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October 29, 2009

Ms. LaDonna Castañuela
Chief Clerk (MC 105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

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RE: Petition for Rulemaking 2010-002-PET-NR - Reclaimed Water – Seeking
Repeal of 30 TAC Chapter 311, Subchapters A, B, and F

Dear Ms. Castañuela:

The Texas Parks and Wildlife Department (TPWD) appreciates the opportunity to comment on a petition for rulemaking pending before the Texas Commission on Environmental Quality (TCEQ), 2010-002-PET-NR, Reclaimed Water, scheduled for Commission agenda on November 18, 2009. TPWD is the agency with primary responsibility for protecting the state's fish and wildlife resources (Texas Parks and Wildlife Code §12.0011(a)). Furthermore, TPWD is charged with providing information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources (Texas Parks and Wildlife Code §12.0011(b)(3)). In light of these considerations, we offer comments below. Please be aware that a written response to a TPWD recommendation or informational comment received by a state governmental agency on or after September 1, 2009 may be required by state law. For further guidance, please see the attached Texas Parks & Wildlife Code Section 12.0011.

We understand this petition for rulemaking was initiated by the City of Leander and the City of Granite Shoals, with support of the City of Marble Falls and the Kingsland Municipal Utility District, in the face of concerns about water supply. We appreciate the petitioners' concerns. Nonetheless, TPWD does not support the petitioners' request to repeal 30 TAC Chapter 311, Subchapters A, B, and F and allow the discharge of treated wastewater to the Highland Lakes. We respectfully request that Commission deny the petition.

The petitioners state that the purpose of their request is to further the statewide public policy of efficiently utilizing and conserving existing water resources. TPWD agrees that use of reclaimed water can be an important facet of water planning. However, the TCEQ Reclaimed Water rules at 30 TAC Chapter 210 allow beneficial use of reclaimed water without discharge to a waterbody. The petitioners appear not to have considered the option of direct reuse of reclaimed water, which could facilitate replacement of existing septic systems with regional wastewater treatment and support both water supply and water quality goals.

The petitioners fail to discuss the water quality impacts of repeal of 30 TAC Chapter 311, Subchapters A, B, and F other than to mention concerns related to septic systems.

Ms. LaDonna Castañuela

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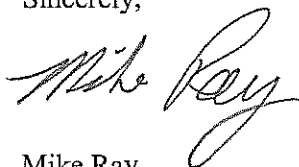
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The Colorado River Environmental Models project conducted by the Lower Colorado River Authority has shown that any increase in nutrient loadings to Lake Travis or the Highland Lakes (which will reach Lake Travis through discharges from Lake Marble Falls) will increase chlorophyll-*a* levels throughout Lake Travis (Final Technical Memorandum, Anchor QEA and Parsons to LCRA, March 18, 2009, revised May 11, 2009). TPWD, which is charged by the Legislature with fisheries management, is concerned about nutrient impacts in some Highland Lakes and does not seek or support increased nutrient loadings.

It would seem that many of the considerations identified by the Governor's Select Committee in 1983 still apply, specifically that "*Lakes Travis and Austin currently are used for general water supply, irrigation, direct drinking water with disinfection, contact recreation including sports which are dependent on water clarity, hydroelectric generation and flood control. The Committee wants to preserve these uses. ... Therefore, the Committee recommends that the water quality standards be amended to and upgraded so that the herein uses be preserved, and additional parameters for nitrogen, phosphorus, clarity and biological indicators should be included in the upgraded standards*" (Report of the Governor's Select Committee on Water Quality Standards for Lake Travis and Lake Austin, March 3, 1983). TPWD applauds TCEQ's foresight in adopting rules at 30 TAC Chapter 311, Subchapters A, B, and F. We encourage TCEQ to further protect the Highland Lakes by adopting appropriate numeric nutrient criteria in the Water Quality Standards, as was suggested in 1983. We request that TCEQ deny the petition for rulemaking and allow 30 TAC Chapter 311, Subchapters A, B, and F to stand.

If you have questions or need any additional information, please contact Dr. Patricia Radloff at 512-389-8730 or patricia.radloff@tpwd.state.tx.us.

Sincerely,



Mike Ray
Acting Director, Coastal Fisheries Division

Enclosure

cc: Ms. Lynda Clayton, Water Quality Division (MC 150)
Mr. Stephen Twidwell
Mr. Steve Magnelia
Mr. Dave Terre
Ms. Cindy Contreras
Ms. Patricia Radloff, Ph.D.
Mr. David Bradsby
Ms. Cindy Loeffler, P.E.

**Section 12.0011, Texas Parks and Wildlife Code
as amended by House Bill 3391, 81st Texas Legislature (2009)**

Sec. 12.0011. RESOURCE PROTECTION.

- (a) The [Texas Parks and Wildlife] department is the state agency with primary responsibility for protecting the state's fish and wildlife resources.
- (b) The department's resource protection activities include:
- (1) investigating fish kills and any type of pollution that may cause loss of fish or wildlife resources, taking necessary action to identify the cause and party responsible for the fish kill or pollution, estimating the monetary value of lost resources, and seeking restoration through presentation of evidence to the agency responsible for permitting or through suit in county or district court;
 - (2) providing recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects;
 - (3) providing information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources; and
 - (4) providing recommendations to the Texas Department of Water Resources on scheduling of in-stream flows and freshwater inflows to Texas estuaries for the management of fish and wildlife resources.
- (c) *An agency with statewide jurisdiction that receives a department recommendation or informational comment under Subsection (b) shall respond to the department in writing concerning the recommendation or comment. A response must include for each recommendation or comment provided by the department:*
- (1) a description of any modification made to the proposed project, fish and wildlife resource decision, or water flow schedule resulting from the recommendation or comment;*
 - (2) any other disposition of the recommendation or comment; and*
 - (3) as applicable, any reason the agency disagreed with or did not act on or incorporate the recommendation or comment.*
- (d) *A response under Subsection (c):*
- (1) must be submitted to the department not later than the 90th day after the date the agency makes a decision or takes other action related to the recommendation or informational comment provided by the department; and*
 - (2) is public information under Chapter 552, Government Code.*