



Life's better outside.®

Commissioners

Peter M. Holt
Chairman
San Antonio

T. Dan Friedkin
Vice-Chairman
Houston

Mark E. Bivins
Amarillo

Ralph H. Duggins
Fort Worth

Antonio Falcon, M.D.
Rio Grande City

Karen J. Hixon
San Antonio

Dan Allen Hughes, Jr.
Beeville

Margaret Martin
Boerne

S. Reed Morian
Houston

Lee M. Bass
Chairman-Emeritus
Fort Worth

Carter P. Smith
Executive Director

October 13, 2009

RECEIVED
TCEQ
WATER QUALITY DIV.

2009 OCT 14 PM 12:01

Ms. April Hoh
Texas Commission on Environmental Quality
Water Quality Division (MC 150)
P.O. Box 13087
Austin, TX 78711-3087

RE: Draft Rule 2009-034-311-PR, *Water Quality in Certain Areas of the Barton Creek Watershed and the Onion Creek Watershed*

Dear Ms. Hoh:

The Texas Parks and Wildlife Department (TPWD) appreciates the opportunity to comment on the Texas Commission on Environmental Quality's (TCEQ's) draft rule 2009-034-311-PR, Water Quality in Certain Areas of the Barton Creek Watershed and the Onion Creek Watershed. 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)). Finally, Onion Creek flows through McKinney Falls State Park, which in addition to being an urban state park, serves as TPWD's headquarters facility. 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 rulemaking was initiated by water quality concerns in the Barton and Onion Creek watersheds in the face of rapid suburban development. We appreciate that TCEQ is considering more stringent effluent limitations for these watersheds, but feel that the proposed limitations are not stringent enough. We would support a ban on discharges, as originally proposed by the City of Austin and the Barton Springs/Edwards Aquifer Conservation District and denied by TCEQ.

Texas Parks and Wildlife staff participated in the September stakeholder group, which included staff from the City of Austin, Lower Colorado River Authority, and the Barton Springs/Edwards Aquifer Conservation District. We understand that at previous meetings scientific data were presented that

Ms. April Hoh
Page Two
(October 13, 2009)

supported the need for protecting water quality by banning wastewater discharges to the streams. At the September stakeholder meeting, TCEQ staff presented a draft rule that did not acknowledge the information that had been presented at the earlier stakeholder meetings, but instead proposed requirements for wastewater discharges that we believe would provide little or no protection for these watersheds. Limits for dissolved nutrients in the rule appear to be based on available technology and not on water quality in the streams. For example, a criterion of 0.1 mg/L total phosphate is proposed in the rule, but background levels of total phosphorus in the streams are an order of magnitude lower. Specific concerns about the proposed rule are noted later in this letter. If technology is not capable of achieving the effluent limits needed to maintain the water quality characteristic of these streams, it seems appropriate to ban discharges in these watersheds.

We do not understand why TCEQ is moving forward with a discharge rule, when we are aware of no scientific data to support that approach. The proposed rule appears to be in conflict with the consensus of data presented at the stakeholder meetings. We ask that TCEQ justify the decision to move forward with a discharge rule.

The proposed rule needs to be revised in alignment with the information developed by the stakeholder process, so that meaningful requirements can be placed on future wastewater discharges in these sensitive watersheds.

Specific concerns and recommendations for the proposed rule:

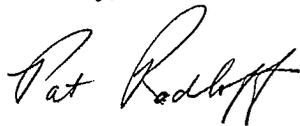
- Water quality based effluent limits are needed for dissolved nutrients (nitrogen and phosphorus) to avoid eutrophic conditions and overgrowth of nuisance aquatic vegetation. These limits should take into account existing ambient water quality in the streams. The total nitrogen limitation (6 mg/L) in the rule appears to be based on the drinking water criterion for nitrate-nitrogen (10 mg/L) backed down to 6 mg/L to offer some safety margin. Limitations should be based on ambient conditions, with consideration to thresholds that would trigger an environmental response. Effects of proposed limitations should be modeled for the streams. Models should take into account not only potential discharges, but also contributions from runoff and other nonpoint sources of pollution.
- The nitrogen and phosphorus limitations are monthly averages; daily maximum and/or grab sample limits are also needed.

Ms. April Hoh
Page Three
(October 13, 2009)

- The rule does not specify criteria or thresholds for ensuring that water quality is not degraded, or a point at which more stringent limitations would be initiated.
- The rule does not describe the desired water quality outcome for the watersheds.
- The rule does not address how cumulative impacts of multiple discharges would be evaluated.

If you have any questions or comments, please contact Stephen Twidwell at (512) 353-3474 or stephen.twidwell@tpwd.state.tx.us or Patricia Radloff at 512-389-8730 or patricia.radloff@tpwd.state.tx.us.

Sincerely,



Patricia L. Radloff, Ph.D.
Water Quality Program Leader

Enclosure

cc: Stephen Twidwell, Texas Parks and Wildlife Department
Cindy Contreras, Texas Parks and Wildlife Department

**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.*