**Comments on *Protecting Aquatic Life from Effects of Hydrologic Alteration, 2016 Draft Technical Report***

**Docket ID Number EPA-HQ-OW-2015-0335**

**Background**

On March 1, 2016, the Environmental Protection Agency (EPA) and the United States Geological Survey (USGS) released a draft technical report, *Protecting Aquatic Life from Effects of Hydrologic Alteration,* and requested comments by May 2, 2016. On April 13, 2016, the EPA extended the comment period on the report until June 17, 2016. The EPA and USGS indicate that the report is intended to provide a non-prescriptive framework to quantify flow targets to protect aquatic life from effects associated with flow alteration. The report describes the relationship between hydrologic conditions and water quality, and indicates that hydrologic alteration can be a contributor of impairment for water bodies that are designated to support aquatic life. The report gives examples of methods States have used to address flow concerns using Clean Water Act authorities.

**Comments on the Draft Technical Report**

1. *General Comments*

**A. The report should include a statement citing that water quantity decisions remain with, and are under the sole jurisdiction of the States, and that this report doesn’t affect that jurisdiction in any way.**

Although the report is intended to be a technical guide, it appears to go beyond technical evaluation by including broader water policy concerns. The report states that it is intended to serve as a technical guide for resource managers to consider in the continued efforts to protect aquatic life through various programs of the Clean Water Act, and is not intended to establish any new authorities or impose any additional requirements on states. However, the report includes a review of Clean Water Act case law that does not clearly acknowledge the state’s absolute jurisdiction over water rights under 33 USC 1251(g) Authority of States over water. The State of Texas has absolute jurisdiction over water rights within the state. Any attempt by the federal government to regulate water quantity through the Clean Water Act or other federal programs would not be consistent with established jurisdiction.

1. *Examples of State and Federal Actions to Protect Aquatic Life from Altered Flows.*

**A. The report should be revised to clearly indicate that the examples of water quality management activities are provided for purposes of suggestion only, and do not indicate new state requirements or federal authority.**

The draft report provides several examples of how to consider and incorporate flow into water quality standards, monitoring, assessment, and restoration programs such as the development of Total Maximum Daily Loads. The TCEQ has historically considered the importance of stream flow in these programs, and has incorporated considerations as appropriate. For example, water quality standards to protect aquatic life uses are assigned based on stream flow type for perennial, intermittent with perennial pools, and intermittent streams. Also, the report accurately documents TCEQ’s use of qualitative visual estimations of flow condition to report flow severity. These examples serve as ways in which states already appropriately consider flow to manage water quality.