

Alamo, Austin, and Lone Star chapters of the Sierra Club
Bexar Audubon Society
Austin, Bexar and Travis Green Parties
Bexar Grotto
Boerne Together
Bulverde Neighborhood Alliance
Bulverde Neighbors for Clean Water
Cibolo Center for Conservation
Citizens for the Protection of Cibolo Creek
Comal County Conservation Alliance
Environment Texas
First Universalist Unitarian Church of SA
Friends of Canyon Lake
Friends of Dry Comal Creek
Friends of Government Canyon
Fuerza Unida
Green Society of UTSA
Guadalupe River Road Alliance
Guardians of Lick Creek
Headwaters at Incarnate Word
Helotes Heritage Association
Hill Country Alliance
Kendall County Well Owners Association
Kinney County Ground Zero
Leon Springs Business Association
Native Plant Society of Texas – SA
Northwest Interstate Coalition of Neighborhoods
Pedernales River Alliance – Gillespie Co.
Preserve Castroville
Preserve Lake Dunlop Association
Preserve Our Hill Country Environment
RiverAid San Antonio
San Antonio Audubon Society
San Antonio Conservation Society
San Geronimo Valley Alliance
San Marcos Greenbelt Alliance
San Marcos River Foundation
Save Barton Creek Association
Save Our Springs Alliance
Scenic Loop/Boerne Stage Alliance
Securing a Future Environment
SEED Coalition
Signal Hill Area Alliance
Sisters of the Divine Providence
Solar San Antonio
Texas Cave Management Association
Trinity Edwards Spring Protection Assoc.
Water Aid – Texas State University
Wildlife Rescue & Rehabilitation
Wimberley Valley Watershed Association

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Comments from the Greater Edwards Aquifer Alliance

TCEQ Commissioners Meeting of March 30, 2022
RE: Pristine Stream Petition (No. 2022-014-PET-NR)

Honorable Commissioners,

I submit these comments on behalf of the fifty-four member organizations of the Greater Edwards Aquifer Alliance (GEAA). GEAA promotes effective broad-based advocacy for the protection and preservation of the Edwards Aquifer, its springs, watersheds, and the Texas Hill Country that sustains it.

We were saddened to learn from a memo regarding Consideration of a Petition for Rulemaking, Docket Number 2022-0175-PET issued by Director of your Office of Water, Earl Lott, that “To initiate or proceed with rulemaking would be contrary to legislative intent and the executive director recommends denial of the petition.”

We question whether the Legislature has intended to prohibit TCEQ from proceeding with rulemaking in this instance. Too often, we have been told by legislators that actions for which we have requested legislation could be achieved administratively by the TCEQ. We have here a catch-22 that, thus far, has frustrated our efforts to engage the State in better protecting our water resources.

Since the Texas Legislature only meets during five months biennially to consider many thousands of bills filed, the Commissioners should note that:

- In 2017, C.S.H.B. 3036¹, which would have prohibited TCEQ from issuing a new permit authorizing the direct discharge of waste or pollutants into the Nueces, San Antonio, and Guadalupe River watersheds located in or north and west of the Edwards Aquifer recharge zone or into the portion of the Colorado River watershed located in Blanco, Hays, and Travis Counties that drains to or includes the Edwards Aquifer recharge zone southwest of the Colorado River, was approved by the House Environmental Regulation Committee. C.S.H.B. 3036 was placed on the calendar for a vote of the Texas House, but time ran out before it got to the floor.

Although the bill analysis for C.S.H.B. 3036 noted that “It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.” those of us supporting the bill were advised by legislators to seek a rulemaking process from TCEQ to implement these much needed changes to State regulation.

¹<https://capitol.texas.gov/Search/DocViewer.aspx?ID=85RHB030362A&QueryText=%22hb+3036%22&DocType=A>

- In 2021, C.S.H.B. 4146², also known as the “The Pristine Streams bill”, was approved by the House Natural Resources Committee. The bill died when Lt. Gov., Dan Patrick declined to refer the bill to a Senate committee, effectively killing this much needed and long awaited legislation to prohibit waste water discharge into forty-one of Texas most pristine waterways.

We believe that the votes of both the House Environmental Regulation Committee and the House Natural Resource Committee to approve sending two similar bills to the House for passage demonstrates sufficient legislative intent of those so charged for TCEQ to proceed with this rule making process in that the legislators with the most expertise in these matters have recognized a need to address regulatory deficiencies in protecting Texas’ most pristine waterways.

As anyone who has engaged in a session of the Texas Legislature knows, the odds of any one bill passing are minimal. For TCEQ to require a clear mandate in the form of passage of legislation before they take action to regulate pollution in Texas is, we feel, an abdication of your responsibilities to the citizens of Texas.

In fact, GEAA and twenty other organizations have been so frustrated with this commission’s lack of initiative in enforcing the U.S. Clean Water Act that we filed a petition³ in September of 2021 requesting the U.S. E.P.A. to take over and repair Texas’ broken system of issuing permits to control water pollution.

It is our opinion that Texas has failed to meet the minimum water quality standards requirements of a state NPDES program. A key missing element to Texas’ permit review process is the lack of an effective “anti-degradation policy” to protect water quality. This policy requires industries to document the economic or social necessity of projects that pollute waterways and demonstrate that there are no viable alternatives that would avoid pollution of the waters.

The requirement for this demonstration predated the Clean Water Act (CWA) itself. When implementing that 1965 federal law, Interior Secretary Stewart Udall enunciated the minimum requirements for each state’s “non-degradation” policy:

“Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at their existing high quality. These and other waters of a State will not be lowered in water quality unless and until it has been affirmatively demonstrated to the State water pollution control agency and the Department of Interior that such change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently possible in, such waters.”⁴

²<https://click.icptrack.com/icp/rclick.php?cid=431426&mid=504156&destination=https%3A%2F%2Fcapitol.texas.gov%2Ftldocs%2F87R%2Fbilltext%2Fpdf%2FHB04146H.pdf%23navpanes%3D0&cid=3281&vh=30b08e5fc32b9fe08c0faa8ea802c821b9ebb424f9b17807409369c35748abea>

³ <https://environmentalintegrity.org/wp-content/uploads/2021/09/TX-Water-Pollution-Petition-to-EPA-9-23-21.pdf>

⁴ Dep’t of the Interior, Compendium of Dep’t of Interior Statements on Non-Degradation of Interstate Waters, 1-2 (1968) <https://www.epa.gov/sites/production/files/2014-10/documents/doiwaters.pdf>

(At the time of this statement, the United States Environmental Protection Agency did not yet exist. The United States Department of the Interior held jurisdiction over water quality standards at the time.)

As this policy statement reflects, where a regulatory decision would lower water quality in waters that exceeded the minimum standards, the anti-degradation policy requires two separate and independent showings: (1) the lowering of water quality would not be harmful to any assigned or attainable use of the receiving waters; and (2) the lowering of water quality is necessary for important economic or social development.

It is our opinion regarding the twenty-two streams to be protected by this rulemaking petition that the lowering of water quality would be antithetical to important economic and social development within the impacted areas. We therefore believe that it is incumbent upon this agency to adopt regulations, such as those outlined in the Pristine Streams petition, that are consistent with the requirements of the U.S. CWA as well as adequately protective of these unique natural resources that are treasured by so many Texans.

In conclusion, we urge you, the Commissioners of the Texas Commission for Environmental Quality to take this bull by the horns and authorize your staff to proceed with devising regulations as petitioned to protect Texas' most pristine streams.

Respectfully,

A handwritten signature in black ink, appearing to read "Annalisa Peace", with a long horizontal flourish extending to the right.

Annalisa Peace
Executive Director
Greater Edwards Aquifer Alliance