

Lake Conroe Association Public Testimony to the Sunset Advisory Commission
concerning the Texas Commission on Environmental Quality
June 22, 2022

My name is Erich Birch, and I am an attorney here on behalf of the Lake Conroe Association, which is a non-profit organization made up of residents and businesses concerned with the use, protection, and enjoyment of the Lake Conroe water supply reservoir. LCA's comments today relate to the first three issues identified in the Sunset Commission's Staff Report and TCEQ's failure to investigate and enforce permits and rules intended to protect and conserve the state's water resources.

Some background is important. After Hurricane Harvey the City of Houston and the San Jacinto River Authority, who both hold permits for water in Lake Conroe, started a practice of lowering the lake for the supposed purpose of flood control. No study supported this political decision, whereas two engineering reports found lowering the reservoir would not reduce flooding, and could actually increase flooding.

In 2020 when it became apparent that Houston and SJRA intended to continue this practice, LCA retained experts to investigate the practice and found it to be not only ineffective, but also in violation of state law and TCEQ's permits and rules. These experts included the former Public Works Director of the City of Houston who experienced the 2011 drought and understood the importance of Lake Conroe. Further, after the research was completed, LCA retained expert water policy consultants, asking Carlos Rubenstein and Herman Settemeyer to review the investigation, and they agreed the practice was an unauthorized use of water.

LCA filed two 100-page, highly detailed complaints with TCEQ, one in June of 2020, and another in December 2020. The complaints showed the practice was wasting billions of gallons of water, and cited eight specific violations ranging from unauthorized diversions of water, to failing to prevent the waste of water, to the filing of false reports with TCEQ by the City of Houston. TCEQ did not substantively respond, and so the lake lowering program continued.

Due to TCEQ's inaction, last year LCA filed suit against Houston and SJRA for the wasting of water and violations of state law. Ultimately the court ruled that Houston and SJRA were protected from suit based on their sovereign immunity claims. LCA initially appealed, but later dropped the appeal due to costs.

But the simple fact is, if TCEQ had done its job LCA would not have had to file suit. It is tragically comic that after Houston, SJRA, and TCEQ have wasted billions of gallons of water, Houston yesterday announced it has entered Stage 1 of drought contingency and hypocritically urged its citizens to save water. Fortunately, due to good spring rainfall and the grace of God, Lake Conroe is currently near full pool, and if the drought gets worse the Houston area will have its best chance of managing the drought.

There are many failures here. TCEQ should have thoroughly investigated LCA's complaint that water was being wasted. TCEQ should have investigated whether Houston's self-reported Water Use Reports were accurate. LCA's complaint should have been assigned to the TCEQ Enforcement Division for investigation, as are all other complaints, not the conflicted Permits Division. It is inconceivable that an agency responsibility for issuing and enforcing permits would allow a blatant violation of these permits to continue for years. TCEQ has the responsibility and duty to protect the state's water and prevent the waste of water, and it did neither.

TCEQ has yet to address LCA's complaints or to stop these violations. LCA asks that the legislature correct these issues with TCEQ, or, provide a mechanism whereby parties like LCA have a way of compelling TCEQ to enforce its rules.

Thank you.