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June 7, 2022

Ms. Jennifer Jones
Executive Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

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Carter P. Smith
Executive Director

Re: Sunset Staff Report on the Texas Commission on Environmental Quality and Texas Low-Level Radioactive Waste Disposal Compact Commission

Dear Ms. Jones:

Thank you for the opportunity to respond to the *Staff Report on the Texas Commission on Environmental Quality and Texas Low-Level Radioactive Waste Disposal Compact Commission*. Per your May 25, 2022, request for comments, Texas Parks and Wildlife Department (TPWD) respectfully offers the following feedback on Issue 3:

Issue 3: TCEQ's Oversight of Water Could Better Protect the State's Scarce Resources.

As the steward of the state's fish and wildlife resources, TPWD is keenly aware of the critical need for water of sufficient quality and quantity to support these valuable natural resources. In support of the staff findings and recommendations in Issue 3, TPWD offers two suggested clarifications.

1. **Page 46, last paragraph:** Suggest adding sentence at end to note that water rights placed in the Texas Water Trust are exempt from cancellation. "Water rights placed in the legislatively created Texas Water Trust are also exempt from cancellation." Section 15.704, Texas Water Code.

Justification: If TCEQ were to administer an active cancellation program, there may be an incentive to deposit water rights in the Texas Water Trust; by statute, deposited rights are exempt from cancellation. Additionally, the 87th Texas Legislature enacted House Bill 2225 which directs TPWD to encourage and facilitate the dedication of water rights in the Texas Water Trust through lease, donation, purchase, or other voluntary means. The bill also provides that TPWD may manage rights in the Trust under a voluntary agreement with a water right holder. (See sections 12.028 and 15.7031, Texas Water Code.)

2. **Page 48, first bullet, second sentence:** Suggest adding reference to environmental set-asides. "Returning unused water would make future appropriations of water subject to e-flow standards or available for set-asides and, depending upon the location of the water, could potentially strengthen the

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impact of the state's environmental flow initiative." Sections 11.0235 and 11.1471, Texas Water Code.

Justification: Water returned to the state after cancelation would also be available for TCEQ to set aside for environmental flows (statutory reservations of unappropriated water for instream uses). The suggested added language ties well with the last sentence of the second paragraph under Staff Recommendation 3.1 on page 49, "The report should also include information on TCEQ's implementation of other statutory requirements related to e-flow standards, *including the status of setting aside unappropriated water for flow protection.*"

Thank you for the opportunity to provide input on this important matter.

Sincerely,



Carter Smith
Executive Director

CS:dh

cc: Mr. Clayton Wolf, Chief Operating Officer
Ms. Allison Winney, Intergovernmental Affairs
Ms. Colette Barron Bradsby, Deputy General Counsel
Mr. Kevin Mayes, Chief of Fisheries Science and Policy, Inland Fisheries