

PETITION FOR RULEMAKING	§	BEFORE THE TEXAS COMMISSION ON
	§	ENVIRONMENTAL QUALITY
BY FRIENDS OF HONDO CANYON	§	
dba PRISTINE STREAMS TEAM,	§	
HILL COUNTRY ALLIANCE,	§	
SAVE BARTON CREEK ASSOCIATION,	§	
DEVILS RIVER CONSERVANCY, TEXAS	§	
HILL COUNTRY RIVER REGION, et al.	§	
	§	
	§	
TO ADOPT NEW RULES FOR PROTECTED	§	
WATERSHEDS (“SUBCHAPTER K”)	§	
FOR PRISTINE STREAM SEGMENTS	§	
FROM DEGRADATION CAUSED BY	§	
TREATED DOMESTIC WASTEWATER	§	
EFFLUENT	§	

ORIGINAL PETITION FOR RULEMAKING

FRIENDS OF HONDO CANYON dba PRISTINE STREAMS TEAM (“PST”), Hill Country Alliance, Save Barton Creek Association, Devils River Conservancy, Texas Hill Country River Region, et al file this Original Petition for Rulemaking to the Texas Commission on Environmental Quality (“TCEQ”), requesting the Commission adopt a new rule establishing a new “Subchapter K – Protected Watersheds” (“Subchapter K”) to be included in Chapter 311 of the Texas Administrative Code (the “TAC”). The proposed Subchapter K is attached as Exhibit A. The objective of the new rules in Subchapter K is to prohibit the permitting of the discharge of treated domestic wastewater effluent to certain “stream segments” and their “drainages”, often referred to herein as “pristine streams”.

The pristine stream segments to be protected from discharge permits are those which have a demonstrated record in TCEQ data files of Total Phosphorus content below 0.06 mg/l (a common limit of detection) in 90% or more of the water quality samples collected over a ten (10) year period prior to January 1, 2022. A comprehensive list of these stream segments is set forth in Exhibit B. These stream segments deserve special protection because they naturally carry very low levels of phosphorus, below common detectable limits, and the addition of treated domestic wastewater effluent containing phosphorus in any amount or concentration will degrade the water quality. Petitioners respectfully request that the Commission consider this Petition and adopt the attached new rule. Pursuant to the provision of 30 Tex. Admin. Code (“TAC”) Section 20.15, PST respectfully shows the following:

I. THE PETITIONERS

FRIENDS OF HONDO CANYON dba PRISTINE STREAMS TEAM, HILL COUNTRY ALLIANCE (HCA), SAVE BARTON CREEK ASSOCIATION (SBCA), TEXAS HILL COUNTRY RIVER REGION (HCRR) and DEVILS RIVER CONSERVANCY (DRC) are 501(c)(3) charitable corporations comprised of Texas citizens, riparian and other landowners, and supported by non-governmental organizations and various individuals. They are joined by individual petitioners who care deeply and feel strongly about the remaining pristine streams in Texas.

The petitioners for many generations have observed that these pristine stream segments, where one can clearly see the stream bottom in standing and running water at depths of many feet, have been tourism magnets, sources of boundless recreational enjoyment and prominent engines for local, area and state economic prosperity. Characteristic of these streams is the extremely low level of Total Phosphorus that they carry. All treated domestic wastewater effluent contains Phosphorus. The discharge of such wastewater into these streams will degrade their water quality.

II. BRIEF EXPLANATION OF PROPOSED RULE

The objective of the new rules in Subchapter K is to protect “stream segments” and their “drainages” from degradation by prohibiting the discharge of treated domestic wastewater effluent. These stream segments have a demonstrated record of Total Phosphorous values of less than 0.06 mg/l (the common detectable limit) in 90% or more of the water quality samples collected over a ten (10) year period prior to January 1, 2022, based on data stored in TCEQ’s Surface Water Quality Monitoring database. The segments proposed to receive protection (often referred to herein as “pristine streams”) are the limited number of ultra-clear streams found in various parts of our State. Examples are segments of the Blanco River, Frio River, Devils River, Llano River and others. A comprehensive list of pristine stream segments meeting the Phosphorus criteria have been identified by PST and TCEQ staff and are presented in the attached Exhibit B. The proposed rule ensures that these pristine stream segments and their drainage areas will not be degraded by the discharge of treated domestic wastewater effluent.

III. TEXT OF PROPOSED RULE

Petitioners propose the adoption of a new rule to be located in a new Subchapter K of Chapter 311 Watershed Protection, Title 30 Texas Administrative Code. Petitioners propose the text of the new rule as is set forth in Exhibit A.

IV. AUTHORITY FOR THE NEW RULE

The new rule is proposed to be adopted pursuant to Section 26.011 of the Texas Water Code, which requires the Commission to administer the provisions of Chapter 26 Water Quality Control and to establish the level of quality to be maintained in, and to control the quality of, the water in this state as provided in Chapter 26. Waste discharges or impending waste discharges covered by the provisions of Chapter 26 are subject to reasonable rules adopted or issued by the Commission in the public interest.

V. INJURY OR INEQUITY RESULTING FROM FAILURE TO ADOPT PROPOSED RULE

The Real and Continual Threat of Adding Treated Domestic Wastewater Effluent to Our Pristine Streams. According to scientific literature, the addition of phosphorus-containing wastewater to streams with low phosphorus content will cause significant adverse consequences. In freshwater streams where the presence of phosphorus is undetectable, even a modest increase in phosphorus can set off a chain of undesirable biologic events, including accelerated plant growth, algae blooms, low dissolved oxygen, and the death of certain fish, invertebrates, and other aquatic animals. Low-flow pristine streams are particularly adversely affected. Treatment of domestic wastewater, even when the treatment is to the highest level of purification, cannot eliminate all phosphorus from being present in the effluent discharge. Consequently, the introduction of *any* treated domestic wastewater effluent into the low-phosphorus pristine streams listed on Exhibit B will unquestionably degrade these pristine streams, and can result in unsightly algae blooms and potential loss of aquatic life caused by the accompanying oxygen loss. Yet, some businesses, land developers and governmental entities continue to apply for treated domestic wastewater discharge permits affecting these pristine streams. TCEQ's current rules do not prohibit or discourage this, despite the problematic consequences; TCEQ's current rules instead invite this. The natural beauty of the areas where pristine streams are located make them attractive targets for development of new businesses and planned residential communities, which requires proper management of their treated domestic wastewater effluent. There is no reason to believe that efforts for such development in the pristine stream areas will abate, or that applications to discharge treated domestic wastewater effluent into pristine streams will cease unless the TCEQ takes action. As a result, the threat to pristine streams today is real and continual. The looming degradation of these pristine streams places downstream landowners and businesses at risk of adverse property and commercial impacts and diminished recreational uses of their "river front" properties.

The Reasons Why the TCEQ Should Amend its Rules to Protect Our Pristine Streams. Listed below are multiple reasons why the TCEQ should amend its rules to protect these precious pristine streams:

(i) **The Proposal is Consistent with TCEQ’s Mission Statement.** TCEQ’s Mission Statement is: “The Texas Commission on Environmental Quality strives to protect our state's public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste.” The Proposal will protect a treasured natural resource of Texas that is at continual risk of degradation and potential elimination. Additionally, the communities in which the pristine streams are located depend on the continued pristine quality of their local streams for economic development. The measured Proposal, which balances the interests of all affected constituencies, will strengthen the economies of pristine stream communities, protect private property, promote Texas tourism, and allow for continued development in pristine stream areas in a sustainable and responsible way. By preventing the degradation of pristine streams caused by the introduction of treated domestic wastewater effluent, the Proposal plainly promotes clean water and the safe management of waste. The Proposal is fully consistent with TCEQ’s Mission Statement.

(ii) **The Proposal Advances the Intent and Objectives of the TCEQ’s Water Quality Monitoring Program.** Section 21.0135 of the Water Code provides: “The [TCEQ’s water quality] monitoring program shall provide data to identify significant long-term water quality trends, characterize water quality conditions, support the permitting process, and classify unclassified waters. The commission shall consider available monitoring data and assessment results in developing or reviewing wastewater permits and stream standards and in conducting other water quality management activities.... The data and reports shall also be used to provide sufficient information for the commission... to take appropriate action necessary to maintain and improve the quality of the state's water resources.”

The Proposal advances the intent and objectives of these statutory provisions. The Proposal relies on historical TCEQ water quality monitoring data to “characterize water quality conditions,” “support the permitting process,” and “take appropriate action necessary to maintain and improve the quality of the state’s water resources.” The Proposal uses quality assured water samples from “stream segments” taken for approximately the last decade under the TCEQ’s stream water quality monitoring program to determine which ones contain undetectable phosphorus. It is reasonable for the TCEQ to use its historical quality assured water sampling data to take appropriate action necessary to maintain and improve the quality of the state’s water resources. Because existing TCEQ stream water sample data identifies the “stream segments” that have been shown to carry very low levels of phosphorus, and scientific literature tells us that adding more phosphorus to streams with very low and undetectable phosphorus causes degradation, the appropriate action of the TCEQ is to prohibit adding phosphorus to pristine streams and their drainages. That is exactly what the Proposal will do;

it prohibits the introduction of treated wastewater into no or low phosphorus pristine streams and their drainages because treated domestic wastewater effluent contains degrading phosphorus.

- (iii) The Proposal Will Substantially Cut TCEQ's Operating Costs by Eliminating Protracted Wastewater Discharge Permit Disputes Where Pristine Streams are Involved.** Based on TCEQ records, applications to discharge treated domestic wastewater effluent into beloved pristine streams are invariably protested. In the past, affected local landowners and businesses, as well as river and nature-lovers across the State, have routinely spent hundreds of thousands of dollars on fees for attorneys, water quality experts, and water quality reports to protest such applications. Their costs are matched or exceeded by the applicants. The TCEQ staff is forced to spend hundreds of hours to evaluate these applications and protests, not to mention incur thousands of dollars on necessary related water quality analyses, travel expense, convening and participating in local area public meetings, etc. It is estimated that a contested case costs the contestants and TCEQ at least \$500,000 each.

In the upper Nueces River Basin, where no wastewater discharge permits have yet to be issued by TCEQ, there have been three (3) contested treated domestic wastewater effluent discharge application cases recently. Two (2) of these were resolved months after filing but prior to the scheduling of a contested case hearing because the applicant, once informed of the risks to the affected stream segment, decided to pursue a non-discharge alternative. The RR417, LLC (Camp Ozark) application for discharge into Commissioners Creek, a tributary to the pristine upper Hondo Creek, on the other hand, was prosecuted up until the eve of a full-blown contested case hearing and still resulted in a zero-discharge permit. An application to discharge treated domestic wastewater effluent into a tributary to Barton Creek was contested for four (4) years before the developer recently decided to change their plans.

These treated domestic wastewater effluent applications are only a subset of all contested such wastewater discharge cases involving pristine streams. The filing of many more contested applications for treated domestic wastewater effluent discharge permits is assured unless TCEQ provides the clear and firm rule guidance proposed. The treated domestic wastewater effluent discharge permitting process should not occur in protracted and expensive judicial proceedings presided over by judges without wastewater expertise. The TCEQ process for approval of a wastewater management application should be a time- and cost-efficient regulatory process where the rules are easily understood, science-based, and protect Texas' natural resources in a manner that fairly and reasonably balances the interests of all affected constituencies. Implementing the Proposal will allow the TCEQ to deploy its limited resources on much more meritorious issues and will keep the treated domestic wastewater effluent permitting process where it properly belongs, at the TCEQ.

- (iv) **The Proposal is Consistent with TCEQ’s Philosophy.** On its website, TCEQ states that it will “base decisions on the law, common sense, sound science, and fiscal responsibility.” A decision to adopt the changes proposed is consistent with the statutory provisions related to the Texas Water Quality Monitoring Program. As previously discussed, the proposed changes are common sense ways to address all relevant interests related to the management of treated domestic wastewater effluent in pristine streams and their watersheds. These changes are grounded in sound science that correlates the addition of phosphorus to low phosphorus water with degradation. Adopting the changes is fiscally responsible and will eliminate the enormous costs currently associated with contested treated domestic wastewater effluent discharge cases involving pristine streams and their watersheds. Therefore, the changes are clearly in keeping with the TCEQ’s philosophy.

Respectfully submitted,

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EXHIBIT A

Administrative Code

TITLE 30	ENVIRONMENTAL QUALITY
PART 1	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 311	WATERSHED PROTECTION
SUBCHAPTER K	PROTECTED WATERSHEDS

RULE 311.1 Definitions

The following words and terms, when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) "Classified segment" means any water body or a portion of a water body identified in Appendices A and C of 30 T.A.C. Section 307.10 as it existed on [January 1, 2023].
- (2) "Drainage area" means every unclassified water body, if any, that drains to a stream segment to which this Subchapter applies.
- (3) "Protected Watershed" means a stream segment and its drainage area.
- (4) "Stream segment" means a stream, creek, or river, or a portion of a stream, creek, or river, that is a classified segment to which this Subchapter applies.
- (5) "Unclassified water body" means a water body other than a classified segment.

RULE 311.2 Applicability

This Subchapter applies to:

- (1) any stream segment, other than a stream segment that is located directly beneath a lake, pond or impounded reservoir, that on [January 1, 2023] has had:
 - (A) at least 10 water quality samples taken from the stream segment over the 10 calendar years preceding January 1, 2020; and
 - (B) according to data in the commission's Surface Water Quality Monitoring Information System, a total phosphorus level below .06 milligrams per liter in 90 percent or more of all water quality samples taken from the stream segment taken over the 10 calendar years preceding January 1, 2020; and
 - (2) the drainage area of any stream segment that meets the requirements of Subdivision (1).
- A list of all stream segments found by the commission to satisfy the requirements of Subdivision (1) is set forth in Appendix A of this Rule.

EXHIBIT A

RULE 311.3 Prohibition on Direct Discharge; Exceptions

(a) After the effective date of this Rule the commission shall not issue a new permit authorizing the direct discharge from a domestic wastewater treatment facility of any waste, effluent, or pollutants into a protected watershed.

(b) This Rule does not affect the authority of the commission to issue:

- (1) an individual permit for a municipal separate storm sewer system; or
- (2) a general permit for stormwater and associated non-stormwater discharges.

(c) This Rule applies only to an application for a permit that is submitted to the commission on or after the effective date of this Rule. An application for a permit that was submitted to the commission before the effective date of this Rule is governed by the law and commission rules in effect at the time the application was filed.

(d) After the effective date of this Rule the commission may not grant:

(1) any amendment to a permit in effect before the effective date of this Rule authorizing the direct discharge from a domestic wastewater treatment facility of any waste, effluent, or pollutants into a protected watershed if such amendment would authorize any increase in the amount of direct discharge; or

(2) any amendment to an initial permit granted after the effective date of this rule pursuant to an application filed before the effective date of this Rule and authorizing the direct discharge from a domestic wastewater treatment facility of any waste, effluent, or pollutants into a protected watershed if such amendment would authorize any increase in the amount of direct discharge.

RULE 311.4 Required Use of Texas Land Application Permits, Chapter 210 Authorizations and Other Zero Discharge Alternatives

(a) In instances where a new permit authorizing the direct discharge from a domestic wastewater treatment facility of any waste, effluent, or pollutants into a protected watershed is prohibited by Rule 311.3, the only permit or authorization obtainable by an applicant from the commission authorizing the disposal of such waste, effluent or pollutants shall be a Texas Land Application Permit, one or more reuse authorizations under Chapter 210 of Title 30 of the Texas Administrative Code, and/or an alternative zero discharge method for wastewater disposal acceptable to the commission.

EXHIBIT B

0224	Red River Basin	North Fork Red River	89.7	miles
1250	Brazos River Basin	South Fork San Gabriel River	41.26	miles
1251	Brazos River Basin	North Fork San Gabriel River	41.77	miles
1415	Colorado River Basin	Llano River	241.94	miles
1424	Colorado River Basin	Middle Concho/South Concho River	77.76	miles
1427	Colorado River Basin	Onion Creek	78.65	miles
1430	Colorado River Basin	Barton Creek	39.50	miles
1809	Guadalupe River Basin	Lower Blanco River	13.35	miles
1813	Guadalupe River Basin	Upper Blanco River	75.97	miles
1815	Guadalupe River Basin	Cypress Creek	15.71	miles
1816	Guadalupe River Basin	Johnson Creek	24.76	miles
1817	Guadalupe River Basin	North Fork Guadalupe River	28.16	miles
1818	Guadalupe River Basin	South Fork Guadalupe River	28.13	miles
1905	San Antonio River Basin	Medina River above Medina Lake	33.84	miles
2111	Nueces River Basin	Upper Sabinal River	45.69	miles
2112	Nueces River Basin	Upper Nueces River	126.70	miles
2113	Nueces River Basin	Upper Frio River	47.22	miles
2114	Nueces River Basin	Hondo Creek	80.15	miles
2115	Nueces River Basin	Seco Creek	74.11	miles
2309	Rio Grande Basin	Devils River	73.66	miles
2310	Rio Grande Basin	Lower Pecos River	85.79	miles
2313	Rio Grande Basin	San Felipe Creek	9.20	miles
22 Segments			1373.02	miles