

RE: TCEQ Permit Application #13524, Proposed Private Recreational Dam, Waterstone Creek LLC, South Llano River

Dear Friends of the Rivers and Lakes of the South Llano, North Llano and Main Llano River,

Last November TCEQ informed Representative Murr's office that TCEQ was anticipating that the public meeting on the proposed private recreational dam on the South Llano River would be held in "Summer 2023." That time is here and we should be getting fairly close to receiving the notice of the public meeting.

When we learned about the proposed private recreational dam last year, we were told by TCEQ that the comment period for Permit Application #13524 will be open again from the date of the public meeting notice until to the date of the actual public meeting. So, we have another opportunity to let our voices be heard at TCEQ concerning this proposed dam.

If you sent in a public comment already...send it in again or another public comment, and if you haven't sent in a public comment PLEASE do so as soon as the public meeting notice is received. On all public comments (unless comments of expertise) be sure and state the reason why you are an "affected party or person," if applicable.

Include the question in your comments; Will this proposed private recreational dam be a benefit to the community and/or does it have a beneficial use to the public?

It is imperative that we gather as many letters and testaments of expertise as we can:

- 1) To be emailed or sent to TCEQ by those with expertise.
- 2) From those with expertise in their fields to read and/or give testament in person at the public meeting.
- 3) In addition to emailing to TCEQ, a hard copy to be printed out and put with other public comments of expertise to be hand delivered to TCEQ at the public meeting.

As many public comments and testaments of expertise as possible need to be sent to TCEQ and PLEASE also email a copy to LRWA. It will make a HUGE difference!

Below are some examples of comments of expertise and comments from “affected parties or persons” regardless if you own property on the river or reside elsewhere in the counties affected or just visit in the counties affected in order to traverse and/or enjoy the free-flowing rivers of the Llano:

- 1) Public comments and testaments of expertise from scientists, biologists and ecologists who can comment on water quality, pollution from low to no water flow and standing bodies of water, public health and safety, negative and irreversible ramifications on our ecosystem, fish and wildlife habitat and migration, nature’s food chain for eagles and other species, the natural flow of plants and nutrients, native and aquatic plants and other negative impacts.
- 2) Engineers who can comment on the necessity of detailed engineering and environmental studies on how private recreational dams may affect groundwater and private wells, erosion, flooding and other factors.
- 3) Hydrologists who can make public comments on the importance of water and soil samples and tests for certain properties such as the pH or pollution levels and data on the environmental impacts of pollution, erosion, drought, and other concerns.
- 4) Economic analysts who can make public comments on natural resources that are important factors influencing the development and sustainability of economic growth and development including a protected and healthy river system.
- 5) Testaments from attorneys, Floodplain Administrators and other professionals.
- 6) Public Comments from realtors who can give testament to the devaluation and resale value of property if a precedent is set and private recreational dams are permitted all along the rivers.
- 7) Chamber of Commerce representatives who can give testament to the impact that low to no water flow caused from private recreational dams would have on the tourism industry that draws in people from all over who are seeking water-based recreation and water-based business opportunities all along the rivers and associated lakes.
- 8) “Affected parties or persons,” such as water-based business owners of fishing camps, boat docks, boat, kayak and tube rentals, RV Parks, convenience stores, eating facilities and the many other associated water-

based recreational businesses that have grown the water recreation industry that greatly contributes to our economy.

- 9) Water recreation enthusiasts who traverse and enjoy the waters of the State-owned rivers by picnicking, swimming, kayaking, rafting, camping and socializing. Family enjoyment and socialization on the river ends when streams become shallow and stagnant.
- 10) Ranchers whose livestock, crops and deer population are dependent on the river and their hunting leases supplement the rancher's business income.
- 11) Property owners along the rivers whose senior and riparian water rights would be infringed upon.
- 12) Representatives of cities whose municipalities and residents survive solely from the clean flowing State-owned waters of the Llano River, and the threat to that water supply because of plugging up the river by permitting private recreational dams.
- 13) Local community fire departments and fire fighters that put their lives on the line and rely on the water supplied by the rivers to fight fires, especially in the rural areas in times of drought when stock tanks and ponds are dry. With no readily available water, one single fire event could destroy an entire community or City as well as tens of thousands of acres of pastures and woodland, putting lives, homes, property, livestock, wildlife and livelihoods at risk. It is possible that during times of drought and/or slow flow, one permitted private recreational dam too far upstream or downstream to access may be impounding the water needed to extinguish such a catastrophic fire event.
- 14) Comments from representatives of the cities and counties that take in thousands and thousands of dollars each year in tax revenue from the tourism industry and the economic growth and development related to water-based recreational areas, and the cities who depend on the clean, healthy, sustainable water source from the Llano River.
- 15) Anyone who resides in any of the counties that the river runs through who are an "affected party or person" if their taxes and cost of living go up due to a declining economy from a precedent being set and private recreational dams are permitted all up and down the rivers of the Llano that will threaten their water supply and economic well-being.
- 16) Landowners who paid premium prices for property located on the rivers of the Llano and the injustice to them if private recreational dams are permitted. Many factors are figured into a decision to buy expensive river

and waterfront property, but unexpected permitted private recreational dam(s) on the rivers was NEVER part of their equation.

- 17) We all witnessed the Llano River at “0” flow for a scary period of time last summer... public comments of how you were personally affected and how permitted private recreational dams along the river would have hastened the diminished flow and water quality even further on an already delicate Llano River.
- 18) Other reasons not listed above.

FOR COMPARISON: A RELATED SITUATION in KERR COUNTY

Last Thursday I was contacted by a property owner from Kerr County and he and his neighbors had just recently learned about a proposed private recreational dam on the Guadalupe River Basin, and the comment period was to end on July 2nd. If permitted, it will be the 4th private recreational dam in that area that would be in very close proximity to each other... exactly what we are trying to prevent on the rivers of the Llano with our first proposed private recreational dam on the South Llano.

The proposed dam on the Guadalupe Basin is permitted differently from the one on the South Llano because they are in TCEQ’s South Texas Watermaster Program, so the stream is considered non-navigable and their current pending permit is with TPWD.

In an effort to get additional information on the South Llano River permitting process if it goes to TPWD, and to get clarification on the TPWD pending permit for the Guadalupe Basin, I called and spoke with Tom Heger, Aquatic Resources Permitting and Consultation Program Leader, Texas Parks and Wildlife (TPWD) on 6-23-2023.

Mr. Heger was most helpful and forthcoming in answering my list of questions concerning the permitting process of the TPWD as it pertains to the proposed private recreational dam on the South Llano River in Edwards County as well as the one on the Guadalupe River Basin in Kerr County. Below are the highlights of our conversation. Edits were made and all approved by Mr. Heger.

- TPWD regulates disturbance of sand, gravel and marl in navigable waters.
- TCEQ regulates water rights and impoundment of public waters.

- In the case of both proposed private recreational dams on the South Llano and Guadalupe Basin, the applicant may have presently only applied to TCEQ or TPWD, but before beginning any construction an applicant will need to have a TPWD Permit. The applicant would generally need permits from other entities (possibly TCEQ, Corps of Engineers and Flood Damage Prevention) along with any other permits that may apply, but the actual decision on whether each agency's permit is needed for a particular project is up to that agency. Mr. Heger said there was no reason not to ask the TCEQ Watermaster who is over the Guadalupe River Basin and/or other TCEQ agents about the permitting process of the proposed dam on the Guadalupe Basin.
- Concerning the proposed private recreational dam on the South Llano River, Mr. Heger said that if TCEQ issues a permit, they will still need to apply to TPWD. The same is true of the Corps of Engineers. The TCEQ, Corps, and TPWD permits are separate authorizations needed under different state and federal laws. If required, each must be in place, plus possibly floodplain administrator authorization, before in-channel construction could begin.
- A public notice for the proposed Guadalupe Basin dam was posted in the Kerr Daily Times and a notice was also mailed to landowners a mile upstream and downstream of the proposed dam. The notice mentioned that a public comment hearing would be held and notice of the hearing would be published in the *Texas Register*. A *Texas Register* notice was published for the public meeting that was held at TPWD in Austin on 6-23-2023.
- Representative Murr's office requested an extension on the public comment period from TPWD and on 6-28-2023 the Public Comments period on the proposed private recreational Guadalupe Basin dam was extended to August 16, 2023.
- Mr. Heger said it was his understanding that riparian landowners have access to use up to 200 acre-feet of water per year for domestic or livestock uses, but impoundment is not in his area of expertise.
- I told Mr. Heger that the Guadalupe Blanco River Authority (GBRA) appeared before the Kerr County Commissioners Court and presented them with a power point about endangered species in their area. He said that when TPWD reviews the application the intent is to look at any species potentially affected by the project, including listed species.

- Mr. Heger said there are hundreds of small dams on Texas streams and from what he has learned and experienced over the past years is that most were built many decades ago and may not have been permitted... but he said that does not mean any and all new dams are not required to be permitted.
- Mr. Heger said that every dam has impacts, and concerning the proposed private recreational Guadalupe Basin Dam as well as others, TPWD will look at the impact of each dam individually.
- If a TPWD and TCEQ permit are both required, TPWD would probably coordinate with them to avoid conflicting information. He said sometimes applicants go to TCEQ first to see if they are approved before applying to TPWD, and sometimes applicants don't actually understand all the permits that are required.
- I asked Mr. Heger if he knew who owned the Senior Water Rights in that part of the Guadalupe River Basin and he said that information is not necessarily required for TPWD's permit review and he did not know. He said if a landowner got all their required authorizations for that particular project, they would be able to build a dam. A water right is one of those authorizations. A call by a Senior right holder would be under TCEQ's jurisdiction but may require a dam owner to pass in-channel flow. Mr. Heger said that new, unauthorized dams have been removed in a few instances, and it may be possible, if this dam were built without necessary permits.
- We discussed if setting a precedent would be taken into consideration in the permitting process and if permitted and a precedent set, on what basis would TPWD and other agencies have for denying others. Mr. Heger said that precedent would be considered by TPWD along with many other factors.
- Mr. Heger said that the impacts on all Texas streams is huge and during permitting, TPWD considers the impact on fish and wildlife, endangered species, river channels, banks, bars and islands, hydrology, hydraulic currents, navigation, recreation etc. If TPWD finds that there will be no impacts on the above, they may issue a permit, but are not required to, but would have to justify not issuing a permit.
- We discussed submitting testaments from experts in their fields and Mr. Heger said that all letters and testaments of expertise such as those from scientists, biologists, ecologists, engineers, economists, realtors, floodplain administrators, water-based business owners, water

recreationalists, ranchers who rely on the river and wildlife population in their business etc. are primary source information sources and carry a lot of weight with TPWD!

- If Waterstone Creek LLC applies for a TPWD Permit for the proposed private recreational dam on the South Llano River, the application will be sent to Mr. Heger.
- During the conversation I commented to Mr. Heger about what “benefit” to the communities or beneficial use to the public the proposed private recreational dams on the South Llano River and Guadalupe Basin and others like it would have. I commented that everyone would love to have their own private lake, but private dams and private lakes like these are a luxury that will only personally and/or financially benefit the private individuals who can afford to build them... a luxury that in the long run will ultimately come at a personal, financial, economic, environmental and social price to all the rest of us!

You will be notified immediately by LRWA and myself of any new information or updates concerning the proposed private recreational dam on the South Llano...and please share this information with others so they may also begin to prepare. Your help in this matter is essential!

Sincerely,

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cc: Elected officials and administrations of the Counties, Cities and Communities of Kimble, Mason, Llano and Burnet County and other affected, interested and concerned parties

