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STATE CAPITOL REPORT

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Sierra Club Files Legal Action to Halt “Fast-Tracking” of Texas Coal-Fired Power Plants

Major New Challenge to Governor’s Attempt to Short-Circuit Full Public Review of Health, Environmental, and Pollution Control Issues in the Permitting Process

The Sierra Club, represented by the Austin office of Environmental Integrity Project (EIP), took legal action on December 27 to stop the “unprecedented, unreasonable, and ... illegal” plan by Governor Rick Perry to “fast track” administrative hearings for construction of up to 18 dirty coal-fired power plants in the state. Most of the plants in question are being proposed by the Dallas-based utility giant TXU.

EIP Austin Office Counsel Ilan Levin filed the petition on behalf of the Sierra Club to intervene in a state district lawsuit originally brought by Environmental Defense over the processing of coal plant permits. This legal action by Sierra Club stems from a recent state agency decision to consolidate six proposed TXU coal plant permits into one hearing, and to set those permits for a speedy decision. The lawsuit seeks to halt Perry’s controversial executive order of October 27, 2005, directing the

Texas Commission on Environmental Quality (TCEQ) to accelerate consideration of permit applications and the Texas State Office of Administrative Hearings (SOAH) to issue unusually fast decisions on air pollution permits for new electric power plants.

Protecting Texans’ Rights

EIP Austin Office Counsel Ilan Levin said: “Today, Sierra Club is asking a judge to overturn a Governor’s executive order that imposes unfair burdens on regular people simply trying to avail themselves of the common-sense environmental protections built into state and federal laws. We’re saying that speeding up the required decision process for major new sources of smog and other air pollution is illegal and unfair, especially to citi-

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zens trying to participate.”

Rita Beving, Conservation Co-Chair for the Dallas Sierra Club Group, whose area’s air quality would be impacted by coal plant emissions, said: “**This legal action is a critical step in the fight by Texas citizens to assert our rights to protect our health and environment from an ill-considered rush to permit these polluting coal-fired power plants, whether we need them or not. The tragedy is that we could meet our energy needs through greater efficiency and renewable energy, without subjecting our cities to further air pollution from coal plants.**”

Executive Order Exceeds Authority

The lawsuit notes: “The executive order imposes an unreasonable schedule to thoroughly develop the required technical and legal issues for one major air permit of the type being con-

sidered, let alone six of them. . . . The Governor’s Executive Order RP 49 infringes on the rights of Texas citizens to participate meaningfully in the environmental permitting arena. The right of any affected party to participate in agency permitting decisions is rooted in the constitutional right to due process. The Governor lacks authority to unilaterally alter this system. Further, the Governor lacks the authority to dictate to an administrative law judge exactly how much time is allowed for a judicial administrative decision, and to do so violates the doctrine of separation of powers.”

Pollution Consequences

The Perry fast-tracking scheme has huge consequences. The Sierra Club petition notes: “To put the magnitude of the six TXU permits in context, it is worth noting the additional greenhouse gases associated with these new coal plants. While not addressed in the permits, the new units will emit an additional estimated 51 million tons of carbon dioxide per year into Texas skies. In 2005, all existing Texas power plants emitted 255.4 million tons of carbon dioxide.”

The Sierra Club contends that a full and deliberate hearing process on each of the power plant applications is crucial due to the serious health and environmental consequences associated with coal-fired power plants, such as increased sulfur dioxide, nitrogen oxides and mercury pollution.

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Public Meetings for Big Bend Ranch State Park Use Plan Opportunity for Public Comment Via E-Mail

The Texas Parks and Wildlife Department (TPWD) will hold a total of four meetings this month and in February to seek public comment about how Big Bend Ranch State Park should be accessed and used for recreational purposes.

Meetings take place in Marfa, Austin and Houston. TPWD is providing an opportunity to comment on the plan via e-mail for those unable to attend the public meetings.

The first meeting on the proposed expansion of public use of Texas' largest state park will be held from 7 p.m. to 8:30 p.m. on January 10 in Marfa at the Presidio County Courthouse.

The second meeting will be held from 7 to 8:30 p.m. on January 24 in Austin in the classroom at Recreational Equipment Inc.'s (REI's) new downtown store, located at 601 North Lamar Blvd.

A third public meeting will take place in Marfa from 7 p.m. to 8:30 p.m. on February 8, again at the Presidio County Courthouse (Yes, there will be TWO public meetings in Marfa).

The fourth meeting is in Houston February 15 at Judson Robinson Community Cen-

ter on Hermann Drive at Almeda. Coffee and information at 7 p.m. Presentations and questions and answers from 7:30 to 9:00 p.m.

Background on Big Bend Ranch State Park

At roughly 300,000 acres, Big Bend Ranch State Park, located just outside Presidio, is by far the largest in the Texas state park system, stretching from the Rio Grande well into the Chihuahuan Desert's numerous mountain ranges and canyon lands.

Unlike Garner, Inks Lake and most state parks, Big Bend Ranch is minimally developed, offering visitors a rare opportunity to enjoy an uncrowded wilderness experience.

Just how to expand park access without negatively impacting its fragile resources is what the public use plan will address, said Mike Hill, TPWD's West Texas regional state parks director.

"Big Bend Ranch is both ecologically sensitive, and archeologically and geologically significant, with 134 free-flowing, fresh water sources and riparian areas that are home to unique plants and animal species," Hill said. "Therefore, careful planning for the expansion of public use is essential and candid public in-

Coal Plant Alternatives Top Environmentalists' Legislative Agenda

Alliance for a Clean Texas Unveils Joint Priorities

A coalition of environmental, religious, sportsmen and parents groups – which includes the Lone Star Chapter of the Sierra Club – announced their joint agenda on January 4 for the upcoming legislative session.

Topping the list is a push to invest in energy efficiency and renewable energy as alternatives to the construction of 19 additional coal-fired power plants.

“Air pollution is already making Texas families sick and more dirty coal plants will mean more asthma, lung disease and premature deaths,” said Dr. Lisa Doggett of Austin Physicians for Social Responsibility. “The good

“We can reduce our energy at half the cost of coal plants, in a fraction of the time and with none of the pollution...”
Luke Metzger, Director of Environment Texas

news is we can meet our energy needs much faster, cleaner and cheaper by investing in energy efficiency and renewable energy.”

The coalition, known as the Alliance for a Clean Texas (ACT) formed several sessions ago as a means of coordinating legislative work on common priorities among the vari-

ous groups that lobby the Texas Legislature on environmental issues.

In addition to the joint ACT priorities, individual groups may pursue other individual priority issues as well.

Energy Efficiency

ACT announced support this session for a comprehensive energy efficiency program that would require appliance manufacturers to improve the efficiency of ten consumer products like office water coolers and DVD players, require regular updates to commercial and residential building codes, increase the state's efficiency goal to require that 50% of load growth be offset by efficiency, and establish a solar rebate program.

“Energy efficiency standards are a win-win policy,” said Luke Metzger, Director of Environment Texas. “We can reduce our energy at half the cost of coal plants, in a fraction of the time and with none of the pollution.”

“Time-Out” for New Coal Plants

Coal-burning power plants continue to be major contributors to serious health problems in Texas, particularly among children,

senior citizens and other sensitive groups. Particle pollution alone results in 1,160 premature deaths each year in Texas. Unfortunately, TXU and other electric utilities are working to build 19 dirty, coal-burning power plants, emitting more smog-forming pollution and brain-damaging toxic mercury and as much global warming pollutants as 20 million cars.

“The upcoming state legislative session is going to determine the future quality of life and the protection of public health for all Texans....”

Ken Kramer, Director of the Lone Star Chapter Sierra Club

“We need to call a time-out on the permitting of these plants until all the information is in, because when all the facts are considered, we’re confident they’ll show that clean energy and efficiency are the smarter choices.” said Tom “Smitty” Smith, Director of Public Citizen’s Texas office.

Following an executive order by Governor Perry, the coal plants are being rushed through the regulatory process, reducing the time for the public to voice their opinion and for scientists to complete studies on the long-term impacts of the plants.

Despite the rush, the earliest the plants will be brought online is 2009, a full year after projected power shortages begin. A recent

poll found that **74% of Texans “would prefer to see major conservation efforts undertaken in the state first** in order to offset a major portion of the electricity that would be required from the proposed new coal-fired power plants”.

The Total ACT Agenda

The Alliance’s agenda also calls for increased funding for state parks, more water conservation efforts, and tougher enforcement of environmental laws. View the full agenda and

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Alliance for a CLEAN Texas LOBBY DAY

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clean air, clean water and natural areas.

MONDAY, FEBRUARY 26, 2007

For more information and to register,
visit... www.AllianceforCleanTexas.org
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put is imperative.”

TPWD Planning Process

The public meetings are the continuation of a planning process TPWD began in 2004, but it was put on hold by a variety of reasons, including a continuing budget squeeze that forced staffing cutbacks, Hill explained.

The park's size is so huge, he said, that it has been divided into nine management zones for planning purposes, each of which is larger than almost any other state park.

A draft of the Public Use Plan calls for retaining five of the 12 existing campsites, 67 miles of trail, roads and river campgrounds, and access points.

The initial phase of development would add 35 primitive campsites, 21 trailheads, 88 miles of trails and 40 miles of four-wheel drive

roads that would make more of the park's interior accessible.

For more information, or to comment on the plan, visit the TPWD web site public comment page, or call Chris Beckcom with TPWD at (512) 389-4661 (e-mail address: chris.beckcom@tpwd.state.tx.us).

The draft public use plan will be available on the TPWD web site (www.tpwd.state.tx.us) late in the week of January 8.

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papers on each of the priority issues online at **www.AllianceforCleanTexas.org**.

Additional information on specific state legislative priorities for the Lone Star Chapter of the Sierra Club will be forthcoming. “The upcoming state legislative session is going to be a major one in terms of determining the future of the quality of life and the protection of public health for all Texans,” said Ken Kramer, Director of the Lone Star Chapter.

“Texans who care about their families and their future need to be on top of what happens in the Texas Legislature this spring and let their legislators know how important it is to them that our leaders take actions on behalf of clean air, clean water, flowing streams, water conservation, energy efficiency, adequate funding for state and local parks, and strong enforcement of environmental laws.”

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P.O. Box 1931 Austin, TX 78767
tel: 512.477.1729 fax: 512.477.8526
lonestar.chapter@sierraclub.org
<http://texas.sierraclub.org>

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For example, the legal filing points out: “Sulfur dioxide ... interacts with nitrogen oxides to form nitric and sulfuric acids, commonly known as acid rain, which damages forests and acidifies soil and waterways. Harvard School of Public Health studies have shown that SO₂ emissions from power plants significantly harm the cardiovascular and respiratory health of people who live near the plants. According to U.S. EPA studies, fine particle pollution from power plants causes more than 20,000 premature deaths a year.”

Mercury Emissions

On the topic of mercury pollution, the Sierra Club petition notes: “Coal-fired power plants are the single largest source of mercury air pollution, accounting for roughly 40 percent of all mercury emissions nationwide. Mercury is a highly toxic metal that, once released into the atmosphere, settles in lakes and rivers, where it moves up the food chain to humans. The Centers for Disease Control has found that roughly 10 percent of American women carry mercury concentrations at levels considered to put a fetus at risk of neurological damage.”

Smog Concerns

Another major pollutant – nitrogen oxide – is a major contributor to ozone smog-forming pollution, which has been a major

problem for ambient air quality in the Dallas/Fort Worth and Austin areas. Concerns about smog impacts have led the mayors and city government leaders in several Texas cities to get involved in the efforts to stop the fast-tracking of the permits for the proposed coal plants.

The Usual Process

Usually each power plant application would be considered separately with a full review of the risks associated with its additional pollution impact. New plants also would be examined to verify that they are using the best available technology in order to avoid degrading air quality.

The current efforts to “fast-track” these permits negatively affects the reasoned and thorough review of situations specific to each proposed plant. Moreover, the shorter the time frame for the review of the permit applications for these plants, the more likely it is that potential problems with the plants are not going to get adequate scrutiny before a decision is made on the applications.

The intention of the Sierra Club’s action is to see that all of these issues are reviewed by the courts and to see that the rights of citizens to protect themselves in pollution permitting cases are upheld.



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