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STATE CAPITOL REPORT

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Christmas Mountains Ranch Remains in Public Hands Eventual Status of Land Still to be Determined

The state School Land Board this week decided not to accept the two bids from private parties that had been submitted last fall for purchase of the 9,269-acre Christmas Mountains Ranch in West Texas. The action by the Land Board at its meeting on February 5, however, has not ended the controversy that has swirled around the property since the Texas General Land Office (GLO), which manages School Land Board lands, put the Christmas Mountains up for sale last summer. That action sparked a great hue and cry from the public when it became known.

Despite a proposal submitted to GLO last week by the National Park Service (NPS) to acquire and manage the property as a unit of Big Bend National Park, the eventual status of the Christmas Mountains is still to be determined. Texas Land Commissioner Jerry Patterson, who heads the GLO and chairs the School Land Board, continues to assert that whatever entity owns and/or manages the Christmas Mountains must provide for public hunting, despite the fact that even Patterson admits that the hunting issue is somewhat

a “faux” issue. Patterson has now laid out a series of actions on Christmas Mountains that he says he has the authority to take on his own initiative as Land Commissioner.

The insistence on opening the Christmas Mountains to public hunting, an obsession that does not seem to be shared by the other two members of the Land Board, complicates the prospects for the NPS acquiring the property. NPS policy generally precludes firearms and hunting in national parks, with certain exceptions. The NPS proposal for Christmas Mountains concludes that the federal agency would not support hunting on the property if the agency acquires it because providing hunting opportunities “would be extremely expensive and of limited public benefit.”

Background

The NPS proposal was prepared after the School Land Board at its November 2007 meeting put the two private bids for the property on hold in order to give NPS 90 days

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to prepare and submit a proposal to acquire and manage the Christmas Mountains. The land was originally donated to the state's Permanent School Fund in 1991 by a national nonprofit organization, The Conservation Fund, as the result of a donation of money to the group from the Mellon Foundation. (The School Land Board has authority over the lands that are owned by the Permanent School Fund.)

That donation was made with several stipulations. The Conservation Fund maintained a conservation easement on the land that dramatically limited activities on the property in order to preserve the area and would remain in effect regardless to whom the land might be sold – be it a public or private buyer. The conveyance document stipulated that the land would have to be offered first to either NPS or Texas Parks and Wildlife Department if it were ever to be sold and that The Conservation Fund would have to approve any other potential buyer of the property. This last stipulation is something that Commissioner Patterson has called an “unlawful restraint” on the School Land Board's authority that he said could not be enforced.

Commissioner Patterson has noted that the Christmas Mountains has been offered for sale to NPS and Texas Parks and Wildlife in the past but that both agencies refused the offer. That is true, but it does not tell the whole story. For Parks and Wildlife there was no real money for parkland acquisition provided by

the Legislature for years prior to last session, and the agency's publicly-developed land conservation plan prioritizes new state parks near urban areas.

Apparently NPS originally was not interested in acquiring the Christmas Mountains because it felt that the land, which has only a one-mile (out of 19 miles) contiguous border with Big Bend National Park, was sufficiently protected as long as it remained in the State land inventory. Last fall though, after GLO put Christmas Mountains up for sale and the public outcry ensued, NPS expressed possible interest in acquiring the property.

NPS Proposal

That new expression of interest, combined with communications from thousands of citizens in opposition to a sale to private interests, led to the School Land Board decision giving NPS time to prepare a proposal for the Christmas Mountains. The NPS followed up with a proposal to GLO that was made public last Friday. A copy of the proposal is available on the Lone Star Chapter website at www.texas.sierraclub.org.

The NPS proposes to acquire the Christmas Mountains and manage it as a unit of Big Bend National Park. The NPS cites what it considers “several advantages [of doing so]:

1. The area would be permanently protected and preserved as part of the Big Bend National Park (BBNP).

2. Public use of the area would be assured and the public would be able to participate in the planning process.
3. BBNP has extensive experience in managing public use in backcountry environments including law enforcement, search and rescue and emergency medical expertise.
4. BBNP can provide a full range of professional educational and interpretive services which are essential to a safe and enjoyable experience in a rugged and remote area.
5. BBNP has an excellent resource management staff including a wildlife biologist, physical scientist, geologist, botanist and archeologist.”

NPS prefers to acquire the land through donation. If that is not possible, however, the NPS says that it “will work with private conservation organizations to find a third party willing to purchase the interest remaining (after the conservation easement) at no more than the appraised value.”

Sierra Club Position

The Lone Star Chapter of the Sierra Club is supporting the NPS proposal. “The National Park Service proposal to acquire and manage the Christmas Mountains as a backcountry area of Big Bend National Park represents the best opportunity to conserve this land and make it accessible to the public to enjoy and preserve,” said Ken Kramer, state Sierra Club director, in

a statement issued earlier in the week.

“The Sierra Club has reviewed the NPS proposal closely. We find that the proposal lays out a future scenario for the Christmas Mountains that provides sound conservation management of the property while also giving the public the chance to access and enjoy this rugged property through appropriate recreational activities,” said Kramer. “We agree with the NPS conclusion that providing hunting opportunities in the Christmas Mountains would be too costly and of limited public benefit.”

“The Sierra Club believes that the State of Texas should donate the property to NPS just as the original establishment of Big Bend National Park was through a donation from the State. However, if it is necessary that arrangements be made for the purchase of the property – either directly by NPS or via a third party and donation to NPS – then we will support that. Preservation of the Christmas Mountains is worth the price,” concluded Kramer.

Patterson’s New Plans

Land Commissioner Patterson, however, contends that it would be “foolish” for a third party – such as The Conservation Fund again – to put up money to buy the Christmas Mountains from the State and then donate the land to NPS. He contends that the land is protected through the conservation easement

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that The Conservation Fund has on the land, and that the money to buy the property could best be spent for other conservation purposes or to buy land elsewhere. Patterson said that it's not his job to stop people from doing something "foolish" but that he was going to take that role.

At a press conference later in the day after the School Land Board met this week Patterson said there was not yet a consensus among the Board members about what to do now about the Christmas Mountains, and he contended that all options were still on the table – including acquisition by a federal agency, retaining Christmas Mountains under GLO management, or even selling it to a private buyer at a later time. **He said that it would take "a while," maybe as long as a year before there was some final resolution on the future of the property.**

Commissioner Patterson said that he was now planning to take the following actions on Christmas Mountains while it remained under GLO management:

- file an easement for public access to the property at any contiguous point with Big Bend National Park;
- try to determine other ways of having public access to the Christmas Mountains (perhaps through an agreement with the property owners' association for property owners of the surrounding Terlingua Ranch subdivision that

would allow hiking or horseback riding into the Christmas Mountains from Terlingua Lodge);

- urge the U. S. Congress to appropriate money for federal purchase of the land and provide through the legislation or appropriation or through the designation of the federal agency to manage the property that public hunting would be allowed; and
- (if the land is still under GLO management) open the Christmas Mountains for quail and dove hunting by September 1 this year.

On the last point Patterson later said in response to a question at the press conference that he would have to coordinate with the Texas Parks and Wildlife Department about the hunting, but it was his intention to pursue that "if it's feasible and practical."

The Commissioner said that he had been out to the Christmas Mountains three times since early December and that there were large numbers of blue quail there, perhaps as a result of last year's rains. He did acknowledge that there were no mule deer on the property, and it was in that context that Patterson said that the hunting issue was "a little bit of a faux issue." He said that he was looking toward the future, however, when sustainable elk or mule deer populations might be established on the property.

Land Commissioner Patterson was giving

somewhat conflicting signals at the press conference as to what path he wants the issue to take from this point.

On the one hand, he said that he wanted “the feds” to have ownership of the Christmas Mountains but only within the “proper format,” which under questioning he defined as “with hunting.” He said that the property could be put under U.S. Fish and Wildlife Service or the National Forest Service because both of those agencies manage properties that allow public hunting (the Sierra Club would point out that this leaves aside the issue of why this land would fit into the priorities for either of those agencies and how they would manage such an isolated tract). He also asserted that Congress could require NPS to allow public hunting if that agency was put in charge of the property (there are some NPS lands that provide for hunting).

On the other hand, Patterson indicated that there may be an opportunity for him to get money from the Legislature next session for GLO to manage the property as a result of all the public focus on the Christmas Mountains, and several of his plans would proceed under state management. There is also the possibility that if these plans are put into effect they could become part of an agreement in the future with potential private buyers.

What’s Next?

That’s not clear. Patterson said that the NPS

proposal could be considered by the School Land Board as soon as the next Board meeting, which is February 19, but he did not commit to putting it on the agenda for that meeting (as chairman, the Land Commissioner sets the agenda).

The Lone Star Chapter of the Sierra Club intends to promote the NPS proposal to acquire and manage the Christmas Mountains. Certainly the Club has no objections to and indeed welcomes the Land Commissioner’s plans to provide public access to the property while other issues are addressed.

In the meantime the saga of the Christmas Mountains continues – perhaps not as exciting as the 2008 presidential race but almost as protracted.

Special Interim Committee on Energy and Environment

The first hearing of the House Select Committee on Electric Generation Capacity and Environmental Effects was held in Austin on February 6. Committee Chairman Dennis Bonnen (R-Angleton), in opening the hearing, told the audience that the idea for the committee grew out of the fact that during the recent controversy over the large number of coal plants proposed in Texas, there was no one who could say “this is Texas’ plan for how to meet our energy needs” or any way to assess whether the coal plants made sense for Texas.

“We will have significant (energy) demands in the future,” Bonnen noted, but he stated that the purpose of the committee was to conduct a “fact-finding mission” about what sources could get Texas there, and that he was not approaching the job with a pre-formed conclusion.

Also attending the committee were State Representatives Sylvester Turner (D-Houston),

Kevin Bailey (D-Houston), Joe Straus (R-San Antonio), and Rick Hardcastle (R-Vernon). The other committee members – Phil King (R-Weatherford), Burt Solomons (R-Carrollton), and Norma Chavez (D-El Paso) were absent, although Tommy Merritt (R-Longview) sat in for part of the meeting.

The Committee heard invited testimony from those agencies most involved in planning, permitting and regulation of electric generation, including the Public Utility Commission (PUC), Electric Reliability Council of Texas (ERCOT), Texas Commission on Environmental Quality and Railroad Commission of Texas.

In response to the testimony from PUC Chairman Barry Smitherman, Rep. Turner in particular said that he wanted the PUC to address the issue of energy conservation and weatherization, particularly of low-income housing. Turner noted that he had constituents who had been living in their homes for 30 or 40 years and paid high electric bills because their homes were not efficient, and in fact, they paid much higher bills than he, “even though my home is larger.”

Chairman Bonnen announced that upcoming meetings would be held around the state so the committee could hear from experts and ideas from outside of Austin.



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Nuclear Regulatory Commission first public meeting on new nuke plant in decades in Bay City

Sierra Club Raises Concerns

Hundreds arrived on February 5th to tell the Nuclear Regulatory Commission (NRC) their views on the proposed South Texas Nuclear Project (STNP) expansion in Bay City, Texas. Officially a meeting for public comments on the Environmental Report filed by the nuclear plant's main investor, NRG, the public scoping meeting served more as a means for locals to announce their support.

Still, many locals, including a former plant operator, workers, neighbors, as well as individuals from San Antonio (whose municipal electric utility CPS has tentatively joined the project) were vocal in their opposition. Among statewide environmental groups expressing opposition were Lone Star Chapter Sierra Club, SEED Coalition and Public Citizen.

The sudden interest in new nuclear plants has been the result of both regulatory changes at the Nuclear Regulatory Commission streamlining the application process and Federal Energy Plan subsidies.

State Representative Mike O'Day said that he was a fisherman who lived near the plants and supports "clean and safe nuclear energy." He presented two recent bills passed by the legislature providing financial incentives to the industry as evidence of statewide support

for the plants. Several local officials favored the plant.

The new application would create two new units with a capacity of 2,700 MWs at Bay City using the Advanced Boiling Water Reactors (ABWRs) similar to four currently operating in Japan. Two of those, however, were shut down at least temporarily as a result of the recent earthquake.

Much of the concern was with the NRC process itself. The NRC announced the comment period on the Environmental Report ends February 18th. However, STNP itself has asked the NRC to delay the plant safety review due to problems with the vendor. Yet those opposing the plant's expansion need to file "contentions" by February 25th.

The Lone Star Chapter Sierra Club disputed the short timeframe. Other issues included the need to consider how climate change might impact water from the Lower Rio Colorado, terrorist attacks, the continued generation of high-level radioactive waste, the expansion of uranium mining in South Texas, and whether power could be provided more cheaply by investments in energy efficiency and renewables.



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