



Control Number: 37448



Item Number: 759

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SOAH DOCKET NO. 473-10-1097
PUC DOCKET NO. 37448

APPLICATION OF LCRA	§	BEFORE THE
TRANSMISSION SERVICES	§	
CORPORATION TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE AND	§	
NECESSITY FOR	§	PUBLIC UTILITY COMMISSION
THE GILLESPIE TO NEWTON 345-KV	§	
CREZ TRANSMISSION LINE IN	§	
GILLESPIE, LLANO, SAN SABA,	§	
BURNET, AND LAMPASAS	§	
COUNTIES, TEXAS	§	OF TEXAS

FILED
10 JAN 21 PM 4:46
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BRIEF REPLY TO LCRA-TSC'S RESPONSE TO MOTION TO EXCLUDE

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Intervenors J17 Ranch, CJ Ranch, Hank Weghorst, Linda Weghorst, and Margaret Wilkinson file this Brief Reply to LCRA-TSC'S Response to Motion to Exclude Testimony of Rob E. Reid and Dennis Palafox.

**I. LCRA Did Not Preserve and Has Not Produced
the Destroyed Environmental Assessment**

LCRA-TSC suggests that Exhibit E to its Response is the draft EA upon which Dennis Palafox and the other LCRA employees relied for their decision in this case. Exhibit E is not the draft EA that was required under the PBS&J contract, viz. a true environmental assessment made before any input from or route selection by LCRA-TSC. (See Intervenors' Motion to Exclude, pp. 10-11. *See also* testimony of Rob R. Reid describing this draft EA as a "strictly environmental" analysis developed prior to and independent of LCRA's selection of GN11 as the preferred route. Docket Interchange item 6 at pp. 740-41). Exhibit E was developed *after* LCRA-TSC's decision to select

GN11 as the preferred route on August 18, 2009. On its face, Exhibit E clearly and unambiguously incorporates LCRA's decision made on that date to select GN11 on bases that included *non-environmental* factors. (See Exhibit E, Page 44). Exhibit E therefore had to be prepared after August 18, 2009, and cannot be the draft EA that PBS&J prepared before that date and on which LCRA employees relied. By the cover email, it is dated well over a month later. The suggestion that Exhibit E is the destroyed EA is also directly contrary to the RFI Answer filed by LCRA-TSC (attached to Intervenor's Motion to Exclude), which states, "A final version of the EA has already been provided, and no draft copies exist."

II. LCRA Has Clear Duties to Preserve Documents

Not only does LCRA have duties as a state agency not to destroy documents,¹ but it cannot be seriously disputed that testifying experts and the parties who hire them have a duty to preserve and not destroy critical documents upon which they rely. None of the cases cited by LCRA-TSC dispute that duty. In this case we are dealing with testifying experts who *knew* they would be giving opinions in a contested case on critical and ultimate issues. This operative document upon which they relied was destroyed *when* it was known by these experts and the party who employed them that their conclusions based on that destroyed document would be presented in this contested hearing.

¹ The draft EA appears to be a "state record" which was destroyed in direct violation of Tex. Gov. Code §441.187(b) et seq., and 13 T.A.C §§ 6.1 – 6.10 and 6.91-6.97.

III. Harms to Endangered and Threatened Species Cannot be Ignored

There is no recognized methodology that would permit LCRA-TSC to ignore the potential harms to endangered and threatened species in selecting a preferred route as it argues it is entitled to do in this case. Unlike *Dunn v. Public Utility Commission*, 246 S.W.3d 788, 793 (Tex. App. Austin 2008, no pet.), cited by LCRA-TSC, the present case has *known* occupied endangered and threatened species habitat on certain of the route alternatives.² With that knowledge, there is no legal or scientific basis for LCRA-TSC to use a methodology that (a) ignores the potential harms to those species and their habitats, and (b) fails to route the project so as to avoid them.

As referenced in LCRA-TSC's Response, when endangered or threatened species are present, the accepted methodology is to avoid their habitat area to the "extent practicable;" some statutes and authorities define it as to the "maximum extent practicable;" in this case the duty is described as "greatest extent reasonably possible."³ LCRA-TSC made no effort to consider the specific habitat areas of endangered and

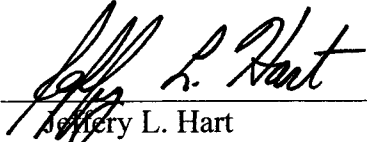
² There is ample evidence of the actual presence of endangered whooping cranes, golden-cheeked warblers, and black-capped vireos, and the threatened bald eagle in habitats crossed by LCRA's preferred route and some alternatives. Moreover, LCRA itself appears to have particular knowledge of the presence of endangered golden-cheeked warblers and black-capped vireos, including confirmations about 4 miles south of and in the same habitat area as the preferred route's C-22 crossing of the Colorado River, as stated on its web site and advertised on the web site of its affiliate, Canyon of the Eagles. See Exhibit A hereto.


³ LCRA-TSC argues that somehow Intervenorors were remiss in not discovering LCRA-TSC's flawed methodology sooner. For the reasons set out in Intervenorors' Motion for Leave, Intervenorors' Daubert/Robinson Motion is filed expeditiously. Moreover, given that LCRA-TSC's prefiled testimony stated they did consider and did attempt to avoid "known endangered or threatened species habitat" to the "greatest extent reasonably possible" when they did no such thing (see Intervenor's Motion to Strike, pp. 4-5, citing LCRA-TSC testimony on pp. 738-39 of its Application, Docket Interchange item no. 6), gives LCRA-TSC no ground to complain about the timing when Intervenorors discovered the contrary true facts about their flawed methodology.

threatened species and consequently made no evaluation or effort, practicable or otherwise, to avoid them. Without that required analysis, there cannot be a valid or scientifically reliable consideration of the important requirement of environmental integrity under PURA and Commission Rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of January, 2010, a copy of the foregoing was served on counsel LCRA-TSC via email pursuant to the Orders of SOAH entered in this proceeding regarding the service of discovery

A handwritten signature in black ink, appearing to read "W. Steele III", written over a horizontal line.

William B. Steele III



Your Nearby Getaways

[Parks](#) | [Parks Guide](#) | [Boat Ramp Info](#) | [Burn Ban Info](#) | [Regulations](#) | [Fees](#) | [Volunteer](#) | [Park Host](#) | [Scouting](#) | [Outdoor Programs](#)



Canyon of the Eagles Nature Park

PARK LOCATION

TAKE OUR SURVEY

NEW We want to hear from you about your park experiences. Take our quick 10-question survey.

The preserve area at Canyon of the Eagles will be closed to public access January 11-13 2010, January 25-27 2010, and February 1-3 2010. The park and preserve will be closed January 19, 2010 and January 20, 2010 for scheduled wildlife management activities.

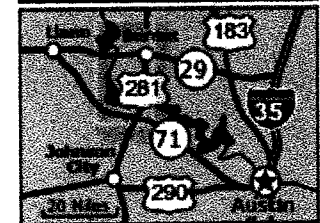
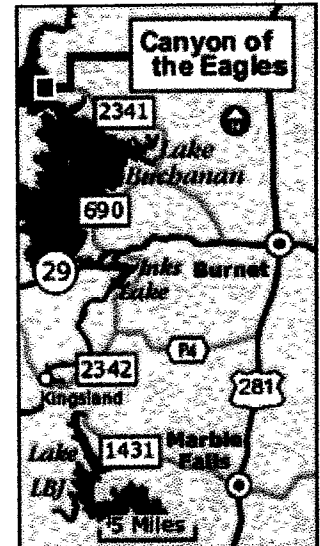
For more information on LCRA's wildlife management activities, please contact Conservation Services at 1-800-776-5272 ext. 2763

Outdoor activities:

- Hiking & Walking Trails
- Fishing Piers
- Swimming
- Outdoor Education & Recreation Programs
- Guided Tours
- Meeting / Conference Facilities
- Picnic Tables & Grills
- RV - Water & Electric
- Cabins / Mini-cabins
- Tent Camping - Water Available
- Unimproved Camping
- Restrooms
- Showers



LCRA opened a 3,200-square-foot natural science center at Canyon of the Eagles in April 2002.

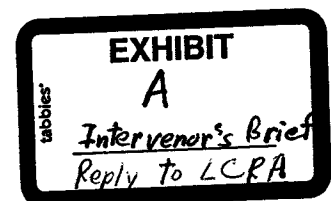


[Get Directions](#)

[Map of park site](#)

[Map of camp sites](#)

[EAGLES VIDEO](#)



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[RESERVATIONS](#)

Canyon of the Eagles Nature Park is located on LCRA-owned land along the shores of Lake Buchanan in Burnet County, about 75 miles northwest of Austin in the Central Texas Hill

RV and camping sites: Call the Texas Parks and Wildlife's

Country.**Home to endangered birds**

Roughly 800 of the park's 940 acres are a nature preserve that is home to a variety of wildlife, including three threatened or endangered birds: the American bald eagle, the black-capped vireo and golden-cheeked warbler. In order to protect the endangered species, a portion of the trails are closed each year from March 1 - September 1 and are shown on our map of the park site.

Features: The park has multiple fishing docks and piers along three miles of lakefront, an outdoor amphitheater, a 64-unit lodge, swimming pool (lodge guests only), restaurant, meeting rooms, campgrounds, RV sites, group camping area for groups up to 100 people, hiking trails and lights-out observatory area for stargazing.

In January 2007, the campgrounds and camping facilities at the park entered into an agreement for operations with a national recreational management company, TTM Inc. Reservations can be made for the campgrounds at least 48 hours prior to arrival by calling central reservations only, reservations cannot be made at the park. Within 48 hours visitors can check availability by calling the campground directly at 512-715-0290.

The Canyon of the Eagles Resort, restaurant, swimming pool, and meeting facilities are managed by Calibre Management of Texas, LLC. For more information about the Resort, or for reservations please visit the Canyon of the Eagles' web site or call them at (800) 977-0081.

Thanks to volunteers with the Austin Astronomical Society, the observatory is open to guests during public star parties. To see a schedule for the observatory please visit their web site using the link provided above. Canyon of the Eagle Lodge staff periodically offer supplemental star gazing sessions to park guests. Please contact the Lodge at (800) 977-0081 for upcoming sessions.

Reservations: To reserve a RV or camping site, call the Texas Parks and Wildlife's central reservation center at (512) 389-8900. (There is a \$5 charge.) To reserve cottages, lodge rooms or conference facilities, contact the lodge directly at 1-800-977-0081.

reservation center at (512) 389-8900. (There is a \$5 charge.)

See LCRA Parks Fees

Conference facilities, cottages and lodge rooms: Call the park directly at 1-800-977-0081.

SIGN UP FOR CURRENTS

LCRA's free, electronic, bimonthly newsletter features nearby getaway parks stories, a weather blog, community events calendar, dazzling photography and programs for the family at McKinney Roughs and Matagorda Bay nature parks.

***First name:**

***Last name:**

***E-mail address:**

City:

***ZIP:**

Login

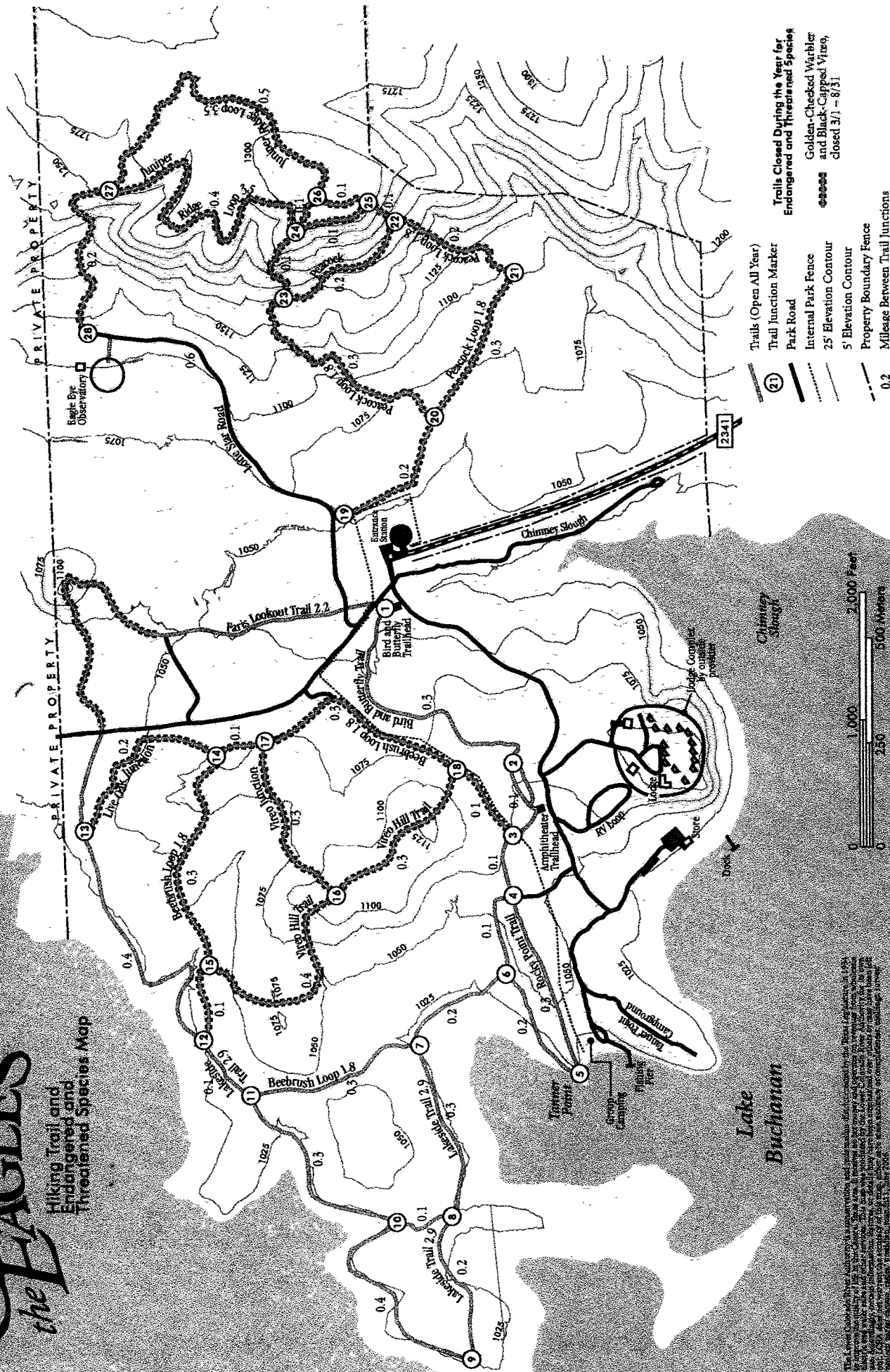
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ENTER KEYWORD:



CANYON of the EAGLES

Hiking Trail and
Endangered and
Threatened Species Map



This map was prepared by the author for the purpose of providing information to the public. It is not intended to be used for any other purpose. The author assumes no responsibility for any errors or omissions. The map is based on the best available information at the time of preparation. The author reserves the right to make changes to the map at any time without notice.



"The experience was delightful and the birds were fabulous. You have a great thing!"

Laura Buescher

Reservations

Home

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Recreation

Location

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Dining

Recreation

Nature Park

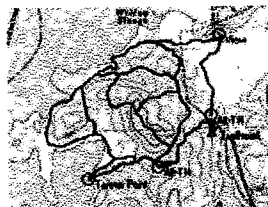
The Nature Park features 14 miles of trails, including a bird and butterfly trail which leads through wildflowers and prickly pear cactus. From lakeside lowlands to wooded ridges 300 feet higher, experience this prime wildlife habitat firsthand.

Catch a glimpse of the endangered black-capped vireo and golden-cheeked warbler in addition to the threatened bald eagle as you meander across the 820 acres undeveloped at Canyon of the Eagles.

Hiking

The trails at Canyon of the Eagles are a series of complex loops that allow for creating a hike of almost any length requiring any level of effort you desire. Three and a half miles are wheelchair accessible. The Bird and Butterfly Trail west of the Trailhead is the easiest and provides the most shade.

The trail maps at Canyon of the Eagles are just about the best trail maps that you'll find anywhere. Printed on sturdy stock, they include contour lines more precise than you'll find on most USGS maps. All trail intersections are numbered and the actual trail markers in the field bear the same numbers making it easy to figure out exactly where you are and how to get where you want to go.



Trail maps available at the resort office.

• Maptech® USGS Topographic SeriesT

• Copyright 2000 Maptech, Inc



resort and nature center

Special Offers

MORE INFORMATION

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Activities Schedule

TG Canoes and Kayaks

Vanishing Texas River Cruises

Waterfront Area

Guided Programs

Nature Park

Observatory



16942 RR 2341, Burnet, TX 78611

Call 800-977-0081 for Reservations



"The experience was delightful and the birds were fabulous. You have a great thing!"

Laura Buescher



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Endless Outdoor Adventures on Lake Buchanan Texas

Canyon of the Eagles is a place designed for enjoying nature. Most of the 940 acres of Canyon of the Eagles Park have been set aside as a nature preserve for wildlife, such as Bald Eagles, Black-capped Vireo, and Golden-cheeked Warbler.

Whether you're relaxing by the beach, casting a line or cruising across Lake Buchanan, there's plenty to keep you content, relaxed and enjoying the beauty of the Texas Hill Country:

- 14 miles of nature trails
- Private beach and fishing pier
- Canoe, kayak, sail and paddleboat rentals
- Vanishing Texas River Cruise



Click here to view a video about Eagles in the Hill Country

For more information about Texas Hill Country, [click here!](#)

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TG Canoes and Kayaks

Vanishing Texas River Cruises

Waterfront Area

Guided Programs

Nature Park

Observatory

EXTRAORDINARY
ADVENTURES



Pet
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Call 800-977-0081 for Reservations

Another WRS Production

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