



Control Number: 37448



Item Number: 870

Addendum StartPage: 0

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

**APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO
AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE
PROPOSED GILLESPIE TO NEWTON 345KV CREZ TRANSMISSION LINE IN
GILLESPIE, LLANO, SAN SABA, BURNET, AND LAMPASSAS COUNTIES,
TEXAS**

Before

STATE OFFICE OF ADMINISTRATIVE HEARINGS

**RESPONSE TO
AMENDED OBJECTION OF LCRA TRANSMISSION
SERVICES CORPORATION AND AMENDED MOTION TO
STRIKE PREFILED DIRECT TESTIMONY OF
RYLANDER PRAIRIE MOUNTAIN RANCH PTNRSHIP
LTD. WITNESS
GRADY RYLANDER**

To The Honorable Judge Wendy Harvel:

Rylander Prairie Mountain Ranch Partnership Ltd hereby files this response to:
AMENDED OBJECTION OF LCRA TRANSMISSION SERVICES
CORPORATION AND AMENDED MOTION TO STRIKE PREFILED DIRECT
TESTIMONY OF RYLANDER PRAIRIE MOUNTAIN RANCH PTNRSHIP LTD.
WITNESS GRADY RYLANDER. I will respectfully respond to each objection in
the order presented

I. Background: The record shows that the Direct Testimony of Rylander Prairie
Mountain Ranch Partnership Ltd was posted on December 23, 2009. An
Amended Direct Testimony was filed on January 19, 2010 in response to LCRA
TSC Objections and Motion to Strike Pre-filed Direct Testimony which was filed
on January 14, 2010. The Amended Direct Testimony was offered to cure the
objections stated by LCRA TSC on January 14, 2010.

II. Motion to Strike:

A. Cured

B. Unexplained Amendments Not Timely

1. Unexplained amendments that should not have had timing issues

The following new excerpts fall into this category:

Page 3, Answer to 5th Question, third Line "Cost" through the end of the 4th line

This sentence simply supplies the legal reference that was inadvertently omitted in the original pre-filed testimony. It could be a footnote instead of a sentence. The sentence is best categorized as a clarification rather than "bolstering".

Page 4, First Answer, 4th Line "Use" through end of 5th line

Likewise, this sentence supplies the legal reference that was inadvertently omitted in the original pre-filed testimony. It could be a footnote instead of a sentence. The sentence is best categorized as a clarification rather than "bolstering".

Page 2, 2d Answer, 7th-8th line "and is very isolated"

This sentence is a correction of the original pre-filed testimony: "A large portion of the C7 segment has no roads. The value of the land stems from its natural beauty and isolation." The sentence was corrected in response to objections of LCRA TSC that only an expert appraiser can attest to the value of property.

2. Material supplied as a result of early filing that would have been available meeting a by later deadline

Page 2, 2d Answer, 8th Line "has" through 10th line "warbler"

The sentence: "The area is environmentally fragile and has habitat identified by TxP&W as suitable for the federal endangered species (black-capped vireo and golden-cheeked warbler)" has been substituted for the sentence in the original pre-filed testimony: "The area is environmentally sensitive and is home to several federal endangered species (black-capped vireo, golden-cheeked warbler) and the Texas horned lizard. That substitution is a clarification and not an addition or "bolstering".

Page 2, 2d Answer, 11th line "The" through the end of the answer

The testimony of Dr Karen Clary has been substituted for the personal observation in the original pre-filed testimony: "Destruction of habitat would adversely affect the native animals and the human aesthetic value of the property in the Enchanted Rock Valley. Segment C1+C2+C7 would be clearly visible from Enchanted Rock." LCRA objected to the statement on the grounds of testimony from a non-expert witness. Dr. Clary's testimony was posted on the PUC website on December 29, 2009, 10 days before the filing deadline and 6 days after the Rylander Direct Testimony was posted. Although the information was available to be included in an amended testimony before January 8, 2010, the information was not relevant until LCRA TSC filed a motion to strike this part of the original pre-filed testimony. Only after LCRA TSC filed the motion to strike the original pre-filed testimony was it necessary to substitute the testimony of Dr.

Clary to cure the objection to testimony by non-expert witness. This is a substitution of expert testimony that generally states what was said by the witness in the original pre-filed testimony.

C. Unqualified Opinion Testimony

Certain excerpts subject to this objection are withdrawn, but others are substituted, modified, or maintained.

Page 2. 2d answer. 6th line "Most" through 10" Line "warbler". Opinion testimony by lay witnesses is limited to those rationally based on the witnesses' perception, TEX. R. EvID. 701, which requires personal knowledge.

The first two sentences state: "Most of the terrain over the C7 segment is very rough and consists of granite hills and small creeks. A large portion of the C7 segment has no roads and is very isolated." This is a statement of fact that is known to the witness by personal knowledge of living in the area for 25 years.

The third sentence states: "The area is environmentally fragile and has habitat identified by TxP&W as suitable for the federal endangered species (black-capped vireo and golden-cheeked warbler)." This is a statement of fact that is available to the public on the Texas Parks and Wildlife website. A copy of the website is included in Exhibit "A".

Taken together the three sentences are specific facts known by the witness through personal experience or knowledge supported by the public database. The statements are not broad generalizations; the statements are supported by public knowledge (Exhibit 'A'); and contrary to the assertions of LCRA TSC the statements of the witness claim no adverse effects.

Page 2, 2d Answer, 11th line "The" through the end of the answer.

LCRA TSC references the quoted testimony of Dr. Karen Clary. That testimony cannot be categorized as "hearsay" since Dr. Clary is an expert witness and no personal opinion is offered based on the quoted statement.

D. Hearsay

Certain excerpts subject to this objection are withdrawn and others substituted.

The following excerpts should be considered inadmissible hearsay:
Page 2, 2d Answer, 8th line "has" through 10th Line "warbler"

Material in Exhibit "A" should not be categorized as "hearsay" but rather public knowledge relevant and admissible in this case

Page 2, 2d Answer, 11th line "The" through the end of the answer

The testimony of expert witness Dr. Karen Clary cannot be categorized as hearsay and her testimony requires no specialized knowledge to be applied to the subject LCRA TSC application.

CONCLUSION

The LCRA TSC objections have all been addressed in the Amended Direct Testimony. The testimony in question does not change the scope or results of the arguments. Our prayer is that the Amended Direct Testimony be admissible in this case.

The response to LCRA TSC is sworn to be true and accurate to the best of my knowledge:

 H.G. Rylander

2500 Spanish Oak Trail
Round Rock, Texas 78681
rylander@mail.utexas.edu

Date: 1-26-2010

Exhibit (A)



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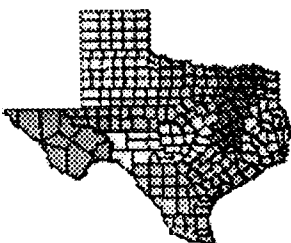
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Endangered Species in the Texas Hill Country

Endangered Species

The Texas Hill Country is well known for its unique ecosystems supporting several endangered species (e.g., Texas blind salamander, San Marcos salamander, black-capped vireo, golden-cheeked warbler, and Tobusch fishhook cactus). Managing the Hill Country to provide the variety of natural habitats on which each of these species depends is quite challenging. Golden-cheeked warblers prefer stands of old-growth cedar, while black-capped vireos prefer more open areas of early-succession plant communities (e.g., shrubby growth forms of shin oak, evergreen sumac, flameleaf sumac, skunkbush sumac, etc.).

Habitat loss is often the primary factor threatening a species' existence. In the Hill Country we have a situation where loss of a particular habitat type will detrimentally affect one species, while other endangered species may benefit. The golden-cheeked warbler depends on stands of mature Ashe juniper (blueberry cedar) mixed with deciduous trees including Lacey oak, Spanish oak, shin oak, post oak, cedar elm, and escarpment black cherry. Suitable habitat will contain **both (1) mature Ashe juniper, and (2) adequate mix of deciduous trees**. Mature Ashe juniper is a major factor resulting in decreased water supply to the Edwards Aquifer. Two other endangered species depend on an adequate supply of water. The San Marcos salamander is threatened by reduced spring flow, and the Texas blind salamander depends on a constant supply of clean water from the Edwards Aquifer. Research indicates that removal of Ashe juniper results in a tremendous increase in groundwater. One such study reported an increase of 100,000 gal/acre/year with 100% cedar removal. Conflicting needs between two (or more) endangered species can make for a sticky situation.

Historically, golden-cheeked warblers were more confined to areas protected from wildfires (e.g., canyons and steep draws). Those areas contained stands of Ashe juniper and deciduous trees, providing suitable warbler habitat. Historical reports explain that cedar was not found on upland sites, simply because periodic fires effectively controlled cedar. In the absence of

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Wildlife Division District Map



fire (for the past 100+ years), Ashe juniper has encroached on the upland sites, forming dense woodlands containing only cedar, bare soil, and rock. In addition to other obvious ecological concerns (e.g., soil erosion), dense stands of cedar (also known as cedar brakes) have played a major role in the depletion of the Edwards Aquifer. Furthermore, cedar brakes **do not** provide suitable habitat for golden-cheeked warblers, as the deciduous tree component is absent and overall

plant diversity is nil. Other sections of this web site elaborates on these issues. Just click to get a [historical perspective](#) on Hill Country management, or to learn more about [sound ecosystem management](#). To learn more about golden-cheeked warbler requirements, read [Life History](#) ↓ (PDF 565.4 KB) of the Golden-cheeked Warbler, or to learn how to effectively manage your land to promote these warblers, download [Management Guidelines](#) ↓ (PDF 192.6 KB).

Black-capped vireos are a great indicator of overall ecosystem health. If your ranch contains this little bird, you likely have great habitat for white-tailed deer, bobwhite quail, Rio Grande turkey, and various species of songbirds. You can learn all about their [Life History](#) ↓ (PDF 331.7 KB) and [Management Guidelines](#) ↓ (PDF 224.7 KB) by clicking on and downloading each file.



The Tobusch fishhook cactus is an endangered plant found in the Hill Country. While some fear that fire (i.e., prescribed burning) may be detrimental to this plant, this is another species that evolved with fire. Sites under intensive management programs, where prescribed burning is used regularly, have shown increases in the number of Tobusch fishhook cactus. The decline of this cactus across the Hill Country has occurred in the absence of fire. Click to learn more about [Tobusch fishhook cactus](#) ↓ (PDF 129.7 KB).

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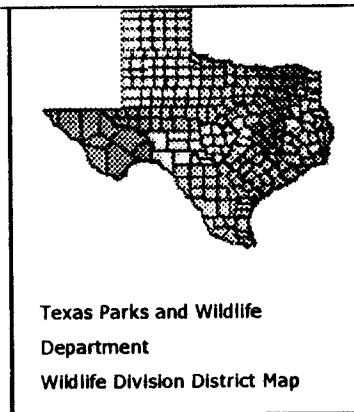
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Threatened and Endangered Species

What is a Threatened or Endangered species? Endangered species are plants or animals that will likely become extinct within the foreseeable future. Threatened means that a species may become endangered within the foreseeable future. In Texas, plants or animals may be protected under the authority of state law and/or under the Federal Endangered Species Act state law and the Federal Endangered Species Act. Examples of federally listed species in north Texas are the black-capped vireo, golden-cheeked warbler, and the Texas poppy mallow. Some of the state listed species are the Texas horned lizard (horny toad) and the Texas kangaroo rat.

Is there a difference between state and federal endangered species? Yes. Some species may be listed as state threatened or endangered and not federally listed (ex. Texas horned lizard). The state list deals only with the status of the species within the borders of Texas. A federal listing means that an animal is in trouble throughout its entire range which may cover several different states (ex. bald eagle). Regulations and penalties apply differently to state and federally listed species. State authority prohibits the taking, possession, transportation, or sale of any animal designated as threatened or endangered without the issuance of a permit. State law also prohibits the commerce of state listed plants and the collection of these plants from public land without a permit. Federal law not only protects the individual animal, but also protects its habitat. While TPWD enforces regulations pertaining to state listed species, the U.S. Fish and Wildlife Service enforces regulations pertaining to federally listed species under the Endangered Species Act.

Extinct and Extirpated are other terms associated with rare species. While extinct means that a species no longer exists anywhere on earth, like dinosaurs, extirpated describes an animal that has disappeared from a given area but still exists elsewhere. An example is the pronghorn antelope. The first settlers that arrived in North Texas described in their journals herds of pronghorns as far east as Fannin County. Pronghorns have since been extirpated from the northeastern portion of their range in Texas. They currently exist in Texas west of the 100th meridian and are numerous enough to be a game animal.



Loss and/or fragmentation of habitat is the number one cause for species declines in Texas. For example, the black-footed ferret is one of the rarest mammals in North America, yet it inhabited prairie dog towns in North Texas as recently as 1963. While prairie dog towns still exist, they are too small and too few in number to support a population of ferrets. Many other species have met with the same demise in North Central Texas in the last 150 years. Animals like the plains bison, the red and gray wolf, black and grizzly bears, passenger pigeon, ivory-billed woodpecker, and pronghorn antelope are either extinct, federally threatened /endangered, or have been extirpated from North Central Texas. These are all animals that require large expanses of habitat. With the arrival of early settlers, native prairies and forests were gradually fragmented into smaller and smaller pieces, divided by roads, towns, and cropland. This trend continues today as the cities grow larger, the rural areas become more populated. This is most evident along the IH-35 corridor in the heart of the Blackland Prairie and Cross Timbers regions. Historically the Blackland prairie ecological area encompassed approximately 10.6 million acres of virgin tallgrass prairie. Conservative estimates reveal that only 200,000 acres currently exist. The Cross Timbers and Prairies ecological area originally covered 17.9 million acres. It is within this ecoregion that some counties have experienced human population growths over 200% since 1970 alone.

So why should I be concerned about an Endangered species that I have never even seen before? Most people become disturbed over the potential loss of large or charismatic species like Greater prairie-chickens (locally extirpated by early 1900's), jaguars (last one killed in Mills county in 1903), bald eagles (currently on Federal Threatened list), or black bears (common in Grayson county as late as 1848) because it signals that something is terribly wrong to lose such large or beautiful animals. Unfortunately the same doesn't always apply to a salamander, a small songbird, or a plant. An ecosystem is like a spider web. It is held together by all the plants, animals, water, air, and nutrients, each being a thread in the web. With each thread that is removed, many other threads are weakened until the entire web collapses. The fact is that when animals disappear from an ecosystem, it indicates that the area is not only becoming less inhabitable for animals but also for people. The bottom line is that in North Central Texas we don't have any large, attractive animals that are threatened or endangered to get everyone's attention...we have already lost those.

What is being done to conserve our natural resources in North Central Texas? The Texas Parks and Wildlife Department administers a grant program called the Landowner Incentive Program (LIP). This program is designed to help landowners implement conservation practices that will benefit rare plants like the Texas poppy mallow, animals like the black-capped vireo, or habitat types like native prairie. In addition to the LIP program, TPW provides free technical assistance to landowners/managers wanting to improve their wildlife habitat. Other agencies and organizations

such as the U.S. Fish and Wildlife Service, The Natural Resource Conservation Service, and the Texas Cooperative Extension also offer financial or technical assistance programs to help landowners better manage wildlife habitat.

County by county list of all state and threatened listed species.

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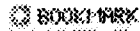
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BOOKS

Black-capped Vireo (*Vireo atricapilla*)

TEXAS STATUS

Endangered

U.S. STATUS

Endangered, Listed

10/06/1987

DESCRIPTION

The tiny black-capped vireo is only 4.5 inches long.

LIFE HISTORY

Black-capped vireos nest in Texas during April through July, and spend the winter on the

western coast of Mexico. They build a cup-shaped nest in the fork of a branch 2 to 4 feet above the ground. Nests are usually built in shrubs such as shin oak or sumac. Females lay 3-4 eggs, which hatch in 14-17 days. Both parents incubate the eggs and feed the chicks. Their diet consists of insects. Black-capped vireos have a lifespan of 5-6 years. Males sing to attract mates and defend territories, which are usually 2 to 4 acres in size. Vireos return year after year to the same area to nest.

HABITAT

Rangelands with scattered clumps of shrubs separated by open grassland are preferred habitat for the black-capped vireo.

DISTRIBUTION

Black-capped vireos are found throughout the Edwards Plateau and eastern Trans-Pecos regions of Texas.

OTHER

Black-capped Vireos are endangered because the low growing woody cover they need for nesting has been cleared or overgrazed by livestock and deer. Also, range fires, which used to keep the land open and the shrubs growing low to the ground, are not as frequent today as in the days before people settled Texas. Another problem is that brown-headed cowbirds lay their eggs in vireo nests, causing the vireos to abandon their nest.

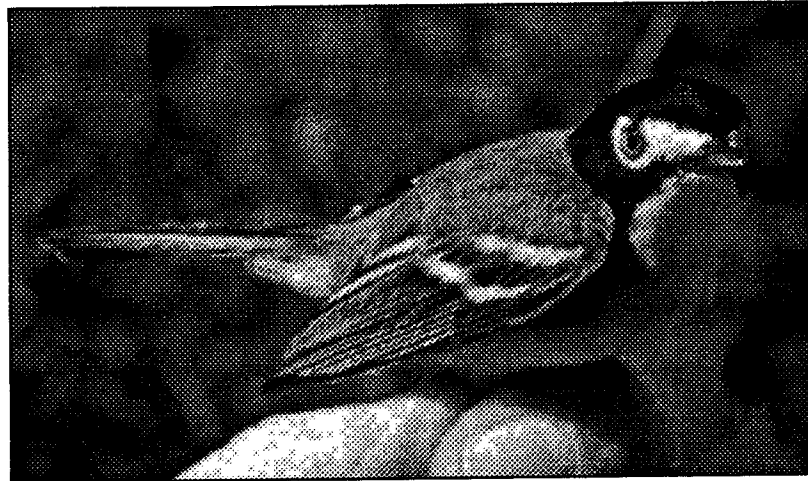
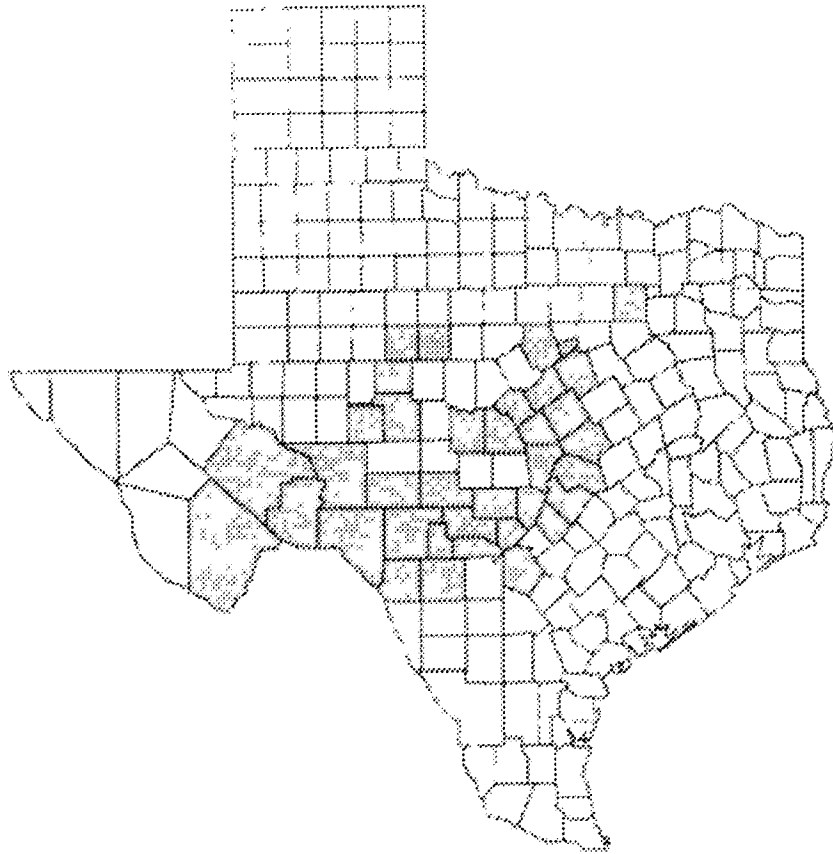


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BOOKS

Golden-cheeked Warbler (*Dendroica chrysoparia*)

TEXAS STATUS

Endangered

U.S. STATUS

Endangered, Listed 5/04/1990

DESCRIPTION

Adult Golden-cheeked warblers reach a length of 4.5 inches.

LIFE HISTORY

Golden-cheeked warblers nest only in central Texas mixed Ashe-juniper and oak woodlands in ravines and canyons. Warblers eat insects and spiders found on the leaves and bark of oaks and other trees. They use long strips of cedar bark and spider webs to build their nests. They come to

Texas in March to nest and raise their young, and leave in July to spend the winter in Mexico and Central America. Females lay 3-4 eggs during nesting season. Of the nearly 360 bird species that breed in Texas, the Golden-cheeked Warbler is the only one that nests exclusively in Texas.



Photo ©TPWD

HABITAT

Woodlands with tall Ashe juniper (colloquially "cedar"), oaks, and other hardwood trees provide habitat for the golden-cheeked warbler.

DISTRIBUTION

In Texas, golden-cheeked warblers are found in the Edwards Plateau and locally north to Palo Pinto County.

OTHER

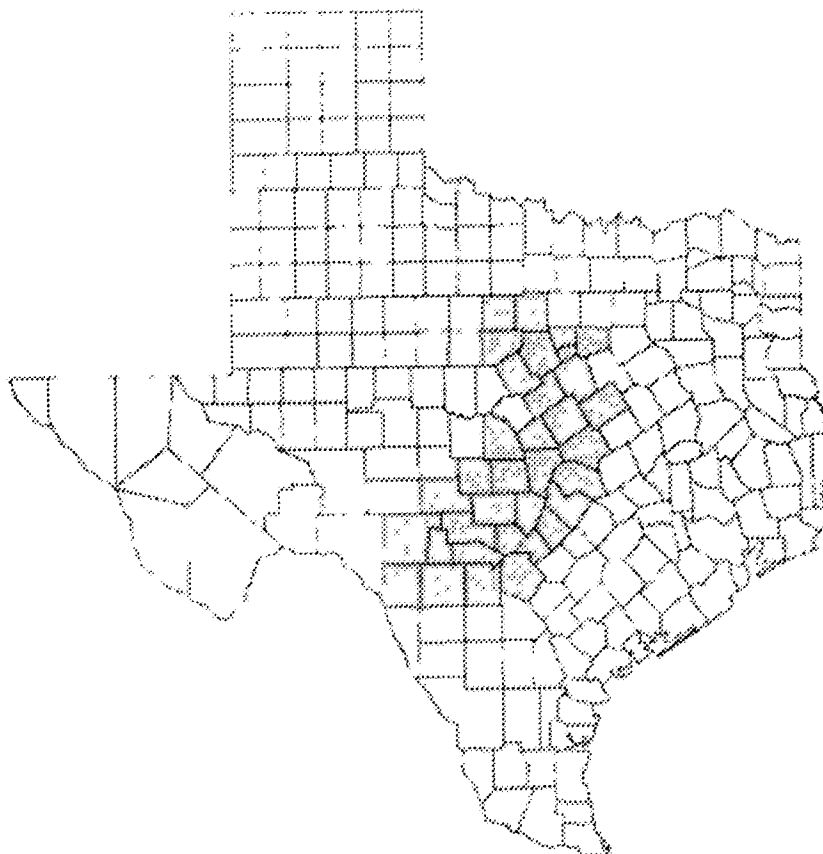
Golden-cheeked warblers are endangered because many tall juniper and oak woodlands have been cleared to build houses, roads, and stores. Some habitat was cleared to grow crops or grass for livestock. Other habitat areas were flooded when large lakes were built.

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Texas Horned Lizard (*Phrynosoma cornutum*)

OTHER NAMES

Horny Toad

TEXAS STATUS

Threatened

DESCRIPTION

The Texas horned lizard or "horny toad" is a flat-bodied and fierce-looking lizard. The head has numerous horns, all of which are prominent, with two central head spines being much longer than any of the others. This lizard is brownish with two rows of fringed scales along each side of the body.

On most Texas horned lizards, a light line can be seen extending from its head down the middle of its back. It is the only species of horned lizard to have dark brown stripes that radiate downward from the eyes and across the top of the head.



Photo ©TPWD

HABITAT

They can be found in arid and semiarid habitats in open areas with sparse plant cover. Because horned lizards dig for hibernation, nesting and insulation purposes, they commonly are found in loose sand or loamy soils.

DISTRIBUTION

Texas horned lizards range from the south-central United States to northern Mexico, throughout much of Texas, Oklahoma, Kansas and New Mexico.

OTHER

The Texas horned lizard currently is listed as a threatened species in Texas (federal category C2).

For more information

Check Parks and Wildlife's [Texas Horned Lizard Watch](#) for programs and monitoring activities.

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Tobusch Fishhook Cactus (*Sclerocactus brevihamatus* subsp. *tobuschii*)

OTHER NAMES

Shorthook Fishhook Cactus

TEXAS STATUS

Endangered

U.S. STATUS

Endangered, Listed 11/07/1979

DESCRIPTION

The Tobusch fishhook cactus is a small, round cactus, usually 2 to 3 inches tall and up to 3.5 inches in diameter, with light yellow spines with red tips. It produces yellow to cream flowers about 1 to 1 1/2 inches long and wide during February through March. The lower central spines are hooked at the tip, like a fishhook. The fruit is fleshy and green, ripening to pink or pinkish-brown by late spring or early summer. The seeds are black.



TPWD ©

LIFE HISTORY

Tobusch fishhook has been affected by over-collecting and habitat alteration. Since this cactus is so small, the best time to look for it is during the spring flowering period.

HABITAT

This cactus grows in very shallow gravelly soil over limestone, in shortgrass areas within live oak-juniper shrublands.

DISTRIBUTION

It is found on the western Edwards Plateau in Bandera, Edwards, Kerr, Kimble, Kinney, Real, Uvalde, and Val Verde Counties.

OTHER

This cactus produces yellow to cream flowers about 1 to 1 1/2 inches long and wide during February through March.

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