

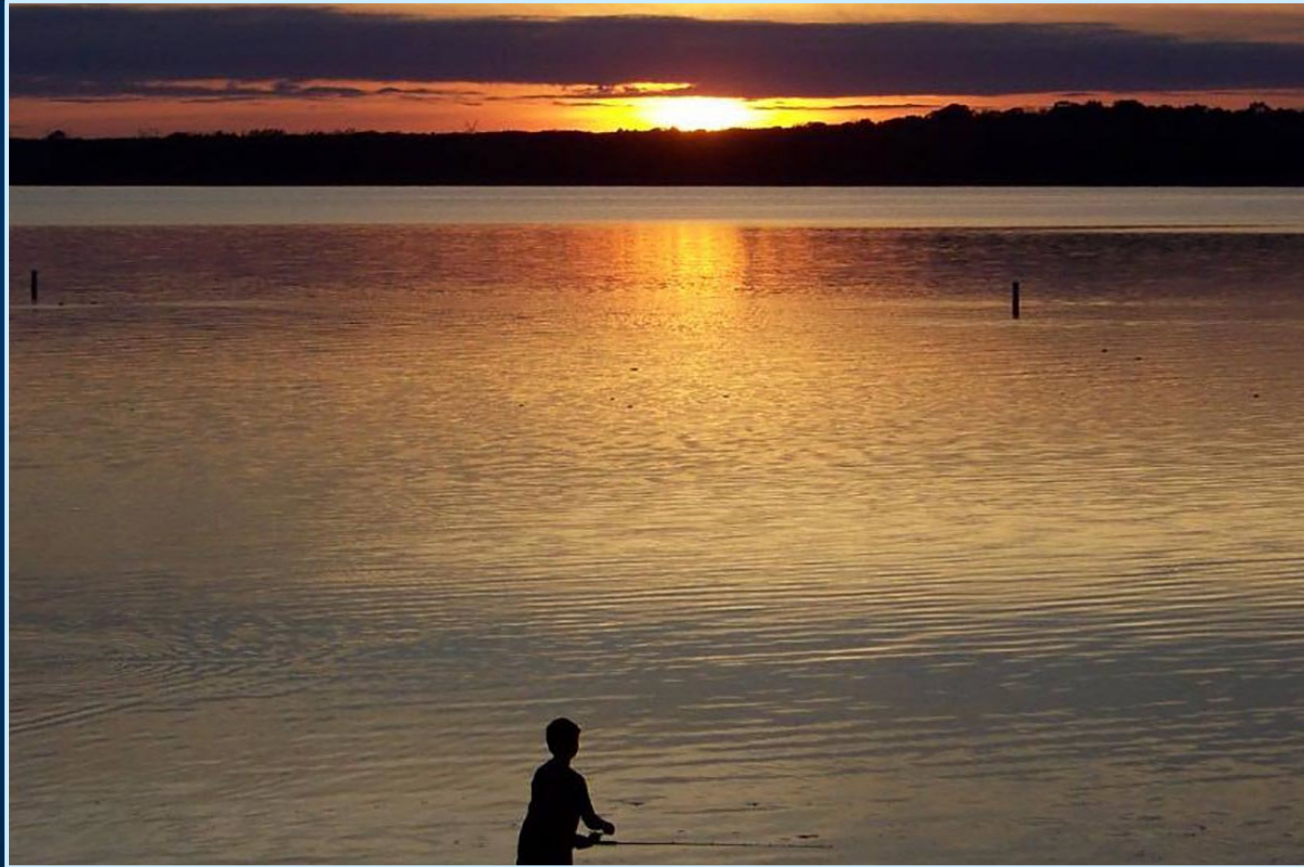


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Condemnation of Land – Freestone County Approximately 5,000 Acres at Fairfield Lake State Park

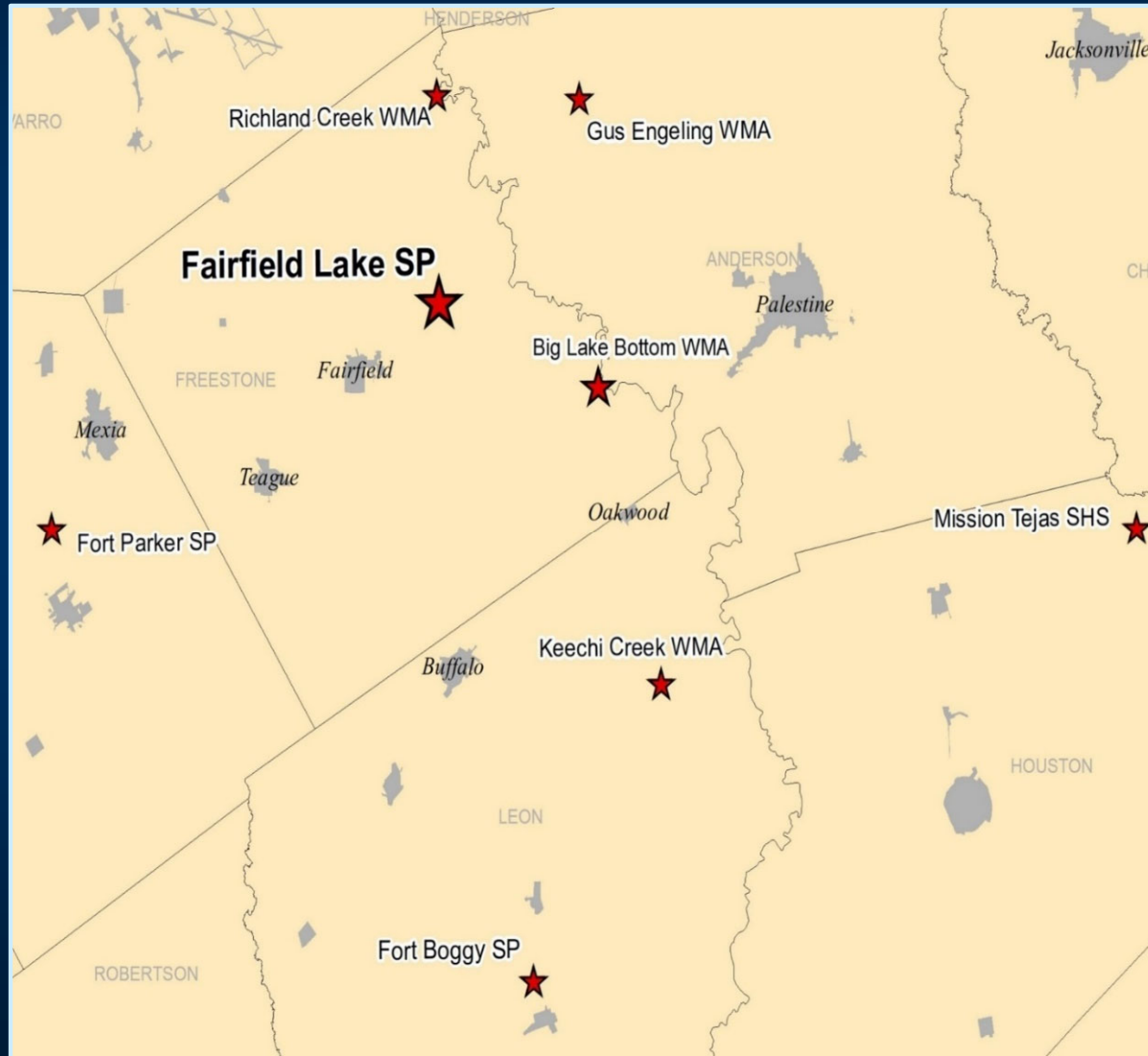


**TPW Special Commission Item No. 2
June 10, 2023**

Fairfield Lake State Park Freestone County



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Fairfield Lake State Park

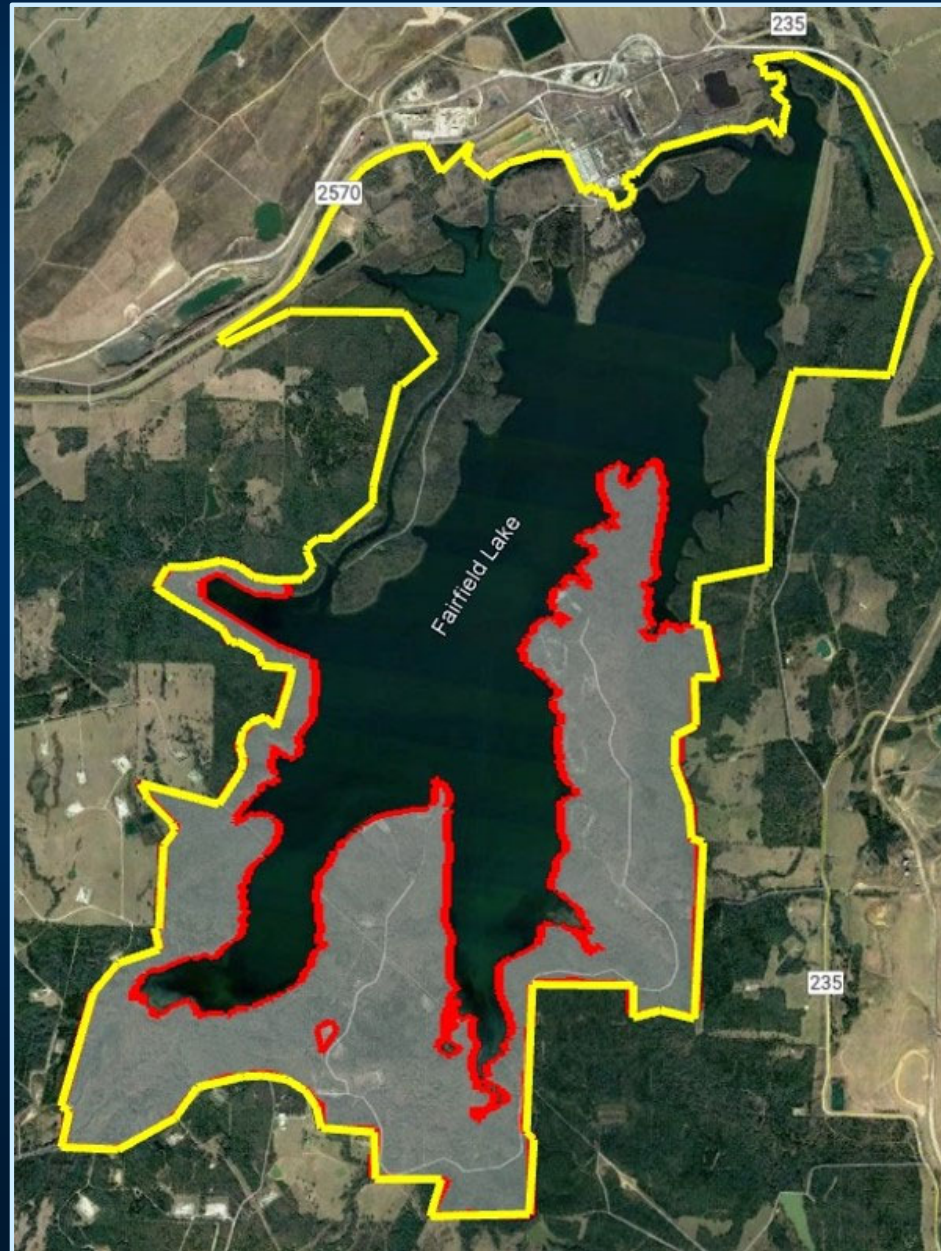
- Fairfield Lake State Park is a leased park which opened in 1976 and consists of 1,821.35 acres.
- The current coal power plant operator, Vistra, shut down the plant in 2018. TPWD engaged to explore options to purchase the state park site, but Vistra would not consider a sale of just the parkland.
- TPWD and multiple interested partners such as Conservation Equity Partners contacted Vistra to purchase the property, repeatedly, over the course of the last three years. Had their bid been accepted we would have worked cooperatively to keep the park open.

Fairfield Lake State Park

- In 2022, Todd Interests entered a contract to purchase the property and completed the acquisition on June 1, 2023.
- The new owner, FLG Owner LLC, does not intend to use the property as a state park.
- TPWD's lease ends on June 13, 2023.
- While the property was under contract for sale, TPWD attempted to purchase the sales contract from Todd Interests for \$25 Million for the right to then purchase the property from Vistra, but the offer was rejected by Todd Interests.

Site Map of Proposed Acquisition

Proposed Acquisition in Yellow
Fairfield Lake State Park in Red



Resource Protection

- Fairfield Lake is considered one of the nation's finest bass fishing locations. It has produced 69 lunkers since 2020, making it one of the most productive fisheries maintained by TPWD.
- Hydrological modeling by TPWD shows diverting the water outside Freestone County could reduce reservoir volume by as much as a third, drawing the water level down eight feet and trimming 11 miles, or 41 percent, of the shoreline. This would damage aquatic life in the lake and affect wildlife.
- Water level variation under the diversion would result in the loss of boat access approximately 80% of the time without ramp modification.

Fairfield Lake State Park

- TPWD will now consider the use of eminent domain to condemn the approximately 5,000-acre property that includes Fairfield Lake State Park and Fairfield Lake from FLG Owner LLC to preserve and expand the park under the authority provided in Texas Parks and Wildlife Code section 21.103.



Public Comment



Received 284 written comments

- 227 comments in support
- 57 comments in opposition

Responses on website without written comments are inconclusive

Eminent Domain Authority for TPWD

- General Authority:
 - Texas Constitution article I, section 17
- Specific Authority:
 - Texas Parks and Wildlife Code section 21.103: “...the department may acquire park sites, including property already devoted to public use, by purchase, *condemnation*, or other manner.”
 - Section 13.305: “The department may institute *condemnation* proceedings according to the laws of this state to acquire land for programs developing outdoor recreation resources under Section 13.302 of this code.”

Eminent Domain and Condemnation

- Eminent Domain: The power of the government to take private property for public use with payment of just compensation
- Condemnation: The process by which government exercises its eminent domain power
- The “quick take” process for condemnation in Texas is described in Chapter 21 of the Texas Property Code and has 5 major steps:
 1. A bona fide offer*
 2. Vote at a public meeting*
 3. File a condemnation petition in court
 4. Special commissioners hearing
 5. Appeal to court

Condemnation Step 1 or 2: Bona Fide Written Offer

- Initial Written Offer
 - If appraisal has been done, send with initial offer
 - If appraisal has not been done, one must be completed and included with the final offer
- Final Written Offer
 - Send on or after the 30th day after sending the initial offer
 - Must be equal to or greater than the appraised value
- Landowner has 14 days to consider the final offer

Condemnation Step 1 or 2: Vote at a Public Meeting

- The TPW Commission must authorize the condemnation by a record vote at an open meeting after giving public notice

Condemnation Step 3: Petition

- The Texas Attorney General's Office, on behalf of TPWD, may file a petition to condemn in the county where the property is located only after completion of Steps 1 and 2
- TPWD is currently represented by the Office of the Attorney General of Texas
 - Sent an evidence preservation letter to Todd Interests on May 25 requesting retention of relevant documents
 - Sent a follow-up evidence preservation letter to Todd Interests on June 2 advising him to “take care to preserve the facilities, infrastructure, and improvements to the Park in their current state.”

Condemnation Step 4: Hearing

- 3 Special Commissioners appointed by the court
 - Disinterested real property owners who reside in the county where the property is located
- Special Commissioners will hear evidence and award the property owner the current fair market value of the property, to be paid by TPWD
- TPWD can take possession of the property after depositing the payment into the registry of the court

Condemnation Step 5: Objection and Appeal

- Either party may object to the Special Commissioners' findings
- If a party objects, the case proceeds to a civil trial
 - The judgment rendered in the civil trial can also be appealed
- Once all avenues of appeal have been exhausted, TPWD would pay the landowner the value decided by the court and take ownership of the land

Recommendation

Staff recommends the Commission adopt the following motion:

“The Texas Parks and Wildlife Commission moves to authorize the Executive Director to use the power of eminent domain to acquire approximately 5,000 acres of land in Freestone County, including all associated water rights, easements, and assets, to preserve and expand Fairfield Lake State Park, and adopt the resolution attached as Exhibit D.”



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**TPW Commission
Special Commission
Meeting
June 10, 2023**

Oral Public Comments



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