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TEXAS STATE SOIL AND WATER CONSERVATION BOARD
Protecting and Enhancing Natural Resources for Tomorrow

April 13, 2022

Jennifer Jones, Executive Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

Re: TSSWCB Response to Sunset Advisory Commission Staff Report

Dear Ms. Jones:

Thank you for the opportunity to respond to the *Sunset Advisory Commission Staff Report on the Texas State Soil and Water Conservation Board (TSSWCB) and the Texas Invasive Species Coordinating Committee (TISCC)*. TSSWCB staff appreciates the diligent, thorough, and constructive analysis of the agency and welcomes the opportunity to implement the recommendations to improve the effectiveness, efficiency, and accountability of the agency's operations and programs.

Regarding the report, you and your review team have made several important recommendations at TSSWCB. As we have discussed, we agree on many of the recommendations within the report, while there are a few we respectfully disagree with and would like to provide further clarification. TSSWCB respectfully offers the following comments for your consideration.

RESPONSES TO ISSUE 1:

TSSWCB Needs to Improve Its Administration of the Dam Structural Repair Program to Ensure Consistency, Fairness, and Accountability.

Findings

TSSWCB insufficiently prepared to effectively administer the \$150 million appropriation from the Economic Stabilization Fund.

Respectfully, the TSSWCB staff disagrees with this finding.

It takes at least two years to design, acquire land rights, and receive Clean Water Act (CWA), Section 404 permit approval for a high hazard dam upgrade or rehabilitation project. Funding was received June 6, 2019. Designs started September 2019. It was critical that sponsors be contacted individually to determine current readiness, and projects be ranked and prioritized in the summer of 2019 so that designs could be started as soon as possible. Only 2 of the 15 upgrade designs were approved before it was necessary to sign agreements to obligate the construction funding by the May 31, 2021 deadline.

Time did not allow for traditional stakeholder meetings, modification of the grant administration process, or a requirement that sponsors re-submit and update applications and cost estimates before starting projects. Regarding updated cost estimates, the only good cost estimate is the engineer's final design cost estimate, and, depending on economic conditions, sometimes even that is off by 30%. TSSWCB staff does not believe that requiring updated applications and cost estimates from sponsors will help. TSSWCB begins projects knowing that the original cost estimate may be inaccurate. The probability of cost increases is discussed with sponsors before funding decisions are made and designs are started.

Lapsing Funds: The pandemic adversely impacted the construction industry including a shortage of materials and a sharp increase in construction costs leading to a situation where many of the agreements did not include enough funding to begin work. During the Sunset Advisory Commission's (SAC) review both agencies were operating under the assumption that the encumbrances made with the \$150 million Economic Stabilization Fund (ESF) appropriation could not be increased or reduced subsequent to the May 31, 2021 deadline. This led to concerns that a significant portion of the appropriation may not be used and remain in the ESF. Simultaneous to the completion of the SAC staff report, the TSSWCB staff were notified by the Comptroller of Public Accounts (CPA) that adjustments to projects within already encumbered amounts was allowable. TSSWCB staff believes that the best approach with this newly found flexibility will be to postpone one or two projects and increase the amounts encumbered for the remaining projects to cover the additional cost. **The expectation is that these corrections will still justify the original encumbrances and will significantly reduce the possibility of any potential lapse to only unused contingency.**

There were no permitting delays. All required CWA 404 permits were obtained for upgrade and rehab projects by September 2021 and did not delay any projects. Construction timeline for most rehab/upgrade projects is 2 to 3 years. As of this month (April 2022), we have about 3 years and 2 months before fund expiration. The six remaining rehab/upgrade projects that have not been bid will be bid within the next 2 or 3 months.

Sunset Staff Recommendations

1.1 Require TSSWCB to develop and adopt one clear set of overall priorities, goals, and associated measures for the dam structural repair program.

Respectfully, the TSSWCB staff believes that we already have one clear set of overall priorities, goals, and measures.

However, TSSWCB staff agrees to reassess stakeholder/sponsor input to update goals, criteria, and metrics for the dam structural repair program, and ensure the agency's rules, policies, and other guidance documents are consistent. Enhanced stakeholder input would also allow TSSWCB to better gauge structural repair needs and sponsor capacity to accomplish a realistic number of projects.

However, TSSWCB staff feels that the Ten-Year Plan is not a Flood Control Program guidance document. This plan was requested by a member of the Legislature as a means of identifying the amount of funding that would be needed to accomplish all known dam repair, upgrade, and rehabilitation needs in a ten-year period. That was the sole intended purpose of the Ten-Year Plan. It was not intended to become a tool in ranking specific applications against one another. The dam projects specified in the Ten-Year Plan were already ranked and were the intended recipients of the \$150 million appropriation, by virtue of the fact that they were in the Plan. Therefore, the agency believes that this document should not be modified or changed, but only updated as needed.

1.2 Direct TSSWCB to establish and update its policies for administering the dam structural repair program.

TSSWCB staff agrees to develop, update, and publish its policies and to inform sponsors of grant application, priority ranking methods, selection, and award processes.

The agency staff also agrees to update the grant application forms and inform sponsors of the results of priority rankings for each funding cycle so that sponsors can determine the status of their projects. The agency also agrees to establish a matching funds policy for federal grants and will consider whether sponsors should apply for federal rehabilitation before becoming eligible for state-funded upgrade. The agency has never moved forward on any state-funded only projects that had received federal funds for repair or rehabilitation.

However, the agency staff does not believe that requiring updates or re-submissions by sponsors of grant applications annually would be beneficial, especially if the intent is to get a better cost estimate (see cost estimate comment above). This should be an option for sponsors, but not a requirement. Sponsors should have an opportunity to update older applications if they desire to do so or cancel applications that they no longer wish to implement.

1.3 Direct TSSWCB to maintain a centralized master file system for dam structural repair grants.

Respectfully, TSSWCB staff believes that the filing system currently being used is the most efficient and effective for this program's administration. We disagree with combining financial and accounting information such as contracts, invoicing, and payment documentation with programmatic documents such as engineering designs, inspections, and O&M agreements, and we disagree with maintaining all older, inactive, and/or terminated projects with active project files. Once inactive, we generally prefer to move project files to an offsite storage location until such time the agency's record retention schedule allows for them to be discarded.

TSSWCB files all repair applications and rehab applications in one location for administrative efficiency. All grants and agreements are filed in another location (fiscal and accounting files) by fiscal year for efficiency. Final disposition of all state records follows the agency records retention schedule for archival preservation. There are sometimes multiple grants over multiple fiscal years. Sometimes dams have been repaired multiple times over a 10-to-15-year period. Watershed Work Plans, O&M Agreements, High Hazard Dam Assessment Reports, Dam Safety Inspections, and As-Built Plans are filed electronically only.

TSSWCB staff agrees to document priority rankings for each funding cycle, grant funding decisions, policies, and documents and file these materials with grant applications.

1.4 Direct the TSSWCB board to approve all grants and contracts over \$1 million.

Respectfully, TSSWCB staff does not agree with this recommendation. The attorney general's office has previously approved the TSSWCB's request for the executive director to act on behalf of the board on grants and agreements. The board sets policy and approves allocations of funding for grants and agreements within each program.

The TSSWCB board currently meets once per quarter. Over the past 3 years, TSSWCB awarded 49 flood control program grants that exceeded \$1 million. Many times, additional grants must be awarded within 30 days of a high bid (bidders typically guarantee their bids for 30 days). This recommendation would likely require an impractical number of specially called board meetings to approve these grants.

1.5 Direct TSSWCB to proactively inform dam sponsors and co-sponsors about dam structural repair funding availability.

Respectfully, TSSWCB staff believes that it is already "proactively" informing sponsors about funding.

TSSWCB has always kept sponsors informed about available funding through emails, web postings, periodic program status reports, board reports, meetings, phone calls, and TSSWCB field staff attending nearly every monthly SWCD meeting. But this is a voluntary program, and there are some sponsors that are not interested in participating.

Cancelled projects were only a problem with 4 sponsors that we had not worked with previously. Staff visited by phone and email extensively with these 4 sponsors to determine readiness. Their decision was to cancel. The agency is not sure what other "evaluation process" would be beneficial.

TSSWCB currently has 30 dam repair applications and 19 dam upgrade applications that are not funded. Total funding needed for these dams, including engineering services, exceeds \$150 million (current budget is \$8.8 million per year), therefore a lack of applications has not proven to be problematic.

Fiscal Implication:

Respectfully, TSSWCB staff disagrees that there is no fiscal impact.

As stated in the Sunset report, it took a “herculean effort” using existing staff to accomplish the task of obligating and completing \$150 million of projects. If Sunset Report requirements are added to the workload, as is, additional staff would be required. To implement all of the recommendations, we would need to employ one additional engineer and one additional project manager.

RESPONSES TO ISSUE 2:

The State Has a Continuing Need for the Texas Invasive Species Coordinating Committee, but Statute Could Better Align with the Committee’s Needs.

Sunset Staff Recommendations

- 2.1 Continue the Texas Invasive Species Coordinating Committee and require it to be reviewed at the same time as TSSWCB.**

The TSSWCB staff agrees with Recommendation 2.1.

- 2.2 Modify statute to better align with the committee’s purpose and current needs.**

The TSSWCB staff agrees with Recommendation 2.2.

RESPONSES TO ISSUE 3:

Texas Has a Continuing Need for the Texas State Soil and Water Conservation Board, but the Agency Needs Changes to Improve Accountability.

Sunset Staff Recommendations

- 3.1 Continue the TSSWCB for 12 years and remove the Sunset date of the agency’s enabling statute.**

The TSSWCB staff agrees with Recommendation 3.1.

- 3.2 Direct TSSWCB to develop a board member recusal policy, including a written explanation for the recusal.**

The TSSWCB staff agrees with Recommendation 3.2.

3.3 Direct TSSWCB to improve its district director training, including providing a training manual the directors would have to attest to receiving and reviewing annually.

The TSSWCB staff agrees with Recommendation 3.3.

The agency is constantly adapting its **nationally recognized** district director training to changing priorities and responsibilities while making use of technological advancements that can serve to further make the information more accessible.

RESPONSES TO ISSUE 4:

The Agency's Statute Does Not Reflect Some Standard Elements of Sunset Reviews.

Sunset Staff Recommendations

4.1 Update the standard across-the-board requirement related to board member training.

The TSSWCB staff agrees with Recommendation 4.1.

However, the TSSWCB staff wishes to make clear that a board member training manual currently exists and is updated each time new board members are elected or appointed and prior to any training activities.

4.2 Update the standard across-the-board requirement regarding the separation of duties of board members from those of staff.

The TSSWCB staff agrees with Recommendation 4.2.

However, the TSSWCB staff wishes to make clear that on July 15, 2021 the State Board approved a policy on division of responsibilities that was developed in cooperation with the agency's attorney assigned to the TSSWCB by the Office of the Attorney General.

4.3 Update the standard across-the-board requirement related to developing and maintaining a complaints system and making information on complaint procedures available to the public.

The TSSWCB staff agrees with Recommendation 4.3.

4.4 Direct TSSWCB to adopt a policy guiding its rule review process.

The TSSWCB staff agrees with Recommendation 4.4.

However, the TSSWCB staff wishes to make clear that it has and follows an approved rule review plan but will incorporate the provisions stated in the recommendation.

4.5 Direct TSSWCB to recertify its records retention schedule and develop a records retention policy.

The TSSWCB staff agrees with Recommendation 4.5.

The TSSWCB started working with the Texas State Library and Archives Commission (TSL) to recertify the records retention schedule on August 31, 2017 and the process continued up until January 14, 2022, on which the TSSWCB received a review memo from the TSL with final updates needed to complete the recertification. The updates have been made and a final schedule has been submitted to TSL. They were scheduled to begin reviewing the updated schedule on March 18th and if all updates are validated then the TSSWCB records retention schedule will be recertified.

Thank you again for this opportunity to provide comments on the *Sunset Advisory Commission Staff Report on the Texas State Soil and Water Conservation Board (TSSWCB) and the Texas Invasive Species Coordinating Committee (TISCC)*. TSSWCB looks forward to cooperatively working with you, your staff, the Sunset Advisory Commission, and the Legislature during the remainder of this process.

Sincerely,



Rex Isom
Executive Director

cc: Marty H. Graham, TSSWCB Chairman-State District 2
David Basinger, TSSWCB Vice-Chairman-State District 4
Scott Buckles, TSSWCB Member-State District 1
José Dodier, Jr. , TSSWCB Member-State District 3
Barry Mahler, TSSWCB Member-State District 5
Carl Ray Polk, Jr., TSSWCB Member-Governor Appointed
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