

SUNSET ADVISORY COMMISSION

STAFF REPORT WITH COMMISSION DECISIONS

Trinity River Authority of Texas

2024-25
89TH LEGISLATURE



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Cover photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the south facade of the Capitol. Photo Credit: Janet Wood

TRINITY RIVER AUTHORITY OF TEXAS

SUNSET STAFF REPORT WITH COMMISSION DECISIONS

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HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at [sunset.texas.gov/how-sunset-works](https://www.sunset.texas.gov/how-sunset-works). The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at [sunset.texas.gov](https://www.sunset.texas.gov).

Sunset Staff Report

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

CURRENT VERSION: Sunset Staff Report with Commission Decisions

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

Sunset Staff Report with Final Results

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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SUNSET COMMISSION DECISIONS

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Trinity River Authority of Texas (TRA).

Since its creation in 1955, TRA has managed the Trinity River basin, which extends from Tarrant County to Chambers County and includes all or part of 17 counties in Texas. The Sunset Commission found TRA to be a generally well-run organization, but the authority faces challenges due to population growth and aging infrastructure at its water and wastewater treatment plants.

The Sunset Commission determined that improving TRA's contracting processes for capital improvement projects would mitigate risk to the authority and its customers. In addition, the commission determined that TRA would benefit from greater auditor independence and increased board involvement for its internal auditing function. Furthermore, although TRA has a robust strategic planning process, the commission concluded that the authority would benefit from developing more detailed action items for implementing its strategic plan, proactively planning for stakeholder communication, and conducting formal analyses to assess risk and evaluate the costs and benefits of strategic decisions. Finally, the commission adopted several recommendations relating to good government practices applied across the board during Sunset reviews.

ISSUE 1

TRA's Procurement and Contracting Processes Would Benefit from Enhanced Oversight, Formal Policies, and Best Practices to Mitigate Potential Risk.

Recommendation 1.1, Adopted — Direct TRA to expand internal oversight of construction and engineering contracting and take additional steps to centralize procurement and contracting functions. (Management action – nonstatutory)

Recommendation 1.2, Adopted — Direct TRA to adopt detailed internal contract management and monitoring policies. (Management action – nonstatutory)

Recommendation 1.3, Adopted — Direct TRA to adopt intermediate remedies in standard contract language. (Management action – nonstatutory)

Recommendation 1.4, Adopted — Direct TRA to adopt a policy with clear criteria for contract remedies. (Management action – nonstatutory)

Recommendation 1.5, Adopted — Direct TRA to adopt a formal escalation policy to prevent contract compliance issues. (Management action – nonstatutory)

Recommendation 1.6, Adopted — Direct TRA to improve certain contracting activities to ensure consistency and enhance monitoring. (Management action – nonstatutory)

ISSUE 2

TRA Would Benefit from Restructuring and Prioritizing Its Internal Auditing Efforts to Improve Operational Efficiency and Reduce Risk.

Recommendation 2.1, Adopted — Direct TRA to have its internal audit function report directly to the board's Administration and Audit Committee. (Management action – nonstatutory)

Recommendation 2.2, Adopted — Direct TRA's full board of directors to receive regular internal audit status updates and vote on internal audit-related decisions prior to their enactment. (Management action – nonstatutory)

Recommendation 2.3, Adopted — Direct TRA's Administration and Audit Committee to exercise additional oversight of the internal audit function. (Management action – nonstatutory)

ISSUE 3

Additional Formalized Planning Would Better Position TRA for Continued Success.

Recommendation 3.1, Adopted — Direct TRA to develop more specific work plans with action items and performance measures to evaluate progress and operationalize its current and future strategic plans. (Management action – nonstatutory)

Recommendation 3.2, Adopted — Direct TRA to further plan for future communications. (Management action – nonstatutory)

Recommendation 3.3, Adopted — Direct TRA to develop a formal, strategic decision-making process to identify and address potential risks and better inform its decisions. (Management action – nonstatutory)

ISSUE 4

TRA's Governing Law and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.

Recommendation 4.1, Adopted — Apply the standard across-the-board requirement regarding the governor's appointment of the presiding officer to TRA's board.

Recommendation 4.2, Adopted — Apply the standard across-the-board requirement regarding grounds for removal of a board member to TRA's board.

Recommendation 4.3, Adopted — Apply the standard across-the-board requirement regarding board member training to TRA.

Recommendation 4.4, Adopted — Apply the standard across-the-board requirement regarding the separation of duties of board members from those of staff to TRA.

Recommendation 4.5, Adopted — Apply the standard across-the-board requirement regarding public testimony to TRA.

Recommendation 4.6, Adopted — Apply the standard across-the-board requirement related to developing and maintaining a complaint system and making information on complaint procedures available to the public.

Recommendation 4.7, Adopted — Amend TRA's Sunset review date to 2037.

Recommendation 4.8, Adopted — Amend TRA's governing law to reflect a board size of 25 directors.

Recommendation 4.9, Adopted — Direct the Texas Legislative Council to update TRA's governing law. (Management action – nonstatutory)

Recommendation 4.10, Adopted — Direct TRA to publish minutes for board and committee meetings to improve transparency. (Management action – nonstatutory)

Fiscal Implication Summary

The Sunset Commission's recommendations would have no fiscal impact to the state. TRA should be able to implement most of the recommendations with existing resources. However, the full fiscal impact on TRA will depend on how the authority chooses to implement certain recommendations, such as assessing internal audit resource levels, and cannot be estimated.

SUMMARY OF SUNSET STAFF REPORT

Since its creation in 1955, the Trinity River Authority of Texas (TRA) has managed the Trinity River basin, which extends from Tarrant County to Chambers County and includes all or part of 17 counties in Texas. TRA treats more wastewater than any other river authority in the state, generating clean water for reuse within the basin and serving as a source of new water supply.¹ The authority owns and operates five wholesale regional wastewater systems, four wholesale regional drinking water treatment systems, and the dam that forms Lake Livingston. TRA also provides raw water to customers that are primarily municipalities, monitors water quality in the Trinity River basin, and participates in regional water and flood planning.

Overall, Sunset staff found TRA to be a generally well-run organization. However, the authority faces significant challenges due to population growth and development in the greater Dallas-Fort Worth Metroplex, aging infrastructure at its water and wastewater treatment systems, regulatory changes, and record-setting rainfall and flooding. As such, this review focused on improving TRA's management and operations to set up the authority for success and better position TRA to address challenges going forward.

TRA faces significant challenges due to population growth, aging infrastructure, and record-setting rainfall.

In response to population growth and aging infrastructure, TRA has expanded its capital improvement program, which relies on engineering and construction contractors to complete projects. The authority estimates rates will nearly double for some customers over the next five years, primarily to pay off bond debt used to fund these projects. Because capital improvement contracts are often high dollar and involve critical infrastructure, Sunset staff's recommendations focused on improving TRA's contracting processes by enhancing training and oversight, implementing formal policies for contract monitoring and enforcement, and aligning processes with best practices to mitigate risk to the authority and its customers.

In addition, the review found that TRA would benefit from greater auditor independence and increased board involvement for its internal auditing function to strengthen board oversight, identify potential risks, and help ensure internal audit recommendations are implemented timely. Furthermore, although TRA has a robust strategic planning process, the authority would benefit from developing more detailed action items for implementing its strategic plan, proactively planning for stakeholder communication, and conducting formal analyses to assess risk and evaluate the costs and benefits of strategic decisions. Finally, this report includes several findings and recommendations relating to good government practices applied across the board during Sunset reviews.

The following material highlights Sunset staff's key recommendations for the Trinity River Authority of Texas.

Sunset Staff Issues and Recommendations

ISSUE 1

TRA's Procurement and Contracting Processes Would Benefit from Enhanced Oversight, Formal Policies, and Best Practices to Mitigate Potential Risk.

To respond to increasing capital needs due to aging water and wastewater infrastructure and population growth in the areas it serves, TRA has increased its contracting for professional engineering and construction services. While TRA has been improving its contracting function, the authority needs additional training and oversight to protect it from risks such as project delays and cost increases. Bolstering TRA's construction and engineering contracting processes through clear and consistent policies and remedies for vendor underperformance would help ensure costs increase only as necessary. Additionally, TRA would benefit from adopting certain best practices to better position the authority for success.

Key Recommendations

- Direct TRA to expand internal oversight of construction and engineering contracting and take additional steps to centralize procurement and contracting functions.
- Direct TRA to adopt formal policies for internal contract management and monitoring, the use of remedies for contractors with performance problems, and when to escalate problems to management and the board.
- Direct TRA to adopt intermediate remedies in standard contract language.
- Direct TRA to improve certain contracting activities to ensure consistency and enhance monitoring.

ISSUE 2

TRA Would Benefit from Restructuring and Prioritizing Its Internal Auditing Efforts to Improve Operational Efficiency and Reduce Risk.

Internal auditing is a key tool for decision makers to help identify and mitigate organizational risks before they result in more serious problems. TRA could improve its internal auditing function by adopting best practices to strengthen internal audit independence, which would allow the auditor to report directly to the board without staff-level influence. Increased board awareness of and involvement in the internal auditing process would give the board greater insight into risks facing the authority and ensure staff is accountable for implementing internal audit recommendations to improve TRA's operations.

Key Recommendations

- Direct TRA to have its internal audit function report directly to the board's Administration and Audit Committee.
- Direct TRA's full board of directors to receive regular internal audit status updates and vote on internal audit-related decisions prior to their enactment.

- Direct TRA's Administration and Audit Committee to exercise additional oversight of the internal audit function.

ISSUE 3

Additional Formalized Planning Would Better Position TRA for Continued Success.

While TRA has a robust strategic planning process, the authority would benefit from developing more detailed action items to ensure staff has clear direction on how to implement the plan and the board has sufficient information to evaluate success. Additionally, TRA would benefit from more formal and proactive planning for communication with stakeholders to promote trust in the authority during flooding events and as it undertakes more capital projects. Finally, as TRA's budget grows the authority would benefit from better documenting the costs and benefits of high-dollar decisions.

Key Recommendations

- Direct TRA to develop more specific work plans with action items and performance measures to evaluate progress and operationalize its current and future strategic plans.
- Direct TRA to further plan for future communications.
- Direct TRA to develop a formal, strategic decision-making process to identify and address potential risk and better inform its decisions.

ISSUE 4

TRA's Governing Law and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.

Sunset's across-the-board recommendations are standard elements that reflect Sunset Act criteria designed to ensure open, responsive, and effective government. In addition, Sunset has worked with the Texas Legislative Council to ensure river authorities' governing laws are codified rather than divided between multiple session laws. TRA's governing law does not include some of these standard elements and is difficult for the public and the authority to find and fully understand. TRA's governing law is also outdated, failing to reflect the authority's actual board size. Finally, TRA does not publish all board and committee meeting minutes online, limiting the transparency of board decisions.

Key Recommendations

- Apply the standard across-the-board recommendations regarding the governor's appointment of the presiding officer, grounds for removal of a board member, board member training, separation of staff and board duties, public testimony, and a system for receiving and acting on complaints.
- Amend TRA's governing law to reflect a board size of 25 directors and direct the Texas Legislative Council to update TRA's governing law.
- Direct TRA to publish minutes for board and committee meetings to improve transparency.

Fiscal Implication Summary

These recommendations would have no fiscal impact to the state. TRA would be able to implement most of the recommendations with existing resources. However, the full impact on TRA will depend on how the authority chooses to implement certain recommendations, such as assessing internal audit resource levels, and cannot be estimated at this time.

¹ Trinity River Authority of Texas, *Self-Evaluation Report*, September 2023, accessed online October 25, 2024, <https://www.sunset.texas.gov/public/uploads/2023-09/Trinity%20River%20Authority%20of%20Texas%20SER.pdf>.

AUTHORITY AT A GLANCE

The Legislature created the Trinity River Authority of Texas (TRA) in 1955 to effectuate flood control and the conservation and use of waters in the Trinity River watershed.¹ TRA's mission, as defined by its board of directors, is to promote conservation, reclamation, protection, and development of the natural resources of the Trinity River basin for the benefit of the public. Like other river authorities in Texas, TRA is authorized to conduct a broad range of activities, including building and operating reservoirs, engaging in flood control, monitoring water quality, selling raw and treated water, treating wastewater, acquiring property by eminent domain when needed, building and managing park land, and operating hydroelectric facilities. TRA engages in a number of these activities, including:

- Operating five regional wastewater systems and four regional drinking water treatment systems.
- Operating the dam that forms Lake Livingston.
- Contracting with the U.S. Army Corps of Engineers (USACE) for water conservation storage space at three reservoirs and administering the associated reporting and compliance requirements for their surface water rights.
- Providing raw water to municipalities.
- Building and maintaining parks and recreational facilities at Lake Livingston for public use.
- Monitoring water quality in the Trinity River basin.
- Serving as a planning group sponsor and chair of the Region C Regional Water Planning Group, a voting member of the Region H Water Planning Group, and planning group sponsor and chair of the Region 3 Regional Flood Planning Group.

The map on Page 9 shows TRA's jurisdiction, which extends from Tarrant County to Chambers County and includes all or part of 17 counties in Texas.²

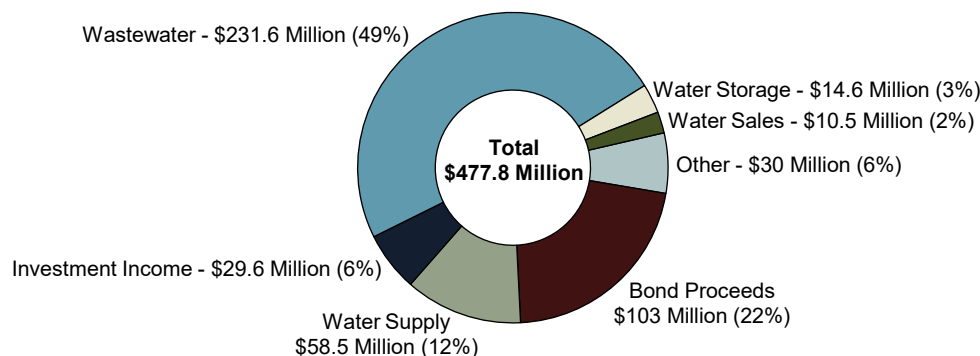
Key Facts

- **Governance.** TRA is governed by a 25-member board of directors appointed by the governor with the advice and consent of the Senate.³ The board is comprised of a member from each of the 17 counties in TRA's boundaries, two additional directors from Tarrant County, three additional directors from Dallas County, and three directors appointed as at-large members. Directors serve staggered six-year terms and must reside and own property in the area they represent. The board elects a president, vice president, chairs of its four functional committees, and chair of the executive committee, all of whom make up the executive committee. The board meets every other month to provide oversight of the authority's operations and approve its strategic plan, budget, large contracts, and other activities.
- **Funding.** As shown in the charts on the following page, TRA collected \$477.8 million in revenue and spent \$475.7 million in fiscal year 2023.

Revenue. TRA receives no state appropriations but has authority to issue bonds. TRA also has authority to levy taxes but has never done so and has not sought the required voter approval to do so since 1973.⁴ TRA primarily generates revenue by providing drinking water supply and wastewater

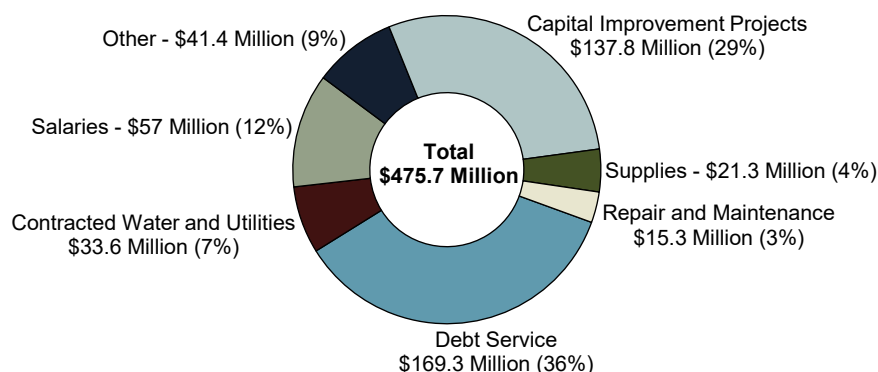
services to customers, which are primarily municipalities, and through bond proceeds, which together accounted for 83 percent of the authority's revenue in fiscal year 2023. Other sources of revenue include compensation for use of TRA land and water to operate a hydroelectric facility and fees for overstrength surcharges, recreation, and TRA's management of raw water supply projects.

TRA Sources of Revenue - FY 2023



Expenditures. The largest of TRA's expenditures were for debt service, capital improvement projects, and salaries, which together accounted for 77 percent of expenditures in fiscal year 2023. Other expenditures included biosolids disposal and operational expenses such as financial auditing, security services, and legal services.

TRA Expenditures - FY 2023



Reserve fund balance. TRA maintains 35 separate funds, each of which corresponds to a water or wastewater system or other activity, including internal service funds that the authority uses to support its other funds. TRA has two funds that include revenue the authority can expend for specific purposes with approval from the board of directors, as dictated by fund balance policies. TRA dedicates the fund balance of its Water Sales Special Revenue Fund to supporting the general office, technical studies and educational initiatives, payments to the City of Houston for water sales, and acquisition of water rights. TRA dedicates the fund balance of the Hydroelectric Special Revenue Fund to supporting the general office; operations and maintenance of the Lake Livingston Hydroelectric Project; technical studies, educational initiatives, and professional services related to flood mitigation or planning; and redevelopment of the Port of Liberty. At the end of fiscal year 2023, the combined total fund balance for TRA's governmental funds was \$23.3 million, with \$3 million available as unassigned in its General Fund.

- **Staffing.** In fiscal year 2023, TRA employed 487 full-time employees. Of these 487 employees, 250 worked at TRA's wastewater systems, 45 at TRA's water supply systems, 154 at TRA's general office in Arlington, and the remaining 38 at the Lake Livingston Dam, recreational facilities, or the southern region office, as shown in the map on Page 9. The authority's Central Regional Wastewater System facility in Dallas had the largest staff with 165 full-time employees in fiscal year 2023. Appendix A compares the percentages of minorities and women in TRA's workforce to the statewide civilian labor forces for the past three fiscal years.
- **Water and wastewater treatment.** TRA operates five regional wastewater collection and treatment systems that provide wholesale treatment services to 39 customers in and around the Dallas-Fort Worth Metroplex. Most of the authority's wastewater customers are municipalities, but the Dallas-Fort Worth International Airport and several municipal utility districts are also customers. In fiscal year 2023, TRA plants treated on average more than 170 million gallons of wastewater per day, much of which was returned to the Trinity River as clean water, maintaining flow and improving the ecosystem and resupplying the river. TRA also operates four water treatment plants in the northern and southern regions to provide customer cities with drinking water. In fiscal year 2023, TRA plants treated over 52 million gallons of raw water per day. The authority operates water and wastewater treatment systems on a cost-reimbursable basis, meaning customers approve and pay for maintenance and expansion.
- **Raw water supply.** TRA holds over 700,000 acre-feet in water rights, as reflected in the accompanying table. The authority owns and operates the Lake Livingston Dam reservoir, which impounds 1.75 million acre-feet of water and produces a firm yield of 1.25 million acre-feet of water annually. TRA owns 30 percent of the lake's yield while the City of Houston owns the remaining 70 percent. The authority is also the local sponsor of three USACE reservoirs in the northern region and is responsible for funding some of the costs of operating and maintaining the reservoirs. Finally, TRA is one of three local sponsors for the Wallisville saltwater barrier which controls river salinity by blocking saltwater intrusion upstream from Trinity Bay into the Trinity River.
- **Water planning and flood management.** TRA maintains the *Trinity River Basin Master Plan* to establish basin-wide objectives and serves on the Texas Water Development Board's regional water and flood planning groups. The authority promotes flood prevention, mitigation, and recovery through flood planning, modeling, and mapping. TRA is not a primary responder for flood control in the Trinity River basin, but the authority is in contact with county emergency personnel and federal or state agencies during flooding emergencies.

TRA Water Rights - FY 2023

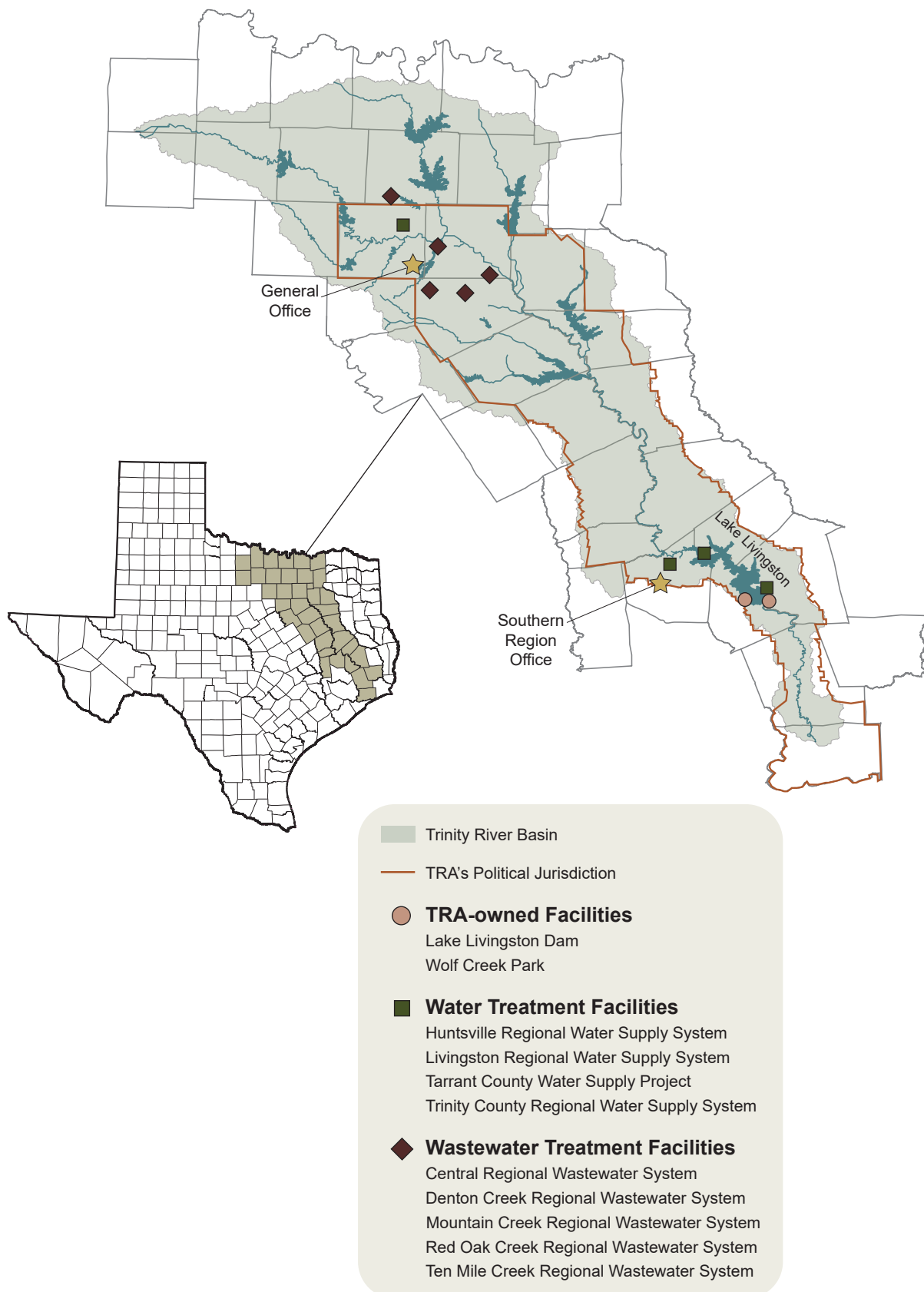
Water Source	Acre-Feet
Natural Yield	
Lake Livingston/Wallisville	403,200
Navarro Mills Lake	19,400
Joe Pool Lake	17,000
Bardwell Lake	9,600
White Rock Creek	3,188
Reuse	
Mountain Creek Regional Wastewater System	4,368
Central Regional Wastewater System	246,519
Ten Mile Creek Regional Wastewater System	
Red Oak Creek Regional Wastewater System	
Waxahachie Wastewater Treatment Plant	5,129
Ennis Wastewater Treatment Plant	3,696
Total	712,100

- **Permitting.** As an authorized agent of the Texas Commission on Environmental Quality (TCEQ), TRA issues permits for on-site sewage facilities (OSSF) within 2,000 feet of Lake Livingston. TRA inspects these septic systems to ensure correct installation and adherence to design and code requirements. In fiscal year 2023, TRA managed over 8,000 OSSF permits. Additionally, TRA issues shoreline permits for the construction of structures around Lake Livingston such as piers and boathouses, bulkheads, and for dredging of the lake. USACE regulates shoreline permits while TRA staff inspects any water-related access construction projects, such as piers, boathouses, or other storage buildings, to ensure compliance with TRA specifications. In fiscal year 2023, TRA managed a total of 435 shoreline permits, as shown in the accompanying textbox.
- **Recreation.** TRA owns, operates, and oversees several recreational facilities on Lake Livingston, including parks, campsites, boat ramps, fishing piers, and a marina. Most recreation sites managed by the authority are free and open to the public, with Wolf Creek Park open to the public with payment of a small fee. TRA had over 32,000 visitors to Lake Livingston recreational facilities in fiscal year 2023.
- **Water quality.** The authority participates in activities related to assessing and improving water quality in the Trinity River basin, including Lake Livingston and USACE reservoirs. TRA operates a National Environmental Laboratory Accreditation Program-certified water quality monitoring laboratory to conduct chemical and biological testing. In addition to supporting the authority's own operations and water quality functions, the lab conducts testing for TRA's customers and other governmental entities in the basin. As one of TCEQ's contracted partners of the Texas Clean Rivers Program, TRA collects and analyzes water samples from 72 sites in the Trinity River basin and reports its findings to TCEQ. Additionally, TRA performs studies on aquatic vegetation and invasive species in collaboration with the Texas Parks and Wildlife Department.
- **Hydropower.** In 2013, TRA entered into a comprehensive agreement with the East Texas Electric Cooperative (ETEC) and City of Houston for the development, operation, and maintenance of a hydropower project at Lake Livingston. The hydropower plant was completed in 2021 and has a power generation capacity of 24 megawatts, enough to power approximately 12,000 homes annually. TRA owns the property on which the plant is located while ETEC owns and operates the hydropower facility and holds the license for the plant.

TRA Shoreline Permits FY 2023

- 143 boathouse and pier permits
- 89 boathouse repair permits
- 28 bulkhead permits
- 130 bulkhead repair permits
- 45 dredge permits

Trinity River Authority of Texas: Basin, Boundaries, and Facility Locations



¹ Chapter 518 (HB 20), Acts of the 54th Texas Legislature, Regular Session, 1955.

² The authority covers all of the territory contained within the counties of Dallas, Tarrant, Ellis, Navarro, and Chambers and parts of the counties of Anderson, Freestone, Henderson, Houston, Kaufman, Leon, Madison, Polk, San Jacinto, Trinity, Walker, and Liberty. Section 2(a), HB 20, Acts of the 54th Texas Legislature, Regular Session, 1955.

³ The authority's governing law states TRA has 24 board members, but another law has directed the governor to appoint an additional at-large board member to bring TRA's board size to an odd number. HB 20, Acts of the 54th Texas Legislature, Regular Session, 1955; all citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 651.0085, Texas Government Code.

⁴ In 1973, voters did not approve a tax and bond initiative that would have provided the local match to enable USACE to construct a federal navigation project that would have made the Trinity River navigable from Trinity Bay to the City of Fort Worth.

ISSUE 1

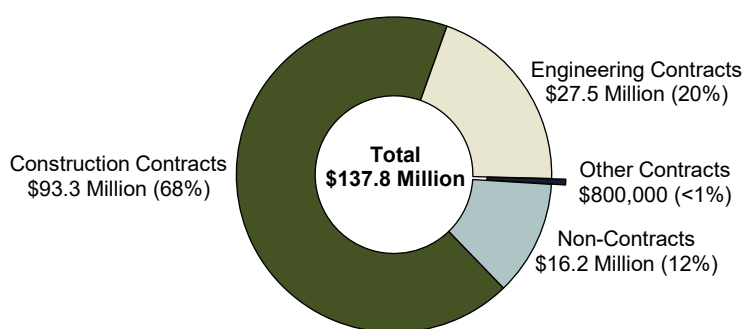
TRA's Procurement and Contracting Processes Would Benefit from Enhanced Oversight, Formal Policies, and Best Practices to Mitigate Potential Risk.

Background

The Trinity River Authority of Texas (TRA) contracts for a variety of construction and professional services, including engineering services, legal counsel, and financial auditing. TRA's Planning, Design, and Construction Administration (PDCA) Division handles contracting for capital improvement projects while its Purchasing Department within the Administrative Services Division handles all other TRA contracts and acts as a procurement consultant to TRA staff in other divisions. The authority's legal staff creates contract templates and reviews final contracts before board approval.

To respond to increasing capital needs due to aging water and wastewater infrastructure and population growth in the areas it serves, TRA has been significantly increasing its contracting for professional engineering and construction services. Between direct capital improvement project expenses and debt service to pay down bonds primarily used to fund these projects, about 65 percent of TRA's expenditures in fiscal year 2023 were related to capital improvement projects. Contracts for construction and engineering services account for 88 percent of the authority's capital improvement project expenses, as shown in the accompanying chart.

**TRA Capital Improvement Project Expenditures
FY 2023**



When evaluating an agency's contracting processes, Sunset uses the general framework established in the *State of Texas Procurement and Contract Management Guide* as well as documented standards and best practices compiled by Sunset staff.¹ TRA is not subject to many of the procurement laws on which the guide is based, as they were designed for state agencies. However, as a quasi-state agency, TRA would benefit from adopting several best practices state agencies use in their contracting process. Because the guide establishes the most comprehensive set of standards for government contracting, purchasing, and procurement in the state, it serves as a good starting point for evaluating a river authority's contracting processes. Implementing best practices to address some key areas would better position the authority to succeed and avoid risks.

Findings

Improving contracting training and oversight of high-value construction and engineering contracts would reduce risks for TRA.

Centralized oversight of procurement and contracting functions can ensure inclusion of proper expertise in developing, monitoring, and enforcing contracts and help identify problems before they negatively affect an organization. TRA has made progress toward realizing efficiencies gained from centralization over the last decade by consolidating capital improvement engineering, design, and construction contracting efforts under PDCA and centralizing the remaining purchasing and contracting activities under the Purchasing Department. However, additional training and oversight are needed to strengthen TRA's contracting functions and protect the authority from risks such as delayed project completion and increased costs. A sound procurement and contracting structure is especially important for TRA as its contracting activity increases to meet the basin's growing water and wastewater treatment needs.

TRA's
construction
and engineering
contracts
lack oversight
by certified
contracting
experts.

- Limited contracting certification and training.** Authority staff involved in contract procurement, management, and monitoring should retain proper contract certifications and receive standard contract training. Due to TRA's bifurcated contracting structure, PDCA's construction and engineering contracts lack oversight by certified contracting experts, which is essential to ensure compliance with contracting best practices and legal requirements. PDCA staff alone is responsible for the procurement, monitoring, and enforcement of TRA's engineering and construction contracts without any oversight from the Purchasing Department. PDCA has competent and experienced staff primarily composed of licensed professional engineers, which benefits the authority's capital planning efforts. However, while certain Purchasing Department employees hold contract development and contract management certifications, no one on PDCA's staff retains such certifications. TRA also does not require staff who procure and manage engineering or construction contracts to receive any form of regular training to ensure they understand how to properly monitor contracts for expected deliverables or when and how to address contractor performance problems. In comparison, state law requires state agency employees engaged in managing high-dollar contracts to receive training, certification, and continuing education.² Engaging certified Purchasing Department staff in the administrative oversight of construction and engineering procurement and contracting and requiring contract training and continuing education for all TRA staff involved in contracting would better ensure appropriate development of solicitations, fair evaluations of vendor proposals, and proper management of contracts.
- Narrow oversight of construction and engineering procurements.** Successful procurement requires staff with all areas of expertise be involved in the development and management of a contract. Specifically, staff with relevant technical expertise or a stake in the contracted project needs to

be involved in the development of the solicitation and evaluation criteria and in the scoring of solicitation responses. However, staff involved in day-to-day communication with contractors should not be the only employees responsible for contract solicitation and procurement. In contrast to this best practice, for construction and engineering contracts TRA's PDCA staff develops and distributes solicitation materials, including the scope of work; communicates with respondents; scores proposals; tabulates scores; negotiates terms and conditions; selects vendors; and notifies respondents of contract awards, all without involvement of the Purchasing Department and with minimal involvement of legal staff. While TRA's legal staff approves contract templates and provides guidance as needed to PDCA staff, legal staff is not regularly involved in contract negotiation. Establishing oversight and collaboration between the Purchasing Department, legal staff, and PDCA would better protect the integrity of TRA's procurement process for construction and engineering contracts, helping ensure the fair and objective selection of contractors.

Additional collaboration would better protect the integrity of the procurement process.

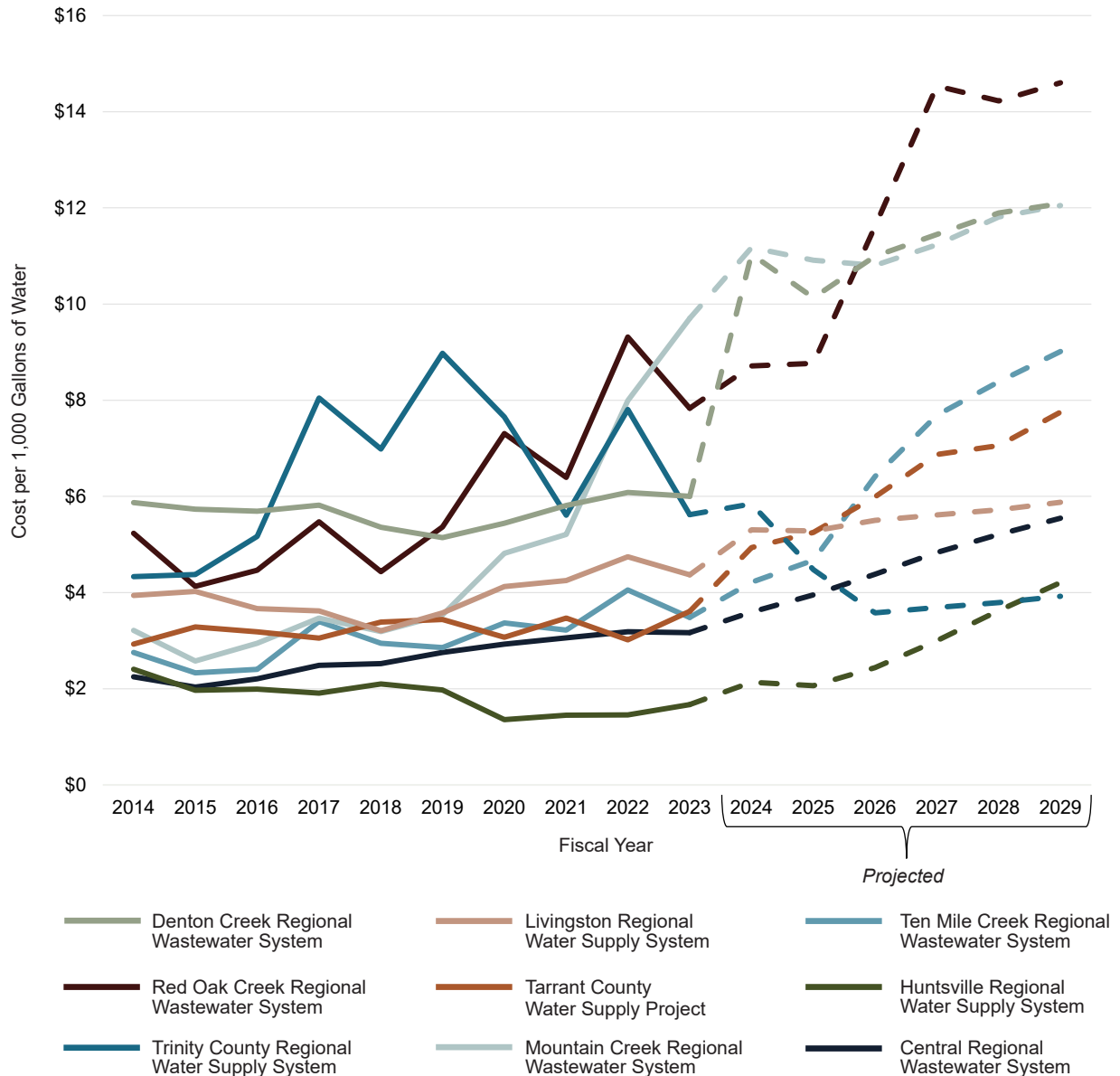
Informal contract monitoring policies and inconsistent contract enforcement limit TRA's ability to ensure successful contracting outcomes.

Consistent and documented contract monitoring and enforcement help ensure an authority receives services per the terms of the contract, the contractor carries out required responsibilities, and project management efficiently identifies and resolves problems before they get out of hand. TRA has projected customer rate increases for the next five fiscal years, as shown in the chart on the following page. Some system rates will nearly double in the next five years, primarily due to TRA paying off bond debt used to fund capital improvement projects. While these projects are necessary to replace aging infrastructure and increase capacity in response to population growth, customers will be paying off project costs for decades. Bolstering TRA's construction and engineering contracting processes through clear and consistent policies, sufficient communication, and recourse for vendor underperformance would help ensure customer rates increase only as necessary.

Some of TRA's system rates will nearly double in the next five years.

- **Lack of formal contract management and monitoring policy.** TRA has not fully implemented a formal mechanism for internally monitoring contracts. Though TRA's board of directors has adopted an authority-wide purchasing and procurement policy, the policy does not include formal guidance for contract management, monitoring, and closeout procedures. Formal contract oversight procedures enable consistent managing and monitoring of contractors to identify and resolve problems quickly, enforce accountability, and prevent delays and cost overruns. The lack of a contract management and monitoring policy increases the risk that TRA staff is uninformed about the authority's standards and best practices whereas a formal written policy serves as a procedural reference for both new and tenured authority staff.

Actual and Projected TRA System Rates FYs 2014-29



- Limited contract remedies.** River authorities should use contract remedies to effectively enforce contracts and better mitigate rate increases. However, TRA does not have sufficient remedies for their construction and engineering contracts. While the contracts contain provisions for applying liquidated damages, holding back retainage, de-scoping a contract, and terminating contractor services, the contracts fail to include intermediate measures, such as enforceable corrective action plans with updated work schedules, that would allow the authority to address contractor performance problems. Instead of using intermediate measures, in practice PDCA re-scopes a project and re-issues bids for project components if the initial contractor continues to underperform, a process that can result in project delays and

increased costs. For example, TRA recently de-scoped a contract after the contractor failed to timely fulfill the contractual duties. While TRA received a \$300,000 credit from the original contractor, a second vendor quoted the authority \$1 million on the de-scoped project component, which could result in a \$700,000 loss to TRA should the authority re-bid for that project component. Including intermediate enforcement tools in contracts would allow TRA to more quickly address problems without allowing delays to escalate to the point where more extreme remedies become necessary.

- **Lack of contract enforcement policy.** TRA's contracts and internal policies do not establish when to use a remedy in response to contractor performance issues, risking a subjective, inconsistent application of remedies for similar cases or not applying remedies at all. This lack of clarity can contribute to problematic situations described in the textbox. Several factors can cause project delays, including regulatory changes or environmental factors. However, contractor failures to meet deadlines contribute to some of TRA's high-cost capital project delays. TRA's contracts allow the authority to assess liquidated damages to contractors causing construction delays for each calendar day the work remains uncompleted beyond the specified period. Yet in the last 10 years, TRA has assessed liquidated damages only once in 2019 for \$350,000. Consistently applying contract remedies can help ensure the authority receives adequate compensation for project delays or cost overruns and can address serious cases of repeated contractor performance issues.

Contracting Delays and Cost Overruns

- In the last 10 years, 85 contractors working on TRA construction projects failed to meet substantial completion or final acceptance by the date specified in the initial contract.
- In the last 10 years, 22 construction projects were delayed by over two years, with five of those more than \$1 million over budget.
- TRA awarded a major construction contract in 2017 with an estimated completion date of early 2022. Due to the contractor's underperformance, the project is currently delayed by over 700 days, and the initial cost of the contract has increased by over \$16 million.

- **Lack of formal escalation policy.** Current TRA policy does not establish a process for escalating issues that arise on large contracts to TRA's board and management before problems get worse. While TRA staff has occasionally presented contractor issues to the board, such as problems collecting reimbursement from terminated contractors who failed to reimburse the authority for associated losses, no formal policy exists to ensure consistent, mandatory reporting and documentation of such issues. As a result, the board does not have a holistic view of potential vendor performance issues, the lack of which may result in increased expenses, delayed projects, and continued or future contracting with delinquent vendors. For example, at staff's recommendation in 2020 the board awarded a second major construction contract to a contractor that was failing to perform and meet deadlines on a construction project started three years earlier. A formal policy for escalating and documenting problems on large contracts to TRA's board and management would lead to more active, consistent reporting of contractor underperformance.

Additional best practices would improve the effectiveness, transparency, and fairness of TRA's contracting processes.

TRA has no centralized contract management system.

- **Master project and contract files.** An entity should maintain one complete master contract administration file for each contract and locate this file in a central contract repository. TRA has no such centralized contract management system that enables the authority to effectively track and manage all contracts. Exacerbating the lack of a centralized contract management system, construction and engineering contract files are scattered among at least three separate systems. The authority is currently conducting a file transition to consolidate construction and engineering contract files into one system, but active projects are delaying the transition. Maintaining all documents for each project in one file could improve TRA's ability to produce timely reports for upper management and easily monitor problematic contracts.

Formal vendor performance evaluations would improve TRA's future selection process.

- **Informal vendor performance evaluation during solicitation and contract closeout.** PDCA does not formally assess a vendor's prior performance when evaluating responses to requests for qualifications or proposals. Statute and the state's contract management guide establish contractor evaluation as a standard practice.³ PDCA staff evaluates the ability of vendors to handle major projects and sometimes splits projects among multiple vendors to ensure a smaller vendor is not awarded a project it cannot carry out. However, this process relies on staff's first-hand knowledge and personal experience to evaluate vendor performance and does not have a mechanism for assessing and managing risk for potential vendors. Checking additional resources, like the Texas Comptroller of Public Accounts' Vendor Performance Tracking System (VPTS), before awarding major contracts could help the authority obtain the most comprehensive information available on potential vendors and thereby reduce further risk. The VPTS provides detailed information on past vendor performance, helping entities confirm the reputability of vendors and make a best-value determination when selecting a vendor to award a contract.⁴ While river authorities are not required to use the VPTS, TRA could benefit from reviewing the comprehensive historical information it provides. Additionally, entities should formally assess and document the overall success of contracts, including contractor performance, upon contract completion. PDCA does not assess the overall success of the contract and lessons learned during contract closeout. A formal vendor performance evaluation process would improve TRA's future contracting efforts by better informing the authority's vendor selection process.
- **Use of historically underutilized businesses (HUBs).** TRA lacks a comprehensive approach to HUB contracting, potentially missing opportunities to reach out to HUB vendors. Although TRA is not subject to the same HUB requirements as state agencies, the Texas Commission on Environmental Quality requires river authorities to adopt administrative policies that comply with the provisions and intent of the statutory requirements for contracting with HUB vendors.⁵ Furthermore, Sunset staff is required to evaluate the HUB programs of entities under review.⁶

TRA's 2024 purchasing and procurement policy encourages, but does not explicitly require, contracting with HUBs. However, the policy does include a goal of 25 percent HUB participation in the procurement of construction and professional services. TRA does not have:

- A HUB subcontracting plan for vendors competing for awards over \$100,000
 - An appointed HUB coordinator
 - An adopted HUB forum program or HUB mentor-protégé program
 - Monthly information on HUB contractors or a yearly financial report relating to HUB contracts
- **Conflict-of-interest statements and nondisclosure agreements.** Entities can protect the integrity of the vendor evaluation process by ensuring personnel involved in soliciting and evaluating competitive contract proposals sign a statement affirming they have no conflicts of interest with any respondents and agree that they will not engage in the premature or unauthorized disclosure of information about solicitations. TRA has general conflict-of-interest guidelines in its ethics policy and purchasing and procurement policy but does not require members of its in-house solicitation evaluation committees to sign conflict-of-interest statements or nondisclosure agreements prior to serving on the committee. In contrast, best practice for state agencies is for agency personnel to receive the names of vendors before they participate in reviewing responses so that the personnel may disclose conflicts of interest, particularly if contracts exceed \$1 million.⁷ Ensuring staff who evaluate contract proposals have signed updated nondisclosure and conflicts-of-interest statements before accessing documents or discussing submissions would prevent personal bias in TRA's contract selection process, safeguard sensitive vendor information, and protect TRA from the consequences of any undisclosed conflicts of interest.
 - **Award dispute policy.** Entities should have clear policies and procedures for protesting contract awards. TRA does not outline a clear, formal procedure by which a vendor may dispute an award or learn why they were not selected. TRA's staff is unaware of the authority receiving any formal award disputes. However, TRA's increasing contracting activity for large projects raises the likelihood of vendor disputes in the future. A formalized contract award dispute process would promote greater transparency and fairness in TRA's contract award decisions.

Conflict-of-interest statements and nondisclosure agreements protect against personal bias and safeguard vendor information.

Increased contracting activity raises the likelihood of vendor disputes.

Sunset Staff Recommendations

Management Action

1.1 Direct TRA to expand internal oversight of construction and engineering contracting and take additional steps to centralize procurement and contracting functions.

This recommendation would direct TRA to give its Purchasing Department administrative oversight of solicitations, scoring and vendor selection, contract development, and award of construction and engineering contracts. Purchasing employees who hold Certified Texas Contract Developer certifications should assist PDCA staff during construction and engineering procurements to ensure contract documents are clear and complete and that TRA takes on projects that are timely and cost effective. The Purchasing Department should also develop standard processes and trainings and serve as a resource for all staff on procurement and contracting-related questions. Under this recommendation, TRA should direct its legal staff to participate in all construction and engineering contract negotiations to increase oversight and limit potential risk.

In addition, TRA should ensure all staff members involved in evaluating vendor solicitation responses and project management receive training appropriate to their role in contracting processes. Training should include best practices for evaluating vendor solicitation responses, managing contracts and vendors, and other information TRA deems necessary. This recommendation also directs TRA to certify appropriate staff members involved in contract development and contract management through the comptroller's office.

1.2 Direct TRA to adopt detailed internal contract management and monitoring policies.

This recommendation would direct TRA to enhance its contract management procedures by creating thorough internal policies that establish detailed staff roles and responsibilities for each contract management and monitoring function. TRA should use the comptroller's *State of Texas Procurement and Contract Management Guide* as a reference in developing its own policies and procedures.⁸ This recommendation would ensure TRA manages its contracts effectively and that all staff involved in contracting coordinates to provide an overall picture of contract performance.

1.3 Direct TRA to adopt intermediate remedies in standard contract language.

This recommendation would direct TRA to insert for each key deliverable in a contract a corresponding remedy for contractor non-performance. TRA could include intermediate enforcement measures such as developing formal corrective action plans with updated, enforceable work schedules or prohibiting a contractor from bidding on additional projects until the contractor catches up on existing projects. Intermediate remedies would allow the authority to address contractor performance issues in a formal manner without resorting to more extreme measures such as contract cancellation.

1.4 Direct TRA to adopt a policy with clear criteria for contract remedies.

This recommendation directs TRA to develop an internal policy that provides guidance on the use of remedies for contractors with performance problems. This policy should define performance issues that trigger the imposition of specific remedies and include a range of intermediate contract remedies to address contractor performance issues. Additionally, the policy should establish a process and criteria for applying enforceable corrective action plans and other types of responses to a vendor's breach of contract. The policy should connect each remedy TRA inserts into its contracts with the types of performance

problems it would address. An enforcement policy would give staff clear direction and provide consistency as TRA enforces its contracts.

1.5 Direct TRA to adopt a formal escalation policy to prevent contract compliance issues.

TRA should adopt a formal escalation policy for notifying TRA's management and the board of contractors who continuously fail to meet deliverables and performance standards, including updates on contracts needing change orders due to contractor underperformance upon certain thresholds. The policy should define an ongoing reporting structure that shows performance status, any corrective action plans, and any liquidated damages assessed and collected for large contracts. Under this recommendation, TRA would have the discretion to establish the dollar threshold for contracts to which the policy would apply. The policy could also require staff to report to management and the board whenever a contractor has eclipsed a certain dollar threshold for contract change orders or when a contractor submits frequent change order claims while underperforming. The implementation of a reporting threshold would give the board consistent oversight and accountability for TRA's most significant contracts.

1.6 Direct TRA to improve certain contracting activities to ensure consistency and enhance monitoring.

- **Maintain a master file system for each contract.** This recommendation would direct TRA to maintain one complete master contract administration file for each contract and locate this file in a central contract repository. All documents relating to a certain contract or project should be in one administrative file to increase efficiency and transparency. Additionally, TRA should consider the feasibility of centralizing all contract management software into one master file software system. A master file software system would allow TRA management to easily review and prepare reports on all construction, engineering, and professional services contracts.
- **Evaluate vendor performance.** This recommendation would direct the authority to document its experiences with vendors and refer to that documentation, as well as other available information, to evaluate vendors for future contracts. TRA should consider other sources of data to improve its vendor evaluation. For example, reviewing the VPTS database could provide TRA with valuable insight into past vendor performance and help ensure contractors do not have a concerning history. TRA should complete detailed evaluations of vendors at contract closeout to compare actual performance with contract objectives. TRA should document "lessons learned" and use that information when considering future contract awards. This recommendation would better ensure TRA avoids contracting with poorly performing vendors and continuously improves its contracting functions.
- **Proactively plan and monitor HUB policies.** This recommendation directs TRA to develop and implement a formal HUB policy that identifies performance targets and directs staff to create HUB subcontracting plans where feasible for contracts over \$100,000 and report HUB data to the board. Depending on the amount of contracting activity and progress made on other measures to increase HUB contracting expenditures, TRA should consider adopting additional approaches of state agencies of comparable size and resources such as hosting forums for diverse businesses and creating a HUB mentor-protégé program. Consolidated under a formal HUB plan, these measures would match TRA's efforts with specified goals, actions, and measurable results.
- **Require conflict-of-interest statements and nondisclosure agreements.** Employees involved in evaluating vendor responses to solicitations should sign a statement affirming they have no conflicts

of interest prior to reading or discussing vendor responses as well as an agreement to maintain confidentiality of information about such proposals. These signed statements would help prevent bias in vendor selection and protect vendor information.

- **Formalize vendor award dispute policy.** TRA should develop and adopt formal procedures for resolving vendor disputes and clearly outline these procedures in solicitation instructions. When the authority receives a dispute, TRA should assess the merits of the dispute and provide an explanation and documented justification for how staff evaluated vendor responses to solicitations and made its decisions. Having a formal dispute policy would promote fairness and transparency in TRA's vendor selection process, ensuring TRA staff follows appropriate procurement processes. TRA should then make improvements to its procurement practices based on the dispute findings.

Fiscal Implication

These recommendations would not have a fiscal impact to the state or TRA. These recommendations relate to administrative responsibilities TRA could implement with existing resources.

¹ Texas Comptroller of Public Accounts (CPA), *State of Texas Procurement and Contract Management Guide*, Version 3.0, accessed online October 4, 2024, <https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 656.052, Texas Government Code.

³ Section 2261.202, Texas Government Code; CPA, *State of Texas Procurement and Contract Management Guide*, Version 3.0, p.65, accessed online October 4, 2024, <https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>.

⁴ CPA, "Vendor Performance Tracking System (VPTS)," accessed online October 14, 2024, <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.

⁵ 30 Texas Administrative Code, Part 1, Chapter 292, Subchapter B, Section 292.13(5)(B) (2023) (Texas Commission on Environmental Quality, *Minimum Provisions*); Chapter 2161, Texas Government Code.

⁶ Section 325.011(9)(B), Texas Government Code.

⁷ Sections 2262.001 and 2262.004, Texas Government Code.

⁸ CPA, *State of Texas Procurement and Contract Management Guide*, Version 3.0, accessed online October 4, 2024, <https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>.

ISSUE 2

TRA Would Benefit from Restructuring and Prioritizing Its Internal Auditing Efforts to Improve Operational Efficiency and Reduce Risk.

Background

Texas Commission on Environmental Quality (TCEQ) rule requires river authority administrative policies to either provide for an independent management audit to be conducted every five years or, alternatively, establish an internal audit office that reports to the authority's board of directors.¹ The Trinity River Authority of Texas (TRA) has established an internal audit function that employs a single certified professional internal auditor. This internal auditor creates annual and five-year audit plans based on risk assessments derived mainly from surveys of executive-level managers. The planned audits are a mix of annual, repeat audits, such as inventory checks, and targeted audits based on risk. Currently, the internal auditor reports to the board's Administration and Audit Committee via the general manager. The committee has five members and oversees TRA's internal business and management activities.

Statute also requires TRA's board to have a public accountant audit the authority's fiscal accounts and records annually.² These financial audits are distinct from the many other types of audits an internal audit function performs. Whereas financial audits examine fiscal accounts and records for accuracy and compliance with standards from the American Institute of Certified Public Accountants, internal auditors perform a variety of management-related audits to ensure their organizations are operating efficiently, effectively, and in compliance with statute. The accompanying textbox lists examples of other types of audits an internal auditor might perform.³

Example Types of Internal Audits

Economy and Efficiency Audit: Determines whether an entity manages resources in an economical and efficient manner and whether an entity's reports contain useful data and accurate information.

Effectiveness Audit: Determines whether a program achieves its objectives and intended benefits efficiently and effectively.

Compliance Audit: Determines whether an entity receives and uses funds for the budgeted purposes or as authorized by law.

Investigations: Inquiries into acts or allegations of impropriety, malfeasance, or nonfeasance related to funds or into specific financial transactions or practices that may involve such impropriety, malfeasance, or nonfeasance.

Source: State Auditor's Office

Findings

TRA decision makers would benefit from using an enhanced internal audit function to deepen their oversight of the authority's operations.

Internal auditing allows for regular, independent evaluation and scrutiny of an entity's financial, managerial, and compliance risks. This evaluation enables

Internal
auditors provide
decision makers
information to
help minimize
risks and
improve
operations.

internal auditors to provide management and governing boards with accurate and consistent information to evaluate program operations and to identify potential risks before they result in more serious problems. Entities across public, non-profit, and private sectors benefit from independent, well-supported internal audit functions. Research shows that internal auditing is an effective tool to find and fix operational problems within organizations, and the most effective audit functions are independent from other staff and receive the support of a strong audit committee.⁴

River authorities can be large, complex entities and may play a crucial role in delivering services to the communities they serve. TRA is one of the largest river authorities in the state, and the risks it faces match its scale. The authority operates 10 critical infrastructure facilities, including the Lake Livingston Dam, and manages many long-term, high-dollar contracts related to critical infrastructure.

Construction contracting is one of TRA's highest-risk areas and contains numerous pitfalls worthy of internal audit review. For example, an auditor could select a single high-dollar, long-term contract and review change orders to determine whether individual management decisions related to each change order are justified and whether TRA could improve its internal processes to minimize future change orders. Some state agencies, such as the Texas Facilities Commission, maintain construction-specific internal auditors on staff to meet the unique requirements and challenges auditing construction contracts pose.⁵ While individual divisions are primarily responsible for tasks such as ensuring dam safety or the proper management of information technology risks, an internal audit function can provide an independent second opinion to help the board and management minimize risks and make informed decisions.

Revising TRA's internal audit reporting structure to align with best practices would strengthen auditor independence and enhance the board's awareness of audit findings.

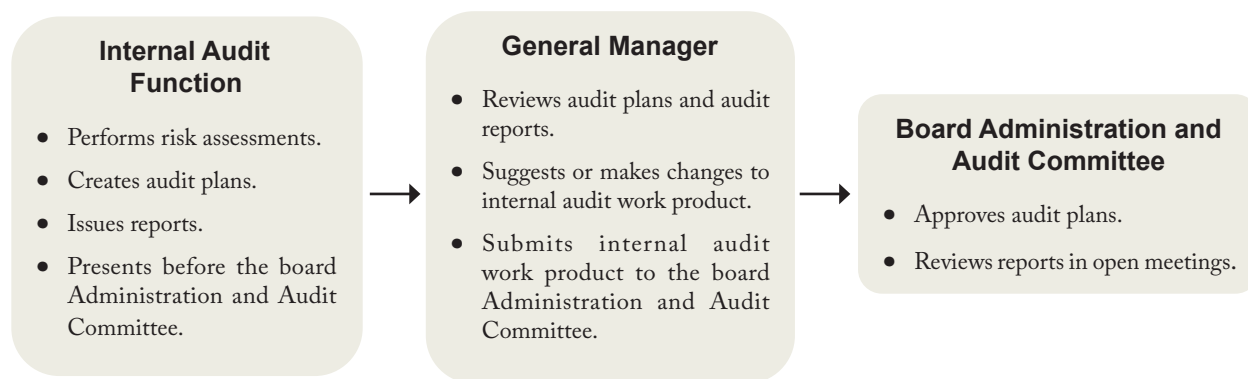
- **Independence from management.** As one of the primary purposes of internal auditing is to hold an organization's staff accountable to its governing body, internal auditors must be independent from other staff to be successful. The Institute of Internal Auditors, a professional organization that sets standards for internal auditors, defines independence as "the freedom from conditions that impair the internal audit function's ability to carry out its responsibilities in an unbiased manner."⁶ Internal audit independence is strengthened when the internal auditor reports directly to the board or one of its committees, since this direct reporting reduces the opportunity for staff-level personnel to influence the auditing process.⁷

As shown in the graphic on the following page, TRA's internal auditor reports first to the general manager — a staff-level employee — and receives approval to report to the board's Administration and Audit Committee. As a result, the general manager currently holds power over what the internal auditor can include in the audit plan proposal and which reports

Internal
auditors must
be independent
from other staff
to be successful.

the internal auditor presents to the board. Removing the general manager from this reporting line would better reflect internal audit best practice.⁸

TRA Internal Audit Reporting Structure



- **Reporting to the full board.** Internal audit reports uncover important information about control failures in subject areas spanning an entity's entire operations. However, out of TRA's 25 board members, the internal auditor only presents these reports to the five board members serving on the Administration and Audit Committee. While it is appropriate that the internal auditor primarily reports to the committee, the lack of reporting of any internal audit matters to the full board obscures authority-wide issues from board members. For example, an audit of a construction contract for capital improvements at a wastewater system might be relevant to the board's Utility Services Committee, which is concerned with the operation and maintenance of TRA's water and wastewater treatment plants. However, there is no clear mechanism in place for those committee members to hear and review the internal auditor's findings.

TRA would also benefit from requiring full board approval of internal audit-related decisions. Most other board committee recommendations and decisions must be approved by the entire board, but this is not the case for internal audit-related decisions. More knowledge and oversight of internal audit plans and activities would allow board members to request briefings and use the internal auditor to enhance their supervision of other areas of TRA operations.

The full board has no visibility into internal audit activity and findings.

TRA would benefit from increased audit committee involvement in the internal audit process.

Independence is a prerequisite for an internal audit function to fulfill its mission, but auditors have little authority without the backing and involvement of a strong board audit committee.⁹ While the existence of the TRA board's Administration and Audit Committee is a good starting point, the committee could benefit TRA as a whole by increasing its involvement in the internal audit process and using internal audit as an oversight tool to support better-informed board decision making.

Recent audits do not correspond to TRA's greatest threats and challenges.

- **Direction setting.** Greater committee involvement could help direct internal audit efforts to the authority's highest-risk areas. The board's audit committee is ultimately responsible for ensuring planned audit work aligns with risks, but recent audits do not correspond to the threats and challenges TRA currently faces. For example, despite increases in capital improvement costs with numerous change orders to construction contracts that are increasing prices and timelines, the internal audit function has not presented a construction-related audit to the board since 2017. While the internal auditor is performing more ad-hoc, risk-based audits than in years past and plans to conduct a construction change order audit, much of the internal auditor's time is spent on repeat annual audits such as warehouse inventory checks or small-dollar issues like payment verification for a restaurant operating on one of TRA's properties.

Risk assessments and audit plans are formal steps TRA's auditor takes to set direction, and greater board and committee involvement in the development of both could maximize the effectiveness of TRA's internal audit function. Internal audit functions often survey or interview board members as part of their risk assessment processes, but TRA's internal auditor only surveys senior-level staff for their perceptions of risks facing the authority.¹⁰ Giving board members the chance to provide input at the start of the process would allow the audit function to benefit from insight into the board's conceptualization of risk before drafting the audit plan. During its reviews of audit plans, the audit committee could make the audit function more effective by assessing which annual audits it can cut and selecting risk-based audits to include based on importance and available resources. After the audit plans are in place, the committee could better ensure the plans are meaningful by monitoring their implementation to assess internal audit performance, resourcing needs, and any necessary audit plan adjustments to address new risks or changing circumstances. Without increased involvement and oversight from the audit committee, the internal auditor could miss opportunities to engage critical stakeholders to fully assess TRA's high-risk areas.

TRA's internal auditor lacks the time and resources to complete planned audits.

- **Resource constraints.** The Institute of Internal Auditors identifies board review of internal audit resources as a crucial practice, as a lack of sufficient resources increases the chance auditors cannot address risks within a reasonable time frame.¹¹ TRA would benefit from the audit committee examining whether the internal audit function has the resources it needs to adequately identify and assess risks. The authority currently operates with nearly 500 employees and about \$475 million in annual expenditures and is responsible for 10 critical infrastructure facilities. However, TRA employs only one internal auditor.

TRA's risk assessment documentation identifies 65 risk areas spread across 10 major categories, but with current resources the authority's internal audit only included seven audits in its fiscal year 2023 annual audit plan. Not all of these audits were completed in fiscal year 2023, demonstrating TRA's internal auditor lacks the time and resources to complete even planned

audits in a given year. Furthermore, within its current resources, the internal audit function cannot fully comply with Institute of Internal Auditors standards such as following up on the status of audit recommendations or performing quality assurance checks of audit reports.¹² TRA's internal audit function is not required to meet Institute of Internal Auditors standards, but fuller compliance with those standards would make internal audits more meaningful for the organization as a whole. TRA is a well-resourced organization and would benefit from bolstering its internal audit function to maximize its efforts to mitigate risk.

- **Audit recommendation implementation and accountability.** While the internal audit function can point out problems and get auditees' agreement to implement recommendations without board involvement, any internal audit function needs a strong audit committee to establish accountability for following through on those recommendations. TRA's internal auditor does not currently conduct compliance reviews of past recommendations in part due to competing priorities. However, past annual audits have consistently identified similar problems with few changes year after year, demonstrating that TRA would benefit from further emphasizing compliance with audit recommendations.

Past audits identified problems that were not timely addressed.

Sunset Staff Recommendations

Management Action

2.1 Direct TRA to have its internal audit function report directly to the board's Administration and Audit Committee.

Under this recommendation, TRA's internal audit function would report directly to the board's Administration and Audit Committee without first reporting to the general manager. At a minimum, the internal auditor should submit audit plans, audit reports, and other work product directly to the committee, and the committee should be responsible for making recommendations to the full board on hiring, removing, and compensating the head of the internal audit function. For routine administrative reporting for which involving the board is unnecessary, such as time reporting and leave authorization, the internal audit function should continue to report to internal TRA management so long as such activity does not jeopardize the independence of the internal audit function's work product. The committee can delegate the hiring and removal of additional internal auditors or contractors to the head of the internal audit function if it so chooses. Reorganizing the internal audit function's reporting structure in this manner would better ensure the internal auditor's independence.

2.2 Direct TRA's full board of directors to receive regular internal audit status updates and vote on internal audit-related decisions prior to their enactment.

This recommendation would bring approval of internal audit decisions in line with other board decisions by requiring the full board to ratify the Administration and Audit Committee's decisions on audit plans, appointment of the head of the internal audit function, and other related items. Bringing such items before the full board would give board members a clearer sense of internal audit activity and open additional lines of communication between the internal auditor and board members.

Under this recommendation, TRA's internal audit function would report to the full board at least annually. While these updates need not be lengthy, the internal auditor should provide at least enough information so that board members not already seated on the Administration and Audit Committee understand the subjects of the audits and their main findings. Members of other board committees should have the ability to request the internal auditor provide more detailed briefings on specific audits at the committee level. The Administration and Audit Committee should also develop a process to escalate particularly important audit updates to the full board for consideration.

2.3 Direct TRA's Administration and Audit Committee to exercise additional oversight of the internal audit function.

This recommendation would support Recommendation 2.1 by directing the Administration and Audit Committee to become more involved in setting the direction of the internal audit function, ensuring the internal auditor has the resources necessary to identify and investigate risks and verify that staff implements audit recommendations. While TRA would retain discretion on how to best implement this recommendation, at a minimum:

- The committee should require the internal auditor to solicit board input in the risk assessment process through surveys or interviews. During the audit plan approval process, the committee could consider evaluating whether the internal audit plan adequately considers the highest risks identified in the risk assessment. The committee could also play a more active role in monitoring the implementation of the audit plan by receiving updates at each committee meeting.
- The committee should annually evaluate the internal audit function's resource needs to confirm it can complete the highest-risk audits identified in the annual audit plan at a level of compliance with the internal auditing standards the committee deems most appropriate. As part of its evaluation, the committee should consider increasing its internal audit function resources to sufficiently audit high-risk construction contracts and complete planned audits.
- The committee should establish accountability for staff's timely implementation of internal audit recommendations. For example, the committee could require that the internal auditor report on staff compliance with recommendations within a specified time frame after the completion of audit reports. If needed, the audit committee and internal auditor could collaborate with management to develop solutions for any noncompliance issues.

TRA should implement any additional internal audit-related board training necessary to fulfill this recommendation. At a minimum, this training should include an overview of how boards can use internal audit to bolster oversight of their organizations as well as overviews of process components like risk assessments, audit plans, reports, and compliance reviews. TRA could establish training for the full board or limit certain trainings to Administration and Audit Committee members where appropriate.

Greater board support would help ensure the internal audit function reviews the highest risks TRA faces, facilitate the board's understanding and support of the audit function's resource needs, and assist auditors and other staff in ensuring recommendations are workable and implemented timely.

Fiscal Implication

Most of these recommendations could be implemented using current resources and would have no fiscal impact to the state or TRA. The component of Recommendation 2.3 directing the board to assess internal audit resource levels could have a fiscal impact to TRA. However, exact costs would depend on

implementation, as TRA could implement Recommendation 2.3 by reallocating resources from other areas rather than incurring additional costs which cannot be determined at this time. Bolstering TRA's internal audit function would enable more frequent and thorough audits, potentially leading to cost savings and improved efficiencies.

¹ 30 Texas Administrative Code, Part 1, Chapter 292, Subchapter B, Section 292.13(5)(A) (2023) (Texas Commission on Environmental Quality, *Special Requirements for Certain Districts and Authorities*).

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 49.191, Texas Water Code.

³ Texas State Auditor's Office, "Types of Audits," accessed online September 2, 2024, <https://sao.texas.gov/Resources/AuditTypes>; Sections 321.0131-321.0136, Texas Government Code.

⁴ George Mason University Costello College of Business, "Why internal auditors are the naysayers companies need," Benjamin Kessler, accessed online September 7, 2024, <https://business.gmu.edu/news/2023-03/why-internal-auditors-are-naysayers-companies-need>; Matthew S. Ege, Young Hoon Kim, Dechun Wang, "The Demand for Internal Auditors following Accounting and Operational Failures," *The Accounting Review*, November 1, 2023; vol 98 (7), pp. 185-210.

⁵ Texas Facilities Commission, "Office of Internal Audit," accessed online September 7, 2024, <https://www.tfc.texas.gov/divisions/commissionadmin/prog/oia/>.

⁶ Institute of Internal Auditors, *Global Internal Audit Standards*, pp. 45-49, accessed online September 2, 2024, https://www.theiia.org/globalassets/site/standards/editableversions/globalinternalauditstandards_2024january9_editable.pdf.

⁷ Ibid.

⁸ Section 2102.007(a)(1), Texas Government Code; Institute of Internal Auditors, *Global Internal Audit Standards*, pp. 45-49, accessed online September 2, 2024, https://www.theiia.org/globalassets/site/standards/editableversions/globalinternalauditstandards_2024january9_editable.pdf.

⁹ Institute of Internal Auditors, *Global Internal Audit Standards*, pp. 39-45, accessed online September 2, 2024, https://www.theiia.org/globalassets/site/standards/editableversions/globalinternalauditstandards_2024january9_editable.pdf; Kessler, "Why internal auditors are the naysayers companies need," accessed online October 16, 2024, <https://business.gmu.edu/news/2023-03/why-internal-auditors-are-naysayers-companies-need>.

¹⁰ Institute of Internal Auditors, *Developing a Risk-Based Internal Audit Plan*, p. 8, accessed online October 15, 2024, <https://www.theiia.org/globalassets/documents/content/articles/guidance/practice-guides/developing-a-risk-based-internal-audit-plan/pg-developing-a-risk-based-internal-audit-plan.pdf>.

¹¹ Institute of Internal Auditors, *Global Internal Audit Standards*, pp. 54-55, accessed online September 2, 2024, https://www.theiia.org/globalassets/site/standards/editable-versions/globalinternalauditstandards_2024january9_editable.pdf; Section 2102.006(d), Texas Government Code.

¹² Institute of Internal Auditors, *Global Internal Audit Standards*, pp. 55-56, 114-115, accessed online September 2, 2024, https://www.theiia.org/globalassets/site/standards/editable-versions/globalinternalauditstandards_2024january9_editable.pdf.

ISSUE 3

Additional Formalized Planning Would Better Position TRA for Continued Success.

Background

The Trinity River Authority of Texas (TRA) develops plans for basin-wide development and flood control, provides water and wastewater treatment services, serves as a local sponsor for federal water projects, and provides recreation and other services within its territory.¹ Every five years, TRA develops a strategic plan to serve as a road map for addressing challenges and opportunities due to population growth and demand for water in the Trinity River basin and to gauge progress in meeting its mission and goals. The accompanying textbox shows TRA's strategic priorities, goals, and strategies for fiscal years 2025-29. As noted in the textbox, one of TRA's four strategic priorities is effective messaging. TRA's Communications Division manages the authority's communications, including future communications planning.

TRA 2025-2029 Strategic Plan Priorities, Goals, and Strategies

Strategic Priority: Thriving basin and community

Goal: Provide targeted support to help basin communities achieve their visions for growth and development.

Strategies: Increase the number of economic and recreational opportunities along the entire basin, assist communities in meeting the growing demand for services, and address future water reclamation and supply and flood risk reduction issues.

Strategic Priority: Industry-leading expertise and operational excellence

Goal: Continuously improve ability to provide services to communities.

Strategies: Explore new cost-effective technologies, models, and methods to meet industry demands and advance our understanding of the Trinity basin; continue to improve cost-effective, in-house technical capabilities; identify the opportunities and challenges resulting from regulatory changes and educate communities and partners; and provide leadership on environmental issues.

Strategic Priority: Effective messaging

Goal: Achieve greater internal and external awareness.

Strategies: Strengthen internal and external communications, advocate effectively for basin priorities, and build trust among communities.

Strategic Priority: Empowering the mission

Goal: Develop and maintain a deep bench of talent that enables the authority to pursue its mission.

Strategies: Maintain a positive and collaborative work environment, develop the next generation of water industry leaders, and enhance investments in employees.

To develop its strategic plan, TRA's board of directors engaged an external consultant to conduct quantitative and qualitative research, which included employee and stakeholder surveys, focus groups, interviews, and a two-day board and staff workshop. Through the strategic planning process, TRA gathered input on its strengths, weaknesses, opportunities, and threats from about 300 stakeholders to inform the plan, including its water and wastewater customers and agencies that interact with TRA such as the U.S. Army Corps of Engineers and the Texas Commission on Environmental Quality (TCEQ). The board of directors used this research to develop the strategic plan's priorities, goals, and strategies

for the next five years. In addition to the strategic plan, TRA's water and wastewater systems, the Lake Livingston Dam project, and Lake Livingston recreation facilities develop performance measures to gauge progress on the plan and produce work plans for implementation.

Findings

TRA would benefit from developing more detailed action items for implementing its strategic plan and more formal, proactive planning for stakeholder communication.

TRA has not created action items or performance measures for all of its strategic goals.

- **Need for clearer action items to implement strategic plan.** Developing action items and performance measures tied to the strategic plan is a best practice that helps ensure an organization has assigned responsibility for high-priority activities, identified steps to complete the tasks, provided details such as an estimate of costs associated with implementing the activity, and set a realistic time frame for execution.² Documenting action items and performance measures also provides continuity for operations and preserves institutional knowledge if key staff or leadership leave the authority.

While TRA generally develops work plans specific to each water and wastewater system with performance measures and action items to implement most strategic plan goals, the authority has not consistently created work plans for all of its goals. For example, TRA's *2019-2024 Strategic Plan* did not include performance measures and action items or identify who would be responsible for achieving the goal to strengthen TRA's "reputation and reach through stronger engagement with its team and the Trinity basin." Similarly, TRA's current *2025-2029 Strategic Plan* lacks performance measures and action items and does not identify who would be responsible for meeting the goal to "assist communities in meeting the growing demand for services." While the strategic plan is meant to be a living document that adapts to the environment in which TRA operates, not consistently developing work plans for all goals risks giving unclear direction to staff on priorities going forward and unclear information to the board to fully determine whether staff implemented the strategic plan. Moreover, TRA could benefit from developing additional work plans for its authority-wide administrative divisions. For example, in both the current and previous strategic plan, TRA's Human Resources Division did not have its own work plan with action items and performance measures, even though one of the goals in the *2019-2024 Strategic Plan* specifically related to authority-wide hiring and retention.

Inconsistent development of work plans risks giving unclear direction to staff.

- **Opportunity for more proactive public engagement planning.** TRA is responsible for supplying its customers with water and wastewater treatment services as well as operating and maintaining the Lake Livingston Dam and recreation facilities. As the population in the Trinity River basin grows, TRA

could benefit from taking an even more proactive role in communicating with its stakeholders described in the accompanying textbox.

TRA Stakeholders

Customers: Cities and districts that contract directly with TRA for water and wastewater treatment and transportation services or purchase raw water from TRA.

End users: Residents of the Trinity River basin, industry, and others receiving services from TRA's direct customers.

General public and others: Homeowner associations, chambers of commerce, those using TRA's recreation facilities, residents living in neighborhoods subject to flooding in the Trinity River basin, environmental groups, and agencies interacting with TRA. These groups may or may not be end users served by a TRA customer.

In TRA's most recent strategic plan, the authority identified concerns with a lack of public awareness of TRA's existence, function, and role in the region. This is a problem because as TRA undertakes more capital projects that could result in increased costs to end users years before they see the benefits, the authority could suffer reputational damage if it does not sufficiently communicate the reasons for the increase to all affected stakeholders. In addition, TRA could improve its communication with the public about its multiple recreational facilities to help ensure residents know about and can take advantage of those resources. TRA proactively communicates with city and utility district customers through multiple advisory committees about capital projects as well as future rate increases and the reasons behind them, but the authority could benefit from clearly defining its role in communicating with end users and the general public.

TRA could communicate more effectively with the public.

Moreover, TRA has a statutory responsibility to work with TCEQ and political subdivisions to communicate about imminent flooding in the basin, which involves customers, end users, and the general public living in areas subject to flooding.³ Additional communication with the public and end users could help residents in the basin prepare better and faster for flooding. This need for proactive communication with all stakeholders affected by flooding is especially relevant as TRA issued a potential dam failure watch notice in 2024. Clearly communicating about the nature of the Lake Livingston Dam as a water supply reservoir rather than a flood control reservoir also could avoid creating a negative or inaccurate perception of TRA's role regarding floods.

Recognizing the need to improve its external communications, TRA made "effective messaging" a priority in its *2025-2029 Strategic Plan* and defined a goal to "achieve greater internal and external awareness." TRA could benefit from defining the action steps it needs to take to achieve this goal. Providing specific direction will give staff a road map for how to effectively and consistently communicate with customers and other stakeholders in the basin.

TRA lacks specific steps to improve messaging for customers and stakeholders.

TRA staff has started developing communications plans, as shown in the textbox on the following page. TRA also has a robust *Emergency Action Plan* detailing which political subdivisions and other stakeholders that TRA

Communications Plans Under Development

- **2025–2027 Strategic Communications Plan:** Estimated completion November 2024
- **Crisis Emergency Risk Communication Plan:** Estimated completion November 2024
- **Social Media Plan:** Estimated implementation January 2025

staff should contact in the case of a high-flow event, potential dam failure, or other scenarios and includes specific language for public notices. TRA has an opportunity to model the rest of its future communications planning on the clear direction in its *Emergency Action Plan*. Specifically, TRA could benefit from defining the division of responsibilities between TRA and its

customers when communicating about non-emergency topics relevant to the authority such as rate increases and the status of capital projects.

TRA does not formally analyze all related costs and risks of certain decisions.

TRA would benefit from developing a more formal, documented analysis that assesses risk and evaluates costs and benefits of strategic decisions.

As TRA's budget grows and the authority considers increasing customers' rates, TRA would benefit from better documenting its high-dollar financial decisions. TRA provides details of the costs and benefits for capital projects such as pipeline repair to its board and customers, but the authority does not consistently document the costs and benefits of other high-dollar decisions, such as:

- **Renovating a golf course.** TRA is considering renovating and reopening an 18-hole golf course on property it owns in San Jacinto County after the previous operator foreclosed on the lease and the clubhouse burned down. TRA has estimated the cost of renovating the grass and facilities on the course at around \$9 million and contracted with an outside consulting firm to analyze the benefits of renovating the course, which includes economic and recreation benefits for the surrounding area. However, TRA did not formally analyze all of the related costs and risks to the authority of redeveloping the course such as all of the opportunity costs, reputational risks, marketing costs, and ongoing costs if the course does not immediately generate revenue or construction is delayed. Without a full analysis, TRA's board and leadership may not be able to make a fully informed decision on the project, which spans over 150 acres, would involve easement acquisition, and could be costly to maintain.
- **Moving previously contracted staff in-house.** In 2016, the board directed TRA to move previously outsourced engineering staff in-house. However, TRA did not formally develop a business case documenting the costs and benefits of outsourcing the service compared to performing it internally. Documenting this analysis would allow for deliberative discussion of the benefits and drawbacks of making similar decisions in the future, especially because engineering is key to TRA's work and involves a large part of the authority's budget. For example, in fiscal year 2023, TRA spent \$137.8 million on capital improvement projects and \$7.5 million through its Planning, Design, and Construction Administration Division, which had 51 staff.

- **Purchasing and maintaining an airplane.** Since the early 1970s, TRA has maintained a private airplane, hangar, and two pilots on staff to frequently transport board members to board and committee meetings from their home counties across the basin. TRA staff also uses the airplane to travel when needed, such as for dam repairs, which requires documented general manager approval. While the airplane efficiently transports board members and staff from rural areas not otherwise accessible by commercial air travel and helps ensure TRA has a quorum at meetings, TRA lacks a formal analysis of whether the ongoing cost of maintaining and eventually replacing the airplane is cost effective versus using another means of transportation or conducting virtual meetings. The cost for the airplane is significant, with operations and maintenance at over \$900,000 per year. The 2013 replacement cost of the airplane totaled almost \$6 million, and replacement costs are likely to only increase in the future.

Documenting the costs and benefits of these decisions would give much-needed clarity and direction to TRA staff on preparing options for its board and executive staff, including identifying risk factors and gathering data and metrics needed to evaluate potential options. A cost-benefit analysis quantifies and compares the value of benefits of a decision against the costs associated with a given course of action, including financial and reputational impacts and any impact on the authority's need to generate additional revenue or increase customer rates. A formal decision-making process would help TRA make informed strategic decisions and take steps to address risk before problems arise, reducing the need for reactive decisions and ensuring the authority is making the right decision at the right time. This documentation also could protect against potential litigation or accusations of impropriety by providing the board and TRA justification for potentially contentious decisions based on evidence available at the time.

More formal analysis of high-cost decisions would reduce risk.

Sunset Staff Recommendations

Management Action

3.1 Direct TRA to develop more specific work plans with action items and performance measures to evaluate progress and operationalize its current and future strategic plans.

Under this recommendation, TRA would develop specific work plans with action items and performance measures tied to strategic plan goals and strategies to gauge the authority's success in meeting goals and priorities as defined in its *2025–2029 Strategic Plan*. To implement this recommendation, TRA's staff should ensure each administrative division, such as Human Resources, and each system, such as the Central Regional Wastewater System, develop work plans tied to the strategic plan that at a minimum include action steps detailing how staff would carry out the goals in the strategic plan as well as performance measures to gauge progress. To help ensure leadership has up-to-date information on authority operations, division and system staff should report progress on meeting performance measures and progress on work plans quarterly to the general manager and at least annually to the board. TRA also should publish performance measure updates on its public-facing website or as part of its annual comprehensive financial report to provide customers and end users more visibility into the authority's

performance. Measuring progress on action items and performance over time would better allow the board to evaluate TRA's progress in meeting strategic priorities and would provide a clear record of performance if staff or leadership leave the authority.

3.2 Direct TRA to further plan for future communications.

Under this recommendation, TRA should document in its communications or emergency action plans:

- A definition or explanation of TRA's role in communicating to the public directly versus what TRA should convey to the public through its customers or other stakeholders.
- Identification of topics on which TRA, its customers, and other governmental entities will coordinate communications to end users and the public, such as rate increases and flood notifications.
- Action items TRA will take to more proactively build general public awareness of TRA among those who live in the basin.
- Guidelines and processes for reviewing TRA communications after crises and for implementing lessons learned.

This recommendation would help guide the authority to success as it works to further improve communication with end users and the public at large.

3.3 Direct TRA to develop a formal, strategic decision-making process to identify and address potential risks and better inform its decisions.

This recommendation would direct TRA to develop a consistent, formal, and strategic decision-making process for evaluating the impact of decisions that could affect the authority's long-term operations that are not part of the authority's capital improvement program. Having a formal process encourages well-reasoned, deliberate discussions when making critical financial decisions. This process should include but is not limited to documenting costs and benefits of decisions that will have a major financial impact to the authority's long-term operations and providing that information to TRA's board of directors. TRA would define the dollar threshold for which projects or decisions outside the capital improvement program would require analysis, such as \$1 million. In implementing this recommendation, TRA should, at a minimum, analyze and document the costs and benefits of the operations, maintenance, and replacement of its airplane; the redevelopment of the San Jacinto County golf course; and future decisions to outsource a function or move it in-house. A documented analysis would provide TRA's board and executive staff with metrics to evaluate a decision's short- and long-term impact through a robust, deliberative process.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the state. Although the recommendations are largely designed to enhance TRA's existing decision-making process, any impact on the authority will depend on the implementation of recommendations. For example, the authority could decide to hire a subject matter or industry expert to inform a strategic decision with technical or financial complexity, resulting in a cost that cannot be estimated at this time.

¹ Section 11, Chapter 518 (HB 20), Acts of the 54th Texas Legislature, Regular Session, 1955; all citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 51.852, Texas Water Code; Region 3 Regional Flood Planning Group, *2023 Amended Region 3 Trinity Regional Flood Plan*, accessed online September 26, 2024, https://www.twdb.texas.gov/flood/planning/plans/2023a/doc/R03_Trinity%20Amended%20RFP.pdf.

² U.S. Economic Development Administration, “Strategic Direction/Action Plan,” accessed online August 12, 2024, <https://www.eda.gov/resources/comprehensive-economic-development-strategy/content/action-plan>; Legislative Budget Board, *Instructions for Preparing and Submitting Agency Strategic Plans, Fiscal Years 2025 to 2029*, accessed online September 17, 2024, https://www.lbb.texas.gov/Documents/Instructions/Strategic_Plan/8125_Strategic_Plan_Instructions_89R.pdf.

³ Section 51.854, Texas Water Code.

ISSUE 4

TRA's Governing Law and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.

Background

In 2015, the Legislature directed Sunset staff to assess the governance, management, operating structure, and compliance with legislative requirements of each river authority.¹ Over the years, Sunset reviews have included a number of standard elements from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or from general law provisions imposed on state agencies. This review identified several opportunities for the Trinity River Authority of Texas (TRA) to adopt good government practices and statutory changes needed to update and conform TRA's governing law to standard Sunset language generally applied to all entities under Sunset review.

Findings

TRA's governing law does not reflect standard language typically applied across the board during Sunset reviews.

The Sunset Commission has developed a set of standard recommendations that it applies to all entities reviewed unless an overwhelming reason exists not to do so.² These across-the-board provisions (ATBs) reflect an effort by the Legislature to place policy directives to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards. ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

- **Presiding officer designation.** Having the governor designate the presiding officer of governing boards ensures a more direct connection between the board and the state's highest elected official, increasing the authority's accountability to the state's leadership. TRA's board elects its president from among TRA's board members.³ In contrast, the governor appoints the presiding officers of the boards of two of the largest river authorities in Texas — the Lower Colorado River Authority and Brazos River Authority.
- **Grounds for removal.** TRA's governing law lacks the standard provision relating to grounds for removal of board members. Having a statutory basis and process for removing a member of a policymaking body who does not maintain the qualifications, has a conflict of interest, or has neglected duties can help ensure a functioning policymaking board.
- **Board member training.** TRA's governing law does not establish the type of training and information board members need to properly discharge their duties. State law requires board members to obtain Texas open

TRA lacks a statutory basis for removing a board member.

TRA's governing law does not require board training to cover important topics.

meetings and public information trainings upon taking their oath of office. While TRA provides basic information about the authority to new board members, the authority's governing laws require no additional training to ensure each member has an adequate understanding of the authority's governing laws, operations, and budget, as well as the scope and limitations of its rulemaking authority, before making decisions regarding matters of public interest.

- **Policymaking and staff functions.** TRA's governing law does not provide for separating the policymaking functions of the board from the day-to-day administrative functions of managing the authority. Such a provision would help avoid confusion about who is in charge of operations, which can undermine TRA's effectiveness.
- **Public testimony.** TRA's governing law does not require an opportunity to provide public comment at open board meetings. When people affected by TRA's decisions have an opportunity to provide meaningful input to the board, the additional information and perspective improve the overall decision-making process. To Sunset's knowledge, TRA has never denied a member of the public an opportunity to speak at a board meeting, and TRA's board meeting agendas include a public comment agenda item. However, a statutory requirement for public comment would ensure the public continues to have the ability to give feedback on the authority's performance and operations.
- **Complaint information.** TRA's governing law does not require the authority to maintain complete information on complaints and make information on complaint procedures available to the public, specifying the authority may not inform parties of the status of complaints if doing so would jeopardize an ongoing investigation. Maintaining a system for acting on complaints and keeping proper documentation helps protect the public by ensuring TRA addresses problems in a timely fashion. While TRA has two complaint tracking systems, one for odor complaints and one for general complaints, it does not currently maintain written procedures for responding to complaints and does not consistently track complaints received via phone or email. Having a statutory requirement for tracking all complaints would ensure TRA follows best practice.

TRA does not consistently track complaints received via phone or email.

The state benefits from continued legislative oversight of TRA.

Although not subject to abolishment under the Sunset Act, TRA benefits from the Sunset Commission's review of the authority's governance, management, operating structure, and compliance with legislative requirements. Through this review, Sunset staff identified a number of opportunities to enhance the effectiveness, efficiency, transparency, and accountability of TRA. More broadly, continued oversight by the Sunset Commission provides future legislatures a powerful tool to assess TRA and invite public input on improving it.

TRA's governing law exists mostly in session law, making it difficult for the public to find and understand.

While some water districts and river authorities are governed by laws that are fully compiled in a specific Texas code or statute, most of TRA's governing law exists only in session law. In the absence of a fully codified statute, members of the public and the authority itself must find and correctly compile these different legislative changes, some of which are quite minute, to understand the cumulative impact of all the changes to the authority's law over time. Additionally, TRA's governing law includes outdated information such as TRA's specific authority to operate and maintain the Devers Canal System, which the authority has not operated since 1986.⁴

TRA's governing law includes outdated information.

TRA's governing law does not reflect its actual board size.

TRA's governing law does not currently reflect its actual board size, stating the authority is governed by a 24-member board of directors. In practice, TRA's board operates with 25 members due to a change in another law directing the governor to appoint an additional member to certain governing boards to ensure an odd number of members.⁵ Boards with an even number of members could split votes and hamper decision making.

TRA could improve the transparency of its board and committee meetings.

TRA's website includes minutes of board meetings from the 2024 calendar year but does not include minutes from any board or committee meetings from past years, unnecessarily limiting the public's ability to follow and provide input on important board decisions. Meeting minutes provide a record of what happened at the meeting, including board decisions on agenda items. Boards should be as transparent as possible to promote stakeholder engagement. TRA could easily post meeting minutes since the authority already creates these documents for the board.

Posting board and committee meeting minutes promotes transparency and engagement.

TRA's board member terms do not comply with constitutional requirements.

Members of TRA's board serve staggered six-year terms as established by the authority's governing law. However, since the authority was created, Texas voters amended the state constitution to set terms for the members of the governing boards of constitutionally created conservation districts, such as river authorities, to not exceed four years.

To date, all 18 authorities subject to the Sunset Act have undergone review, and Sunset found that unconstitutional six-year board terms are common. In fact, of the 18, all but three had six-year board terms when they underwent review. During the last biennium, the Sunset Commission recommended changes to individual river authority boards to conform to constitutional requirements.

The commission also directed Sunset staff to study and make recommendations on options to create uniformity among river authorities for consideration by the 89th Legislature. Because of the incongruence between the constitution and the provisions regarding board member terms in almost all river authority statutes, the river authority uniformity study presents options for the Sunset Commission's further consideration.

Sunset Staff Recommendations

Change in Statute

4.1 Apply the standard across-the-board requirement regarding the governor's appointment of the presiding officer to TRA's board.

This recommendation would require the governor to designate a member of the TRA board to serve as the presiding officer at the pleasure of the governor.

4.2 Apply the standard across-the-board requirement regarding grounds for removal of a board member to TRA's board.

This recommendation would specify the grounds for board member removal, including failure to maintain qualifications, conflicts of interest, or neglect of duties. The recommendation would also provide a process for board member removal, including guidelines for timelines, public hearings, and action by appointing bodies.

4.3 Apply the standard across-the-board requirement regarding board member training to TRA.

This recommendation would clearly establish the type of information to be included in the board member training for TRA. This training would need to provide board members with information regarding TRA's governing law; its programs, functions, by-laws, and budget; the scope of and limitations of its rulemaking authority; the results from its most recent audits; the requirements and training available related to open meetings, open records, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

4.4 Apply the standard across-the-board requirement regarding the separation of duties of board members from those of staff to TRA.

This recommendation would require TRA to adopt policies to clearly separate board policy functions from the authority staff's day-to-day operations.

4.5 Apply the standard across-the-board requirement regarding public testimony to TRA.

This recommendation would require TRA to include public testimony as an agenda item at every regular board meeting. The authority should clearly provide the public the opportunity to comment on each agenda item and any issue or matter under TRA's jurisdiction at open board meetings.

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

This recommendation would require TRA to maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures. The authority would also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints if doing so would not jeopardize an ongoing investigation.

4.7 Amend TRA's Sunset review date to 2037.

Because TRA is not subject to abolishment under the Sunset Act, but the Legislature and the public benefit from continued legislative oversight of the authority, this recommendation would extend the Sunset date in TRA's governing law to 2037, placing the authority under Sunset review again in 12 years.

4.8 Amend TRA's governing law to reflect a board size of 25 directors.

This recommendation would amend TRA's governing law to reflect its actual board size of 25 directors with the additional director being an at-large member. This update would reflect TRA's current board size and ensure an odd number of members to avoid split votes.

Management Action

4.9 Direct the Texas Legislative Council to update TRA's governing law.

This recommendation would require the Texas Legislative Council to prepare legislation codifying TRA's governing law for introduction during the 90th Legislative Session. This recommendation would also request the council to provide by February 1, 2025, a list of any issues regarding TRA's governing law that would impede codification and should be addressed in the authority's Sunset bill during the 89th Legislative Session to facilitate the codification of that law. Sunset staff would work directly with the authority and the council to determine whether and how to address the identified issues.

4.10 Direct TRA to publish minutes for board and committee meetings to improve transparency.

Under this recommendation, TRA should prepare and post to its website board and committee meeting minutes, including actions taken on each agenda item. Providing meeting minutes would improve the public's ability to meaningfully engage with TRA.

Additional Consideration

4.11 Consider the decision on modifying board terms as part of the river authority uniformity study.

Sunset staff has provided options for consideration by the Sunset Commission on how to address and standardize river authority board terms as part of Sunset staff's *River Authority Uniformity Study*.

Fiscal Implication

Overall, these recommendations would not result in a significant fiscal impact to the state or TRA. The recommendations relate to basic administrative responsibilities TRA could implement with existing resources.

¹ Chapter 1148 (SB 523), Acts of the 84th Texas Legislature, Regular Session, 2015.

² Available at: <https://www.sunset.texas.gov/across-board-policies>.

³ Section 4, Chapter 518 (HB 20), Acts of the 54th Texas Legislature, Regular Session, 1955.

⁴ Chapter 364 (S.B. 708), Acts of the 61st Texas Legislature, Regular Session, 1969.

⁵ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 651.0085, Texas Government Code; Section 59, Article XVI, Texas Constitution.

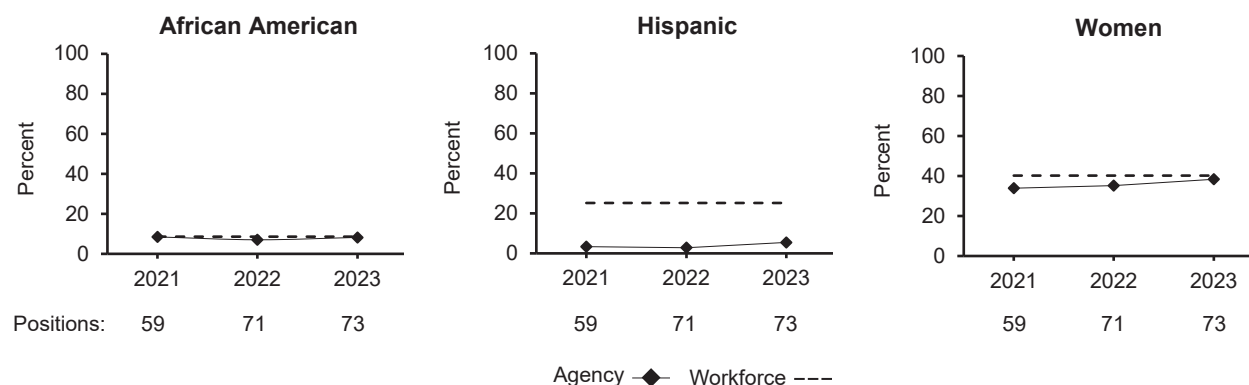
APPENDIX A

Equal Employment Opportunity Statistics, FYs 2021-23

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and women in all applicable categories by the Trinity River Authority of Texas (TRA).¹ In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and women in each job category.² These percentages provide a yardstick for measuring the authority's performance in employing persons in each of these groups. The diamond lines represent the authority's actual employment percentages in each job category from fiscal years 2021-23.

The authority failed to meet statewide civilian workforce percentages in most categories over the last three fiscal years. The authority met or exceeded civilian workforce percentages for African Americans in the professional, technical, and protective services categories in each of the past three fiscal years and nearly met or exceeded percentages for women in the administrative support and protective services categories over that same period.

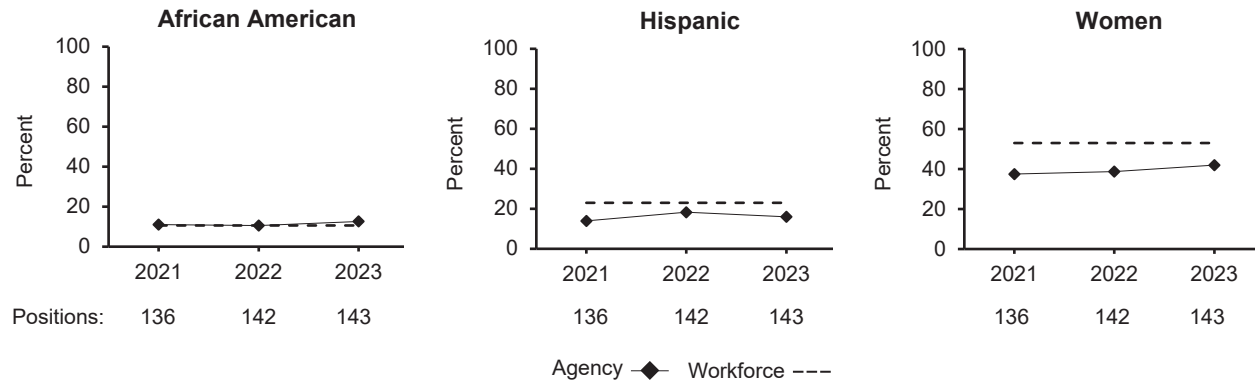
Administration



In each of the last three fiscal years, the authority nearly met the statewide civilian workforce percentages for African Americans and women but failed to meet the percentages for Hispanics.

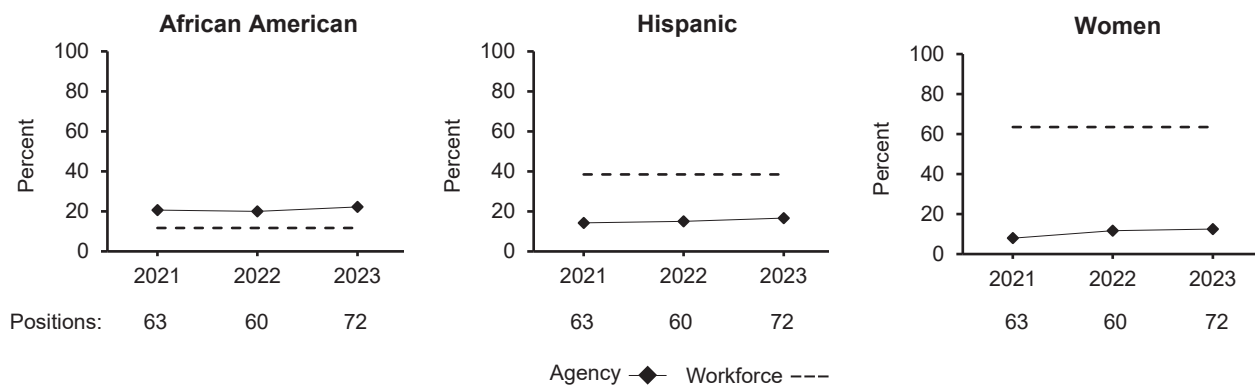
Appendix A

Professional



In each of the last three fiscal years, the authority met or exceeded the statewide civilian workforce percentages for African Americans but fell short of the percentages for Hispanics and women.

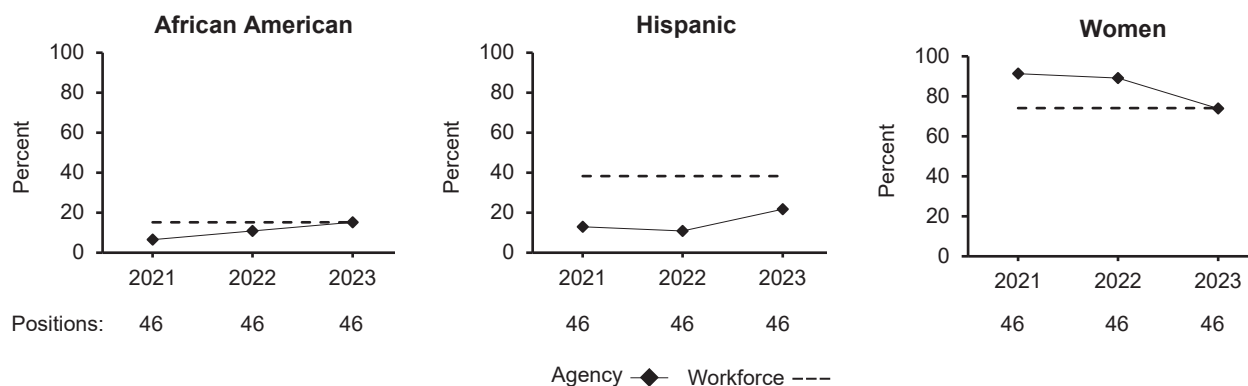
Technical



In each of the last three fiscal years, the authority exceeded the statewide civilian workforce percentages for African Americans but failed to meet the percentages for Hispanics and women.

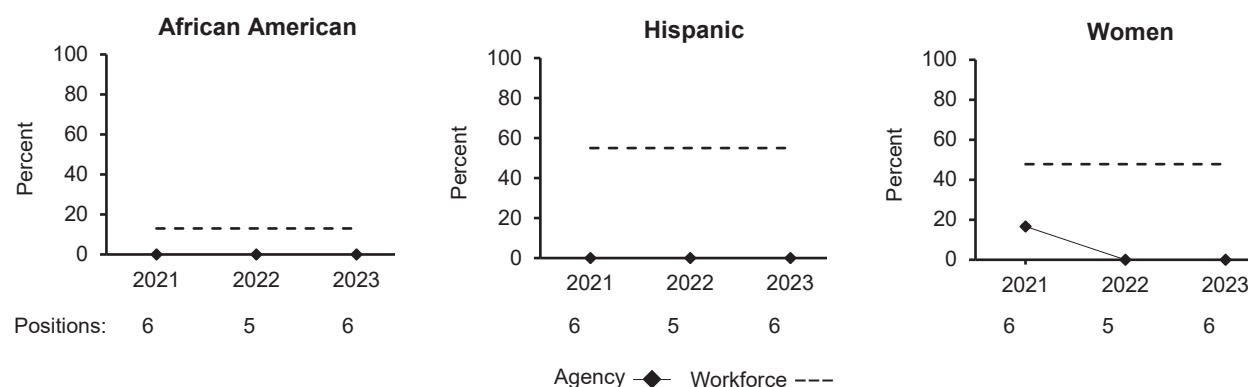
Appendix A

Administrative Support



In each of the last three fiscal years, the authority met or exceeded the statewide civilian workforce percentages for women but failed to meet the percentages for Hispanics. The authority met the percentages for African Americans in fiscal year 2023 but fell short in fiscal years 2021 and 2022.

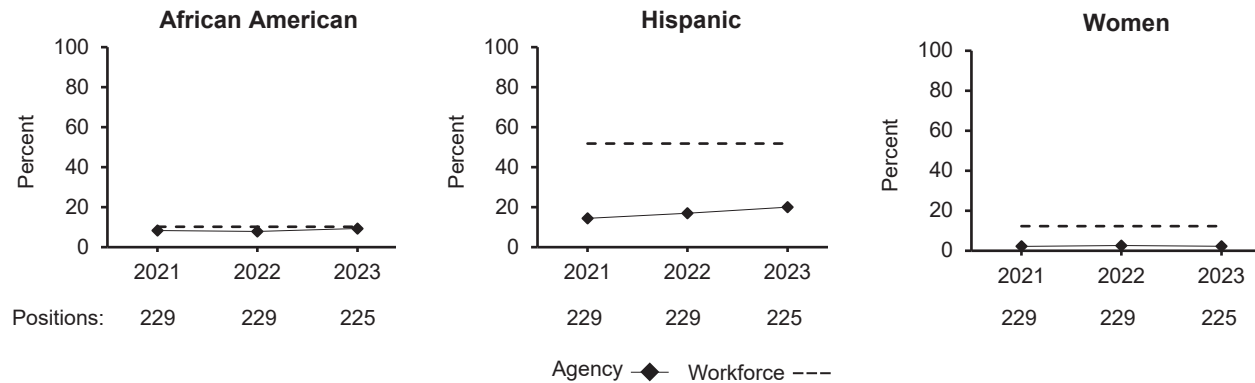
Service/Maintenance



The authority failed to meet the statewide civilian workforce percentages for all three reported groups in each of the last three fiscal years. However, the authority had few employees in this category.

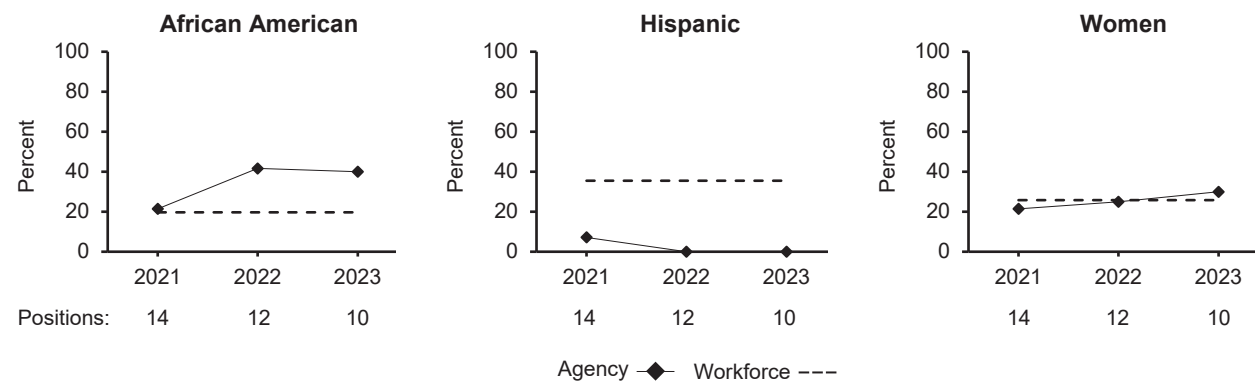
Appendix A

Skilled Craft



In each of the last three fiscal years, the authority nearly met the statewide civilian workforce percentages for African Americans but failed to meet the percentages for Hispanics and women.

Protective Services



In each of the last three fiscal years, the authority exceeded the statewide civilian workforce percentages for African Americans but failed to meet the percentages for Hispanics. The authority nearly met or exceeded the percentages for women in fiscal years 2022 and 2023 but fell just short in fiscal year 2021.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

² Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

APPENDIX B | Staff Review Activities

During the review of the Trinity River Authority of Texas (TRA), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with TRA's personnel; attended board meetings; interviewed board members; corresponded with key legislative offices; solicited written comments from interest groups and the public; reviewed TRA's documents and reports, state statutes, legislative reports, previous legislation, and literature; and performed background and comparative research.

In addition, Sunset staff performed the following activities unique to TRA.

- Conducted a survey of stakeholders, including municipal customers and other interest groups.
- Attended the Texas Water Conservation Association Fall 2023 Conference.
- Attended TRA's board committee meetings, including Executive, Administration and Audit, Legal and Public Policy, Utility Services, and Resources Development committee meetings.
- Attended TRA's customer advisory committee meetings.
- Toured TRA's major projects, including the Central Regional Wastewater System, Denton Creek Regional Wastewater System, Mountain Creek Regional Wastewater System, Red Oak Creek Regional Wastewater System, Tarrant County Water Supply Project, Huntsville Regional Water Supply System, Livingston Regional Water Supply System, Trinity County Regional Water Supply System, and Lake Livingston Dam.
- Toured TRA's parks and recreation areas, including Wolf Creek Park and an 18-hole golf course in San Jacinto County.
- Solicited staff input from the Texas Commission on Environmental Quality, Department of Information Resources, and Texas Water Development Board.
- Attended a meeting of the Region 3 Regional Flood Planning Group.

Sunset Staff Review of the *Trinity River Authority of Texas*

REPORT PREPARED BY

Katherine Durain, *Project Manager*

Astrid Alvarado

Lauren Ames

Anthony Ellis

Megan Nair

Elizabeth Saenz

Robin Blackmon, *Project Supervisor*

Eric Beverly
Executive Director

Sunset Advisory Commission

Location

Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

Mail

PO Box 13066
Austin, TX 78711

Website

www.sunset.texas.gov

Email

sunset@sunset.texas.gov

Phone

(512) 463-1300