

JUN 10 2016



Moore County

Rowdy Rhoades

Moore County Judge
715 Dumas Avenue, Room 202
Dumas, Texas 79029
806-935-5588 • Fax 806-935-5697

June 7, 2016

Mr. Ken Levine
Director, Sunset Advisory Commission
1501 N. Congress
Austin, Texas 78701

Re: Palo Duro River Authority

Dear Mr. Levine:

On behalf of the citizens of Moore County, I welcome this opportunity to respond to the *Sunset Staff Report on the Palo Duro River Authority (PDRA)*. We appreciate Sunset staff's diligence and professionalism as they conducted a thorough review of the PDRA during the last year. Their hard work and understanding of complex issues is nothing short of remarkable, and we applaud the staff on a job well done.

Enclosed is Moore County's response to the Sunset Staff Report. We have attempted to respond to each one of the issues raised in the Staff Report, provide some supporting exhibits, and offer some of our own suggestions for the future viability of the PDRA.

We are sending two notebook-bound copies to you under cover of this letter, and we are sending notebook-bound copies to each individual Committee Member directly. In addition, we are providing you a thumb drive, which will include digital copies of this letter, and our response with exhibits in the event anyone prefers digital copies, rather than hard copies.

Moore County has attempted to take action on Staff Recommendation 4.2 by contacting the City of Stinnett regarding their interest in continuing as a member of PDRA. We understand that the Sunset Advisory Commission prefers 'local solutions', and are attempting to facilitate that possibility.

We look forward to discussing these recommendations with the Sunset Advisory Commission at the scheduled June 23rd hearings, and to working with the Legislature as the Sunset process continues.

Sincerely,



Rowdy Rhoades
Moore County Judge

RR/asd

Enclosure/s

Cc: Palo Duro River Authority of Texas
c/o Mr. Jim Derrington,
Executive Director
P.O. Box 99
Spearman, TX 79081

Ms. Sarah Kirkle
Review Director
Texas Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711

Honorable Larry Gonzales
Chair, Texas Sunset Commission
Room E2.418
P.O. Box 2910
Austin, TX 78768

Honorable Van Taylor
Vice-Chair, Texas Sunset Commission
P.O. Box 12068
Capitol Station
Austin, TX 78711

Honorable Juan "Chuy" Hinojosa
Member, Texas Sunset Commission
P.O. Box 12068
Capitol Station
Austin, TX 78711

Honorable Cindy Burkett
Member, Texas Sunset Commission
Room E2.322
P.O. Box 2910
Austin, TX 78768

Honorable Robert Nichols
Member, Texas Sunset Commission
P.O. Box 12068
Capitol Station
Austin, TX 78711

Honorable Dan Flynn
Member, Texas Sunset Commission
Room GN.7
P.O. Box 2910
Austin, TX 78768

Honorable Charles Schwertner
Member, Texas Sunset Commission
P.O. Box 12068
Capitol Station
Austin TX 78711
Honorable Kirk Watson
Member, Texas Sunset Commission
P.O. Box 12068
Capitol Station
Austin, TX 78711

LTC (Ret.) Allen B. West
Member, Texas Sunset Commission
14180 Dallas Pkwy, Ste 350
Dallas, TX 75254

Mr. William W. Meadows
Member, Texas Sunset Commission
421 W. Third Street, Ste. 800
Ft. Worth, TX 76102

Honorable Four Price
Texas State House District 87
P.O. Box 2848
Amarillo, TX 79105

Honorable Colin Locke, Mayor
City of Stinnett
609 Mackenzie
P.O. Box 909
Stinnett, TX 79083-0909

Honorable Richard Pena Raymond
Member, Texas Sunset Commission
Room 1W.4
P.O. Box 2910
Austin, TX 78768
Honorable Senfronia Thompson
Member, Texas Sunset Commission
Room 3S.6
P.O. Box 2910
Austin, TX 78768

Honorable Kel Seliger
P.O. Box 12068
Capitol Station
Austin, TX 78711

Honorable Ken King
Texas State House District 88
Capitol Office: EXT E2.416
Capital Address: P.O. Box 2910
Austin, TX 78768

Honorable Benny Wilson
Hansford County Judge
16 Northwest Court
Spearman, TX 79081

The Response of Moore County to the Staff Report of the Sunset Advisory Commission Regarding the Palo Duro River Authority of Texas (PDRA)

June 6, 2016

Introductory Statement

Moore County agrees with the statement in the Sunset Advisory Commission Staff Report that PDRA is *unable to fulfill its original purpose* (Page 4 of the Staff Report) as stated in H. B. 1531 of the 63rd Legislature R.S. in 1973. In January, 1985, the citizens of Moore County voted 518 “yay” to 112 “nay” to be annexed into the PDRA, and 465 “yay” to 142 “nay” to financially support the PDRA and its endeavors through *ad valorem* tax assessments.

Since Moore County citizens approved both Propositions in 1985, our citizens have dutifully paid \$34,048,765.00 (72.7 % of total) towards construction of the Palo Duro Reservoir, and \$5,032,388.10 (68.98% of total) towards the continuing maintenance and operations of the PDRA. (See attached **Exhibits 1A** and **1B**)

While paying 72% of the debt retirement and almost 69% of the continuing maintenance and operations, Moore County only holds 44% (4 of the 9) votes on the PDRA Board of Directors.

The tabulation of PDRA member’s financial contributions and PDRA Board voting-weight is as follows:

	<u>% vote on PDRA Board</u>	<u>% of M&O paid</u>	<u>% paid to retire debt</u>
Moore County	44.44%	68.98%	72.71%
Hansford County	44.44%	29.09%	25.64%
City of Stinnett	11.11%	1.92%	1.64%

Although we have been, and continue to be committed to the success of the PDRA, our citizens ask why the \$5,032,388.10 paid for maintenance and operations by Moore County citizens to the PDRA seems to stay in, and be spent in Hansford County, and what benefit, if any, will the PDRA provide in the future. There is no water flowing back to Moore County, and there is merely a trickle of fiscal benefits which Moore County citizens reap as a return on their substantial investments. Not only are the Moore County citizens frustrated by the failure of the PDRA’s primary purpose; but we are also concerned because we continue to be responsible for 75% of the PDRA’s maintenance, operations, and liabilities; but with only 4 members on the 9-member Board of Directors, we are powerless to either reduce our financial burden, increase

Board representation, or to substantially change the operations of the Authority towards profitability. Simply stated, we can object to the PDRA budget all we want to, but the budget will be approved over our objections.

Moore County accepts the fact that the intended hydrological purposes of the PDRA have not been, and will not be realized. We cannot accept the fact that we have invested over \$39,000,000.00 into the Hansford County economy and are powerless to change PDRA performance because of disproportionate Board representation, and a PDRA Board that seems content with the *status quo* on funding, Board structure, and alternative revenue opportunities.

Sunset Advisory Commission Recommendation 4.1

4.1 Reclassify PDRA as a local water district and remove it from Sunset review.

PDRA would not lose or gain any authority or requirements through reclassification as a water district. This recommendation would affect PDRA in name only, changing its name from Palo Duro River Authority to Palo Duro Water District. As a special law water district, PDRA would maintain all of the powers and duties detailed in its governing law. Being classified as a water district rather than a river authority would more clearly convey PDRA's actual structure and purpose as a small, limited-purpose water district designed to meet local needs. Reclassification from a river authority to a local water district would also remove PDRA from Sunset review.

Moore County's Response to Recommendation 4.1

Regarding Conversion of the PDRA to a water district, Moore County would like to have clarification on what type of water district structure is contemplated.

A) If the Sunset Advisory Commission contemplates conversion of the PDRA into a Water District as defined under Texas Water Code § 36.001, then:

- 1) Enabling legislation H. B. 1531 63rd Legislature R.S. (1973) and H. B. 985-1 64th Legislature R.S. (1975) would have to be amended to not only allow PDRA to access and produce groundwater, but also apportionment and appointment of Directors under Texas Water Code § 36.051 (**Exhibit 2**).
- 2) H. B. 1531 63rd Legislature R.S. (1973), page 11, lines 4 and 5 states as follows:

No member of a governing body of a county, and no employee of a county shall be appointed as director.

This prohibition conflicts directly with Tex. Water Code § 36.051 (b) (**Exhibit 2**), since the population of the PDRA is under 50,000. Either the Sunset Advisory Commission or the Legislature will need to advise on how to synergize this conflicting language.

- 3) The Sunset Advisory Commission and/or the Legislature would have to provide guidance on how the Palo Duro Water District would co-exist with the North Plains Groundwater Conservation District, The Canadian River Municipal Water Authority, and the Red River Authority of Texas.
- 4) The Sunset Advisory Commission, and/or the Legislature would have to advise the PDRA members on compliance with Texas Water Code § 36.101 (**Exhibit 2A**), § 36.121 (**Exhibit 2B**), and § 36.122 (**Exhibit 2C**).
- 5) Either the Sunset Advisory Commission, or the Legislature will also need to advise as to whether Tex. Water Code § 36.121 (**Exhibit 2B**) applies to the PDRA, if converted to a water district; because the PDRA itself pre-dates 1991, the newly-created water district will be created after 1991.

B) If the Sunset Advisory Commission contemplates conversion of the PDRA into a Water Control and Conservation District (aka Water Control and Improvement District) under Texas Water Code § 51.011, *et seq.*, then:

- 1) The same amendments to PDRA's enabling legislation must be considered, as mentioned *supra* at (A) (1).
- 2) Guidance must be provided for compliance with Texas Water Code § 51.016 (**Exhibit 3**), § 51.027 (**Exhibit 3A**) and § 51.028 (**Exhibit 3B**).
- 3) Moore County does not believe that having Directors appointed by the Texas Commission on Environmental Quality (Texas Water Code § 51.032 [**Exhibit 3C**]) would be in the best interest of the PDRA, or its members.
- 4) Complicating issues could arise after conversion to a Water Control and Conservation District because of the potential Land Exclusion provisions of Texas Water Code §§ 51.754 *et seq.*

C) In addition to the two water district conversions discussed at (A) and (B) above there are also Municipal Utility Districts (at Tex. Water Code §54.001 *et seq.*), Special Utility Districts (at Tex. Water Code § 65.011 *et seq.*); or any other District created

under Texas Water Code § 49.001, *et seq.* All of which should be considered as alternatives for converting PDRA.

For convenience we have attached as **Exhibits 4** and **4A**, publications from Texas Commission on Environmental Quality and the Research Spotlight from the Texas Senate Research Center explaining the different structures of water districts to help the Commission decide which structure would best fit the PDRA.

- D) If any conversion is suggested, then Moore County would also suggest permitting PDRA access to, and use of groundwater which is currently prohibited by language on page 3 of H. B. 1531 63rd Legislature R.S. (1973), in lines 10 through 11, which states as follows:

The Authority is not authorized to develop or otherwise acquire underground sources of water.

Sunset Advisory Commission Recommendation 4.2

4.2 Authorize one or more members to withdraw from or dissolve PDRA, but only if its members agree and ongoing obligations are met.

This recommendation would allow a member county or city to withdraw from PDRA or for all members to dissolve PDRA, but only if certain conditions are met:

- *A member county or city would be required to issue an order or pass a resolution supporting either withdrawal from or dissolution of PDRA and deliver that order or resolution to the PDRA board of directors. The order or resolution must detail the action sought and the reasons supporting withdrawal or dissolution.*
- *Within 30 days of receipt of the order or resolution, PDRA would be required to hold a public hearing and consider the requested action.*
- *Before the PDRA board could approve the requested action, the member counties and city would be required to reach a financial agreement that provides for sufficient ongoing revenue to maintain the dam and reservoir to prevent any dam safety risks while accommodating the requested action. If a member requests to dissolve PDRA to a party that would be legally responsible for all future dam maintenance and associated liability.*
- *PDRA would be required to approve the agreement by a two-thirds majority vote of all board members, after opportunity for public comment regarding the proposed financial agreement. Hansford and Moore county commissioners' courts and Stinnett's city council would also have to approve the agreement.*
- *The requested action would not take effect if*
 - *the member counties and city cannot reach a financial agreement;*
 - *the PDRA board does not approve the agreement;*
 - *the member counties and city do not approve the agreement; or*

– any part of the financial agreement does not become effective. For example, if the financial agreement includes a plan to increase taxes in a member county or city, the agreement would be contingent on all elections or tax increases taking effect. A member would not be permitted to cease its current tax collections until all parts of the agreement become effective.

Moore County’s Response to Recommendation 4.2

The following language in creating the PDRA will need to be amended with any consideration of Dissolution, Withdrawal, or Re-organization:

“no territory shall be detached from the Authority after the issuance of bonds which are payable from revenues or taxes or both.” H. B. 1531 63rd Legislature R.S. (1973), Section 23 (a), at page 19, lines 3 through 5 and H. B. 985-1 64th Legislature R.S. (1975), Section 23 (a) at page 7, lines 7 through 19.

H. B. 1531 63rd Legislature R.S. (1973) and modifying legislation H. B. 985-1 64th Legislature R.S. (1975), S. B. 132 / H. B. 3251 68th Legislature R.S. (1983), and H. B. 2537 70th Legislature R.S. (1987)

Dissolution, Withdrawal, or Re-organization

A) Dissolution – Dissolution of the PDRA would not serve any of the interests of the current PDRA members, their citizens, or the Panhandle Community. Moore County citizens have invested \$39,000,000.00 in the PDRA, and we continue to believe in its viability. However, if research discloses that the continued existence of the PDRA violates the Canadian River Compact, dissolution of the PDRA may be the only way to avoid potential litigation with the States of New Mexico and Oklahoma.

B) Withdrawal

(1) Moore County does not believe that our withdrawal from the PDRA would be in the best interests of our citizens, or the Authority; unless of course it is determined that the PDRA and the Palo Duro Reservoir somehow violate the terms and intent of the Canadian River Compact.

Moore County citizens have invested \$39,000,000.00 in the PDRA, and we believe that it is our responsibility to our friends, neighbors and constituents to explore maximum return on their investments.

Additionally, with PDRA’s 2015 expenditures of \$413,176.00, the Authority would be unable to meet financial obligations if Moore County withdrew from PDRA (See **Exhibit 5**), and removed the \$300,000.00 that we contribute annually to the maintenance and operations of the PDRA (see **Exhibit 1B**).

(2) In the event that the City of Stinnett is interested in withdrawing from PDRA, Moore County has decided to act on the suggestion of the Sunset Advisory Commission Advisory Committee Staff Report, and to seek a local solution to PDRA organizational structure by sending a letter to the City of Stinnett inquiring about Stinnett's interest in allowing Moore County to acquire the City of Stinnett's rights and responsibilities in, and to the PDRA (see attached **Exhibit 6**). The basic terms of the offer are:

- Moore County would assume Stinnett's funding responsibilities beginning with *ad valorem* year 2016, pro-rated to August 1, or a later closing date.
- PDRA will absolve the City of Stinnett of all future responsibilities and liabilities after August 1, or the closing date.
- The City of Stinnett would allow Moore County to assume Stinnett's representation on the PDRA Board of Directors at the closing date. Allowing Stinnett to withdraw from PDRA, and have Moore County assume their role, rights and responsibilities would be conditioned upon:
 - 1) Appropriate amendment to the statutory language of H. B. 2537 70th Legislature R.S. (1987) which brought Stinnett into the PDRA, and
 - 2) Super-majority approval by PDRA Board of Directors, and
 - 3) Amendment to the statutory language of H. B. 1531 63rd Legislature R.S. (1973) and S. B. 985-1 64th Legislature R.S. (1975) prohibiting member withdrawal after bond-issuance.
 - 4) A majority vote by the Stinnett City Council allowing Moore County to assume Stinnett's rights, responsibilities and Board seat to the PDRA, and a majority vote in favor by the Moore County Commissioner's Court.
 - 5) Amend the enabling Legislation to enable Moore County more than 4 members on the PDRA Board of Directors

C) Re-organization – Moore County is most interested in Sunset Advisory Commission's recommendation about re-organizing the PDRA structure to allow Moore County PDRA Board representation consistent with Moore County's share of financial contribution and obligation. Moore County would ideally like to have an additional 1 or 2 Board Members on the 9-person PDRA Board of Directors.

In order to accomplish this, the enabling legislation H. B. 1531 63rd Legislature R.S. (1973) and specifically H. B. 985-1 64th Legislature R.S. (1975) would have to be

amended. Specifically, H. B. 985-1 64th Legislature R.S. (1975) states at lines 19 through 26, page 2 as follows:

After such territory is annexed to the Authority, the commissioners Court of Moore County shall appoint four residents of Moore County to the Board of Directors of the Authority with two of such directors to serve terms of office until December 31, 1975, and two of such directors to serve terms of office until December 31, 1976. After the expiration of the original term of office, the directors representing Moore County shall be appointed as provided in Section 17 of this Act.

Regarding re-organization, the following issues are preferences for Moore County, and we believe to be in the best interest of the PDRA:

- 1) Resolution of the Canadian River Compact question, and
- 2) Access to, and delivery of groundwater within the PDRA, and
- 3) Maintain local appointment powers for the Board of Directors of the PDRA, and
- 4) Increased PDRA Board of Director representation for Moore County, and
- 5) Flexibility in developing, and delivering water resources within the PDRA, and
- 6) Synergies with, and compatibility among the PDRA and the North Plains Ground Water Conservation District, Canadian River Municipal Water Authority, and the Red River Authority of Texas, and
- 7) Allow PDRA flexibility to monetize other opportunities and assets within the PDRA that are not dependent on delivering water to municipalities.

Moore County's Concern Regarding the Canadian River Compact

Texas, New Mexico and Oklahoma ratified the Canadian River Compact in 1951, and the United States Congress ratified it in 1952. Act of May 17, 1952, Ch. 306, 66 Stat. 74 (1952), see also 111 S. Ct. at 2288 n.4. The Canadian River Compact was, and is ratified at Texas Water Code, Title 3, Chapter 43 at § 43.001, *et seq.* (Vernon's 2008). The Canadian River Compact was designed as an interstate apportionment of the waters of the Canadian River. (see **Exhibit 7**).

The Palo Duro River Reservoir was created by impounding the waters of the Palo Duro Creek (see **Exhibit 7A**). The Palo Duro Creek is covered under the Canadian River Compact, Article II (b) as a tributary of the North Canadian River.

Article V of the Canadian River Compact states that:

Texas shall have free and unrestricted use of all waters of Canadian River in Texas, subject to the limitations upon storage of water set forth below:

(a) The right of Texas to impound any of the waters of North Canadian River shall be limited to storage on tributaries of said River in Texas for municipal uses, for household and domestic uses, livestock watering, and the irrigation of lands which are cultivated solely for the purpose of providing food and feed for the householders and domestic livestock actually living or kept on the property.

Because the waters impounded by the Palo Duro Reservoir have never been used for any of the specifically stated purposes of the Canadian River Compact, Moore County has concerns that the currently operated and constructed Palo Duro Reservoir may be in violation of the Compact, and subject the PDRA, and The State of Texas to litigation brought by New Mexico and/or Oklahoma.

Prior to any actions taken on the Sunset Advisory Committee staff recommendations, the Sunset Advisory Commission, the Legislature and/or the PDRA should obtain a legal opinion as to the Palo Duro Reservoir's compliance with the terms and intent of the Canadian River Compact.

Signed this the 6th day of June, 2016



Rowdy Rhoades
Moore County Judge



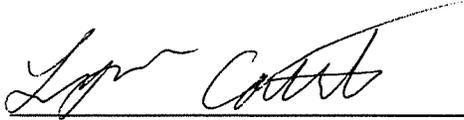
Daniel Garcia,
Moore County Commissioner, Precinct 1



Len Sheets,
Moore County Commissioner, Precinct 2



Milton Pax,
Moore County Commissioner, Precinct 3



Lynn Cartrite,
Moore County Commissioner, Precinct 4