
May 18, 2016

The Honorable Larry Gonzales, Chair
Sunset Advisory Commission
PO Box 13066
Austin, Texas 78711

Cc: The Honorable Van Taylor, Vice Chair
Mr. Ken Levine, Director

Re: 2016 Sunset Commission Report Response

Dear Chairman Gonzales,

Thank you for the opportunity to respond to the Sunset Commission's report regarding the governance and operations of the Sulphur River Basin Authority (SRBA). The report highlights a number of opportunities for SRBA to consider as it works to improve, and while complete agreement on each recommendation may not exist, please be assured that the SRBA board takes the recommendations seriously and is determined to evaluate the Commission's feedback with great care.

I appreciate the Commission recognizing the challenges facing SRBA. The report acknowledged that "varying water needs and interests among these stakeholders create a controversial and often antagonistic backdrop against which SRBA pursues its mission. Some stakeholders appear largely driven by their own financial motivations..." This is the first of many points on which the Commission and Board agree. Northeast Texas water discussions, made contentious in part by the Region C, D boundary overlaying the SRBA area of authority, is but one of the policy-level dimensions at work in our part of the state.

The SRBA board also agrees it can do more to promote transparency in its work. The state's Sunset Review report criticized SRBA for not publishing the basin study reports before SRBA board meetings and for not providing, in the Commission's view what was, sufficient dialogue with local news organizations. The former critique is accepted. Every governmental entity charged with stewardship of the state's natural resources can improve its transparency to interested stakeholders. Regarding the latter, please be aware that news organizations in our region have

shown little interest in the technical aspects of the basin study that has been conducted. Instead media outlets have provided a generous amount of ink and air focused on negative, often incendiary comments made by a few of the stakeholders called out by the Commission's report. That said, the Board recognizes the need to do its best to educate interested media on the basin's water facts and shall endeavor to do so in a more deliberate manner. Pursuant to the Commission's recommendations in Section 1.5 regarding transparency and openness, the board recognizes the importance of each, is committed to improvements in this area and intends to request support from the attorney general's office to reinforce open meeting and record requirement disciplines.

The Commission rightly notes that SRBA has been forced to operate against an "antagonistic backdrop" due to "...stakeholders...largely driven by their own financial motivations..." The Commission's report stated, "the attitudes and actions of other stakeholders, competition for future water rights and the controversial nature of water development foster [a] lack of trust in SRBA..." The Commission surely understands that SRBA did not invent the mistrust flowing from the parties interested in water rights in the region. Several landowners and a majority of the Region D Planning Group have publicly stated they do not wish to see any development of Sulphur River water resources. Timber interests in this region fear how mitigation for new development of water resources could severely impact availability of timber tracts for their exploitation for lumber and pulp. Texarkana water interests, including the Texarkana City Council and River Bend Water supply, are concerned about the control of water rights in the basin especially for Wright Patman reservoir. For still other landowners, perpetual ownership within families and preservation of legacy interests is the overriding concern. Each of these is an important position the SRBA board understands, and all must be recognized in our planning efforts.

Understanding these positions is critical, but the positions do not individually or collectively eclipse the special responsibility SRBA has to provide for the conservation *and* development of the state's natural resources within the Sulphur River basin. The seven SRBA board members, who together represent every major area of the basin's ten counties, are charged with ensuring equitable treatment of Northeast Texas citizens' interests in distribution of the basin's resources. The board's balanced view is the primary reason it commissioned a basin-wide study. The study seeks to gather important and comprehensive scientific and technical data to assess the prudence of future water distribution options. The data gathered is to be used to gauge the fairness of any future SRBA decision. Be assured that no board member intends to negate local interests or environmental concerns for the sole benefit of others. Our commitment is to establish a baseline of facts and data from which informed discussions can take place.

The Commission report accurately states that, "SRBA does not receive any local funding or serve a specific water need," then goes on to recommend SRBA should seek financial participation from local water districts. SRBA's contracts for funding

include provision for 20 percent of any developed water resources to be reserved for priority use of the local area within the Sulphur River Basin. We believe this is a prudent and conservative approach to future funding as it is predicated upon expanding the value of basin-wide water. Forming local entities into a revenue generating arrangement in order to accrue cash reserves for future development feels like a tax under a different name, and taxation is not power the legislature has granted to SRBA. SRBA has not yet discussed this issue in open session, but I personally do not agree with this concept.

I must also respectfully disagree with the Commission's opinions regarding governance, namely the sweeping of the board (SRBA discussion has generally agreed) and the installment of an executive director. Regarding the former, our view is that the suggestion is seriously counterproductive to the interests of the citizens of the basin. Sweeping a board of directors assumes that a new board would be better informed and shielded from the stakeholder criticism cited as the primary reason for the recommendation. I view these assumptions as simplistic and immediately harmful. For the reasons noted earlier, local support and trust will not somehow automatically improve. The issues faced by the SRBA are complex and contentious; facts that no new board can change. The current SRBA board takes its responsibility seriously. Each member has been engaged in studying the varied issues associated with SRBA conservation and development, and holds the benefits to local counties and cities paramount in any action under discussion. Issues presented before the board require a significant learning curve. As such, it is difficult to envision how a newly installed board can avoid being anything other than susceptible to decision-by-impression foisted onto it by the loudest, oftentimes most negative, voices.

Regarding the latter recommendation involving the installment of an Executive Director, the SRBA believes room for compromise exists. While an Executive Director could certainly take a significant role in meeting public needs for information, be directly accountable for work performed, manage the contracts, and supervise the office personnel, our past experience with this very same concept did not result in favorable outcomes. During the previous executive director's tenure, no progress toward SRBA goals was made and unfortunately, a significant conflict-of-interest prevented transparent interactions between the executive director and the board and public, resulting in the resignation of the executive director. In the aftermath of this situation, the board took the decision to employ a consultant-based model. This arrangement promotes greater allegiance to the board and public, while maintaining a low-cost personnel structure; an important feature given that SRBA received no appropriated funding from the state for staffing.

The consultant-based model, to be fair, has proven effective. In the past six years, the board along with its consultant and staff, have successfully completed nine major studies containing thousands of pages of detailed scientific data about the basin. These studies are available on the SRBA's website, srbatx.org, for the public to view. Notably, the studies do not contain editorial commentary or viewpoints.

Technical data and scientific facts are presented with objectivity in order to facilitate better discussions and ultimately decision-making. Instead, the reports conform to the board's plan to address the full range of watershed issues facing the basin. This fact may have been overlooked in the Commission's report. While a document labeled "strategic plan" may not exist, the studies undertaken by SRBA constitute the same.

That said, the SRBA board recognizes the relevance of the Commission's findings regarding the consultant's scope of work as well as other contract provisions governing the work, and is committed to improving both the transparency and accountability of this structure. Our plan is to review the existing contract and integrate Commission recommendations where possible in order to ensure the basin citizens are receiving a good return on this investment. This same approach can be used in development and solicitation of any future contracts from alternative engineering firms. I agree with the Commission that the current engineering firm brings both a high degree of expertise and continuity to the work of SRBA, but recognize the importance of seeking alternative firms from a competitive bidding standpoint.

The Sunset Commission report brought forward a number of recommendations that when viewed without context, cast significant aspersion onto the SRBA. While it is the Commission's right and charge to do so for any agency under its review, it is also important to recognize what the report omitted. In many respects, SRBA is operating effectively. The board is dedicated to achieving the goals assigned to it by the legislature, and to do so within the difficult political and media environment that naturally develops when an important resource like water is involved. Our track record demonstrates a commitment to facts and data gathering. This makes some parties uncomfortable as objective analysis of those facts may lead to future decisions not fully supportive of any single party's position. Nevertheless, SRBA takes a great deal from the Sunset Commission report and appreciates the Commission's and Commission staff's time and effort to develop it. Our intention is to fully explore and act on those recommendations we deem to be in the best interest of the basin, including:

- Governance changes. Our standing committee structure may be modified to assign board members to specific roles with more in-depth focus such as, sedimentation, governance and transparency, and water planning group liaison.
- Contract improvements. We can review and amend existing contracts to improve transparency and accountability to the Board.
- Transparency improvements. As for any and all state agencies, our methods for communicating with stakeholders can be augmented and improved. We can use the Texas Comptroller's Transparency Stars program as a guide and

resources from the Texas Attorney General's office to improve our open meeting and record requirement disciplines.

- Executive Director formalization. Our board is ready to undertake discussions to formalize the Executive Director role per the Commission's recommendations. Our past experience with this structure was less than positive, but we understand the importance of the recommendation and its intent, so will move forward accordingly.

The SRBA Board is very likely to follow these recommendations with additional improvement ideas and investments. The Board looks forward to communicating with you regarding our progress and welcome any additional insights the Commission may have regarding our operations.

My response is solely my own and not an approved response of the SRBA.

Sincerely,

Michael Russell, President
Sulphur River Basin Authority

