

EXECUTIVE SUMMARY

Lower Colorado River Authority

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Amidst the collision of entrenched power and water interests of depression-era Texas, the Lower Colorado River Authority (LCRA) was forged in controversy, and LCRA's affiliation with controversy continues to this day. After failing in a regular legislative session and three consecutive special sessions, the Legislature in 1934 finally created LCRA in a fourth special session as a conservation and reclamation district, a simple title that belies the complexity of LCRA's work. The primary drivers behind LCRA's creation were two opposing natural disasters — floods and droughts — that regularly lay siege to the Colorado River basin. The Legislature also authorized LCRA to generate and sell electricity. At the persistent urging of then-Congressman Lyndon B. Johnson, LCRA used hydroelectricity to turn on the lights in rural Central Texas for the first time and later added coal and natural gas to its electric generation portfolio.

Now the second-largest electric company in Texas, one could be forgiven for concluding at first blush that LCRA is an energy company that also happens to own a river. LCRA derives about 93 percent of its roughly \$1 billion in annual revenue from its electric generation and transmission businesses and has a huge operational presence in more than 70 counties. LCRA's dual role as a major player in the competitive electric market and as a governmental entity providing a vital natural resource makes it unique among the other 16 river authorities in Texas. Like other river authorities, state law does not subject LCRA to abolishment under the Sunset Act, but unlike the others, state law specifically prohibits Sunset from reviewing LCRA's electric businesses.¹ Accordingly, this review did not consider LCRA's electric operations or the appropriateness of LCRA's arrangement as both an electric and water provider. Instead, Sunset staff focused on LCRA's other activities, primarily its water functions, which have a tremendous impact on Central Texas' rapidly growing population and the industry, communities, and environment in the lower Colorado River basin. While historic flooding in the lower Colorado River basin occurred at the end of this review, the vast majority of input received during the review concerned the drought and its effect on water availability. Sunset staff also examined LCRA's efforts to conserve and protect public and private lands in the basin and to regulate water quality and safety along the Highland Lakes.

LCRA has a difficult job of balancing many competing interests and needs.

Sunset staff found the LCRA of today a very sophisticated, well-functioning organization that has a difficult job of balancing many competing interests and needs. In particular, the hiring of new executive leadership in 2014 has led to significant improvements to LCRA's reputation among stakeholders and state leadership. However, at various points in time, LCRA continues to be at odds with its numerous water stakeholders — municipalities and water utilities that purchase water for basic needs, environmental groups with ecological concerns, and agricultural operations reliant on water for irrigation. To be fair, water conflicts between the municipalities and water utilities of LCRA's upper basin and the environmental and agricultural groups of its lower basin often align with divisions between growing urban areas and rural, agricultural interests that also occur across Texas and the country. The competitive, high-stakes nature of both the power business and water rights also play out in the continual cycle of threatened and actual litigation, in which LCRA alternates as the defendant and the plaintiff.

However, these recurring conflicts are not justification for LCRA to hunker down and limit engagement. The region needs LCRA to succeed as a water supplier, and LCRA's success hinges on its ability to improve public trust. Some of the questions these conflicts raise were beyond the purview of this review, as discussed in the *Water Concerns Outside the Scope of Sunset* textbox. However, as discussed in Issue 1, other conflicts are problems of LCRA's own making, and in the areas of financial transparency and public engagement in particular, LCRA still has room for improvement. Transparency encourages honesty, openness, and accountability in government actions, and LCRA must do more than the bare minimum to obtain and retain public trust.

Water Concerns Outside the Scope of Sunset

This review coincides with the critical process of updating LCRA's Water Management Plan, which determines how LCRA allocates water from its supply reservoirs, lakes Buchanan and Travis (described in Appendix B). Proving the adage, "whiskey is for drinking, water is for fighting," LCRA's management of the water in these reservoirs has been a frequent source of criticism over the years, especially during periods of drought. Following a 1988 court order, LCRA is required to produce and periodically update this plan for state review and approval, just one of many requirements from multiple levels of government that keeps LCRA from making decisions unilaterally.

Sunset evaluated LCRA's process for updating its Water Management Plan and on the whole, found it to be robust, open, and responsive. That said, serious questions continually arise regarding the adequacy of the system of "checks and balances" in place for LCRA — such as whether state law provides for adequate oversight of raw water rates or whether the technical methodology state water planners use to calculate future water availability projections is still appropriate. However, questions like these are far beyond the scope of this review. Other recurring criticisms coming from some of LCRA's fiercest critics — businesses and property owners whose financial interests depend on the Highland Lakes remaining mostly full — relate to maintaining the lakes at a constant level, which would have statewide implications for water availability and are therefore also beyond Sunset's scope.

The Legislature also designed LCRA to conserve and protect the land in the basin and to administer regulatory programs to ensure water quality and safety along the Highland Lakes. This report contains findings and recommendations to implement best practices in the areas of regulation and grants administration, as well as transparency and openness reflective of the Sunset Commission's more than 40 years observing, documenting, and applying good government standards. The following material summarizes Sunset staff recommendations on the Lower Colorado River Authority.

Issues and Recommendations

Issue 1

The Growing Impact of LCRA’s Important Mission Requires Higher Standards of Openness and Engagement to Improve Public Trust.

Demand for water is the biggest long-term challenge facing LCRA’s water division. As the 2008–2016 drought ended, LCRA committed to investing tens of millions of dollars in water supply projects, but LCRA will need cooperation, buy-in, and trust from the communities in which it operates to be successful in the future. LCRA’s complex operations and scope of responsibility, its long history serving diverse and often conflicting interests, and its mission’s substantial impact on so many Texas communities significantly raises the bar for both the expectations and need for public transparency. Despite growing water supply needs, LCRA has not developed a formal, proactive strategy for engaging communities in its activities, and its approach to public engagement is inconsistent and often reactive. In addition, LCRA’s lack of budget transparency has led to incorrect conclusions and unwarranted distrust from stakeholders, particularly with respect to water funding. Finally, several LCRA board practices — such as restrictions on public testimony — could unnecessarily limit opportunities for and discourage public engagement.

Key Recommendations

- Require LCRA to adopt a public engagement policy for water supply projects.
- Direct LCRA to provide more detailed financial information in its publicly available documents.
- Direct LCRA to provide more transparent, consistent, and accurate agenda meeting notices.

Issue 2

LCRA Should Clarify Its Relationship With the Colorado River Land Trust to Better Manage Expectations and Promote Independence.

LCRA created the Colorado River Land Trust (CRLT) in 2012 as an independent nonprofit support organization to further its water quality and conservation mission. While LCRA and the land trust mutually benefit from their association, the dual roles of LCRA board members and staff supporting the land trust present unnecessary potential for conflicts. Additionally, the service agreement in place between the two organizations lacks clear performance goals or targets for CRLT. Establishing performance expectations for CRLT and maintaining clear lines of accountability for managing land trust staff would further CRLT’s independence from LCRA moving forward, comporting with best practices for land trusts.

Key Recommendations

- Direct LCRA to clearly separate the governance and management of the land trust from its own board and staff.
- Direct LCRA to update its service agreement with the land trust to include performance goals and a timeline of expectations for the land trust to move toward greater financial independence from LCRA.

Issue 3

LCRA's Water Quality Regulatory Programs Lack Best Practices That Would Improve Efficiency and Transparency for Permit Holders and the Public.

LCRA maintains three regulatory programs designed to protect water quality and safety in the Highland Lakes region. First, through the Highland Lakes Watershed Ordinance, LCRA actively manages storm water runoff around the Highland Lakes to reduce the impact of pollution. Second, LCRA's Highland Lakes Marina Ordinance regulates the construction and operation of marinas and docks on the Highland Lakes. Finally, LCRA's On-Site Sewage Facility (OSSF) program, a duty delegated from the Texas Commission on Environmental Quality (TCEQ), governs the permitting and operation of sewage facilities near the Highland Lakes. Under OSSF rules, landowners within LCRA's jurisdiction must obtain permits for nearly any change to their septic systems or property.

LCRA has an informal process for appealing its OSSF decisions and does not provide detailed information on how to file an appeal or what to expect during the appeals process, which potentially affects the fair treatment of permittees. LCRA has an online tool for OSSF permits but does not advertise it, creating inefficiencies and delays. Additionally, all three of these regulatory programs lack a clear, publicly accessible complaint process and a system for tracking and analyzing complaints, limiting LCRA's ability to identify patterns of issues in its regulatory programs.

Key Recommendations

- Direct LCRA to document and publish a clear appeals process for OSSF decisions.
- Direct LCRA to develop and publicize an online option for submitting OSSF permit applications and payments.
- Direct LCRA to develop and publicize a clear complaints process for all three water quality regulatory programs and collect, maintain, and report detailed information on complaints.

Issue 4

LCRA's Community Development Grant Program Needs Improvements to Promote Overall Effectiveness and Fairness.

Through its Community Development Partnership Program (CDPP), LCRA awards \$1 million in grants each year to local organizations for capital improvement projects, such as emergency equipment for first responders, parks, and community centers. Since 1996, the CDPP grant program has awarded 1,672 grants to local projects worth a total of \$267 million. The program generally works well, but lacks key best practices for robust grant programs such as creating conflict of interest policies and providing applicants with grant application scoring criteria. LCRA also does not clearly define grant priorities or performance measures to track the impact of the program, or fully leverage its access to software and technology to effectively communicate with grant applicants. Implementing best practices to address these areas would help improve the overall effectiveness and fairness of the program.

Key Recommendations

- Direct LCRA to develop and adopt a conflict of interest policy specific to the grant program, and to update its grant application materials to more clearly disclose scoring criteria to applicants.

- Direct LCRA to update the overall goals for the CDPP grant program to include more specific program priorities and outcome measures.
- Direct LCRA to use available technology to improve grant tracking and communication to applicants and grantees.

Issue 5

LCRA Should Implement Policies to Enhance Accountability and Better Comply With the Intent of State Law.

LCRA could benefit from changes to ensure compliance with TCEQ rules and good government policies the Legislature typically applies to all entities under Sunset review. TCEQ rules require river authorities to have a policy prohibiting nepotism in board hiring decisions, but LCRA's board policy does not address hiring. LCRA also has not implemented several practices to ensure good faith efforts in historically underutilized businesses (HUB) purchasing, resulting in participation rates below state goals. Additionally, LCRA's employment of minorities and females consistently falls short of statewide percentages, but LCRA has neither a comprehensive plan nor specific goals for increasing workforce diversity.

Key Recommendations

- Apply the Sunset across-the-board standard on alternative dispute resolution to LCRA's statute.
- Direct LCRA to update its board nepotism policy to include hiring decisions.
- Direct LCRA to improve both its Small and Diverse Supplier Program to better comply with the intent of HUB laws, and its efforts to increase workforce diversity.

Fiscal Implication Summary

The recommendations in this report would not have a significant impact to the state. LCRA would be able to implement most of the recommendations within its existing resources. Some minimal impacts to LCRA are discussed below.

Issue 1 — While holding additional public outreach events could have some minor additional costs, LCRA could implement an improved public engagement strategy within its current resources.

Issue 2 — The recommendations for LCRA to clarify its relationship with CRLT to promote more independence would decrease costs to LCRA over time by converting the two LCRA employees assigned to CRLT to land trust employees and by reducing LCRA's in-kind services, but the savings could not be estimated.

Issue 4 — Establishing a standardized grant application tracking and communication mechanism for CDPP would have a small cost to LCRA, but the authority should also see a savings in staff time by automating communication to grantees.

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 8503.0021(a), Texas Special District Local Laws Code.