

SUNSET ADVISORY COMMISSION

STAFF REPORT WITH COMMISSION DECISIONS

Sulphur River Basin Authority

Central Colorado River Authority

Upper Colorado River Authority

Palo Duro River Authority of Texas



2016–2017

85TH LEGISLATURE

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SULPHUR RIVER BASIN AUTHORITY
CENTRAL COLORADO RIVER AUTHORITY
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PALO DURO RIVER AUTHORITY OF TEXAS

SUNSET STAFF REPORT WITH COMMISSION DECISIONS

2016-2017

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HOW TO READ SUNSET REPORTS

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and action into one, up-to-date document. Only the most recent version is posted to the website. **(The version in bold is the version you are reading.)**

1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

SECOND VERSION: **The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.**

3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

THIRD VERSION: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

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SUNSET COMMISSION DECISIONS

Summary

Overall, the small size and limited resources of the four river authorities under Sunset review directly affects their capacity to carry out their missions and raises questions about their ability to solve local water needs or make a real impact on their watersheds. The authorities' lack of a stable revenue source also creates problems in organizational sustainability and continuity and little public interest translates into a lack of transparency and openness. The following material summarizes the Sunset Commission's decisions on the staff recommendations for each of the four river authorities under review, as well as modifications and new issues raised during the public hearing.

Sulphur River Basin Authority (SRBA). Controversy over potential water development projects has thrown an organizationally immature SRBA into the big leagues of water development. The Sunset Commission's recommendations aim to hit the reset button on SRBA and its operations to allow SRBA and its stakeholders to reestablish the working relationships and trust needed to best meet the needs of the Sulphur River basin. The Sunset Commission recommends sweeping the SRBA board and hiring an executive director, among other recommendations to address funding, contracting, and improved transparency.

Central Colorado River Authority (CCRA). CCRA has outlived its relevance as a river authority. CCRA's only function, providing bulldozing services to private landowners, is identical to land management services provided by the private sector and does not serve a direct public purpose. However, because Sunset is not statutorily authorized to abolish a river authority under the Sunset Act, the Sunset Commission recommends the Legislature transfer through separate, non-Sunset legislation CCRA's only ongoing responsibility, maintaining three small dams, to its neighboring river authority, the Upper Colorado River Authority.¹

Upper Colorado River Authority (UCRA). UCRA performs its functions in a well-run, successful fashion, but stakeholders are unsure if UCRA is a relevant part of the future solution to local watershed needs. Increasing the UCRA board's role in identifying priorities and strengthening relationships with local partners could help UCRA add value to the region and avoid future risks of irrelevancy.

Palo Duro River Authority of Texas (PDRA). While generally well-managed, this river authority lacks a river and essentially runs a park. Lake Palo Duro is a meager 3 percent full, making it impractical to build a pipeline and ever fulfill PDRA's mission to pump water to local cities. The Sunset Commission recommends PDRA be restructured as a local water district and be allowed to locally decide its future through an optional process for member withdrawal or dissolution.

SULPHUR RIVER BASIN AUTHORITY

ISSUE 1

The SRBA Board Has Not Built the Trust Needed to Effectively Carry Out Its Mission.

Recommendation 1.1, Adopted — Institute new leadership at SRBA by requiring the terms of all SRBA board members to expire on September 1, 2017.

Recommendation 1.2, Adopted — Direct the SRBA board to hire an executive director. (Management action – nonstatutory)

Recommendation 1.3, Adopted — Direct SRBA to seek local financial investment in its water development projects. (Management action – nonstatutory)

Recommendation 1.4, Adopted — Direct SRBA to seek bids for the next phase of its feasibility study. (Management action – nonstatutory)

Recommendation 1.5, Modified — Direct SRBA to implement best practices to improve transparency and openness in its operations. Also direct SRBA, after posting board materials on its website, to create a listserv to enable people to sign up for updates when the board posts new materials to the website. (Management action – nonstatutory)

CENTRAL COLORADO RIVER AUTHORITY

ISSUE 2

CCRA No Longer Serves a Necessary Public Purpose.

Recommendation 2.1, Modified — Provide that the Legislature, by separate legislation, should transfer CCRA's functions and jurisdiction to UCRA and abolish CCRA, as directed in Sunset staff Recommendation 2.1. (Management action – nonstatutory)

Direct the Texas Commission on Environmental Quality (TCEQ) to inspect each of CCRA's three lakes, determine the condition and any repair needs of the dams. TCEQ reported the results of these inspections in December 2016. (Management action – nonstatutory)

Recommendation 2.2, Modified — Clarify UCRA's territory, boundaries, and board makeup to accurately reflect its jurisdiction, as modified to exclude Coleman County from the updated boundaries.

UPPER COLORADO RIVER AUTHORITY

ISSUE 3

UCRA Has Not Set Priorities to Ensure Its Operations Meet Changing Local Watershed Needs.

Recommendation 3.1, Adopted — Direct UCRA to work with local partners to identify priorities and develop strategies to meet changing watershed needs. (Management action – nonstatutory)

PALO DURO RIVER AUTHORITY OF TEXAS

ISSUE 4

PDRA Lacks Flexibility to Adapt to Changed Local Circumstances.

Recommendation 4.1, Adopted — Reclassify PDRA as a local water district and remove it from Sunset review.

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

CROSS ISSUE

ISSUE 5

River Authorities Lack Basic Good Government Standards That Would Enhance Transparency, Accountability, and Compliance With State Law.

Recommendation 5.1, Modified — Require opportunities for public testimony at board meetings and direct river authorities to implement additional best practices to improve openness and transparency.

- a. Public testimony, modified to require UCRA and PDRA to provide the public the opportunity to provide comment on any agenda item at board meetings and remove the requirement for public testimony as an item on monthly meeting agendas. (Change in statute)
- b. Website (Management action – nonstatutory)
- c. Record retention plan (Management action – nonstatutory)
- d. Public Information Act requests (Management action – nonstatutory)
- e. Board updates (Management action – nonstatutory)
- f. Update governing laws, including the series of agreed-to changes needed to remove potential impediments to codification of SRBA's and PDRA's governing laws by the Texas Legislative Council.

Specifically, changes clarify out-of-date references to defunct state agencies, conflicting provisions of law, and grammatical errors that complicate full understanding of the authorities' powers and duties. (Change in statute)

Recommendation 5.2, Modified — Apply good government standards to river authorities' governing laws to promote accountability, transparency, and best practices.

- a. Conflict of interest
- b. Presiding officer designation
- c. Grounds for removal
- d. Board member training, including requirements for SRBA, PDRA, and UCRA to develop a training manual that each board member attests to receiving annually and to require board member training to include information about the scope of and limitations on the board's rulemaking authority.
- e. Separation of duties
- f. Complaint information
- g. Alternative Dispute Resolution

Recommendation 5.3, Adopted — Direct SRBA and UCRA to comply with TCEQ rules by adopting required administrative policies. (Management action – nonstatutory)

ADOPTED NEW ISSUES

Unused Powers

Repeal Sulphur River Basin Authority's unused authority to provide hydroelectric power, parks and recreation facilities, solid waste service, and forestation services.

Repeal Palo Duro River Authority's unused authority to imprison people for violating its regulations.

Local Advice

Require the Sulphur River Basin Authority, before making a decision on a project for which it would seek permits, to seek the advice of any county judges within the geographic boundaries of the authority in whose county a potential project lies.

FISCAL IMPLICATION SUMMARY

The Sunset Commission's recommendations would not have a fiscal impact to the state. Impacts to each of the four river authorities are discussed below.

Sulphur River Basin Authority — Recommendations would not have a significant fiscal impact to SRBA. Costs for SRBA to hire an executive director, about \$130,000 per year plus benefits, would be offset by savings from incorporating the duties of its consultant into the executive director position. Other recommendations, such as implementing best practices for transparency, would not have a significant fiscal impact to SRBA and could be absorbed within existing resources.

Central Colorado River Authority — If the Legislature chooses to transfer CCRA's functions and jurisdiction to UCRA in separate legislation, approximately \$73,000 in cash and investments, \$150,000 in real property, and \$400,000 in equipment would transfer from CCRA to UCRA based on April 2016 estimates.

Upper Colorado River Authority — The recommendation would not have a significant fiscal impact to UCRA beyond the transfer of CCRA's assets discussed above.

Palo Duro River Authority of Texas — Recommendations would not have a significant fiscal impact to PDRA. If a member of PDRA pursued withdrawal or dissolution, any resulting financial implications would have to be agreed to by the PDRA board and each of its member counties and city. Other recommendations, such as establishing a website, could result in a small cost, but this cost could be absorbed using existing resources.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 325.025, Texas Government Code.

INTRODUCTION

INTRODUCTION

River authorities, a type of water district, are state governmental entities overseen by boards generally appointed by the governor. The Legislature created most river authorities to respond to flood control concerns beginning around the 1930s. Today, the authorities largely perform water quality and water supply activities in their respective watersheds, but many have other duties, such as generating electricity. River authorities' jurisdictions range from one to 19 counties, but the majority cover large portions of or entire river basins. River authorities receive no state appropriation and are largely funded by water sales or other grants and contracts.

Each river authority is governed by its own law that grants it broad authority to engage in a wide range of functions authorized by the Texas Constitution. However, the actual functions each river authority performs vary widely depending on location, water needs, roles of other water entities, and the interest or initiative of the authority itself. Despite being state governmental entities, river authorities have historically received little state oversight.

In 2015, the 84th Legislature placed all 18 river authorities under Sunset review, scheduling four to five authorities for review each biennium. Senate Bill 523 requires Sunset to evaluate river authorities' governance, management, operational structure, and compliance with legislative requirements, but specifies the authorities are not subject to abolishment. This report addresses the four river authorities placed under Sunset review for 2017, the Sulphur River Basin Authority, Central Colorado River Authority, Upper Colorado River Authority, and Palo Duro River Authority of Texas. The chart below and the map on page 4 provide additional detail on these four river authorities.

River Authorities Under Sunset Review (2017)

Authority	Location	FTEs FY 2015	Budget FY 2015	Duties
Sulphur River Basin Authority	Wake Village	1	Revenues: \$745,000 Expenditures: \$1,000,000	<ul style="list-style-type: none"> • Contracts for a feasibility study of the Sulphur River basin • Administers the Texas Clean Rivers Program water quality contract
Central Colorado River Authority	Coleman	1	Revenues: \$145,000 Expenditures: \$175,000	<ul style="list-style-type: none"> • Provides land improvement services for private landowners • Holds a small amount of unused water rights to three small lakes with dams
Upper Colorado River Authority	San Angelo	3	Revenues: \$617,000 Expenditures: \$658,000	<ul style="list-style-type: none"> • Administers various water quality and water supply contracts and grants, including the Texas Clean Rivers Program • Holds a small amount of water rights and sells the water to several small towns
Palo Duro River Authority	Spearman	4	Revenues: \$462,000 Expenditures: \$413,000	<ul style="list-style-type: none"> • Operates Lake Palo Duro and its accompanying dam and park

**SUMMARY OF SUNSET STAFF
RECOMMENDATIONS**

SUMMARY

Limited resources create an uncertain future for the four river authorities currently under Sunset review. Their small size directly affects their capacity to carry out their missions and raises questions about their ability to solve local water needs or make a real impact on their watersheds. Except for the Sulphur River Basin Authority, the authorities' limited duties lead to little public interest or demand for openness and transparency. As a result, the authorities are not very transparent in their operations; do not always follow state legislative requirements; and good government practices appear to be hit or miss. The authorities' lack of a stable revenue source also creates problems in organizational sustainability and continuity, mostly because of the lack of — or threat of losing — staff. Even the Sunset review costs, which the Legislature required the authorities to pay, placed these authorities in incredibly difficult financial positions.

Small size affects the river authorities' ability to make a real impact on their watersheds.

The following material summarizes Sunset staff's recommendations on each of these four river authorities.

Sulphur River Basin Authority (SRBA). SRBA is at the center of one of the biggest water fights in the state. Controversy over potential water development projects, such as Marvin Nichols Reservoir that the Dallas-Fort Worth metroplex has proposed in northeast Texas, has thrown an organizationally immature SRBA into the big leagues of water development.

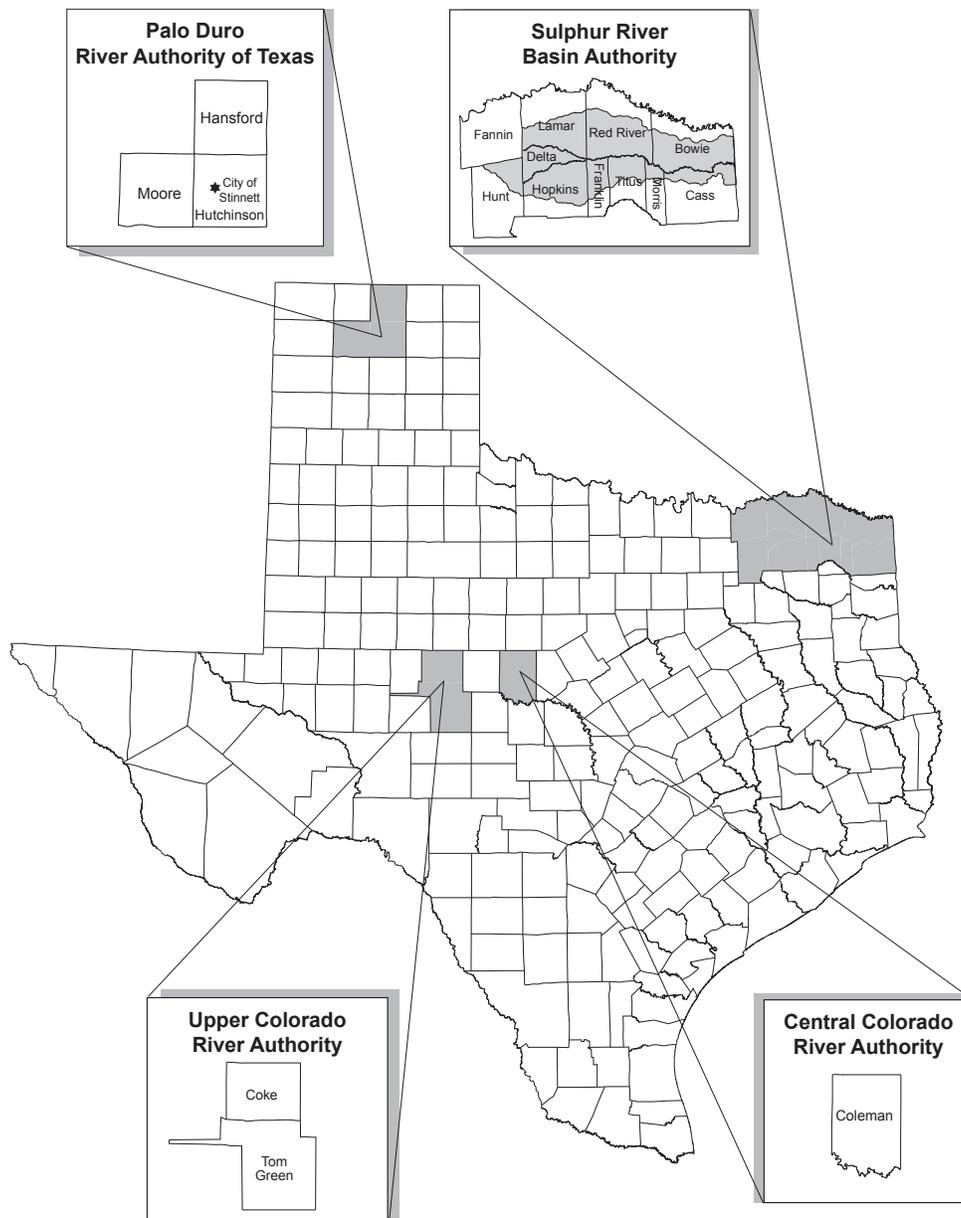
Recommendations in the report aim to hit the reset button on SRBA and its operations to allow SRBA and its stakeholders to reestablish the working relationships and trust needed to best meet the needs of the Sulphur River basin. The report provides a stark assessment of the SRBA board's failings, but SRBA alone is not to blame for the current atmosphere of distrust among the stakeholders in the basin. Some stakeholders can be divisive, antagonistic, and appear to be largely driven by their own financial motivations or wishes to control future water rights. However, the difficulties of operating in this controversial atmosphere only reinforce the importance of SRBA's mission and warrant an overhaul of SRBA's operations to better ensure its ability to successfully meet the watershed's growing and controversial needs.

Central Colorado River Authority (CCRA). CCRA has outlived its relevance as a river authority. CCRA's only function, providing bulldozing services to private landowners, is identical to land management services provided by the private sector and does not serve a direct public purpose. While the review found no ongoing need for CCRA's duties, Sunset is prohibited from abolishing a river authority. As such, staff recommends transferring CCRA's only ongoing responsibility, maintaining three small dams, to its neighboring river authority, the Upper Colorado River Authority.

Upper Colorado River Authority (UCRA). UCRA performs its functions in a well-run, successful fashion, but stakeholders are unsure where UCRA fits as part of future solutions to local watershed needs. UCRA’s funding model is inherently unstable and creates risks that UCRA could lose relevancy in its watershed and stray from its mission. Increasing the UCRA board’s role in identifying priorities and strengthening relationships with local partners could help UCRA add value to the region and avoid future risks of irrelevancy.

Palo Duro River Authority (PDRA). While generally well-managed, this river authority lacks a river and essentially runs a park. Lake Palo Duro is a meager 3 percent full, making it impractical to build a pipeline and fulfill PDRA’s mission to provide water to local cities. PDRA structurally resembles a local water district more than a river authority, and PDRA would benefit from flexibility to locally decide its future structure and role in the region.

River Authorities



Issues and Recommendations

Issue 1

The SRBA Board Has Not Built the Trust Needed to Effectively Carry Out Its Mission.

Within a contentious stakeholder environment, the lack of local trust in SRBA hinders its ability to successfully represent and protect the best interests of the basin. The SRBA board has not addressed critical gaps in its operational responsibilities and board members do not act as a whole to further the basin's interests. These actions of the SRBA board aggravate the atmosphere of distrust and ultimately threaten the board's ability to carry out its mission. The absence of local investment and perceived lack of independence in SRBA's funding structure creates further barriers to SRBA's success.

The state needs an effective basin-wide entity to help balance development and conservation efforts in the Sulphur River basin. However, because the distrust surrounding SRBA is deep and widespread, SRBA needs comprehensive change in its structure and operations to help restore public trust to serve as that basin-wide entity.

Key Recommendations

- Institute new leadership at SRBA by requiring the terms of all SRBA board members to expire on September 1, 2017.
- Direct the SRBA board to hire an executive director.
- Direct SRBA to seek local financial investment in its water development projects.
- Direct SRBA to implement best practices to improve transparency and openness in its operations.

Issue 2

CCRA No Longer Serves a Necessary Public Purpose.

CCRA's operations consist almost entirely of providing bulldozing services, such as building stock tanks, repairing small dams, and clearing brush, all for private landowners. These services are identical to those provided by local businesses and do not serve a direct public purpose. CCRA does not perform typical functions expected of a river authority or expressed in its mission. While CCRA maintains liability for the dams of several small lakes it built decades ago, it has all but abandoned its interest in these lakes, which are now only used by private landowners. CCRA lacks most governance documents and policies required by law, and has not positioned itself as an entity capable of meeting future watershed needs. UCRA, which operates adjacent to CCRA, is a well-functioning river authority and could absorb CCRA's minimal responsibilities for its dams.

Key Recommendation

- Transfer CCRA's functions and jurisdiction to UCRA.

Issue 3

UCRA Has Not Set Priorities to Ensure Its Operations Meet Changing Local Watershed Needs.

While UCRA's operations largely function in a well-run fashion, UCRA's board has not set priorities for the authority's operations. Without a clear process for identifying watershed priorities, UCRA's operations could fall out of line with the needs of local communities. In addition, UCRA's financial dependence on grants and contracts creates a risk that its operations will stray from UCRA's mission. Formal priorities developed in conjunction with local stakeholders would help UCRA establish a strategic direction for its programs, better guide the use of its resources, and ensure its ongoing relevance in addressing in future watershed needs.

Key Recommendation

- Direct UCRA to work with local partners to identify priorities and develop strategies to meet changing watershed needs.

Issue 4

PDRA Lacks Flexibility to Adapt to Changed Local Circumstances.

PDRA was created to supplement the ongoing water needs of its city and county members through construction of the taxpayer-funded dam that created Lake Palo Duro. However, because Lake Palo Duro has never remained full enough to provide water supplies to local cities, PDRA is unable to fulfil its original purpose. Since PDRA is unable to meet its local members' water needs, PDRA risks its members no longer wanting to participate in and fund PDRA. However, unlike other local water districts, PDRA's governing law does not provide for its dissolution or allow changes to its structure based on local circumstances. PDRA's board, funding structure, and limited geographic jurisdiction are also more like a water district than a river authority. PDRA would benefit from flexibility to adjust its structure to local circumstances.

Key Recommendations

- Reclassify PDRA as a local water district and remove it from Sunset review.
- Authorize one or more members to withdraw from or dissolve PDRA, but only if its members agree and ongoing obligations are met.

Issue 5

River Authorities Lack Basic Good Government Standards That Would Enhance Transparency, Accountability, and Compliance With State Law.

Over the past 40 years, Sunset has observed, documented, and applied good government standards that reflect best practices designed to ensure open, responsive, and effective government. River authorities have not applied several best practices that would improve openness and transparency. In addition, the river authorities' governing laws do not reflect good government standards, such as requirements for

board member training or regarding conflicts of interest, typically applied during Sunset reviews. SRBA and UCRA also have not fully complied with applicable state laws and additional good government policies in TCEQ rules.

Key Recommendations

- Require opportunities for public testimony at board meetings and direct river authorities to implement additional best practices to improve openness and transparency.
- Apply good government standards to river authorities' governing laws to promote accountability, transparency, and best practices.
- Direct SRBA and UCRA to comply with TCEQ rules by adopting required administrative policies.

Fiscal Implication Summary

The recommendations in this report would not have a fiscal impact to the state. Impacts to each of the four river authorities are discussed below.

Sulphur River Basin Authority — Recommendations in this report would not have a significant fiscal impact to SRBA. Costs for SRBA to hire an executive director, about \$130,000 per year plus benefits, would be offset by savings from incorporating the duties of its consultant into the executive director position. Other recommendations, such as implementing best practices for transparency, would not have a significant fiscal impact to SRBA and could be absorbed within existing resources.

Central Colorado River Authority — The recommendation to transfer CCRA's functions and jurisdiction to UCRA would transfer approximately \$108,000 in cash and investments, \$150,000 in real property, and \$400,000 in equipment from CCRA to UCRA, based on estimates as of April 2016.

Upper Colorado River Authority — Recommendations in this report would not have a significant fiscal impact to UCRA, beyond the transfer of CCRA's assets discussed above.

Palo Duro River Authority — Recommendations in this report would not have a significant fiscal impact to PDRA. If a member of PDRA pursued withdrawal or dissolution, any resulting financial implications would have to be agreed to by the PDRA board and each of its member counties and city. Other recommendations, such as establishing a website, could result in a small cost that could be absorbed using existing resources.

SULPHUR RIVER BASIN AUTHORITY
APRIL 2016

AUTHORITY AT A GLANCE

SULPHUR RIVER BASIN AUTHORITY

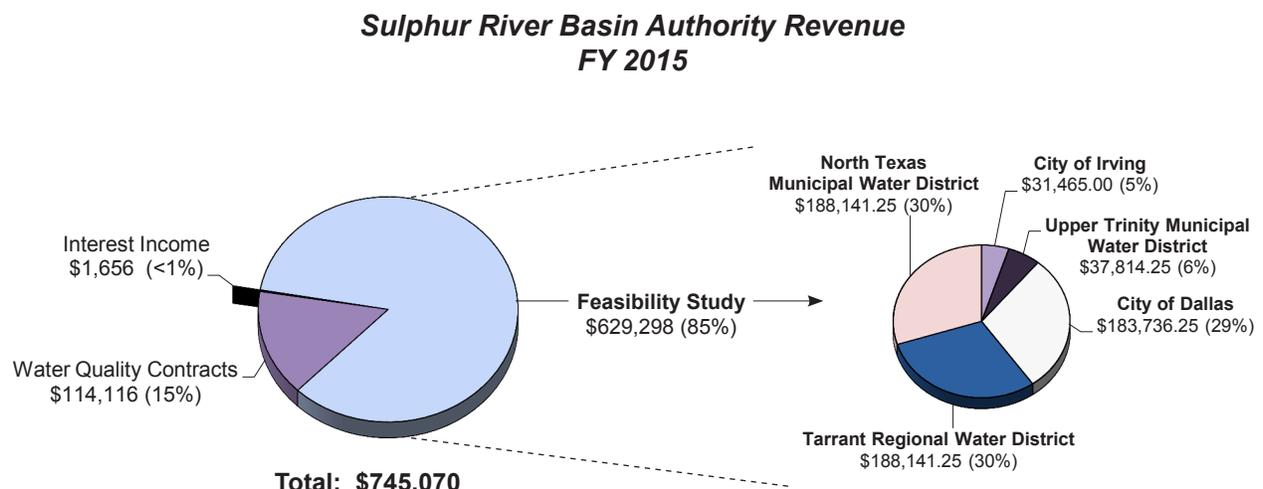
The Legislature created the Sulphur River Basin Authority (SRBA) in 1985 to provide for the conservation and development of natural resources in the Sulphur River basin in northeast Texas. Like other river authorities, SRBA is authorized to conduct a broad range of activities, including building and operating reservoirs, selling raw and treated water, conducting wastewater treatment, acquiring property by eminent domain, building and managing park land, and generating electricity. In practice, however, SRBA's activities are limited to administering grants and contracts to

- study the feasibility of developing additional water supplies within the Sulphur River basin; and
- monitor the water quality in the basin through the Texas Clean Rivers Program.

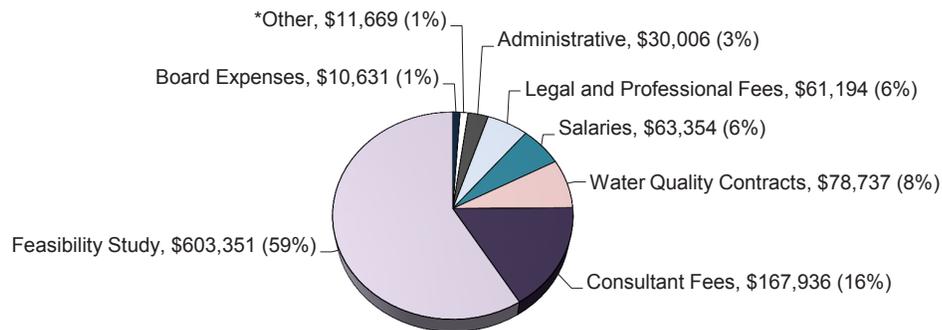
The map on page 4 shows SRBA's boundaries, which include territory in 10 of the 11 Texas counties that make up the basin.¹

Key Facts

- **Board.** SRBA is governed by a seven-member board appointed by the governor with the advice and consent of the Senate. The board consists of two members from each of the three regions of the basin and one at-large member.² Members serve six-year staggered terms. The board meets monthly and elects a president to serve a two-year term.
- **Funding.** SRBA receives no state appropriation. In fiscal year 2015, SRBA collected about \$745,000 and spent about \$1 million, as shown in the following pie charts, *Sulphur River Basin Authority Revenue and Expenditures*. About 84 percent of SRBA's funding comes from member cities and water districts in the Dallas-Fort Worth metroplex, collectively known as the Joint Commission for Program Development (JCPD), to study the feasibility of developing water resources in the basin.³ SRBA is not authorized to assess taxes.



Sulphur River Basin Authority Expenditures FY 2015



Total: \$1,026,878

* Includes capital costs, newspaper advertisements, insurance, bonds, and travel.

- **Staffing.** In fiscal year 2015, SRBA employed one staff, an administrator, at its office in Wake Village. SRBA also contracts with a consultant to manage its contracts for the feasibility study.
- **Feasibility study.** SRBA contracts with engineering firms and the U.S. Army Corps of Engineers to study water resources within the Sulphur River basin. Specifically, the studies aim to identify water supply strategies and determine the economic, environmental, hydrological, geologic, and social impacts of development in the basin. Since 2011, SRBA has spent about \$2.7 million studying various impacts of proposed water development strategies in the basin.
- **Water quality.** The Texas Commission on Environmental Quality contracts with SRBA to plan, coordinate, and monitor water quality within the basin through the Texas Clean Rivers Program. SRBA subcontracted with Texarkana College for collection and reporting of water quality samples and data for 16 sites in fiscal year 2015.

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¹ The Sulphur River basin includes territory in the following counties: Bowie, Cass, Delta, Franklin, Hopkins, Hunt, Lamar, Morris, Red River, Titus, and Fannin (which is not included in SRBA's boundaries).

² The Sulphur River basin is divided into three regions to ensure adequate geographic representation on the board. Region 1 includes Bowie and Red River counties; Region 2 includes Cass, Franklin, Hunt, Morris, and Titus counties; and Region 3 includes Delta, Hopkins, and Lamar counties.

³ The Joint Commission for Program Development includes the following members in addition to the Sulphur River Basin Authority: City of Dallas, City of Irving, North Texas Municipal Water District, Tarrant Regional Water District, and the Upper Trinity Regional Water District.

ISSUE 1

The SRBA Board Has Not Built the Trust Needed to Effectively Carry Out Its Mission.

Background

The Sulphur River Basin Authority's (SRBA) mission is to provide for the conservation and development of natural resources within the Sulphur River basin. The basin covers 11 counties in northeast Texas and SRBA's boundaries include territory in all but one of these counties. SRBA is governed by a seven-member board that consists of two members from each of the three geographic regions of the basin and one at-large member.¹ Because SRBA only employs one administrative staff, the SRBA board is largely responsible for managing SRBA's day-to-day operations. SRBA also contracts with a consultant to manage its feasibility study contracts.

Texas has 16 water planning regions. SRBA and most of the Sulphur River basin are located within Region D, which covers most of northeast Texas, including Texarkana. However, the basin stretches into Region C, which includes the Dallas-Fort Worth metroplex.² Region C and Region D have a long history of interregional water plan conflicts and lawsuits over Region C's plans to seek additional water in Region D. Because SRBA is funded by entities in Region C to study water development projects, SRBA is at the center of these conflicts.

Beginning in 2001, parties in the Dallas-Fort Worth metroplex, collectively called the Joint Commission for Program Development (JCPD), contracted with SRBA to study the feasibility and impacts of water development in the basin.³ SRBA contracted with an engineering firm, the Sulphur Basin Group, and together with the U.S. Army Corps of Engineers began studying the feasibility of constructing Marvin Nichols Reservoir in the Sulphur River basin. Due to opposition by some local interests in Region D who oppose construction of a reservoir, SRBA backed away from studying the reservoir specifically and in 2013 began a more comprehensive feasibility study of all options for water development in the basin.

Through its water development studies, SRBA must interact with and balance the interests of many stakeholders, including cities in both Regions C and D, water districts, private landowners, and environmental and agricultural interests such as the timber industry. 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 or wishes to control future water rights and have become heavy contributors to the lack of regional and interregional cooperation needed to meet the state's water needs. However, as the only entity under Sunset review, the following discussion relates to restoring trust in SRBA to ensure that it effectively serves its mission to balance these competing needs and act in the best interest of the basin.

Findings

The state needs a basin-wide entity to help balance development and conservation efforts in the Sulphur River basin, but SRBA needs comprehensive change to serve effectively as that entity.

The Sulphur River basin has more available water than most other river basins in Texas, making it a prime target for water development. Without an entity to balance competing development and conservation interests, the state risks either overdeveloping the basin to the detriment of the environment or underdeveloping the basin and not meeting the state's water supply needs.

Water needs, interests, and opportunities vary significantly across the 11 counties that make up the Sulphur River basin, and actions in one part of the basin can directly affect the rest of the basin. Also, areas outside the basin, such as the Dallas-Fort Worth metroplex, struggle to meet their water needs and are looking to the basin to help meet these needs. As long as water remains more plentiful in the basin than other parts of the state, the state needs an entity to help balance these diverse needs and interests.

SRBA is the only entity whose boundaries largely cover the entire basin and whose board makeup ensures broad geographic representation of the basin's varied needs and interests.⁴ SRBA is also the only entity in the basin with broad eminent domain authority that would be needed to build a reservoir or other large water development project.

However, the scarcity of water in the state matched against growing water supply demands has placed SRBA, a small river authority with very few resources, in the big leagues of water development. The controversy surrounding the basin's development demands that SRBA increase its maturity and sophistication to meet the heightened public and stakeholder expectations associated with the complex water-development projects being contemplated in the basin. As discussed below, the SRBA board has failed to take needed steps to meet these raised expectations and to establish trust and credibility in SRBA's operations. SRBA needs sweeping changes to effectively serve the basin's needs.

Within such a contentious environment, the lack of trust in SRBA hinders its ability to successfully represent and protect the best interests of the basin.

The Sunset review found a significant amount of public distrust in SRBA and the way it operates. Having a trusted organization, capable of navigating the politics and competitive atmosphere within this broader water fight in the state, is critical to protect the best interests of the Sulphur River basin. While the SRBA board and its actions certainly contribute to the lack of trust, as discussed later in this issue, the attitudes and actions of other stakeholders, competition for future water rights, and the controversial nature of water development foster this lack of trust in SRBA as well.

The Sulphur River basin has more available water than most other river basins.

Sunset found a significant amount of public distrust in SRBA.

The tension between SRBA and its stakeholders plays out in the media about once a week, negatively shaping the larger, public view of SRBA. While some of this skepticism comes from stakeholders that oppose water development in the basin generally, much of it stems from SRBA's poor relationships with local water entities and communities within the basin. This distrust casts doubt on virtually every decision the SRBA board makes, preventing it from accomplishing its mission to protect the best interests of the basin. Restoring public trust in SRBA is essential if SRBA is to secure governmental approval for any permits to develop water in the basin.

SRBA's funding structure creates further barriers to its success through an absence of local investment and perceived lack of independence.

Water districts, such as river authorities, are typically funded by local entities to meet a local water need. This local funding creates a public investment in achieving the mission of the water district. However, unlike most water districts, SRBA does not receive any local funding or serve a specific local water need. The Legislature created SRBA in 1985 to proactively guide water planning and development in the basin before any real interest in or need for water development existed. As a result, local investment by communities and other stakeholders in SRBA and its mission does not currently exist.

Without local investment, SRBA's primary source of funding comes from outside of the basin, raising concerns among stakeholders about SRBA's independence and allegiance. Specifically, the funding for SRBA's main function, the feasibility study, comes from JCPD located in the metroplex, prompting local stakeholders to raise concerns about SRBA's motives and question the independence of its actions. This distrust in SRBA has even led some stakeholders to cast doubt on the study data and engineering firm involved in the feasibility study, even though the data must be scientifically sound for permit approval for any future water development projects.

Actions of the SRBA board aggravate the atmosphere of distrust surrounding SRBA.

The SRBA board has failed to effectively structure and manage the organization to carry out its mission successfully, particularly in the high-stakes arena of water development that the Sulphur River basin has become. The board has not addressed critical gaps in its operational responsibilities, and board members sometimes act independently rather than as a whole to further the basin's interests. These board actions, or failures to act, compromise SRBA's credibility and trust and ultimately threaten the board's ability to carry out its mission, as discussed below.

- **No executive director.** The SRBA board has chosen not to employ an executive director, which is needed to ensure effective operation of the river authority. The absence of an executive director and part-time nature of the board leads stakeholders to question SRBA's competence

SRBA does not receive any local funding or serve a specific local water need.

The SRBA board has not addressed critical gaps in its operational responsibilities.

Operational Gaps at SRBA

- Ensuring the board adequately understands issues for decision making
- Coordination and relationship-building with stakeholders
- Public outreach, spokesperson with the press
- Encouraging transparency to the public
- Contract management
- Long-term or strategic planning

and capacity to manage complex and controversial projects to fulfill its mission. In other organizations, an executive director often performs the responsibilities discussed below and listed in the textbox, *Operational Gaps at SRBA*, which are essential to establishing and maintaining a competent, credible organization. Without an executive director, the board has taken on some operational duties, but has not acted to ensure other responsibilities are performed or performed well.

In 2014, the SRBA board considered hiring an executive director. However, the board was unable to

agree on a candidate and decided to continue to contract with its consultant instead. The board uses its consultant to perform some operational duties related to the feasibility study, but board members disagree on whether the consultant’s duties are limited to the feasibility study as the contract states or whether the consultant is, for all intents and purposes, SRBA’s executive director.

- **Weak contract management and oversight.** The SRBA board has failed to ensure the contract with its consultant adequately protects the organization’s self-interest, approving unfavorable provisions, providing limited oversight, and not clearly ensuring accountability.

Limited oversight and accountability. SRBA’s consultant contract lacks a clearly defined scope of work, making it difficult for SRBA to hold its consultant accountable. The contract establishes broad goals, but the board’s contract monitoring lacks detail on meetings, activities, and progress of the feasibility study, preventing the board from effectively overseeing the consultant’s performance in meeting those goals. In the absence of thorough contract monitoring, this unclear scope of work creates a substantial risk that the consultant could under-deliver on needed services without any consequences.

Inflated costs. The lack of a clear scope of work and use of a lump sum funding arrangement increases the risk that SRBA pays for more than it

receives in consultant services. SRBA lacks any means of determining whether the consultant’s services require 10 or 60 hours per week, and it does not track how much time the consultant actually works. Therefore, the board cannot assign an appropriate value to this unknown scope of services. Despite this, SRBA’s financial arrangement with its consultant is significant and the contract includes financial add-ons that are not typical and not in SRBA’s best interest, as described in the accompanying textbox.

Financial Provisions of SRBA’s Consultant Contract

- Compensation of \$144,000 per year
- A signing bonus of \$7,000
- Expenses that average \$1,500 per month
- SRBA must provide the consultant a five-month termination agreement, totaling more than \$60,000, while the consultant can terminate the contract with only 60 days’ notice

Best value. SRBA's contract with the engineering firm for the feasibility study lacks an end-date and SRBA has not sought additional qualifications since awarding the initial contract in 2000. Having open-ended contract terms that allow SRBA to use the same contractor for an extended period without rebidding the contract makes it difficult for SRBA to ensure the engineering firm provides the best value, as discussed in Issue 5.

- **Questionable understanding of complex issues.** Board members do not demonstrate adequate comprehension of SRBA's complex and technical operations and responsibilities. While other part-time boards have staff to help supplement their knowledge and ensure an appropriate level of understanding for decision-making purposes, SRBA's lack of staff creates both increased risk and responsibility for the board to fully understand SRBA's operations. While SRBA's consultant and engineering firm contractors are available for questions at board meetings, the board engages in little substantive discussion about their work or SRBA's agenda items in general. In the absence of staff to assist board members' understanding, the board should use its consultants and contractors to summarize complex information and ensure the board understands key points and conclusions well enough to make informed decisions. While contractors sometimes make presentations to the board, board members have not asked to receive the consultants' presentations before board meetings to aid in their preparation. Some of the board members' unpreparedness has been evident at recent board meetings, and the board has just recently begun requesting their board packets earlier to ensure adequate time to prepare before the board meetings. SRBA cannot build credibility or trust among stakeholders or the public if the public does not believe the board adequately understands the issues before them.
- **Poor coordination with stakeholders and the media.** As a basin-wide river authority, coordination with local stakeholders and partners is a primary responsibility of SRBA, but one that is woefully underperformed. The board as a whole does not make an effort to establish, maintain, or repair these relationships. On an individual basis, some board members attempt to build relationships with certain stakeholders and remedy problems. However, because stakeholders' distrust of the board is so great, and because the formal actions of the board either conflict with individual board members' efforts or do little to publicly acknowledge the value of other potential water partners, SRBA has been largely unsuccessful in repairing local relationships.

This same passive attitude plays out in the board's relationship with the media as well. SRBA does not attempt to provide information or formally engage the press and the board does little to correct negative statements about SRBA that are often inaccurate, taken out of context, or misunderstood. This allows the media to sway the public against SRBA because the public has no way of knowing that it is missing information.

SRBA's lack of staff creates increased risk and responsibility for the board.

SRBA's coordination with local stakeholders is woefully underperformed.

The SRBA board does not embrace the full spirit of openness.

- **Lack of openness and transparency.** The SRBA board does not embrace the full spirit of openness. As a public, governmental entity, SRBA has a responsibility to be transparent and informative to the people it serves. SRBA appears to meet the minimum legal requirements set out in the Texas Open Meetings and Public Information Acts, and the Sunset review did not find any instances where SRBA did not provide documents that were formally requested and within the scope of the Public Information Act. However, SRBA does not go beyond these minimum requirements to better inform and involve stakeholders and the public. To be meaningful, public involvement should include regular contact between an organization and its stakeholders and real opportunities for input and involvement in its operations. The accompanying textbox details some recent examples

when SRBA was not fully transparent. These types of actions perpetuate feelings of distrust and suspicion about SRBA.

**Examples of the SRBA Board's
Lack of Transparency**

- In a September 1, 2015 letter from SRBA to the Texas Water Development Board regarding an interregional conflict, the SRBA board president included a provision requesting that SRBA be designated as a wholesale water provider. While the board authorized the president to send a letter in an open meeting, this significant provision was never discussed. As a result, some stakeholders assumed SRBA was deceitfully attempting to secure the City of Texarkana's water rights. This led to a series of public exchanges of resolutions, requests for appearances, and bad press between SRBA and Texarkana. Ultimately, the SRBA board adopted a policy that requires the entire board to review all correspondence before its release.
- At its October 2015 board meeting, the SRBA board approved its most recent feasibility study without the opportunity for public review and comment. Upon the report's release, stakeholders identified a number of errors. Although most were minor errors or typos, the board had to address them in a subsequent board meeting.

The largest point of confusion for the public and stakeholders is determining SRBA's progress in the basin-wide feasibility study. SRBA provides little public information about the study to stakeholders and interested individuals. At board meetings, the board does not provide copies of the consultant's presentations about the study and does not release any progress reports. Information about the study is verbally presented at board meetings without any documentation or context and is so complex and technical that some board members find it difficult to follow, as does the public. The board also has very limited discussion about the next steps to be taken or work orders for the contractor, leaving the public wondering about the actual progress, direction, and timeline of the study.

SRBA lacks formal and informal mechanisms for obtaining feedback on its studies before the board adopts them. The SRBA board has repeatedly considered and decided against seeking feedback from the public on draft versions of the feasibility study components. While SRBA is not legally required to release *drafts* of the study as long as it is released in its *final* form, by not seeking feedback from the public SRBA breeds further public distrust. While SRBA posts finally adopted studies on its website, no reason exists that SRBA cannot provide the public with a draft study at an appropriate time and seek feedback before final adoption.

Despite the controversial nature and far-reaching impact of SRBA's responsibilities and actions, it does not use several best practices that encourage transparency and open government at its board meetings. The textbox, *Best Practices to Encourage Open Government*, describes several of these practices and their benefits.

Best Practices to Encourage Open Government

- **Availability of board materials.** Making board materials available to the public before board meetings allows the public to follow along with board discussions and encourages relevant public comments for board consideration.
 - **Public comment periods.** Providing opportunities for public comment on agenda items *before* the board makes its decisions can offer additional perspectives to help improve decision making. Public comment is only effective if the public has materials or discussion of the agenda item first to enable them to provide relevant feedback.
 - **Recording board meetings.** Recording board meetings, either by video or voice, provides a more comprehensive record of board discussions than meeting minutes, which are only required to record actions and broad discussion topics.
- **No strategic planning.** SRBA has not addressed other issues facing the Sulphur River basin, largely because it lacks staff capacity to manage additional projects. For example, SRBA has only recently begun conversations about a sedimentation issue that presents both water quality concerns as well as threatens the very water supply options SRBA is studying. Without a plan to address this issue, and staff to execute the plan, SRBA will be unlikely to make a meaningful impact on this problem. To carry out its mission, SRBA should identify, plan for, and address the full range of watershed issues facing the basin.

Recommendations

Because the concerns and distrust surrounding SRBA are deep and widespread, the intent of these recommendations is to effect comprehensive change in SRBA's structure and operations to help restore public trust in and better position SRBA to best meet the needs of the Sulphur River basin.

Change in Statute

1.1 Institute new leadership at SRBA by requiring the terms of all SRBA board members to expire on September 1, 2017.

This recommendation would sweep the SRBA board, providing that all board member terms expire on September 1, 2017. The governor would replace all seven board members at that time, staggering the terms of new appointments such that two terms expire in 2019, two terms expire in 2021, and three terms expire in 2023. This recommendation would preclude SRBA board members appointed before January 1, 2016 from reappointment. However, the governor should consider reappointing board members appointed after January 1, 2016 to promote continuity and understanding of SRBA's complex water

issues on the board. In addition, Issue 5 recommends that the governor designate the presiding officer of the board, as the governor does for the two largest river authorities in the state.

Management Action

1.2 Direct the SRBA board to hire an executive director.

The SRBA board should hire an executive director to assume the current duties of SRBA's consultant related to managing the feasibility study. The executive director would also perform the following operational duties, in addition to those laid out in SRBA's governing legislation:⁵

- Oversee budget, personnel, and general administrative oversight of SRBA
- Actively manage SRBA's contracts to ensure they represent SRBA's best interests
- Serve as SRBA's spokesperson, including coordinating SRBA's responses to the media and fostering collaborative relationships with stakeholders
- Engage in long-term strategic planning and take needed steps to identify and address other issues facing the Sulphur River basin

Beyond an executive director, the SRBA board should be prepared to meet any other future staffing needs to ensure ongoing performance of all of SRBA's operational responsibilities.

1.3 Direct SRBA to seek local financial investment in its water development projects.

To be successful, SRBA should seek financial participation from local water districts, cities, or other local government entities when developing, or studying development of, a new water supply in the Sulphur River basin. If a local entity expresses an interest in participating, SRBA should facilitate discussions between current funding parties, such as JCPD, and the interested local entity to negotiate a fair level of financial participation and amend any contracts accordingly. Any local entity that reaches a financial agreement to join JCPD as a funding party would also participate in directing the feasibility study as a voting member of JCPD. Local investment would help remove perceptions that SRBA lacks independence from interests outside of the basin. This recommendation would also help ensure local stakeholders are represented and invested in SRBA and its responsibilities to identify, study, and address water development in the Sulphur River basin.

1.4 Direct SRBA to seek bids for the next phase of its feasibility study.

SRBA should seek qualifications from additional engineering firms before proceeding onto the next phase of its feasibility study. While using the same engineering firm can offer continuity for a long-term water development project, seeking qualifications from additional firms could ensure SRBA gets the best value as it moves into the permitting phase for any selected plan.

1.5 Direct SRBA to implement the following practices to improve transparency and openness in its operations.

- **Stakeholder input.** SRBA should develop formal mechanisms for seeking stakeholder input on its operations, particularly in developing any studies of the basin that affect a specific stakeholder group.
- **Public hearings.** SRBA should hold a public hearing to gather input on any studies or technical memoranda that are part of a larger study before final approval. SRBA should make copies of the studies or memoranda available on its website at least 20 days before the public hearing.
- **Public comment.** While SRBA already provides opportunity for public comment at its board meetings, the board should adopt a policy to allow for comments before the board votes on any significant agenda item.
- **Make board materials available to the public.** SRBA should make its board packets available to the public on its website at least one day before the board meetings, as well as provide a hard copy packet at its meeting for anyone who requests a packet by phone or email.
- **Record meetings.** SRBA should continue to record its board meetings and public hearings, by voice at a minimum, as a supplemental record to its meeting minutes.
- **Open government 102.** SRBA should request the attorney general's office provide a public workshop to discuss general open meeting and record requirements, and respond to questions from both SRBA and the public. The workshop should occur at an SRBA board meeting. The workshop should provide guidance on how legal requirements apply to a small organization and direction on how organizations can be more transparent by going beyond minimum legal requirements.

Fiscal Implication

These recommendations would not have a cost to the state and any costs to SRBA would be offset by other savings. Hiring a qualified executive director would cost SRBA about \$130,000 per year plus any benefits offered by SRBA. The cost of this position would largely be offset by incorporating the duties of SRBA's consultant into the duties of its executive director. SRBA could fund any costs through its water development contracts, such as its current contract with JCPD, and seek any necessary contract revisions to accommodate needed shifts in funding allowances. The other recommendations to improve transparency could have a small cost, but could be absorbed within SRBA's current resources.

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¹ The Sulphur River basin is divided into three regions to ensure adequate geographic representation on the board. Region 1 includes Bowie and Red River counties; Region 2 includes Cass, Franklin, Hunt, Morris, and Titus counties; and Region 3 includes Delta, Hopkins, and Lamar counties.

² While the Sulphur River basin spans Regions C and D, SRBA's boundaries are limited to Region D.

³ JCPD includes the following entities in addition to SRBA: City of Dallas, City of Irving, North Texas Municipal Water District, Tarrant Regional Water District, and Upper Trinity Water District.

⁴ SRBA's boundaries cover all of the counties except Fannin County (10 of the 11 counties) in the Sulphur River basin.

⁵ Section 10, S.B. 5, 69th Legislature, 1st Called Session, 1985.

— **CENTRAL COLORADO RIVER AUTHORITY**
APRIL 2016

AUTHORITY AT A GLANCE

CENTRAL COLORADO RIVER AUTHORITY

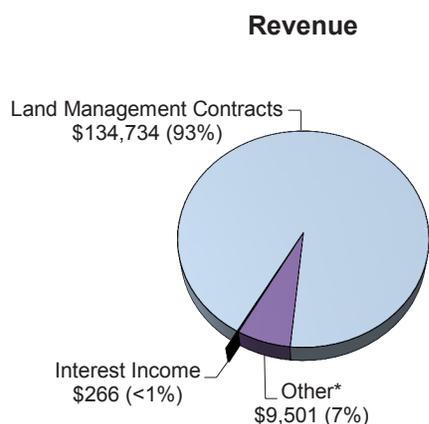
The Legislature created the Central Colorado River Authority (CCRA) in 1935 to preserve, store, and distribute the waters that feed the Colorado River within Coleman County. Like other river authorities, CCRA is authorized by law to conduct a broad range of activities, including building and operating reservoirs; selling raw and treated water; conducting wastewater treatment; acquiring property by eminent domain; building and managing park land; and generating electricity. In practice, however, CCRA's activities are limited to providing land management services to private landowners.

The map on page 4 shows CCRA's boundaries, which are limited to Coleman County.

Key Facts

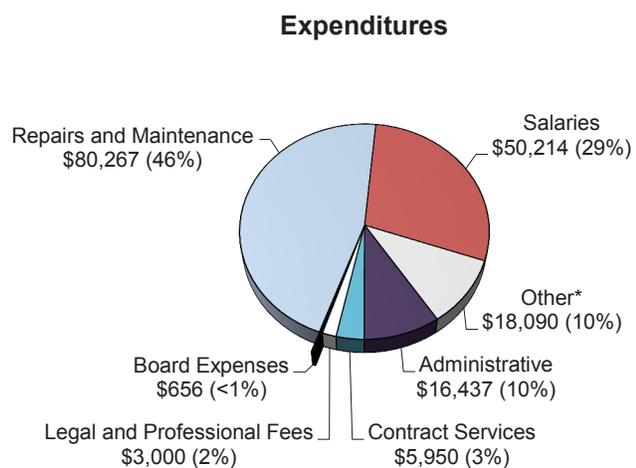
- **Board.** CCRA is governed by a five-member board appointed by the governor with the advice and consent of the Senate. Each board member must be a resident of Coleman County. Members serve six-year staggered terms. The board meets monthly and elects a president each year.
- **Funding.** CCRA receives no state appropriation. In fiscal year 2015, CCRA collected about \$145,000 and spent about \$175,000, as shown in the pie charts, *Central Colorado River Authority Revenue and Expenditures*. Almost all of CCRA's funding comes from private landowners. CCRA is not authorized to assess taxes.

Central Colorado River Authority Revenue and Expenditures — FY 2015



Total: \$144,501

* Includes insurance and property equity return.



Total: \$174,614

* Includes administrative fees, insurance, postage, meals, travel, cell phone, professional dues, taxes, and permits.

- **Staffing.** In fiscal year 2015, CCRA employed one staff, a heavy equipment operator, at its office in Coleman. CCRA also contracts with a part-time administrator to manage CCRA's finances and record-keeping.
- **Land management services.** Private landowners hire CCRA to provide land management services, such as clearing brush, digging stock tanks, and repairing small earthen dams. CCRA charges an hourly rate of \$150 for its bulldozer services.
- **Water supply.** CCRA owns the water rights to three small lakes in Coleman County. These lakes were built decades ago to provide a water supply to several small towns without a dependable water source. In the 1970s, however, installation of a pipeline providing treated water from Lake Coleman eliminated the towns' need for these small lakes. Today, CCRA's lakes are no longer used for water supply and are located on privately controlled land with no public access.

ISSUE 2

CCRA No Longer Serves a Necessary Public Purpose.

Background

In 1935, the Legislature created the Central Colorado River Authority (CCRA) to address a growing need for flood control and water conservation throughout Coleman County. CCRA actively planned for and addressed Coleman County's watershed needs through the 1960s, building several small lakes to act as community reservoirs to supply water to rural towns that did not have a stable water supply. However, by the 1970s, a pipeline from Lake Coleman provided water throughout Coleman County, replacing the need for CCRA's small lakes. The table, *CCRA Lake Comparisons*, compares the size of CCRA's lakes, which generally span the size of two to four football fields, to other well-known lakes throughout Texas. CCRA also assisted in initial planning and studies for O.H. Ivie Reservoir, south of Coleman County, which was ultimately built by other entities.

CCRA Lake Comparisons¹

Name	Owned By	Normal Capacity (in acre/feet)
Lake Novice	CCRA	222
Lake Sealy	CCRA	600
Lake Talpa	CCRA	232
Lake Coleman	City of Coleman	38,094
Lake Ray Hubbard	City of Dallas	452,040
Possum Kingdom Lake	Brazos River Authority	540,340
Lake Travis	Lower Colorado River Authority	1,134,956
Lake Livingston	Trinity River Authority	1,741,867

Since its creation, CCRA has also built numerous small retention ponds or "stock tanks" for flood control purposes that also serve as a water source for landowners' livestock. CCRA was the first in the state to use power equipment, rare and expensive at the time, to dig these stock tanks, helping local landowners who could not build such projects on their own. Today, CCRA and its one employee provide land management services to local landowners and monitor the condition of three small earthen dams on CCRA's lakes about once a year.

Findings

CCRA operates like a private business and no longer serves a clear public purpose.

CCRA's current operations consist almost entirely of providing landowners with bulldozing services that are essentially identical to services offered by private land management companies. Landowners hire CCRA to build small stock tanks, repair small dams and spillways of existing stock tanks, and clear trees and brush. CCRA's operator performs these services well, but since the private sector can and does perform these services, CCRA is directly competing with the free market.

CCRA's operations do not serve a direct public purpose or provide a public benefit, hallmarks of traditional government services. Although land

Recent CCRA Projects

- Dredging and repairing a tank the local country club uses to water its golf course
- Clearing trees and brush for a business planning to put in a vineyard
- Clearing brush for a landowner, allegedly for tax purposes

management services potentially contribute to water conservation or flood prevention in a general sense, CCRA does not select its projects based on any identified needs in the Colorado River watershed. Instead, CCRA provides services to individual landowners based on a "first come, first served" basis. The textbox, *Recent CCRA Projects*, lists some of CCRA's recent land management projects. CCRA has not demonstrated any measureable impact of its projects on water conservation or flood prevention. Further, any water quantity or quality improvements that result from these services would also occur if these services were being provided by private companies in place of CCRA.

CCRA contends it charges a lower hourly rate for its services than private competitors, thus providing a public service to landowners through cost savings. Sunset staff found competitors operating in Coleman County with lower, comparable, and higher rates. If CCRA operates at a lower rate, it can do so because it has a competitive advantage over private businesses. As a governmental entity, CCRA only needs to cover its operating costs and does not have to pay taxes or make a profit.

CCRA also does not target its services toward entities performing a public purpose. For example, the Central Colorado Soil and Water Conservation District in Coleman County owns 81 flood control dams and contracts for a great deal of dam maintenance and repair work. However, CCRA has never performed dam maintenance or repair services for the district.

CCRA does not perform functions typical of a river authority.

Aside from potential conservation and flood control aspects of its land management services, CCRA does not perform functions typical of river authorities. For example, CCRA does not monitor water quality, sell water, or treat wastewater and has not developed a water supply source since 1947. Entities other than CCRA manage all of Coleman County's water-related needs.

- **Water supply.** The county receives its water supply and treatment largely from the City of Coleman and the Brown County Water Improvement District. Other cities and regional entities, such as San Angelo, Abilene, and the Colorado River Municipal Water District, are actively engaged in developing needed water supply opportunities in the region.
- **Water quality.** The Texas Commission on Environmental Quality (TCEQ), the Upper Colorado River Authority (UCRA), and the Lower Colorado River Authority perform water quality monitoring for the Colorado River watershed. Should a water issue arise in Coleman County, these entities are more prepared, experienced, and able to address the problem than CCRA.

While CCRA has an ongoing responsibility related to the earthen dams that create its small lakes, CCRA has not performed any maintenance to remove trees or brush on these dams in decades, or possibly ever. For similar-sized dams, TCEQ recommends quarterly inspections and regular removal of trees and brush growing on the dam. CCRA only inspects its dams once a year to see whether a dam or spillway has collapsed or eroded, as CCRA would be liable for any damages to private land caused by dam failure. While CCRA continues to hold water rights for these lakes, it has done little to protect these rights and has not developed another beneficial use for the lakes since they stopped serving their water supply purpose. Individuals have used the water in these lakes without CCRA's permission, once when an oil company pumped out water for its drilling operations and once when the owner of the land surrounding another one of the lakes sold water to a highway construction crew. CCRA essentially relinquished ownership of its lake near Gouldbusk, Texas, when the owner of the land surrounding the lake tore down CCRA's dam and built a new one to enlarge the lake.

CCRA has not positioned itself to perform traditional river authority functions in the future and has not taken any active steps to ensure its continued relevance in the Colorado River watershed. CCRA has also not taken steps to build relationships with other local, regional, and state water entities, participate in regional water planning processes, or document the needs of its local watershed. As an organization, CCRA has not developed stable funding sources or grown its staff and expertise necessary to carry out typical river authority functions.

CCRA does not meet minimum expectations of a governmental agency.

CCRA operates without many of the governing documents and standard procedures expected of a government agency. CCRA's bylaws have not been updated since 1958 and CCRA does not have current policies or other documents that typically guide the operations of a government agency. State law requires CCRA and other river authorities to adopt formal policies governing a wide range of standard government practices, such as conflicts of interest, investment rules, and other standards of conduct.² To date, the CCRA board has not adopted any of the required policies. The textbox on the following page, *Basic Governance Documents CCRA Lacks*, provides a list of the standard

CCRA has done little to protect its water rights or develop a beneficial use for its lakes.

CCRA has not taken steps to ensure its continued relevance.

**Basic Governance Documents
CCRA Lacks**

- Updated by-laws
- Board policies or handbook
- Employee manual
- Records retention schedule
- Public Information Request documentation
- Policies required by state law:
 - Conflicts of interest
 - Standards of conduct
 - Nepotism
 - Code of ethics
 - Travel expense guidelines
 - Investment rules or guidelines
 - Budget/accounting guidelines
- TCEQ-required policies:
 - Professional service contract guidelines
 - Historically Underutilized Businesses
 - Equal Employment Opportunity
- Documentation for its operations, such as contracts or policies relating to services provided to landowners

governance and administrative items CCRA was unable to provide. State law also requires river authorities to conduct a management audit every five years and submit the results to TCEQ, but CCRA has never performed such an audit.

UCRA operates adjacent to Coleman County and could absorb CCRA's minimal responsibilities.

UCRA has both the expertise and the capacity to perform CCRA's functions. UCRA already conducts water quality monitoring, watershed planning, or water development efforts in three counties immediately west and southwest of Coleman County — Runnels, Concho, and McCulloch counties. UCRA is well-regarded in the region for its work monitoring the quality of the Colorado River watershed and has shown its willingness to partner with local communities to meet their water needs. UCRA has a positive reputation for its ability to seek state and federal grants and to coordinate local and regional fund matching for such projects.

UCRA is also better positioned to manage and determine the best use of CCRA's small lakes. UCRA controls the water rights to one large and two small lakes, and assists small communities in the region to identify water supply sources. UCRA is currently finalizing the transfer of

ownership of one of its small lakes, comparable to the size of CCRA's lakes, to the city of Robert Lee to help meet its water supply needs. UCRA would be well-equipped to determine if any beneficial use for CCRA's lakes exists.

Recommendations

Change in Statute and Management Action

2.1 Transfer CCRA's functions and jurisdiction to UCRA.

Under the provisions of Senate Bill 523, 84th Legislature, which placed river authorities under Sunset review, Sunset staff cannot recommend a river authority be abolished. Instead, this recommendation would transfer CCRA's functions to UCRA, consolidating the two jurisdictions under one river authority.

The recommendation would require the transfer of all assets from CCRA to UCRA, including CCRA's financial assets, bulldozer, real property, and water rights. UCRA and CCRA would be required to jointly develop a consolidation plan to address timelines for the transfer and whether UCRA would continue to employ CCRA's bulldozer operator. The plan must include an assessment of any watershed needs and priorities in Coleman County and ways in which UCRA could potentially address those needs. UCRA and CCRA would complete the consolidation plan by September 1, 2017, and complete all necessary transfers by December 31, 2017, as CCRA operates on a calendar year. Under this recommendation, CCRA's board would disband on December 31, 2017.

The recommendation would also direct UCRA to consider all potential options for the future of the CCRA lakes, including the following options:

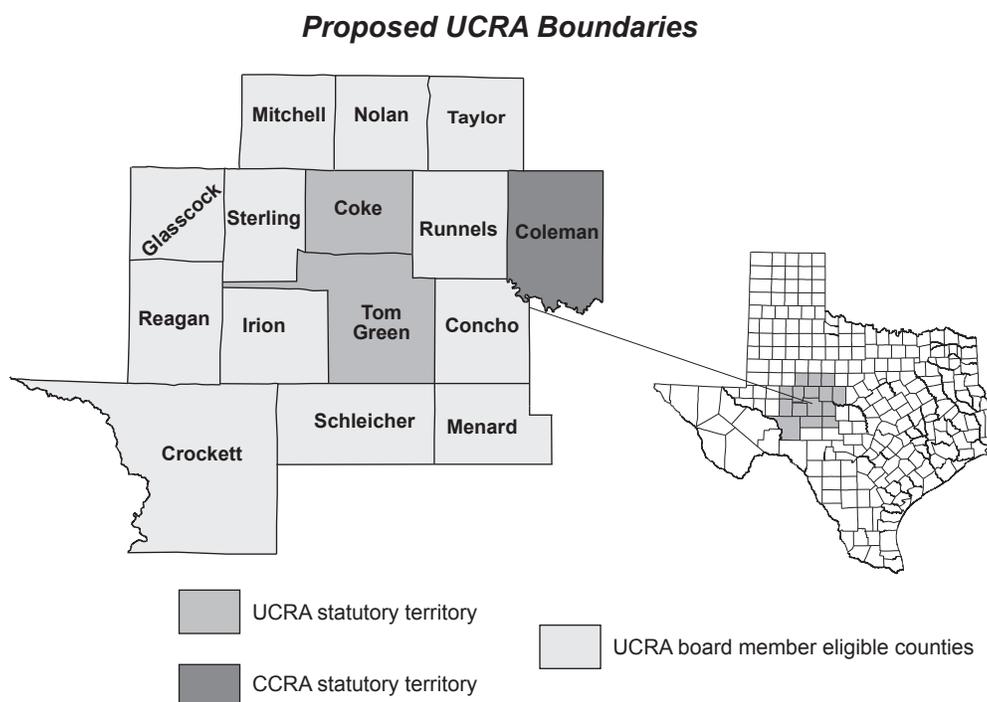
- Retain ownership of the lakes, perform regular dam maintenance, and determine if beneficial use exists for the water.
- Sell the lakes to the owners of the land surrounding the lakes or another interested party. UCRA should notify TCEQ of any change in dam ownership and stress the importance of regular dam maintenance to the new owners.
- Demolish the small earthen dams in a safe manner that eliminates future risk of flood damage and liability. UCRA would need to submit an engineering report to TCEQ for approval, addressing structural plans and any anticipated damage or associated risks of removing the dams. UCRA could subsequently sell the property.

As a management action, this recommendation would also direct TCEQ to inspect each of CCRA's three lakes and determine the condition and any repair needs of the dams. TCEQ should report the results of these inspections to the Sunset Commission, CCRA, and UCRA by December 31, 2016.

Change in Statute

2.2 Clarify UCRA's territory, boundaries, and board makeup to accurately reflect its jurisdiction.

This recommendation would clarify the boundaries of UCRA to match its service area and to include Coleman County. While statute currently describes UCRA's territory as limited to Tom Green and Coke counties, statute requires three of the nine board members to be appointed from counties either contiguous to the authority or within twenty-five miles of the authority, as shown in the map below.³ Because UCRA's current operations also extend to all these counties, not just Tom Green and Coke, this recommendation would update UCRA's boundaries to reflect its actual regional footprint.



The recommendation would also change the makeup of the UCRA board to reflect its expanded jurisdiction. Rather than having board member positions tied to specific counties, as statute currently requires, the recommendation would instruct the governor to appoint all nine board members from within UCRA's updated jurisdiction, such that the members would adequately represent the different geographic areas of the region.⁴ This approach would give the governor more flexibility in selecting board members and ensure one county's interests do not dominate UCRA's attention. This change in appointments would not affect current UCRA board members; the governor would use the broader geographic criteria for appointments occurring on or after September 1, 2017.

Fiscal Implication

The transfer of CCRA's functions and jurisdiction to UCRA would not have a fiscal impact to the state. These recommendations would transfer approximately \$108,000 in cash and investments, \$150,000 in real property, and \$400,000 in equipment from CCRA to UCRA, based on estimates as of April 2016.

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¹ Information about CCRA owned lakes provided by the Texas Commission on Environmental Quality. Information about comparison lakes available at <http://www.twdb.texas.gov/surfacewater/rivers/reservoirs/index.asp>.

² 30 T.A.C. Sections 292.1–292.13.

³ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Sections 8506.003 and 8506.051(b), Special District Local Laws Code.

⁴ Section 8506.051(b), Special District Local Laws Code.

———— **UPPER COLORADO RIVER AUTHORITY**
APRIL 2016

AUTHORITY AT A GLANCE

UPPER COLORADO RIVER AUTHORITY

The Legislature created the Upper Colorado River Authority (UCRA) in 1935 to preserve, store, and distribute the water of the upper portion of the Colorado River. Like other river authorities, UCRA is authorized by law to conduct a broad range of activities, including building and operating reservoirs; selling raw and treated water; conducting wastewater treatment; acquiring property by eminent domain; building and managing park land; and generating electricity. In practice, however, UCRA's activities are limited to receiving grants and contracts to

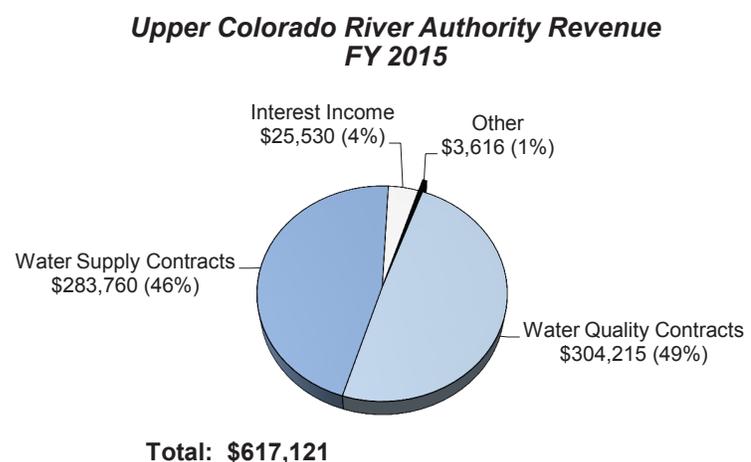
- monitor water quality, such as through the Texas Clean Rivers Program; and
- develop and conserve water supply resources.

The map on page 4 shows UCRA's statutory boundaries, which consist of Tom Green and Coke counties.

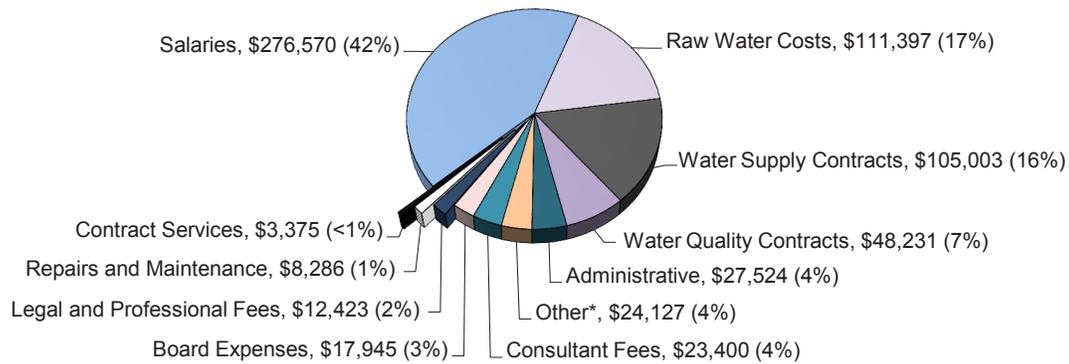
Key Facts

- **Board.** UCRA is governed by a nine-member board appointed by the governor with the advice and consent of the Senate. The board consists of three members from Tom Green County, three members from Coke County, and three members from surrounding counties. Members serve six-year staggered terms. The board meets monthly and elects a chair each year.
- **Funding.** Beginning in the 1940s, the Legislature temporarily appropriated property tax revenue from Tom Green and Coke counties, totaling approximately \$1.4 million over 20 years, to UCRA to develop local flood control projects. Through investments and loans to local cities for water projects, UCRA's reserve fund has grown to about \$3.5 million.

Today, UCRA receives no state appropriation. In fiscal year 2015, UCRA collected about \$617,000 and spent about \$658,000, as shown in the pie charts *Upper Colorado River Authority Revenue* and, on the following page, *Upper Colorado River Authority Expenditures*. UCRA's funding comes from a combination of grant revenue from various state and federal environmental agencies, contracts with local cities, and a small amount of water sales to local cities. UCRA is not authorized to assess taxes.



**Upper Colorado River Authority Expenditures
FY 2015**



Total: \$658,281

* Includes professional dues and subscriptions, insurance, postage, security alarm fees, cell phones, travel, and permits.

- **Staffing.** In fiscal year 2015, UCRA employed three staff at its office in San Angelo — a director of operations, a hydrogeologist, and an office manager.
- **Water quality.** UCRA receives a number of grants and contracts to monitor water quality within the watersheds of the Concho and upper Colorado rivers. As part of the Texas Clean Rivers Program, UCRA collects water quality samples and data at 50 sites and reports this information to the Texas Commission on Environmental Quality for the statewide water quality database. UCRA also monitors storm water pollution at 10 sites on the Concho River through a contract with the City of San Angelo.
- **Water supply.** UCRA holds rights to around 80,000 acre-feet of water in O. C. Fisher Reservoir and other small reservoirs. As a wholesale water provider, UCRA sells water to several small towns and water supply districts. UCRA also administers a grant from the Texas State Soil and Water Conservation Board to remove brush to enhance local water supplies.

ISSUE 3

UCRA Has Not Set Priorities to Ensure Its Operations Meet Changing Local Watershed Needs.

Background

The Upper Colorado River Authority (UCRA) performs water quality and water supply functions to carry out its statutory duties to preserve, store, and protect the waters of the upper Colorado River watershed located in Tom Green, Coke, and other contiguous counties. UCRA operates with three staff and an annual budget of about \$620,000, the majority of which comes from water quality grants and contracts for special projects, described in the textbox, *UCRA's Main Sources of Funding*.

UCRA also has a reserve fund of about \$3.5 million built from investments of excess funds originally appropriated to it from the 1940s to 1960s. UCRA uses this reserve primarily for low-interest loans to local communities pursuing water development projects. Funding for all staff salaries and operations is contingent on staff identifying and obtaining funding through grants and special projects.

UCRA's Main Sources of Funding

- **Federal grants.** Environmental Protection Agency Urban Waters grant — water quality
- **State grants.** Texas State Soil and Water Conservation Board Water Supply Enhancement grant — brush control
- **Contracts for special projects.**
 - Texas Commission on Environmental Quality Clean Rivers Program (sub-contract through the Lower Colorado River Authority) — water quality monitoring
 - City of San Angelo — storm water quality monitoring
 - City of Robert Lee — well exploration
- **Water sales.** Pass-through sales of treated water from San Angelo to other local cities

Findings

UCRA has not set priorities to ensure its operations stay relevant to local watershed needs.

While UCRA's operations largely function in a well-run, successful fashion, the board has not identified priorities or provided strategic direction to guide UCRA's future operations. Instead of the board setting priorities and goals for the authority's operations, UCRA staff seek out grants and contracts on their own and then request board approval for these projects. These staff-identified projects determine and fund UCRA's operations. Further, while UCRA has relationships with the local communities it serves, it does not have a formal process to work with these communities to identify local watershed needs to inform UCRA's priorities and operations.

UCRA's loan program has made only two loans in 20 years.

Without clear identification of watershed priorities, UCRA's approach creates risks that its operations could fall out of line with the needs of local communities, diminishing the benefit of and need for its programs. For example, UCRA's loan program no longer appears to meet a local need. UCRA has made only two loans to fund water development projects in the last 20 years. Changes over time, including wider availability of low-interest financing at the Texas Water Development Board, have reduced the demand for UCRA's loan program. In addition, UCRA's \$3.5 million reserve fund is not sufficient to finance the costs of most large water projects and could likely only be used to finance one small new project, as shown in the table, *Modern Costs of Small Water Projects*. Despite the decreased demand for its loan program, UCRA's board has not developed other uses for its reserve fund or applied less restrictive investment policies to better use the fund to meet watershed needs.¹

Modern Costs of Small Water Projects

Project	Cost Range
Small reservoir — less than 10,000 acre-feet	\$2–13 million
Small water pipeline — 6–12 inch pipe	\$100,000–200,000 per mile
Small water treatment plant — 1–2.5 million gallons per day	\$2.4–5.5 million

Local communities are unsure how UCRA can assist with their watershed needs.

While many local communities report positive opinions about UCRA, they struggle to envision how UCRA could assist with their watershed needs in the future. If UCRA does not work with communities to identify and provide solutions to changing watershed needs, it risks losing relevance in the region. For example, local communities that contract with UCRA for water from San Angelo could decide to directly contract with San Angelo for water, rather than use UCRA as a middleman. Similarly, entities that contract with UCRA for water-quality improvement efforts, such as the Lower Colorado River Authority and the City of San Angelo, may someday find it in their best interests to contract with another entity or perform those duties in-house.

In the absence of clearly identified priorities, UCRA's financial instability creates a risk that UCRA will stray from its mission.

UCRA staff relies exclusively on funding from grants and contracts for their continued employment. This funding model creates inherent risks that UCRA could stray from its mission just to secure sufficient funding to maintain its staff and operations. For example, the city of Robert Lee recently contracted with UCRA to dig several test wells to explore for groundwater. Digging wells for groundwater exploration, at best, only tangentially relates to UCRA's statutory duties, which are limited to surface water. A similar situation has already played out for the neighboring Central Colorado River Authority (CCRA) whose operations have strayed from its mission such that it no longer performs

traditional river authority functions and does not have a relevant role solving its local watershed needs, as discussed in Issue 2.

UCRA also does not have strategies to ensure the programs critical to its mission continue. UCRA risks losing staff and programs each time a grant or contract expires. For example, in response to the recent loss of funding for outreach and education efforts, UCRA ceased most of its educational programing and relinquished a building on which it spent significant resources to turn into an education center. For programs UCRA deems critical to its mission, UCRA should develop strategies to ensure their continued operation.

UCRA's self-defined mission statement, stated in the accompanying textbox, increases the risk it will stray from its mission. By focusing exclusively on water quality, this statement neither reflects the full scope of watershed duties provided in UCRA's statute nor many of UCRA's current programs.

UCRA's Mission Statement

To enhance the water quality of the streams and tributaries located within the watershed of the Upper Colorado River Authority

Recommendation

Management Action

3.1 Direct UCRA to work with local partners to identify priorities and develop strategies to meet changing watershed needs.

UCRA should formally seek input from local communities to identify the needs of its watershed, and the board should prioritize the needs that are in line with UCRA's statutory duties and mission, as well as its capacity to help address them. Like a strategic plan, UCRA should match its operations and any new grants or contracts to these priorities and be mindful of initiating any new activities not in line with its mission or priorities. UCRA should also monitor progress in meeting its priorities, and identify and make any organizational and operational changes needed to meet them.

UCRA should revisit its mission statement in light of its broader statutory duties and, for programs deemed critical to its mission, the board should develop strategies to ensure their continued operation. In addition, the board should

- evaluate whether its reserve fund could be managed differently to help meet local watershed needs;
- consider changing its policies to allow a broader range of investments as authorized by the Public Funds Investment Act; and
- ensure the use of its reserve fund links to the program priorities it identifies for the watershed.

Having formal priorities developed in conjunction with local stakeholders would help UCRA establish a more strategic direction for its programs, better guide the use of its resources, and ensure its ongoing relevance in addressing future watershed needs. Engaging with local communities to identify priorities would help keep UCRA positioned as an entity able to adapt to the changing landscape of its watershed needs. Additionally, seeking input from local communities could help UCRA establish more secure local partnerships by informing communities of the types of assistance it can offer.

Fiscal Implication

This recommendation would not have a fiscal impact to UCRA or the state.

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¹ In 1998, the UCRA board passed a resolution restricting itself to only the safest investments, such as certificates of deposit, even though the Public Funds Investment Act authorizes numerous other investment options. UCRA's current reserve sits largely unused in certificates of deposit earning only 0.22 percent interest.

**PALO DURO RIVER AUTHORITY
OF TEXAS
APRIL 2016**

AUTHORITY AT A GLANCE

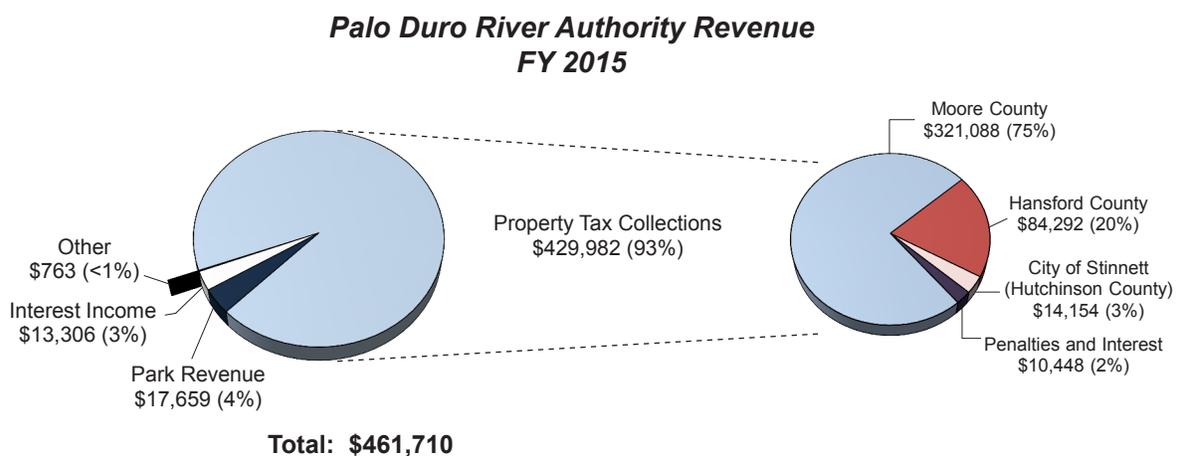
PALO DURO RIVER AUTHORITY OF TEXAS

The Legislature created the Palo Duro River Authority of Texas (PDRA) in 1973 to construct a dam and reservoir to supplement municipal water supplies in a region completely dependent on groundwater. Like other river authorities, PDRA is authorized by law to conduct a broad range of activities, including building and operating reservoirs; selling raw and treated water; acquiring property by eminent domain; and building and managing park land. However, in practice, PDRA only maintains and operates the Lake Palo Duro dam and reservoir and manages the surrounding park. Palo Duro Creek and Horse Creek, intermittently flowing tributaries of the North Canadian River, feed Lake Palo Duro.

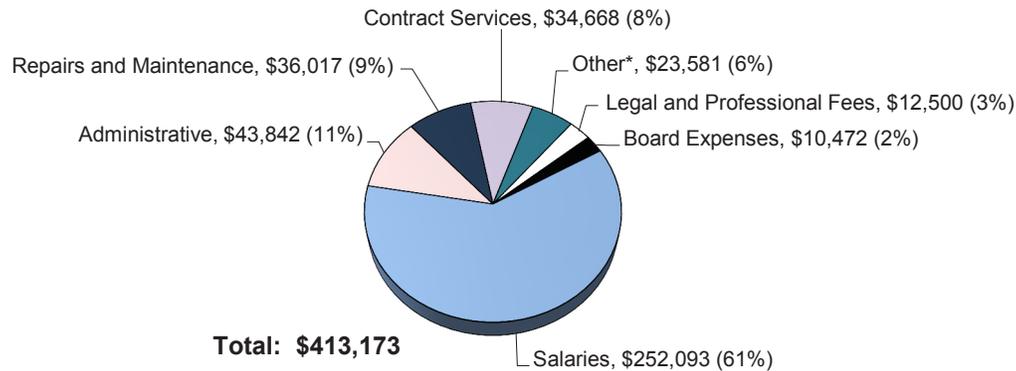
The map on page 4 shows PDRA’s boundaries, which include Hansford County, Moore County, and the City of Stinnett in Hutchinson County.

Key Facts

- **Board.** PDRA is governed by a nine-member board appointed by the commissioners’ courts of Hansford County and Moore County, and by the Stinnett city council. The board consists of four members from each county and one from the City of Stinnett. Members serve two-year staggered terms. The board meets monthly and elects a president each year.
- **Funding.** PDRA receives no state appropriation. In fiscal year 2015, PDRA collected about \$462,000 and spent about \$413,000, as shown in the following pie charts, *Palo Duro River Authority Revenue and Expenditures*. PDRA’s primary source of revenue is from property taxes collected from the member counties and city.



**Palo Duro River Authority Expenditures
FY 2015**



* Includes insurance, bonds, professional dues and fees, legal notices and publications, travel, and equipment rentals and leases.

PDRA is one of the few river authorities in Texas authorized to collect property taxes to support its operations. For a fee, member counties assess and collect PDRA's taxes, in addition to their own, and then deposit these collections directly to PDRA. PDRA paid off the bonds associated with the dam construction in 2013 and now only assesses taxes to fund its maintenance and operation costs. In fiscal year 2015, PDRA's property tax rate was 1.3 cents per \$100 valuation of property.

- **Staffing.** In fiscal year 2015, PDRA employed four staff at its office, located on its park grounds about 10 miles north of Spearman in Hansford County. PDRA employs a general manager, an administrative assistant, and two full-time maintenance staff. Both the general manager and head of maintenance live on PDRA's park grounds.
- **Lake Palo Duro.** PDRA completed construction of its dam and reservoir in 1991. The reservoir has a conservation storage capacity of approximately 60,900 acre-feet, encompassing a surface area of 2,413 acres. However, low lake levels have prevented PDRA from constructing a pipeline to supplement water supplies for its member cities. Instead, PDRA manages its property and reservoir as a park, collecting approximately \$17,700 in park fees for boating, camping, and fishing in fiscal year 2015.

ISSUE 4

PDRA Lacks Flexibility to Adapt to Changed Local Circumstances.

Background

The Legislature created the Palo Duro River Authority of Texas (PDRA) to develop supplemental water supplies for Hansford and Moore counties and the City of Stinnett by constructing a reservoir, Lake Palo Duro, completed in 1991.¹ PDRA is governed by a nine-member board appointed by the commissioners' courts of Hansford and Moore counties, and the Stinnett city council. PDRA is funded by property taxes assessed on residents of its member counties and city, as well as park revenues from camping and boating fees. PDRA paid off the bond debt for construction of the reservoir in 2013 and reduced its tax rate to only collect a maintenance and operation tax of 1.3 cents per \$100 valuation of property to maintain its dam and park operations. Lake Palo Duro is fed by two small, intermittently flowing tributaries of the North Canadian River, Palo Duro Creek and Horse Creek, and has a conservation storage capacity of almost 61,000 acre-feet.

Findings

PDRA is more comparable to a local water district than a river authority.

River authorities are a type of water district; they share similar powers and duties, but have notable differences. The chart, *River Authorities vs. Water Districts*, shows PDRA is structured more like a water district than a river authority because of its local board appointments and funding structure. Additionally, unlike most river authorities, PDRA manages only a small, local reservoir and not a basin or watershed of a major river.

PDRA also does not meet the definition of a "river authority" in the Texas Water Code because the governor does not appoint PDRA's board.² Further, because PDRA's operations serve local and not regional needs, the Texas Commission on Environmental Quality (TCEQ) does not require PDRA to comply with its rules for all other river authorities.³

PDRA does not manage a basin or watershed of a major river.

River Authorities vs. Water Districts

	River Authorities	Water Districts	PDRA
Board Structure	Usually governor-appointed	Locally elected or appointed	Locally appointed
Funding Structure	Revenue from water sales contracts; grants for state and federal projects	Local tax contributions from member cities or counties	Local tax contributions from member city and counties; park fees
Jurisdiction	Regional, typically covers all or a substantial part of a river basin or watershed; averages 10 counties	Local, typically limited; Can range from all or part of one or more counties	Hansford and Moore counties and the City of Stinnett

PDRA's lake was only 3 percent full as of April 2016.

Due to low lake levels, PDRA cannot fulfil its original purpose of providing water supplies to local cities.

Because Lake Palo Duro has not maintained sustainable lake levels to justify building a costly pipeline to deliver water to cities, PDRA has been unable to accomplish its water supply mission. Due to factors beyond PDRA's control, largely a lack of rainfall and inconsistent creek inflows, the lake was only 3 percent full as of April 2016. The textbox, *Reasons Why PDRA's Reservoir Is Not Full*, provides more detail on why the reservoir has not reached levels to support construction of a pipeline to member cities. Without the availability of water from PDRA, the cities have drilled additional groundwater wells to meet their ongoing water supply needs.

Reasons Why PDRA's Reservoir Is Not Full

- Not fed by a continually flowing river or other significant water source
- Lack of regular rainfall
- Changes in irrigation practices have reduced water runoff
- Continuous drought status in the region

Even though the member counties and city do not have access to supplemental water from PDRA, their taxpayers must continue to pay to maintain the dam and reservoir, which serve both flood control and recreational park purposes. Continued funding for regular dam maintenance is necessary to prevent risks of dam failure. Dam failure could put those downstream at risk for personal injury and property damage, for which PDRA would likely be responsible.

Unlike other local water districts, PDRA's governing law does not provide for its dissolution or allow changes to its structure based on local circumstances.

Since PDRA has been unable to meet its local members' water needs, PDRA risks its members no longer wanting to participate in and fund PDRA, or to continue it in its current form. However, PDRA's governing law does not contemplate these changed circumstances. The Legislature likely never envisioned Lake Palo Duro would not have enough water to supply its members, preventing PDRA from fulfilling its mission. PDRA's governing law does not provide for PDRA's dissolution, nor does it provide guidance on how the city and county members may withdraw from PDRA in response to changed circumstances, such as lack of water. The law only provides guidance on how members may detach from PDRA before bonds are issued, not after they are paid off, as is the case currently.

PDRA cannot fulfill its original mission.

In comparison, other water districts have statutory authority to adapt to meet changing local needs, including the ability to convert into a different type of water district, consolidate two or more districts, or dissolve a district completely. For example, if the board of a municipal utility district, a type of water district, determines that dissolution is in the best interest of the district, it may simply dissolve by a unanimous vote.⁴ Statute also often provides for disposal or reallocation of assets and any outstanding debts and obligations. PDRA would benefit from similar flexibility so its members could adapt to local needs and circumstances without state legislative action.

Recommendations

Change in Statute

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.

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, the members would also have to agree to transfer dam ownership from 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.

Since PDRA was created to meet local water supply needs, this recommendation would promote local control by allowing local members to collaboratively decide if and how member withdrawal or dissolution should occur, rather than requiring state legislative action.

Fiscal Implication

These recommendations would not have a fiscal impact to PDRA or the state. If a member of PDRA pursued withdrawal or dissolution, any resulting financial implications would have to be agreed to by the PDRA board and each of its member counties and city. Without such agreement, the withdrawal or dissolution and any resulting shifts of fiscal responsibilities would not take place.

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us>. Chapter 438 (H.B. 1531), Acts of the 63rd Legislature, Regular Session, 1973.

² Section 30.003(4), Texas Water Code.

³ 30 T.A.C. Sections 292.1 and 292.13.

⁴ Section 54.737, Texas Water Code.

CROSS ISSUE

ISSUE 5

River Authorities Lack Basic Good Government Standards That Would Enhance Transparency, Accountability, and Compliance With State Law.

Background

Senate Bill 523, 84th Legislature, placed 18 river authorities under Sunset review and directed Sunset staff to assess the governance, management, operating structure, and compliance with legislative requirements for each river authority. Over its nearly 40-year history, Sunset has observed, documented, and applied good government standards that reflect best practices in these same areas to approximately 130 state agencies subject to the Sunset Act. Sunset staff determined river authorities would benefit from these best practices to improve their openness, responsiveness, and accountability.

The following material discusses the changes needed to apply certain good government standards and enhanced transparency measures to the Sulphur River Basin Authority (SRBA), Upper Colorado River Authority (UCRA), and Palo Duro River Authority of Texas (PDRA), as well as to ensure compliance with applicable state laws and Texas Commission on Environmental Quality (TCEQ) rules. This issue does not address the Central Colorado River Authority because Sunset staff recommends transferring its functions, as described in Issue 2.

Findings

River authorities have not applied several best practices that would improve openness and transparency.

Transparency encourages honesty, openness, and accountability in government actions. The Legislature cited problems with transparency and accountability in placing river authorities under Sunset review. While the Texas Open Meetings and Public Information Acts set out minimum requirements for open government, application of the best practices below would further encourage transparency of, and meaningful public involvement in, river authority operations. With the exception of SRBA as discussed in Issue 1, these small river authorities have little interaction with the public, but implementing these best practices could help the authorities meet basic expectations of the public.

- **Public testimony.** Neither UCRA nor PDRA provides a formal opportunity for the public to appear and speak before the board. When people affected by a river authority's decisions have an opportunity to provide meaningful input to the board, the additional information and perspective improves the overall decision-making process. To Sunset's knowledge, these river authorities have never denied a member of the public an opportunity to speak at a board meeting, but a formal agenda item for public comment would reassure the public that the boards encourage and value their comments.

The Legislature cited problems with transparency and accountability at river authorities.

The mass of documents in authority offices indicates they may not comply with their record retention plans.

SRBA's and PDRA's governing laws are hard to find and outdated.

- **Website.** Websites are a primary way organizations interact with the public today. PDRA has no website. While limited information about PDRA exists on other state and county websites, those sites do not contain contact information, board meeting and board member information, links or references to PDRA's governing laws, or up-to-date park information. Because PDRA's largest function and only source of non-tax revenue is from operation of a park, PDRA should be especially vigilant in publicizing its amenities to draw additional visitors.
- **Record retention requirements.** The Texas State Library and Archives Commission requires river authorities to submit and comply with record retention policies, which vary depending upon the authority's size and functions. Record retention policies are important to ensure an organization adequately and accurately responds to open record and public information requests. UCRA has not filed required record retention schedules with the commission and while SRBA and PDRA have filed schedules, the mass of documents observed in their offices indicate the authorities may not be removing or destroying documents in compliance with their plans.
- **Public Information Act requests.** Routine tracking of Public Information Act requests can help an organization keep clear records of timely responses and help an organization identify trends in requests. If an organization routinely receives requests for the same information, the organization could consider making that information more publicly available, such as on its website. While SRBA, UCRA, and PDRA receive few formal Public Information Act requests, none had clear, centralized records to document their requests and responses.
- **Board updates.** At the SRBA and PDRA board meetings, authority staff and consultants provide oral reports to update board members on projects and operations, and raise any issues that warrant board attention. These reports do not offer sufficient detail to provide the board a thorough understanding of the authorities' activities. In comparison, UCRA staff summarizes its monthly activities in written reports, which help document the authority's activities and ensure the board and public have a better understanding of the authority's operations and accomplishments.
- **Outdated governing laws.** While some water districts and river authorities are governed by laws that are fully compiled in a specific Texas code or statute, SRBA and PDRA's governing laws only exist in session law.¹ Since these authorities' creation, the Legislature has amended SRBA's law three times and PDRA's enabling law seven times. In the absence of a codified statute, members of the public and even SRBA and PDRA themselves struggle to correctly compile all of the changes to their laws and understand their cumulative impact. SRBA and PDRA's governing laws also contain out-of-date references to defunct state agencies and code sections that have been amended, renamed, or no longer exist, further complicating full understanding of these authorities' powers and duties.

The river authorities' governing laws do not reflect good government standards typically applied during Sunset reviews.

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed, unless an overwhelming reason exists not to do so. These across-the-board recommendations reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. Across-the-board recommendations are statutory administrative policies adopted by the Sunset Commission containing "good government" standards and reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government. The concepts contained in these standards are applicable to river authorities, though some may need modification to match their unique structure and functions. As quasi-state agencies created by the Legislature, river authorities directly serve the public interest and, while they do not receive a direct appropriation from the Legislature, they are largely funded with public money.

- **Conflict of interest.** Unlike other river authorities, PDRA's governing laws do not require board members and staff with a financial interest in a contract to disclose that interest to the board prior to voting. Requiring disclosure of potential conflicts of interest would help ensure decisions are made solely in the public's interest.
- **Presiding officer designation.** The laws governing SRBA and UCRA do not require the governor to designate the presiding officer of their boards. Having the governor designate the presiding officer ensures a more direct connection between the board and the state's highest elected official, and increases the authority's accountability to the state's leadership. SRBA and UCRA boards elect their own board president. 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.² This standard would not apply to PDRA since its board is appointed locally rather than by the governor.
- **Grounds for removal.** Unlike other river authorities, PDRA's governing law lacks a provision relating to grounds for removal of a board member. Having a statutory basis and process for removing a board member who does not maintain the qualifications to serve, who has neglected duties, or for improper conduct in office can help ensure the sound and consistent functioning of the policymaking body.
- **Board member training.** The laws governing SRBA, UCRA, and PDRA do not establish the type of training and information board members need to properly discharge their duties. While state law requires each board member to obtain Texas Open Records and Open Meetings trainings upon taking their oath of office, river authorities' statutes require no additional training to ensure each member has an adequate understanding of the authority's governing laws, operations, or budget before making decisions regarding matters of public interest.

Having the governor designate the presiding officer increases accountability to the state's leadership.

Board member training can ensure adequate understanding of authority operations.

Due to the authorities' small size, board members may be very involved in day-to-day operations.

- **Policymaking and staff functions.** The laws governing SRBA, UCRA, and PDRA do not provide for separating the policymaking functions of the boards from the day-to-day administrative functions of managing the authorities. Such a provision can help avoid confusion about who is in charge of operations, which can undermine an authority's effectiveness. Due to the small staff sizes of SRBA, UCRA, and PDRA, the boards may be very involved in the day-to-day functions and operations of the authorities. Without separation of functions, board members involved in administrative matters may also inadvertently risk violating the Texas Open Meetings Act by discussing and deciding public business in a non-public forum.
- **Complaint information.** The laws governing SRBA, UCRA, and PDRA do not require the river authorities to maintain complete information on complaints. Maintaining a system for acting on complaints and keeping proper documentation of complaints helps protect the public by ensuring problems will be addressed in a timely fashion. While these small river authorities currently receive few complaints, a complaint tracking system could help improve management of authority operations, alert the authority to damages in the authority's infrastructure, and raise awareness of other high-risk issues, especially if these authorities grow or take on controversial projects in the future.
- **Alternative dispute resolution.** The laws governing SRBA, UCRA, and PDRA do not encourage use of alternative dispute resolution procedures, as state law requires for typical state agencies. Without this provision, river authorities could miss ways to improve dispute resolution through more open, inclusive, and conciliatory processes designed to solve problems by building consensus, rather than through contested proceedings or lawsuits.

Alternative dispute resolution procedures could apply to internal employee grievances, interagency conflicts, contract disputes, actual or potential contested matters, and other areas of potential conflict.

SRBA and UCRA have not fully complied with applicable state laws and TCEQ rules.

TCEQ has a continuing right of supervision over all water districts, including river authorities.³ TCEQ rules require certain river authorities and water districts to comply with a combination of requirements in state law and several other good government administrative policies, described in the textbox, *TCEQ-Required Policies*.⁴ SRBA and UCRA are subject to TCEQ's rules, but PDRA is not.⁵

TCEQ-Required Policies

- Code of ethics – must include provisions to address conflicts of interest, nepotism, standards of conduct, and a prohibition on granting public money
- Travel expenditures – must provide for reimbursement of necessary and reasonable travel expenditures
- Investments – must comply with the Public Funds Investment Act and Public Funds Collateral Act
- Professional services – must prohibit use of competitive bids and maintain a list of at least three pre-qualified persons or firms for contracts over \$25,000 for professional services
- Industrial development and pollution control bonds – must comply with disclosure requirements of these bonds
- Management policies – must obtain an independent management audit and comply with the intent of HUB and EEO laws

While SRBA and UCRA comply with most of TCEQ's rules, they have not adopted the following administrative policies as required:

- A code of ethics relating to standards of conduct, personal financial disclosure, and conflicts of interest
- A prohibition on granting money or other valuable property to individual citizens, associations, or corporations
- The requirement to maintain a list of at least three pre-qualified persons or firms for professional services contracts over \$25,000
- Compliance with the intent of the state policy to contract with historically underutilized businesses⁶

Recommendations

Summary of Recommendations

Recommendation	SRBA	UCRA	PDRA
<i>Recommendation 5.1 — Transparency</i>			
a. Formal public testimony	*	Apply	Apply
b. Establish a website	*	*	Apply
c. File and comply with records retention plan	Apply	Apply	Apply
d. Track Public Information Act requests	Apply	Apply	Apply
e. Written reports at board meetings	Apply	*	Apply
f. Update governing laws	Apply	*	Apply
<i>Recommendation 5.2 — Good Government Standards</i>			
a. Conflict of interest	*	*	Apply
b. Designation of presiding officer	Apply	Apply	N/A
c. Grounds for removal	*	*	Apply
d. Board member training	Apply	Apply	Apply
e. Separation of duties	Apply	Apply	Apply
f. Complaint information	Apply	Apply	Apply
g. Alternative dispute resolution	Apply	Apply	Apply
<i>Recommendation 5.3 — Compliance with TCEQ Rules</i>	Apply	Apply	N/A

* Currently in place or required by river authority's governing law.

5.1 Require opportunities for public testimony at board meetings and direct river authorities to implement additional best practices to improve openness and transparency.

Change in Statute

- a. **Public testimony.** This recommendation would require UCRA and PDRA to provide the public the opportunity to comment on each agenda item at board meetings, as well as an opportunity to comment on any issue or matter under the river authority's jurisdiction. While this recommendation would be a statutory change, UCRA and PDRA should also include "public testimony" as an agenda item on every monthly board agenda.

Management Action

- b. **Website.** PDRA should develop and maintain a website that provides clear, updated information about its operations. The website should contain contact information, including the physical address and phone number of the main office; lake and park information, such as hours, fees, and rules; basic information about PDRA, including its history, programs, tax information, and governing laws; a list of current board members and the county or city each represents; and agendas of previous and upcoming board meetings. PDRA should inquire whether its member counties and city could help develop and support the website or provide other tools or assistance to reduce any associated costs.
- c. **Record retention plan.** UCRA should create and file all necessary record retention schedules with the Texas State Library and Archives Commission to ensure proper compliance with state and local record retention requirements. SRBA, UCRA, and PDRA should manage their files according to their commission-approved plans to properly comply with open records and public information requests and to ensure records are properly maintained, archived or destroyed.
- d. **Public Information Act requests.** SRBA, UCRA, and PDRA should track any Public Information Act requests in a format that easily allows the authority to track the timeliness of their response and identify trends in requested information.
- e. **Board updates.** SRBA and PDRA should provide clear written summaries of staff and consultant activities at each board meeting. These reports should include updates on all of the authority's major functions, including any meetings attended; status of projects; relevant watershed information, such as lake or river levels or water quality; and any other significant issues. These reports would ensure the board members and the public have a full understanding of the authority's activities.
- f. **Update governing laws.** This recommendation requests that the Texas Legislative Council prepare legislation codifying the laws governing the SRBA and PDRA for introduction during the 86th Legislative Session. This recommendation also requests that the legislative council submit to the Sunset Commission, not later than the date of Sunset's public hearing at which the commission's staff presents its recommendations for the SRBA and PDRA, a list of any issues regarding the law governing each authority that might present an impediment to codifying that law and should be addressed in the authority's sunset bill in order to facilitate the codification of that law. Sunset staff would work directly with the authorities and the legislative council to determine whether and how to address the identified issues before the Sunset Commission's decision hearing at which the commission votes on the recommendations for the SRBA and PDRA.

Change in Statute

5.2 Apply good government standards to river authorities' governing laws to promote accountability, transparency, and best practices.

- a. **Conflict of interest.** This recommendation would apply the provisions for disclosure of conflicts of interest in SRBA's governing laws to PDRA.⁷ The recommendation would require PDRA board members to disclose a financial interest in a contract for property or the construction of facilities and prohibit members from voting or participating in discussions related to the contract in which an interest exists.
- b. **Presiding officer designation.** This recommendation would require the governor to designate the presiding officer of both the SRBA and UCRA boards to serve in that capacity at the pleasure of the governor.
- c. **Grounds for removal.** This recommendation would apply the reasons and processes for removal of a board member in UCRA's statute to PDRA.⁸ The recommendation would specify the grounds for board member removal, including inefficiency, neglect of duties, or misconduct in office. The recommendation would also provide a process for board member removal, including guidelines for timelines, public hearings, and action by appointing bodies.
- d. **Board member training.** This recommendation would clearly establish the type of information to be included in the board member training for SRBA, UCRA, and PDRA. This training would need to provide board members with information regarding the authority's governing laws; its programs, functions, by-laws, and budget; the results from its most recent formal audit and any previous TCEQ management audit; the requirements and training available related to open meetings, open records, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.
- e. **Separation of duties.** This recommendation would require SRBA, UCRA, and PDRA to adopt policies clearly defining the board's role of setting policy separate from day-to-day staff responsibilities.
- f. **Complaint information.** This recommendation would require SRBA, UCRA, and PDRA to maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures. These river authorities would also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints.
- g. **Alternative Dispute Resolution.** This recommendation would require SRBA, UCRA, and PDRA to develop and implement a policy to encourage alternative procedures for dispute resolution. These river authorities would also coordinate implementation of the policy, provide training as needed, and collect any related data concerning the effectiveness of these procedures.

Management Action

5.3 Direct SRBA and UCRA to comply with TCEQ rules by adopting required administrative policies.

SRBA and UCRA should adopt the following policies to comply with state law and TCEQ rules:

- A code of ethics relating to standards of conduct, personal financial disclosure, and conflicts of interest
- A prohibition on granting money or other valuable property to individual citizens, associations, or corporations

- The requirement to maintain a list of at least three pre-qualified persons or firms for professional services contracts over \$25,000
- Compliance with the intent of the state policy to contract with historically underutilized businesses

Fiscal Implication

These recommendations would not have a significant fiscal impact to SRBA, UCRA, or PDRA, or to the state. While PDRA may incur a small cost associated with establishing a website, it could be absorbed using existing resources. If PDRA is able to collaborate with its member counties or city for website support, any website-related costs could be further reduced.

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¹ Chapter 3 (S.B. 25), Acts of the 69th Legislature, 1st Called Session, 1985 and Chapter 438 (H.B.1531), Acts of the 63rd Legislature, Regular Session, 1973.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Sections 8503.007(a), 8502.009(e), Texas Special District Local Laws Code.

³ 30 T.A.C. Section 292.1(a).

⁴ 30 T.A.C. Section 292.13.

⁵ 30 T.A.C. Section 292.1.

⁶ 30 T.A.C. Sections 292.13(1)(D), 292.13(4)(B), 292.13(6)(B), 292.13(1)(C).

⁷ Section 7, Chapter 3 (S.B. 5), Acts of the 69th Texas Legislature, First Called Session, 1985.

⁸ Section 8506.053, Texas Special Districts Local Laws Code.

APPENDIX

APPENDIX A

Staff Review Activities

During the reviews of the Sulphur River Basin Authority (SRBA), Central Colorado River Authority (CCRA), Upper Colorado River Authority (UCRA), and Palo Duro River Authority of Texas (PDRA), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with authority personnel; attended board meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups, stakeholders, and the public; reviewed authority documents and reports, state statutes and session law, legislative reports, previous legislation, and relevant literature; researched the organization and functions of similar entities in other states; and performed extensive background and comparative research.

In addition, Sunset staff also performed the following activities unique to these authorities:

- Toured the main offices of each river authority as well as various lakes, dams, rivers and other portions of the authorities' watersheds
- Accompanied authority staff performing dam inspections and water quality monitoring activities
- Toured past authority projects for water quality and land improvement services
- Met with several city and county officials within the authorities' watersheds and attended a meeting of a regional water planning group
- Interviewed staff from the Texas Commission on Environmental Quality, Texas Water Development Board, Texas State Soil and Water Conservation Board, Office of Governor Greg Abbott, Attorney General's Office, Comptroller of Public Accounts, Texas Workforce Commission, Texas Legislative Council, Texas State Library and Archives Commission, and the Legislative Budget Board.

Sunset Staff Review of the
Sulphur River Basin Authority
Central Colorado River Authority
Upper Colorado River Authority
Palo Duro River Authority of Texas

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