

SUNSET ADVISORY COMMISSION

FINAL REPORT



*Texas State Soil and Water
Conservation Board*

July 2011

Sunset Advisory Commission



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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency’s operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

*Texas State Soil and Water
Conservation Board*

SUNSET FINAL REPORT
JULY 2011

This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, March 2010* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.
 - *Hearing Material, April 2010* – Summarizes all responses from agency staff and the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission at its public hearing.
 - *Decision Material, May 2010* – Includes additional responses, testimony, or new policy issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
 - *Commission Decisions, June 2010* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency's Sunset bill.
 - *Final Report, July 2011* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency's Sunset bill.
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Summary

Summary

The Texas State Soil and Water Conservation Board (State Board) has growing pains. Since the agency's creation in 1939 as the State Soil Conservation Board, the agency has grown far beyond its initial role of providing technical assistance, administrative support, and funding to soil and water conservation districts throughout the state.

The State Board now has responsibility for water quality issues related to agricultural and forestry-related runoff; water supply issues related to the control of water-depleting brush species; and public safety concerns related to the maintenance and repair of aging flood control structures throughout the state. With this growth in responsibility, the agency has also grown in size and budget, nearly doubling its budget from fiscal year 2009 to 2010 to more than \$28 million.

While conservation is still the State Board's mission, the agency's responsibilities have significantly expanded.

Despite this growth, the agency has remained in many ways a small, low-profile agency, promoting voluntary programs that are popular because they provide grant funding. Systems and accountability have not really been necessary because the State Board's focus has been on getting money out to landowners to promote conservation. While the State Board does a good job working with landowners and administering programs on the ground level, due in part to its unique relationship with soil and water conservation districts, the State Board lacks processes and systems to track effectiveness and outcomes to justify what the State is getting for its increasingly large investment in these increasingly sensitive areas.

The State Board's development as a decentralized, grassroots agency, while advantageous in the delivery of program services, has contributed to the State Board administering its programs in silos, posing challenges to consistent communication and evaluation of programs statewide. Sunset staff found that the State Board is in need of clear, statewide approaches to ensure that its programs are effective and accountable to the State. These problems are illustrated most significantly in the State Board's program for water supply enhancement through brush control, where an ineffective framework and lingering confusion about the basic purpose of the program limit program evaluation.

The material on the following page summarizes Sunset staff recommendations on the Texas State Soil and Water Conservation Board.

Issues and Recommendations

Issue 1

Weaknesses in the Agency's Riskiest State-Funded Grant Programs Prevent the State From Evaluating Overall Agency Performance.

The majority of the State Board's activities involve making grants of state funds, on a cost-share basis, to landowners to address water quality and water quantity issues and public safety concerns about flood control structures throughout the state. The State Board administers these programs through a decentralized structure that helps ensure that programs are sensitive to the needs of the affected area. However, this structure also challenges the agency's ability to provide a consistent statewide approach for administering these grant programs and, ultimately, to assess how well these programs are working.

The State Board lacks standard practices, such as establishment of clear program goals, measurement of grant performance, evaluation of outcomes, and routine program adjustment to improve performance to ensure that its state-funded grant programs are effective and accountable to the State. While use of empirical evaluation tools, such as modeling and monitoring, for small environmental grants can be expensive and time-consuming, other planning tools are available to clearly link program goals to more easily measured outcomes. Given the recent growth in funding for the State Board's grant programs, a more holistic approach for tying goals to outcomes would provide needed information to help the agency and legislators better evaluate program impact statewide, and ensure the greatest return for the State's increased investment.

Key Recommendation

- Require the State Board to establish specific program goals and statewide grant practices, and to measure impacts for state-funded grant programs.

Issue 2

State Guidance for Water Supply Enhancement Provides a Confusing and Ineffective Framework for Meeting Critical Water Conservation Needs.

The current framework for state water supply enhancement efforts through brush control lacks direction and process to ensure success and effectiveness of the Program. Because landowners participate in the Program for brush control benefits other than water supply enhancement, the agency must balance conflicting expectations for the Program, which ultimately places additional pressure on its implementation efforts. Clarification of the Program's basic purpose, and strengthening the process for prioritization of projects, should allow the State Board to more effectively accomplish legislative intent to focus the program in areas most likely to produce water where it is most needed. Additional requirements for feasibility studies, monitoring, and technical expertise each lend needed credibility to the Program by helping justify program decisions, ensuring effectiveness of the Program, and most likely leading to a more quantifiable means of increasing available water supplies for the State.

Key Recommendations

- Clarify the Program's focus on water supply enhancement through the removal of water-depleting brush species.
- Require the State Board to develop a system to rank and prioritize projects, based on water conservation need and water yield.
- Establish an application process for water supply enhancement projects, including requirements for feasibility studies on new projects.
- The State Board should continue to dedicate funding toward evaluating the effectiveness of the Program.

Issue 3

Texas Has a Continuing Need for the Texas State Soil and Water Conservation Board.

In its review of the State Board, Sunset staff found that the State has a continuing need to develop and implement conservation plans and abate agricultural nonpoint source pollution, which is a potential contributor to over half of the total impairments of state waterbodies. No significant benefits would justify an alternative organization to the current independent agency structure.

Key Recommendation

- Continue the Texas State Soil and Water Conservation Board for 12 years.

Fiscal Implication Summary

Issue 2 of the report should not result in additional costs to the State.

- **Issue 2** – Requirements to fund feasibility studies or contract for technical expertise should not result in additional costs to the State. However, these requirements would reduce the current funding available to landowners for brush removal and water conservation by approximately \$60,000 to \$80,000 per year.

Summary of Legislative Action ***H.B. 1808 Cook (Nichols)***

House Bill 1808 continues the State Board for 12 years, but requires a special purpose review of the State Board's implementation of Sunset Commission decisions in four years. The bill also contains the Sunset Commission's recommendations aimed at providing processes and systems to ensure that agency programs are effective and accountable. The list below summarizes the major provisions of H.B. 1808, and more detailed discussion is located in each issue.

Sunset Provisions

1. Require the State Board to establish a clearer framework for showing what the State gets for its investment in certain grant programs.
2. Clarify the focus of the State Board's brush control activities on water supply enhancement, and require a system to rank and prioritize water supply enhancement projects based on water conservation need and water yield.
3. Clarify the State Board's ability to accept funds on behalf of the Texas Invasive Species Coordinating Committee.
4. Continue the Texas State Soil and Water Conservation Board for 12 years, but require a special purpose review of the State Board's implementation of Sunset Commission recommendations in four years.

Provisions Added by Legislature

None added.

Fiscal Implication Summary

House Bill 1808 will not result in a significant fiscal impact to the State.

Agency at a Glance
(March 2010)

Agency at a Glance

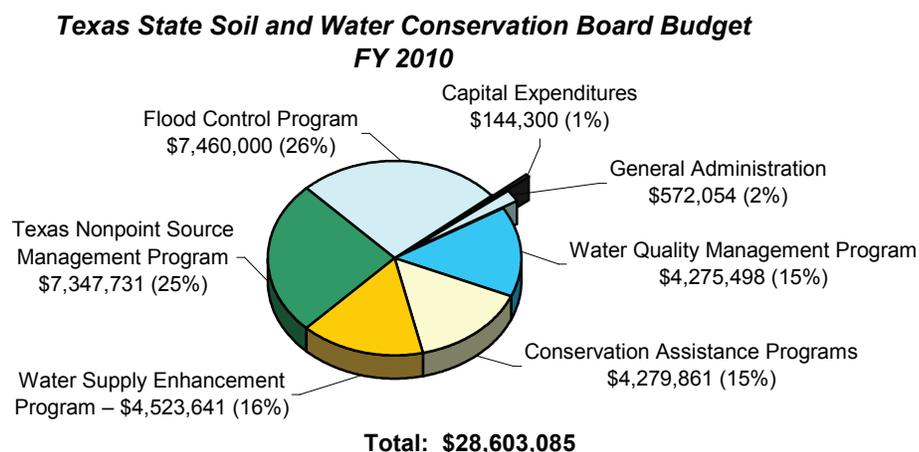
The Texas State Soil and Water Conservation Board (State Board) works directly with owners and operators of agricultural land to develop and implement conservation plans involving land treatment measures for erosion control, water quantity, and water quality purposes. The State Board's mission is to encourage the wise and productive use of natural resources throughout the state and to ensure their availability for future generations. To achieve its mission, the State Board carries out the following key activities:

- provides technical and financial assistance to assist the operation of 216 local soil and water conservation districts;
- serves as the lead state agency for the prevention, management, and abatement of nonpoint source pollution resulting from agricultural and silvicultural, or forestry-related, activities;¹ and
- administers grant programs for the maintenance and repair of flood control dams, water supply enhancement, development of water quality management plans, and management and abatement of agricultural nonpoint source pollution.

All of the State Board's programs and services are voluntary in nature, and the agency performs no enforcement functions.²

Key Facts

- **Texas State Soil and Water Conservation Board.** The State Board comprises seven members, with five members elected from each of the State's five soil and water conservation statewide districts, and two members appointed by the Governor. Governor appointees must be actively engaged and have a land interest in a business related to agriculture, and cannot be a member of the board of directors of a conservation district.
- **Funding.** In fiscal year 2010, the State Board received an appropriation of \$28.6 million, nearly double its fiscal year 2009 appropriation. The pie chart, *Texas State Soil and Water Conservation Board Budget*, shows how this money is to be spent. The additional funding included \$7.5 million for maintenance and repair of flood control dams, \$3 million to expand the Water Supply Enhancement Program, and \$1 million more for the Texas Nonpoint Source Management Program.



- **Staff.** The State Board employs a staff of 68, more than half of whom work in the State Board’s ten regional or program offices. The State Board is headquartered in Temple.
- **Conservation Implementation Assistance.** The State Board provides funding to all 216 soil and water conservation districts to employ technicians who perform operational duties for the districts and provide conservation planning assistance to landowners.
- **Nonpoint Source Grants.** The State Board administers the agricultural and forestry components of the Texas Nonpoint Source Management Program to protect water quality under the federal Clean Water Act. In fiscal year 2009, the State Board awarded \$3.3 million in federal funds and \$1.3 million in state funds to 22 projects, which provided \$1.9 million in matching funds, to address water quality impairments in state waters.³
- **Water Quality Management Plans.** The State Board provides financial and technical assistance to landowners to plan and implement conservation practices that prevent, abate, and manage nonpoint source pollution. As of the end of fiscal year 2009, 14,096 water quality management plans have been developed under the program.
- **Water Supply Enhancement.** The State Board provides funding to landowners in identified priority watersheds for the selective removal of brush species leading to increases in the amount of available surface and groundwater. Since the program’s inception, the program has funded the treatment of 766,529 acres of land that the State Board has estimated to produce over 196,223 acre-feet of water each year.⁴
- **Flood Control Program.** The agency will provide grants for operation and maintenance, structural repair, and rehabilitation of about 2,000 flood control dams located within 106 soil and water conservation districts. The State Board received \$7.5 million for this program for fiscal year 2010, and has allocated about \$2.5 million for the ongoing operation and maintenance of flood structures. The State Board anticipates the remaining funds will support structural repairs.

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¹ Texas Agriculture Code, sec. 201.026.

² Poultry operations are required to maintain water quality management plans through the State Board. While the State Board coordinates producer compliance with water quality management plans, enforcement authority for noncompliant operations lies with the Texas Commission on Environmental Quality.

³ The grant period for projects awarded in fiscal year 2009 runs from three to five years. Additional grant projects from other fiscal years are still ongoing.

⁴ One acre-foot is equal to 325,851 gallons of water, or approximately a football field covered in water one foot deep.

Issues

Issue 1

Weaknesses in the Agency's Riskiest State-Funded Grant Programs Prevent the State From Evaluating Overall Agency Performance.

Background

The Texas State Soil and Water Conservation Board's (State Board's) largest function, representing more than 80 percent of the agency's budget, is to administer grants to reduce nonpoint source pollution and improve water quality and water quantity throughout Texas. The agency's operations are highly decentralized to facilitate the delivery of grant programs, services, and technical assistance to the 216 local soil and water conservation districts (SWCDs) in Texas. Appendix A provides additional detail on the locations of agency operations. The agency's grants fall into two major categories – grants designed to maintain a local soil and water conservation presence across the state through the operations of SWCDs, and grants intended to address specific water quality, water quantity, and flood control concerns.

Grants targeting specific water and flood concerns create the greatest potential risks for the State due to the public safety implications of funded projects, and the State's considerable investment of general revenue funds in these programs. These grants, detailed in the chart *Major State Board Grant Programs*, include programs for water supply enhancement, water quality management plans (WQMP), flood control, and nonpoint source (NPS) management grants. Each of these grants addresses water or public safety hazards and, with the exception of the largely federally funded NPS Grant Program, also presents financial risks to the State. Taken together, the state-funded water supply enhancement, WQMP, and flood control programs amount to a state investment of more than \$16.3 million in General Revenue. The State Board operates these three grant programs on a cost-share basis, using state funding and requiring grantees to pay a portion of the total costs or provide in-kind services.

Major State Board Grant Programs

Grant	Purpose	Operating Budget 2010
Water Supply Enhancement	To enhance the availability of surface and groundwater resources through the selective removal of water-depleting brush species.	\$4.5 million
Water Quality Management Plan	To abate, prevent, and manage nonpoint source pollution through implementation of conservation practices on privately owned rural lands.	\$4.3 million
Flood Control	To assist localities in the operation, maintenance, repair, and rehabilitation of federally designated and constructed flood control structures.	\$7.5 million
Nonpoint Source Management Grants	To manage and abate agricultural and silvicultural nonpoint source pollution through the provision of grants designed to fund specific abatement activities.	\$7.4 million

Findings

The State Board has not followed standard practices to ensure its state-funded, cost-share grants are effective in achieving their intended purpose.

Over the past 33 years, Sunset Staff has reviewed numerous state agencies that provide grants to individuals, units of governments, and other entities, indentifying and compiling standard features and best practices that contribute to an effective and accountable grant program. These standards serve as guidelines for evaluating agencies' grant programs as part of an overall effort to improve grant-making practices. The following material describes areas where the State Board's grant-making activities could benefit from these guidelines and related best practices. While Issue 2 addresses specific elements of the State Board's water supply enhancement program, including setting goals and monitoring performance, its treatment in this issue is meant to reinforce the importance of the agency approaching its grant programs at a higher, strategic level.

The State Board lacks measurable outcomes needed to assess performance of its largest grant programs.

- **Clear Goals.** Agency grant processes should have clear goals providing purpose, direction, and meaning to ensure expenditures achieve a desired outcome. Establishing concrete goals provides a benchmark for measuring agencies' efforts in achieving intended grant outcomes.

State law establishes the intent of both the WQMP and water supply enhancement programs; however, the State Board has not taken the opportunity to more clearly define the goals of each program or establish measurable outcomes, making it difficult to gauge program progress towards a defined result. The Legislature designed the water supply enhancement program to yield additional water in parts of the state with a water conservation need. The Legislature established the WQMP program to prevent or mitigate nonpoint source pollution problems from agriculture and silviculture. Beyond producing water or reducing nonpoint source pollution, the Board has not clearly defined the beneficiaries of these programs or the anticipated results. Clearly articulated program goals would allow the State Board to more easily explain programs to grantees and other stakeholders, and would provide a standard against which to measure grant performance.

- **Performance Monitoring.** Following the awarding of grants, the agency should consistently monitor grantee activities to ensure grant terms are met for the life of the grant contract.

The data collected by the State Board, as well as the agency's existing grant review processes, are incomplete and do not clearly establish that grantees continue to comply with grant terms over the length of contracts. The Board does review landowner receipts to ensure that cost-share money in both the water supply enhancement and WQMP programs is initially spent to install land management practices appropriately; however, the

agency does not routinely verify that grantees continue to comply with grant terms for the lifespan of the practices, as required by the terms of the grant.

The water supply enhancement program does not have a process to verify that landowners maintain land following the initial removal of brush. Grant terms require landowners to keep land clear from brush for 10 years following receipt of cost-share funds. To date, the program has focused all resources on initial brush removal, and has not developed a process to ensure lands remain clear of water-depleting vegetation five to 10 years after the State's payment to landowners, making it difficult to determine if the State continues to receive the expected water-yielding benefits from its investment.

While the WQMP program does have a status review process to verify ongoing compliance with grant terms, the agency cannot provide data on the percentage of all plans that have been reviewed through this process. Though offices supervise a similar number of grants, the number of annual reviews ranges from about 30 to 300, depending on the regional office. Likewise, while the WQMP program targets most grant money to its priority districts – those with the potential for the greatest water quality problems – only some regional offices focus reviews in these priority districts, while others conduct no reviews in priority districts. Taken together, these issues make it difficult to evaluate whether grantees statewide continue to fulfill their obligations for the life of their contracts. The lack of comprehensive data or a statewide approach on the number of reviews, type of operations reviewed, selection method, or targeted statewide priorities as they relate to the program as a whole, prevent State Board staff from gauging whether status reviews are an effectively administered tool for monitoring grant performance.

- **Program Evaluation and Adjustment.** Following grant completion, the agency should evaluate actual results against goals and measures established at the beginning of the process to ensure greater accountability for the use of funds, and should make necessary adjustments to improve future grant-making activities.

While the State Board has performed targeted evaluation of select projects in the water supply enhancement and WQMP programs, the State Board does not attempt consistent or ongoing evaluation of the impact of grants or the overall success of the grant programs. Environmental program evaluation can be accomplished through the use of empirical techniques, such as water monitoring and outcome modeling, though use of these techniques for small-scale grants is widely acknowledged to be difficult and expensive. Grants may also be measured through less empirical methods designed to clearly link program goals to more easily measured short-, medium-, and long-term outcomes. The textbox on the following page, *Evaluation Tools*, provides additional information on typical evaluation methods.

Existing agency processes do not guarantee that grantees meet their obligations over the life of a grant.

The State Board does not perform routine evaluation of its grant programs.

Evaluation Tools

Empirical Tools

- Monitoring – Includes efforts to measure or quantify the changes in waterbodies following the implementation of grant activities.
- Modeling – Involves the development of mathematical models to estimate the impact of grant activities.

Non-Empirical Tools

- Logic Model – A planning tool to clarify and graphically display what a project intends to do and what it hopes to accomplish. Logic models summarize key program elements; explain the rationale behind activities; clarify intended outcomes; and provide a communication tool.
- Comprehensive Planning Documents – Includes other planning tools, such as long-term strategic plans, that connect program resources and activities to expected short-, medium-, and long-term outcomes, providing a basis for developing performance measurement and evaluation strategies.

The State Board does not consistently use any form of monitoring, outcome modeling, or more readily available non-empirical methods to evaluate long-term impacts from individual grants or grant programs as a whole. As a result, it has difficulty determining, for example, whether or not the water supply enhancement program yields water and if so, for whom, or if the installation of WQMPs has improved water quality or helped to prevent additional waterbody impairments. The State Board has acknowledged the need for consistent evaluation of the WQMP program, and recently invested in the development of a site-specific modeling program for WQMPs. The agency hopes the modeling program will be available for testing in the fall of 2010. Without clear measurement of results for the grants programs, no solid basis exists for showing how well these grants and the agency are performing, or what changes may be needed to improve these programs.

Agency decision making is spread among many levels and offices throughout the state.

The State Board’s decentralized structure helps provide needed flexibility to the agency’s grant programs, but complicates its ability to administer grants consistently and assess grant performance.

In the water supply enhancement and WQMP programs, decision making and administration for each program is spread among many levels and offices, including agency headquarters, regional and program offices, SWCDs, and local brush control working groups. This structure allows the agency flexibility in responding to diverse needs across the state; however, a decentralized

administrative structure combined with the lack of a statewide approach and oversight, may produce inconsistent messages regarding program goals and policies, and subsequently lead to varying levels of service or grant assistance across the state. Additionally, decentralization can pose challenges regarding the sharing of information, such as best practices, across grant programs.

Other means of assessing grant performance, such as comprehensive complaint tracking, can also be inhibited by a decentralized structure. Both complaints and other data, including status reviews, provide meaningful feedback on how well programs work; however, without a centralized mechanism for collecting or evaluating this type of information, the agency cannot use trend data to adjust its grant programs, identify policy decisions that may need revision, or target stakeholder education efforts toward common sources of grant noncompliance.

The State Board's own Nonpoint Source Grant Program, as well as programs of other state and federal agencies with similar missions, have developed ways to ensure grants are accountable and effective.

Ideally, the way to judge how well programs are working is to observe results first-hand through the use of empirical evaluation tools. The State Board's NPS Management Grant Program is one such program that employs empirical tools for measuring results through monitoring or predicting results through modeling. Such processes, and the fact that the grant is largely federally funded, greatly reduce the financial risk to the State for how funds are spent.

Recognizing such efforts can be expensive and present logistical difficulties in evaluating the performance of other types of environmental grants, state and federal agencies have developed other comprehensive planning tools to ensure, through non-empirical means, that grant programs have clear goals and are accountable to funders. Numerous federal and state agencies have pioneered the use of non-empirical planning methods, such as logic models, to help demonstrate program impact and provide a framework for evaluation.

In 2005, the Environmental Protection Agency (EPA) began requiring all grant recipients to document outputs and, "to the extent practicable," outcomes.¹ EPA further requires grantees to use logic models as a framework to connect grant activities to short-term impacts and longer-term objectives, all without the expense of project monitoring or modeling. Texas law requires Texas Parks and Wildlife Department (TPWD) to develop a statewide Land and Water Management Resources Conservation and Recreation Plan (Plan). The comprehensive plan links existing state resources, such as wildlife and public lands, to future recreation and conservation needs, and establishes agency goals and objectives to guide future TPWD activities. TPWD is required to use the Plan to evaluate agency programs and initiatives.

Other state and federal agencies use inexpensive tools to evaluate programs.

The State Board’s newest and most expensive grant program is still in development, presenting an opportunity for the agency to implement an improved grant process.

In 2009, the Legislature established a flood control grant program at the State Board, significantly increasing the State Board’s responsibilities and duties, and creating an opportunity for the Board to implement a new grant program consistent with best practices in grant making. The Legislature appropriated an additional \$15 million to the State Board for the biennium to implement this flood control program intended to help areas of the state repair and maintain aging flood control structures. The ultimate goal of the grant program is to prevent loss of life and property due to breaches or failures of existing structures.

The timing, important goals, and the significant funding associated with this new program necessitate the State Board develop the flood control grant program consistent with well-established best practices in grant making, as previously laid out, including establishing clear program goals; developing procedures to verify contract performance throughout the life of the contract; measuring outcomes against goals; and making adjustments to improve the program.

Recommendations

Change in Statute

1.1 Require the State Board to establish specific program goals and statewide grant practices, and to measure impacts for state-funded grant programs.

This recommendation would require the agency to develop appropriate program goals for its state-funded grant programs. Goals should define the beneficiaries of each program and the anticipated program results.

The recommendation would also require the State Board to establish statewide policies in each state-funded grant program to ensure grantees continue to meet grant responsibilities over the life of the grant. The agency could allow offices to have variations in regional grant verification practices based on local needs; however, all verification practices should follow the same basic statewide approach. The agency should also collect and analyze comprehensive data on status reviews or other verification activities to ensure statewide and region-specific activities are sufficient to guarantee grant conditions are met.

Statute would require the agency to create a centralized complaint tracking system to complement the complaint reviews performed by each State Board office. With the statewide approach to verifying grant performance, a complaint system would help ensure consistency in grant administration, and allow the State Board to more easily identify trends, evaluate performance, and adjust grant programs statewide.

Finally, statute would require the Board to measure grant impact, using either empirical or non-empirical methods, and report program results publicly via the agency’s website or through any existing statutorily required annual publication.

Management Action

1.2 The State Board should use a stakeholder process to develop grant goals and performance measures, and to routinely use grant results to improve existing programs.

The State Board should work with stakeholders, including SWCDs, landowners, grantees, and contractors, to develop program goals and expected short-, medium-, and long-term outcomes for each grant. These goals would establish a direct relationship between the purpose of the grant, the activities of the grant, and the expected impact. The agency should explore the use of empirical and non-empirical techniques to measure program impact and effectiveness.

The State Board should also develop a process to periodically review all grant programs and make necessary adjustments, based on ongoing evaluations and results, if results indicate the programs are not achieving anticipated goals.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State. The agency would need to conduct several public meetings to establish program goals. The agency already follows a public meeting process when developing programs or educating stakeholders about changes in existing grants, and these meetings could also be used for establishing goals at no additional cost to the State. The agency already has several databases to track grants and could develop another database for complaints. The agency has recently hired a database developer to assist the agency in improving use of technology. A new database could be created within existing resources.

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¹ Environmental Protection Agency, Measuring Environmental Results, <http://yosemite.epa.gov/R10/ECOCOMM.NSF/webpage/measuring+environmental+results#Environmental%20Results>. Accessed: January 26, 2010.

Responses to Issue 1

Recommendation 1.1

Require the State Board to establish specific program goals and statewide grant practices, and to measure impacts for state-funded grant programs.

Agency Response to 1.1

The TSSWCB agrees that some measures, that can be evaluated on a consistent basis, need to be identified and incorporated into the Water Quality Management Plan and Texas Brush Control/Water Supply Enhancement Program so the agency can better evaluate their impacts. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

For 1.1

None received.

Against 1.1

None received.

Recommendation 1.2

The State Board should use a stakeholder process to develop grant goals and performance measures, and to routinely use grant results to improve existing programs.

Agency Response to 1.2

The TSSWCB currently relies on SWCD directors and representatives from partner agencies to provide the agency input on natural resource concerns, appropriate best management practices, and cost-share grant program activities. Local SWCD directors, by virtue of being elected by landowners and agricultural producers, are the best possible collection of stakeholders for both of these programs. The TSSWCB has not routinely engaged SWCD directors and partner agencies in the establishment of program goals, but the agency sees the benefit that it would provide.

In order to garner input from these existing stakeholders, as well as program participants, the TSSWCB agrees to initiate a formal expanded stakeholder process for both the WQMP Program and the Texas Brush Control / Water Supply Enhancement Program. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

For 1.2

None received.

Against 1.2

None received.

Commission Decision

Adopted Recommendations 1.1 and 1.2.

Legislative Action

House Bill 1808 requires the agency to develop appropriate program goals for its competitive grant programs funded primarily by the State, including defining the beneficiaries of each program and the anticipated program results. The bill requires the State Board to establish statewide policies in each state-funded grant program to ensure grantees continue to meet responsibilities over the life of the grant. The agency must also collect and analyze comprehensive data on status reviews or other verification activities to ensure statewide and region-specific activities are sufficient to guarantee grant conditions are met.

The bill also requires the agency to create a centralized complaint tracking system to complement the complaint reviews performed in its grant programs by each State Board office. Finally, the State Board must measure grant impact, using either empirical or non-empirical methods, and report program results publicly via the agency's website or through any existing statutorily required annual publication. (Recommendation 1.1)

As a management action not needing statutory change, Recommendation 1.2 did not result in legislative action.

Issue 2

State Guidance for Water Supply Enhancement Provides a Confusing and Ineffective Framework for Meeting Critical Water Conservation Needs.

Background

Researchers agree that under certain conditions, removal of water-depleting brush species, such as juniper, mesquite, or salt cedar, leads to increases in available surface and groundwater.¹ In 1985, the Legislature embraced this concept by establishing a program at the Texas State Soil and Water Conservation Board (State Board) to enhance water supplies by offering financial assistance to landowners to remove water-depleting brush species in qualifying watersheds. However, the Legislature did not fund the first project until 1999 when it appropriated money by rider in the General Appropriations Act for a pilot project in the North Concho watershed.

For almost all of the Program's history, legislative riders in the agency's bill pattern have dictated the projects selected for the Program. Beginning in 1999, riders specified the pilot program, 13 feasibility studies in different watersheds across the state, as well as specific appropriations for implementation of a handful of other projects. Subsequently, program funding was significantly reduced just as the State Board began full implementation of a majority of the projects. Increased appropriations to \$4.5 million in fiscal year 2010 allowed the State Board, for the first time, to consider new projects in addition to continued work on rider-directed projects.

Beyond direction in the agency's appropriations bill pattern, the Legislature also requires the State Board, through statute, to rank and prioritize areas of the state in need of a brush control program as well as specific brush control projects within those areas, based on the most critical water conservation needs and the amount of water conservation a project would yield.^{2,3}

Findings

The State's approach to water supply enhancement lacks a clarity of purpose expressed in the State Board's statute.

The Legislature's and the agency's handling of the State's program for water supply enhancement contributes to a lingering confusion about its basic purpose. As a result, the State has been limited in its ability to evaluate the effectiveness of water supply enhancement efforts, especially in meeting the most important goal of increasing water supplies for drinking water purposes.

The Legislature intended water supply enhancement to be the focus of the State Board's brush control program, as a simple reading of the statute makes clear.⁴ Despite this clear statutory intent to support water supply enhancement, the inclusion of specific projects in appropriations riders over the years has undermined statutory guidance to prioritize efforts by critical water conservation needs and water yield. While these projects are estimated to produce approximately 195,000 acre-feet of water each year, legislative

direction eliminated the practical need for the agency to establish processes to prioritize and select new water supply enhancement projects.⁵

The State Board, for its part, has successfully implemented these legislatively directed projects, and changed the name of its brush control program to reflect

Benefits of Brush Control

- Water supply enhancement
- Improved pastures
- Control of invasive species or other noxious brush
- Increased grazing land
- Economic benefits from decreased livestock production costs

this water supply enhancement focus. Statute, however, continues to refer to the program by its brush control name. In the confusion, landowners rarely see immediate water supply impacts to their own land, and are typically motivated to participate in the Program to achieve the broader benefits of brush control, as identified in the accompanying textbox. Because of its desire to balance water supply objectives with the personal motivations of potential participants, the State Board has not clearly articulated water supply enhancement as the focus of the program.

Ambiguous objectives, inadequate process, and the lack of needed data prevent the State Board's Program from pursuing projects most likely to produce water where it is most needed.

- **Statutory requirements to prioritize areas of the State do not lend themselves to practical application.** Criteria for ranking brush control areas, listed in the textbox below, are difficult to determine on a statewide basis. Specifically, water-yield criteria cannot easily be determined for entire areas of the state because of its size and variability. Similarly, water need is difficult to rank across the state, requiring balancing the needs of all Texans, whether urban or rural, in arid or wet climates, and with a sole-source or multiple-source water supply. No other agency, including the Texas Water Development Board, is required to rank the water needs of Texans across areas of the state. Prioritization criteria can best be applied to specific watershed projects within the state, not entire areas of the state.

Statutory Criteria for Ranking Brush Control Areas of the State⁶

- Location of brush infestations
- Type and severity of brush infestations
- Management methods for controlling brush
- Amount of water produced by a project
- Severity of water shortage in the project area
- Other relevant criteria

The State Board shall give priority to areas with the most critical water conservation needs and in which brush control will be most likely to produce substantial water conservation.

- **The State Board lacks basic processes to prioritize projects based on water conservation need and yield.** The State Board does not have a standard application form that enables it to gather basic information required to determine whether or not a water supply enhancement project is viable. Requests for project approval and funding come by way of phone calls, emails, or collections of research without explanation of how brush removal will improve water availability in a local watershed.

The State Board also lacks a published set of project selection criteria, including scientifically validated estimates of water conservation need; the project’s projected water yield, based on specified physical characteristics; a description of the project plan; or other information the State Board determines necessary. SWCDs or other applying entities lack clear guidance regarding eligibility or information required for projects to be selected. Similarly, the State Board does not have a statewide list of brush species that science has demonstrated result in a level of water depletion that merits removal through the Program. Without clear selection criteria and identified brush species, the Program lacks a scientific basis that can make it difficult for the State Board to justify its selection decisions and even open it up to program administration through appropriation riders, as has characterized much of its history.

The State Board funds projects before it even knows whether the proposed project will produce water. The State Board approves project funding contingent on submission of acceptable proposals, requiring State Board staff – not applicants – to spend months gathering additional information to support funded projects that may not even be viable. After project approval, SWCDs, or other applying entities, do not have to seek State Board approval to change the locations of brush removal. Location changes at the SWCD level can affect the estimated water yield and the effectiveness of the Program.

- **The State Board does not require scientific data needed to prioritize water supply enhancement projects.** The State Board does not require data or modeling needed to estimate potential water yield of a project, such as is provided in a feasibility study. The textbox, *Feasibility Studies*, provides more detail on the kinds of data needed to evaluate a project proposal. Past feasibility studies have included information beyond basic modeled water yield results that the State Board needs for its own purposes, but costs for such broad studies have been a prohibitive factor for some applying entities. Applicants may choose to provide their own feasibility studies from recognized experts on water supply matters, but the State Board does not require such studies for application under the Program. Further, the State Board does not currently employ or contract with persons credentialed in water resources or hydrology to collect and model water yield information on its own.

The State Board lacks an application process and priority system for water supply enhancement projects.

Feasibility Studies

Feasibility studies map the hydrologic and geologic features of a watershed to provide modeling-based estimates of the amount of water likely to be produced by brush removal in each sub-basin of the watershed, allowing soil and water conservation districts and the State Board to decide which sub-basins to treat to produce the most water.

Lack of needed water yield data prevents the State Board from justifying program decisions or evaluating the program.

In fiscal year 2010, six of 17 funded projects have not had feasibility studies, leaving State Board staff without the means of estimating the amount of water state-funded brush removal will produce. While legislative involvement may have affected the Program's full development under the statute, as noted earlier, the Legislature did recognize the need for water yield estimates by dedicating over \$2 million for feasibility studies in 13 watersheds across the state between 1999 and 2001. Lack of scientific data about the estimated water yield of a water supply enhancement project prevents State Board staff from:

- determining the best water-yielding locations within a potential project;
- comparing projects across the state;
- justifying selection decisions;
- estimating the amount of water produced as a result of the Program; and
- evaluating the Program.

In addition to the need for modeled water yield data, the State Board should continue to monitor changes in water availability that result from brush removal to determine the effectiveness of the Program. While monitoring the water yield of each project would be cost-prohibitive, monitoring a few sites with standard characteristics would be useful to justify the Program, better quantify actual water amounts produced through the Program, and refine the accuracy of water yield models. The State Board has recognized the need for, and dedicated a portion of its funding toward, monitoring projects in the past.

Recommendations

Change in Statute

2.1 Clarify the Program's focus on water supply enhancement.

This recommendation would clarify the Program's water supply enhancement focus by changing the statutory name of the program from the Texas Brush Control Program to the Water Supply Enhancement Program. Statute would explicitly state the Program's purpose as enhancing available surface and groundwater through the removal of brush species detrimental to water conservation. The State Board would continue performing brush control for purposes beyond water supply enhancement through the State Board's other programs administered under Chapter 201 of the Texas Agriculture Code.

The State Board would also define specific goals for the Program, such as water use and benefitting populations of the Program. By defining the use and entities likely to benefit from water supply enhancement, the State Board could create a framework for evaluating the Program and potentially enlist the financial or other support of newly defined program beneficiaries.

2.2 Require the State Board to develop a system to rank and prioritize water supply enhancement projects, rather than areas of the State, based on water conservation need and water yield.

This recommendation would remove the requirement for the State Board to rank *areas* of the State in need of a brush control program. The State Board would be required to develop a system to rank water supply enhancement *project* proposals, giving priority to projects that balance the most critical water conservation need and the highest potential water yield. The State Board would also consider administrative factors, such as workload and capacity within the grant timeframe. Applications for landowner cost-share would be based on similar criteria, prioritizing water conservation need and water-yield criteria, within the specifications of the approved project. Applications would require projected water yield to be modeled by a person with appropriate credentials, such as water resources or hydrology. The State Board would rank project proposals based on the following project selection criteria:

- Water conservation need, based on information presented in the State Water Plan;
- The project's projected water yield, based on soils, slope, land use, vegetative or brush type and distribution, and proximity of the brush to the stream or channel;
- Description of the project plan, including:
 - methods of brush removal,
 - landowner cost-share rates,
 - location and size of the proposed project,
 - budget and grant funding request, and
 - implementation schedule over the grant timeframe; and
- Any other criteria the State Board deems relevant to implement the Program effectively, efficiently, and in line with research related to brush removal for water supply enhancement.

The State Board would be required to work with stakeholders to define standard methods of reporting water-yield criteria and modeled results in a way that allows the State Board to compare applications across the state and adopt these reporting methods through the agency's rulemaking process.

2.3 Require the State Board to establish a process to contract for feasibility studies on new water supply enhancement projects.

For water supply enhancement project proposals that have not modeled potential water yield for their project, the State Board would be required to establish a process to contract for completion of a feasibility study by a person with appropriate credentials, such as water resources or hydrology, that would model water yield results in the proposed watershed location. Projects that have completed a feasibility study that includes modeled water yield by a credentialed source would be eligible to directly apply for project funding, as long as they meet the State Board's application requirements.

Depending on the size of the area modeled for water yield in the feasibility study, the cost could range anywhere from \$15,000 to \$50,000. While SWCDs and other applying entities would be responsible for funding the studies, the State Board could dedicate a limited amount of its appropriation toward sharing the cost of funding for the feasibility studies, while still encouraging the financial and technical partnering of local watershed sponsors, such as SWCDs, river authorities, or other stakeholders. If the State funds a portion of a feasibility study, applicants would be required to demonstrate potential for water yield to qualify for funding.

Management Action

2.4 The State Board should develop an application process for water supply enhancement projects.

In developing an application process, the State Board should clearly provide program objectives, application categories, grant amounts and timeframes, project selection criteria, and the project selection process to potential applicants to help it gather information needed to prioritize projects. After ranking proposals based on project selection criteria, State Board staff should present selected proposals and funding recommendations to the State Board, contingent on landowner participation. Upon request, the State Board should provide an explanation of denial to applicants if the project is not selected. Once a project is selected and funded, the State Board should require applicants to seek State Board approval to change elements of the approved proposal.

2.5 The State Board should approve brush species eligible for treatment through the Program.

The State Board should consider existing research regarding the degree to which a brush species consumes water at a rate detrimental to water conservation, and only approve project funding for removal of species that the State Board believes will lead to water enhancement.

2.6 The State Board should explore the need to contract for technical expertise in administration of the Program.

Under this recommendation, the State Board should explore whether it needs to employ or contract as needed with a person with appropriate credentials, such as water resources or hydrology, for various program purposes, such as ranking project proposals or evaluating potential water monitoring projects. Employing or contracting with a person with appropriate credentials is estimated to cost \$55,000 to \$70,000 per year. If the State Board decides to contract for technical expertise, it could either seek additional funding through the appropriations process or fund such expertise out of existing appropriations.

2.7 The State Board should continue to dedicate a portion of its funding to evaluate the effectiveness of the Program.

The State Board should continue to dedicate a portion of its program funding toward measuring the effectiveness of the Program. The State Board should fund research that would continue to evaluate whether removal of brush through the Program results in increased water supply. Data from this research is necessary to justify whether the Program is effective. Funding a monitoring project to observe changes in water availability as a result of the Program is estimated to cost approximately \$250,000 each fiscal year, based on the amount the State Board dedicated toward a monitoring project in fiscal year 2009.

Fiscal Implication Summary

No additional cost to the State is anticipated. These recommendations can be accomplished within existing resources; however, requirements to fund feasibility studies or contract for technical expertise would reduce the current funding available for brush removal and water conservation. Based on a 25 percent cost-share rate for feasibility studies by the State Board, program funding available for brush removal would be reduced by approximately \$60,000 to \$80,000 per year.

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¹ K.A. Rainwater, et al. *Evaluation of the TSSWCB Brush Control Program: Monitoring Needs and Water Yield Enhancement*. Final Report to the Texas Commission on Environmental Quality. Texas Tech University Water Resources Center, August 2008; and C. Allan Jones and Lucas Gregory. Effects of Brush Management on Water Resources. Texas Water Resources Institute, Texas A&M AgriLife. TR – 338, 2008; and Saleh, A., et al. “Effect of Brush Control on Evapotranspiration in the North Concho River Watershed Using the Eddy CoVariance Technique,” *Journal of Soil and Water Conservation*, vol. 34, no. 5 (2009), pp. 336 - 349.

² Texas Agriculture Code, sec. 203.053.

³ Texas Agriculture Code, sec. 203.159.

⁴ Texas Agriculture Code, secs. 203.001(4), 203.051, 203.053, 203.055, and 203.159.

⁵ One acre-foot is equal to 325,851 gallons of water, or approximately a football field covered in water one foot deep.

⁶ Texas Agriculture Code, sec. 203.053.

Responses to Issue 2

Recommendation 2.1

Clarify the Program's focus on water supply enhancement.

Agency Response to 2.1

The TSSWCB does not support the Sunset Advisory Commission's staff recommendations to clarify the focus of the Texas Brush Control Program as being water supply enhancement, and does not support changing the statutory name to Water Supply Enhancement Program. We believe further clarification of the Program's focus would only result in increasing redundancy, and that changing the name would narrow the intended scope of the Program, as well as unnecessarily and adversely affecting participation in this voluntary program.

TSSWCB does not believe that additional statutory language to clarify the Program's purpose would result in a substantive change to the Program. TSSWCB does not agree that having personal motivations aligned with state government intentions is requisite to achieving program goals and objectives. As created by the Legislature in 1985, the Program attempts to create an overall public benefit by providing an incentive to individuals seeking to attain private benefits. At that time, the focus of the program was (and continues to be) ground and surface water quantity enhancement. The private benefits were intentionally included as a fundamental component to ensure adequate participation due to the voluntary nature of the program, without which, there would be no public benefits.

TSSWCB has intentionally begun commonly referring to the Program as the Water Supply Enhancement Program to emphasize that appropriations recently made to the Program were specifically for increasing public surface water supplies through a new goal in the agency's bill pattern in the 2006-2007 biennium. However, TSSWCB does not believe that the narrowed scope of certain appropriations necessarily calls for narrowing the scope of the overall Program. TSSWCB changed the Program's name in an effort to better market the express intentions of the Legislature, but now realizes this name change has only resulted in creating additional confusion.

The statutory goal of water conservation may be needed for a variety of uses, including agricultural, recreational, environmental flows, or drinking water from surface or groundwater. The agency feels the scope of the Program should remain as currently provided for in statute to accommodate future water conservation needs for a variety of uses.

The reason this Program is situated within TSSWCB is because it is a brush control program, not because it is a water supply enhancement program. The agency is not currently authorized to conduct water supply enhancement through any other means other than brush control. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

Staff Comment: The personal motivation of agricultural landowners who participate in the Program does not need to align with the water supply enhancement intent of the Legislature. Recommendation 2.1 is intended to ensure that program administrators, including Soil and Water Conservation District Directors, understand the Program's focus to promote accountability in achieving the statewide goal of water supply enhancement. Changing the Program's name will not affect the scope of, or landowner participation in, the Program. Statute clearly intends water supply enhancement as the Program's focus and the State Board has operated it as such. Sunset staff's evaluation of the Program determined that the Program is appropriately placed at the State Board because of its success working directly with agricultural landowners in providing technical assistance, not because of its use of any specific conservation practice, such as brush control.

Agency Modification

1. The TSSWCB recommends that future marketing of the Program be by its official statutory name, but refer to the projects currently funded by the Legislature as water supply enhancement projects, and work with the Legislature to clarify the meanings of "program," "project," and "area" during the upcoming legislative session.

(Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

Staff Comment: Clarification of the meanings of "program," "project," and "area" would be addressed through adoption of Sunset Staff Recommendation 2.2.

For 2.1

None received.

Against 2.1

Scott Buckles, President – Association of Texas Soil and Water Conservation Districts, Temple

Bob McCan, Ranch Manager – McFaddin Enterprises, Victoria

Recommendation 2.2

Require the State Board to develop a system to rank and prioritize water supply enhancement projects, rather than areas of the State, based on water conservation need and water yield.

Agency Response to 2.2

The TSSWCB generally agrees that ranking individual projects, rather than "areas of the state," would be a more efficient use of agency time. The TSSWCB recognizes that this recommendation, in conjunction with Recommendation 2.4 and Recommendation 2.3, would establish a logical and straightforward approach to administering the program. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

For 2.2

None received.

Against 2.2

None received.

Recommendation 2.3

Require the State Board to establish a process to contract for feasibility studies on new water supply enhancement projects.

Agency Response to 2.3

The TSSWCB generally agrees that feasibility studies provide valuable information to the agency in determining where to establish project areas that would maximize the limited funding for the Program by targeting its efforts in geographic areas that are most likely to result in measurable water yield. However, it is the TSSWCB's understanding that current legislative appropriations made to the Program are for actual brush management (cost-share funding and minimal program administration) rather than feasibility studies. If feasibility studies are to become required elements, the TSSWCB would either need (1) additional appropriations or (2) legislation direction to determine the percentage of Program funding that should be removed from cost-share allocations and transferred to feasibility studies. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

For 2.3

None received.

Against 2.3

None received.

Recommendation 2.4

The State Board should develop an application process for water supply enhancement projects.

Agency Response to 2.4

The TSSWCB agrees that an application/proposal process for the Program is needed in order to comply with Recommendation 2.2. However, because local Soil and Water Conservation Districts (SWCDs) are the primary stakeholder for the Program, and because SWCDs have limited resources, the TSSWCB believes any potential application process should not become too burdensome. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

For 2.4

None received.

Against 2.4

None received.

Recommendation 2.5

The State Board should approve brush species eligible for treatment through the Program.

Agency Response to 2.5

The TSSWCB does not agree that the agency should approve brush species eligible for treatment through the Program.

The current enabling legislation for the Program defines brush control as “the selective control of noxious brush such as mesquite, prickly pear, salt cedar, or other phreatophytes (deep-rooted plants that obtain water from a permanent ground supply or from the water table) that consume water to a degree that is detrimental to water conservation.”

All species that can tolerate wet feet will consume excessive water when it is readily available and on that basis could qualify for inclusion on a statewide list. However, the TSSWCB does not see a public benefit in listing species such as pecan, cypress, and oak on a list eligible for removal. These excessive water users may have historical positive environmental effects that outweigh water consumption (shade, water temperature, fish and wildlife habitat, etc).

The TSSWCB recommends maintaining the established legislated list and being granted the flexibility to determine “other phreatophytes” based on location, detriment to water consumption, and environmental benefit. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

Staff Comment: Sunset Staff Recommendation 2.5 maintains the legislative list of examples of brush species and instructs the agency to use its current statutory flexibility to determine “other phreatophytes” as it deems appropriate. The agency should consider factors such as location, detriment to water consumption, and positive environmental effects, in determining inclusion on the list, and not list species it does not believe merit removal through the Program. The recommendation is intended as an efficiency measure that would shift the burden of proof from the State Board to applying entities to provide research proving that brush species not approved by the Board would, in fact, merit removal through the Program.

For 2.5

None received.

Against 2.5

None received.

Recommendation 2.6

The State Board should explore the need to contract for technical expertise in administration of the Program.

Agency Response to 2.6

The TSSWCB agrees with this recommendation. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

For 2.6

None received.

Against 2.6

None received.

Recommendation 2.7

The State Board should continue to dedicate a portion of its funding to evaluate the effectiveness of the Program.

Agency Response to 2.7

The TSSWCB agrees that the agency should continue to dedicate a portion of its funding to evaluate the effectiveness of the Program. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

For 2.7

None received.

Against 2.7

None received.

Modification to Issue 2

Require the State Board to use a portion of its General Revenue appropriation for planning and analysis activities, such as feasibility studies, for water supply enhancement projects, but prohibit the State Board from providing funding for any portion of landowner costs for the removal of brush. (Representative Byron Cook, Member – Sunset Advisory Commission)

Staff Comment: This modification to Issue 2 would need to be adopted in place of, and not in addition to, Staff Recommendations 2.1 through 2.7.

Commission Decision

Adopted Recommendations 2.1 through 2.7.

Adopted an additional recommendation to require the State Board to rank areas within each approved water supply enhancement project, prioritizing those areas with the most critical water conservation needs balanced with the highest potential water yield. Areas of a watershed project receiving a lower ranking shall receive a lesser cost-share amount from the State Board. The State Board shall determine the cost-share amounts for the different areas of a watershed project. The State Board shall adopt the ranking system in rule.

The recommendation also required the State Board to continue to require follow-up brush control treatment, at no cost to the State, in its brush control conservation plans. The State Board shall conduct status reviews in accordance with the dates specified in the brush control conservation plan for a 10-year period subsequent to initial treatment to ensure brush canopy averages remain at or below 5 percent on lands treated with State funding. As part of its annual report to the Legislature on the Water Supply Enhancement/Brush Control Program, the State Board shall include a comprehensive analysis of the program, including a review of the effectiveness of the Program and the level of noncompliance with follow-up brush control treatment.

Legislative Action

House Bill 1808 changes the statutory name of the Texas Brush Control Program to the Water Supply Enhancement Program and clarifies the Program's purpose as enhancing available surface and groundwater through the removal of brush species detrimental to water conservation. The Program does not, however, limit the State Board's brush control authority as a general land improvement measure. The State Board must define specific goals for the Program, such as water use and benefitting populations of the Program. (Recommendation 2.1)

The bill also removes the requirement for the State Board to rank areas of the state in need of a brush control program. Instead, the bill requires the State Board to develop a system to rank water supply enhancement project proposals each funding cycle, giving priority to projects that balance the most critical water conservation need and the highest potential water yield. The bill requires project applications to include projected water yield, modeled by a person with appropriate expertise in areas such as water resources or hydrology, and provides for stakeholder input for standardized reporting of projected water yield.

The State Board must rank project proposals based on the following selection criteria:

- water conservation need, based on information presented in the State Water Plan;
- projected water yield, based on soils, slope, land use, vegetative or brush type and distribution, and proximity of the brush to the stream or channel;

- description of the project plan, including:
 - methods of brush removal,
 - landowner cost-share rates,
 - location and size of the proposed project,
 - budget and grant funding request, and
 - implementation schedule over the grant timeframe; and
- any other criteria the State Board deems relevant to implement the Program effectively, efficiently, and in line with research related to brush removal for water supply enhancement. (Recommendation 2.2)

For water supply enhancement project proposals that have not modeled potential water yield for their project, the State Board must establish a process to contract for completion of a feasibility study by a person with appropriate credentials that would model water yield results in the proposed watershed location. (Recommendation 2.3)

The State Board must continue to require follow-up brush control treatment, at no cost to the State, in 10-year water supply enhancement plans as part of cost-share contracts. As part of its annual report to the Legislature on the Water Supply Enhancement Program, the State Board must include a comprehensive analysis of the Program, including a review of its effectiveness and the level of noncompliance with follow-up brush control treatment. (Additional recommendation adopted by the Sunset Commission)

The Legislature did not adopt the Commission's additional recommendation to rank areas within water supply projects.

As management recommendations not needing statutory change, Recommendations 2.4 through 2.7 did not result in legislative action.

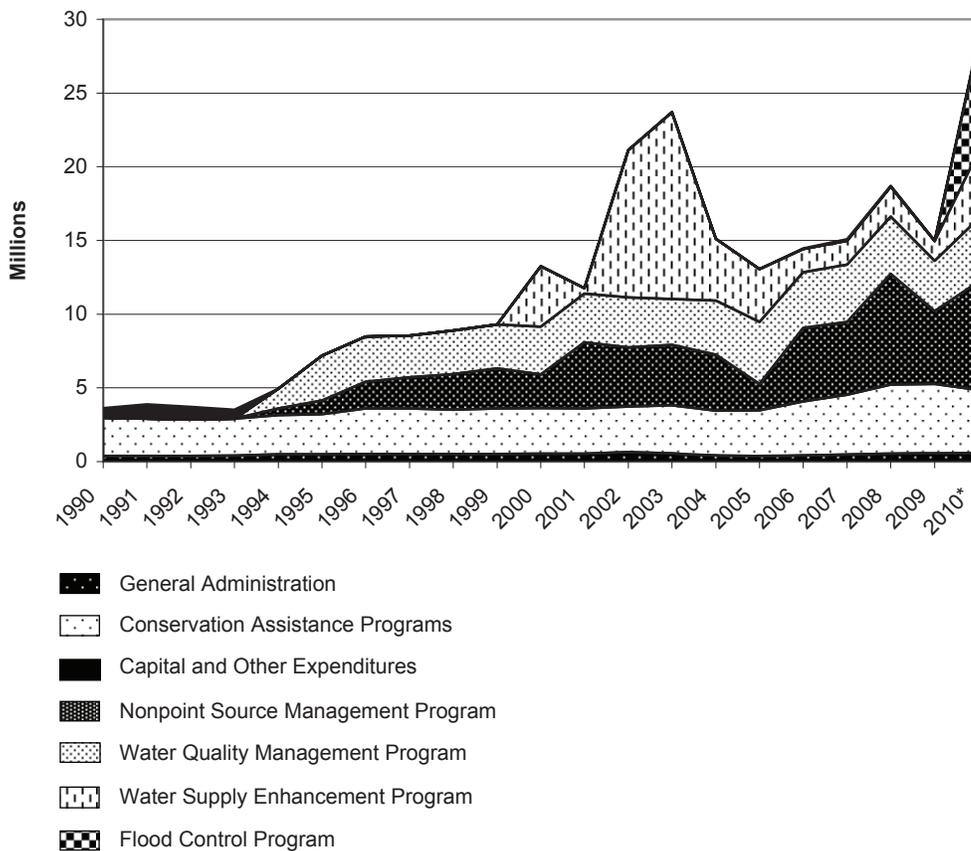
Issue 3

Texas Has a Continuing Need for the Texas State Soil and Water Conservation Board.

Background

The Legislature created the State Soil Conservation Board in 1939 in response to the Dust Bowl to implement soil conservation laws and to organize and assist soil and water conservation districts (SWCDs). Since the agency's name changed in 1965 to the State Soil and Water Conservation Board (State Board), its role and budget have expanded to include numerous statewide programs, as illustrated in the chart, *Texas State Soil and Water Conservation Board Expenditures*, showing the State Board's expenditures from fiscal years 1990 to 2010. Today, the State Board serves as the lead state agency for the planning, management, and abatement of nonpoint source (NPS) pollution resulting from agricultural and silvicultural, or forestry-related, activities, and administers grant programs for the development of water quality management plans, water supply enhancement, and the maintenance and repair of flood control dams. The Board itself has grown to include two governor-appointed members in addition to five members elected from each of the State's five statewide soil and water conservation districts.

**Texas State Soil and Water Conservation Board Expenditures
FYs 1990 – 2010**



*Fiscal year 2010 reflects budgeted figures.

Findings

Texas has a continuing need to work with agricultural landowners to develop and implement practices to conserve and protect the State's natural resources.

The implementation of conservation practices on agricultural lands reduces agricultural runoff polluting the State's water resources. Conservation practices, such as those recommended by the State Board in the accompanying textbox, conserve and protect the quality of the State's natural resources from agricultural water pollutants such as fertilizers, bacteria, or pesticides. Texas has a continuing need to prevent, manage, and abate NPS water pollution, as agricultural or silvicultural NPS pollution is a potential contributor to over half of the 838 total impairments of state waterbodies.¹ The State Board is currently funding 70 projects that address waterbodies impaired by agricultural or silvicultural NPS pollution.

Conservation Practices

- Nutrient Management
- Irrigation Water Management
- Irrigation Land Leveling
- Conservation Crop Rotation
- Pest Management
- Prescribed Grazing
- Brush Management

Over half of the impairments of state waterbodies are potentially due to agricultural nonpoint source pollution.

Because it is difficult to pinpoint the source of NPS pollution, voluntary abatement efforts are a common approach to encourage the broad participation of landowners needed to take actions to address the concern. Implementation of conservation practices on agricultural operations across an area can collectively work to control agricultural runoff, which can carry pollutants to state waterbodies. As of the end of fiscal year 2009, the State Board has developed 14,096 water quality management plans to implement conservation practices. The State Board works through SWCDs by providing financial and technical assistance to maintain a soil and water conservation presence throughout the state. This unique relationship between the State Board and SWCDs works well to provide a voluntary, grassroots delivery system for improving water quality and quantity.

Review of the State Board and other related agencies did not reveal any significant beneficial alternatives for consolidation or transfer of functions.

No other state agency works through voluntary, non-regulatory means with agricultural landowners and SWCDs to develop and implement conservation plans and abate agricultural NPS water pollution. While other organizational alternatives exist for the State's efforts to develop and implement conservation plans and abate agricultural NPS water pollution, consolidation with those agencies would not yield significant benefits to the State.

- The Texas Commission on Environmental Quality (TCEQ) oversees environmental concerns, such as water and air quality, for the State. As a regulatory agency, TCEQ focuses on issuing permits and enforcing state laws addressing environmental concerns. This regulatory approach by TCEQ is available as a final option if the State Board's voluntary water quality efforts fail. However, direct regulation is a costly, and possibly less effective, means of dealing with agricultural NPS pollution. TCEQ administers a voluntary NPS program to prevent and remediate urban stormwater runoff, but does not enjoy the close working relationship with SWCDs or landowners to enable it to effectively address agricultural runoff.

TCEQ also regulates flood control dams to protect public safety, but does not provide funding to assist with the maintenance or repair of flood control dams. Doing so in conjunction with its regulatory responsibilities could present a potential conflict of interest for the management of flood control dams.

- The Department of Agriculture works closely with the agricultural community, but its main focus is the regulation of agricultural businesses and occupations for consumer safety. The Department also administers agricultural grants for various needs, but lacks the State Board's technical expertise to address water quality and quantity concerns on its own. Because the Department has no similar expertise or duties that are comparable to the State Board's functions, it provides little advantage for consolidating these activities.
- The Texas Parks and Wildlife Department works with private landowners and addresses water quantity and water quality concerns for the purpose of wildlife management and aquatic life, but not for abating agricultural NPS pollution. State Board programs could divert the Department from its focus on Texas wildlife and state parks.

Agencies such as the Texas Water Development Board and the Department of Rural Affairs administer grant programs for rural or agricultural communities, and other agencies, such as the Texas Forest Service and the Texas AgriLife Extension Service, work with landowners or the agricultural community. However, none of these agencies has the capacity and technical expertise, especially regarding agricultural NPS water pollution, to absorb the State Board's functions.

While organizational structures vary, all states seek to conserve natural resources and abate nonpoint source water pollution.

While all states have a statewide conservation agency, one-third of the states administer the conservation function through an independent agency, as Texas does. Another third have this function in their environmental or natural resource agency, and the final third have this function in their agriculture agency. All states have soil and water conservation districts, and all states use a voluntary-based approach to address agricultural NPS pollution.

Use of other organizational structures to administer State Board functions would not yield significant benefits to the State.

All states use a voluntary-based approach to address agricultural nonpoint source pollution.

The agency's statute does not reflect standard language typically applied across-the-board during Sunset reviews.

The State Board's governing statute does not include a standard provision relating to unbiased appointments to policymaking bodies that the Sunset Commission routinely applies to agencies under review. This provision would help ensure an open process in the Governor's appointment of two members to the State Board.

The State Board's statute contains language addressing the grounds for removing and training of board members elected by SWCD Directors, but not members appointed by the Governor. Unlike elected board members, governor-appointed members currently lack any process for removal from the Board and are not clearly eligible for reimbursement for attending training. The statute should not treat appointed members differently from elected members.

The State Board's statute contains outdated language regarding complaint information requirements, which is limited to written complaints and only provides that procedures for complaint investigations and resolutions be made available to the person filing the complaint. These provisions should be updated to current standards.

In addition, the State Board's governing statute does not include a standard provision relating to alternative rulemaking and dispute resolution that the Sunset Commission routinely applies to agencies under review. Without this provision, the agency could miss ways to improve rulemaking and dispute resolution through more open, inclusive, and conciliatory processes designed to solve problems by building consensus rather than through contested proceedings.

A review of the agency's equal employment opportunity and historically underutilized business performance, as required by the Sunset Act, reveals deficiencies.

The Sunset Act requires Sunset staff, in conducting reviews of state agencies, to consider agencies' compliance with applicable state requirements regarding historically underutilized businesses (HUBs) and equal employment opportunity (EEO). While agency performance regarding these requirements is routinely evaluated in the course of a Sunset review, it is noted only when deficiencies exist that are significant enough to merit attention.

Regarding HUB expenditures, the State Board generally met the statewide HUB goals for Professional Services and Commodities from fiscal years 2007 to 2009, but failed to meet goals for Other Services, which accounted for the State Board's largest amount of contract spending. Much of this spending is for specialized services, mostly with public entities, for functions such as research and brush control, for which HUB vendors are generally not available. The agency meets the other HUB requirements regarding HUB rules, subcontracting plan, designating a HUB coordinator, developing a

The State Board failed to meet statewide HUB goals for its largest amount of contract spending.

HUB forum program, and implementing a HUB mentor-protégé program. Appendix B shows the State Board's HUB spending for fiscal years 2007 to 2009.

The State Board generally met the EEO statewide civilian workforce percentages for the Administrative Support category for fiscal years 2007 to 2009, but failed to meet these statewide percentages for all other job categories for the past three years. The State Board indicates it struggles to meet these statewide percentages largely because its headquarters is located in Temple and almost half of its staff is located in rural parts of the state where workforce opportunities may be more limited. Appendix C shows the State Board's EEO performance in each job category for fiscal years 2007 to 2009.

Recommendations

Change in Statute

3.1 Continue the Texas State Soil and Water Conservation Board for 12 years.

This recommendation would continue the Texas State Soil and Water Conservation Board as an independent agency responsible for the development and implementation of conservation plans and abating agricultural NPS pollution for 12 years.

3.2 Apply standard Sunset across-the-board requirements to the Texas State Soil and Water Conservation Board.

This recommendation would add language to the State Board's statute to ensure that the Governor makes appointments to the State Board on an impartial and unbiased basis.

The recommendation would update the standard statutory language regarding grounds for removal and training of board members to ensure their applicability to governor-appointed members in the same manner as other members of the State Board. Separate statutory language applying these provisions to governor-appointed members would be removed, as updated across-the-board language would provide clearer direction regarding grounds for removal and training requirements for all members.

The recommendation would also update the State Board's complaint information requirements to clarify the State Board's need to maintain complaint information on all complaints and to provide information on its complaint procedures to the public.

Finally, the recommendation would ensure that the State Board develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible, to model guidelines by the State Office of Administrative Hearings. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Fiscal Implication Summary

If the Legislature continues the current functions of the State Board using the existing organizational structure, the agency's annual appropriation of \$28.6 million would continue to be required for its operation.

.....
¹ A single waterbody may have multiple impairments.

Responses to Issue 3

Recommendation 3.1

Continue the Texas State Soil and Water Conservation Board for 12 years.

Agency Response to 3.1

The TSSWCB agrees with the Sunset Advisory Commission staff's assessment that Texas has a continuing need to provide technical and financial assistance to local SWCDs, abate nonpoint source pollution, administer a brush control program to enhance ground and surface water resources, and the TSSWCB is the most appropriate agency to perform these functions. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

For 3.1

Scott Buckles, President – Association of Texas Soil and Water Conservation Districts, Temple

Against 3.1

None received.

Recommendation 3.2

Apply standard Sunset across-the-board requirements to the Texas State Soil and Water Conservation Board.

Agency Response to 3.2

The TSSWCB has no comment on this recommendation. If legislatively enacted, the agency will proceed with implementation. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

For 3.2

None received.

Against 3.2

None received.

Commission Decision

Adopted Recommendations 3.1 and 3.2.

Adopted an additional recommendation to require the Sunset Advisory Commission to conduct a special purpose review of the Texas State Soil and Water Conservation Board as part of the Commission's review of agencies for the 84th Legislature (2015). The Commission shall limit

its review of the agency to the implementation of recommendations made by the Commission to the 82nd Legislature regarding the Water Quality Management Plan, Flood Control, and Brush Control/Water Supply Enhancement Programs. In the Commission's report to the 84th Legislature, the Commission may include any recommendations it considers appropriate.

Legislative Action

House Bill 1808 continues the Texas State Soil and Water Conservation Board for 12 years. (Recommendation 3.1)

The bill also requires the Sunset Advisory Commission to conduct a special purpose review of the State Board for the 2015 Legislature regarding the agency's implementation of recommendations made by the Sunset Commission to the 82nd Legislature. (Additional recommendation adopted by the Sunset Commission)

The bill applies standard Sunset across-the-board requirements to the State Board. The bill adds standard language regarding impartial appointments to the State Board and the development of a policy that encourages the use of negotiated rulemaking and alternative dispute resolution. The bill modifies across-the-board requirements specifying the grounds for removing a State Board member and requiring members of the State Board to complete training before assuming their duties to apply the language to appointed, as well as elected, board members. The bill also updates a provision requiring the State Board to maintain information on all complaints and notify the parties about policies for and status of complaints. (Recommendation 3.2)

New Issues

New Issues

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

4. Expand the scope of the Texas Brush Control Program in Chapter 203, Agriculture Code, to include the control of terrestrial invasive plant species (to not simply be a water quantity enhancement program). (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)
5. Establish the agency's authority in Chapter 201, Agriculture Code, to specify the TSSWCB is the lead agency for the control of terrestrial invasive plant species, and is authorized to receive and administer state and federal appropriations on the matter. (Rex Isom, Executive Director – Texas State Soil and Water Conservation Board)

Staff Comment: New issues 4 and 5, requested by TSSWCB to clarify its authority to receive funding and address terrestrial invasive plant species, are separate options and not meant to be adopted together. New Issue 4 conflicts with Sunset Staff Recommendation 2.1.

6. Establish laws to promote and facilitate the use of prescribed fire for brush control. (Harris Greenwood, Johnson City)

Commission Decision

Adopted New Issue 5.

Legislative Action

House Bill 1808 allows the State Board to accept grants, loans, or other funds in its role as administrator of the Committee. The Legislature modified the Sunset provision to remove language specifying that the State Board is the lead agency for the control of terrestrial invasive plant species. (New Issue 5)

Provisions Added by Legislature

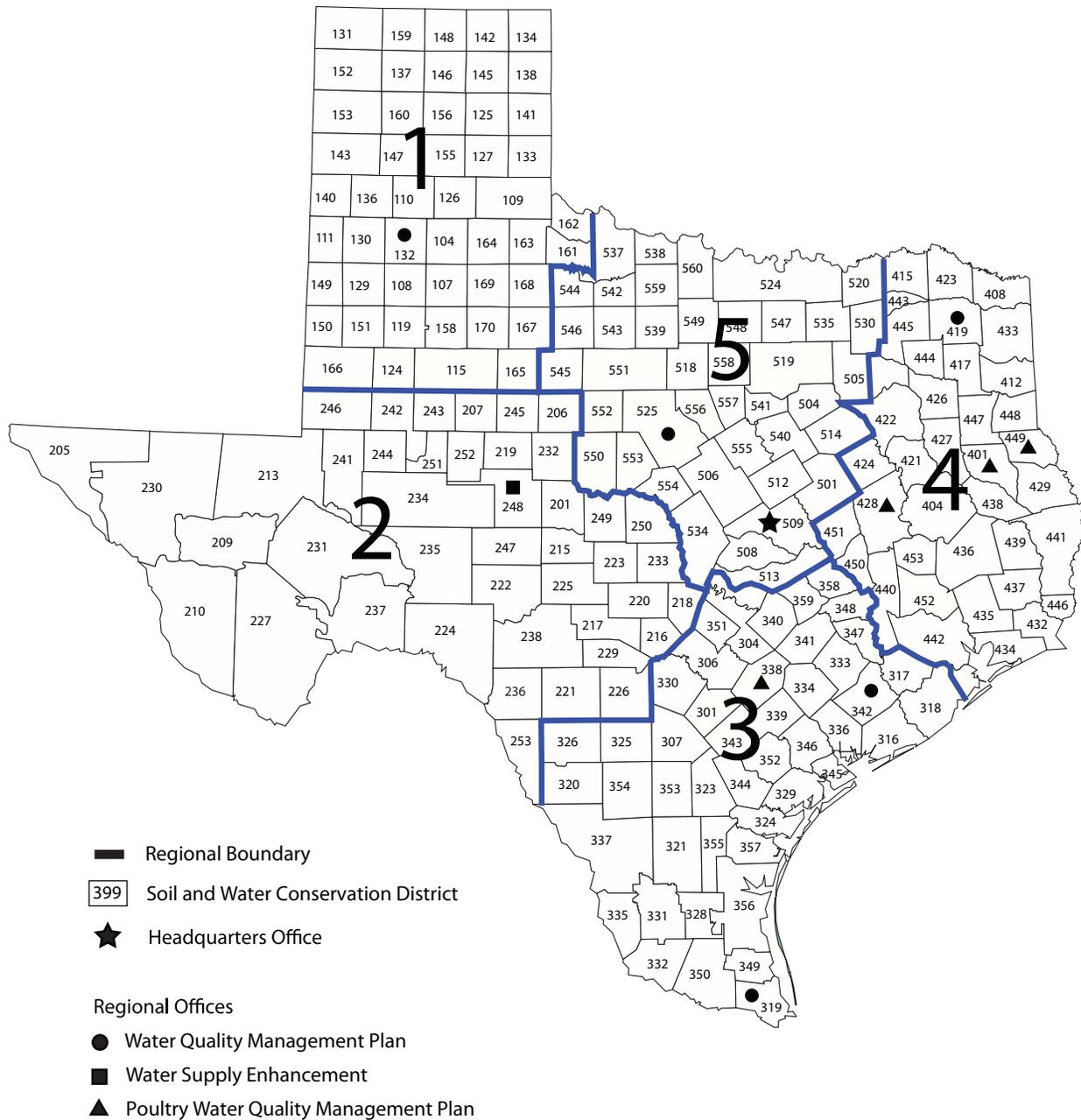
Provisions Added by Legislature

None added.

Appendices

Appendix A

Texas State Soil and Water Conservation Board Regional Map



Appendix B

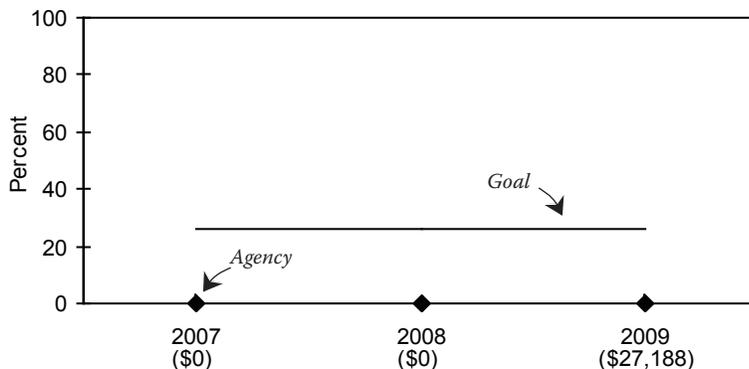
Historically Underutilized Businesses Statistics

2007 to 2009

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹

The following material shows trend information for the Texas State Soil and Water Conservation Board's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2007 to 2009. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The agency exceeded some of the State's HUB purchasing goals for professional services and commodities, but had difficulty meeting the goal for other services because the agency's spending is mostly for specialized services with public entities for which HUB vendors are not available. The agency met other HUB-related requirements, such as appointing a HUB coordinator, establishing a HUB policy, and developing a mentor-protégé program.

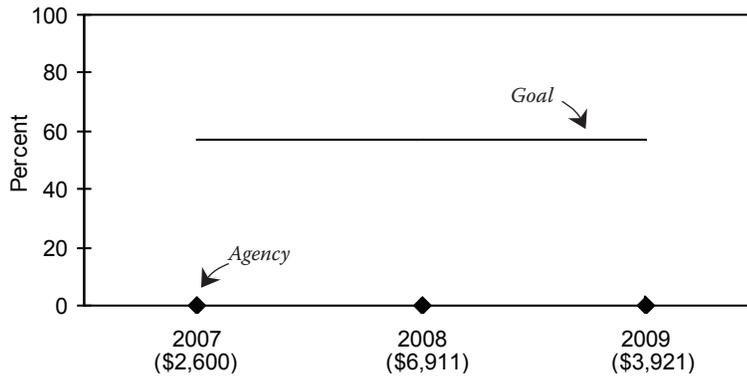
Building Construction



The agency fell below the State's goal for spending on building construction in fiscal year 2009. The agency had no expenditures for this category in fiscal years 2007 and 2008.

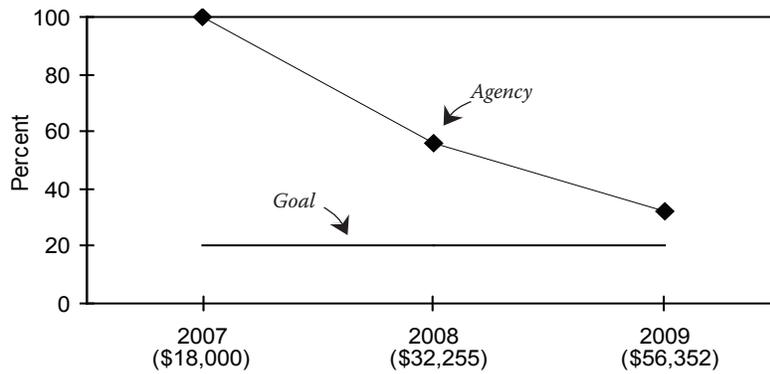
Appendix B

Special Trade



The agency failed to meet the State's goal for spending in the special trades category for each of the last three fiscal years. The expenditures in this category were small, one-time expenditures for each fiscal year.

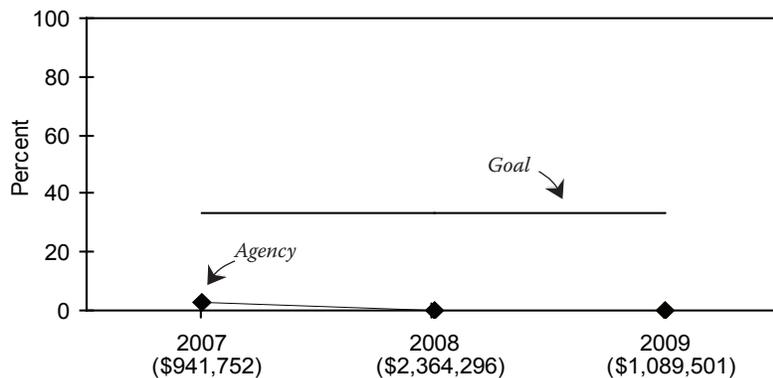
Professional Services



The agency exceeded the State's goal for spending for professional services each fiscal year.

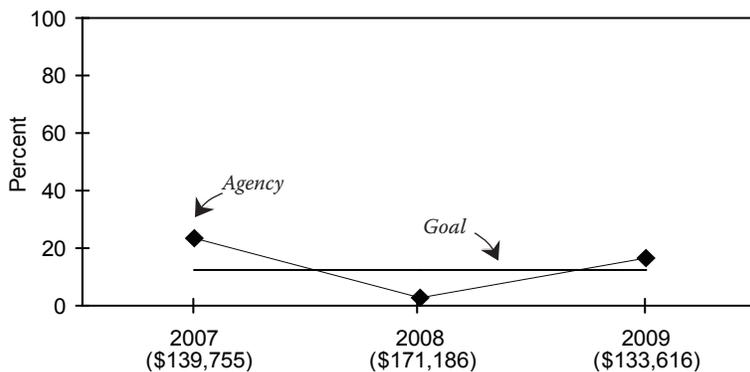
Appendix B

Other Services



Representing the largest expenditure category, purchases for the other services category fell below the State purchasing goal each fiscal year. Purchases in this category were for services in which HUB vendors were generally not available.

Commodities



In fiscal years 2007 and 2009, the agency exceeded the State's goal for spending for commodities. However in fiscal year 2008, the agency fell short of the goal. Purchases for this category are often made in areas of the state in which there are generally no HUB vendors available.

.....
¹ Texas Government Code, sec. 325.011(9)(B).

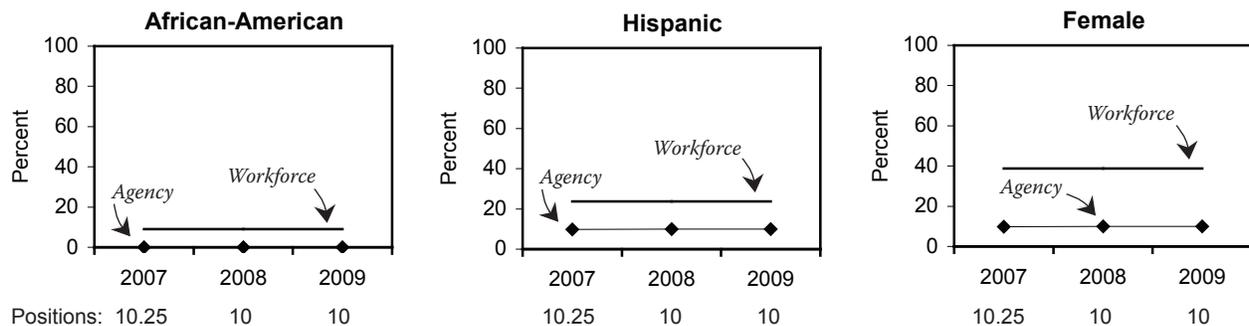
² Texas Government Code, ch. 2161.

Appendix C

Equal Employment Opportunity Statistics 2007 to 2009

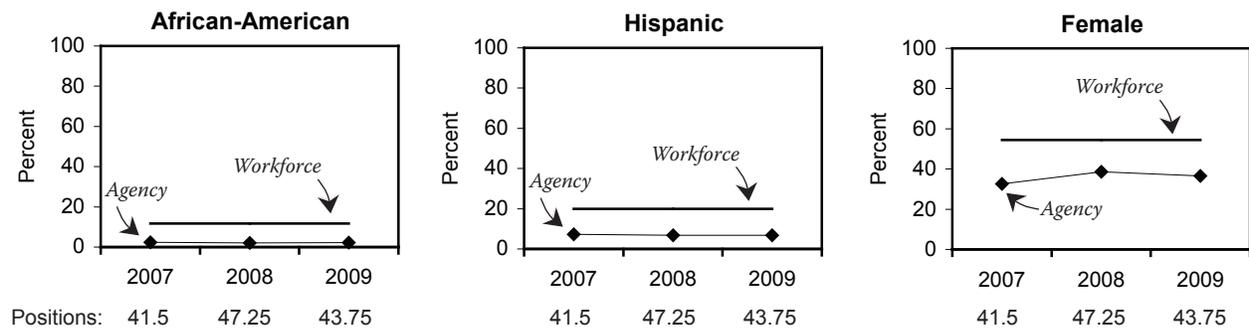
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas State Soil and Water Conservation Board.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2007 to 2009. The agency generally did not meet civilian workforce percentages in any category except Administrative Support. The agency indicates that the location of its headquarters in Temple, and large percentage of field staff located in rural areas of the state, may limit its applicant pool.

Administration



The agency fell below the civilian workforce percentages in all three groups in the past three fiscal years.

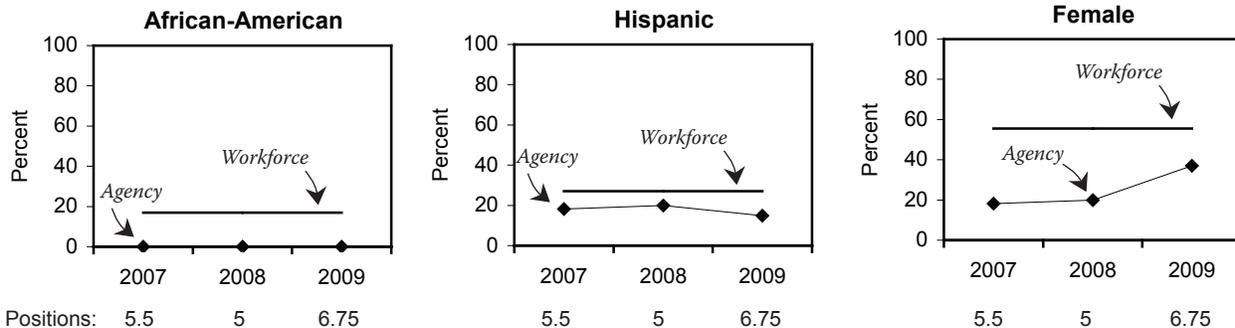
Professional



In the largest category of staff, the agency fell short of the civilian workforce percentages in all groups in all three fiscal years.

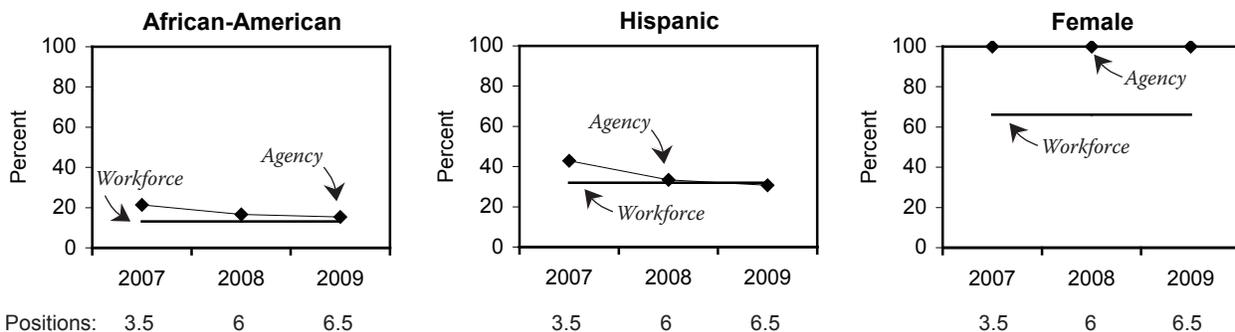
Appendix C

Technical



The agency fell short of the civilian workforce percentages in all three groups in all three years, but did have an increase of the percentage for females in fiscal year 2009.

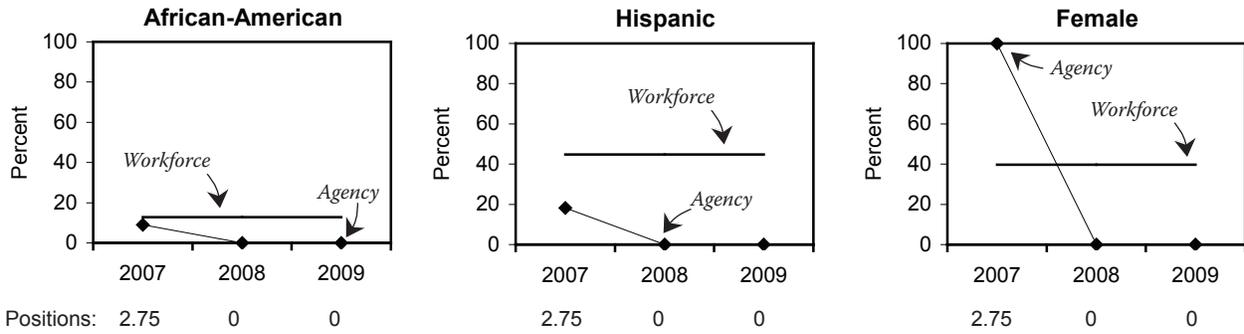
Administrative Support



The agency generally met or exceeded the civilian workforce percentages for all three groups in all three years.

Appendix C

Service/Maintenance³



For fiscal year 2007, the agency did marginally better in meeting the civilian workforce percentages, but had no positions in this job category in fiscal years 2008 and 2009.

¹ Texas Government Code, sec. 325.011(9)(A).

² Texas Labor Code, sec. 21.501.

³ The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups.

Appendix D

Staff Review Activities

During the review of the Texas State Soil and Water Conservation Board, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended Board meetings; spoke with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to this agency.

- Interviewed staff from the U.S. Department of Agriculture Natural Resources Conservation Service, Texas Commission on Environmental Quality, Texas Water Development Board, Texas Tech Water Resources Institute, and the National Association of Conservation Districts.
- Attended meetings of the Texas Groundwater Protection Committee and Texas Invasive Species Coordinating Committee.
- Toured water supply enhancement projects.
- Accompanied State Board staff on a status review of a water quality management plan.
- Attended the Annual State Meeting of Soil and Water Conservation District Directors.
- Toured flood control dams.
- Attended a soil and water conservation district meeting.
- Attended a public meeting for the development of a watershed protection plan.

SUNSET STAFF REVIEW OF THE TEXAS STATE SOIL AND WATER CONSERVATION BOARD

REPORT PREPARED BY:

Sarah Kirkle, Project Manager

Leah Daly

Hector Morales

Ksenia Zemlyanova

Dawn Roberson

Joe Walraven, Project Supervisor

Ken Levine

Interim Director

Sunset Advisory Commission
PO Box 13066
Austin, TX 78711

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

www.sunset.state.tx.us

(512)463-1300 Fax (512)463-0705