



Red River Authority of Texas

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May 10, 2018

The Honorable Brian Birdwell, Chair
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

Re: Response to Sunset Staff Report, 2018-2019, 86th Legislature

Dear Chairman Birdwell:

Thank you for the opportunity to respond to the Sunset Advisory Commission's Staff Report regarding the governance and operations of the Red River Authority of Texas (the Authority). It is important to express the Authority Board's appreciation of the report, which concluded that the Authority generally is a well-run overseer of the Red River Basin in Texas. The Authority welcomes a fresh perspective on the challenging issues the Authority has been dealing with over the years.

On behalf of the Authority, enclosed please find the Authority's response to the Sunset Advisory Commission's Staff Report. We appreciate the opportunity to comment on the staff report and look forward to continuing to work with you, your staff and the Commission.

The Authority extends a special thanks to Ms. Danielle Nasr, Ms. Emily Johnson, Ms. Trisha Linebarger, Ms. Sarah Kinkle, and Ms. Taj Sheikh for their thorough efforts in examining the Authority.

If you have any questions, please do not hesitate to contact me.

RED RIVER AUTHORITY OF TEXAS

A handwritten signature in cursive script that reads "Nathan J. Bell, IV".

Nathan J. Bell, IV
President

NJB:dpb

cc: The Honorable Chris Paddle, Vice Chair
Mr. Kevin Levine, Director

Below, please find the Authority's responses (in blue text) to key factors presented in the Sunset Advisory Commission's Staff Report on the Red River Authority of Texas.

SUMMARY – PAGE 3

RED RIVER AUTHORITY OF TEXAS. RRA IS STEERED BY TRADITIONALISTS; THE AUTHORITY LIKES TO DO THINGS THE WAY THEY HAVE ALWAYS BEEN DONE. EVEN IN THE MIDST OF ITS OWN LEADERSHIP CHANGE, THE AUTHORITY CONTINUES TO LIVE IN THE PAST, SIGNALING RESISTANCE TO CHANGE AND NEW PERSPECTIVES. AS A PROVIDER OF RURAL UTILITY SERVICES, RRA ENCOUNTERS MANY OF THE STRUGGLES THAT FACE THESE TYPES OF SERVICES: LOW REVENUES, HIGH COSTS OF RUNNING A SPREAD OUT SYSTEM, AND PERSISTENT ISSUES WITH COMPLIANCE DUE TO NATURALLY OCCURRING CONTAMINANTS THAT PLAGUE SEVERAL SMALL WATER SYSTEMS ACROSS THE STATE. THESE OBSTACLES, HOWEVER, DO NOT EXCUSE THE AUTHORITY FROM MEETING MINIMUM SAFETY AND TRANSPARENCY STANDARDS. RATHER THEY SIGNAL THE NEED FOR MORE ROBUST AND PROACTIVE MANAGEMENT THAT IS WILLING TO SEEK OUT SOLUTIONS AND ADDRESS THESE PROBLEMS HEAD-ON. AS THE AUTHORITY'S NEW GENERAL MANAGER STEPS IN, THIS IS AN OPPORTUNITY FOR A FRESH LEADERSHIP PERSPECTIVE OPEN TO NEW IDEAS TO ENSURE THE BEST DECISIONS ARE MADE FOR THE AUTHORITY'S CUSTOMERS AND THE BASIN AS A WHOLE.

Sunset Staff characterizes the Authority as being traditionalist and, in some respects, suggests this is a bad thing. The Authority's customers are descendants of some of the oldest settlers of Texas. These families appreciate that the Authority has been consistent and conservative in providing our services to them. Also, the Authority works in a very regulated industry and many traditions are based on the rigid rules under which it is governed.

However, even with these traditionalist values, the Board is not close minded or unwilling to consider and implement new ideas or methods of governance. For example, the Board recently hired a new General Manager with no previous ties to the Authority. The new General Manager has experience working in the more regulated and transparent industry of municipal government. As such, the new General Manager has the experience necessary to fund projects with grants and to work with many of the entities from which the Sunset Staff recommends the Authority seek assistance.

Also, even though the Sunset Staff was aware the Authority had appointed a successor General Manager, the Sunset Staff did not interview the incoming General Manager about his views or thoughts on the future of the Authority. The Authority believes this was a missed opportunity to learn what direction the new General Manager intends to take the Authority and to provide additional guidance regarding that new direction. For example, the new General Manager has plans to make the Authority more transparent and has already implemented some changes to its website to make it more user friendly and information more accessible. He has also begun the process to offer online bill pay and to utilize email invoicing that will speed up the billing process and give our customers options in paying utility bills and service invoices.

The report's comment that the Authority is not meeting minimum transparency standards is misleading. The Authority has complied with applicable laws regarding notices and other

information that the Authority is required to provide to its customers and the public. The report even acknowledges that the Authority currently does more than is required in both notices and allowing public comment. Moreover, as the report notes, river authorities are not currently subject to the transparency suggestions made by the Sunset Staff. Should the legislature adopt the Sunset Staff's legislative recommendations regarding transparency, the Authority will comply. Additionally, the Authority will continue to explore additional ways to keep its customers and public informed about the Authority and its business.

ISSUE 4: THE LACK OF COMPREHENSIVE ANALYSIS BEFORE CRITICAL DECISIONS HAS POTENTIALLY RESULTED IN MISSED OPPORTUNITIES FOR RRA. PAGE 31

The Authority has combatted water quality issues in several of its water systems for many years. The primary contaminant is naturally occurring nitrate. While the Authority understands the Sunset Staff's concerns and criticisms regarding the Authority's efforts to address the problem, the report's analysis does not appreciate the complexity of the problem (the size and locations of the water systems, and the type of issue and available solutions) and in some ways trivializes the efforts the Authority has taken and is currently taking to address the issues.

Contrary to the report's suggestions, the Authority takes seriously its obligation to protect the health and safety of its customers. For the water systems affected by the elevated nitrates, a quarterly Public Notice is mailed to our affected customers that clearly states health risks to newborns or those who have preexisting health concerns. Those at risk from elevated nitrates represent only a small portion of the customers of the water systems. It is for this reason the Texas Commission on Environmental Quality (TCEQ) approved the Authority providing bottled water and did not require more aggressive action. As the literature on nitrates notes, water with nitrate in the range that the Authority is providing is not a health risk to most people. Attached is a copy of a Notice that shows the language provided by the TCEQ.

The staff report states that the Authority performed little evaluation of corrective options for decades in response to drinking water violations concerning nitrate. The Authority disagrees with this assessment of its efforts. The Authority has been evaluating options for many years, but none of the options have been feasible. In 2013, the Authority had three Preliminary Engineering Reports prepared that evaluated the options available to the Authority to address the nitrate problem. All of the options were very expensive. For systems with so few customers, the cost of those improvements would have more than doubled water rates for those water systems. For example, the Preliminary Engineering Report for the Truscott-Gilliland Water System estimated the capital costs for the improvements would be about \$3.2 million dollars and that the base water rates would increase from \$66.25 per month to \$229.25 per month. Because of this increase, the Authority continued to explore other options, including installing filters or other systems at the points of use, that is, in the homes of each of the customers on the system. However, those options were also problematic, as there are access issues, and concerns that they would not comply with the TCEQ's regulatory requirements.

Further complicating matters, the Authority was instructed by the TCEQ staff that the Authority could not consolidate its systems into one system under a single rate. Thus, the Authority did not believe the options available to it were financially feasible, given the size of each of the water

systems. During its negotiation with the EPA regarding Consent Agreements, the Authority reevaluated whether it could charge a system rate and concluded it could. By charging the system rate, the projects proposed by the Preliminary Engineering Reports became more financially feasible.

Also, the options chosen were to bring treated water from another source to the water systems with elevated nitrate. For the Authority's Truscott-Gilliland Water System, that required purchasing water from the Greenbelt Municipal and Industrial Water Authority (GMIWA). That option required the installation of a 28 mile pipeline and was only economically feasible after adopting a system wide rate.

The same was true of the Authority's Hinds-Wildcat Water System, where the Authority is looking to the City of Vernon to provide treated water. The City of Vernon could not accommodate the request until enhancements to their own water treatment facilities were completed in 2014.

It should also be noted, that during the span of time in question, the Authority was actually complying with TCEQ Compliance Agreements, which approved the provision of bottled water to those at risk, in lieu of correcting the nitrate problem. The TCEQ was the entity with oversight and continually renewed the Authority's operating permits with the exception to provide bottled water when requested. Therefore, the Authority did not fail to address the problem. The Authority agrees that more aggressive action was not taken until the EPA stepped in with a deadline, but that does not change the fact that the Authority was in fact in administrative compliance with the TCEQ during the prior period.

INSUFFICIENT CONSIDERATION OF FINANCING OPTIONS THAT COULD HAVE REDUCED THE NEED FOR SUCH A LARGE RATE INCREASE. PAGE 33

At all times during this process, the Authority worked with its financial advisors, bond counsel, and other legal and engineering professionals to review and assess various funding options. However, each type of funding source has its limitations. As the Authority explained, both the income levels of the customers on the systems and the fact that in the rural areas many of the meters are livestock and ranch meters, the Authority was told the water systems would not qualify for subsidies. The programs suggested are not meant for systems with a large number of non-residential meters. In the future, the Authority will ensure that it documents the types of funding that it reviewed and analyzed.

LACK OF A COMPREHENSIVE RATE ANALYSIS TO DETERMINE THE EXTENT OF NEEDED RATE INCREASES. PAGE 34

The Authority did perform sufficient rate analyses. However, any attempt to regionalize the rates, as suggested, would have made any sparsely populated areas projected rates extremely cost prohibitive. The Authority's bond counsel and financial advisors recommended the consolidation of the systems.

The Authority would note that the Sunset Staff's suggestion that the Authority should have regional rates appears to be contrary to the Sunset Staff's concern that the Authority does not

always make decisions on the basin as a whole to “ensure the best decisions are made for the Authority’s customers and the basin as a whole”.¹ As previously noted, managing the Authority’s system is very complex and geographically challenging. There are no simple answers or solutions. The Authority, with the help of its professional advisors, evaluated the options and implemented the most feasible and available option for financing the improvements to its water systems.

IN A RUSH TO CONSOLIDATE WATER RATES, RRA MISSED OPPORTUNITIES TO FULLY ENGAGE AND INFORM CUSTOMERS. PAGE 34

In regards to customer notification of the Authority’s rate process and pending rate increase, the Authority did a good job of notifying the customers of an impending rate change. The Authority’s customers claiming they were unaware of an impending rate increase were aware, but many were unhappy with an increase and that is expected. With respect to the appeal process through the PUC, the Authority complied with the requirements of Texas Water Code § 13.043, which only requires notice to customers outside the boundaries of the district. *See* Tex. Water Code § 13.043(f). The criticism regarding what notice should be provided to customers is more appropriately directed to what is required by Chapter 13 of the Texas Water Code. The Authority complied with the applicable law. With that said, in the future, the Authority will try to be as transparent as possible, but it is not in a position to provide legal advice or instruct others on the rules of a separate agency.

RRA LACKS A COMPREHENSIVE ASSET MANAGEMENT APPROACH THAT COULD HAVE IMPROVED THE AUTHORITY’S ABILITY TO ADDRESS WATER QUALITY CONCERNS. PAGE 35

The Authority has professional engineering reports on many of its water systems. The Authority maintains a Capital Improvement Project schedule that includes maintenance and repair items, as well as large projects, both currently funded and those identified for when funds are available. To say the Authority needs a traditional asset management plan for a water system that extends over 15 counties with over 2,150 miles of pipe is not feasible. The Authority looked at the cost to have an engineered assessment a few years ago and the cost was in excess of 1 million dollars. That cost would have to be borne by the same rate payers who are already identified as paying elevated rates. The Authority will begin to conduct in-house asset management techniques, but does not believe it should be mandated to spend sparse resources on nontangible improvements.

RRA IS MISSING OPPORTUNITIES TO BETTER PREPARE FOR FUTURE STAFFING CHANGES. PAGE 36

The Authority is very lean. There are many one or two member departments. As such, there will never be a pool of internal applicants available to fill every position opened by attrition. Every effort is made to cross train employees when possible so that there will an easier transition if there is a change in staffing.

¹ *Sunset Advisory Commission Staff Report – Guadalupe-Blanco River Authority, Red River Authority of Texas, Nueces River Authority – 2018-2019 86th Legislature, Summary, Page 4*

RECOMMENDATIONS PAGE 36

CHANGE IN STATUTE PAGE 36

4.1 REQUIRE RRA TO DEVELOP AND MAINTAIN A COMPREHENSIVE ASSET MANAGEMENT PLAN. PAGE 36

The Authority will begin to conduct in-house asset management techniques, but does not believe it should be mandated to spend sparse resources on nontangible improvements.

4.2 REQUIRE THE RRA BOARD TO ADOPT A POLICY TO ENSURE MEANINGFUL PUBLIC INPUT ON SIGNIFICANT RATE CHANGES. PAGE 36

There is no need for legislative action, as Chapter 13 of Texas Water Code provides what notice is required. The Authority will continue to allow for public input at its meetings and will look at better utilizing social media to enhance its notification process. Authority staff will remain available to attend city council or commissioners court meetings and give presentations in affected towns, when requested. The Authority has already made changes to its website, as suggested by Sunset Staff, to eliminate the number of key strokes necessary to seek notices and agenda information.

4.3 REQUIRE RRA TO INFORM CUSTOMERS OF THEIR RIGHT TO APPEAL RATE CHANGES. PAGE 37

The notice that is required for rate changes is set out in Texas Water Code § 13.043. If the notice requirements in Chapter 13 of the Texas Water Code are insufficient, the changes should be to Chapter 13, rather than changes made specifically for the Authority.

It should also be noted that any additional mailing or notice requirements will come with significant added costs. Currently, the Authority's water bills allow only a short message box, which will accommodate only a few text characters. To provide the necessary room for that kind of announcement and to add pages would cause either a format change to the bills, (which will require contracted software design) or a change in billing to an envelope with additional pages. That will cost more in postage and would force the Authority staff to stuff the bills by hand and lose its automated process. The Authority will provide a link on its website to the PUC website for information on appealing rate changes. The Authority should not be mandated to provide legal advice or information beyond the contact information of another entity.

MANAGEMENT ACTION PAGE 37

4.4 DIRECT RRA TO DOCUMENT AND REGULARLY UPDATE ITS KEY DUTIES AND PROCEDURES. PAGE 37

The duties and procedures for all positions is part of the Authority's Administrative Policy and Procedure Manual. The Authority attempts to update this policy at least every five years. The

Authority will take the comments and suggestions from the Sunset Commission Staff Report and utilize them in the next policy review.

FISCAL IMPLICATION PAGE 37

In regard to a formal asset management plan, it appears the Sunset Staff is trivializing the size and complexity of the Authority's system and is not including the premium cost to study such a vast and remote area, such as the Authority's system. Again, the estimated cost for an asset management plan several years ago was in excess of 1 million dollars.

Also, the costs to redesign the Authority's billing software to include notices or with letters versus a card system will significantly impact the cost of billing. Any added costs will have to be passed on to our rate payers in the form of a rate increase.

ISSUE 6 RIVER AUTHORITIES LACK CERTAIN GOOD GOVERNMENT STANDARDS THAT WOULD ENHANCE TRANSPARENCY, ACCOUNTABILITY, AND COMPLIANCE WITH STATE LAW. PAGE 45

6.1 REQUIRE OPPORTUNITIES FOR PUBLIC TESTIMONY AT BOARD MEETINGS AND DIRECT RIVER AUTHORITIES TO IMPLEMENT ADDITIONAL BEST PRACTICES TO IMPROVE OPENNESS AND TRANSPARENCY. PAGE 49

A. WEBSITE. PAGE 49

The Authority has already made changes to its website to reduce the number of key strokes to access public notices. The Authority has also added labels to the drop down menus to assist the public in the search for agendas and meeting information. The Authority cannot place all the Board packet info online as many of our packets contain lengthy reports and/or maps that are supplied by others that cannot be reasonably scanned in to the website. The Authority will post all meetings and notice information on the Authority's website and again on the official calendar on the website.

B. RECORD RETENTION PLAN. PAGE 49

The Authority has already filed all necessary record retention schedules with the Texas State Library and Archives Commission and will continue to do so annually now that we are aware of that requirement. The Authority appreciates the Sunset Commission's staff in getting the Authority in compliance.

C. FINANCIAL INFORMATION. PAGE 49

Not applicable, as the Authority has received five consecutive (2012-2016) Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting Awards and has already qualified in 2017 and submitted for its sixth year in a row.

D. UPDATE GOVERNING LAWS. PAGE 49

The Authority will comply if legislation to codify is adopted.

6.2 DIRECT RIVER AUTHORITIES TO DEVELOP A POLICY TO ENSURE ALL CONTRACTS ARE PERIODICALLY REVIEWED. PAGE 50

There is no history of abuse in the selection of professional services by the Authority. There is no reason to adopt legislation to implement this recommendation.

6.3 APPLY GOOD GOVERNMENT STANDARDS TO RIVER AUTHORITIES' GOVERNING LAWS TO PROMOTE ACCOUNTABILITY, TRANSPARENCY, AND BEST PRACTICES. PAGE 50

A. PRESIDING OFFICER DESIGNATION. PAGE 50

There is no history of abuse in the selection of presiding officer and any legislation is not necessary.

B. GROUNDS FOR REMOVAL. PAGE 50

The Authority will adopt any rules the legislature sees necessary to govern its Board of Directors; however, the Sunset Staff's recommendation does not cite any abuses or issues. There does not seem to be any reason to adopt legislation to address this removal of board members.

C. BOARD MEMBER TRAINING. PAGE 50

The Red River Basin is a long way from Austin and the type training suggested by Sunset Staff. This would be an additional expense the Authority would have to pass on to its rate payers without any justification. The Authority will explore other ways, including online training courses, to provide training to its board members.

D. SEPARATION OF DUTIES. PAGE 50

All policies are adopted by the Board and carried out by Administration. There is already a clear separation of duties. If the legislature chooses to limit board members from being employed as General Manager, the Authority will make that change in its Bylaws. There has been no record as to that separation not being adhered to.

E. PUBLIC TESTIMONY. PAGE 50

The Authority already provides for public comment for non-agenda items on its agenda, and since the review, has initiated a sign up page for visitors who want to sign up to comment on agenda items, as well.

F. COMPLAINT INFORMATION. PAGE 50

The Authority already documents all complaints.

G. ALTERNATIVE DISPUTE RESOLUTION. PAGE 50

There is no history of unresolved or long litigation cases that would warrant the need for such a policy.

MANAGEMENT ACTION PAGE 51

6.4 DIRECT RRA TO COMPLY WITH TCEQ RULES BY ADOPTING REQUIRED ADMINISTRATIVE POLICIES. PAGE 51

A. A POLICY PROHIBITING THE AUTHORITY FROM GRANTING MONEY OR OTHER VALUABLE PROPERTY TO INDIVIDUAL CITIZENS, ASSOCIATIONS, OR CORPORATIONS PAGE 51

The Authority will address this suggestion and insert an appropriate policy in its Administrative Policy and Procedure Manual update.

B. A POLICY TO PROHIBIT NEPOTISM PAGE 51

The Authority will address this suggestion and insert an appropriate policy in its Administrative Policy and Procedure Manual update.

C. A POLICY FOR PRE-QUALIFIED PROFESSIONAL SERVICES VENDORS FOR CONTRACTS EXPECTED TO EXCEED \$25,000 PAGE 51

The Authority will address this suggestion and insert an appropriate policy in its Administrative Policy and Procedure Manual update.