

SUNSET ADVISORY COMMISSION

STAFF REPORT

Lavaca-Navidad River Authority

Upper Guadalupe River Authority

San Jacinto River Authority

**Bandera County River Authority
and Groundwater District**

2022-23

88TH LEGISLATURE



SUNSET ADVISORY COMMISSION



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Cover photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the south facade of the Capitol. Photo Credit: Janet Wood

LAVACA-NAVIDAD RIVER AUTHORITY
UPPER GUADALUPE RIVER AUTHORITY
SAN JACINTO RIVER AUTHORITY
BANDERA COUNTY RIVER AUTHORITY
AND GROUNDWATER DISTRICT

SUNSET STAFF REPORT

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HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at sunset.texas.gov/how-sunset-works. The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at sunset.texas.gov.

CURRENT VERSION: Sunset Staff Report

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

Sunset Staff Report with Commission Decisions

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

Sunset Staff Report with Final Results

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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SUMMARY OF SUNSET STAFF REPORT

Since 2015, the Sunset Commission has reviewed the operations and management of Texas' river authorities, applying good government principles and practices to increase transparency and oversight of these unique political subdivisions. River authorities pursue a variety of activities — ranging from water supply development and flood protection to generating electricity, treating water and wastewater, and operating parks and recreation facilities. Through its reviews, Sunset staff has found that no two river authorities are identical, and the river authorities currently under review are no exception.

The following material highlights Sunset staff's key recommendations for the Lavaca-Navidad River Authority, Upper Guadalupe River Authority, San Jacinto River Authority, and Bandera County River Authority and Groundwater District.

Lavaca-Navidad River Authority

Since its creation in 1947, the Lavaca-Navidad River Authority (LNRA) has managed the floodwaters, rivers, streams, and tributaries of the Lavaca-Navidad River Basin. LNRA's functions include providing raw water to municipal water providers and industry, monitoring water quality, and maintaining parks and event venues on its lands surrounding Lake Texana in Jackson County. Due to a small but stable customer base, LNRA has built up significant reserve funds, part of which it uses to provide grants to improve local communities and support economic development throughout the county. Sunset staff found LNRA to be generally well run, particularly its water operations, but identified ways the authority could strengthen its policies and procedures to ensure it manages various administrative practices in a fair and effective manner.

Sunset Staff Issue and Recommendations

ISSUE 1

LNRA Lacks Some Standard Practices to Ensure Fairness and Accountability, Including in Its Grant Program.

LNRA's grant programs benefit its local community, but lack certain standard practices government entities use to ensure impartiality and good stewardship when awarding grants. LNRA also lacks policies to govern the management and growth of its reserve funds. Finally, the authority's governing law does not reflect good government standards typically applied during Sunset reviews and is generally outdated and difficult for the public and the authority to find and fully understand.

Key Recommendations

- Direct LNRA to establish policies requiring conflicted members of its grant review committee, staff, and the board to recuse themselves from the grant award process.
- Direct LNRA to establish policies and procedures to formally monitor grant awardees and consider their past performance before awarding future grants.
- Direct LNRA to develop and implement a reserve fund balance policy.

Upper Guadalupe River Authority

Since its creation in 1939, the Upper Guadalupe River Authority (UGRA) has monitored the portions of the Guadalupe River and its tributaries within Kerr County. UGRA primarily operates a certified lab to regularly assess area water quality and encourages voluntary stewardship practices to protect the Guadalupe River watershed from threats such as flooding, sedimentation, water pollution, and invasive species. UGRA receives no state appropriations, but receives revenue through a local property tax, which generated \$1.14 million in fiscal year 2021, and from fees generated by its lab services. Through its work with stakeholders and partners in Kerr County, UGRA is highly regarded in the community, with a reputation for leveraging its small staff to create meaningful improvements in the water quality of the Guadalupe River. While UGRA performs its operations well, the Sunset review found some areas where the authority could benefit from adopting good governance practices. As such, Sunset staff recommends a number of standard contracting practices, policies for how UGRA manages its reserve fund, and several statutory changes and good government practices applied across the board during Sunset reviews.

Sunset Staff Issue and Recommendations

ISSUE 2

UGRA Would Benefit from Implementing Common Good Governance Practices To Ensure Greater Fairness, Transparency, and Accountability.

Over the years, Sunset reviews have included a number of standard elements designed to ensure open, responsive, and effective government. UGRA contracts for a wide range of services and should implement best practices to ensure consistency and transparency in its contracting process. Additionally, UGRA has developed a sizeable reserve fund over several years but does not have policies to govern the growth or depletion of these funds. Finally, UGRA's governing law does not contain several standard good government provisions, does not comply with constitutional requirements for river authority board member terms, and is generally outdated and difficult for the public and the authority to find and fully understand.

Key Recommendations

- Direct UGRA to improve its contracting processes to ensure consistency and transparency.
- Direct UGRA's board to develop and adopt a reserve fund balance policy.
- Apply standard across-the-board recommendations regarding board operations and public input.

San Jacinto River Authority

For the past 85 years, the San Jacinto River Authority (SJRA) has planned surface water resource development in the San Jacinto River basin, growing to become one of the largest river authorities in the state and managing an annual budget of over \$100 million. SJRA is the primary wholesale water provider for Montgomery County and is positioned to help serve an increasing population in the upcoming decades. In the previous Sunset review that took place during the 2020-2021 biennium, Sunset staff found public trust in SJRA had suffered due to drawn-out legal disputes over contracting issues and water policy decisions related to lake levels. While those issues were outside the scope of the

review, Sunset staff recommended requiring SJRA develop a public engagement policy and improve its public communications strategy.

Following that review, the authority's Sunset bill did not pass. Instead, the Legislature placed SJRA under Sunset review again for the 2022-23 biennium. Sunset staff found SJRA has made concerted efforts to meaningfully engage with the public, including improving its website. However, SJRA's protracted and contentious legal disputes with retail water providers continue to strain the authority's relationship with the general public and customers, leaving room for some additional improvement.

For additional information on the previous Sunset review of SJRA, please see the *Staff Report with Final Results*, published in June 2021 and available on the Sunset Commission's website. The 2021 report contains detailed information on the original Sunset staff recommendations, Sunset Commission decisions, and legislative action on the agency taken during the 87th Legislature.

Sunset Staff Issue and Recommendations

ISSUE 3

SJRA Would Benefit From Improved Communication and Common Good Governance Practices.

While SJRA has improved its communications and public engagement efforts since its previous Sunset review during the 2020-2021 biennium, protracted legal disputes continue to complicate the authority's relationship with the public. Consequently, a statutory requirement for a public engagement policy would ensure the authority's new practices continue at SJRA regardless of leadership and personnel changes. In addition, the authority's governing law does not reflect good government standards typically applied during Sunset reviews and is generally outdated and difficult for the public and the authority to find and fully understand.

Key Recommendations

- Statutorily require SJRA to adopt a public engagement policy that guides and encourages public involvement on key decisions.
- Apply standard across-the-board recommendations regarding board operations and public input.

Bandera County River Authority and Groundwater District

Historically, Texas has managed its primary water supply sources — surface water and groundwater — independently from one another, with each water source governed by a separate set of laws and regulated by separate government agencies. Surface water is the property of the state and is appropriated through water rights. By contrast, groundwater is governed by the rule of capture, meaning landowners own the water beneath their property and generally have the ability to use or sell that water as they see fit, unless that property is regulated by a local groundwater conservation district (GCD). For most of the state, the Texas Commission on Environmental Quality (TCEQ), river authorities, and various water districts manage surface water resources, while GCDs implement rules protecting groundwater availability and quality. The Bandera County River Authority and Groundwater District (BCRAGD) is an exception to this rule.

In 1989, the Legislature created BCRAGD (originally named Springhills Water Management District) to protect and preserve both groundwater and surface water resources in Bandera County. When establishing BCRAGD, the Legislature created a hybrid entity, by establishing a GCD and giving it the authority and functions of the Bandera County River Authority (BCRA), a preexisting river authority operating in Bandera County. However, the Legislature did not legally merge the two entities or abolish the river authority. As a result, BCRAGD took over the river authority's functions while the BCRA became a defunct entity without a governing body, funding, staff, or programs. Since BCRA is a defunct authority, Sunset staff cannot review it. Likewise, Sunset lacks clear authority to review BCRAGD.

Sunset Staff Issue and Recommendations

ISSUE 4

The Bandera County River Authority and Groundwater District Is Not Subject to Sunset Review.

The two entities created by the Legislature to manage water resources in Bandera County — BCRAGD and BCRA — were never legally combined and continue to exist as separate legal entities. Since BCRA is an inactive authority, Sunset staff cannot review it. Likewise, because the Sunset provision was only placed in BCRA's enabling act, Sunset staff lack clear authority to review BCRAGD.

Key Recommendation

- Remove the Bandera County River Authority from Sunset review.

Fiscal Implication Summary

The recommendations in this report would not result in a significant fiscal impact to the state or the river authorities under review. Most recommendations relate to basic administrative responsibilities the river authorities could implement with their existing resources. Since BCRAGD is not subject to Sunset review, it will not be required to pay the Sunset Commission for the cost of the review, resulting in a savings of approximately \$52,000 to BCRAGD.

LNRA AT A GLANCE

The Legislature created the Lavaca-Navidad River Authority (LNRA) in 1947 to provide for the management of floodwaters, rivers, streams, and tributaries in Jackson County and the Lavaca-Navidad River Basin.¹ Like other river authorities in Texas, LNRA is authorized to conduct a broad range of activities, including building and operating reservoirs; engaging in flood control; monitoring water quality and quantity; selling raw and treated water; preventing pollution; treating wastewater; acquiring property by eminent domain when needed; and building and managing park land.² LNRA engages in a number of these activities, including:

- Operating Lake Texana and the Palmetto Bend Dam.
- Providing raw water to municipalities and industrial customers.
- Operating parks and other recreational facilities on Lake Texana.
- Providing wastewater, water treatment, and law enforcement services on LNRA property.
- Monitoring water quality in the Lavaca-Navidad River Basin.
- Funding economic and community development programs in Jackson County.
- Participating in water supply and flood planning activities, including serving as a voting member and administrator for the Region P Water Planning Group and as a member of the Region 10 Colorado-Lavaca Flood Planning Group.

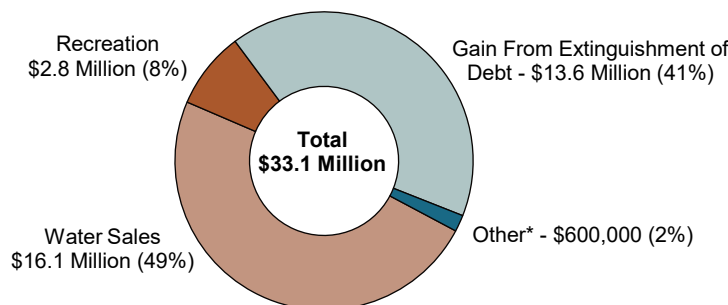
The map on Page 8 shows the authority's boundaries in relation to the overall Lavaca-Navidad basin.

Key Facts

- **Governance.** LNRA is governed by a nine-member board of directors appointed by the governor with the advice and consent of the Senate.³ Directors serve staggered six-year terms and elect a presiding officer from their membership.⁴ The board meets monthly to provide oversight of LNRA's operations, approve the authority's budget, establish LNRA policy, authorize allocation of funds, and set water sales rates.
- **Funding.** As the charts on the following page show, LNRA collected almost \$33.1 million in revenues and spent over \$31.5 million in fiscal year 2021.

Revenues. LNRA receives no state appropriations but has authority to issue bonds and assess a local tax.⁵ LNRA used local tax revenue to fund the initial operation and maintenance of Lake Texana but has not assessed any taxes since 1997. Instead, LNRA generates funds primarily from its water supply operations, including contracts for raw water and for the operation of two pipeline delivery systems, which accounted for most of the authority's revenue in fiscal year 2021. LNRA also collects revenue from its recreational facilities, such as fees for day-use and overnight park access and for hosting events at its Main Event Center.

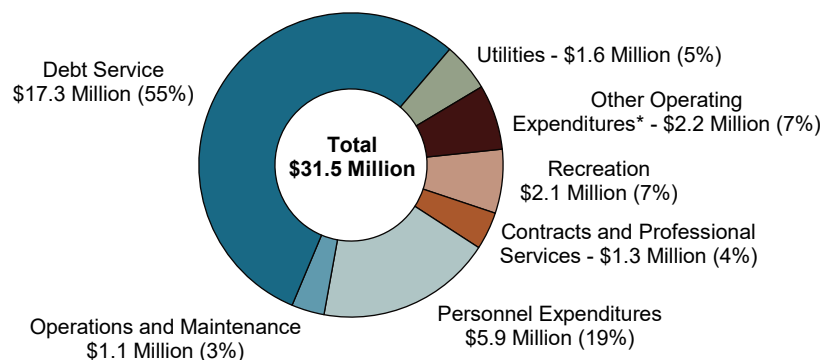
LNRA Sources of Revenue FY 2021



* Includes proceeds from the sale of capital assets, investment income, and customer payments for the East and West delivery system reserve funds.

Expenditures. In fiscal year 2021, LNRA spent the majority of its budget on personnel and debt service related to the Palmetto Bend Dam. Other expenses included operation and maintenance costs for the Lake Texana reservoir and water delivery systems, as well as operating its recreational facilities and parks.

LNRA Expenditures FY 2021



* Includes subscriptions, dues, TCEQ fees, insurance, public relations, capital outlays, and money deposited into the East and West delivery system reserve funds.

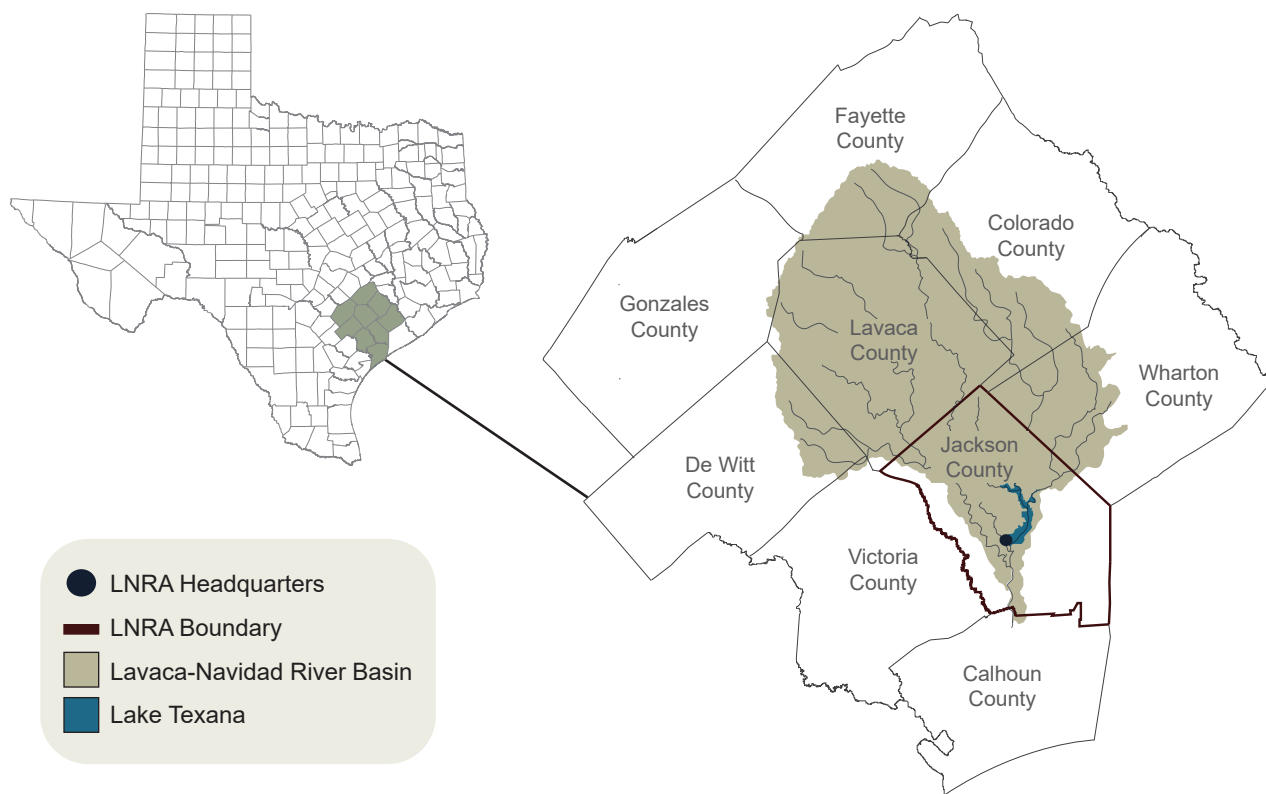
Reserve funds. During fiscal year 2021, LNRA deposited almost \$1.6 million in excess annual revenue into operating and capital reserve funds, which it maintains for emergency expenses and to save for future projects. At the end of fiscal year 2021, LNRA had more than \$15.9 million in reserves, with about \$7.1 million of that reserve dedicated to meet contractual agreements or bond covenants.

- **Staffing.** In fiscal year 2021, LNRA employed 85 staff at LNRA's headquarters in Edna and at its neighboring Brackenridge Recreation Complex, including seven commissioned peace officers to enforce state law, local ordinances, and authority rules on LNRA property and at recreational facilities. Appendix A compares the percentage of women and minorities in LNRA's workforce to the statewide civilian labor force for the past three fiscal years.
- **Water supply.** LNRA owns and operates the Lake Texana reservoir, including the dam, spillway, and associated raw water delivery structures. The Texas Commission on Environmental Quality (TCEQ) has permitted LNRA to impound 170,300 acre-feet of water in Lake Texana and use up to 79,000 acre-feet per year, plus an additional 7,500 acre-feet of interruptible water — water captured

in the lake due to rainfall or runoff. The authority currently contracts with industrial and municipal customers to provide up to 86,444 total acre-feet per year. TCEQ has also permitted LNRA to impound 93,340 acre-feet of water in a second planned reservoir and use up to 48,122 acre-feet per year. LNRA also oversees dam maintenance and safety, including supervisory and data acquisition controls for its pump stations and a flood early warning system. In addition, the authority operates a small water and wastewater treatment plant to serve LNRA's recreational facilities.

- **Recreation.** LNRA operates several recreational facilities. LNRA's thousand-acre Brackenridge Recreation Complex overlooking Lake Texana includes the Brackenridge Park and Campground, the Main Event Center, and the Texana Park and Campground, a former state park that includes a community education center. Other recreational facilities include the Mustang Wilderness Area, a primitive campground and natural area, and Camp Mauritz, a historical Boy Scouts of America camp. LNRA receives tens of thousands of visitors each year at its parks and facilities, receiving more than 40,000 visitors to the Brackenridge Park and Campground and over 30,000 to their Main Event Center in fiscal year 2021.
- **Community grant program.** LNRA's governing law authorizes it to use revenue from its water sales to fund grant programs aimed at encouraging economic and community development in Jackson County, such as improving the quality and quantity of services essential to economic development and community growth in the region.⁶ The Community Development Partnership Program offers grants of up to \$50,000 to three or four projects a year, such as park improvements and expanding public facilities. The Community Service Program provides grants up to \$5,000 for several smaller projects, including contributions to local community events and small capital projects. The authority reserves \$100,000 a year in a reserve fund for the larger grants and budgets \$15,000 a year for the smaller grants. LNRA also awards annual college scholarships to 13 county high school seniors and to one college student from Jackson County.
- **Water quality and land management.** LNRA collects and evaluates water quality samples at 23 different sites across the Lavaca-Navidad River Basin and reports this information to TCEQ as part of the Texas Clean Rivers Program. LNRA contracts with habitat management professionals to control the spread of invasive species, such as Carizzo Cane. LNRA also works with the Texas Parks and Wildlife Department and local game wardens to control white tail deer, alligators, and wild boar populations, including hosting annual hunts for youth and wounded veterans. Finally, LNRA works with the Texas Historical Commission to monitor 14 registered historical and archaeological sites and nine historical cemeteries on the authority's property.

Lavaca-Navidad River Authority River Basin



¹ Chapter 186 (HB 516), Acts of the 50th Texas Legislature, Regular Session, 1947; Chapter 417 (SB 808), Acts of the 61st Texas Legislature, Regular Session, 1969. The Legislature first created the authority in 1947 as the Jackson County Flood Control District. In 1969, the Legislature changed the district's name to the Lavaca-Navidad River Authority.

² Chapter 22 (SB 11), Acts of the 56th Texas Legislature, Third Called Session, 1959; Chapter 1224 (SB 1276), Acts of the 78th Texas Legislature, Regular Session, 2003.

³ Chapter 1224 (SB 1276), Acts of the 78th Texas Legislature, Regular Session, 2003.

⁴ SB 11, 1959.

⁵ Ibid. This provides broad authority for LNRA to use ad valorem taxes for the maintenance, operation, and upkeep of the authority and its constructed or acquired facilities, properties, and improvements.

⁶ Chapter 616 (SB 508), Acts of the 82nd Texas Legislature, Regular Session, 2011.

ISSUE 1

LNRA Lacks Some Standard Practices to Ensure Fairness and Accountability, Including in Its Grant Program.

Background

The Lavaca-Navidad River Authority (LNRA) provides raw water from its Lake Texana reservoir to municipalities and industrial customers, both within and outside Jackson County. In addition to the water related functions carried out by LNRA, the authority also supports economic development across Jackson County by drawing visitors to its parks, recreation facilities, and event center and by providing community grants to benefit Jackson County and LNRA's water service area.¹ LNRA's grant program uses revenue collected from water sales and recreation operations to provide up to \$50,000 for community enhancement projects through its Community Development Partnership Program (partnership grant) and up to \$5,000 for smaller community activities through its Community Services Program (service grant). LNRA's grants focus on:

- Encouraging economic diversification by supporting new and expanded community services.
- Improving the attractiveness of the community to public and private enterprises.
- Improving the quality or quantity of community services, including education, transportation, public safety, recreation, health care, training, community planning, or employment.²

In 2015, the Legislature directed Sunset staff to assess the governance, management, operating structure, and compliance with legislative requirements for each river authority.³ Over the years, Sunset reviews have included a number of standard elements from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or from general law provisions imposed on state agencies. This review identified several opportunities for LNRA to adopt good government practices and changes needed to update and conform LNRA's law to standard Sunset language generally applied to all entities under Sunset review.

Findings

LNRA lacks certain policies and procedures needed to best ensure a fair and effective grant program.

LNRA's partnership grant program lacks several best practices that would help ensure a more fair and transparent distribution of funds. In 2013, LNRA began awarding partnership grants to communities, governmental entities, and nonprofits. LNRA reserves \$100,000 a year for this grant, awarding up to \$50,000 per grant for capital improvements or community enhancement projects within Jackson County.⁴ Once a year, the program's grant review committee, whose members are shown in the textbox on the following page, recommends which grants the LNRA board of directors should fund, and the board makes the final decisions.^{5,6}

- **Conflicts of interest.** An agency's procedures for administering its grant program should not allow for or create the appearance of conflicts of interest. LNRA's current practices do not fully account for conflicts of interest in the selection of grant recipients. Each member of the grant

Grant Review Committee

The committee is made up of 13 members. Unless specified, each entity is allotted one member.

- Three LNRA Board members appointed by the board president
- LNRA's General Manager
- Two representatives from the Jackson County Commissioners Court
- Jackson County Hospital District
- Edna Independent School District (ISD)
- Industrial ISD
- Ganado ISD
- City of Edna
- City of Ganado
- City of La Ward

review committee reviews and scores every partnership grant application, even applications from the organization they represent.⁷ While LNRA has adopted a policy that committee members with potential conflicts should recuse themselves from the discussion after scoring applications, Sunset staff found no evidence that committee members do so.⁸ In addition, no LNRA board member has recused themselves from the final award decision on grants, despite some serving in organizations that regularly apply for and receive grant funds. Since its inception in 2013, LNRA has awarded 30 partnership grants totaling more than \$690,000, 14 of which were awarded to organizations represented by a member of the grant review committee. Together, these organizations received more than \$370,000. And on at least one occasion, an LNRA board member also served on the board of a local entity that received a grant. While Sunset staff did not find evidence that the awards were improper, having transparent and fully implemented recusal policies would reassure participants the grant selection process is fair and objective for all applicants.

- **Inadequate grant requirements.** Grant award contracts should clearly lay out the expectations for how grant funds will be used. However, LNRA's grant award contracts lack adequate terms and conditions for grantees. When the authority formalizes a partnership grant, the actual contract only contains four or five general terms, the first of which provides that

Grant Application Examples

Baseball field bleacher coverings. The application contained a brief project narrative, but no estimate of the goods and services needed to construct or install the improvement or how the grant money would be used.

Building expansion. The application provided no further project description of what the expansion would entail other than a total project cost estimate of \$93,700. The application did not include a description of why the expansion was needed, how large of an expansion this would be, or how the grant money would be used.

Building renovation. The application described a building in need of numerous repairs but provided no explanation for how LNRA's grant money, which would only cover a portion of the total cost, would be used in the renovation efforts.

the grant application sets the specific purpose for the grant funds. However, some grant applications lack sufficient detail to provide clear, measurable performance measures, as described in the *Grant Application Examples* textbox. In addition, the application and final approved grant funds awarded do not always match because an applicant may agree to receive less funding if the committee chooses to distribute the available funding across multiple applicants. This was the case for a 2021 recipient that received a grant amount that differed from its grant application. If the grant application serves as the guiding document for how grant funds are to be spent, the grant documentation should explain any difference between the funds requested and the final award and how that money should be spent.

- **Inadequate consideration of past performance.** An agency should consider past performance in re-evaluating or awarding money to previous grant recipients to ensure the best use of funds and the success of projects. Although LNRA policy directs staff to monitor projects, LNRA does not always formally document grantee performance. The authority only maintains a record of whether a grant project has been completed and any required signage acknowledging LNRA's involvement has been put up. The grant review committee's scoring matrix also does not include past performance as a factor.⁹ Instead, when evaluating future grant applications, LNRA informally relies on what staff can recall from their own experiences. Having and considering documented past performance of grantees provides a more objective and effective measure when scoring applications and helps ensure grant awards are used appropriately and successfully.

LNRA does not formally document grantee performance.

LNRA's service grant lacks fair and formalized processes.

An agency should fairly ensure potential applicants are aware of opportunities for grants and have formalized policies governing grant awards. In 2013, LNRA created the service grant to fund smaller projects in LNRA's service area, targeting private businesses, as well as municipalities, governmental entities, and nonprofits.¹⁰ The service grant awards up to \$15,000 per year from LNRA's budget through small, medium, and large grants described in the textbox.¹¹ LNRA accepts applications for these grants on a rolling basis throughout the year, which the general manager reviews and approves.¹²

Service Grant Categories

- Small - up to \$500
- Medium - up to \$2,500
- Large - up to \$5,000

- **Undocumented processes.** LNRA lacks formal policies on when and how it will award a service grant. Board policies specify the purpose and funding categories for the service grant, but LNRA has no other formal procedures for awarding the grant.¹³ For example, LNRA has not developed an application for the service grant. Instead, organizations often just submit a letter to LNRA requesting funds for a project. Some service grant recipients apply through the partnership grant application process. Occasionally, LNRA simply decides to perform a proposed grant project themselves, essentially "granting" the goods and services to complete the project. Once a request for a grant is received, LNRA does not have any guidelines or scoring criteria to evaluate and determine which requests to fund and does not require grantees adhere to a written contract to receive grant funds. While LNRA has informal procedures for each of these steps, formalizing them would better ensure the fairness and effectiveness of the grant program going forward.
- **Inadequate promotion.** Unlike the partnership grant, LNRA does not actively market the service grant, so potential applicants do not always realize the smaller grant program exists. LNRA's website contains no mention of the service grant, and when LNRA advertises for its grant program, it only mentions the partnership grant.¹⁴ In some instances, LNRA staff redirect qualified applicants from the partnership grant to the service grant. But,

Formalizing procedures would better ensure the fairness and effectiveness of LNRA's grant program.

because only government entities, communities, and nonprofits are eligible for the partnership grant, private businesses are unlikely to learn about the service grant through this method. To date, no private business has received a service grant. Without clearly communicating the existence of the service grant to all potential applicants, LNRA creates an unfair process.

A reserve fund can be a useful tool to prepare for large expenses.

LNRA lacks clear and comprehensive policies to govern its reserve fund.

Although LNRA has some policies governing portions of its reserve fund, the authority has not developed an overall reserve fund policy to guide its operations. Building up a reserve fund can be a useful tool for an entity to prepare for future large expenses, such as capital improvement projects or responding to unanticipated events or shortfalls. However, without strategic policies to guide the accumulation and expenditure of its reserves, an entity risks having fund balances either grow unchecked or fall below a reserve level adequate to respond to any emergencies or unexpected costs. Reserve fund policies can also help an entity create separate reserve funds for different needs and establish funding targets for each fund.

LNRA's reserve funds totaled over \$15.9 million at the end of fiscal year 2021, \$7.1 million of which is required to be maintained by customer contracts or bond covenants. The LNRA board retains control over the remaining reserve funds, including a Reserve Contingency Fund totaling over \$5 million. LNRA has strategically established multiple dedicated reserve funds to anticipate a variety of future expenses. While maintaining a reserve fund balance for future expenses is prudent, LNRA does not have policies in place to set an upper limit for its reserve funds. Generally, LNRA tries to budget annually for revenues to be within 10 percent of costs, to ensure sufficient funds for emergencies or cost overruns. LNRA's water supply contracts allow the authority to encumber funds for future uses or refund unspent funds to the water customers. LNRA often finds potential uses for any excess funds at the end of each year. This practice, however, increases the likelihood of LNRA's reserve growing unchecked over time. Without a reserve fund balance policy, the authority risks filling an ever-increasing number of reserve "buckets" as its total fund balance grows unchecked. Adopting and regularly reviewing an overall reserve fund balance policy would help LNRA maintain a sufficient fund balance for emergencies and other needs, while keeping fund balances at levels the board determines are fiscally responsible.

Without a reserve fund policy, LNRA risks its balance growing unchecked.

LNRA's governing law does not reflect standard language typically applied across the board during Sunset reviews.

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed, including river authorities, unless an overwhelming reason exists not to do so. These across-the-board recommendations (ATBs) reflect an effort by the Legislature to enact policy directives to prevent problems from occurring, instead of reacting to problems

after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain “good government” standards. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

- **Public membership.** LNRA’s governing law does not include the standard provision relating to public membership on state agency policymaking bodies that prevents a person from serving as a public member of the board if the person or the person’s spouse meets certain criteria, such as using or receiving a substantial amount of tangible goods, services, or money from the board. This provision better ensures LNRA is more responsive to the public’s broad interests rather than the specific entities affected by the activities of the board.
- **Presiding officer designation.** Having the governor designate the presiding officer of governing boards ensures a more direct connection between the board and the state’s highest elected official and increases the agency’s accountability to the state’s leadership. LNRA’s board annually elects the board president. In contrast, the governor appoints the presiding officers of the boards of two of the largest river authorities in Texas, the Lower Colorado River Authority and Brazos River Authority.
- **Grounds for removal.** LNRA’s governing law lacks the standard provision relating to grounds for removal of board members. Having a statutory basis and process for removing a member of a policymaking body who does not maintain the qualifications, has a conflict of interest, or has neglected duties can help ensure the sound function of the policymaking board.
- **Board member training.** While the authority provides training for new board members, LNRA’s governing law does not establish the type of training and information board members need to properly discharge their duties. State law requires board members to obtain Texas open meetings and public information trainings upon taking their oath of office. However, LNRA’s governing law requires no additional training to ensure each member has an adequate understanding of the authority’s governing law, operations, budget, and the scope and limitations of its rulemaking authority or programs, before making decisions regarding matters of public interest.
- **Policymaking and staff functions.** While LNRA has adopted policy, its governing law does not provide for separating the policymaking functions of the board from day-to-day administrative functions of managing LNRA. Such a provision would help avoid confusion about who is in charge of operations, which can undermine LNRA’s effectiveness.
- **Public testimony.** LNRA’s governing law does not require an opportunity to provide public comment at open board meetings. When people affected by LNRA’s decisions have an opportunity to provide meaningful input to the board, the additional information and perspective improve the overall decision-making process. LNRA’s bylaws do include a policy to allow anyone to address the board concerning issues relating to LNRA.¹⁵ To

ATBs reflect criteria to ensure open, responsive, and effective government.

LNRA’s governing law does not require board training on key topics.

A tracking system could help improve LNRA's management of complaints.

Sunset's knowledge, LNRA has never denied a member of the public an opportunity to speak at a board meeting, but a statutory requirement for public comment would ensure the public continues to have the ability to give its input on the authority's performance and operations.

- **Complaint information.** LNRA's governing law does not require LNRA to maintain complete information on complaints it receives or to make information on complaint procedures available to the public. Maintaining a system for acting on complaints and keeping proper documentation helps protect the public by ensuring LNRA addresses problems in a timely fashion. While LNRA receives few complaints, a complaint tracking system could help improve management of authority operations and raise awareness of high-risk issues.

LNRA's board member terms do not comply with constitutional requirements.

Members of LNRA's board serve staggered six-year terms as dictated by their governing law.¹⁶ Since the authority's creation, however, the Texas Constitution has been amended and sets the terms for the members of the governing boards of conservation districts created under Article XVI, Section 59 of the Texas Constitution, such as river authorities, to not exceed four years.¹⁷ Conforming to the four-year term requirement would align LNRA with current constitutional requirements.

LNRA's governing law exist only in session law, making it difficult for the public to find and understand.

While some water districts and river authorities are governed by laws that are fully compiled in a specific Texas code or statute, LNRA's governing law only exists in session law. In the absence of a codified statute, members of the public and the authority itself must find and correctly compile these different legislative changes, some quite minute, to understand the cumulative impact of all the changes to the authority's law over time. For example, LNRA's board structure is governed by three separate bills passed over a period of 50 years, each one establishing some piece of the current board structure.¹⁸

The state benefits from continued legislative oversight of LNRA.

Although not subject to abolishment under the Sunset Act, LNRA benefits from the Sunset Commission's review of the authority's governance, management, operating structure, and compliance with legislative requirements. Through that review, Sunset staff have identified a number of opportunities to enhance the effectiveness, efficiency, fairness, and accountability of LNRA. More broadly, continued oversight by the commission provides future legislatures a powerful tool to assess LNRA and invite public input on improving it.

Sunset Staff Recommendations

Change in Statute

1.1 Apply the standard across-the-board requirement regarding public membership on the board.

This recommendation would prohibit a public member from serving on the board if the person or the person's spouse meets certain criteria, including using or receiving a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

1.2 Apply the standard across-the-board requirement regarding the governor's appointment of the presiding officer to LNRA's board.

This recommendation would require the governor to designate a member of the LNRA board to serve as the presiding officer at the pleasure of the governor.

1.3 Apply the standard across-the-board requirement regarding grounds for removal of a board member to LNRA.

This recommendation would specify the grounds for board member removal, including failure to maintain qualifications, conflicts of interest, or neglect of duties. The recommendation would also provide a process for board member removal, including guidelines for timelines, public hearings, and action by appointing bodies.

1.4 Apply the standard across-the-board requirement regarding board member training to LNRA.

This recommendation would clearly establish the type of information to be included in the board member training for LNRA. This training would need to provide board members with information regarding LNRA's governing law; its programs, functions, by-laws, and budget; the scope of and limitations of its rulemaking authority; the results from its most recent audits; the requirements and training available related to open meetings, open records, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

1.5 Apply the standard across-the-board requirement regarding the separation of duties of board members from those of staff to LNRA.

This recommendation would require LNRA to adopt policies to clearly separate board policy functions from LNRA's staff day-to-day operations.

1.6 Apply the standard across-the-board requirement regarding public testimony to LNRA.

This recommendation would require LNRA to include public testimony as an agenda item at every regular board meeting. The authority should clearly provide the public the opportunity to comment on each agenda item and any issue or matter under the authority's jurisdiction at open board meetings.

1.7 Apply the standard across-the-board requirement related to developing and maintaining a complaints system and making information on complaint procedures available to the public.

This recommendation would require LNRA to maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures. LNRA would also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints if doing so would not jeopardize an ongoing investigation.

1.8 Amend LNRA's board member terms to four years to comply with constitutional requirements.

This recommendation would change the term of LNRA's board members from six years to four years to align with constitutional requirements for conservation districts created under Article XVI, Section 59 of the Texas Constitution.¹⁹

1.9 Amend LNRA's Sunset review date to 2035.

Because LNRA is not subject to abolishment under the Sunset Act, but the Legislature and the public benefit from continued legislative oversight of the authority, this recommendation would extend the Sunset date in LNRA's governing law to 2035, placing the authority under Sunset review again in 12 years.

Management Action

1.10 Direct LNRA to establish policies requiring conflicted members of its grant review committee, staff, and the board to recuse themselves from the grant award process.

This recommendation would direct LNRA to adopt formal policies recusing grant review committee members, staff, and board members with potential conflicts of interest from scoring applications, discussing recommendations, or voting to approve grant awards. Removing conflicted members from scoring and voting on applications would help protect the fairness of LNRA's grant decisions.

1.11 Direct LNRA to establish and document in writing the goals, terms, and conditions for partnership grants.

This recommendation would direct LNRA to create and sign formal agreements with partnership grant recipients that include all necessary terms and conditions of the grant. Documenting grant conditions would ensure that all parties are aware of the goals and objectives by which performance will be assessed.

1.12 Direct LNRA to establish policies and procedures for formally monitoring grant awardees.

This recommendation would direct LNRA to establish formal policies and procedures for monitoring partnership grantee's progress in fulfilling the terms and conditions of grants awarded by the authority. The authority's oversight should be proportionate to the scope and length of time needed to complete the project. This would ensure that LNRA maintains awareness of all grant projects and their progress.

1.13 Direct LNRA to develop policies to consider the past performance of grantees before awarding future grants.

This recommendation would direct LNRA to incorporate past performance into their evaluation of partnership grant awards. The authority should use this information to inform future decisions on grant

applications. The grant review committee should also consider incorporating past performance into its scoring matrix. This would allow LNRA to better measure and manage the success of their grant program over time and direct funds to the most deserving applicants.

1.14 Direct LNRA to create and publish policies and procedures governing the service grant and publicly post information about the grant.

This recommendation would direct LNRA to develop formal policies governing the solicitation, awarding, and tracking of service grants. When developing these policies, the authority should consider the recommendations made for the partnership grant, applying them where applicable. These policies should also include a fair and formal process for providing goods and services in lieu of funds for service grant award applicants. Additionally, LNRA should post information about the service grant online and publicly solicit applications for the grant. These policies would help ensure LNRA's solicitation and awarding of service grants is fair and targeted to reach the most qualified applicants.

1.15 Direct LNRA to develop and implement a reserve fund balance policy.

This recommendation would direct LNRA to develop a reserve fund balance policy that establishes the amount of funds needed to support current operations and address potential future expenses. The policy should include the basis for adjusting the growth or reduction of the fund balance to account for changes in revenue and expenditures; when excess revenue should be refunded to customers; and identify factors on which to base those decisions. This recommendation would help provide customers and the public greater transparency and clarity over the authority's budgeting process.

1.16 Direct the Texas Legislative Council to update LNRA's governing law.

This recommendation would request that the Texas Legislative Council prepare legislation codifying the governing law for LNRA for introduction during the 89th Legislative Session. This recommendation also would request the council to provide, by February 1, 2023, a list of any issues regarding LNRA's governing law that would impede codification and should be addressed in the authority's Sunset bill to facilitate the codification of that law. Sunset staff would work directly with the authority and the council to determine whether and how to address the identified issues.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the state or LNRA. The recommendations relate to basic administrative responsibilities LNRA could implement with existing resources.

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- ¹ Chapter 616 (SB 580), Acts of the 82nd Texas Legislature, Regular Session, 2011.
 - ² Ibid.
 - ³ Chapter 1148 (SB 523), Acts of the 84th Texas Legislature, Regular Session, 2015.
 - ⁴ Lavaca-Navidad River Authority (LNRA), *LNRA Board Policy: 701 – Economic Development and Community Services*, Section 701.601, 2018, accessed online September 23, 2022, <https://www.lnra.org/wp-content/uploads/2021/01/Board-Policy-701.pdf>.
 - ⁵ Ibid, section 701.602; Economic Development Review Committee, *Economic Development Review Committee Operating Procedures*, LNRA, 2013.
 - ⁶ Ibid.
 - ⁷ Ibid.
 - ⁸ Ibid. If the scoring and ranking process “does not yield consensus” and the committee must then vote on who to recommend, a member whose organization applied must abstain from any further discussion and vote on whether to recommend the grant.
 - ⁹ Economic Development Review Committee, *Community Development Partnership Program Review Committee Application Ranking*, LNRA, 2013.
 - ¹⁰ LNRA, *LNRA Board Policy: 701*, Section 701.50, 2018. Section 701.502 provides examples for the medium grant application category, which includes funding to assist private businesses for exterior beautification.
 - ¹¹ Ibid, Sections 701.503 and 701.504.
 - ¹² Ibid, Section 701.504.
 - ¹³ Ibid, Section 701.50.
 - ¹⁴ LNRA, “Community Development Partnership Program,” web page last modified 2021, accessed online September 23, 2022, <https://www.lnra.org/community/community-development-partnership-program/>; see, for example, LNRA, “LNRA’s Community Development Partnership Program Grants Available,” *Press Release*, April 2022.
 - ¹⁵ LNRA, *By-Laws*, section 2.6, 2016, accessed online September 23, 2022, <https://www.lnra.org/wp-content/uploads/2021/05/BYLAWS-Revised-05-18-16.pdf>.
 - ¹⁶ Chapter 22 (SB 11), Acts of the 56th Texas Legislature, Third Called Session, 1959.
 - ¹⁷ Section 30(c), Article XVI, Texas Constitution (amended 2009).
 - ¹⁸ See, for example, Chapter 383 (HB 836), Acts of the 53rd Texas Legislature, Regular Session, 1953; Chapter 22 (SB 11), Acts of the 56th Texas Legislature, Third Called Session, 1959; Chapter 1224 (SB 1276), Acts of the 78th Texas Legislature, Regular Session, 2003. The first bill transferred management of the Jackson County Flood Control District to a board. The second increased the board to nine members and changed their qualifications. The third bill, along with changing the name of the authority, added the appointment of board members with the advice and consent of the senate.
 - ¹⁹ Section 30(c), Article XVI, Texas Constitution.

UGRA AT A GLANCE

The Legislature created the Upper Guadalupe River Authority (UGRA) in 1939 as a conservation and reclamation district responsible for the control, storage, preservation, and distribution of the waters of the upper Guadalupe River and its tributaries within Kerr County.¹ Like other river authorities in Texas, UGRA is authorized to conduct a broad range of activities, including building and operating reservoirs; engaging in flood control; monitoring water quantity and quality; preventing pollution; treating wastewater; acquiring property by eminent domain when needed; and building and managing park land. UGRA engages in a number of these activities, including:

- Monitoring and improving the water quality of the Guadalupe River and its tributaries within Kerr County.
- Operating a certified environmental lab that conducts water quality testing for the authority and customers from surrounding communities.
- Implementing programs to protect the Guadalupe River watershed from flooding, sedimentation, water pollution, invasive species, and other threats.
- Providing outreach and education programs on the health and importance of the Guadalupe River and its tributaries.
- Serving as a voting member of the Region J Water Planning Group and the Region 11 Guadalupe Regional Flood Planning Group.

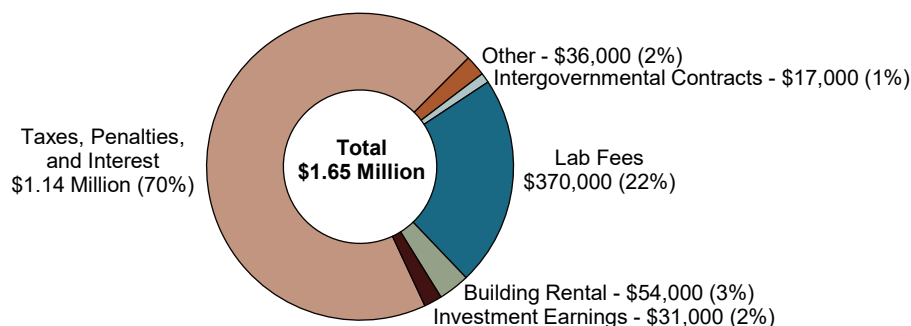
The map on Page 22 shows the authority's boundaries in relation to the broader Guadalupe River basin, which begins in Kerr County and continues to the Gulf of Mexico.

Key Facts

- **Governance.** A nine-member board of directors governs UGRA. The governor appoints the directors with the advice and consent of the Senate. Directors must be 21 years old, as well as reside and own land in Kerr County. Directors serve staggered six-year terms, and the board elects a president, vice president, secretary, and treasurer from its members.² The board adopts a meeting schedule each year and met seven times in fiscal year 2021.
- **Funding.** As the charts on the following page show, UGRA collected \$1.65 million and spent \$1.57 million in fiscal year 2021.

Revenues. UGRA receives no state appropriation but has voter-approved authority to assess local taxes and issue bonds.³ In fiscal year 2021, UGRA levied an ad valorem property tax of \$0.01952 per \$100 of appraised value within Kerr County and collected \$1.1 million in taxes, penalties, and interest, which averaged about \$28 per property. Other sources of revenue include fees generated by UGRA's lab services, rent UGRA collects from tenants, investment earnings, and intergovernmental contracts.

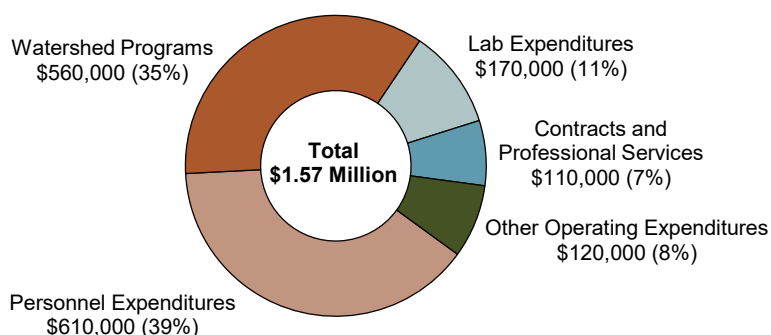
UGRA Sources of Revenue FY 2021



Expenditures. In fiscal year 2021, UGRA spent the majority of its revenue on personnel and implementing its watershed programs, including water monitoring, protection, and education programs. UGRA's remaining expenditures went toward its lab, professional services, and other operating expenses, such as building maintenance and intergovernmental payments.

Fund balance. At the end of fiscal year 2021, UGRA deposited about \$110,000 in excess revenue into an operating reserve fund, which it maintains for unplanned or emergency expenses, or savings for future large-scale projects. At the end of fiscal year 2021, UGRA's reserve fund balance was about \$3.4 million, which UGRA accrued as part of a multi-year effort to develop a water supply project in Eastern Kerr County. However, UGRA has recently determined a water supply project will not be feasible to pursue and at its August 2022 meeting the UGRA board approved a plan to lower its tax rate and begin spending down its reserve balance.

UGRA Expenditures FY 2021



- **Staffing.** In fiscal year 2021, UGRA employed seven full-time staff. Three additional part-time employees assisted with janitorial and administrative duties. All staff work at UGRA's headquarters in Kerrville. Because of UGRA's small size, Sunset staff did not prepare an analysis comparing the office's workforce to the percentage of minorities in the statewide civilian labor force.
- **Water quality monitoring and improvement.** UGRA collects and evaluates water quality samples at 17 sites and reports this information to the Texas Commission on Environmental Quality (TCEQ) as part of the Texas Clean Rivers Program through a sub-agreement with the Guadalupe-Blanco River Authority. Additionally, UGRA collects samples and evaluates water quality through its own testing program at 24 sites to supplement the data it collects for TCEQ. Using this data, UGRA monitors trends in water quality and identifies areas of the river that have pollution concerns. In response to a TCEQ report identifying portions of the Guadalupe River with elevated bacteria levels in 2002, UGRA developed a bacteria reduction plan in collaboration with local governments. UGRA implemented this plan between 2008 and 2018 using TCEQ funds and matching funds from local

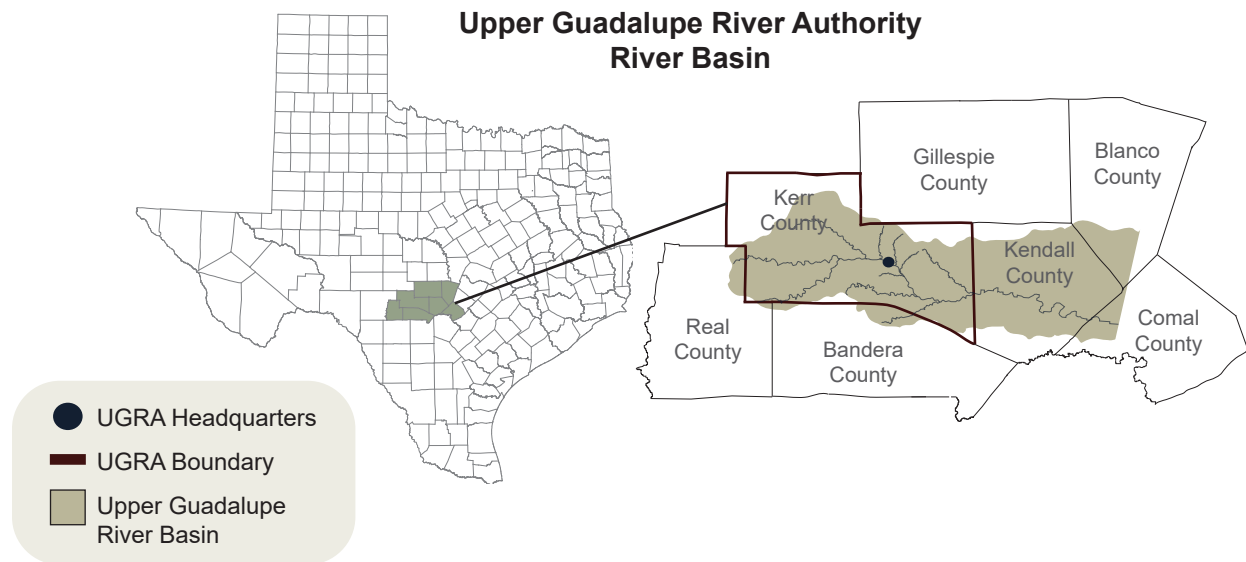
governments, totaling about \$890,000. The bacteria reduction strategies addressed pollution from various sources including animal waste, failing septic systems, and stormwater runoff. During summers, UGRA also conducts weekly monitoring of the bacteria levels at 21 popular swimming sites. UGRA publishes this information on its website and provides the data to local governments, including the City of Kerrville and Kerr County, who use the information to issue swimming advisories.

- **Environmental lab.** UGRA operates an environmental water quality testing lab certified by TCEQ's National Environmental Laboratory Accreditation Program. Through its lab, UGRA conducts tests on drinking water, wastewater, and surface water for general measurement for qualities such as temperature, dissolved oxygen, or turbidity as well as the presence of contaminants. The lab's clients include TCEQ-permitted drinking water and wastewater systems and private clients, as well as UGRA's internal programs. The lab provides in-house chemistry and microbiology testing and contracts out for any other needed tests, such as metals testing. In fiscal year 2021, UGRA's lab completed 6,342 work orders, as shown by the table.

**UGRA Lab Work Orders by Test Type
FY 2021**

Test Type	Work Orders
Permitted Drinking Water System	3,841
Permitted Wastewater System	1,058
Private	1,035
UGRA Internal	408
Total	6,342

- **Watershed protection.** UGRA operates a number of programs aimed at preserving and protecting the watershed of the Guadalupe River in Kerr County. For example, UGRA developed a program to construct small dams on private land to reduce flooding and sediment loading in the river downstream. Additionally, UGRA operates programs to keep the river clean, including efforts to regularly remove trash and pet waste, and maintains a partnership with local governments to provide materials for hazardous spill containment and clean up. UGRA also supports programs at other governmental agencies through interlocal agreements, including a partnership with Kerr County to pay feral hog bounties to reduce water pollution and another with the Texas Parks and Wildlife Department to manage invasive plant species.
- **Outreach and education.** UGRA works with schools and members of the public to increase awareness and appreciation of the Guadalupe River's natural resources through volunteer opportunities, presentations, events, and educational materials, such as annual river clean up days and field trips for school children. In fiscal year 2021, UGRA conducted 16 events with 702 participants. UGRA also funds two programs that incentivize rainwater collection and has developed an interactive landscape at its headquarters to educate the community on water conservation and stormwater detention techniques.
- **Water rights.** UGRA has not supplied or treated water since 1998, when it settled litigation with the City of Kerrville by transferring ownership of the Nimitz Lake dam and a water treatment facility to the city. Today, UGRA holds the surface water rights to about 2,000 acre-feet of water that are not currently in use.



¹ Chapter 5 (SB 303), Acts of the 46th Texas Legislature, Regular Session, 1939.

² Chapter 632 (HB 1058), Acts of the 59th Texas Legislature, Regular Session, 1965.

³ Chapter 83 (HB 428), Acts of the 55th Texas Legislature, Regular Sessions, 1957.

ISSUE 2

UGRA Would Benefit from Implementing Common Good Governance Practices To Ensure Greater Fairness, Transparency, and Accountability.

Background

The Upper Guadalupe River Authority (UGRA) is a small river authority that primarily encourages watershed protection and stewardship practices within Kerr County. In the decades after its creation in 1939, UGRA pursued various functions common to river authorities, including operating a dam and a water treatment plant that supplied water to Kerr County. UGRA also constructed the first aquifer storage and recovery well in the state in 1991, which allowed UGRA to capture and divert water from the Guadalupe River for use during peak water demand periods. However, as a result of legal disputes UGRA transferred all of these assets and responsibilities to the City of Kerrville in 1998. After the transfer, UGRA shifted its strategic purpose and settled into its current focus on watershed protection to sustain water supply and quality.

In 2015, the Legislature directed Sunset staff to assess the governance, management, operating structure, and compliance with legislative requirements for each river authority.¹ Over the years, Sunset reviews have included a number of standard elements from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or from general law provisions imposed on state agencies. This review identified several opportunities for UGRA to adopt good government practices and changes needed to update and conform UGRA's governing law to standard Sunset language generally applied to all entities under Sunset review.

Findings

UGRA should implement best practices to ensure consistency and transparency in its contracting process.

In fiscal year 2021, UGRA spent about \$600,000, almost 40 percent of its total annual expenditures, on contracts for a number of services across its programs, including construction, landscaping, and river cleanup. When evaluating an entity's contracting processes, Sunset uses the general framework established in the *State of Texas Procurement and Contract Management Guide*, as well as documented standards and best practices compiled by Sunset staff. As a political subdivision, UGRA is not subject to many of the procurement laws on which the guide is based, as they were designed for state agencies. However, as a quasi-state agency that spends public funds, UGRA would benefit from adopting several best practices state agencies use in their contracting processes. Because the guide establishes the most comprehensive set of standards for government contracting, purchasing, and procurement in the state, it serves as a good starting point for evaluating a river authority's contracting processes. While UGRA generally performs well in procurement and contracting, implementing best practices to address the following areas would better position the authority to continue to succeed in its future contracting.

UGRA would benefit from adopting contracting best practices.

UGRA does not have standard processes for evaluating and selecting vendors.

- **Contractor evaluation and selection.** Objective methods and clear documentation for evaluating and awarding contracts protect the transparency and accountability of an entity's contracting process while helping it select the vendor that provides the best value. However, UGRA does not have formalized and standardized processes for evaluating and selecting vendors for all contracts. While the authority uses objective selection criteria such as a scoring matrix for some larger contracts, UGRA usually relies on informal discussions before reaching a verbal consensus to select a vendor for smaller contracts. For example, staff may consider personal familiarity with a vendor and undocumented past performance, which can change with personnel turnover and may undercut fair evaluations. Adopting a standard approach using clear, objective selection criteria and recording the basis for award decisions would enhance fairness and consistency in UGRA's vendor evaluation and selection process.

- **Contractor performance.** Evaluating vendor performance before closing out a project is crucial to both assess the success of a contract and document lessons learned for future contracts. Most state agencies review vendor performance during a project and at closeout and formally document the results as part of the contract file. While UGRA may take note of vendor performance during a project, the information is collected informally and is not documented. As a result, UGRA's ability to use past experience when evaluating new contract proposals is limited to staff recollection. Assessing and documenting vendor performance in a centralized location both during a project and as part of the contract closeout process would improve future vendor selection.

Signed conflicts-of-interest statements would help prevent bias in contract selection.

- **Conflicts of interest.** Entities can protect the integrity of the contract evaluation process by ensuring personnel involved in the solicitation and evaluation of competitive contract proposals sign a statement affirming they have no conflicts of interest with any respondents, as well as agreeing they will not engage in the premature or unauthorized disclosure of information about proposed solicitations. UGRA's policies generally require board members and employees to disclose conflicts of interest with a vendor, but they do not specifically require staff members to sign a conflicts-of-interest statement or nondisclosure agreement prior to reviewing solicitation responses. Ensuring staff who evaluate contract proposals has signed non-disclosure and conflicts-of-interest statements before accessing documents or discussing submissions would help prevent the introduction of bias or favoritism in the contract selection process, safeguard sensitive vendor information, and provide clear assurances to the public that UGRA is appropriately screening for conflicts of interest.

UGRA lacks clear and comprehensive policies to govern its reserve fund.

Although UGRA has policies governing portions of its reserve fund, the authority does not adequately plan for use of the majority of its reserve. Building up a reserve fund can be a useful tool for an entity to prepare for

future large expenses, such as capital improvement projects or responding to unanticipated events or shortfalls. However, without strategic policies to guide the accumulation and expenditure of its reserves, an entity risks having fund balances either grow unchecked or fall below a reserve level adequate enough to respond to any emergencies or unexpected costs. Reserve fund policies can also help an entity create separate reserve funds for different needs and establish funding targets for the amount of each fund.

UGRA's reserve fund totaled about \$3.4 million at the end of fiscal year 2021, primarily comprised of unspent tax collections. In 2005, UGRA adopted an emergency reserve fund policy requiring the authority to maintain 25 percent of its current budget in reserve for emergency operations, which currently constitutes \$450,000. However, any additional reserves over that amount are not governed by board policy or designated for a specific purpose, as discussed in the textbox. While maintaining a reserve fund balance for future expenses is prudent, UGRA does not have policies in place to set an upper limit for its reserve fund or to determine when and how to adjust its tax rate and spending to account for excesses or shortfalls. Adopting and regularly reviewing additional reserve fund balance policies would help UGRA maintain a sufficient fund balance for emergencies and for other needs, while keeping fund balances at levels the board determines are fiscally responsible.

UGRA does not set an upper limit for its reserve fund.

Current Status of UGRA's Reserve Fund

Over many years, UGRA built up its current reserve of \$3.4 million — several times the entity's annual operating expenditures — for the original purpose of developing a small reservoir or other water supply project in Eastern Kerr County. After several attempts, UGRA and its local partners determined that such a project would not be viable due to the inability to find suitable land and concerns about the reliability of water under UGRA's permit. As a result, a large portion of UGRA's reserve fund no longer has a dedicated purpose. To help spend down its reserve balance the UGRA board approved a plan in August 2022 to lower its tax rate to reduce revenues and approved a budget that includes new programs to increase expenditures, including a program to incentivize low impact development in Kerr County.

UGRA's governing law does not reflect standard language typically applied across the board during Sunset reviews.

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed, including river authorities, unless an overwhelming reason exists not to do so. These across-the-board recommendations (ATBs) reflect an effort by the Legislature to enact policy directives to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

- **Presiding officer designation.** Having the governor designate the presiding officer of governing boards ensures a more direct connection between the board and the state's highest elected official and increases the authority's

accountability to the state's leadership. UGRA's governing law requires its board members to elect their own president.² In contrast, the governor appoints the presiding officers of the boards of two of the largest river authorities in Texas, the Lower Colorado River Authority and Brazos River Authority.

UGRA's
governing law
does not require
board training on
key topics.

- **Grounds for removal.** UGRA's governing law lacks the standard provision relating to grounds for removal of board members. Having a statutory basis and process for removing a member of a policymaking body who does not maintain the qualifications, has a conflict of interest, or has neglected duties can help ensure the sound function of the policymaking board.
- **Board member training.** UGRA's governing law does not establish the type of training and information board members need to properly discharge their duties. State law requires board members to obtain Texas open meetings and public information trainings upon taking their oath of office. While the authority provides training for new board members, UGRA's governing law requires no additional training to ensure each member has necessary knowledge about topics such as the authority's governing law provisions, operations, and budget before making decisions regarding matters of public interest.
- **Policymaking and staff functions.** UGRA's governing law does not provide for separating the policymaking functions of the board from day-to-day administrative functions of managing UGRA. Such a provision would help avoid confusion about who is in charge of operations, which can undermine UGRA's effectiveness.
- **Public testimony.** UGRA's governing law does not require an opportunity to provide public comment at open board meetings. When people affected by the authority's decisions have an opportunity to provide meaningful input to the board, the additional information and perspective improve the overall decision-making process. UGRA regularly provides opportunity for public testimony during their board meetings. A statutory requirement for public comment, however, would ensure the public continues to have the ability to give its input on the authority's performance and operations.
- **Complaint information.** UGRA's governing law does not require the authority to maintain complete information on complaints it receives or to make information on complaint procedures available to the public. Maintaining a system for acting on complaints and keeping proper documentation helps protect the public by ensuring the authority addresses problems in a timely fashion. While UGRA currently tracks water quality complaints it receives from the public, having a statutory requirement for tracking all complaints would ensure UGRA continues this best practice.

UGRA's board member terms do not comply with constitutional requirements.

Members of UGRA's board serve staggered six-year terms as dictated by their governing law.³ Since the authority's creation, however, the Texas Constitution has been amended and sets the terms for the members of the governing boards of conservation districts created under Article XVI, Section 59 of the Texas Constitution, such as river authorities, to not exceed four years.⁴ Conforming to the four-year term requirement would align UGRA with current constitutional requirements.

UGRA's governing law exists only in session law, making it difficult for the public to find and understand.

While some water districts and river authorities are governed by laws that are fully compiled in a specific Texas code or statute, UGRA's governing law only exists in session law. In the absence of a codified statute, members of the public and the authority itself must find and correctly compile these different legislative changes, some quite minute, to understand the cumulative impact of all the changes to the authority's law over time. UGRA's governing law also contains out-of-date provisions, including references to defunct state agencies and code sections that have been amended, renamed, or no longer exist, further complicating full understanding of the authority's powers and duties.

UGRA's governing law contains out-of-date provisions.

The state benefits from continued legislative oversight of UGRA.

Although not subject to abolishment under the Sunset Act, UGRA benefits from the Sunset Commission's review of the authority's governance, management, operating structure, and compliance with legislative requirements. Through this review, Sunset staff has identified a number of opportunities to enhance the effectiveness, efficiency, transparency, and accountability of UGRA. More broadly, continued oversight by the commission provides future legislatures a powerful tool to assess UGRA and invite public input on improving it.

Sunset Staff Recommendations***Change in Statute*****2.1 Apply the standard across-the-board requirement regarding the appointment of the presiding officer to UGRA's board.**

This recommendation would require the governor to designate a member of the board to serve as the presiding officer at the pleasure of the governor.

2.2 Apply the standard across-the-board requirement regarding grounds for removal of a board member to UGRA.

This recommendation would specify the grounds for board member removal, including failure to maintain qualifications, conflicts of interest or neglect of duties. The recommendation would also provide

a process for board member removal, including guidelines for timelines, public hearings, and action by appointing bodies.

2.3 Apply the standard across-the-board requirement regarding board member training to UGRA.

This recommendation would clearly establish the type of information to be included in the board member training for UGRA. This training would need to provide board members with information regarding the authority's governing law; its programs, functions, by-laws, and budget; the scope of and limitations of its rulemaking authority; the results from its most recent audits; the requirements and training available related to open meetings, open records, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

2.4 Apply the standard across-the-board requirement regarding the separation of duties of board members from those of staff to UGRA.

This recommendation would require UGRA to adopt policies to clearly separate board policy functions from the authority's staff day-to-day operations.

2.5 Apply the standard across-the-board requirement regarding public testimony to UGRA.

This recommendation would require UGRA to include public testimony as an agenda item at every regular board meeting. The authority should clearly provide the public the opportunity to comment on each agenda item and any issue or matter under the authority's jurisdiction at open board meetings.

2.6 Apply the standard across-the-board requirement related to developing and maintaining a complaints system and making information on complaint procedures available to the public.

This recommendation would require UGRA to maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures. The authority would also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints if doing so would not jeopardize an ongoing investigation.

2.7 Amend UGRA's board member terms to four years to comply with constitutional requirements.

This recommendation would change the term of UGRA's board members from six years to four years to align with constitutional requirements for conservation districts created under Article XVI, Section 59 of the Texas Constitution.⁵

2.8 Amend UGRA's Sunset review date to 2035.

Because UGRA is not subject to abolishment under the Sunset Act, but the Legislature and the public benefit from continued legislative oversight of the authority, this recommendation would extend the Sunset date in UGRA's governing law to 2035, placing the authority under Sunset review again in 12 years.

Management Action

2.9 Direct UGRA to improve its contracting processes to ensure sufficient consistency and transparency.

- **Contractor evaluation and selection.** Under this recommendation, UGRA should establish formal practices for evaluating contractors and documenting the authority's selection decisions. UGRA should develop written policies dictating the evaluation and selection process for different types of contracts and document why staff selected specific vendors. These documented procedures would make vendor selection more transparent and consistent, while providing support for the authority's decisions.
- **Contractor performance.** This recommendation would direct UGRA to establish standardized contract monitoring and evaluation procedures. UGRA should complete evaluations of vendors during a project and at closeout to compare actual performance with contract objectives. As part of this recommendation, UGRA should provide clear guidance to staff on how to monitor, document, and evaluate a vendor's performance, and under what circumstances to escalate contracting problems to leadership. This recommendation would allow UGRA to replace reliance on institutional memory with documented vendor performance when considering future contract awards.
- **Conflicts of interest.** Employees and board members of UGRA who have access to and evaluate vendor responses to competitive solicitations should sign a statement affirming no conflicts of interest with any responding vendors as well as an agreement to maintain the confidentiality of information about proposed solicitations prior to reading or discussing vendor responses. These procedures would help prevent bias in vendor selection and protect vendor information.

2.10 Direct UGRA's board to develop and adopt a reserve fund balance policy.

UGRA should develop a reserve fund balance policy that establishes the amount necessary to support current operations and address potential future expenses. The policy should include the basis for adjusting the growth or reduction of the fund balance to account for changes in revenue and expenditures, and identify factors on which to base those decisions. This recommendation would help provide the public greater transparency and clarity over the authority's budgeting process.

2.11 Direct the Texas Legislative Council to update UGRA's governing law.

This recommendation would request that the Texas Legislative Council prepare legislation codifying UGRA's governing law for introduction during the 89th Legislative Session. This recommendation would also request the council to provide, by February 1, 2023, a list of any issues regarding UGRA's governing law which would impede codification and should be addressed in the authority's Sunset bill during the 88th Legislative Session to facilitate the codification of that law. Sunset staff would work directly with the authority and the council to determine whether and how to address the identified issues.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the state or UGRA. The recommendations relate to basic administrative responsibilities UGRA could implement with existing resources.

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- ¹ Chapter 1148 (SB 523), Acts of the 84th Texas Legislature, Regular Session, 2015.
 - ² Chapter 632 (HB 1058), Acts of the 59th Texas Legislature, Regular Session, 1965.
 - ³ Ibid.
 - ⁴ Section 30(c), Article XVI, Texas Constitution (amended 2009).
 - ⁵ Ibid.

SJRA AT A GLANCE

The Legislature created the San Jacinto River Authority (SJRA) in 1937 to store, control, and conserve waters of the San Jacinto River basin.¹ Like other river authorities, SJRA is authorized to conduct a broad range of activities, including building and operating reservoirs; selling raw and treated water; engaging in flood control; monitoring water quantity and quality; preventing pollution; treating wastewater; acquiring property by eminent domain when needed; and building and managing park land.² SJRA engages in a number of these activities, including:

- Operating and maintaining the Lake Conroe Dam.
- Providing water for municipalities, private utilities, industry, and agriculture in the basin.
- Treating water and wastewater for various municipalities in Montgomery County.
- Providing regulatory oversight of on-site sewage facilities, structures, and other activities with a potential to impact the safety and water quality at Lake Conroe.
- Developing and executing short-term and long-term flood management activities with regional entities, including participation as a voting member of the Region 6 San Jacinto Flood Planning Group.
- Planning to develop and conserve water supplies in the basin for future use, including participation as the administrator and voting member of the Region H Regional Water Planning Group.

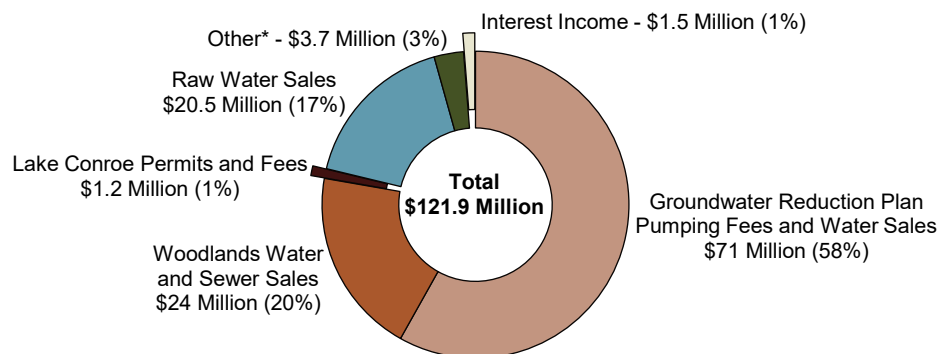
The map on Page 35 shows SJRA's jurisdiction, which includes all or part of seven counties in East Texas. Although SJRA's jurisdiction generally excludes the San Jacinto watershed within Harris County, SJRA has operated the Highlands Reservoir and canal system, which delivers untreated water to various customers in Eastern Harris County, since 1944.³

Key Facts

- **Governance.** SJRA is governed by a seven-member board of directors appointed by the governor with the advice and consent of the Senate. Four of the directors must reside in Montgomery County.⁴ Directors serve staggered six-year terms and elect the board's president.⁵ The board meets every month except November.
- **Funding.** As the charts on the following page show, SJRA generated almost \$122 million in revenue and spent more than \$124 million in fiscal year 2021.

Revenues. SJRA receives no state appropriations but has authority to issue bonds.⁶ SJRA also has authority to levy taxes to pay for its operations but has not sought the required voter approval.⁷ SJRA generates revenue to pay for its operations and debt service by selling water and wastewater services through contracts as well as issuing permits for structures on Lake Conroe.

SJRA Sources of Revenue FY 2021



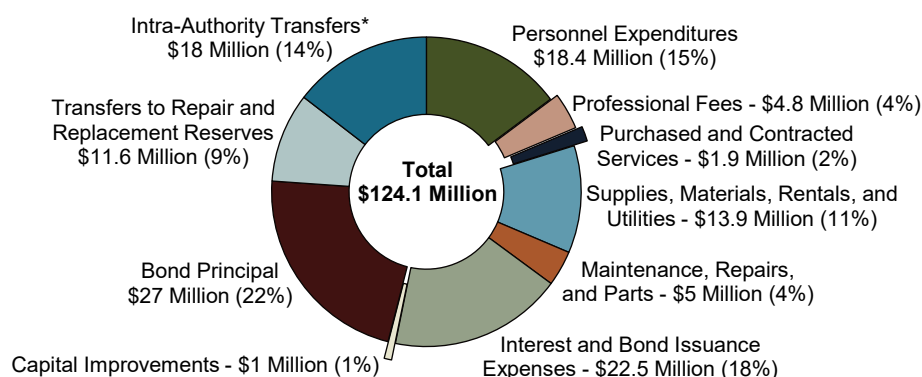
* Other includes revenue from sources such as: grant revenue and contributions from the City of Houston and water customers to operate and maintain SJRA's reservoirs. Includes intra-authority revenues.

Expenditures. In fiscal year 2021, the majority of SJRA's expenditures were for personnel, water supply infrastructure operations, and principal and interest payments on bonds issued for the construction of its water treatment plant. Generally, SJRA's water contracts and board policies direct its operating divisions, listed in the accompanying textbox, to spend revenue from its customers on only that division's direct expenses, such as operating a treatment plant, and its share of authority-wide expenses, such as accounting, technical support, and human resources.⁸

SJRA Operating Divisions

- Raw Water Enterprise
 - Highlands Division
 - Lake Conroe Division
 - Flood Management Division
- Groundwater Reduction Plan (GRP) Division
- Woodlands Division

SJRA Expenditures FY 2021



* Intra-authority transfers account for payments from the Woodlands Division to the Groundwater Reduction Plan (GRP) Division for treated water and from the GRP Division to Raw Water Enterprise for raw water.

Reserve funds. During fiscal year 2021, SJRA managed the \$2.2 million difference between its revenues and expenses by relying on operating reserve funds, which the authority maintains for future unplanned or emergency expenses and to save for large-scale projects. SJRA typically deposits unspent annual revenue into its reserve funds to maintain targeted reserve balances for each operating division. As of August 31, 2021, SJRA had approximately \$163.6 million in total reserve funds. The vast majority of these funds have restrictions on their use. For example, SJRA maintains a reserve of over \$77.1 million as required by bond covenants to service outstanding debt, and board policies restrict the use of another \$60.5 million for future large-scale projects like construction. SJRA anticipates completing payments on its current bonds by 2042. In addition, SJRA holds \$12.8 million in specific operating reserves and another \$7.7 million as emergency reserves, as required by its contracts with water customers.

- **Staffing.** SJRA employed 159 staff at the end of fiscal year 2021. Of these, 97 directly supported water-related functions and the remainder supported authority-wide functions such as technical support, administration, purchasing, and engineering. About 38 percent of staff work at SJRA's headquarters and surface water treatment plant in Conroe, while the remainder work at offices and facilities in Montgomery County and Eastern Harris County, as shown on the map on Page 5. Appendix B compares the percentage of minorities and women in SJRA's workforce to the statewide civilian labor force for the past three fiscal years.

- **Water supply.** The Texas Commission on Environmental Quality (TCEQ) has permitted more than 168,000 acre-feet of water in the San Jacinto River basin to SJRA, which represents about 19 percent of all permitted water rights in the basin.⁹ The table, *SJRA Water Rights Permits*, summarizes these rights.¹⁰ The main reservoir SJRA operates is Lake Conroe, a joint, long-term water supply project built by SJRA and the city of Houston in 1973. SJRA operates the Lake Conroe Dam and manages water supply diversions in coordination with the city, which retains rights to two-thirds of the lake's permitted water.

**SJRA Water Rights Permits
FY 2021**

Water Source	Permitted Acre-Feet
Lake Conroe	33,333
Lake Houston	135,244
Trinity River Basin	86,000
Total	254,577

Raw water. SJRA operates the Highlands Reservoir and a 27-mile canal system that brings raw water from Lake Houston to industrial, municipal, and agricultural customers in eastern Harris County through a series of open-air canals and pump stations.

Treated water. SJRA provides treated wholesale groundwater to 11 municipal utility districts (MUDs) in the Montgomery County portion of The Woodlands. SJRA also sells treated surface water from Lake Conroe to the 11 Woodlands MUDs, the city of Conroe, and five other utility providers, to reduce the need to pump groundwater.¹¹ SJRA's water supply infrastructure includes groundwater wells, water plants, storage tanks, and a potable water transmission system.

- **Wastewater treatment.** SJRA operates regional wastewater treatment plants, lift stations, and pipelines to provide treatment of wastewater for the 11 Woodlands MUDs. SJRA has agreements with the MUDs to monitor equipment that businesses must install to keep fats and grease from entering the wastewater system. TCEQ has recently approved SJRA's application for a permit to regulate certain industrial businesses' treatment of their wastewater to prevent damage to SJRA's wastewater system.
- **Groundwater reduction plan (GRP) compliance.** In 2009, the groundwater conservation district for Montgomery County adopted rules to reduce overall groundwater pumping by 30 percent.¹² To comply, SJRA constructed a plant to treat and transmit surface water from Lake Conroe, which

it completed in 2015. To offset the cost of plant operations and debt service, SJRA entered into contracts with 149 retail utility providers that agreed to pay SJRA a fee for providing surface water to certain providers while others continued to rely on groundwater. Following a repeal of the 2009 pumping restrictions by the groundwater conservation district, several retail utility providers declared an intent not to comply with these contracts and several lawsuits were filed concerning SJRA's GRP program. Appendix C contains more information about the litigation around the GRP and the rules that precipitated it.

- **Water quality and safety.** SJRA protects water quality and ensures water safety at Lake Conroe through several regulatory programs and a contract with Montgomery County constables to enforce SJRA's rules and regulations for these programs and general lake recreation.¹³

Commercial and residential permitting. SJRA requires lakeside businesses and residents to obtain permits and comply with certain minimum safety and construction standards for on-water facilities, such as residential docks, bulkheads, and commercial marinas. SJRA approved 25 new commercial permits and 541 new residential structures in fiscal year 2021.

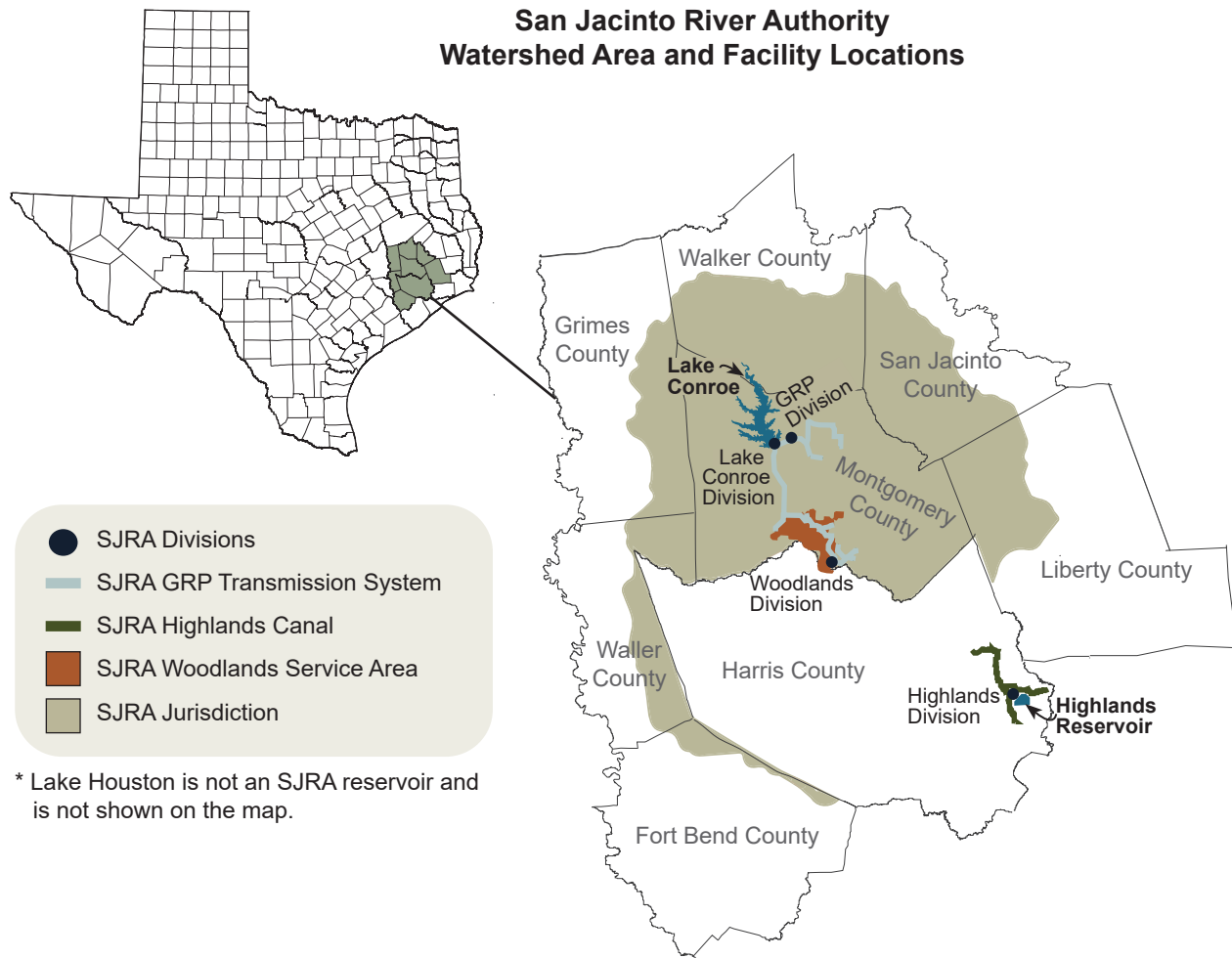
On-site sewage facilities. As an authorized agent of TCEQ, SJRA regulates on-site sewage facilities within 2,075 feet of Lake Conroe. SJRA issues permits for residential septic tanks to ensure proper design and construction to protect the lake's water quality.¹⁴ SJRA issued 82 new permits and conducted 42 inspections in fiscal year 2021.

Clean Rivers Program. SJRA collects water quality samples at 10 sites on Lake Conroe in support of the Houston-Galveston Area Council's administration of the Texas Clean Rivers Program. The council reports this information quarterly to TCEQ.

- **Flood management.** In response to the governor's direction following Hurricane Harvey, SJRA created its Flood Management Division in 2018. In addition to maintaining a storm water detention reservoir for five Woodlands MUDs, SJRA's current flood management efforts include:

Seasonal lake lowering. Since 2018, SJRA has adhered to a joint agreement with the city of Houston to release water from Lake Conroe when needed to capture anticipated stormwaters and reduce downstream flooding. SJRA will create up to six inches of reservoir capacity in the spring and up to one foot of capacity in the fall, while the U.S. Army Corps of Engineers and the city complete dredging and flood control infrastructure projects on and around Lake Houston.¹⁵

Flood planning and warning. SJRA is helping to develop a drainage plan for the San Jacinto watershed and a tool to predict peak storm water levels on Lake Conroe. SJRA has also applied for grants to fund other flood mitigation projects, such as a feasibility study for flood control dams.



¹ Chapter 426 (HB 832), Acts of the 45th Texas Legislature, Regular Session, 1937. The original name of the authority was the San Jacinto River Conservation and Reclamation District. The Legislature renamed it the San Jacinto River Authority (SJRA) in 1951.

² Section 3, HB 832, 1937.

³ Section 5, HB 832, 1937.

⁴ Section 1, Chapter 847 (SB 526), Acts of the 78th Texas Legislature, Regular Session, 2003.

⁵ Section 6, HB 832, 1937.

⁶ Section 10b, Chapter 10 (HB 941), Acts of the 46th Texas Legislature, Regular Session, 1939.

⁷ Section 9(e), HB 832, 1937.

⁸ SJRA, *Contract for Groundwater Reduction Planning, Alternative Water Supply, and Related Goods and Services By and Between The San Jacinto River Authority and [Participant]*, Sections 6.04(g) and 9.03, accessed September 23, 2022, <http://www.sjra.net/wp-content/uploads/2015/01/GRP-Contract-04192010.pdf>; SJRA, *Rate Order (Raw Water Customers)*, 1, , accessed September 23, 2022, https://www.sjra.net/wp-content/uploads/2019/08/2019-O-03_Raw-Water.pdf; SJRA, *Approved Operating Budgets For Fiscal Year September 1, 2020 to August 31, 2021*, pp. 7–8 and 89.

⁹ “Water Rights and Water Use Data,” Texas Commission on Environmental Quality, accessed September 23, 2022, https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/wrwud.

¹⁰ SJRA, *Comprehensive Annual Financial Report for the Fiscal Year Ending August 31, 2021*, 96, accessed September 27, 2022, <https://www.sjra.net/wp-content/uploads/2022/03/ACFR-FY21.pdf>.

¹¹ SJRA, *Groundwater Reduction Plan – Monthly Operations Report, 2*, accessed September 23, 2022, https://www.sjra.net/wp-content/uploads/2022/09/2022_08_22_GRP_Monthly-Operations-Report_August.pdf.

¹² Lone Star Groundwater Conservation District, *Groundwater Management Plan*, accessed September 23, 2022, https://www.twdb.texas.gov/groundwater/docs/GCD/lsgcd/lsgcd_mgmt_plan2013.pdf

¹³ SJRA, *Lake Conroe Reservoir Rules and Regulations*, accessed September 23, 2022, <http://www.sjra.net/wp-content/uploads/2015/03/Lake-Conroe-Rules-and-Regulations-2015.pdf>.

¹⁴ SJRA, *Order Adopting new Rules for On-Site Sewage Facilities*, accessed September 23, 2022, http://www.sjra.net/wp-content/uploads/2015/01/Order-Adopting-Rules-for-On-Site-Sewage-Facilities-Within-2075-feet-of-Lake-Conroe-Texas_121015.pdf.

¹⁵ SJRA, “Joint Flood Mitigation Strategy Seasonal Lake Lowering at Lake Conroe Frequently Asked Questions,” press release, accessed September 23, 2022, https://www.sjra.net/wp-content/uploads/2022/01/Flood-Mitigation-Strategy-FAQs_Compromise_2022.pdf.

STATUS OF 2020 SUNSET COMMISSION RECOMMENDATIONS

San Jacinto River
Authority

Issue 1 - SJRA's Growing Regional Role Requires Better Communication and Engagement Efforts to Improve Public Trust in the Authority.

2020 Recommendation	Status
Change in Statute	
1.1. Require SJRA to adopt a public engagement policy that guides and encourages public investment on key decisions.	Not implemented; recommendation still needed. See Issue 3 of this report.
Management Action	
1.2 Direct SJRA to develop a strategic communications plan.	Implemented. SJRA adopted a strategic communications plan in February 2020.
1.3 Direct SJRA to provide prominently on its website clear, understandable information on its rates and fees, and the associated expenses paid for by these rates and fees.	Implemented. SJRA added specific webpages addressing rates, fees, and rate orders in January 2020.
1.4 Direct SJRA to regularly update its website to provide current, easily accessible information.	Implemented. SJRA redesigned its website in January 2020, and improved navigation and availability of information.

Issue 2 - SJRA's Contracting Function Lacks the Direction and Processes Needed to Consistently Receive Best Value.

2020 Recommendation	Status
Management Action	
2.1 Direct SJRA to establish additional guidance for contracting needs and procurement methods and use open solicitations except in documented exceptions.	Implemented. SJRA's board created policies to document exemptions from open solicitations and has updated its Procurement Policies and contracting manual.
2.2 Direct SJRA to consistently monitor, document, and evaluate vendor performance.	Implemented. SJRA adopted administrative procedures related to vendor performance and created a vendor performance evaluation form.
2.3 Direct SJRA to improve the transparency, fairness, and effectiveness of its contracting process, including publishing on its website conflict-of-interest statements from employees who evaluate vendor responses to solicitations.	Implemented. SJRA updated its website to include a section for conflict-of-interest statements and its training practices related to transparency, fairness, and effectiveness.

Issue 3 - SJRA's Governing Law and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.

2020 Recommendation	Status
Change in Statute	
3.1 Apply the standard across the board requirement regarding the governor's appointment of the presiding officer if the SJRA board.	Not adopted; recommendation still needed. See Issue 3 of this report.
3.2 Apply the standard across the board requirement regarding grounds for removal of a board member to SJRA.	Not adopted; recommendation still needed. See Issue 3 of this report.
3.3 Apply the standard across the board requirement regarding board member training to the SJRA board.	Not adopted; recommendation still needed. See Issue 3 of this report.
3.4 Apply the standard across the board requirement regarding the separation of duties of board members from those of SJRA staff.	Not adopted; recommendation still needed. See Issue 3 of this report.
3.5 Apply the standard across the board requirement regarding public testimony to SJRA.	Not adopted; recommendation still needed. See Issue 3 of this report.
3.6 Apply the standard across the board requirement regarding developing and maintaining a system for receiving and acting on complaints and making information on complaint procedures available to SJRA.	Not adopted; recommendation still needed. See Issue 3 of this report.
Management Action	
3.7 Direct the Texas Legislative Council to update SJRA's governing law.	Not adopted; recommendation still needed. See Issue 3 of this report.
3.8 Direct SJRA to plan and monitor its efforts to increase workforce diversity.	Implemented. SJRA has expanded recruiting efforts to begin including more individuals from historically disadvantaged backgrounds in their workforce.

ISSUE 3

SJRA Would Benefit From Improved Communication and Common Good Governance Practices.

Background

The San Jacinto River Authority (SJRA) primarily acts as a wholesale provider of raw and treated water from Lake Conroe, the largest reservoir in the San Jacinto River basin. SJRA delivers raw water to industrial customers in Eastern Harris County and raw water, treated drinking water, and wastewater services to municipal and commercial utilities in Montgomery County. In addition, Lake Conroe's extensive shoreline provides commercial and recreational opportunities to residents and local businesses represented by chambers of commerce and other associations. SJRA's direct customers are mostly retail utility providers and industrial water users, not the general public. Thus, while most of the general public does not receive services directly from SJRA, as the textbox describes, its operations directly impact the lives of many in the region.

SJRA Regional Stakeholders

SJRA direct customers. Retail utilities — municipalities, municipal utility districts, and investor-owned utilities — and industrial and other raw water users that purchase wholesale water directly from SJRA.

Consumers. Individuals who live in communities within the San Jacinto River basin and receive water and/or wastewater service from a retail utility. Consumers pay the retail utility directly, not SJRA.

Communities and general public. Chambers of commerce, service clubs, and other groups and individuals interested in water management on Lake Conroe and in the San Jacinto River basin. These groups may or may not be consumers served by a retail utility that purchases water from SJRA.

In 2015, the Legislature directed Sunset staff to assess the governance, management, operating structure, and compliance with legislative requirements for each river authority.¹ Sunset staff conducted a review of SJRA during the 2020-21 biennium; however, SJRA's Sunset bill did not pass during the 87th Legislative Session. Instead, the Legislature continued SJRA for two years, placing it under full Sunset review again in the 2022-23 biennium. In the current review, Sunset staff generally found SJRA has improved communications and public engagement practices since the previous review. However, Sunset also found SJRA's protracted, contentious legal disputes with certain direct customers continue to harm the authority's relationship with the general public and consumers, leaving room for further improvement. In addition, Sunset staff again identified changes needed to apply good government practices to SJRA and conform the authority's governing law to standard Sunset language.

Findings

Continued distrust of SJRA hinders effective water supply management, including bond repayment and future supply development.

Complicated legal disputes and uncertainty surrounding groundwater usage regulations continue to affect SJRA's relationships with its direct customers and the general public. In response to rules set in 2009 by Montgomery County's Lone Star Groundwater Conservation District (Lone Star), SJRA facilitated

SJRA has taken significant steps to repair its reputation and relationships in the community.

a multi-phase regionalized groundwater reduction plan (GRP) to reduce groundwater consumption by developing surface water resources for the area. Dozens of utilities entered into contracts with SJRA which it used as collateral to obtain bonds from the Texas Water Development Board (TWDB) to fund construction of a water treatment facility and distribution system, completed in 2015. As a result, GRP participants fund bond payments by paying SJRA either a wholesale rate for using treated surface water or a pumping fee for continuing to use groundwater. Shortly after SJRA started providing treated surface water, however, contract disputes began. Several municipal utilities refused to pay SJRA's 2017 rates and challenged the validity of the GRP contracts, so the authority filed suit to establish the validity of the rates and the contracts. In turn, these utilities challenged the validity of the GRP contracts in other lawsuits.² Appendix C provides a summary of this ongoing litigation. During the same period, a newly elected Lone Star board declared its 2009 rules invalid, undermining the original motivation for creating the GRP.

The current Sunset review found SJRA has taken significant steps to repair its reputation and relationships in the community. SJRA has implemented all of the Sunset Commission's previous management actions related to improving its communication and engagement efforts. In fact, as soon as the commission adopted the recommendations in January 2021, SJRA immediately began implementing them. The textbox, *SJRA Communications Improvements*, summarizes the authority's responses to the previous review's recommendations related to public engagement. However, because SJRA's Sunset bill did not pass during the 87th Legislature, the commission's statutory recommendation for SJRA to adopt a public engagement policy to guide and encourage public involvement on key decisions did not become law.

SJRA Communications Improvements

Strategic communications plan. Adopted in 2020, the plan sets out methods to provide consumers with clear information regarding rates and fees and to educate the general public about SJRA's operations.

Public engagement policy. Finalized in 2021, the policy requires the authority to seek input ahead of major projects from stakeholders and the public, communicate frequently with the public through social media and their website, and engage the general public with educational campaigns like Know Your Watershed.

Website redesign. Completed in 2020, the authority's new website features a more user-friendly design, focusing on plain language, easy-to-find rate information, and live updates regarding lake levels and storm events.

Despite all of these efforts, frustrations and misunderstandings persist. For example, members of the public served by some of SJRA's direct customers feel they receive nothing for the groundwater pumpage fees they pay as part of their monthly bill, particularly since they do not receive any surface water from SJRA and Lone Star's groundwater restrictions no longer exist. Others complain that these direct customers' lawsuits and refusals to pay have led to

increased costs for those continuing to participate in good faith.³ Given these ongoing concerns, SJRA has halted further action on additional planned phases of the GRP project. This ongoing mistrust not only undermines the successful execution of SJRA's GRP contracts and bonds, but also complicates the authority's ability to effectively plan for future projects.

As a river authority and steward of the largest reservoir in the basin, SJRA will continue to play a key role in water supply planning and projects to meet the rapidly growing region's future water needs. Such projects will require long-term collaboration with local and regional entities, solicitation of significant funding or debt obligations, and participation and support from the public. Therefore, placing the requirement in SJRA's statute to create and maintain a public engagement policy would reflect the critical and consequential importance of public buy-in to SJRA's functions and ensure current practices continue even after any leadership or personnel change.

Ongoing mistrust in SJRA undermines the successful execution of future projects.

SJRA's governing law does not reflect standard language typically applied across the board during Sunset reviews.

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed, including river authorities, unless an overwhelming reason exists not to do so. These across-the-board recommendations (ATBs) reflect an effort by the Legislature to enact policy directives to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government. During the last review, these same ATBs were recommended by Sunset staff and adopted by the Sunset Commission, but because the bill did not pass the recommendations did not become law.

ATBs reflect criteria to ensure open, responsive, and effective government.

- **Presiding officer designation.** Having the governor designate the presiding officer of governing boards ensures a more direct connection between the board and the state's highest elected official and increases the agency's accountability to the state's leadership. SJRA's governing law requires its board members to elect their own president.⁴ In contrast, the governor appoints the presiding officers of the boards of two of the largest river authorities in Texas, the Lower Colorado River Authority and Brazos River Authority.
- **Grounds for removal.** SJRA's governing law lacks the standard provision relating to grounds for removal of board members. Having a statutory basis and process for removing a member of a policymaking body who does not maintain the qualifications, has a conflict of interest, or has neglected duties can help ensure the sound function of the policymaking board.
- **Board member training.** SJRA's governing law does not establish the type of training and information board members need to properly discharge their duties. State law requires board members to obtain Texas open meetings

and public information trainings upon taking their oath of office. While the authority provides training for new board members, SJRA's governing law requires no additional training to ensure each member has necessary knowledge about topics such as the authority's governing law provisions, operations, and budget before making decisions regarding matters of public interest.

SJRA's governing law does not require board training on key topics.

- **Policymaking and staff functions.** While SJRA has adopted policy, its governing law does not provide for separating the policymaking functions of the board from day-to-day administrative functions of managing the authority. Such a provision would help avoid confusion about who is in charge of operations, which can undermine an authority's effectiveness.
- **Public testimony.** SJRA's governing law does not require an opportunity to provide public comment at open board meetings. When people affected by SJRA's decisions have an opportunity to provide meaningful input to the board, the additional information and perspective improve the overall decision-making process. While SJRA follows board policy requiring a public comment agenda item during board meetings, having a statutory requirement for public comment, however, would ensure the public continues to have the ability to give its input on the authority's performance and operations.
- **Complaint information.** SJRA's governing law does not require the authority to maintain complete information on complaints it receives or to make information on complaint procedures available to the public. Maintaining a system for acting on complaints and keeping proper documentation helps protect the public by ensuring SJRA addresses problems in a timely fashion. Although SJRA receives and logs various types of complaints and general inquiries, having a statutory requirement for complaint tracking would ensure SJRA continues this best practice.

Four-year board member terms would comply with constitutional requirements.

SJRA's board member terms do not comply with constitutional requirements.

Members of SJRA's board serve staggered six-year terms as dictated by their governing law.⁵ Since the authority's creation, however, the Texas Constitution has been amended and sets the terms for the members of the governing boards of conservation districts created under Article XVI, Section 59 of the Texas Constitution, such as river authorities, to not exceed four years.⁶ Conforming to the four-year term requirement would align SJRA with current constitutional requirements.

SJRA's governing law exists only in session law, making it difficult for the public to find and understand.

While some water districts and river authorities are governed by laws that are fully compiled in a specific Texas code or statute, SJRA's governing law only exists in session law. In the absence of a codified statute, members of the

public and the authority itself must find and correctly compile these different legislative changes, some quite minute, to understand the cumulative impact of all the changes to the authority's law over time. SJRA's governing law also contains out-of-date references to defunct state agencies and code sections that have been amended, renamed, or no longer exist, further complicating the full understanding of the authority's powers and duties.

The state benefits from continued legislative oversight of SJRA.

Although not subject to abolishment under the Sunset Act, SJRA benefits from the Sunset Commission's review of the authority's governance, management, operating structure, and compliance with legislative requirements. Through this review, Sunset staff has identified a number of opportunities to enhance the effectiveness, efficiency, transparency, and accountability of SJRA. More broadly, continued oversight by the commission provides future legislatures a powerful tool to assess SJRA and invite public input on improving it.

Sunset Staff Recommendations

Change in Statute

3.1 Statutorily require SJRA to adopt a public engagement policy that guides and encourages public involvement on key decisions.

This recommendation would require SJRA to adopt a comprehensive policy to guide its approach to getting general public input in advance of major actions and projects. While SJRA has already adopted a comprehensive public engagement policy, requiring such a policy in statute would ensure SJRA continues to proactively anticipate and interact with those ultimately affected by its decisions both now and into the future.

3.2 Apply the standard across-the-board requirement regarding the governor's appointment of the presiding officer to SJRA's board.

This recommendation would require the governor to designate a member of the board to serve as the presiding officer at the pleasure of the governor.

3.3 Apply the standard across-the-board requirement regarding grounds for removal of a board member to SJRA.

This recommendation would specify the grounds for board member removal, including failure to maintain qualifications, conflicts of interest, or neglect of duties. The recommendation would also provide a process for board member removal, including guidelines for timelines, public hearings, and action by appointing bodies.

3.4 Apply the standard across-the-board requirement regarding board member training to SJRA.

This recommendation would clearly establish the type of information to be included in the board member training for SJRA. This training would need to provide board members with information regarding SJRA's governing law; its programs, functions, by-laws, and budget; the scope of and limitations of its

rulemaking authority; the results from its most recent audits; the requirements and training available related to open meetings, open records, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

3.5 Apply the standard across-the-board requirement regarding the separation of duties of board members from those of staff to SJRA.

This recommendation would require SJRA to adopt policies to clearly separate board policy functions from the authority's staff day-to-day operations.

3.6 Apply the standard across-the-board requirement regarding public testimony to SJRA.

This recommendation would require SJRA to include public testimony as an agenda item at every regular board meeting. The authority should clearly provide the public the opportunity to comment on each agenda item and any issue or matter under SJRA's jurisdiction at open board meetings.

3.7 Apply the standard across-the-board requirement related to developing and maintaining a complaints system and making information on complaint procedures available to the public.

This recommendation would require SJRA to maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures. SJRA would also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints if doing so would not jeopardize an ongoing investigation.

3.8 Amend SJRA's board member terms to four years to comply with constitutional requirements.

This recommendation would change the term of SJRA's board members from six years to four years to align with constitutional requirements for conservation districts created under Article XVI, Section 59 of the Texas Constitution.⁷

3.9 Amend SJRA's Sunset review date to 2035.

Because SJRA is not subject to abolishment under the Sunset Act, but the Legislature and the public benefit from continued legislative oversight of the authority, this recommendation would extend the Sunset date in SJRA's governing law to 2035, placing the authority under Sunset review again in 12 years.

Management Action

3.10 Direct the Texas Legislative Council to update SJRA's governing law.

This recommendation would request that the Texas Legislative Council prepare legislation codifying SJRA's governing law for introduction during the 89th Legislative Session. This recommendation would also request the council to provide, by February 1, 2023, a list of any issues regarding SJRA's governing law which would impede codification and should be addressed in the authority's Sunset bill during the 88th Legislative Session to facilitate the codification of that law. Sunset staff would work directly with the authority and the council to determine whether and how to address the identified issues.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the state or SJRA. The recommendations relate to basic administrative responsibilities SJRA could implement with existing resources.

¹ Chapter 1148 (SB 523), Acts of the 84th Texas Legislature, Regular Session, 2015.

² *City of Conroe, Texas; City of Magnolia, Texas; and City of Splendora, Texas, v. The Attorney General of Texas and San Jacinto River Authority*, 2022 Tex. App. LEXIS 5109 (Tex. App. - Austin 2022); *Quadvest v. San Jacinto River Authority*, 2022 Tex. App. LEXIS 3901 (Tex. App. - Beaumont 2022) (mem. op.).

³ San Jacinto River Authority, *FY 2018 GRP Budget and Rates Recommended by Customer Review Committee; Includes Five Percent Rate Increase*, May 25, 2017, accessed October 12, 2022. (“Over \$0.12 of the \$0.14 rate increase approved by the Review Committee is directly attributable to the City of Conroe’s and City of Magnolia’s refusal to pay last year’s approved rates and the continued cost of the resulting litigation.”).

⁴ Section 6, Chapter 426 (HB 832), Acts of the 45th Texas Legislature, Regular Session, 1937.

⁵ Ibid.

⁶ Section 30(c), Article XVI, Texas Constitution.

⁷ Ibid.

BCRAGD AT A GLANCE

The Legislature created the Bandera County River Authority in 1971 as a conservation and reclamation district to preserve and protect surface water resources in Bandera County.¹ Then, in 1989, the Legislature created the Springhills Water Management District (Springhills) to protect groundwater within Bandera County and authorized it to exercise the authorities granted to the Bandera County River Authority.² Since then, the river authority and groundwater conservation district have functioned as one entity, carrying out the duties of both. In 2003, the Texas Commission on Environmental Quality (TCEQ) approved a petition from Springhills to change its name to the Bandera County River Authority and Groundwater District (BCRAGD), which the Legislature ratified in 2015.³

As a groundwater conservation district, BCRAGD regulates the spacing of water wells and their production of water through a well registration and permit program.⁴ BCRAGD may enforce its groundwater rules with injunctions and civil penalties through the court system. Although BCRAGD does not hold any water rights, the district conducts a variety of surface water activities aimed at conservation and development of natural resources within Bandera County, including:

- Monitoring and sampling water quality.
- Implementing projects, such as a flood early warning system, through cooperative agreements with other governmental agencies.
- Treating and preventing the spread of invasive species near rivers and streams.
- Investigating potential environmental threats to surface and groundwater and pursuing enforcement action against violations of state law and BCRAGD rules.
- Providing the local community with information and educational services on water conservation and flood awareness.
- Participating in water supply and flood planning activities, including through the Region J Water Planning Group, Groundwater Management Area 9, and the Texas Floodplain Management Association.

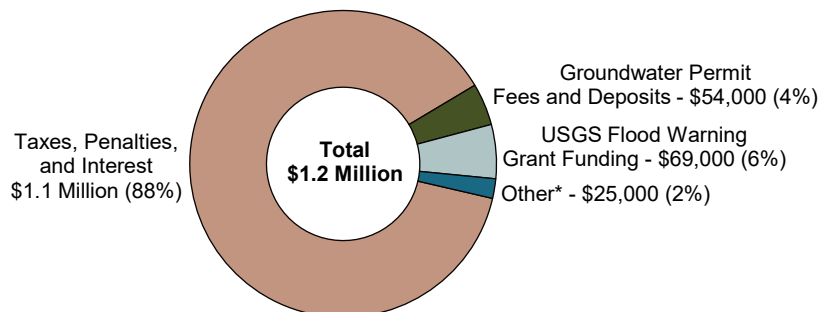
The map on Page 50 shows the surface and groundwater resources BCRAGD is tasked with protecting within Bandera County. BCRAGD monitors segments of the Medina River, including Medina Lake, and Sabinal River. In addition, BCRAGD monitors production of groundwater from portions of the Edwards-Trinity Aquifer and the Trinity Aquifer located beneath Bandera County.

Key Facts

- **Governance.** A nine-member, locally-elected board of directors governs BCRAGD. Two directors are elected from each of Bandera County's four commissioner precincts, and one director is elected county-wide. Directors serve staggered four-year terms, and the board elects its officers in an open meeting following each election. The board meets at least once per quarter.
- **Funding.** As shown in the charts on the following page, BCRAGD collected \$1.25 million and spent \$1.1 million in fiscal year 2021.⁵

Revenues. BCRAGD receives no state appropriation but has authority to assess local taxes and issue bonds. In fiscal year 2021, BCRAGD levied an ad valorem property tax of \$0.045 per \$100 valuation across Bandera County and collected about \$1 million in taxes, penalties, and interest, which averaged about \$77 per homestead.⁶ Other revenues include fees from well permitting activities and grant funding for BCRAGD's flood early warning system.

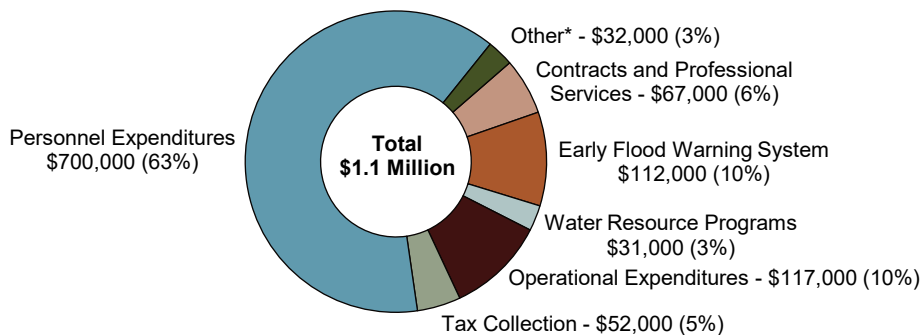
BCRAGD Sources of Revenue FY 2021



* Includes water testing fees and a private donation for a monitoring well.

Expenditures. In fiscal year 2021, BCRAGD spent the majority of its revenue on personnel, as well as general operating expenses and maintenance of its flood early warning system.⁷

BCRAGD Expenditures FY 2021



* Includes insurance, personal bonds, and depreciation of capital assets.

Fund balance. At the end of fiscal year 2021, BCRAGD deposited \$117,947 in excess annual revenue into an operating reserve fund, which it maintains for unplanned or emergency expenses, or savings for future large-scale projects. As of fiscal year 2021, BCRAGD's reserve fund balance totaled about \$200,800.⁸

- **Staffing.** In fiscal year 2021, BCRAGD employed 12 staff at its headquarters in Bandera, Texas. BCRAGD also maintains several professional service contracts for legal services, information technology, and hydrogeological services. Because of BCRAGD's small size, Sunset staff did not prepare an analysis comparing its workforce to the percentage of minorities in the statewide civilian labor force.

- **Well registration and permitting.** BCRAGD regulates groundwater production in Bandera County by reviewing and restricting well placement and production and issuing well permits and registrations. Statute directs groundwater conservation districts to require permits for the drilling and operating of most commercial, irrigation, and public water supply wells within their jurisdiction while exempting certain domestic and livestock wells.⁹ As authorized by statute, BCRAGD rules limit the exempt well category to domestic and livestock wells located on tracts of land greater than 10 acres. BCRAGD rules also require exempt wells to be registered with the district.¹⁰ As of June 1, 2022, BCRAGD has issued 161 well permits and registered an additional 4,500 wells.
- **Water quality monitoring.** BCRAGD monitors surface and groundwater quality in Bandera County through a series of water quality monitoring programs.

Clean Rivers Program. BCRAGD partners with the San Antonio River Authority and the Nueces River Authority to identify and evaluate regional surface water quality issues in Bandera County. BCRAGD collects water quality samples at 20 locations on behalf of the two river authorities, who then evaluate the samples and report this information to TCEQ as part of the Texas Clean Rivers Program.

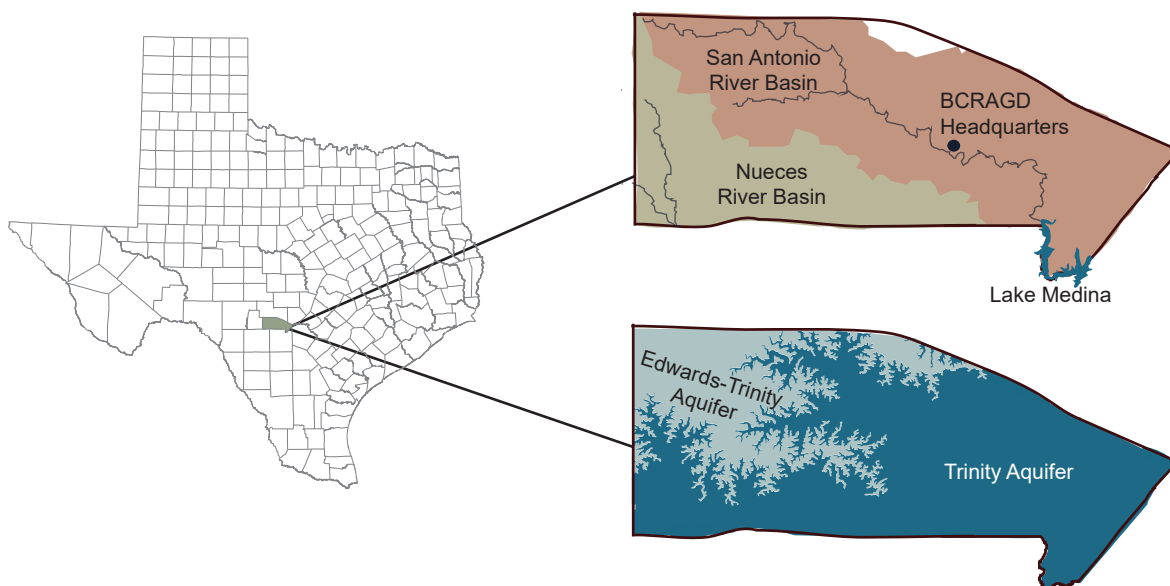
In-house sampling. BCRAGD conducts regular in-house surface water quality sampling of 51 sites to detect E. Coli and other harmful bacteria that can threaten public health and environmental quality in Bandera County. BCRAGD makes this information available to the public online and informs local officials when it detects water quality issues.

Groundwater monitoring. BCRAGD maintains 41 monitor wells and tests quarterly for groundwater levels and contamination.

- **Flood management.** BCRAGD has worked with the United States Geological Survey to install and maintain a flood early warning system along 23 miles of the Medina and Sabinal Rivers. As a result of several severe floods in Bandera County over the last 50 years, the system has been designed to predict and notify emergency response management hours before an extreme flood event occurs.¹¹ BCRAGD works with state and local emergency response management to develop flood evacuation plans and enable automatic flood alerts.
- **Invasive species management.** BCRAGD works with the Texas Parks and Wildlife Department, the Nueces River Authority, and local landowners to identify, treat, and prevent invasive species that threaten water quality and quantity and natural resources in Bandera County. BCRAGD monitors for invasive species such as Carizzo Cane, Chinaberry, and zebra mussels. BCRAGD conducts annual surveys for Carizzo Cane every June and treated 2.28 acres of Carizzo Cane in fiscal year 2021.
- **Environmental investigations.** BCRAGD investigates potential environmental violations that may threaten surface water and groundwater quality and quantity in Bandera County. In addition to its rules regarding well placement and production, BCRAGD has adopted rules prohibiting unauthorized discharges and other activities that can lead to water pollution. In fiscal year 2021, BCRAGD performed 38 investigations of potential violations of these rules. Of those, one resulted in a violation notice, one resulted in a verbal warning, four were referred to outside agencies, and 32 resulted in no further action. BCRAGD may respond to violations with a warning, a cease-and-desist letter, or by pursuing civil or criminal penalties through court action.

- **Education and outreach.** BCRAGD’s education and outreach programs provide the local community with information on flood awareness, water conservation practices, and riparian restoration. For example, BCRAGD hosts education talks and activities centered on soil and water conservation at local libraries for children during the summer. In fiscal year 2021, BCRAGD facilitated eight educational events.

Bandera County River Basins and Major Aquifers



- ¹ Chapter 629 (HB 988), Acts of the 62nd Texas Legislature, Regular Session, 1971.
- ² Chapter 654 (SB 1636), Acts of the 71st Texas Legislature, Regular Session, 1989.
- ³ Chapter 302 (SB 363), Acts of the 84th Legislature, Regular Session, 2015.
- ⁴ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 36.001(1), Texas Water Code.
- ⁵ Bandera County River Authority and Groundwater District (BCRAGD), “Annual Financial Report for the Year Ended September 30, 2021,” 2022, pp. 11-12, <https://www.bcragd.org/wp-content/uploads/2022/01/FY-2021-Annual-Financial-Report.pdf>.
- ⁶ BCRAGD, “Transparency,” accessed online September 7, 2022, <https://www.bcragd.org/transparency/>; BCRAGD, “Annual Financial Report for the Year Ended September 30, 2021,” 2022, pp. 11-12, <https://www.bcragd.org/wp-content/uploads/2022/01/FY-2021-Annual-Financial-Report.pdf>.
- ⁷ BCRAGD, “Annual Financial Report for the Year Ended September 30, 2021,” 2022, pp. 11-12, <https://www.bcragd.org/wp-content/uploads/2022/01/FY-2021-Annual-Financial-Report.pdf>.
- ⁸ Ibid, p. 4.
- ⁹ Section 36.113 and 36.117, Texas Water Code.
- ¹⁰ Section 3.2, Bandera County River Authority and Groundwater District Rules.
- ¹¹ United States Geological Survey, “New Tools for Flood Preparedness Available for Medina River Near Bandera, Texas,” USGS Communications and Publishing, August 26, 2019, accessed online September 20, 2022, <https://www.usgs.gov/news/state-news-release/new-tools-flood-preparedness-available-medina-river-near-bandera-texas>.

ISSUE 4

The Bandera County River Authority and Groundwater District Is Not Subject to Sunset Review.

Background

The Legislature has created two entities to monitor and protect water resources in Bandera County. In 1971, the Legislature created the Bandera County River Authority (BCRA) as a water conservation and reclamation district funded through local property taxes.¹ BCRA carried out surface water conservation and flood planning activities until 1989, when the Legislature created the Springhills Water Management District (Springhills) as a groundwater conservation district in Bandera County.² Springhills was tasked with managing groundwater resources in Bandera County and was authorized to collect a property tax. The Legislature also authorized Springhills to “exercise the rights, powers, purposes, authority, and functions” given to BCRA.³ Having this additional authority over surface water is unique among groundwater conservation districts in Texas.

Following its creation, Springhills began collecting taxes to fund both surface and groundwater operations. With Springhills carrying out BCRA’s functions, BCRA ceased its operations, including collecting taxes. Over time BCRA became defunct, existing only on paper, and filed an affidavit of dormancy with the Texas Commission on Environmental Quality (TCEQ) in the 1990s.⁴ In 2003, Springhills requested to change its name to the Bandera County River Authority and Groundwater District (BCRAGD), which TCEQ granted. The Legislature ratified this name change in 2015.⁵ In the same year, the Legislature placed river authorities under Sunset review.⁶

Findings

BCRAGD’s enabling legislation did not unify the river authority and the groundwater district, which continue to exist as separate legal entities.

The enabling act that created BCRAGD (formerly Springhills) in 1989 authorized the district to exercise the rights, powers, purposes, authority, and functions of BCRA, but did not formally combine the two entities.⁷ In essence, the Legislature created a groundwater conservation district with the power to carry out river authority functions but did not clearly abolish the existing river authority. Since 1989, the Legislature has amended the enabling acts of BCRAGD and BCRA, but none of the changes have clearly merged or abolished either entity. In particular, BCRA’s enabling act has been amended to place it under Sunset review, but BCRAGD’s enabling act has not.⁸

Further, while the Legislature seemingly intended BCRAGD to carry out surface water operations, specific elements within its enabling act suggest the Legislature did not intend to formally merge the two entities or abolish the river authority. For example, BCRAGD’s territorial boundaries differ from BCRA’s in that the groundwater district covers all of Bandera County while the river authority’s jurisdiction excludes the portions of Bandera County already managed by two

BCRAGD and the existing Bandera County River Authority were never formally merged.

other water control and improvement districts.⁹ Additionally, BCRAGD's enabling act expressly preserved BCRA's board as a distinct structure. The act states "each director of the Springhills Water Management District serves on the board of directors of the Bandera County River Authority as an additional duty of his office as director of the water management district."¹⁰ As a result, the two boards consist of the same individual members, but the two governing bodies remain separate. Finally, the first action taken by both entities at the time of BCRAGD's creation confirms those involved at the time believed the two entities remained separate and distinct from each other. The two entities signed a contract dictating the groundwater district would perform the river authority's governmental and administrative functions and services. The contract states the two entities are authorized to make such an arrangement under the Texas Interlocal Cooperation Act, which allows separate governmental entities to contract with one another.¹¹

While the Legislature placed BCRA under Sunset review, it is inactive and cannot be reviewed.

BCRA is an
inactive river
authority.

In 2015, the Legislature made 16 river authorities subject to Sunset review but not abolishment by adding a Sunset provision to each river authority's enabling act and listing them in the Sunset Act.¹² While the "Bandera County River Authority and Groundwater District" was listed in the Sunset Act, the actual Sunset provision was only placed in BCRA's enabling act, not BCRAGD's (even though other changes, including renaming Springhills to BCRAGD, were made to its statute the same year).¹³ Although using BCRAGD's name indicates some legislative intent to review the groundwater district, no other groundwater districts were placed under Sunset review. However, based on legislative research and in consultation with the Texas Legislative Council, Sunset staff concluded BCRA is an inactive authority without a governing body, funding, staff, or programs. As a result, Sunset staff cannot perform the statutorily required review of BCRA and lacks the clear authority to review BCRAGD.

Sunset Staff Recommendation

Change in Statute

4.1 Remove the Bandera County River Authority from Sunset review.

This recommendation would remove BCRA from review by the Sunset Advisory Commission, due to the river authority's long-standing inactivity and dormant designation. However, BCRA would not be abolished as the river authority is not subject to abolishment under the Sunset Act.

Fiscal Implication

This recommendation would not result in a fiscal impact to the state or BCRA, but would result in savings of approximately \$52,000 to BCRAGD. Since BCRAGD is not subject to Sunset review, it will not be required to pay the Sunset Commission for the cost of the review.

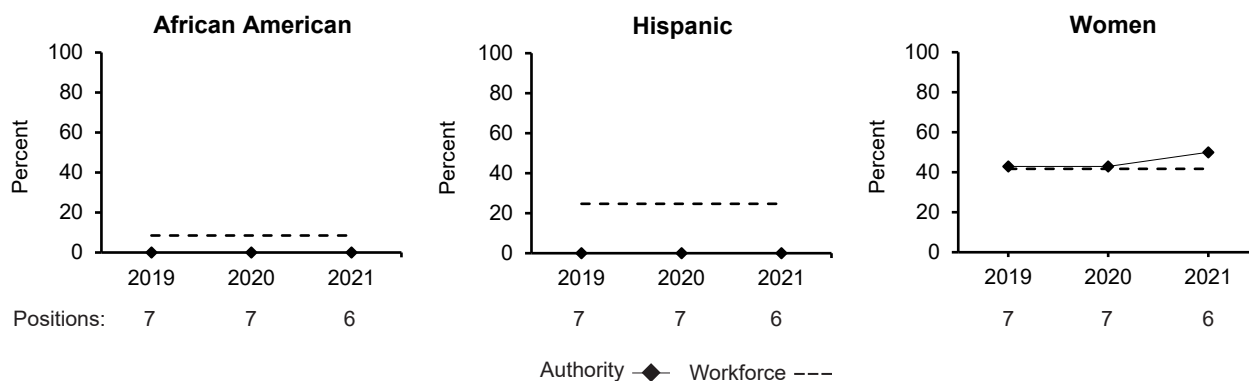
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- ¹ Chapter 629 (HB 988), Acts of the 62nd Texas Legislature, Regular Session, 1971.
 - ² Chapter 654 (SB 1636), Acts of the 71st Texas Legislature, Regular Session, 1989.
 - ³ Ibid, Section 11.
 - ⁴ Texas Commission on Environmental Quality (TCEQ) records indicate Bandera County River Authority has not filed a water district registration form with TCEQ since 1992; TCEQ, “Bandera County River Authority District Information Report,” accessed online September 19, 2022, <https://www14.tceq.texas.gov/iwud/dist/index.cfm?fuseaction=DetailDistrict&cID=10734&command=list&name=BANDERA%20COUNTY%20RIVER%20AUTHORITY>.
 - ⁵ Chapter 302 (SB 363), Acts of the 84th Legislature, Regular Session, 2015.
 - ⁶ Chapter 1148 (SB 523), Acts of the 84th Legislature, Regular Session, 2015.
 - ⁷ Section 11, SB 1636, 1989.
 - ⁸ SB 363, 2015; SB 523, 2015; Chapter 763 (SB 2068), Acts of the 85th Legislature, Regular Session, 2017.
 - ⁹ Section 3, SB 1636, 1989; Section 2, HB 988, 1971.
 - ¹⁰ Section 12, SB 1636, 1989.
 - ¹¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 791.001, Texas Government Code.
 - ¹² SB 523, 2015.
 - ¹³ Ibid, Section 3.

APPENDIX A

Lavaca-Navidad River Authority Equal Employment Opportunity Statistics, FYs 2019-21

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and women in all applicable categories by the Lavaca-Navidad River Authority (LNRA).¹ The authority maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and women in each job category.³ These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the authority's actual employment percentages in each job category from fiscal years 2019-21. Of the 15 categories depicted, overall LNRA fell short in 13 categories, and in several instances recorded zero minority or women employees in a category during one or more years during this time period. The authority had no employees in the protective services category, and had too few employees in the skilled craft category to conduct a meaningful comparison to the overall civilian workforce.

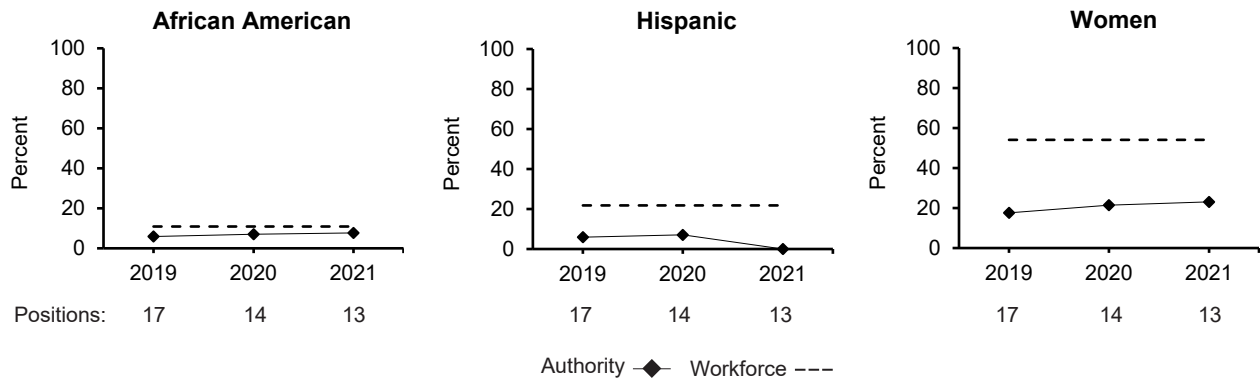
Administration



The authority exceeded the statewide civilian workforce percentage for women in administration positions in all three years, but fell below the civilian workforce percentage in administration positions for African Americans and Hispanics in all three fiscal years.

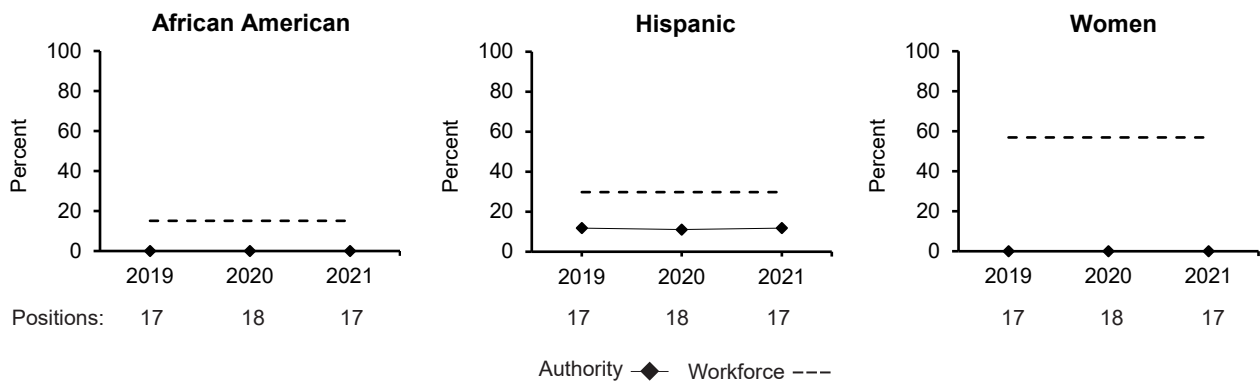
Appendix A

Professional



The authority fell below statewide civilian workforce percentages in professional positions for African Americans, Hispanics, and women in each of the last three fiscal years.

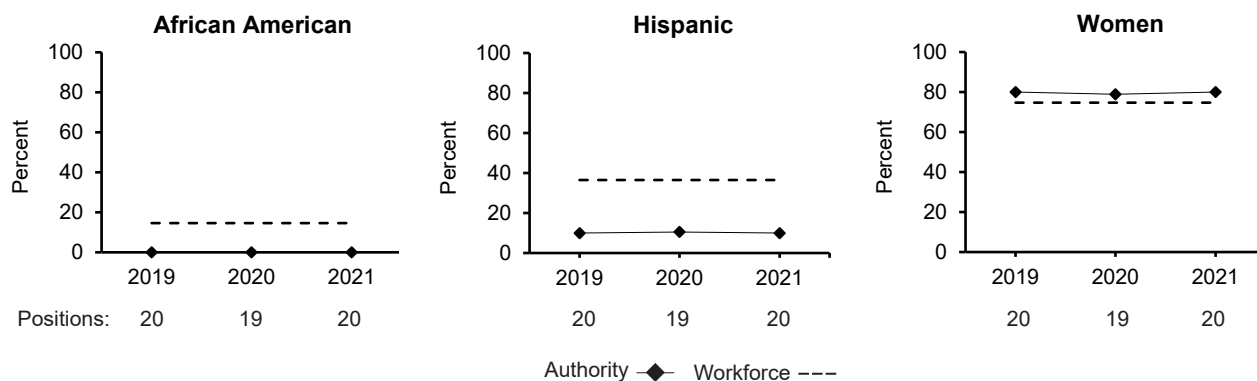
Technical



The authority fell below statewide civilian workforce percentages in technical positions for African Americans, Hispanics, and women in each of the last three fiscal years.

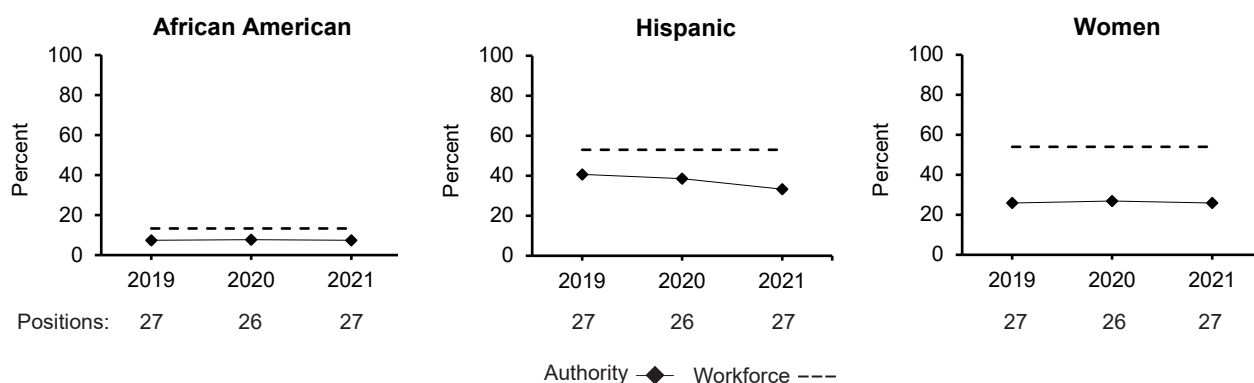
Appendix A

Administrative Support



The authority exceeded the statewide civilian workforce percentage for women in administrative support positions in all three years, but fell below the civilian workforce percentage in administrative support positions for African Americans and Hispanics in all three fiscal years.

Service Maintenance



The authority fell below statewide civilian workforce percentages in service maintenance positions for African Americans, Hispanics, and women in each of the last three fiscal years.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

² Section 21.501, Texas Labor Code.

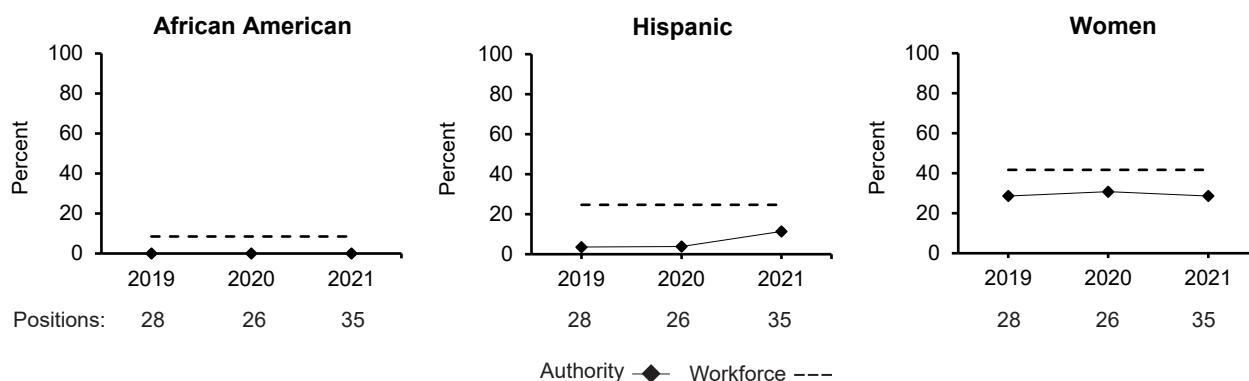
³ Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

APPENDIX B

San Jacinto River Authority Equal Employment Opportunity Statistics, FYs 2019-21

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and women in all applicable categories by the San Jacinto River Authority (SJRA).¹ The authority maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and women in each job category.³ These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the authority's actual employment percentages in each job category from fiscal years 2019-21. Of the 18 categories depicted, overall SJRA fell short in 16 categories, and in several instances recorded zero minority or women employees in a category during one or more years during this time period. The authority had no employees in the protective services category.

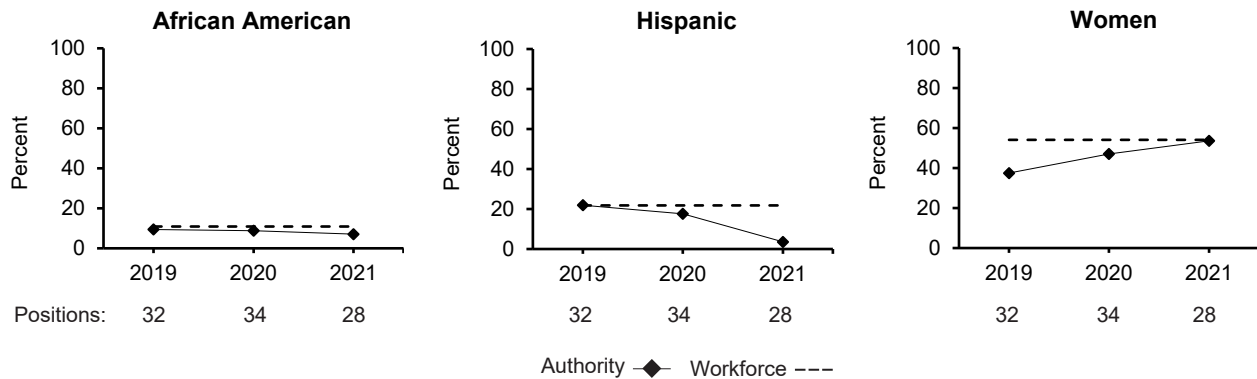
Administration



The authority's workforce percentages fell below statewide civilian workforce percentages for African Americans, Hispanics, and women in each of the last three fiscal years.

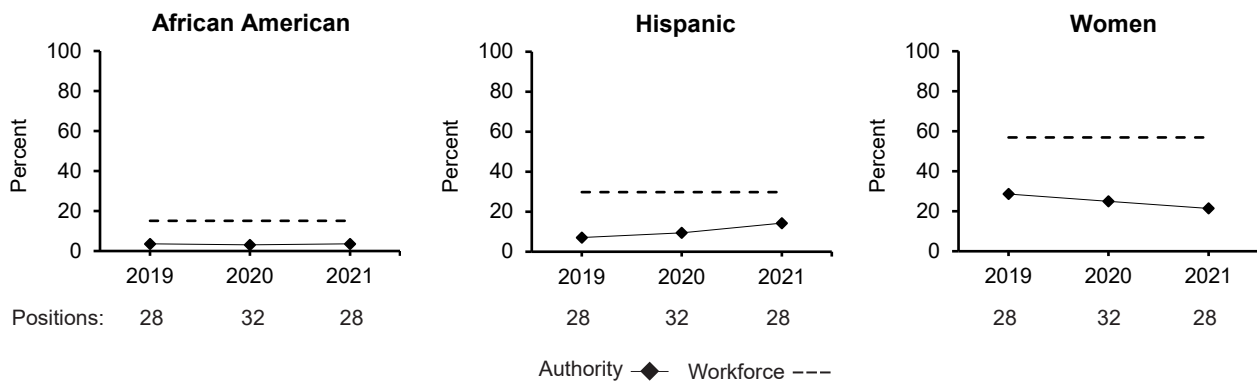
Appendix B

Professional



The authority generally met or fell slightly below the statewide civilian workforce percentage for professional positions for African Americans for the past three years. The authority met or fell slightly below the state civilian workforce percentage for Hispanics in 2019 and 2020, but fell below the percentage in 2021. The authority fell below the state civilian workforce percentage in professional positions for women in 2019 and 2020, but met the percentage in 2021.

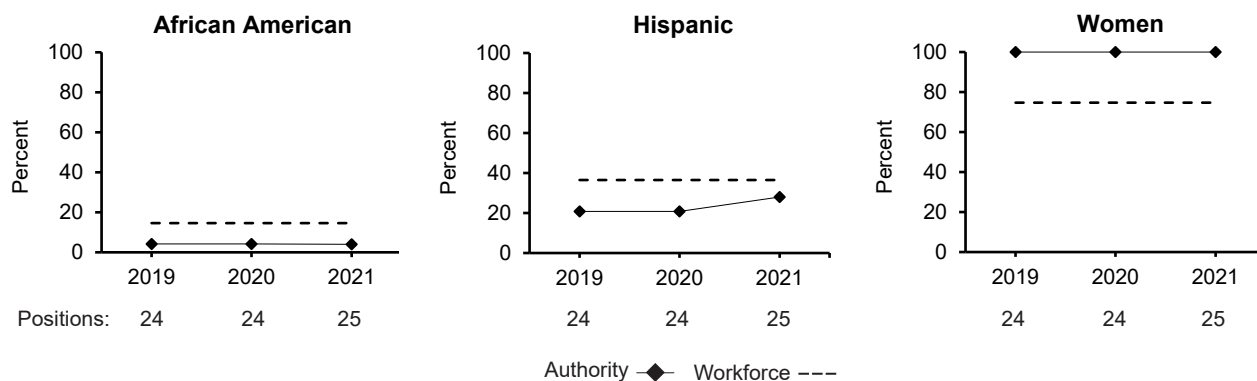
Technical



The authority fell below the statewide civilian workforce percentage in technical positions for African Americans, Hispanics, and women in all three fiscal years.

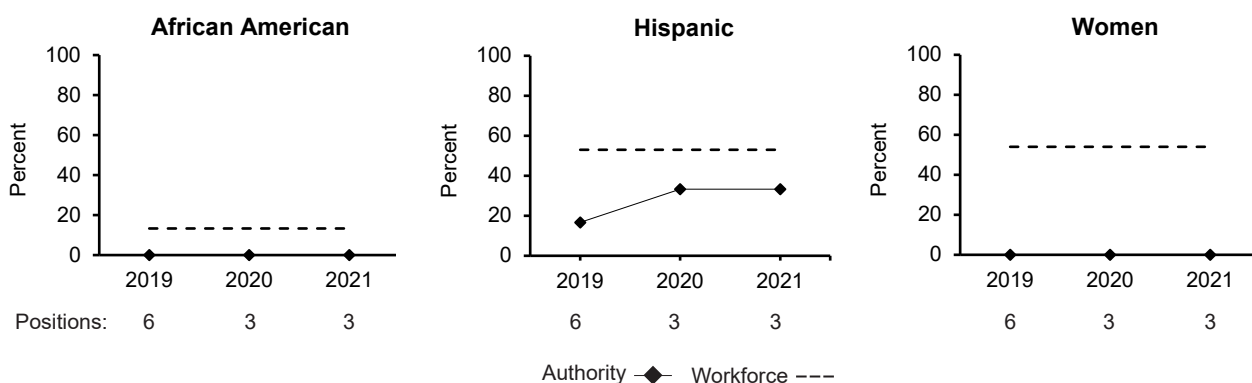
Appendix B

Administrative Support



The authority exceeded the statewide civilian workforce percentage for women in administrative support positions in all three years, but fell below the civilian workforce percentage in administrative support positions for African Americans and Hispanics in all three fiscal years.

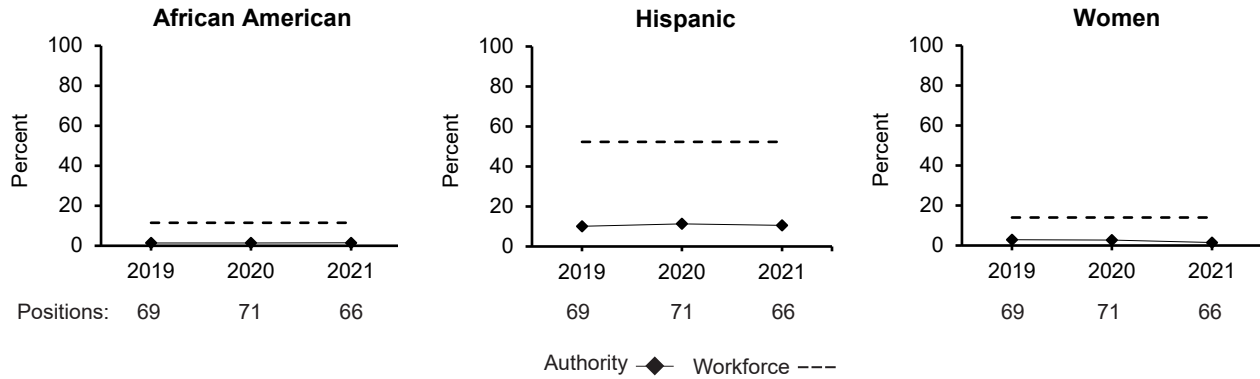
Service Maintenance



The authority fell below the statewide civilian workforce percentage in service maintenance positions for African Americans, Hispanics, and women in all three fiscal years.

Appendix B

Skilled Craft



The authority fell below the statewide civilian workforce percentage in skilled craft positions for African Americans, Hispanics, and women in all three fiscal years.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

² Section 21.501, Texas Labor Code.

³ Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

APPENDIX C

San Jacinto River Authority Litigation Events

This timeline highlights key dates related to litigation involving the San Jacinto River Authority's (SJRA) groundwater reduction plan (GRP). These cases are complex, and this timeline is not intended to provide a summary of all the facts or the courts' decisions or evaluate the merits of parties' claims. Each color in the timeline corresponds to a related case or event. All references to the status of cases are as of October 2022.

2006-09

Lone Star Groundwater Conservation District (LSGCD), whose jurisdiction covers Montgomery County, adopts rules in several phases to reduce groundwater pumping among large users like SJRA. In response, SJRA develops a joint GRP with other large users in the county to design, finance, and construct a water treatment plant so any retail utility can contract with SJRA to get surface water to reduce its use of groundwater and meet LSGCD's requirement.

2010

SJRA establishes its GRP Division and begins charging a groundwater pumpage fee.

2015

SJRA begins delivering treated surface water and charging a fee for this service.

LSGCD Case: City of Conroe and other utility providers file suit against LSGCD in Montgomery County over its groundwater rules related to reduced pumping.

2016

EDJA Case: City of Conroe and other cities stop paying increased GRP fees to SJRA. SJRA files suit under the Expedited Declaratory Judgment Act (EDJA) in Travis County to have the GRP contracts and fees declared legal and valid.

2017

Legislature passes House Bill 1982, changing LSGCD's board from nine appointed to seven elected members after November 2018 elections.¹

2018

LSGCD Case: Court invalidates LSGCD's groundwater rules.² Appointed LSGCD board appeals.

Appendix C

2019

Legislature passes House Bill 1982, changing LSGCD's board from nine appointed to seven elected members after November 2018 elections.

Quadvest Antitrust Case: Quadvest and another private utility provider participating in the GRP file federal antitrust suit against SJRA over the GRP.³ Case is ongoing.

Rate Case: Quadvest and other private utility providers participating in the GRP file suit against SJRA in Montgomery County over GRP contracts and fees. SJRA counterclaims to declare the GRP fees in compliance with the contracts.

2020

EDJA Case: On appeal of the cities' motion to dismiss suit, the Texas Supreme Court rules SJRA can use the EDJA to declare whether its execution of the GRP contracts was valid and whether the contracts authorize SJRA to set rates.⁴ Travis County trial court grants SJRA's request for two declarations stating the GRP contracts were validly executed by SJRA, the City of Conroe, and other parties, and that SJRA has contractual authority to set rates and issue rate orders under those contracts.

Rate Case: Following the Supreme Court decision in the EDJA case, SJRA adds the cities of Conroe and Magnolia as defendants to the rate case. The trial court finds the cities have sovereign immunity because the GRP contracts did not set specific rates, but instead included a formula for guiding rate orders. An appeal of this finding stays the rest of the case.

Quadvest Breach Case: As a result of the stayed rate case, Quadvest and another private utility owner announce they would no longer pay any SJRA fees for participation in the GRP. In response, SJRA files suit in Montgomery County to enforce the GRP contracts.⁵ Case is ongoing.

2022

EDJA Case: Appellate court determines that the EDJA limits the scope of the requested declarations and, therefore, modifies the declarations to state only that the GRP contracts were validly executed by SJRA.

Rate Case: Beaumont Court of Appeals affirms the dismissal of SJRA's suit against the cities on the grounds of sovereign immunity, though on the grounds that the parties did not mediate prior to litigation. Case is ongoing.

¹ Chapter 20 (HB 1982), Acts of the 85th Texas Legislature, Regular Session, 2017.

² *City of Conroe v. Lone Star Groundwater Conservation Dist.*, No. 15-08-08942-CV (284th Dist. Ct., Montgomery County, Tex. Sept. 18, 2018).

³ *Quadvest v. San Jacinto River Auth.*, No. 4:19-CV-4508, 2020 U.S. Dist. LEXIS 156144 (D. Tex. Aug. 14, 2020).

⁴ *City of Conroe v. San Jacinto River Auth.*, No. 18-0989, 2020 Tex. LEXIS 539 (Tex. June 12, 2020).

⁵ Quadvest, "Quadvest Will Stop Paying SJRA," news release, accessed September 14, 2022, <https://www.quadvest.com/index.php/publications/press-release/quadvest-will-stop-paying-sjra>.

APPENDIX D | Staff Review Activities

During the review of the Bandera County River Authority and Groundwater District, the Lavaca Navidad River Authority (LNRA), the San Jacinto River Authority, and the Upper Guadalupe River Authority (UGRA), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with authority personnel; attended board meetings at each authority; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed authority documents and reports, state statutes, legislative reports, previous legislation, and literature; and performed background and comparative research.

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

- Toured several of the authorities' facilities, including raw water delivery systems, wastewater treatment centers, treated drinking water supply systems, dams, spillways, recreational facilities, water quality testing laboratories, campgrounds, and educational exhibits.
- Interviewed members of each authority's board of directors.
- Observed inspections for invasive plant species and collection of water samples and data.
- Attended public events hosted by the river authorities, including UGRA's annual river clean up event and the Jackson County Youth Fair hosted by LNRA.
- Interviewed local officials, county and municipal government staff, and regional water stakeholders from each authority's jurisdiction.
- Attended two statewide water supply and conservation conferences hosted by the Texas Water Conservation Association and a public forum hosted by the Lake Conroe Association.

Sunset Staff Review of the
Lavaca-Navidad River Authority
Upper Guadalupe River Authority
San Jacinto River Authority
Bandera County River Authority and Groundwater District

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