

# SUNSET ADVISORY COMMISSION

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STAFF REPORT WITH COMMISSION DECISIONS

## Sabine River Authority of Texas

2024-25

89TH 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

# **SABINE RIVER AUTHORITY OF TEXAS**

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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](http://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](http://sunset.texas.gov).

### **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.

### **CURRENT VERSION: 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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# SUNSET COMMISSION DECISIONS

## Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Sabine River Authority of Texas (SRA).

Since its creation in 1949, SRA has managed the floodwaters, rivers, streams, and tributaries of the Sabine River basin. The Sunset Commission found SRA to be generally well-run and in a solid financial position to meet the water needs of its basin but also found the authority could benefit from statutory guidance and best practices relating to grants, contracts, and strategic decision making.

SRA operates an economic development program that helps address an area of major concern for the state — aging water infrastructure in rural areas. The commission found the program generally works well but lacks some standard grantmaking best practices such as consistent data management, clear grant agreements, and measurable performance goals. The Sunset Commission also found that overall SRA performs well in procurement and contracting but would benefit from aligning with best practices, such as documenting justifications for decisions to outsource certain services, to ensure continued effectiveness and efficiency.

In addition, SRA has no formal, documented process for making important decisions in a considered and strategic way. Accordingly, the Sunset Commission determined that formalizing and documenting SRA's decision-making process would better ensure accountability while mitigating future risks should those decisions be challenged. Finally, the commission adopted several recommendations relating to good government practices applied across the board during Sunset reviews.

## ISSUE 1

### SRA's Grant Program Requires Additional Best Practices to Better Ensure Effectiveness, Transparency, and Fairness.

**Recommendation 1.1, Adopted** — Direct SRA to implement consistent practices for tracking and managing award and financial data for the authority's grant program. (Management action – nonstatutory)

**Recommendation 1.2, Adopted** — Direct SRA to establish and publish policies that clearly explain the authority's grant administration process and procedures. (Management action – nonstatutory)

**Recommendation 1.3, Adopted** — Direct SRA to make scoring criteria transparent and publicly available to applicants for competitive grants. (Management action – nonstatutory)

**Recommendation 1.4, Adopted** — Direct SRA to establish formal agreements with written terms and conditions for individual grant awards and policies for grantee underperformance. (Management action – nonstatutory)

**Recommendation 1.5, Adopted** — Direct SRA to establish and track outcome measures for its grant program. (Management action – nonstatutory)

**Recommendation 1.6, Adopted** — Direct SRA to establish performance monitoring standards for grant recipients. (Management action – nonstatutory)

**Recommendation 1.7, Adopted** — Direct SRA to update policies to include consideration of past performance of grantees. (Management action – nonstatutory)

**Recommendation 1.8, Adopted** — Direct SRA to develop a conflict-of-interest policy specific to its competitive grants. (Management action – nonstatutory)

## ISSUE 2

### SRA's Contracting Process Would Benefit from Additional Documentation and Alignment with Best Practices.

**Recommendation 2.1, Adopted** — Direct SRA to institute a formal needs assessment or cost-benefit analysis to justify outsourcing current and future services. (Management action – nonstatutory)

**Recommendation 2.2, Adopted** — Direct SRA to adopt a contract threshold above which board approval is required. (Management action – nonstatutory)

**Recommendation 2.3, Adopted** — Direct SRA to formally document and evaluate vendor performance. (Management action – nonstatutory)

**Recommendation 2.4, Adopted** — Direct SRA to improve its contracting processes to ensure sufficient transparency and fairness. (Management action – nonstatutory)

## ISSUE 3

### More Formal, Strategic Decision Making Would Better Position SRA for Continued Success.

**Recommendation 3.1, Adopted** — Direct SRA to develop a formal, strategic decision-making process to identify and address potential risk and better inform its decisions. (Management action – nonstatutory)

**Recommendation 3.2, Adopted** — Direct SRA to work with SRA-LA to develop a memorandum of understanding to facilitate better coordination between the authorities. (Management action – nonstatutory)

## ISSUE 4

### SRA's Governing Law and Complaint Process Do Not Reflect Some Standard Elements of Sunset Reviews.

**Recommendation 4.1, Adopted** — Apply the standard across-the-board requirement regarding the governor's appointment of the presiding officer to SRA's board.

**Recommendation 4.2, Adopted** — Apply the standard across-the-board requirement regarding grounds for removal of a board member to SRA.



**Recommendation 4.3, Adopted** — Apply the standard across-the-board requirement regarding board member training to SRA.

**Recommendation 4.4, Adopted** — Apply the standard across-the-board requirement regarding the separation of duties of board members from those of staff to SRA.

**Recommendation 4.5, Adopted** — Apply the standard across-the-board requirement regarding public testimony to SRA.

**Recommendation 4.6, Adopted** — Apply the standard across-the-board requirement related to developing and maintaining an authority complaints system and making information on complaint procedures available to the public.

**Recommendation 4.7, Adopted** — Amend SRA's Sunset review date to 2037.

**Recommendation 4.8, Adopted** — Direct the Texas Legislative Council to update SRA's governing law. (Management action – nonstatutory)

**Recommendation 4.9, Adopted** — Direct SRA to develop and publicize a clear complaint policy for its permitting programs. (Management action – nonstatutory)

**Recommendation 4.10, Adopted** — Postpone the decision on modifying board terms until completion of the upcoming river authority uniformity study. (Future consideration)

## Fiscal Implication Summary

The Sunset Commission's recommendations would have no fiscal impact on the state but may have a financial impact on SRA. The recommendations in Issues 1, 2, and 4 relate to basic administrative responsibilities and could be implemented with existing resources. The recommendations in Issue 3 may have a fiscal impact on SRA depending on whether the authority decides to hire additional subject matter or industry experts to inform strategic decisions. However, that potential cost cannot be estimated at this time.



# SUMMARY OF SUNSET STAFF REPORT

Since its creation in 1949, the Sabine River Authority of Texas (SRA) has managed the floodwaters, rivers, streams, and tributaries of the Sabine River basin. SRA's functions include maintenance of three reservoirs and a canal system to supply raw water to municipal, industrial, and agricultural customers; operation of a hydroelectric power plant; and promotion of economic development throughout the Sabine River basin. Overall, Sunset staff found SRA to be a generally well-run organization in a solid financial position to meet the water needs of its basin. Sunset staff also found SRA could benefit from the application of standard Sunset statutory guidance and certain best practices relating to grants, contracts, and strategic decision making.

SRA operates an economic development program, and SRA's board of directors has aligned the program with SRA's core mission to manage the waters of the Sabine River basin, including water supply and wastewater infrastructure.<sup>1</sup> The program helps address an area of major concern for the state as thousands of public water systems in lightly populated areas across Texas lack the customer base, resources, and expertise to maintain and expand their aging infrastructure. SRA's grant program may play a significant role in addressing this issue in the basin, but the authority currently lacks adequate documentation to better ensure an effective, transparent, and fair program.

**SRA is a generally well-run organization positioned to meet the water needs of its basin.**

The authority contracts for various goods and services for maintenance and operational functions and generally performs well in procurement and contracting. However, given the importance these contracting decisions have to SRA's current and future water operations and economic development efforts, the authority's contracting process would benefit from aligning with best practices to ensure continued effectiveness and efficiency.

Over time, circumstances outside SRA's control have required the authority to make several critical, basin-wide decisions. For example, SRA has had to secure additional funding streams for water resources, take over costly failing wastewater systems that threatened water quality, and maintain an aging hydroelectric power plant with expensive and substantial federal requirements to avoid losing significant revenue. While these commitments appear to have been worthwhile for SRA, the authority has no formal, documented process for making important decisions in a considered and strategic way. The authority has potential to continue expanding the public good it provides the basin, but operations on the scale of SRA's also expose the authority to risks such as financial loss and legal disputes. Formalizing and documenting SRA's decision-making process would better ensure accountability from the authority's board and management while mitigating future risks should those

decisions be challenged. Finally, this report includes several findings and recommendations relating to good government practices applied across the board during Sunset reviews.

The following material highlights Sunset staff's key recommendations for the Sabine River Authority of Texas.

## Sunset Staff Issues and Recommendations

### ISSUE 1

#### SRA's Grant Program Requires Additional Best Practices to Better Ensure Effectiveness, Transparency, and Fairness.

SRA's Community Assistance and Economic Development Program offers a range of grants to eligible entities across the Sabine River basin. Since 2002, SRA has provided over 400 awards totaling almost \$7 million. The program generally works well but lacks some standard best practices for grantmaking with public funds such as consistent data management, clear grant agreements, and measurable performance goals. Establishing best practices in these areas would help guide the program and better ensure its success.

#### Key Recommendations

- Direct SRA to implement consistent practices for tracking and managing award and financial data for the authority's grant program.
- Direct SRA to establish and publish policies that clearly explain the authority's grant administration process and procedures.
- Direct SRA to establish formal agreements with written terms and conditions for individual grant awards and policies for grantee underperformance.

### ISSUE 2

#### SRA's Contracting Process Would Benefit from Additional Documentation and Alignment with Best Practices.

SRA contracts for various goods and services, which totaled \$19.9 million in fiscal year 2023. While SRA generally performs well in procurement and contracting, the authority does not follow some standard contracting procedures, including documenting justifications for decisions to outsource certain services, documenting and evaluating vendor performance, and other contracting best practices. Implementing these best practices would better position the authority to continue its success and mitigate potential risks.

### **Key Recommendations**

- Direct SRA to institute a formal needs assessment or cost-benefit analysis to justify outsourcing current and future services.
- Direct SRA to formally document and evaluate vendor performance.
- Direct SRA to improve its contracting processes to ensure sufficient transparency and fairness.

## **ISSUE 3**

### **More Formal, Strategic Decision Making Would Better Position SRA for Continued Success.**

As a well-resourced river authority, SRA is uniquely positioned to address the unmet water needs of the Sabine River basin. However, SRA will need to be strategic about how it leverages public funds to maximize the benefit to Texans in the basin. Sunset staff identified opportunities to improve the authority's decision-making efforts through a deliberative, documented process that assesses and mitigates risk and evaluates costs and benefits. These tools would help ensure SRA is best positioned for the future and able to continue meeting the needs of the basin.

### **Key Recommendations**

- Direct SRA to develop a formal, strategic decision-making process to identify and address potential risk and better inform its decisions.
- Direct SRA to work with SRA-LA to develop a memorandum of understanding to facilitate better coordination between the authorities.

## **ISSUE 4**

### **SRA's Governing Law and Complaint Process Do Not Reflect Some Standard Elements of Sunset Reviews.**

Sunset's across-the-board recommendations are standard elements that reflect Sunset Act criteria designed to ensure open, responsive, and effective government. In addition, Sunset has worked with the Texas Legislative Council to ensure river authorities' governing laws are codified rather than split up between multiple session laws. SRA's law does not reflect good government standards typically applied during Sunset reviews and is outdated and difficult for the public and the authority to find and fully understand. Finally, SRA's informal complaint system for its permitting programs does not incorporate some standard best practices to ensure an efficient and transparent process.

### **Key Recommendations**

- Apply the standard across-the-board recommendations regarding the governor's appointment of the presiding officer, grounds for removal of a board member, board member training, separation of staff and board duties, public testimony, and a system for receiving and acting on complaints.

- Direct the Texas Legislative Council to update SRA's governing law.
- Direct SRA to develop and publicize a clear complaint policy for its permitting programs.

## **Fiscal Implication Summary**

These recommendations would have no fiscal impact on the state but may have a financial impact on SRA. The recommendations in Issues 1, 2, and 4 relate to basic administrative responsibilities and could be implemented with existing resources. The recommendations in Issue 3 may have a fiscal impact on SRA depending on whether the authority decides to hire additional subject matter or industry experts to inform strategic decisions. However, that potential cost cannot be estimated at this time.

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<sup>1</sup> Texas Commission on Environmental Quality, *Self-Evaluation Report*, September 2021, accessed online April 16, 2024, [https://www.sunset.texas.gov/public/uploads/files/reports/TCEQ%20SER\\_9-01-21.pdf](https://www.sunset.texas.gov/public/uploads/files/reports/TCEQ%20SER_9-01-21.pdf).

# AUTHORITY AT A GLANCE

The Legislature created the Sabine River Authority of Texas (SRA) in 1949 to control, store, preserve, and distribute the waters of the Sabine River basin.<sup>1</sup> Like other river authorities in Texas, SRA is authorized to conduct a broad range of activities, including building and operating reservoirs, monitoring water quality, selling raw water, treating wastewater, acquiring property by eminent domain when needed, building and managing park land, and generating electricity. SRA engages in a number of these activities, including:

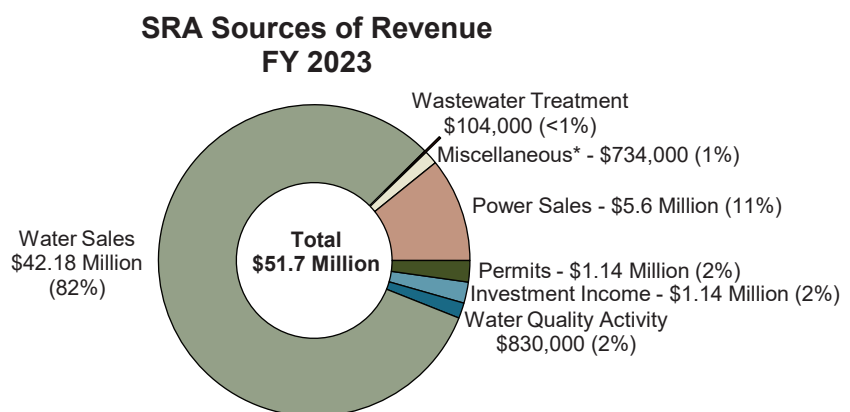
- Maintaining three reservoirs and a canal system to supply raw water to municipal, industrial, and agricultural customers.
- Operating a hydroelectric power plant.
- Building and maintaining recreational parks and facilities for public use.
- Providing community assistance and economic development grants to eligible entities.
- Issuing permits for limited private, commercial, and grazing uses and on-site sewage facilities.
- Monitoring water quality in the Sabine River basin.
- Participating in regions C, D, and I Regional Water Planning Groups; Region 4 Sabine Regional Flood Planning Group; and water conservation and drought contingency planning.

The map on Page 8 shows SRA's jurisdiction, which includes all or part of 21 counties in East Texas.

## Key Facts

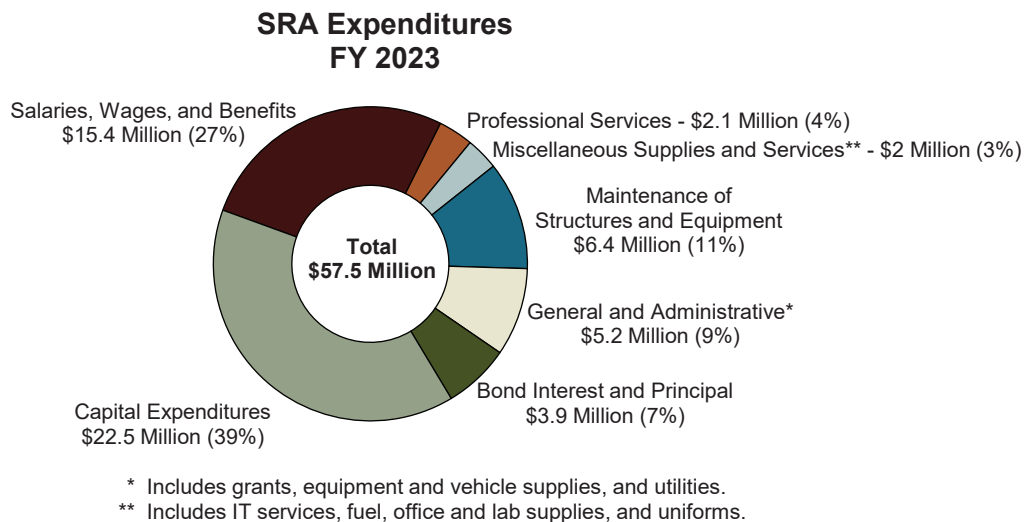
- **Governance.** SRA is governed by a nine-member board of directors appointed by the governor with the advice and consent of the Senate.<sup>2</sup> The board is comprised of four members representing the upper basin, four representing the lower basin, and one at-large member.<sup>3</sup> Directors serve staggered six-year terms, and the board elects a president and other officers from its members.<sup>4</sup> The board meets quarterly and as needed to provide oversight of the authority's operations and approve SRA's budget.<sup>5</sup>
- **Funding.** As the following charts show, SRA collected \$51.7 million in revenue and spent \$57.5 million in fiscal year 2023.

Revenue. SRA receives no state appropriation and does not assess taxes, but the authority may issue bonds. SRA primarily generates revenue through the sale of raw water to municipal and industrial customers. Other sources of revenue include the sale of hydroelectric power, water quality testing services, and fees for limited use permits and on-site sewage facilities.



\* Includes proceeds from the sale of surplus assets, leases, and pipeline easements.

Expenditures. In fiscal year 2023, SRA spent most of its money on capital projects and employee salaries, wages, and benefits. SRA’s remaining expenditures were for maintenance of structures and equipment, general and administrative needs, bond interest and principal, professional services, and miscellaneous supplies and services.



Reserve funds. SRA maintains separate reserve funds for operating costs, capital improvements, economic development, debt service, and disaster recovery. The board has set target balances for each reserve fund and adopted policies to govern how each is drawn down and replenished. SRA transfers any unspent revenue each year into these reserve funds, which the authority uses for immediate needs and in its long-term plans for the development of the Sabine River basin. SRA ended fiscal year 2023 with total reserve fund balances of over \$67.2 million.

- **Staffing.** In fiscal year 2023, SRA employed 122 full-time employees. The majority of employees work out of SRA’s headquarters and other division offices in Orange while remaining staff members work in division offices at SRA’s three reservoirs: Lake Tawakoni in Point, Lake Fork in Quitman, and Toledo Bend in Burkeville, as shown in the map on Page 8. Appendix A compares the percentage of minorities and women in SRA’s workforce to the statewide civilian labor force for the past three fiscal years.
- **Reservoirs and water supply.** SRA holds over 1.5 million acre-feet in water rights, as reflected in the *SRA Water Rights Permits* table. The authority’s reservoirs at Lake Tawakoni, Lake Fork, and Toledo Bend account for the majority of its surface water rights. Industrial, municipal, and agricultural customers pump water directly from the reservoirs or from SRA’s own canal system. Over time, SRA’s customer base has shifted from being primarily agricultural to industrial.

**SRA Water Rights Permits - FY 2023**

Water Source	Permitted Acre-Feet
Toledo Bend Reservoir	970,067
Lake Fork Reservoir	188,660
Lake Tawakoni Reservoir	238,100
Sabine River/SRA Canal System	147,100
<b>Total</b>	<b>1,543,927</b>

customers pump water directly from the reservoirs or from SRA’s own canal system. Over time, SRA’s customer base has shifted from being primarily agricultural to industrial.

Toledo Bend Project Joint Operation and Toledo Bend Division. SRA jointly owns and operates the Toledo Bend reservoir on the border of East Texas with the Sabine River Authority, State of Louisiana (SRA-LA). The two authorities evenly split costs and revenue associated with the project as well as



the annually available water yield. As the largest man-made body of water in the southern United States, Toledo Bend covers 185,000 surface acres, with a total storage capacity of almost 4.5 million acre-feet.<sup>6</sup> The joint operation employs no staff; rather, as part of an agreement between the two authorities, SRA's Toledo Bend division staff oversees administrative and Federal Energy Regulatory Commission (FERC) compliance functions, while SRA-LA is responsible for engineering and maintenance functions on the joint operation. As part of a FERC license requirement, SRA staff conducts erosion monitoring and management on the 762 miles of Texas shoreline of the Toledo Bend reservoir.<sup>7</sup> SRA division staff also manages boat ramp repairs, buoy maintenance, and removal of submerged tree stumps on the Texas side of the reservoir.

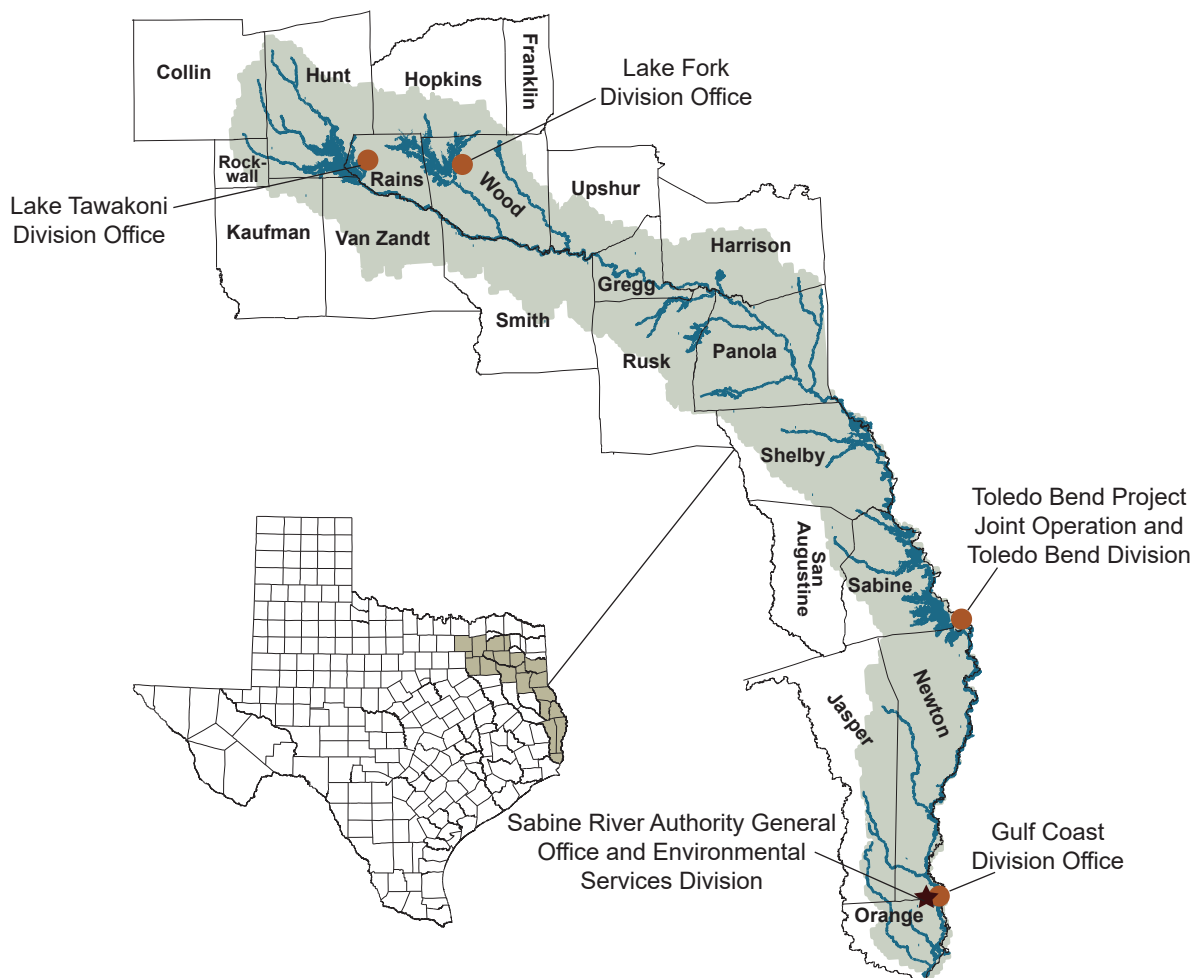
Lake Fork and Lake Tawakoni. SRA operates two reservoirs in the upper Sabine River basin that primarily provide water to municipal customers. SRA staff maintains both reservoirs through dam and spillway maintenance and instrumentation monitoring. The City of Dallas purchased the right to use 80 percent of the water in Lake Tawakoni and 63.6 percent of the water in Lake Fork. The City of Dallas also pays a significant share of maintenance and operations costs for each reservoir.

Lower basin canal system. SRA supplies water through a canal system to customers in the lower basin near its headquarters in Orange. SRA recently completed construction of a new \$75 million pump station that can pump up to 85 million gallons of water per day from the Sabine River through a seven-mile pipeline into the canal system. SRA staff performs daily maintenance and inspections on the pump station and canal system, monitoring and adjusting water levels as necessary.

- **Hydroelectric power.** SRA operates and maintains a hydroelectric power plant on Toledo Bend that is located within and connected to the Midcontinent Independent System Operator grid, rather than the Electric Reliability Council of Texas grid. The power plant has a power generation capacity of about 75 megawatts and generated an average of 236,113 megawatt hours per year over the last 10 years, enough to power roughly 21,881 homes annually.<sup>8</sup> To operate the power plant, SRA and SRA-LA are mandated to comply with FERC license requirements and regulations, including annual dam safety and security inspections, emergency action plans, a spillway flow release plan, and a recreation management plan.<sup>9</sup>
- **Community Assistance and Economic Development Program.** SRA promotes the economic growth and vitality of communities in the basin through its Community Assistance and Economic Development Program. Through this program, SRA provides competitive grants of up to \$20,000 for water-related projects to local governmental entities and nonprofit water supply and sewer service corporations within the Sabine River basin. SRA also offers in-kind services such as providing equipment, supplies, or labor on a case-by-case basis. The board awards larger, noncompetitive grants to local entities in need of special assistance for water-related projects or to help local entities attract recreational opportunities, such as fishing tournaments, to the basin. In addition to economic development efforts, SRA provides emergency and disaster relief funds to communities in the basin affected by natural disasters.
- **Recreation.** SRA operates and maintains 18 park sites and multiple boat ramps on its three reservoirs as well as the Sabine River, including six parks on federal land at the Toledo Bend reservoir in partnership with the United States Forest Service. All parks and recreation sites managed by the authority are open to the public free of charge and may also be reserved by private parties for hosting events such as fishing tournaments. In fiscal year 2024, SRA opened two new recreation areas in the upper basin: the Caney Point Recreation Area at Lake Fork and the Holiday Recreation Area at Lake Tawakoni.<sup>10</sup>

- **Permitting.** As an authorized agent of the Texas Commission on Environmental Quality (TCEQ), SRA issues permits for on-site sewage facilities within 2,000 feet of each of its three reservoirs. SRA inspects these septic systems to ensure correct installation and adherence to design and code requirements. In fiscal year 2023, SRA managed 16,090 on-site sewage facility permits. SRA also issues private, commercial, and grazing limited use permits for its land adjacent to the reservoirs. Staff inspects any water-related access construction projects, such as piers, boathouses, or other storage buildings, to ensure compliance with SRA specifications. In fiscal year 2023, SRA managed 6,512 private limited use permits, 104 commercial limited use permits, and 111 grazing limited use permits.
- **Water quality.** SRA operates a National Environmental Laboratory Accreditation Program-certified water quality monitoring laboratory at its headquarters in Orange and a smaller lab in the upper basin field office in Quitman. As one of TCEQ’s contracted partners of the Texas Clean Rivers Program, SRA collects and analyzes water samples from 38 sites in the Sabine River basin and reports this information to TCEQ. SRA also conducts a variety of routine water quality analyses for industrial and municipal customers. Additionally, SRA performs studies on aquatic vegetation and invasive species and assists TCEQ, the Texas Parks and Wildlife Department, and the Railroad Commission of Texas with complaint investigations and responses to pollutants and other environmental hazards.

### Sabine River Authority of Texas



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- <sup>1</sup> Chapter 110 (HB 467), Acts of the 51st Texas Legislature, Regular Session, 1949.
  - <sup>2</sup> Section 3, HB 467, 1949.
  - <sup>3</sup> Ibid; Chapter 1496 (HB 3846), Acts of the 76th Texas Legislature, Regular Session, 1999.
  - <sup>4</sup> Sections 3 and 4, HB 467, 1949.
  - <sup>5</sup> Section 6, HB 467, 1949.
  - <sup>6</sup> Texas Water Development Board, “Toledo Bend Reservoir (Sabine River Basin),” accessed online March 15, 2024, [https://www.twdb.texas.gov/surfacewater/rivers/reservoirs/toledo\\_bend/index.asp](https://www.twdb.texas.gov/surfacewater/rivers/reservoirs/toledo_bend/index.asp).
  - <sup>7</sup> Federal Energy Regulatory Commission (FERC), *Order Issuing New License*, Article 401 and Appendix A, “Condition 14 — Erosion Monitoring and Management,” accessed online March 21, 2024, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20140829-3036&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20140829-3036&optimized=false).
  - <sup>8</sup> U.S. Energy Information Administration, “How much electricity does an American home use?,” web page last modified January 8, 2024, accessed online March 15, 2024, <https://www.eia.gov/tools/faqs/faq.php?id=97&t=3>.
  - <sup>9</sup> 18 Code of Federal Regulations, Part 12, Subparts C and D (2023); FERC, *Order Issuing New License*, Articles 402, 403, and 410, accessed online March 21, 2024, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20140829\\_3036&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20140829_3036&optimized=false).
  - <sup>10</sup> SRA, “SRA Dedication Ceremony Held for Caney Point Recreation Area on Lake Fork Reservoir,” October 17, 2023, accessed online March 15, 2024, <https://www.sratx.org/wp-content/uploads/Caney-Point-Press-Release.pdf>; SRA, “Holiday Recreation Area on Lake Tawakoni Reservoir,” November 8, 2023, accessed online March 15, 2024, [https://www.sratx.org/wp-content/uploads/Holiday\\_Rec\\_Press-Release.pdf](https://www.sratx.org/wp-content/uploads/Holiday_Rec_Press-Release.pdf).



# ISSUE 1

## SRA's Grant Program Requires Additional Best Practices to Better Ensure Effectiveness, Transparency, and Fairness.

### Background

In 2002, the Sabine River Authority of Texas (SRA) created its Community Assistance and Economic Development Program using statutory authority afforded to river authorities that annually generate a certain minimum average amount of electric energy.<sup>1</sup> Through this grant program, SRA works with counties, community organizations, and other entities to enhance the economic vitality of the Sabine River basin and increase awareness of the Sabine River and its tributaries. SRA provides a range of competitive and noncompetitive grants to qualifying entities to improve the quality and quantity of water-related services, provide disaster relief assistance, and enhance recreational opportunities for communities. Since 2002, SRA has awarded over 400 grants and almost \$7 million in public funding through the program. The accompanying textbox contains a list of entities eligible for assistance through the program followed by descriptions of each type of grant SRA offers.

#### Eligible Recipients of SRA's Community Assistance and Economic Development Program

- Cities, counties, and communities within the basin.
- SRA water and electricity customers.
- General and special law districts that have the authority and responsibility for water quality protection or municipal solid waste management, such as special utility districts within the basin.
- Councils of governments or other governmental entities like school districts within the basin.
- Member-owned water supply corporations within the basin.

- **Competitive grants.** SRA's Community Assistance and Economic Development Program offers competitive Community Assistance Program (CAP) grants for water or wastewater improvement projects.<sup>2</sup> As part of CAP, SRA may also provide in-kind services — including staff expertise, equipment, and supplies — in lieu of funding. Applicants must complete an application that is available on SRA's website and return it to the authority by email, mail, or in person. Applicants can submit more than one application and may receive funding for multiple projects during each quarterly award cycle.<sup>3</sup> SRA holds applications for up to one year from the date of submission, so the authority may consider applicants in subsequent award cycles if they were unsuccessful previously.<sup>4</sup> SRA staff reviews and scores applications and presents their recommendations to SRA's board of directors for approval at quarterly board meetings.<sup>5</sup> Once SRA awards a CAP grant, the authority requires the grantee to notify SRA when the project is complete. A CAP grant can award up to \$20,000 per project within the following categories:
  - Water supply and wastewater management system improvements
  - Water conservation
  - Water quality
  - Other areas, such as recreational access, that the SRA board may approve at its discretion<sup>6</sup>

- **Noncompetitive grants.** SRA offers three types of noncompetitive grants, which are not subject to internal scoring processes, on a case-by-case basis. SRA does not publicly advertise or solicit applications for these grants beyond noting in the instructions for CAP grants that applicants may request additional funding for shovel-ready projects above CAP's standard \$20,000 limit.<sup>7</sup> The following are the three categories of SRA's noncompetitive grants.

Special assistance: SRA awards larger noncompetitive grants depending on need and economic impact such as providing water infrastructure for a public hospital. Projects must improve water availability, quality, or management or provide job growth for communities in the basin.

Recreational enhancement: SRA awards noncompetitive grants to attract recreational events to the basin such as fishing tournaments.

Emergency assistance: SRA awards noncompetitive grants to mitigate issues caused by natural disasters and related emergencies such as providing emergency supplies after severe storms. SRA's board authorizes the general manager to provide up to \$50,000 per event for emergency relief; any additional amount requires board approval.<sup>8</sup>

Historically, most of SRA's CAP grants have addressed water supply or water quality issues, improving water systems throughout the Sabine River basin. These water systems still have unmet needs, which speaks to the importance of SRA's grant program. Currently, the counties that make up the Sabine River basin contain 410 community water systems, 26 of which were under enforcement action by the Texas Commission on Environmental Quality (TCEQ) in the last year. Sunset staff identified at least four water systems in the basin that will require major infrastructure upgrades to address persistent issues. In addition to public water systems, the basin is home to 270 wastewater systems, 12 of which are currently under TCEQ enforcement action.

In nearly five decades, Sunset staff has reviewed numerous state agencies that provide grants to individuals, units of government, and other entities, identifying and compiling standard features and best practices that contribute to an efficient, effective, and accountable grant program. Sunset also uses the general framework established in the Texas Comptroller of Public Accounts' *Texas Grant Management Standards*. These standards serve as guidelines for evaluating agencies' grant programs as part of an overall effort to improve grantmaking practices.<sup>9</sup> SRA's grant program generally works well, and Sunset staff identified no significant problems. However, applying common best practices to SRA's grantmaking activities helps ensure these legislatively authorized investments that use public funds continue to effectively meet the needs of water systems and other critical infrastructure within the Sabine River basin. The following material describes areas where SRA's Community Assistance and Economic Development Program could benefit from these best practices.

## Findings

### **SRA's inefficient management of its grant award and financial data hinders the authority's ability to fully account for all program expenditures.**

SRA does not effectively track or retain important information related to its grantmaking process, making a full accounting of all award decisions and transactions difficult. When Sunset staff requested basic data on the Community Assistance and Economic Development Program, SRA had to revisit its spreadsheets, board meeting minutes, and financial records several

times during the review to fulfill this request. Once SRA consolidated its grant data into a single spreadsheet, Sunset staff found several inconsistencies. For example, Sunset staff compared the grant spreadsheet to SRA's board meeting minutes and found SRA had not recorded in its spreadsheet an approved grant award. Additionally, several special grants were awarded by inclusion in SRA's budget rather than through separate board approvals of the grants. The spreadsheet also included an awarded grant SRA never paid to the grantee due to cancellation of the grantee's project during the COVID-19 pandemic.

Sunset staff found multiple inconsistencies in SRA's grant data.

Sunset staff also reviewed SRA's financial records for all assistance provided through its grant program from fiscal years 2018 to 2023. The financial records supported the majority of information recorded in SRA's grant spreadsheet. However, as detailed in the *Missing Documentation* textbox, the authority typically does not track employee time or costs associated with the use of SRA supplies and equipment when providing in-kind services, and some grant expenditures were missing proper documentation. While SRA readily made corrections to its grant spreadsheet throughout the review, the authority could benefit from implementing consistent data management practices to ensure accurate and timely evaluation and accounting of all grant decisions and expenditures.

#### Missing Documentation

- In fiscal years 2011 and 2014, SRA provided in-kind services to three grantees but was unable to produce any financial documentation for these expenditures.
- In fiscal year 2019, SRA purchased emergency supplies for a grantee but was only able to provide partial documentation of this expenditure and stated that providing full documentation would be burdensome.
- In fiscal year 2020, SRA provided supplies to a grantee for recreation but was unable to produce any financial documentation for this expenditure.
- In fiscal year 2021, SRA awarded an emergency grant but has not yet followed its own procedures to bring the grant before the board for approval.

#### **SRA could enhance transparency by documenting and making publicly available all grant program policies.**

Granting entities should prepare written and publicly available policies governing all parts of their grants process before issuing grants. Having requirements and internal operating procedures in place, including those related to applicant review and selection, program criteria, and reporting schedules, enables grantmaking entities to set clear expectations. SRA posts general information on its website as part of the instructions for CAP applications, including funding cycles, eligible applicants, general project requirements, and project rating criteria.<sup>10</sup> While these general descriptions are helpful for applicants of CAP grants, SRA's publicly available documents do not provide some key information for all grant categories.

SRA does not advertise for its noncompetitive grants.

- **Missing grant information.** SRA does not advertise or provide an application process for its noncompetitive grants, including special assistance grants. The authority only acknowledges noncompetitive grants through a note in the economic development section of its website and in the CAP grant application instructions, directing applicants to inquire about additional assistance for shovel-ready projects.<sup>11</sup> These documents suggest to applicants that SRA may award additional funding at the discretion of the board but give no indication of the other types of grants SRA offers. Sunset staff learned these noncompetitive grants often result from board members and local officials and entities, not applicants, informally bringing these grant proposals to SRA staff’s attention.

For the competitive CAP grants, SRA increased the award threshold from \$10,000 to \$20,000 in fiscal year 2019 due to demand and inflation. However, SRA only recently updated its website in 2024 to reflect this increase in available CAP funding.<sup>12</sup> Maintaining consistency between publicly available grant information and internal grant administration processes would help the authority ensure that grant administration practices are transparent and help applicants better understand what kinds and amounts of grant funding are available.

- **Unclear scoring process for competitive grants.** Grant applicants should be able to access and clearly understand the criteria by which their applications will be judged. Without knowing the actual criteria or the meaning behind them, applicants cannot adequately prepare their applications. Until October 2023, SRA’s approach to CAP grant application evaluations was informal, led by a group of executive-level employees coming to a general consensus after considering need, award history, project location, community input and support, and the amount requested.<sup>13</sup> In October 2023, as Sunset’s review of SRA began, the authority implemented a scoring system to assess applicants for the CAP grant but has not publicized the details of this evaluation. SRA staff established this internal scoring system to give specific weights to different elements of an application. For example, SRA adds two additional points to a grant application from an entity that has never received funding from SRA before and adds a score between one and five based on how closely the proposed project aligns with SRA’s mission.

SRA’s advertised criteria for competitively awarded grants does not fully reflect how it scores applications.

However, applicants do not have access to this level of detail to fully inform the content of their applications. In fact, the general criteria for evaluation and selection found in the CAP application instructions does not fully reflect the criteria SRA actually uses to score applications, as seen in the *CAP Criteria Comparison* textbox on the following page.<sup>14</sup> The publicly available instructions omit the criteria related to compliance and first-time recipients as well as any information on how criteria will be weighted. SRA does not inform successful or unsuccessful applicants how the authority scored and ranked their applications. In addition, providing applicants with detailed scoring information could help them understand SRA’s requirements and expectations for grant application submissions.



### CAP Criteria Comparison

#### Public Criteria in CAP Instructions

- Match to mission of SRA
- Local commitment and support
- Location within the Sabine River basin

#### Internal CAP Grant Scoring Criteria

- Mission match (1-5): how the project aligns with SRA's and the CAP grant's mission.
- Local commitment (+5): whether local or other funds are available to assist with the project.
- Local support (+5): documented support from residents and officials.
- Needed for compliance (+5): whether the project is required to maintain compliance with TCEQ or another regulatory agency.
- No prior funds received (+2): the applicant has not previously received grant funds from SRA.

### SRA grant award documents lack clear requirements to ensure accountability of both the authority and grantees.

Award documents should clearly lay out expectations and requirements for grant programs. Granting entities should also have clear guidelines outlining how they would improve grantee underperformance during grant-funded projects. SRA's grant awards lack documented terms and conditions that would help improve accountability between the authority and its grantees.

Specifically, SRA does not have written agreements to establish the authority's expectations, details of a grantee's project, a payment arrangement, a specific reporting schedule, or consequences for grantees if they underperform. The textbox, *Project Requirements Listed in CAP Instructions*, shows the only publicized terms and conditions SRA has for its CAP grants.<sup>15</sup> For noncompetitive grants, which typically entail much larger dollar amounts, SRA says they have written letters of commitment outlining projects with stipulations for funding. However, the only documentation of terms and conditions SRA provided Sunset are those between third parties and SRA grantees. For example, SRA provided an agreement between a county drainage district and the Texas Water Development Board (TWDB) for a large project, of which SRA and the district each provided \$250,000 and TWDB provided \$1.5 million through the Flood Infrastructure Fund. However, no documentation exists between SRA and the district concerning the portion of funds provided by the authority, creating uncertainty about SRA's ability to hold the district accountable for proper use of those funds.

SRA maintains a good relationship with its grantees and has yet to encounter many serious issues. However, without a grant agreement, neither SRA nor

#### Project Requirements Listed in CAP Instructions

- The funds must be used within 12 months of the award date.
- During the 12 months, the recipient agrees to provide project information to SRA.
- Upon completion of the project, the recipient agrees to notify SRA.

the grantee have a legal mechanism to enforce any terms, conditions, or goals agreed to informally. For example, one CAP grant recipient used the funds to pay its electricity bill instead of funding the approved project. The entity informed the authority of its intention, and SRA allowed them to pay the bill but placed the entity on a list of organizations ineligible for future CAP grants. However, SRA indicated to Sunset staff that placement on this list does not prevent the entity from applying for other forms of SRA assistance. Further, if SRA had intended to recover those misused funds, the authority would have had no clear means to do so.

**SRA’s grant program lacks measurable performance goals and monitoring standards that would help improve the program’s accountability and effectiveness.**

Tracking specific grant program goals would allow SRA to better evaluate long-term impacts.

- **No measurable outcome goals.** Entities providing grants should require evidence of grantee success and use this information to improve the outcomes of their grant programs. SRA’s administrative policies detail the purpose of the Community Assistance and Economic Development Program. However, SRA has not set measurable goals based on the program’s broad objectives that would enable SRA staff to assess the effectiveness of the program. For example, the authority has not established benchmarks to measure how well grant projects contribute to community and economic development or address the water needs of the Sabine River basin. While SRA’s grant program provides needed support to many community projects, the program could potentially be more impactful with a systematic approach. The table below, *Examples of Potential Outcome Measures*, shows how SRA could establish specific benchmarks to better evaluate how grant-funded projects are contributing to the purpose of the program.<sup>16</sup> Establishing and tracking specific grant program goals would allow SRA to better target needs and evaluate the program’s long-term impacts throughout the basin.

**Examples of Potential Outcome Measures**

Existing Purpose of Community Assistance and Economic Development Program	Existing Output Measures	Potential Outcome Measures
To promote the improvement of the quality and quantity of services essential for the development of a viable community, provide disaster relief assistance, and enhance recreational opportunities throughout the basin.	<ul style="list-style-type: none"> <li>● Project completion</li> <li>● Community satisfaction</li> </ul>	Number of: <ul style="list-style-type: none"> <li>● Beneficiaries (by person or by utility connection)</li> <li>● New or improved water and wastewater infrastructure</li> <li>● Water and wastewater systems brought back into compliance</li> <li>● Events hosted at SRA recreational facilities that generate economic activity</li> <li>● Entities assisted with emergency assistance</li> </ul>

- **Insufficient and inconsistent performance monitoring.** Granting entities should monitor the performance of grants regularly and routinely to ensure grantees comply with terms and meet goals. Even when SRA begins setting clear terms and goals in grant agreements, without adequate monitoring, SRA cannot evaluate whether the grantee is meeting these terms and goals. The authority has no documented processes for monitoring grantee performance and does not formally check on grant projects. SRA infrequently monitors projects by driving by project site locations, sometimes entering the project site, occasionally requesting additional information from the recipient, and relying on the general knowledge of the project within the community. The authority requires grantees to provide a notification upon project completion, but this notification can be as informal as an email or phone call.
- **No consideration of past performance.** Granting entities should comprehensively evaluate the ability of grantees to perform grant duties before an award is made, including accounting for an applicant's past performance. SRA does not formally review the past performance of grantees, instead relying on the recollection of individual staff members regarding any past issues to inform current decisions. SRA lacks the basic information to evaluate past performance of grantees as the authority does not follow up with grantees to collect and document performance information upon project completion, and SRA's scoring matrix does not include past performance as an indicator. Evaluating the past performance of grantees could be an effective method for SRA to score applicants and ensure grant funds are being used appropriately.

SRA relies on staff's recollection regarding past issues to inform grant decisions.

### **SRA does not have a policy specific to its grant program to protect against potential conflicts of interest.**

An entity's procedures for grant programs should not present conflicts of interest or the appearance of conflicts of interest. While SRA requires new staff and board members to sign a code of ethics statement addressing general conflicts of interest, the authority lacks a conflict-of-interest process specific to staff who evaluates grant applications and administers the grant program. While Sunset staff found no evidence that SRA awards grants improperly, a conflict-of-interest policy specific to SRA's grant programs with clear recusal policies would help ensure transparency and fairness for all applicants.

## **Sunset Staff Recommendations**

### ***Management Action***

#### **1.1 Direct SRA to implement consistent practices for tracking and managing award and financial data for the authority's grant program.**

This recommendation would direct SRA to review its practices for tracking and managing its grant award decisions and fund disbursements and implement procedures so that the authority consistently captures, validates, and retains data. SRA staff should perform quality control and train employees on

how to record information accurately. SRA's implementation of a consistent data collection and validation process would ensure SRA is able to provide accurate information to the public and would aid internal and external evaluations to ensure a complete accounting of all grant expenditures.

### **1.2 Direct SRA to establish and publish policies that clearly explain the authority's grant administration process and procedures.**

This recommendation would direct SRA to publish information about all of its noncompetitive grant categories — emergency, special assistance, and recreational enhancement — and establish formal policies governing the application process for each. This recommendation would not direct SRA to implement a competitive process for its noncompetitive grants nor would the recommendation infringe upon the board's discretion when making award decisions for these grants. However, SRA should establish and publicize general guidance on the factors the authority and its board take into account when evaluating these types of funding requests. SRA should also ensure publicly available information about all grant categories matches internal grant administration processes. Doing so while formalizing and publicizing all grant policies would better promote fairness and accountability in SRA's grant program.

### **1.3 Direct SRA to make scoring criteria transparent and publicly available to applicants for competitive grants.**

This recommendation would direct SRA to publicize the authority's scoring rubric for CAP grant applications and define each scoring criterion. SRA should consider providing the final score and ranking to applicants so that they have a clear understanding of why they did or did not receive an award.

### **1.4 Direct SRA to establish formal agreements with written terms and conditions for individual grant awards and policies for grantee underperformance.**

This recommendation would direct SRA to establish formal written agreements to sign with grant recipients that include necessary terms and conditions for SRA and the grantee. SRA should also develop policies that account for underperformance of grantees. These terms and conditions should include information on project expectations, goals, funds disbursement, and consequences should either party fail to meet its obligations.

### **1.5 Direct SRA to establish and track outcome measures for its grant program.**

This recommendation would require SRA to establish specific, measurable outcome goals for its grant program. The authority should identify outcomes relating to SRA's mission or the purpose of the grant program to serve as benchmarks for the authority to track over time to ensure the grant program is achieving desired results.

### **1.6 Direct SRA to establish performance monitoring standards for grant recipients.**

This recommendation would direct SRA to adopt performance monitoring standards for its grant program to ensure recipients meet the terms and conditions of the grant award agreement. These standards should require documented check-ins for ongoing grant projects and final reporting by the grantee to SRA upon project completion. Performance monitoring standards would assist with SRA's oversight of terms and conditions in award agreements and improve awareness of project progress.

### **1.7 Direct SRA to update policies to include consideration of past performance of grantees.**

This recommendation would require SRA to formally consider any available information on past performance of grantees. To facilitate this consideration, SRA should record grantee performance information upon project completion and incorporate the information into the authority's scoring matrix or elsewhere in the application process. In addition, SRA should publicize how the authority considers past performance when evaluating applications. As part of its evaluation of grant applications, SRA could also consider soliciting feedback from other entities that have previously provided funds to applicants.

### **1.8 Direct SRA to develop a conflict-of-interest policy specific to its competitive grants.**

This recommendation would direct SRA to adopt a conflict-of-interest policy for its CAP grants. Under this recommendation, SRA's policy should specify what constitutes a conflict of interest with respect to CAP grants and require staff members involved in the CAP grant application evaluation process to recuse themselves from scoring or discussing applications when doing so would present a conflict of interest. Adopting a conflict-of-interest policy for the grant program would help ensure all awards are merit based while mitigating any real or perceived conflicts of interest.

## **Fiscal Implication**

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

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 152.152, Texas Water Code.

<sup>2</sup> SRA, *Administrative Policies*, Attachment B, amended October 12, 2023.

<sup>3</sup> SRA, "SRA\_CAP\_Grant\_Instructions," accessed online March 21, 2024, [https://www.sratx.org/wp-content/uploads/SRA\\_CAP\\_Grant\\_Instructions\\_rev20221117.pdf](https://www.sratx.org/wp-content/uploads/SRA_CAP_Grant_Instructions_rev20221117.pdf).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> SRA, *Administrative Policies*, Attachment B, amended October 12, 2023.

<sup>9</sup> Texas Comptroller of Public Accounts, *State of Texas Grant Management Standards*, accessed online March 21, 2024, <https://comptroller.texas.gov/purchasing/grant-management/>.

<sup>10</sup> SRA, "SRA\_CAP\_Grant\_Instructions," accessed online March 21, 2024, [https://www.sratx.org/wp-content/uploads/SRA\\_CAP\\_Grant\\_Instructions\\_rev20221117.pdf](https://www.sratx.org/wp-content/uploads/SRA_CAP_Grant_Instructions_rev20221117.pdf).

<sup>11</sup> Ibid.

<sup>12</sup> SRA, "Economic Development," accessed online March 20, 2024, <https://www.sratx.org/basin-development/economic-development/>. Sunset staff accessed this site again on March 22, 2024, and the content had changed to reflect the current \$20,000 maximum award.

<sup>13</sup> SRA, "SRA\_CAP\_Grant\_Instructions," accessed online March 21, 2024, [https://www.sratx.org/wp-content/uploads/SRA\\_CAP\\_Grant\\_Instructions\\_rev20221117.pdf](https://www.sratx.org/wp-content/uploads/SRA_CAP_Grant_Instructions_rev20221117.pdf).

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

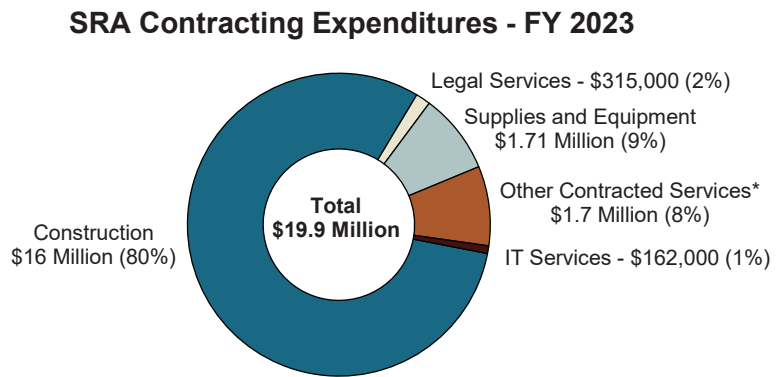
<sup>16</sup> SRA, *Administrative Policies*, Attachment B, amended October 12, 2023.

## ISSUE 2

# SRA's Contracting Process Would Benefit from Additional Documentation and Alignment with Best Practices.

### Background

The Sabine River Authority of Texas (SRA) contracts for a variety of services, including construction and engineering services, legal counsel, and IT support as well as a range of equipment and supplies for operation and maintenance functions. The chart, *SRA Contracting Expenditures*, provides a breakdown of SRA's contract spending in fiscal year 2023, which totaled \$19.9 million and comprised almost 35 percent of the authority's total spending. SRA coordinates contracting functions from its headquarters, but individual divisions begin the contracting process by identifying specific needs and vendor requirements. The SRA manager's handbook outlines standard forms and policies like the maximum costs of purchases and term length of contracts that can be approved at various staff levels. As designated in SRA's bylaws, the general manager can approve contracts with no maximum amount or term limitations.<sup>1</sup> SRA's board of directors approves division budgets, and staff is free to contract within that budget.



\*Includes reservoir security, stump cutting, and environmental lab services.

When evaluating an entity's contracting process, 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.<sup>2</sup> As a political subdivision, SRA is not subject to many of the procurement laws on which the guide is based, as the laws were designed for state agencies. However, as a quasi-state agency that spends public funds, SRA 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 SRA generally performs well in procurement and contracting, implementing best practices to address some key areas would better position the authority to continue to succeed and avoid risks.

### Findings

#### **SRA does not conduct a formal analysis or needs assessment prior to outsourcing services.**

Before deciding to outsource a major function, an entity should carefully develop a business case that documents the costs and benefits of outsourcing a service compared to performing it internally. SRA has not conducted a formal analysis

A lack of formalized decision making leaves SRA vulnerable.

to justify the need to outsource major services. Previous staff and boards left no documented justification for the authority's decisions to outsource key functions, and current staff and board members have not formally reevaluated those past decisions, some several decades old. While these decisions are not unreasonable, a lack of formalized and documented decision making leaves the authority vulnerable should those decisions be questioned. Issue 3 will further discuss how SRA could benefit from performing regular, formal cost-benefit analyses before making decisions, which should include whether to outsource a function. Sunset found three areas where this process would improve operations.

- **Legal services.** In the 1970s, SRA decided it would be more cost effective to outsource legal work to multiple firms with different areas of expertise than hire in-house counsel. In the 50 years since that decision, SRA has never performed a formal cost-benefit analysis or needs assessment of outsourcing legal services. SRA believes this arrangement is still cost effective, but it does not track the costs or number of hours associated with the use of multiple legal firms. While SRA attests it would be too expensive to pay for in-house general counsel in addition to the services of firms that specialize in particular areas of law, the authority was unable to provide data or formal analysis to support this assertion.
- **IT personnel.** After the authority's in-house IT professional retired in 2021, SRA decided to outsource most of its IT functions by contracting with a third-party provider. As SRA looks to incorporate more advanced technology into its operations in the coming years, staff recently sought to hire a new in-house IT professional, which the board approved in December 2023. However, SRA has not performed a formal cost-benefit analysis or needs assessment for these IT decisions, resulting in a reactionary shifting of IT strategies over the last three years instead of a planned approach.
- **Reservoir security.** Prior to the 1980s, SRA employed in-house law enforcement officers to patrol SRA reservoirs and provide general security services. In the 1980s, the authority decided to dissolve SRA's internal police force, outsourcing security duties to off-duty peace officers. SRA believes this arrangement remains beneficial for the authority but does not have documented justification for this decision. SRA never performed a formal needs assessment or documented a cost-benefit analysis for outsourcing security services.

**Without a threshold for board approval of contracts, SRA's board cannot provide sufficient oversight and accountability for contracting processes.**

Agencies should establish policies that clearly outline who may approve contracts for the agency and include monetary thresholds requiring board approval. While other river authorities and state agencies have generally adopted this policy, SRA's bylaws do not specify a contract threshold at which board



approval would be required. The bylaws authorize the general manager to sign and execute contracts but do not designate when the board should step in to provide oversight.<sup>3</sup>

Furthermore, staff conflate the board's oversight of the budgeting process with contract approval, considering any contract falling within the approved budget for a project to be "board approved." Executive staff only bring significant contracts to the board for separate approval on a case-by-case basis, particularly if the contract would cause a project to go over budget. However, this approach means board members are only involved in contract oversight once contract costs exceed their initial approved budget. This prevents the board from proactively heading off potential risks by reviewing significant contracts up front. Clear board approval authority enhances oversight and helps eliminate any confusion over accountability and responsibility in contract administration, especially for high-dollar engineering and construction contracts.

Staff only brings significant contracts to the board on a case-by-case basis.

### **Lack of formal documentation and evaluation of vendor performance creates future risk of uninformed vendor selections.**

- **Informal vendor performance documentation and evaluation.** Entities should formally assess and document the overall success of contracts, including contractor performance, upon contract completion. Currently, SRA relies on staff's first-hand knowledge and personal experience to evaluate vendor performance. While the authority recently developed an internal vendor evaluation form for division managers and executive staff members to fill out upon the completion of a contract, the process is new and has not been implemented. A formal vendor performance evaluation process would improve SRA's future contracting efforts by better informing the authority's vendor selection.
- **Contractor research.** Entities should conduct research on potential contractors before awarding a major contract. Third-party resources can enhance the evaluation of potential vendors beyond internal documentation and research, particularly for vendors with which a contracting entity has no prior history. Sunset staff determined that SRA's current contract research process — verifying vendor registration on the Texas Secretary of State website and conducting reference checks — would be strengthened by formally evaluating and documenting vendor past performance. Checking additional resources, like the Texas Comptroller of Public Accounts' Vendor Performance Tracking System (VPTS), before awarding major contracts could help the authority obtain the most comprehensive information available on potential vendors and thereby reduce further risk. The VPTS provides detailed information on past vendor performance, helping entities confirm the reputability of vendors and make a best-value determination when selecting a vendor to award.<sup>4</sup> While river authorities are not required to use the VPTS, SRA could benefit from reviewing the comprehensive historical information it provides.

SRA relies on staff's informal first-hand knowledge when evaluating vendor performance.

**Additional best practices would improve the transparency and fairness of SRA's contracting processes.**

Not all staff involved in procurement receive standard contract management training.

- **Contract management training.** An entity's executive director, purchasers, and contract managers should receive standard contract management training. SRA executive staff and division managers carry out key contracting and procurement processes for the authority, including approving routine purchases, evaluating vendor solicitations, and handling project management functions for large contracts. The SRA manager's handbook outlines procurement and purchasing procedures for executive staff and division managers but does not provide training on the evaluation of solicitations or detailed project management information. While a few SRA employees possess formal procurement certifications, not all executive staff and division managers are required to have formal training. In comparison, state law requires state agency employees engaged in purchasing or managing significant contracts to receive relevant training and continuing education.<sup>5</sup> Standardized training covering all contracting processes for executive staff and division managers would better ensure vendor solicitations are evaluated uniformly and fairly and that contracts are managed properly.

Signed conflict-of-interest statements help prevent bias in vendor selection.

- **Conflict-of-interest statements and nondisclosure agreements.** Entities can protect the integrity of the vendor evaluation process by ensuring personnel involved in soliciting and evaluating competitive contract proposals sign a statement affirming they have no conflicts of interest with any respondents and agree that they will not engage in the premature or unauthorized disclosure of information about solicitations. SRA's policies generally require board members and staff to disclose conflicts of interest upon appointment or employment. However, SRA does not require those evaluating solicitations to sign conflict-of-interest statements or nondisclosure agreements prior to evaluating solicitations. In contrast, best practice for state agencies is for agency personnel to receive the names of vendors before they participate in reviewing responses to avoid conflicts of interest, particularly if contracts exceed \$1 million.<sup>6</sup> Ensuring staff who evaluate contract proposals have signed updated nondisclosure and conflict-of-interest statements before accessing documents or evaluating submissions would prevent bias in SRA's contract selection process, safeguard sensitive vendor information, and protect SRA from actual or perceived conflicts of interest.

- **Contracting with former employees.** Entities should not contract with former or retired employees or with firms or vendors that hire former employees within a certain established timeframe to avoid actual or perceived conflicts of interest. SRA does not currently have a policy in place that prevents or restricts contracting with firms or vendors that hire former SRA employees. Though Sunset staff did not find any evidence of impropriety, a policy outlining a timeframe for contracting with former or retired employees would help to avoid potential conflicts of interest in the future.

- **Award dispute policy.** Entities should have clear policies and procedures for protesting contract awards. SRA does not outline a clear, formal procedure in solicitation instructions by which a vendor may dispute an award or learn why they were not selected. While SRA has largely avoided contract award disputes, the inclusion of a formal contract award dispute policy in solicitation instructions would promote greater transparency and fairness in SRA's contract award decisions.
- **Use of historically underutilized businesses (HUBs).** SRA lacks a comprehensive approach to increase the number of contracts it awards to HUBs, potentially missing opportunities to work with disadvantaged vendors. Although SRA is not subject to the same HUB requirements as state agencies, the Texas Commission on Environmental Quality requires river authorities to adopt a policy for contracting with HUB vendors.<sup>7</sup> Furthermore, Sunset staff routinely evaluates efforts of entities under review to increase their use of HUBs to promote full and equal opportunities for all businesses in government procurement. SRA recently hired an accounting and procurement specialist to coordinate SRA's efforts to contract with HUBs. However, SRA has not yet adopted other best practices applicable to state agencies with similar staffing levels and operating budgets, such as developing a HUB plan with specific goals, creating HUB subcontracting plans when feasible, and apprising its board of HUB activity. SRA's use of HUB vendors falls below state goals in categories such as heavy construction, professional services, and commodities. A comprehensive plan with targeted performance goals would better focus SRA's efforts and improve its outreach to and use of historically disadvantaged vendors.

A comprehensive HUB plan would improve outreach to disadvantaged vendors.

## Sunset Staff Recommendations

### *Management Action*

#### **2.1 Direct SRA to institute a formal needs assessment or cost-benefit analysis to justify outsourcing current and future services.**

This recommendation would direct SRA to conduct a formal needs assessment or cost-benefit analysis that includes a justification of why the authority should use an outside vendor to perform a particular service. Factors may include lack of current staff expertise, cost of outsourcing the function, or ability to perform the service in house. SRA should perform a periodic assessment to reevaluate current professional services contracts and any non-construction service contracts valued over an amount the board should establish. In addition, SRA should institute this assessment as part of its evaluation process for future outsourced functions.

#### **2.2 Direct SRA to adopt a contract threshold above which board approval is required.**

This recommendation would direct SRA to create a policy setting a dollar amount threshold above which the board must approve a contract. The implementation of a contract approval threshold for SRA's board would give the board consistent oversight and accountability for SRA's most significant contracts. Addressing contracting issues before contracts are implemented would help SRA conduct business in a more fair and transparent manner.

### 2.3 Direct SRA to formally document and evaluate vendor performance.

This recommendation would direct the authority to document vendor experiences and refer to that documentation and other available information to evaluate vendors for future contracts.

- SRA should develop a standard vendor evaluation process. The authority should evaluate vendor performance at contract completion and document “lessons learned” to improve future contract awards and contracting functions.
- SRA should consider other sources of data to improve its vendor evaluation. For example, reviewing the VPTS database could provide SRA with valuable insight into past vendor performance and help ensure contractors do not have a concerning history.

### 2.4 Direct SRA to improve its contracting processes to ensure sufficient transparency and fairness.

This recommendation would direct SRA to take additional steps to improve certain contracting activities to better protect the integrity of its contract solicitations and increase the participation of historically disadvantaged vendors. SRA should adopt the following best practices:

- **Ensure appropriate training.** SRA should ensure all staff members involved in evaluating vendor solicitations and project management receive training appropriate to their role in contracting processes. Training should include best practices for evaluating vendor solicitations, skills necessary for managing contracts and vendors, and other information SRA deems necessary.
- **Require updated, signed conflict-of-interest statements and nondisclosure agreements.** Employees evaluating vendor solicitations should sign a statement affirming they have no conflicts of interest prior to reading or evaluating vendor responses as well as an agreement to maintain the confidentiality of information about proposed solicitations. These signed statements would help prevent bias in contract selection and protect vendor information.
- **Prohibit contracting with former employees.** SRA should adopt a policy to prohibit contracting with former or retired employees for a specified time following their separation from employment. This would help prevent the appearance of conflicts of interest in contracting decisions.
- **Formalize vendor award dispute policy.** SRA should develop and adopt formal procedures for resolving vendor disputes and clearly outline these procedures in solicitation instructions. When the authority receives a dispute, SRA should assess the merits of the dispute and provide an explanation and documented justification for how staff evaluated solicitations and made their decisions. Having a formal dispute policy would promote fairness and transparency in SRA’s vendor selections, ensuring SRA staff follows appropriate procurement processes. SRA should then make improvements to its procurement practices based on the dispute findings.
- **Proactively plan and monitor HUB spending efforts.** SRA should conduct more focused outreach to HUBs by developing a formal HUB plan that identifies performance targets, directs staff to create HUB subcontracting plans when feasible for contracts over \$100,000, and reports on HUB data to the board. Depending on the amount of contracting activity and progress made on other measures to increase HUB contracting expenditures, SRA could also consider adopting the approaches of state agencies of comparable size and resources, such as hosting forums for diverse businesses and creating a HUB mentorship program. Consolidated under a formal HUB plan, these measures would match SRA’s efforts with specified goals, actions, and measurable results.

## Fiscal Implication

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

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<sup>1</sup> SRA, *Bylaws of Sabine River Authority of Texas*, Article III, amended July 11, 2019.

<sup>2</sup> Texas Comptroller of Public Accounts (CPA), *State of Texas Procurement and Contract Management Guide*, accessed online March 19, 2024, <https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>.

<sup>3</sup> SRA, *Bylaws*, Article III, amended July 11, 2019.

<sup>4</sup> CPA, “Vendor Performance Tracking System (VPTS),” accessed online March 19, 2024, <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/index.php#process>.

<sup>5</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 656.052, Texas Government Code.

<sup>6</sup> Sections 2262.001 and 2262.004, Texas Government Code.

<sup>7</sup> 30 Texas Administrative Code, Part 1, Chapter 292, Subchapter B, Section 292.13(5)(B) (2023) (Texas Commission on Environmental Quality, *Minimum Provisions*).



## ISSUE 3

# More Formal, Strategic Decision Making Would Better Position SRA for Continued Success.

### Background

The Sabine River Authority of Texas (SRA) plays a critical role in developing, conserving, and protecting the waters of the Sabine River basin. The authority operates and maintains three reservoirs at Lake Fork, Lake Tawakoni, and Toledo Bend and a canal system in Orange County, all of which supply raw water to agricultural, industrial, and municipal customers. SRA also maintains several parks and recreational areas throughout the basin, providing recreational access to the Sabine River and community facilities for public use. SRA's nine-member board of directors adopts the authority's strategic plan and annual budget and is ultimately responsible for ensuring SRA fulfills its mission.

SRA and the Sabine River Authority, State of Louisiana (SRA-LA) jointly own and operate the Toledo Bend Project Joint Operation, a hydroelectric project licensed by the Federal Energy Regulatory Commission (FERC). The joint project includes a hydroelectric power plant that produces electricity used by Texas and Louisiana, a major reservoir on the border between the states, and a dam and spillway for water releases. The 1953 Sabine River Compact between Texas and Louisiana governs the equitable division of the waters of the Sabine River basin.<sup>1</sup>

### Findings

#### **SRA is facing new, competing opportunities to use the authority's financial resources to benefit the basin.**

As a well-resourced river authority, SRA is uniquely positioned to address the unmet water needs of the Sabine River basin. Recognizing its ability to provide financial assistance to communities in the basin, SRA identifies economic development as a key mission priority. SRA has engaged in various investment efforts in the basin, which have been well received by its stakeholders. The authority's Community Assistance and Economic Development Program has invested almost \$7 million in the basin since 2002, in part through a competitive grant for funding new water supply and wastewater systems or improvements to existing ones, as discussed in Issue 1. SRA recently expanded this program to help drive local economic growth by leveraging its funds in collaboration with the basin's cities and councils of government to attract large events such as fishing tournaments to the area. The City of Dallas, SRA's largest water customer, provides a stable source of revenue projected to continue for the next 30 years. With this revenue, SRA's board has already funded a number of improvement projects for parks and recreational areas throughout the basin, including construction of new, large event facilities for public use. As these park projects come to a close, SRA must decide where to invest its robust resources next.

SRA needs to be strategic about how it leverages public funds in the basin.

SRA will need to be strategic about how it leverages these resources, which are public funds, to maximize the benefit to Texans in the basin. The authority faces several competing opportunities to benefit the basin, such as providing

additional funding to its economic development program, investing in additional recreational facilities, or expanding its existing services. No matter what choices the authority makes, SRA and the basin will be best served by a board that makes informed and deliberative decisions. Sunset staff identified opportunities to improve SRA's decision-making efforts to ensure the authority is well positioned for the future and able to continue meeting the needs of the Sabine River basin.

**SRA's decision making would benefit from a deliberative, documented process that assesses risk, evaluates costs and benefits, and takes mitigating action.**

The authority does not have a consistent, documented approach for its strategic decision making. Risk assessment and decision-making tools would give needed clarity to SRA staff on preparing options for board decision making, including identifying risk factors and gathering data and metrics needed to evaluate potential options. A formal decision-making process would help the board make informed strategic decisions and take steps to address risk before problems arise, reducing the need for reactive decisions and ensuring the authority is making the right decision at the right time.

- **Risk assessment.** SRA does not perform a formal risk assessment before making decisions, instead relying on its staff to informally identify potential problems. While SRA staff has good working knowledge of the authority and its day-to-day risks, a formal risk assessment would ensure a more comprehensive view of the out-of-the-ordinary and worst-case scenarios potentially facing the authority. For example, SRA staff was aware of the advanced age of the hydroelectric power plant at Toledo Bend but did not anticipate a major transformer replacement project was needed, which has an estimated cost of \$6.9 million, until its insurance carrier voiced concerns.

As part of this risk assessment, SRA should proactively identify and evaluate applicable risk factors and metrics of strategic decisions that could impact the authority's long-term operations. In particular, major financial decisions that may affect the authority's ability to carry out its statutory functions and mission should be fully vetted to avoid unintended consequences. When SRA staff prepares potential options for the board to consider, a risk assessment would indicate the nature and severity of the risks facing the authority for each option. Not all risk is financial — factors could involve asset damage, cybersecurity, fraud, legal, operational, regulatory compliance, or reputational risk. A risk assessment need not be overly complicated, especially for small entities like river authorities. For example, the State Auditor's Office has a risk assessment tool designed for small agencies that provides guidance on identifying agency activities and associated risks.<sup>2</sup>

When gathering information to use for the risk assessment and to evaluate potential dangers, SRA should consider consulting with experts to ensure the authority obtains relevant information about the problem to help

SRA does not perform a formal risk assessment prior to making decisions.



make informed decisions. This is especially important when the authority is considering engaging in new endeavors with which it has little to no direct experience, such as when SRA and SRA-LA took over operation of the hydroelectric power plant in 2023. Prior to that point, the authorities had little working knowledge of the power plant's day-to-day operations, instead relying on a local electric company to operate the power plant for 50 years. The authorities learned much during a five-year transition period between 2018 and 2023 and hired several technicians from the local electric company, but the authorities' direct knowledge of power plant operations was inherently new and potentially incomplete. An outside perspective or third-party evaluation by a subject matter or industry expert, such as a regulatory consultant or legal counsel, would ensure SRA is fully aware of all potential risks, however unlikely, before taking on a new activity. The textbox, *Increased Regulatory Compliance Risk*, describes another example where early expert advice could have been helpful to anticipate the long-term impact of regulatory compliance on the authorities.<sup>3</sup>

### Increased Regulatory Compliance Risk

With its original license expiring in 2013, SRA and SRA-LA renewed the hydroelectric power plant's FERC license for another 50-year term. As part of the renewal, FERC included numerous environmental requirements stemming from federal legislation enacted since 1963, significantly increasing the authorities' regulatory compliance burden and cost. For example, the authorities must regularly conduct eel surveys. If the authorities find a significant number of eels, FERC has the discretion to require an eel ladder at the power plant, which according to SRA could potentially cost millions of dollars to install. Other requirements relate to recreational usage, such as requiring the authorities to consult conservation groups on the scheduling and timing of weekend water releases and implementing a recreation management plan that specifies capital improvements for parks in the Toledo Bend area. SRA estimates the cost of regulatory compliance with the renewed license at \$520,000 annually since 2014, with no comparable cost prior to 2014. While the authorities believe none of these individual requirements are burdensome enough to contraindicate continued operations, the decision to renew the FERC license was not informed by a full accounting of the potential regulatory burden and costs in aggregate.

- **Cost-benefit analysis.** The authority does not perform a formal cost-benefit analysis before making strategic decisions. A cost-benefit analysis quantifies and compares the value of the benefits against the costs associated with a given course of action and provides insight into potential short-term and long-term impacts. Anticipated revenue and hard costs, such as labor, maintenance, and operation costs, are usually easier to quantify. However, soft costs should also be quantified, such as time needed for staff to obtain additional training or licenses, contractor fees, and forecasted repair and replacement costs. For example, while SRA understands taking ownership of failing wastewater treatment plants in the basin is not profitable, unanticipated infrastructure repairs have required SRA to invest funds in these plants that will be difficult to recover. The cost-benefit analysis should provide the board with metrics to evaluate each option's potential impact on the authority and the basin.

A focused cost-benefit analysis would identify unprofitable activities and improve performance.

Additionally, SRA should consider performing regular cost-benefit analyses to evaluate the impacts of the authority's current activities. While SRA gathers revenue and expenditure information about its operations across

SRA does not formally evaluate whether each activity recovers its costs.

the basin, the authority does not take the next step to formally evaluate whether each of those activities is recovering costs or operating at a loss. As SRA is well resourced, the potential impact from an ongoing loss is minimized, which could result in overlooking activities struggling to recover costs. However, these are the activities that would benefit most from a focused cost-benefit analysis to identify the sources of those struggles and improve performance.

Further, the authority should evaluate the long-term sustainability of its activities using information from its cost-benefit analyses to gauge the full magnitude of potential year-over-year losses. For example, SRA does not track the full extent of costs for its five wastewater treatment plants such as labor costs of maintenance and operation or the soft costs of staff obtaining and maintaining required licensure. A formal cost-benefit analysis would provide SRA and its board with a full accounting of an activity’s impact, helping the authority improve operations and evaluate the activity’s progress in recovering costs.

- **Risk mitigation.** SRA could do more to mitigate potential financial or legal consequences. Engaging the board in the risk assessment process would ensure board members are aware of the risk facing the authority and are proactive in mitigating that risk. For example, the board could provide guidance to staff by setting priorities for risk mitigation, indicating which activities should be targeted to address any potential physical or cybersecurity risks. As part of setting these priorities, the board could determine what types of risk and degree of loss they are willing to accept, which would also inform the steps the authority could take to mitigate such risk. Additional examples of potential actions to mitigate risk are provided in the textbox.

### Potential Risk Mitigation Actions

Written agreements to reduce fraud and reputational risk. As discussed in Issue 1, SRA could consider defining clear grant terms and conditions in writing that would ensure both the authority and grantees understand expectations. Without written agreements, SRA has no legal assurance the grantee will use the funds for the approved purpose, and the grantee similarly lacks legal assurance SRA will provide funds upon fulfillment of conditions or completion of the project.

Liability waivers to offset asset damage risk. SRA has invested millions in recreational areas throughout the basin, some of which include event facilities that may serve thousands of participants. SRA could consider using liability waivers or signed agreements to help mitigate against potential lawsuits involving property damage of its event facilities and park assets.

Additionally, as SRA considers the long-term impacts of activities operating at a loss on the authority’s other statutorily-required operations, SRA could also decide what conditions are acceptable for continued operations. Operating at a year-over-year loss is a financial risk that should be accounted for in the authority’s operations and addressed by the board. For example, SRA’s board could identify thresholds indicating when a follow-up review is required or if operations should cease, such as a maximum threshold

amount of reserve funds for covering a deficit and a time frame indicating when the loss is no longer acceptable.

Outdated roles and responsibilities. Developed before the Toledo Bend hydroelectric project was operational, the governing documents of the joint project anticipated amendments would be made as the project progressed and conditions on the ground changed, but the last update occurred in 1964.<sup>4</sup> Since then, the roles and responsibilities performed by both authorities have evolved beyond what was originally contemplated in the governing documents. SRA has not revisited the documents with SRA-LA to define and record current expectations of their roles and responsibilities. Preserving knowledge through formal written documentation, such as a memorandum of understanding, would help mitigate risk due to inexperienced staff not knowing or potentially misinterpreting the responsibilities they are to perform and would ensure coordination of staff efforts to perform key tasks. Potential topics for updated formal documentation of the Toledo Bend Project Joint Operation could include a new water royalty assessment, which has not changed since the 1960s, and defining an agreed-upon threshold size for water sales whose revenue would be shared between the authorities. Additional details about the compact are provided in the accompanying textbox.<sup>5</sup>

The Toledo Bend governing documents have not been updated since the 1960s.

### Sabine River Compact

The Sabine River Compact between Texas and Louisiana equally divides the water in the stateline reach, or the region from where water of the Sabine River touches both states down to the river's entry into Sabine Lake. Both states have an equal allocation of the river's natural stream flow and water stored in the Toledo Bend reservoir, excluding water consumed for domestic and stock water use. Under the compact, each state may use its allocation of water in any manner deemed beneficial by that state. As joint owners of the Toledo Bend reservoir, the compact does not require the authorities to jointly sell water from the reservoir but does require them to share revenue from reservoir water sales. However, the authorities do not share sales revenue on smaller water sales typically less than 25,000 acre-feet. The authorities also assess a water royalty of 1.3 cents per 1,000 gallons on water diverted by each state in excess of 90,000 acre-feet per year to offset the Toledo Bend Project Joint Operation. Both authorities agree in theory — although not in writing — that sales revenue would be shared from a large reservoir water sale on the order of 600,000 acre-feet. However, the compact and the project's governing documents do not define a clear sales threshold for sharing sales revenue of reservoir water sales. While this has not yet been an issue between the authorities, specifying such a threshold well before a potential deal could help reduce ambiguity and uncertainty before entering into sale negotiations.

- **Decision documentation.** The authority would benefit from documenting decisions, which would record its well-reasoned and deliberative process, provide a historical record that can inform the board's future decisions, and facilitate review of past decisions. Documentation would indicate the information considered by the board, such as risk factors, impacts, and outcomes, as well as the ultimate decision. This documentation could also protect against potential litigation or accusations of impropriety by providing the board's justification for potentially contentious decisions based on evidence available at the time.

## Sunset Staff Recommendations

### *Management Action*

#### **3.1 Direct SRA to develop a formal, strategic decision-making process to identify and address potential risk and better inform its decisions.**

This recommendation would direct SRA to develop a consistent, formal, and strategic decision-making process that could impact the authority's long-term operations. Having a formal process encourages well-reasoned, deliberative decisions. This process should include, but is not limited to, the following decision-planning tools:

- A risk assessment to identify applicable risk factors of an activity in addition to typical financial risks, including operational, compliance, and cybersecurity risks. The assessment should also include metrics useful for evaluating impacts of risks on the authority and the basin, such as comparing the relative size of the activity to the authority's full operations, evaluating whether the activity is critical to the authority's mission or affects residents in the basin, and determining the potential cost or magnitude associated with each risk. The assessment should also estimate the likelihood of occurrence for each risk. Engaging the board in a risk assessment would ensure they understand the nature and severity of the risks facing the authority.
- A cost-benefit analysis to quantify and compare costs and benefits. This analysis should be performed in preparation for a decision as well as on a regular basis to evaluate the effectiveness and sustainability of the decision, such as whether to outsource a function or perform it in house, as discussed in Issue 2. The board could use this information to evaluate the potential impacts of activities on the authority and the basin and identify activities struggling with year-over-year losses.
- A risk mitigation plan to identify actions to reduce risk and its impacts on the authority and the basin. The risk assessment may feed into the risk mitigation plan, indicating how the risk identified in the risk assessment may be mitigated through controls and other actions. Engaging the board in the risk mitigation process would enable the members to have a comprehensive understanding of the authority's activities, determine what risk is unacceptable, and be proactive in taking the steps needed to mitigate those risks.
- Documentation of the decision, including the use of the above tools, factors and outcomes considered, and final decision. Such documentation would be useful for providing the board's reasoning for future decisions and would facilitate review of past decisions.

#### **3.2 Direct SRA to work with SRA-LA to develop a memorandum of understanding to facilitate better coordination between the authorities.**

This recommendation would direct SRA to work with SRA-LA to document in a memorandum of understanding the roles and responsibilities currently performed by the Texas and Louisiana authorities as well as any needed adjustments to ensure equitable division of efforts. Under this recommendation, the authorities could also revisit other topics of interest that may need to be modernized, such as a new water royalty assessment or a potential water sale threshold for future shared revenue. Written documentation of the authorities' roles and responsibilities would help mitigate the potential risk of ambiguity over which authority is responsible for key tasks, ensuring both authorities have clear understanding of and accountability for their roles.

## Fiscal Implication

These recommendations would not result in a significant fiscal impact to the state. Although the recommendations are largely designed to enhance SRA's existing decision-making process, any impact on the authority will depend on the implementation of recommendations. For example, the authority could decide to hire a subject matter or industry expert to inform a strategic decision with technical or financial complexity, resulting in a cost that cannot be estimated at this time.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Chapter 44, Texas Water Code.

<sup>2</sup> State Auditor's Office, "Small Agency Risk Assessment Instructions," accessed online March 21, 2024, <https://sao.texas.gov/InternalAudit/SmallAgencyRiskAssessment/>.

<sup>3</sup> Federal Energy Regulatory Commission, *Order Issuing New License*, Articles 405(c), 410, and 414 and Appendix B, "Section 18 Prescription for Fishways," accessed online March 21, 2024, [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20140829-3036&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20140829-3036&optimized=false).

<sup>4</sup> Sabine River Authority of Texas and Sabine River Authority, State of Louisiana, *Basic Contract between Sabine River Authority of Texas and Sabine River Authority*, State of Louisiana, 1961, Sections 1.13 and 10.1; Sabine River Authority of Texas and Sabine River Authority, State of Louisiana, *Organizational Plan of the Toledo Bend Project Joint Operation between Sabine River Authority of Texas and Sabine River Authority, State of Louisiana*, 1964, Section 18. The Basic Toledo Bend Contract provides for the appropriate titling and numbering of amendments to the contract in Section 1.13 and the understanding of the authorities that contract may be supplemented and amended in Section 10.1. The organizational plan, last revised in 1964, provides the process for amending the plan in Section 18.

<sup>5</sup> Section 44.010, Articles I, V, and VI, Texas Water Code.



## ISSUE 4

# SRA's Governing Law and Complaint Process Do Not Reflect Some Standard Elements of Sunset Reviews.

### Background

In 2015, the Legislature directed Sunset staff to assess the governance, management, operating structure, and compliance with legislative requirements for each river authority.<sup>1</sup> 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 the Sabine River Authority of Texas (SRA) to adopt good government practices and statutory changes needed to update and conform SRA's governing law to standard Sunset language generally applied to all entities under Sunset review.

SRA exercises regulatory authority by issuing limited use and on-site sewage facility (OSSF) permits. The authority requires limited use permits to build structures and operate businesses on SRA-owned property. Individuals may obtain private limited use permits to build water access-related structures such as boathouses, piers, and docks. Commercial entities may obtain commercial limited use permits to operate businesses such as marinas, RV parks, and golf courses as well as to build water access-related structures. SRA also issues limited use permits for livestock grazing on authority land. SRA operates as the authorized agent of the Texas Commission on Environmental Quality in the permitting of OSSFs within 2,000 feet from SRA reservoir boundaries. Around its three reservoirs, SRA has 16,090 OSSF permits, 6,512 private limited use permits, 104 commercial limited use permits, and 111 grazing limited use permits. In fiscal year 2023, SRA received 61 complaints about OSSF permits and 22 complaints about both private and commercial limited use permits. The authority received no complaints about grazing limited use permits.

### Findings

#### **SRA'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 entities reviewed, including river authorities, unless an overwhelming reason exists not to do so.<sup>2</sup> These across-the-board provisions (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 an 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, increasing the authority's accountability to the state's leadership. SRA's governing law requires

members of the board of directors to elect the board’s president.<sup>3</sup> 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.

SRA lacks a statutory basis for removing a board member.

- **Grounds for removal.** SRA’s governing law lacks the standard provision relating to the grounds for removal of board members. Having a statutory basis 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 a functioning policymaking board.
- **Board member training.** SRA’s governing law does not establish the type of training and information board members need to properly discharge their duties. State law requires members to obtain Texas open meetings and public information trainings upon taking their oath of office. While SRA provides basic information about the authority to new board members, SRA’s governing law requires no additional training to ensure each member has necessary knowledge about topics such as the authority’s governing law, programs, operations, budget, and the scope and limitations of the board’s rulemaking authority before the member makes decisions regarding matters of public interest.
- **Policymaking and staff functions.** SRA’s 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 SRA’s effectiveness.
- **Public testimony.** SRA’s governing law does not require an opportunity to provide public comment at open board meetings. When people affected by SRA’s decisions have an opportunity to provide meaningful input to the board, the additional information and perspective improve the overall decision-making process. To Sunset’s knowledge, SRA has never denied a member of the public an opportunity to speak at a board meeting, and SRA’s board meeting agendas include a public comment agenda item. However, 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.** SRA’s governing law does not require the authority to maintain complete information on complaints it receives or 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 SRA addresses problems in a timely fashion. While SRA receives few complaints, a complaint tracking system could help improve management of authority operations, alert the authority to damages to the authority’s infrastructure, and raise awareness of high-risk issues.

Maintaining a system for acting on complaints helps protect the public.



### **The state benefits from continued legislative oversight of SRA.**

Although not subject to abolishment under the Sunset Act, SRA 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 identified a number of opportunities to enhance the effectiveness, efficiency, transparency, and accountability of SRA. More broadly, continued oversight by the Sunset Commission provides future legislatures a powerful tool to assess SRA and invite public input on improving it.

### **SRA'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, SRA's governing law exists only 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, SRA's original governing law established a board of nine members who reside within a county that is wholly or partially within the watershed of the Sabine River.<sup>4</sup> However, in 1999, the legislature amended the law, specifying four members should reside in specific counties in the upper basin, four in specific lower basin counties, and one at-large member.<sup>5</sup> SRA'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 inhibiting full understanding of the authority's powers and duties.

### **SRA's permitting programs would benefit from a clear, publicly accessible complaint process.**

A governmental entity with regulatory authority should have rules or policies that clearly lay out all phases of filing, investigating, and acting on a complaint against an entity it regulates. Such rules or policies ensure the public knows how to engage in the complaint process and access the information needed to allow for an investigation. As part of the complaint process, an individual should be able to file a written complaint using a simple form provided on the regulator's website then submit it through either email or postal mail. The form should clearly establish the information needed to allow for an investigation and provide information about what to expect throughout the process.

SRA does not record internally or describe on its public-facing website the complaint process for the authority's permitting programs. SRA fields complaints about OSSF (e.g., a leaking septic tank), private limited use (e.g., a dilapidated dock), and commercial limited use permits (e.g., a damaged pier at a marina). SRA receives these complaints via phone calls or emails to its division offices. No centralized process, form, or information exists on the website informing the public that they can submit complaints regarding these

SRA does not publicize or maintain a formal complaint process for its permitting programs.

programs. Clear, accessible information about investigation and complaint resolution procedures, especially when provided on a simple complaint form available to all parties, would improve the efficiency of investigations and ensure SRA fulfills its duty as a government regulator to be responsive to the public.

**SRA’s board member terms do not comply with constitutional requirements.**

Like many river authorities, SRA’s board terms exceed the constitutional term limit of four years.

Members of SRA’s board serve staggered six-year terms as established by the authority’s governing law.<sup>6</sup> However, since the authority’s creation, Texas voters amended the state constitution to set terms for the members of the governing boards of constitutionally-created conservation districts, such as river authorities, to not exceed four years.<sup>7</sup>

To date, Sunset has reviewed 14 river authorities and found that unconstitutional six-year board terms are common. In fact, of the 18 authorities placed under Sunset review, all but three had six-year board terms when they underwent review. During the last biennium, the Sunset Commission recommended changes to individual river authority boards to conform to constitutional requirements. The commission also directed Sunset staff to study and make recommendations on options to create uniformity among river authorities for consideration in the 89th Legislature. Because of the incongruence between the constitution and the provisions regarding board member terms in almost all river authority statutes, further consideration of this matter is more appropriate for the river authority uniformity study, which is scheduled for completion in fall 2024.

**Sunset Staff Recommendations**

***Change in Statute***

**4.1 Apply the standard across-the-board requirement regarding the governor’s appointment of the presiding officer to SRA’s board.**

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

**4.2 Apply the standard across-the-board requirement regarding grounds for removal of a board member to SRA.**

The 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.

**4.3 Apply the standard across-the-board requirement regarding board member training to SRA.**

This recommendation would clearly establish the type of information to be included in the board member training for SRA. This training would need to provide board members with information regarding

SRA's governing laws; its programs, functions, bylaws, 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.

#### **4.4 Apply the standard across-the-board requirement regarding the separation of duties of board members from those of staff to SRA.**

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

#### **4.5 Apply the standard across-the-board requirement regarding public testimony to SRA.**

This recommendation would require SRA 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 SRA's jurisdiction at open board meetings.

#### **4.6 Apply the standard across-the-board requirement related to developing and maintaining an authority complaints system and making information on complaint procedures available to the public.**

This recommendation would require SRA to maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures. SRA 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.

#### **4.7 Amend SRA's Sunset review date to 2037.**

Because SRA 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 SRA's governing law to 2037, placing the authority under Sunset review again in 12 years.

### ***Management Action***

#### **4.8 Direct the Texas Legislative Council to update SRA's governing law.**

This recommendation would request that the Texas Legislative Council prepare legislation codifying SRA's governing law for introduction during the 90th Legislative Session. This recommendation would also request the council to provide by February 1, 2025, a list of any issues regarding SRA's governing law that would impede codification and should be addressed in the authority's Sunset bill during the 89th 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.

#### **4.9 Direct SRA to develop and publicize a clear complaint policy for its permitting programs.**

SRA should adopt and make available to the public a policy that clearly lays out each step of the authority's process for complaints concerning limited use and OSSF permits. These steps include complaint receipt, investigation, resulting actions, and disclosure to the public. Additionally, this recommendation would direct SRA to develop a centralized, uniform way for the public to file complaints about permitted

entities, including a simple online complaint form listing required information and details about the complaint process. Making these changes would increase the transparency of SRA's regulatory programs and ensure affected property owners and permit holders understand their rights.

### ***Future Consideration***

#### **4.10 Postpone the decision on modifying board terms until completion of the upcoming river authority uniformity study.**

This recommendation would postpone the staff recommendation and the Sunset Commission's decision on how to address river authority board terms until completion of Sunset's study of opportunities for uniformity among authorities in fall 2024. Postponement would allow for a more holistic evaluation of options to address board terms in a single decision.

### **Fiscal Implication**

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

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

<sup>2</sup> Available at: <https://www.sunset.texas.gov/across-board-policies>.

<sup>3</sup> Section 4, Chapter 110 (HB 467), Acts of the 51st Texas Legislature, Regular Session, 1949.

<sup>4</sup> Ibid. Section 3.

<sup>5</sup> Section 1, Chapter 1496 (HB 3846), Acts of the 76th Texas Legislature, Regular Session, 1999.

<sup>6</sup> Section 3, Chapter 110 (HB 467), Acts of the 51st Texas Legislature, Regular Session, 1949.

<sup>7</sup> Section 30(c), Article XVI, Texas Constitution (amended 2009).

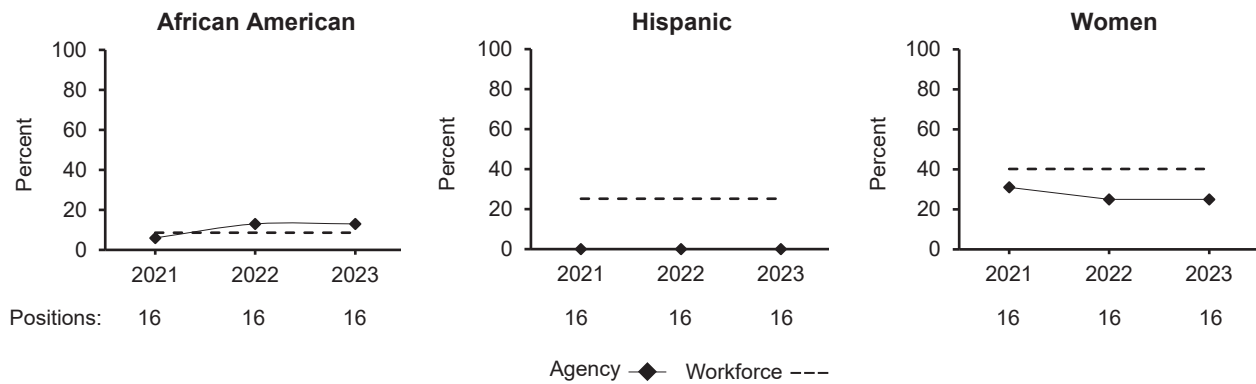
# APPENDIX A

## Equal Employment Opportunity Statistics, FYs 2021-23

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 Sabine River Authority of Texas (SRA).<sup>1</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and women in each job category.<sup>2</sup> These percentages provide a yardstick for measuring the authority’s performance in employing persons in each of these groups. The diamond lines represent the authority’s actual employment percentages in each job category for fiscal years 2021-23.

Overall, SRA fell short in 14 of the 18 categories depicted below. In several instances, the authority reported zero women, African American, or Hispanic employees in a category during one or more fiscal years. However, SRA exceeded the statewide percentages for women in two of the six job categories: technical and administrative support. SRA did not have any employees in the protective services category.

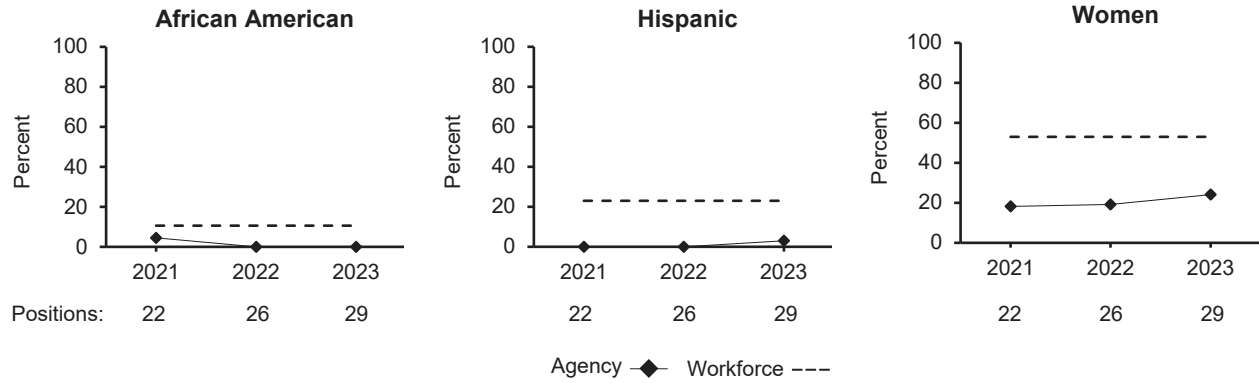
### Administration



The authority fell below the statewide civilian workforce percentage in administration positions for Hispanics and women in all three fiscal years. The authority reported fewer African Americans than the civilian workforce percentage in fiscal year 2021 but exceeded statewide workforce percentages in fiscal years 2022 and 2023.

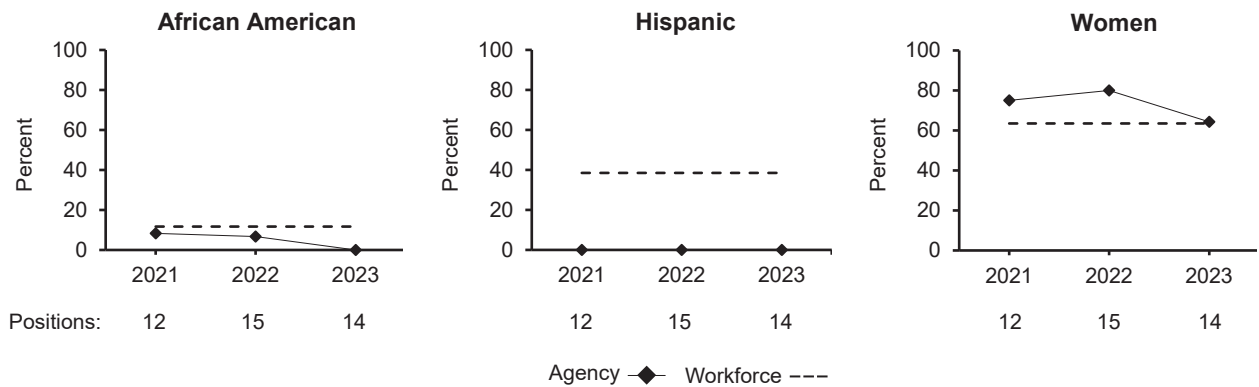
## Appendix A

### Professional



The authority fell below the statewide civilian workforce percentage in professional positions for all three reported groups in all three fiscal years.

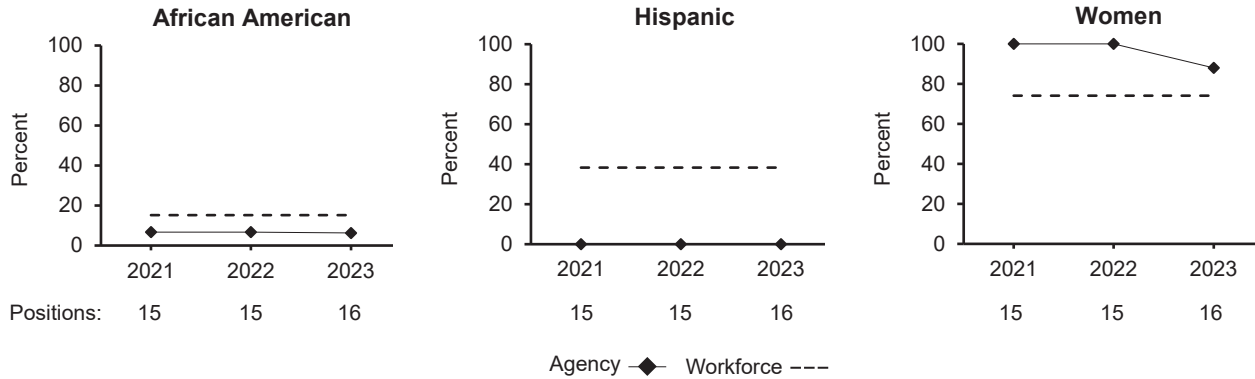
### Technical



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

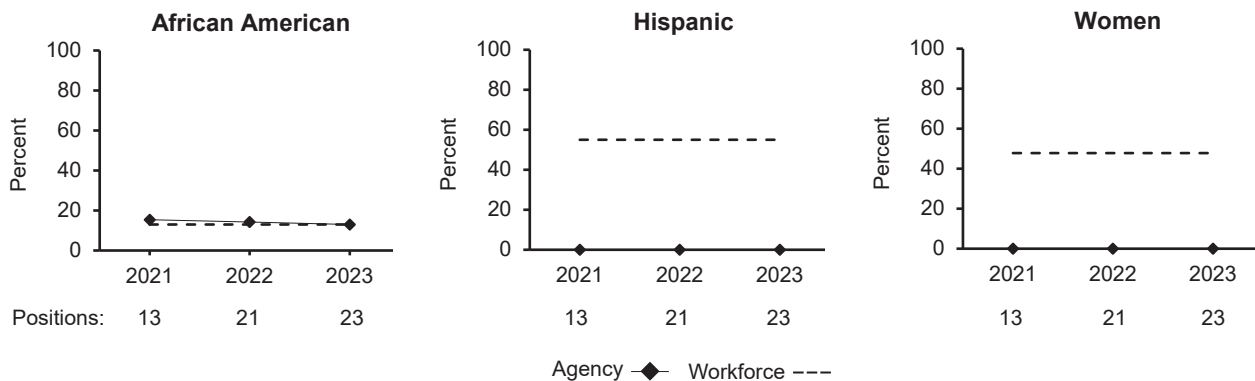
## Appendix A

### Administrative Support



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

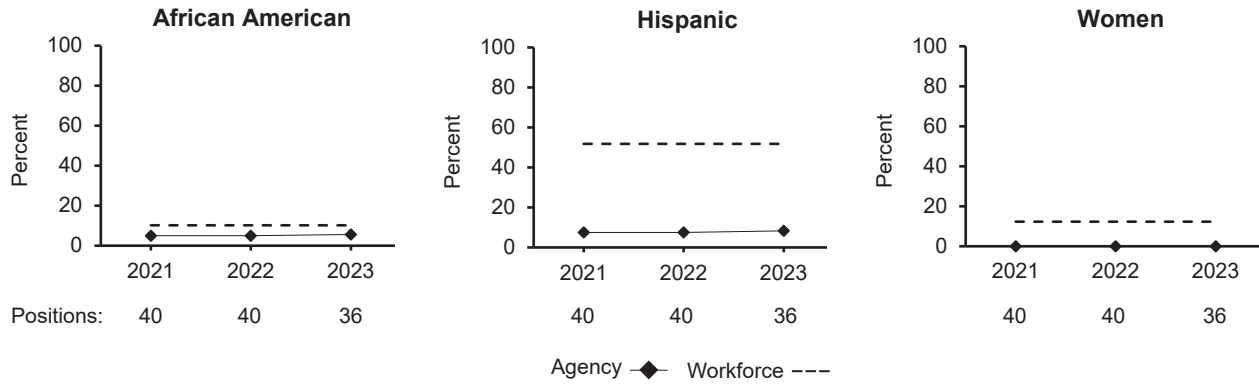
### Service/Maintenance



The authority exceeded the statewide civilian workforce percentage in service/maintenance positions for African Americans for all three fiscal years but reported zero Hispanic and women employees in the service/maintenance category during this timeframe.

## Appendix A

### Skilled Craft



The authority fell below the statewide civilian workforce percentage in skilled craft positions for all three groups in all three fiscal years.

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

<sup>2</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.



## APPENDIX B | Staff Review Activities

During the review of the Sabine River Authority of Texas (SRA), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with SRA personnel; attended board meetings; interviewed board members; corresponded with key legislative offices; solicited written comments from interest groups and the public; reviewed SRA 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 SRA.

- Interviewed members of SRA's board of directors.
- Interviewed staff of the Sabine River Authority, State of Louisiana.
- Conducted surveys of stakeholders and potential recipients of SRA's Community Assistance and Economic Development Program grants.
- Attended the Texas Water Conservation Association Fall Conference.
- Attended SRA's Audit Committee meeting.
- Toured SRA's major projects, including the Lake Fork dam, Lake Tawakoni's Iron Bridge Dam, John W. Simmons Gulf Coast Canal System, Earl Williams Pump Station, and the Toledo Bend dam and hydroelectric power plant.
- Attended SRA's dedication ceremony for the Caney Point Recreation Area and toured other parks and recreation areas, including the Deweyville boat ramp, City of Orange floating boat dock, Bluebird boat ramp, and Sam Forse Collins Park.
- Interviewed staff from the Texas Commission on Environmental Quality, Department of Information Resources, and Texas Water Development Board.
- Attended a meeting of the Region 4 Sabine Regional Flood Planning Group.



# Sunset Staff Review of the *Sabine River Authority of Texas*

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