



**Texas  
Sunset  
Advisory  
Commission**

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**STAFF EVALUATION**

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*Rio Grande River Compact Commissioner for Texas  
Pecos River Compact Commissioner for Texas  
Canadian River Compact Commissioner for Texas  
Sabine River Compact Commissioner for Texas  
Red River Compact Commissioner for Texas  
Gulf States Marine Fisheries Commission*

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**A Staff Report  
to the  
Sunset Advisory Commission**

**1984**

**INTERSTATE RIVER COMPACTS**

**June 1984**

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## SUMMARY

In the past 45 years, Texas has negotiated and approved five interstate river compacts. The first compact was negotiated for the Rio Grande in 1939. This compact was followed by the establishment of compacts for the Pecos River in 1949, the Canadian River in 1951, the Sabine River in 1953, and most recently the Red River in 1980.

These compacts play an important role in the availability of water for the state. The river compacts are legal agreements that divide up the water in the river basins between compact states. All but the Canadian River compact apportion stream flow. The Canadian River compact deals with the storage of waters between compact states.

These as well as most other compacts must be approved by the states involved and the federal government. The river compacts are structured in two parts. The first part is statutory language developed by each state separately. This language sets up basic administrative elements left to each state to decide. Approval of this part by all states is not required. The second part is the main body containing compact agreements and approved by all states and the federal government.

The river compacts are administered by compact commissions. Provisions of the compacts require one or two commissioners from each state making up the compact plus a federal non-voting chairman appointed by the President of the United States. Each of the Texas compact commissioners are appointed by the governor, with the advice and consent of the senate, for either two or six-year terms, depending on the compact. These Texas commissioners have their own engineer or work with engineers supplied by the Texas Department of Water Resources. The commissioners use legal advisors from the Texas Attorney General's Office to advise them on technical matters relating to the compacts. In addition, the Texas Department of Water Resources has designated an Interstate Compact Coordinator who coordinates other department support which may be needed by the compact commissioners.

Expenses of the compacts are paid by the United States and compact states. Each state pays the salary and personal expenses of its commissioners. Total appropriations from Texas to the various compacts for fiscal year 1984 ranged from approximately \$27,000 in the case of the Sabine compact to \$219,000 in the

case of the Rio Grande compact. Total Texas appropriations to the compacts for 1984 were \$499,572.

The review indicated that there is a continuing need for the five river compacts. It is necessary that a river compact or some other enforceable document exist to apportion the water supply between the states and that an interstate commissioner or some other administrative body exist to serve as a forum to discuss and hopefully resolve water-related problems between the states.

If the state wished to withdraw from any of the compacts, there are legal obstacles to overcome. The five river compacts can be terminated only by action of all the legislatures of the states involved or by a finding of the U.S. Supreme Court that the compact is unenforceable. As long as the compact is in effect, the Texas component of the interstate river commission is required by state and federal laws. If the compacts are to be continued, the following changes are set out for consideration.

#### Approaches for Sunset Commission Consideration

##### **I. MAINTAIN THE COMMISSION WITH MODIFICATIONS**

- 1. The statutes for the Pecos, Red, and Canadian River Compacts should be amended to change the terms of all compact commissioners to six years.**

Terms of the three compact commissions should be extended from two years to six years to conform with other compact commissioners which currently have six-year terms. Two-year appointees lack the background and continuity to do the job effectively.

- 2. The compact statutes should be amended to require that to be eligible for appointment by the governor as an interstate compact commissioner, a person must reside within the boundaries of the river basin at the time of appointment.**

Currently, there are no residency requirements for Texas compact commissioners. Prior governors have appointed commissioners who have not resided within the river basin and have not been familiar with the conditions and problems of the area.

- 3. Requirements found in the preliminary sections of the compacts should be made consistent with one other.**

Certain basic administrative requirements are found in the preliminary sections of some compacts and not in others. For instance, specifica-

tion of the length of commissioner terms and definition of employee administrative expense are found in all compacts except the Canadian. No reason could be found for the inconsistencies, and they should be eliminated to ensure like treatment for all the compacts.

**4. The special state fund under the control of the Canadian River Compact Commissioner should be deposited in the State Treasury.**

A small state fund (about \$22,000) under the control of the Canadian River Compact Commissioner is currently maintained outside the State Treasury. General state policy and the standard approach of the Sunset Commission require that most state funds be maintained in the State Treasury, and this fund should not be an exception.

**5. Notice of meetings to be held by the various compact commissions should be filed with the Secretary of State's Office.**

Since the compact commissions are neither purely state nor federal agencies, their meetings do not clearly fall under the public notice requirements of either member states or the federal government. The Texas public has not had notice of these meetings as it would for the meetings of typical state agencies. This problem should be corrected by requiring the Texas component of the commissions to follow the notice procedures set out in the state's Open Meetings Act.

**II. OTHER POLICY CONSIDERATIONS**

**1. Should the separately appointed river compact commissioners be replaced by the executive director of the Department of Water Resources.**

The review identified that savings could be made if the executive director of the Department of Water Resources were required, in addition to his regular duties, to act as compact commissioner for all river compacts. The Department of Water Resources has the technical staff and background to manage the five river compacts. The administrative work would be consolidated into one agency. It was also found that in most of the other states making up the river compacts, the compact commissioner was either a director of a water agency or a state agency administrator.

Problems exist with this approach in that, in the Sabine, the text of the compact specifies that the governor shall appoint two commissioners. In order for the text of a compact to be amended, the legislatures of all the states involved plus the federal congress have to comply. The Pecos, Canadian, Red and Rio Grande river commissions could probably be changed due to the structure of the compacts, but it is not clear what the legal implications for the state would be in the case of the Sabine compact.

## **AGENCY EVALUATION**

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The review of the current operations of an agency is based on several criteria contained in the Sunset Act. The analysis made under these criteria is intended to give answers to the following basic questions:

1. Does the policy-making structure of the agency fairly reflect the interests served by the agency?
  2. Does the agency operate efficiently?
  3. Has the agency been effective in meeting its statutory requirements?
  4. Do the agency's programs overlap or duplicate programs of other agencies to a degree that presents serious problems?
  5. Is the agency carrying out only those programs authorized by the legislature?
  6. If the agency is abolished, could the state reasonably expect federal intervention or a substantial loss of federal funds?
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## BACKGROUND

### Organization and Objectives

Beginning in 1939, five river compacts have been negotiated between Texas and neighboring states. These compacts, which are still in effect, apportion the water between compact states for five rivers: the Rio Grande, Pecos, Canadian, Sabine, and Red River. The compacts are legal agreements that must be approved by member states and the federal government. The compacts are administered by "interstate compact commissions" and each state selects commissioners to serve on these agencies. Basic information concerning the compacts for each of the five rivers is presented in the following table.

<b>INTERSTATE COMPACT COMMISSIONS</b>				
<u>Compact/ Date Established</u>	<u>States Involved</u>	<u>Number of Texas Commissioners</u>	<u>Term of Commissioners</u>	<u>Salary of Commissioners/ Total Budget for 1984</u>
Rio Grande 1939	Texas New Mexico Colorado	One	6 years	\$ 34,200 218,593
Pecos River 1949	Texas New Mexico	One	2 years	16,800 148,781
Canadian 1951	Texas New Mexico Oklahoma	One	2 years	8,900 58,253
Sabine 1953	Texas Louisiana	Two	6 years Overlapping	1,850 27,220
Red River 1980	Texas Oklahoma Arkansas Louisiana	Two	2 years	22,400 46,725

There has been only one change in the text of the river compacts since they became effective and that was a minor change in the Sabine Compact. In order for any change or amendment to be made to the text of an interstate compact, the change or amendment has to be ratified by the legislatures of each state involved plus the federal congress.

The Texas commissioners usually use an engineering advisor from the Texas Department of Water Resources (TDWR) and a legal advisor from the Texas Attorney General's Office. In addition, the Texas Department of Water Resources has designated an interstate compacts coordinator who coordinates other department support needed by the Texas component of the interstate commissions. The Rio Grande Compact is the only river compact that has a full-time engineer on its staff. Most of the Texas commissioners hire a part-time administrative assistant to help in the administrative work for the Texas component. The Sabine River Authority handles the administrative work of the two Sabine River commissioners for a fee of \$2,800 per year.

During its history, Texas has sued member states three times for failure to make deliveries of water as required by the compacts. In 1951 the Rio Grande commissioner had Texas file suit against New Mexico for failure to make water deliveries as required by the compact. This suit against New Mexico in the U.S. Supreme Court was dismissed in 1957 on grounds that the United States was an indispensable party to the suit because Indian lands in New Mexico would be affected by the litigation. In 1966, the states of Texas and New Mexico sued the State of Colorado for a large debt of water owed the two states. The three states are now operating under a U.S. Supreme Court continuance which stipulates that the suit will be held in abeyance so long as Colorado meets its annual obligations to Texas and New Mexico.

In 1975 the State of Texas filed suit against the State of New Mexico in the U.S. Supreme Court to force New Mexico to deliver water to Texas in compliance with the terms of the Pecos River Compact. This case is still in litigation and it will probably be several years before a final decision is rendered.

There is concern that New Mexico's on-going enlargement of the Ute Reservoir may put New Mexico in violation of the Canadian River Compact and cause litigation before the U.S. Supreme Court if the problem cannot be resolved by the Interstate Canadian River Commission. The issue centers around the compact's definition of "conservation storage" in reservoirs. New Mexico's interpretation of this definition is that New Mexico can build a million acre-foot capacity reservoir on the Canadian River at the Texas-New Mexico state line, stop all the water, and as long as New Mexico calls only 200,000 acre-feet as conservation storage capacity, there is compact compliance. (The compact limits New Mexico's conservation storage capacity to 200,000 acre-feet.) Presently, the

commission's Legal Advisory Committee is preparing a legal analysis of the compact's definition of "conservation storage."

The Sixty-eighth Legislature provided a law suit contingency fund for the Rio Grande, Pecos, and Canadian River Compact commissioners in case the State of Texas finds it necessary to file suit against the states of New Mexico, Colorado, the U.S. Army Corp of Engineers, or the Bureau of Reclamation for violations of provisions of the compacts.



## REVIEW OF OPERATIONS

This section covers the evaluation of current compact operations undertaken to identify any major changes which should be made to improve the efficiency and effectiveness of those operations, if these compacts are to be continued. The evaluation is divided into three general areas dealing with: 1) a review and analysis of the policy-making body, 2) a review and analysis of the overall administration of the compacts and 3) a review and analysis of the operation of their program.

### Policy-making Structure

The evaluation of the policy-making structure was designed to determine if the current statutory structure contains provisions that ensure adequate executive and legislative control over the organization of the body; competency of members to perform required duties; proper balance of interest within the composition; and effective means for selection and removal of members. Changes which should be made in the policy-making structure if the compacts are continued are set out below.

#### Terms for all compact commissioners should be changed to six years.

The review indicated that the commissioners for two of the compacts -- the Rio Grande and the Sabine -- are appointed for six-year terms. Commissioners for the other three compacts are appointed for two years. Analysis of the nature of the commissioners' responsibilities resulted in the conclusion that a six-year term is most appropriate.

The job of a river compact commissioner is not a full-time state position. All the commissioners hold other jobs in addition to that of commissioner. The time spent on state business varies from a day or two a month to nearly full-time. The commissioners usually have no state experience prior to their appointment and are unfamiliar with state policies and procedures or how to coordinate with other state agencies. In most instances, they do not have a water or agricultural background. Interviews with commissioners and agency staff indicated that it usually takes a commissioner about two years to learn the job and its related problems.

Given the two-year length of time to become familiar with the job, a six-year appointment would give a commissioner the chance to be more effective in the position than would a two-year term. The statute setting up the Pecos, Red, and

Canadian River Compact Commissions should therefore be amended after the expiration of the terms of the current commissioners to provide for six-year appointments.

**Interstate Compact Commissioners should be selected from the appropriate river basins.**

There is no residency requirement for the Texas compact commissioners. Prior governors have appointed commissioners who have not resided within the river basin and therefore have not been familiar with the conditions and problems of the area.

No specific professional qualifications are required of a compact commissioner. However, it appears that it would be useful if a commissioner was familiar with the problems and the people of the district through which the river runs. A commissioner is usually required to work with boards of directors of water districts and river authorities on the status of the river and the uses of the water. A commissioner frequently needs to monitor gauging stations along the river to know if Texas is getting its share of the water in compliance with the terms of the compact. The statute should be amended to require that to be eligible to serve as an interstate compact commissioner a person must reside within the boundaries of the appropriate river basin.

**Guidelines affecting the administration of the five interstate river compacts should be standardized.**

Each of the five river compacts contains preliminary guidelines prior to the substantive text of the documents. These guidelines deal with administrative elements such as appointment of commissioners and terms of office. This language is the same in most compacts with a few exceptions. These exceptions are presented in the following chart.

**COMPACT INCONSISTENCIES**

<u>Selected Compact Provisions</u>	<u>Pecos</u>	<u>Canadian</u>	<u>Red</u>	<u>Rio Grande</u>	<u>Sabine</u>
1. Term of office	In Compact	Not Provided	In Compact	In Compact	In Compact
2. Oath taking	In Compact	Not Provided	In Compact	In Compact	In Compact
3. Definition of employee administrative expenses	In Compact	Not Provided	In Compact	In Compact	In Compact
4. TDWR to cooperate with compact commissioners	In Compact	Not Provided	In Compact	Not Provided	In Compact
5. Appointed commissioner to be exempted from Employee Retirement System	Not Provided	Not Provided	In Compact	Not Provided	Not Provided

No reason could be found for these inconsistencies. To ensure like treatment for all compacts, the inconsistencies should be eliminated. To accomplish this objective, the approaches most frequently used should be extended to apply in all cases.

**Overall Administration**

The evaluation of the overall agency administration was designed to determine whether the management policies and procedures, the monitoring of management practices and the reporting requirements of the agency were consistent with the general practices used for internal management of time, personnel, and funds. The review showed that these river compacts managed their resources according to established practices with one exception.

**State of Texas Canadian River Revolving Fund should be deposited in the State Treasury.**

The statute creating the Canadian River Compact authorizes an account entitled "Canadian River Revolving Fund." Equal payments are deposited into this account by each of the commissioners from the state of New Mexico, Oklahoma, and Texas. This account is used to pay the necessary administrative expenses of the Canadian River Compact Commission.

However, a State of Texas fund, also entitled "Canadian River Revolving Fund" was established several years ago and is maintained separate and distinct from the three-state "Canadian River Revolving Fund" account. This fund is under the control of the Texas commissioner and belongs solely to the State of Texas. This fund consists of a savings account and a certificate of deposit held in Booker and Lubbock banks. The total funds in the account amount to \$21,734. Since the account does not fall within an exception to the general rule that funds should be deposited in the State Treasury, these funds should be deposited in the State Treasury.

**EVALUATION OF OTHER SUNSET CRITERIA**

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The review of the agency's efforts to comply with overall state policies concerning the manner in which the public is able to participate in the decisions of the agency and whether the agency is fair and impartial in dealing with its employees and the general public is based on criteria contained in the Sunset Act.

The analysis made under these criteria is intended to give answers to the following questions:

1. Does the agency have and use reasonable procedures to inform the public of its activities?
  2. Has the agency complied with applicable requirements of both state and federal law concerning equal employment and the rights and privacy of individuals?
  3. Has the agency and its officers complied with the regulations regarding conflict of interest?
  4. Has the agency complied with the provisions of the Open Meetings and Open Records Act?
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## EVALUATION OF OTHER SUNSET CRITERIA

This section covers the evaluation of the compacts efforts in applying those general practices that have been developed to comply with the general state policies which ensure: 1) the awareness and understanding necessary to have effective participation by all persons affected by the activities of the agency; and 2) that agency personnel are fair and impartial in their dealings with persons affected by the agency and that the agency deals with its employees in a fair and impartial manner.

### Open Meetings/Open Records

#### Notice of compact meetings should be filed with the Secretary of State's Office.

As state officials, the Texas river commissioners are subject to the Texas Open Meetings Act. However, the interstate river commissions sitting as a body are not subject to state or federal open meetings requirements since they are neither a state nor a federal agency. The compacts have developed procedural rules to govern their meetings and records, and these generally apply the spirit of the differing laws of the federal government and the participating states.

The review of these procedures indicated that, except in one instance, interested parties are afforded adequate protection. The procedures provide that meetings are open to the public, that minutes of meetings be prepared and be open for inspection, and that action on matters discussed in executive session be voted on in open session. The general public is not notified of the times, dates, and locations of the compact meetings. There appears to be no practical reason why the Texas commissioners could not provide this notice to members of the public in Texas through the Texas Register. The statutes of the various compacts should be amended to require this type of public notice.

### EEOC/Privacy

A review was conducted to determine the Texas components' compliance with applicable provisions of state and federal statutes concerning equal employment. The Rio Grande compact commissioner is the only commissioner that submits an EEO report. This commissioner is the only one who hires a full-time employee. Necessary requirements have been met.

### **Public Participation**

The operations of the Texas commissioners were examined to determine if the general public and those affected by the actions of the compacts have been informed of their activities and whether the public has had an opportunity to provide input during policy formulation by the agency.

The Texas commissioners have no written policy regarding public participation, but where appropriate have kept key Texas citizens and agencies informed verbally, and sometimes by letter, of interstate compact meetings.

### **Conflict of Interest**

The review focused on agency efforts to inform compact members and employees of responsibilities related to conflict of interest statutes and compliance with applicable statutes. The Texas commissioners are advised of statutory conflict-of-interest provisions by their legal advisors. The commissioners inform their employees when appropriate.

**OTHER POLICY CONSIDERATIONS**

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During the review of an agency under sunset, various issues were identified that involve significant changes in state policy relating to current methods of regulation or service delivery. Most of these issues have been the subject of continuing debate with no clear resolution on either side.

Arguments for and against these issues, as presented by various parties contacted during the review, are briefly summarized. For the purposes of the sunset report, these issues are identified so they can be addressed as a part of the sunset review if the Sunset Commission chooses to do so.

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## OTHER POLICY CONSIDERATIONS

This section covers that part of the evaluation which identifies major policy issues surrounding the agency under review. For the purposes of this report, major policy issues are given the working definition of being issues, the resolution of which, could involve substantial change in current state policy. Further, a major policy issue is one which had a strong argument developed, both pro and con, concerning the proposed change. The material in this section structures the major question of state policy raised by the issue and identifies the major elements of the arguments for and against the proposal.

**Should the appointed river compact commissioners be replaced by the executive director of the Department of Water Resources.**

In considering methods to more efficiently utilize state funds and improve administration, attention was given to replacing the individual interstate river compact commissioners with the executive director of the Texas Department of Water Resources. The department currently is responsible for administration of individual water rights in Texas. This would also make them responsible for the apportionment of water to Texas from interstate waters governed by the compacts. The Department of Water Resources has the technical staff and background to manage Texas' five river compacts. The administrative work of five small compacts would be consolidated into one agency.

In most of the other states which are members of the compacts, the compact commissioner is either a director of a water agency or is a state agency administrator. The state water engineer of New Mexico is the New Mexico compact commissioner for the Rio Grande and Canadian compacts. The state engineer for Colorado is the Rio Grande compact commissioner. The director of public works for the state of Louisiana is also a Sabine and Red River commissioner. Arkansas has its director of the division of Soil and Water Department as its Red River commissioner while Oklahoma has the executive director of the Oklahoma Water Resources Board as one of its Red River commissioners.

Arguments against this approach also exist. Making the executive director of the Department of Water Resources the river compact commissioner could occur in the Pecos, Canadian, Rio Grande, and Red River Compacts. However, in the actual text of the Sabine Compact, specific language requires the governor to

appoint two members. For this provision to be amended, it may be necessary for the legislatures of each of the states involved plus the federal congress to agree to the change.

**ACROSS-THE-BOARD RECOMMENDATIONS**

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From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

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## RIVER COMPACTS

Applied	Modified	Not Applied	Across-the-Board Recommendations
			<b>A. GENERAL</b>
		X	1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
		X	3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
		X	5. Specify grounds for removal of a board member.
		X	6. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute.
		X	7. Require the board to establish skill-oriented career ladders.
		X	8. Require a system of merit pay based on documented employee performance.
		X	9. Provide that the state auditor shall audit the financial transactions of the board at least once during each biennium.
		X	10. Provide for notification and information to the public concerning board activities.
	X		11. Place agency funds in the Treasury to ensure legislative review of agency expenditures through the appropriation process.
		X	12. Require files to be maintained on complaints.
		X	13. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	14. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	15. Require development of an E.E.O. policy.
		X	16. Require the agency to provide information on standards of conduct to board members and employees.
		X	17. Provide for public testimony at agency meetings.
		X	18. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.

**River Compacts**  
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			<b>B. LICENSING</b>
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	5. (a) Provide for licensing by endorsement rather than reciprocity.  (b) Provide for licensing by reciprocity rather than endorsement.
		X	6. Authorize the staggered renewal of licenses.
		X	7. Authorize agencies to use a full range of penalties.
		X	8. Specify board hearing requirements.
		X	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	10. Authorize the board to adopt a system of voluntary continuing education.

\*Already in statute or required.  
\*\*Not approved for application.