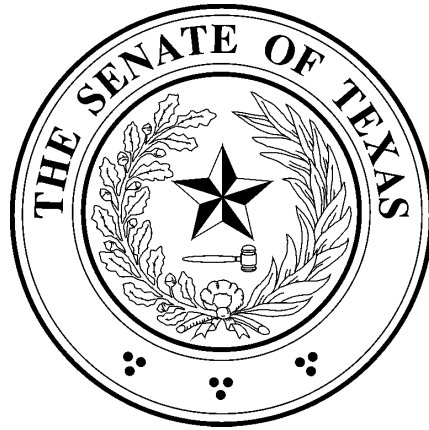


**The Senate
Committee on
Natural Resources**



**Interim Report
to the 81st Legislature**

Texas River Authorities

March 2009

SENATE COMMITTEE ON NATURAL RESOURCES

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February 9, 2009

The Honorable David Dewhurst
Lieutenant Governor of Texas
Members of the Texas Senate
Texas State Capitol
Austin, Texas 78701

Dear Governor Dewhurst and Fellow Members:

The Senate Committee on Natural Resources of the Eightieth Legislature hereby submits its interim report including findings and recommendations for consideration by the Eighty-first Legislature.

Respectfully Submitted,

Handwritten signature of Senator Craig Estes.

Senator Craig Estes, Vice-Chair

Handwritten signature of Senator Kip Averitt.

Senator Kip Averitt, Chair

Handwritten signature of Senator Glenn Hegar.

Senator Glenn Hegar

Senator Kim Brimer

Handwritten signature of Senator Juan "Chuy" Hinojosa.

Senator Juan "Chuy" Hinojosa

Handwritten signature of Senator Robert Deuell.

Senator Robert Deuell

Senator Mike Jackson

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Senator Kel Seliger

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Senator Kevin Eltife

Handwritten signature of Senator Carlos Uresti.

Senator Carlos Uresti

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INTERIM CHARGE

Review all state-created river authorities, including the powers exercised by each authority and the advisability of subjecting these authorities to legislative review. Consider options for ensuring adequate protection of public assets, improving transparency of operations, enhancing appropriate access to financial and management records, and authorizing audits by the State Auditor's Office.

BACKGROUND

The following background on past attempts to subject river authorities to legislative review was provided during testimony at the April 8, 2008, hearing of the Senate Committee on Natural Resources (Committee) by Dean Robbins of the Texas Water Conservation Association:

In 1985, the Legislature added 19 of the State's river authorities to the list of agencies subject to review under the Sunset Act. Those entities were scheduled for review in 1991. That law provided that unless the board of directors of the river authorities were continued in office, their membership would expire and the Governor would appoint a new board. Another bill was passed in 1985 requiring the State Auditor to conduct an annual audit of 23 specifically named districts and authorities. That bill also created a Water Districts and River Authority Study Committee to consider the appropriate role and level of accountability of these entities.

In December 1986, the Water Districts and River Authority Study Committee issued its report. That report recommended that the state audit and sunset requirements passed in 1985 be repealed. That report also addressed many other issues still being debated today such as water conservation, water planning, and groundwater management.

In 1989, the audit and sunset requirements for river authorities were repealed and the Water Code was amended to make it abundantly clear that the Texas Commission on Environmental Quality (TCEQ) has the continuing right of supervision over river authorities.

In 1992, TCEQ adopted rules to implement its right of supervision over river authorities. Those rules applied to 20 water districts and authorities identified by name. Those rules addressed several issues identified in the 1986 interim study committee report, but most significantly required those entities to either maintain an internal audit office that reports directly to the board of directors, or at least once every five years to conduct an independent management audit. A management audit is not to be confused with a financial audit that is already required annually. These requirements are still in effect today.

Another evaluation of river authorities, this time by the Senate Interim Committee on Natural Resources, occurred in 2000, resulting in an interim report to the Texas Legislature entitled, "Missions and Roles of River Authorities". That report identified a number of mechanisms for increased oversight, but did not make any specific recommendations.

In 2001, the Legislature created the Texas Water Advisory Council to, among other things, provide additional oversight of river authorities. This council consisted of legislators, other state officials, and public members. The duties of the council included a periodic review of 30 districts and authorities named in the bill. These entities were to provide a variety of information to the council on a staggered schedule. That information included a self-assessment and the results of a management audit.

The council, over the next two years, received written reports and heard testimony from entities scheduled for review. Testimony was also encouraged from others, such as customers of the entities under review. The Legislature repealed the review process in 2003 and the council was finally abolished in 2007.

INTERIM EFFORTS/ISSUE STATUS

INTERIM COMMITTEE HEARINGS

The Committee held a public hearing in Austin, Texas, on April 8, 2008, to focus on powers and duties of river authorities and the advisability of subjecting river authorities to legislative review. Various river authorities were invited to testify before the Committee:

- Brazos River Authority
- Guadalupe-Blanco River Authority

- Lower Colorado River Authority
- Sabine River Authority
- San Antonio River Authority
- Trinity River Authority
- Bexar-Medina-Atascosa County WCID #1
- Gulf Coast Water Authority
- Northeast Texas Municipal Water District

All participating river authorities were asked to address the following issues in the course of their testimony:

1. When was the river authority established?
2. Review governance. What is the size of the river authority's board? Is the board elected or appointed?
3. How is the river authority funded? What is the annual budget for the river authority?
4. What are the functions of the river authority?
5. How does the river authority view its relationship with the state?

All testimony, including invited testimony from the river authorities mentioned earlier, can be reviewed in full at <http://www.senate.state.tx.us/75r/senate/commit/c580/c580.htm>.

The agenda of this hearing can be found in Appendix A.

RIVER AUTHORITY POWERS

Todd Chenoweth, Director of the Water Supply Division at TCEQ, submitted a chart at the April 8, 2008, committee hearing that lists river authorities and select special law

districts. The chart details the powers each river authority is permitted to exercise under current statute. This chart can be found in Appendix B.

RIVER AUTHORITY CODIFICATION

The Texas Legislative Council is working on a long-term project to codify all special districts, including river authorities. To date, three river authorities have had their original enabling legislation codified into the Special District Local Law Code, including the Angelina-Neches River Authority, the Brazos River Authority, and the Lower Colorado River Authority.

RIVER AUTHORITY AUDITS

Under current TCEQ rules, all river authorities are required to either maintain an internal management audit office that reports directly to the board of directors, or have an outside, independent management audit conducted every five years. Results from outside audits are required to be submitted to TCEQ. Audits submitted to TCEQ by river authorities are considered open records and may be obtained by the public. Additionally, statute requires river authorities to have annual financial audits conducted by a certified public accountant.¹

Currently, the State Auditors Office (SAO) is statutorily permitted to conduct financial audits of river authorities. These audits were once required by state law; however, that requirement was repealed in 1975 by Senate Bill 608, 64th Legislature. Under the current SAO audit plan development process, the SAO conducts an ongoing statewide

risk assessment to identify potentially necessary audits. The SAO risk assessment process focuses primarily on entities that receive state monies, such as state agencies and universities. Based on the results of the risk assessment process, a proposed audit plan is developed and submitted to a legislative audit committee for approval. Although river authorities do not receive state monies, Chapter 49 of the Texas Water Code gives the SAO the authority to audit the financial transactions of river authorities, should the state auditor determine that an audit is necessary. The SAO occasionally receives communication from legislators with regard to audits, either for the purpose of providing information for the SAO to utilize in the risk assessment process or as a direct audit request. The most recent SAO audit of a river authority was conducted in 1985.²

CONCLUSIONS

Testimony provided during the interim committee process supported the continuation of the financial audits required by TCEQ rules and no major reforms to the structure of river authorities were identified during the interim hearing process. The Texas Legislative Council should continue codification of river authorities. The audits required by TCEQ rules provide useful information on management and operations. Should these audits prove insufficient in the future, the State should consider employing alternative oversight and review processes as necessary to ensure that river authorities make every effort to operate with openness and transparency. River authorities are encouraged to continue self examination and continue to identify new and innovative changes to improve their operations and activities.

¹ Robert Kiker, Personal Communication, February 10, 2009.

² Id.

Appendix

A



AGENDA
Senate Committee on Natural Resources
Interim Hearing
April 8, 2008
10:00 a.m.
Capitol Extension, E1.016

- I. Call to Order
- II. Welcoming Remarks and Introduction of Staff
- III. Invited Testimony

Interim Charge 8 - Review all state-created river authorities, including the powers exercised by each authority and the advisability of subjecting these authorities to legislative review. Consider options for ensuring adequate protection of public assets, improving transparency of operations, enhancing appropriate access to financial and management records, and authorizing audits by the State Auditor's office.

- Todd Chenoweth, Director, Water Supply Division, Texas Commission on Environmental Quality
- Dean Robbins, Assistant General Manager, Texas Water Conservation Association

Panel #1

- Phil Ford, General Manager, Brazos River Authority
- Bill West, General Manager, Guadalupe-Blanco River Authority
- Thomas G. Mason, General Manager, Lower Colorado River Authority
- Jerry Clark, General Manager, Sabine River Authority

Panel #2

- Suzanne Scott, General Manager, San Antonio River Authority
- Danny Vance, General Manager, Trinity River Authority

Panel #3

- Larry Haby, Board Director, Bexar-Medina-Atascosa County WCID #1
- Robert Istre, General Manager, Gulf Coast Water Authority
- Walt Sears, General Manager, Northeast Texas Municipal Water District

- IV. Public Testimony
- VI. Recess

Appendix B

River Authorities (Title 30 TAC §292.1) and Select Special Law Districts

Powers and Duties

(Chart 1 of 3)

✓From Enabling Legislation or From Texas Water Code Chapter 49

30 TAC Section 292.1 River Authorities (Senate Districts)	Directors Number Appointed/Elected	Retail Water Sales	Whole- sale Water Sales	Authority to Operate Reservoirs & Dams	# of Water Rights Permits Held	Authority to Provide Waste Water	# of Waste Discharge Permits	Authority to Provide Solid Waste	Authority to Provide Drainage/ Flood Control	Regulate Well Spacing &/Or Pumping	Provides Water for Irrigation	Navigation	Generate &/Or Sell Electric	Install & Maintain Parks	Police/ Security
Angelina & Neches RA (Senate Districts: 1, 2, 3, 4, & 5)	29/ Gov	✓	✓	✓	1				✓		✓				✓
Bexar-Medina-Atascosa Cos WCID 1 (Senate Districts: 19, 21, & 25)	7		✓		3						✓				✓
Brazos RA (Senate Districts: 5, 11, 17, 18, 22, 24, 30, & 31)	21/ Gov		✓	✓	14	✓	7	✓	✓		✓	✓	✓		✓
Canadian River MWA (Senate Districts: 28&31)	18/ cities		✓	✓	1			✓	✓				✓		✓
Central Colorado RA (Senate District: 24)	9/ Gov	✓	✓	✓	3			✓	✓		✓		✓		✓
Colorado River MWD (Senate Districts: 28, 30, & 31)	12/ cities		✓	✓	6	✓		✓	✓				✓	✓	✓
Dallas Co Utility & Reclamation Dist (Senate Districts: 8 & 9)	5/ city	✓	✓	✓	11	✓	1		✓		✓				✓
Guadalupe-Blanco RA (Senate Districts: 14, 18, 21, & 25)	9/ Gov	✓	✓	✓	13	✓	8	✓	✓		✓	✓	✓	✓	✓
Gulf Coast Water Authority (Senate District: 11)	7/ CCC	✓	✓	✓	3						✓				✓
Lavaca-Navidad RA (Senate District: 18)	9/ Gov		✓	✓	1	✓	1		✓				✓	✓	✓
Lower Colorado RA (Senate Districts: 14, 18, 24, & 25)	15/ Gov	✓	✓	✓	14	✓	8	✓	✓		✓		✓	✓	✓
Lower Neches Valley A (Senate Districts: 3 & 4)	9/ Gov		✓	✓	1	✓	1		✓		✓		✓	✓	✓

River Authorities (Title 30 TAC §292.1) and Select Special Law Districts

Powers and Duties

(Chart 1 of 3)

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30 TAC Section 292.1 River Authorities (Senate Districts)	Directors Number Appointed/Elected	Retail Water Sales	Whole- sale Water Sales	Authority to Operate Reservoirs & Dams	# of Water Rights Permits Held	Authority to Provide Waste Water	# of Waste Discharge Permits ❶	Authority to Provide Solid Waste	Authority to Provide Drainage/ Flood Control	Regulate Well Spacing &/Or Pumping	Provides Water for Irrigation	Navigation	Generate &/Or Sell Electric	Install & Maintain Parks	Police/ Securit y
Tarrant Regional WD (Senate Districts: 9, 10, 12, & 22)	5	✓	✓	✓	11	✓	1	✓	✓		✓				✓
Titus County FWSD 1 (Senate District: 1)	5		✓	✓	2			✓							✓
Trinity RA (Senate Districts: 2, 3, 4, 5, 8, 9, 10, 12, 16, 22, & 23)	24/ Gov		✓	✓	4	✓	7	✓	✓		✓	✓	✓	✓	✓
Upper Colorado RA (Senate Districts: 24, 25, & 28)	9/ Gov	✓	✓	✓	2				✓		✓		✓	✓	✓
Upper Guadalupe RA (Senate District: 25)	9/ Gov		✓	✓	1	✓			✓		✓				✓
Upper Neches River MWA (Senate District: 3)	9/ Gov		✓	✓	1				✓					✓	✓
West Central Texas MWD (Senate Districts: 24 & 30)	12/ cities		✓	✓	1	✓		✓	✓	✓	✓		✓	✓	✓

❶ The number of waste discharge permits shown are only those held in the district's or authority's name.

NOTE: Under the column heading *Directors - # Appointed*, the phrase "CCC" means appointed by a local county commissioners court. Authorities and Districts have also been granted other powers not specifically mentioned in their enabling acts, depending upon their designated "type." See the Powers and Duties Chart 3 to see if an authority or district has been granted any additional, general law powers.