

SUNSET ADVISORY COMMISSION

STAFF REPORT WITH COMMISSION DECISIONS

Lower Colorado River Authority

2018–2019
86TH LEGISLATURE

SUNSET ADVISORY COMMISSION

Senator Brian Birdwell

Chair

Representative Chris Paddie

Vice Chair

Senator Dawn Buckingham, M.D.

Representative Dan Flynn

Senator Bob Hall

Representative Stan Lambert

Senator Robert Nichols

Representative Poncho Nevárez

Senator Kirk Watson

Representative Senfronia Thompson

Emily Pataki, Public Member

Ronald G. Steinhart, Public Member

Jennifer Jones

Acting Director

Cover Photo: The Texas Capitol rotunda houses the Texas Governors and Presidents Portrait Gallery. The gallery includes portraits of every government leader in Texas' history, including several presidents when Texas won its independence from Mexico and became a republic. Photo Credit: Janet Wood

LOWER COLORADO RIVER AUTHORITY

SUNSET STAFF REPORT WITH COMMISSION DECISIONS

2018-2019

86TH LEGISLATURE

HOW TO READ SUNSET REPORTS

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

SECOND VERSION: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

THIRD VERSION: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

TABLE OF CONTENTS

	PAGE
SUNSET COMMISSION DECISIONS	
.....	A1
SUMMARY OF SUNSET STAFF RECOMMENDATIONS	
.....	1
AUTHORITY AT A GLANCE	
.....	7
ISSUES/RECOMMENDATIONS	
1 The Growing Impact of LCRA's Important Mission Requires Higher Standards of Openness and Engagement to Improve Public Trust.....	13
2 LCRA Should Clarify Its Relationship With the Colorado River Land Trust to Better Manage Expectations and Promote Independence	27
3 LCRA's Water Quality Regulatory Programs Lack Best Practices That Would Improve Efficiency and Transparency for Permit Holders and the Public	33
4 LCRA's Community Development Grant Program Needs Improvements to Promote Overall Effectiveness and Fairness	39
5 LCRA Should Implement Policies to Enhance Accountability and Better Comply With the Intent of State Law.....	45
APPENDICES	
Appendix A — Equal Employment Opportunity Statistics	51
Appendix B — The Lower Colorado River Authority's Water Management Plan	55
Appendix C — Lower Colorado River Authority Community Development Partnership Program Score Sheet.....	57
Appendix D — Firm Water vs. Interruptible Water	59
Appendix E — Staff Review Activities	61

— SUNSET COMMISSION DECISIONS

SUNSET COMMISSION DECISIONS

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Lower Colorado River Authority (LCRA), as well as modifications raised during the public hearing.

The Legislature created LCRA in 1934 to control floods, protect and store water, conserve land, and generate and sell electricity. Now the second-largest electric company in Texas, LCRA derives about 93 percent of its roughly \$1 billion in annual revenue from its electric generation and transmission businesses and has a huge operational presence in more than 70 counties. LCRA's dual role as a major player in the competitive electric market and as a governmental entity providing a vital natural resource makes it unique among the other 16 river authorities in Texas. Like other river authorities, state law does not subject LCRA to abolishment under the Sunset Act, but unlike the others, state law specifically prohibits Sunset from reviewing LCRA's electric businesses. Accordingly, the Sunset Commission did not consider LCRA's electric operations or the appropriateness of LCRA's arrangement as both an electric and water provider.

Instead, the commission focused on LCRA's other activities, primarily its water functions, which have a tremendous impact on Central Texas' rapidly growing population and the industry, communities, and environment in the lower Colorado River basin. The Sunset Commission found LCRA is a very sophisticated, well-functioning organization that has a difficult job of balancing many competing interests and needs. However, the region needs LCRA to succeed as a water supplier, and LCRA's success hinges on its ability to improve public trust. The commission determined LCRA still has room for improvement, particularly in the areas of financial transparency and public engagement and must do more than the minimum required to obtain and retain public trust. The commission's recommendations include requiring LCRA to adopt a public engagement policy for water supply projects and to provide more detailed financial information to the public.

The Sunset Commission also examined LCRA's efforts to conserve and protect public and private lands in the basin, contribute to economic development among the communities LCRA serves, and regulate water quality and safety along the Highland Lakes. The commission recommends LCRA implement best practices in the areas of regulation and grants administration, as well as transparency and openness reflective of the commission's more than 40 years observing, documenting, and applying good government standards.

ISSUE 1

The Growing Impact of LCRA's Important Mission Requires Higher Standards of Openness and Engagement to Improve Public Trust.

Public Engagement

Recommendation 1.1, Adopted — Require LCRA to adopt a public engagement policy for water supply projects.

Recommendation 1.2, Adopted — Require LCRA to develop and maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures.

Financial Transparency

Recommendation 1.3, Adopted as Modified — Direct LCRA to provide more detailed financial information in its publicly available documents. Specify that in providing more detailed financial information, LCRA should do so in an annual, publicly available report that strives to include the information listed in the staff recommendation. Clarify that the clear explanation of money transfers between business units, departments, and funds applies only to material transfers. For its operational reserve funds, LCRA should provide a list of each fund, its purpose, and its balance. For its strategic reserve funds, LCRA should just provide the cumulative balance of all the funds. (Management action – nonstatutory)

Board Practices

Recommendation 1.4, Adopted as Modified — Require LCRA to provide an official opportunity for public testimony at meetings of its board and its committees-of-the-whole.

Recommendation 1.5, Adopted — Require LCRA to provide training to board members to enable them to properly discharge their duties.

Recommendation 1.6, Adopted — Direct LCRA to provide more transparent, consistent, and accurate agenda meeting notices to the public. (Management action – nonstatutory)

Recommendation 1.7, Adopted — Direct LCRA to improve transparency of its committees-of-the-whole. (Management action – nonstatutory)

Recommendation 1.8, Adopted — Direct LCRA to amend its public testimony protocols to provide greater accessibility. (Management action – nonstatutory)

ISSUE 2

LCRA Should Clarify Its Relationship With the Colorado River Land Trust to Better Manage Expectations and Promote Independence.

Recommendation 2.1, Adopted — Direct LCRA to clearly separate the governance and management of the land trust from its own board and staff. (Management action – nonstatutory)

Recommendation 2.2, Adopted — Direct LCRA to update its service agreement with the land trust to include performance goals and a timeline of expectations for the land trust to move towards greater financial independence from LCRA. (Management action – nonstatutory)

ISSUE 3

LCRA's Water Quality Regulatory Programs Lack Best Practices That Would Improve Efficiency and Transparency for Permit Holders and the Public.

Recommendation 3.1, Adopted — Direct LCRA to document and publish a clear appeals process for on-site sewage facility regulatory decisions. (Management action – nonstatutory)

Recommendation 3.2, Adopted — Direct LCRA to develop and publicize an online option for submitting on-site sewage facility permit applications and payments. (Management action – nonstatutory)

Recommendation 3.3, Adopted — Direct LCRA to develop and publicize a clear complaints process for all three water quality regulatory programs. (Management action – nonstatutory)

Recommendation 3.4, Adopted — Direct LCRA to collect, maintain, and report detailed information on complaints. (Management action – nonstatutory)

ISSUE 4

LCRA's Community Development Grant Program Needs Improvements to Promote Overall Effectiveness and Fairness.

Recommendation 4.1, Adopted — Direct LCRA to develop and adopt a conflict-of-interest policy specific to the grant program including disclosure and recusal elements.

Recommendation 4.2, Adopted — Direct LCRA to update its grant application materials to more clearly disclose scoring criteria to applicants.

Recommendation 4.3, Adopted — Direct LCRA to update the overall goals for its CDPG grant program to include more specific program priorities and outcome measures to inform future investments.

Recommendation 4.4, Adopted — Direct LCRA to use available technology to improve grant tracking and communication to applicants and grantees.

ISSUE 5

LCRA Should Implement Policies to Enhance Accountability and Better Comply With the Intent of State Law.

Recommendation 5.1, Adopted — Apply the good government standard relating to alternative dispute resolution to LCRA's statute.

Recommendation 5.2, Adopted — Direct LCRA to update its board nepotism policy to fully conform to TCEQ requirements and state law. (Management action – nonstatutory)

Recommendation 5.3, Adopted — Direct LCRA to improve its Small and Diverse Supplier Program to better comply with the intent of HUB laws. (Management action – nonstatutory)

Recommendation 5.4, Adopted — Direct LCRA to plan, more proactively implement, and monitor its efforts to increase workforce diversity. (Management action – nonstatutory)

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would not have a significant impact to the state. LCRA would be able to implement most of the recommendations within its existing resources. Some minimal impacts to LCRA are discussed on the following page.

The Sunset Commission's recommendation to require LCRA to adopt a public engagement policy for water supply projects could result in LCRA holding additional public outreach events, which could have some minor additional costs. However, LCRA could implement an improved public engagement strategy within its current resources.

The Sunset Commission's recommendations for LCRA to clarify its relationship with the Colorado River Land Trust (CRLT) to promote more independence would decrease costs to LCRA over time by converting the two LCRA employees assigned to CRLT to land trust employees and by reducing LCRA's in-kind services, but the savings could not be estimated.

The Sunset Commission's recommendation for LCRA to establish a standardized grant application tracking and communication mechanism for the Community Development Partnership Program would have a small cost to LCRA, but the authority should also see a savings in staff time by automating communication to grantees.

SUMMARY OF SUNSET STAFF RECOMMENDATIONS

SUMMARY

Amidst the collision of entrenched power and water interests of depression-era Texas, the Lower Colorado River Authority (LCRA) was forged in controversy, and LCRA's affiliation with controversy continues to this day. After failing in a regular legislative session and three consecutive special sessions, the Legislature in 1934 finally created LCRA in a fourth special session as a conservation and reclamation district, a simple title that belies the complexity of LCRA's work. The primary drivers behind LCRA's creation were two opposing natural disasters — floods and droughts — that regularly lay siege to the Colorado River basin. The Legislature also authorized LCRA to generate and sell electricity. At the persistent urging of then-Congressman Lyndon B. Johnson, LCRA used hydroelectricity to turn on the lights in rural Central Texas for the first time and later added coal and natural gas to its electric generation portfolio.

Now the second-largest electric company in Texas, one could be forgiven for concluding at first blush that LCRA is an energy company that also happens to own a river. LCRA derives about 93 percent of its roughly \$1 billion in annual revenue from its electric generation and transmission businesses and has a huge operational presence in more than 70 counties. LCRA's dual role as a major player in the competitive electric market and as a governmental entity providing a vital natural resource makes it unique among the other 16 river authorities in Texas. Like other river authorities, state law does not subject LCRA to abolishment under the Sunset Act, but unlike the others, state law specifically prohibits Sunset from reviewing LCRA's electric businesses.¹ Accordingly, this review did not consider LCRA's electric operations or the appropriateness of LCRA's arrangement as both an electric and water provider. Instead, Sunset staff focused on LCRA's other activities, primarily its water functions, which have a tremendous impact on Central Texas' rapidly growing population and the industry, communities, and environment in the lower Colorado River basin. While historic flooding in the lower Colorado River basin occurred at the end of this review, the vast majority of input received during the review concerned the drought and its effect on water availability. Sunset staff also examined LCRA's efforts to conserve and protect public and private lands in the basin and to regulate water quality and safety along the Highland Lakes.

Sunset staff found the LCRA of today a very sophisticated, well-functioning organization that has a difficult job of balancing many competing interests and needs. In particular, the hiring of new executive leadership in 2014 has led to significant improvements to LCRA's reputation among stakeholders and state leadership. However, at various points in time, LCRA continues to be at odds with its numerous water stakeholders — municipalities and water utilities that purchase water for basic needs, environmental groups with ecological

LCRA has a difficult job of balancing many competing interests and needs.

concerns, and agricultural operations reliant on water for irrigation. To be fair, water conflicts between the municipalities and water utilities of LCRA's upper basin and the environmental and agricultural groups of its lower basin often align with divisions between growing urban areas and rural, agricultural interests that also occur across Texas and the country. The competitive, high-stakes nature of both the power business and water rights also play out in the continual cycle of threatened and actual litigation, in which LCRA alternates as the defendant and the plaintiff.

However, these recurring conflicts are not justification for LCRA to hunker down and limit engagement. The region needs LCRA to succeed as a water supplier, and LCRA's success hinges on its ability to improve public trust. Some of the questions these conflicts raise were beyond the purview of this review, as discussed in the *Water Concerns Outside the Scope of Sunset* textbox. However, as discussed in Issue 1, other conflicts are problems of LCRA's own making, and in the areas of financial transparency and public engagement in particular, LCRA still has room for improvement. Transparency encourages honesty, openness, and accountability in government actions, and LCRA must do more than the bare minimum to obtain and retain public trust.

Water Concerns Outside the Scope of Sunset

This review coincides with the critical process of updating LCRA's Water Management Plan, which determines how LCRA allocates water from its supply reservoirs, lakes Buchanan and Travis (described in Appendix B). Proving the adage, "whiskey is for drinking, water is for fighting," LCRA's management of the water in these reservoirs has been a frequent source of criticism over the years, especially during periods of drought. Following a 1988 court order, LCRA is required to produce and periodically update this plan for state review and approval, just one of many requirements from multiple levels of government that keeps LCRA from making decisions unilaterally.

Sunset evaluated LCRA's process for updating its Water Management Plan and on the whole, found it to be robust, open, and responsive. That said, serious questions continually arise regarding the adequacy of the system of "checks and balances" in place for LCRA — such as whether state law provides for adequate oversight of raw water rates or whether the technical methodology state water planners use to calculate future water availability projections is still appropriate. However, questions like these are far beyond the scope of this review. Other recurring criticisms coming from some of LCRA's fiercest critics — businesses and property owners whose financial interests depend on the Highland Lakes remaining mostly full — relate to maintaining the lakes at a constant level, which would have statewide implications for water availability and are therefore also beyond Sunset's scope.

The Legislature also designed LCRA to conserve and protect the land in the basin and to administer regulatory programs to ensure water quality and safety along the Highland Lakes. This report contains findings and recommendations to implement best practices in the areas of regulation and grants administration, as well as transparency and openness reflective of the Sunset Commission's more than 40 years observing, documenting, and applying good government standards. The following material summarizes Sunset staff recommendations on the Lower Colorado River Authority.

Issues and Recommendations

Issue 1

The Growing Impact of LCRA's Important Mission Requires Higher Standards of Openness and Engagement to Improve Public Trust.

Demand for water is the biggest long-term challenge facing LCRA's water division. As the 2008–2016 drought ended, LCRA committed to investing tens of millions of dollars in water supply projects, but LCRA will need cooperation, buy-in, and trust from the communities in which it operates to be successful in the future. LCRA's complex operations and scope of responsibility, its long history serving diverse and often conflicting interests, and its mission's substantial impact on so many Texas communities significantly raises the bar for both the expectations and need for public transparency. Despite growing water supply needs, LCRA has not developed a formal, proactive strategy for engaging communities in its activities, and its approach to public engagement is inconsistent and often reactive. In addition, LCRA's lack of budget transparency has led to incorrect conclusions and unwarranted distrust from stakeholders, particularly with respect to water funding. Finally, several LCRA board practices — such as restrictions on public testimony — could unnecessarily limit opportunities for and discourage public engagement.

Key Recommendations

- Require LCRA to adopt a public engagement policy for water supply projects.
- Direct LCRA to provide more detailed financial information in its publicly available documents.
- Direct LCRA to provide more transparent, consistent, and accurate agenda meeting notices.

Issue 2

LCRA Should Clarify Its Relationship With the Colorado River Land Trust to Better Manage Expectations and Promote Independence.

LCRA created the Colorado River Land Trust (CRLT) in 2012 as an independent nonprofit support organization to further its water quality and conservation mission. While LCRA and the land trust mutually benefit from their association, the dual roles of LCRA board members and staff supporting the land trust present unnecessary potential for conflicts. Additionally, the service agreement in place between the two organizations lacks clear performance goals or targets for CRLT. Establishing performance expectations for CRLT and maintaining clear lines of accountability for managing land trust staff would further CRLT's independence from LCRA moving forward, comporting with best practices for land trusts.

Key Recommendations

- Direct LCRA to clearly separate the governance and management of the land trust from its own board and staff.
- Direct LCRA to update its service agreement with the land trust to include performance goals and a timeline of expectations for the land trust to move toward greater financial independence from LCRA.

Issue 3

LCRA's Water Quality Regulatory Programs Lack Best Practices That Would Improve Efficiency and Transparency for Permit Holders and the Public.

LCRA maintains three regulatory programs designed to protect water quality and safety in the Highland Lakes region. First, through the Highland Lakes Watershed Ordinance, LCRA actively manages storm water runoff around the Highland Lakes to reduce the impact of pollution. Second, LCRA's Highland Lakes Marina Ordinance regulates the construction and operation of marinas and docks on the Highland Lakes. Finally, LCRA's On-Site Sewage Facility (OSSF) program, a duty delegated from the Texas Commission on Environmental Quality (TCEQ), governs the permitting and operation of sewage facilities near the Highland Lakes. Under OSSF rules, landowners within LCRA's jurisdiction must obtain permits for nearly any change to their septic systems or property.

LCRA has an informal process for appealing its OSSF decisions and does not provide detailed information on how to file an appeal or what to expect during the appeals process, which potentially affects the fair treatment of permittees. LCRA has an online tool for OSSF permits but does not advertise it, creating inefficiencies and delays. Additionally, all three of these regulatory programs lack a clear, publicly accessible complaint process and a system for tracking and analyzing complaints, limiting LCRA's ability to identify patterns of issues in its regulatory programs.

Key Recommendations

- Direct LCRA to document and publish a clear appeals process for OSSF decisions.
- Direct LCRA to develop and publicize an online option for submitting OSSF permit applications and payments.
- Direct LCRA to develop and publicize a clear complaints process for all three water quality regulatory programs and collect, maintain, and report detailed information on complaints.

Issue 4

LCRA's Community Development Grant Program Needs Improvements to Promote Overall Effectiveness and Fairness.

Through its Community Development Partnership Program (CDPP), LCRA awards \$1 million in grants each year to local organizations for capital improvement projects, such as emergency equipment for first responders, parks, and community centers. Since 1996, the CDPP grant program has awarded 1,672 grants to local projects worth a total of \$267 million. The program generally works well, but lacks key best practices for robust grant programs such as creating conflict of interest policies and providing applicants with grant application scoring criteria. LCRA also does not clearly define grant priorities or performance measures to track the impact of the program, or fully leverage its access to software and technology to effectively communicate with grant applicants. Implementing best practices to address these areas would help improve the overall effectiveness and fairness of the program.

Key Recommendations

- Direct LCRA to develop and adopt a conflict of interest policy specific to the grant program, and to update its grant application materials to more clearly disclose scoring criteria to applicants.

- Direct LCRA to update the overall goals for the CDDP grant program to include more specific program priorities and outcome measures.
- Direct LCRA to use available technology to improve grant tracking and communication to applicants and grantees.

Issue 5

LCRA Should Implement Policies to Enhance Accountability and Better Comply With the Intent of State Law.

LCRA could benefit from changes to ensure compliance with TCEQ rules and good government policies the Legislature typically applies to all entities under Sunset review. TCEQ rules require river authorities to have a policy prohibiting nepotism in board hiring decisions, but LCRA's board policy does not address hiring. LCRA also has not implemented several practices to ensure good faith efforts in historically underutilized businesses (HUB) purchasing, resulting in participation rates below state goals. Additionally, LCRA's employment of minorities and females consistently falls short of statewide percentages, but LCRA has neither a comprehensive plan nor specific goals for increasing workforce diversity.

Key Recommendations

- Apply the Sunset across-the-board standard on alternative dispute resolution to LCRA's statute.
- Direct LCRA to update its board nepotism policy to include hiring decisions.
- Direct LCRA to improve both its Small and Diverse Supplier Program to better comply with the intent of HUB laws, and its efforts to increase workforce diversity.

Fiscal Implication Summary

The recommendations in this report would not have a significant impact to the state. LCRA would be able to implement most of the recommendations within its existing resources. Some minimal impacts to LCRA are discussed below.

Issue 1 — While holding additional public outreach events could have some minor additional costs, LCRA could implement an improved public engagement strategy within its current resources.

Issue 2 — The recommendations for LCRA to clarify its relationship with CRLT to promote more independence would decrease costs to LCRA over time by converting the two LCRA employees assigned to CRLT to land trust employees and by reducing LCRA's in-kind services, but the savings could not be estimated.

Issue 4 — Establishing a standardized grant application tracking and communication mechanism for CDDP would have a small cost to LCRA, but the authority should also see a savings in staff time by automating communication to grantees.

.....

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 8503.0021(a), Texas Special District Local Laws Code.

———— **AUTHORITY AT A GLANCE**

AUTHORITY AT A GLANCE

The Legislature created the Lower Colorado River Authority (LCRA) in 1934 to develop, conserve, and protect the water of the lower Colorado River basin, and to provide electricity to Central Texas. Like other river authorities, LCRA is authorized to conduct a broad range of activities, including building and operating reservoirs; engaging in flood control; selling raw and treated water; conducting wastewater treatment; acquiring property by eminent domain; building and managing park land; and generating and selling electricity. As one of the state's largest river authorities as far as revenues and services, LCRA engages in a number of these activities, including

- operating the six dams that form the Highland Lakes and the 279 automated river and weather gauges that form the Hydromet system;
- developing and conserving water supply resources for more than 1 million people throughout the lower Colorado River basin;
- providing raw water to municipalities, utilities, agriculture, and industry in the basin;
- providing regulatory oversight of marinas, septic systems, and other activities with a potential to impact the safety and water quality of the Highland Lakes;
- maintaining parks and recreational facilities;
- monitoring the water quality in the basin through its environmental services laboratory as well as the Texas Clean Rivers Program; and
- serving as a voting member and administrator of the state's Region K Regional Water Planning Group.

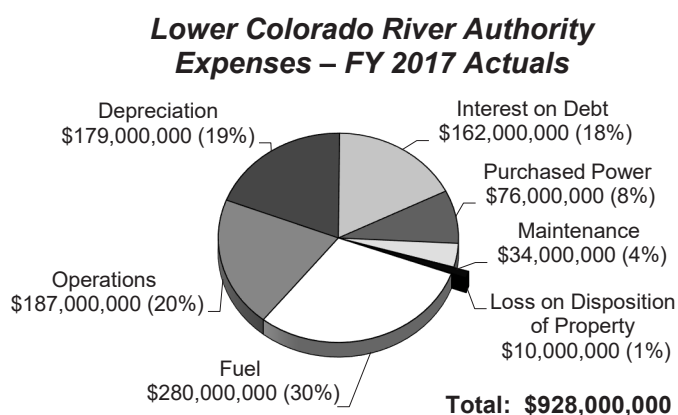
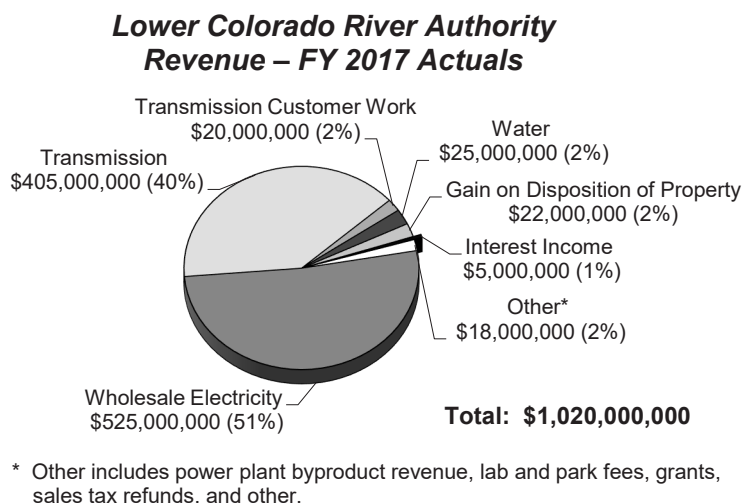
LCRA's statutory jurisdiction includes 10 counties in the lower Colorado River basin from the Highland Lakes to Matagorda Bay. LCRA also provides raw water to a larger water service area, which covers 35 counties, as seen in the map on page 11. LCRA generates and sells wholesale electricity and, for more than 70 counties, provides electricity transmission. However, the Legislature excluded LCRA's management of electric generation and transmission from Sunset review, so these functions are not the focus of this report.¹

Key Facts

- **Board of directors.** A 15-member board of directors appointed by the governor governs LCRA. Twelve directors represent LCRA's 10-county statutory jurisdiction, and three represent LCRA's electric service area outside of it. Of the 12 directors representing LCRA's statutory district, two represent Travis County, nine represent each of the other counties, and the remaining at-large position may come from any of the nine counties other than Travis. Directors serve six-year staggered terms and the governor appoints the presiding officer.
- **Staffing.** In fiscal year 2018, LCRA employed 1,856 staff. Of these, 181 directly supported water-related functions, and 644 supported authority-wide functions, such as legal and administrative support. LCRA also has 17 commissioned peace officers. About 29 percent of staff work in LCRA's headquarters in Austin, while the rest work at regional offices, dams, power plants, and other facilities

throughout the basin. LCRA spent \$234 million on employee compensation and benefits in fiscal year 2017. Appendix A compares LCRA's workforce composition to the percentage of minorities in the statewide civilian labor force for the past three fiscal years.

- Overall funding.** LCRA receives no state appropriations and is not authorized to assess taxes. Instead, LCRA generates revenue by selling electricity, electric transmission, and water services. In LCRA's fiscal year 2017, which runs from July 1 to June 30, LCRA reported about \$1.02 billion in revenues and about \$928 million in expenses, as reflected in its annual financial report and depicted in the *Lower Colorado River Authority Revenue and Expenses* pie charts.² The authority's fund balance at the end of fiscal year 2017 was \$870 million. While outside the scope of this review, electric operations make up the majority of LCRA's finances, about 93 percent of its total revenue. Meanwhile, of the remaining revenue, about 2 percent comes from water-related operations and 5 percent comes from other income streams such as interest income, the environmental lab, and park fees. Issue 5 describes LCRA's use of its Small and Diverse Supplier Program, which is similar to the state's historically underutilized businesses program.



- Water funding.** LCRA receives most of its water revenue from rate payments made by wholesale raw water customers, including municipal utilities, industry, and agriculture, and LCRA's other business units. The *Lower Colorado River Authority Water Division Funding Sources and Expenditures* pie charts on the following page show the finances for LCRA's water division, including its raw water delivery and other water-related functions, such as water quality and conservation efforts. Although not separately reflected in the charts, the division's total direct labor expenditures in fiscal year 2017 were about \$18.6 million.

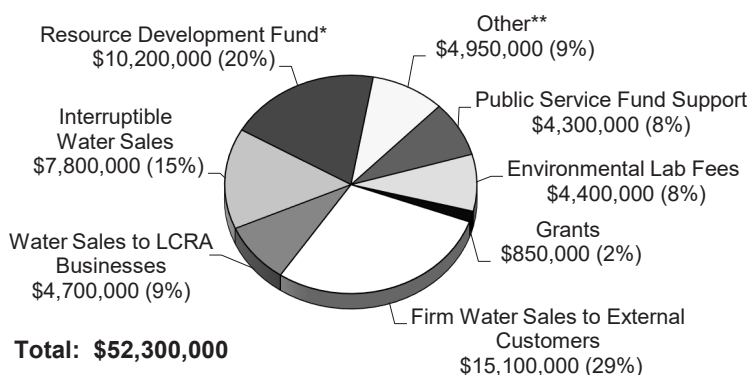
The difference between the authority's overall funding for water (\$25 million) and the more detailed water division funding (\$52 million) is primarily because LCRA does not categorize interest income, resource development fund contributions, and sales to other divisions of LCRA, such as its power plants, as water revenue.

- Water supply.** LCRA holds rights to just over three million acre-feet of water, which represents 74 percent of all water permitted in the entire basin, including the upper basin. Two of LCRA's six lakes, Buchanan and Travis, are water supply reservoirs that can hold a combined 2.01 million acre-feet of water. Between this stored water supply and run-of-the-river supply, LCRA provides wholesale raw water to municipalities, industry, and agriculture throughout the river basin. In compliance with a 1988 court ruling, LCRA established and must periodically update a Water Management Plan that determines how much water it allocates from lakes Buchanan and Travis to its customers. LCRA is in the process of updating this plan, and the Texas Commission on Environmental Quality (TCEQ) must review and approve the updates before they go into effect. See Appendix B for more information on LCRA's Water Management Plan.

LCRA participates in the Texas Water Development Board's regional water planning process for the state and works to develop new supplies through projects like the Arbuckle Reservoir, Prairie Reservoir, and Lost Pines Power Park groundwater project. LCRA expects to begin operation of the Arbuckle Reservoir in Lane City in January 2019. This reservoir will provide an additional 90,000 acre-feet of stored water, which will be available to downstream agriculture and industrial customers.

- Flood control.** LCRA participates in flood management through operation of its only flood control dam, Mansfield Dam below Lake Travis. In addition to its 1.1 million acre-feet of storage, Lake Travis can hold an additional 787,000 acre-feet of floodwater. During flood conditions, the upstream lakes can pass floodwaters down to Lake Travis, which can hold this water to be released in a controlled manner. LCRA operates Mansfield Dam directly, following procedures directed by the U.S. Army Corps of Engineers.

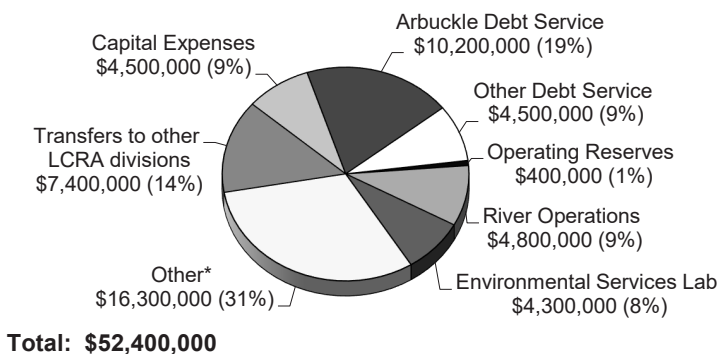
Lower Colorado River Authority Water Division Funding Sources – FY 2017



* The Resource Development Fund provides funding, primarily from transmission, to pay the debt service for the Arbuckle Reservoir. See the chart in Issue 1 for more information.

** Other includes City of Austin deferred revenue, permit fees, scrap sales, interest income, and other.

Lower Colorado River Authority Water Division Funding Expenditures – FY 2017



* Other includes City of Austin deferred revenue, conservation, maintenance for Mansfield and Buchanan dams, water quality protection, and other expenses.

LCRA also operates the Hydromet system, which consists of 279 gauges throughout the basin. These gauges provide real-time data on rainfall and stream flow to help LCRA, local partners, and the public to predict, monitor, and respond to floods as they happen.

- **Water quality monitoring.** As part of the Texas Clean Rivers Program, LCRA collects water quality samples and data at 56 sites and reports this information to TCEQ. LCRA also conducts additional water quality monitoring activities, including continuous monitoring in the Matagorda Bay system and managing the Colorado River Watch Network, an extensive volunteer water quality monitoring program.

LCRA operates a nationally certified laboratory to conduct chemical and biological testing on 80,000 to 100,000 samples per year. In addition to supporting the authority's own operations and water quality functions, the lab maintains several local and state contracts, including with TCEQ to conduct compliance testing for public water systems across the state.

- **Water quality regulations.** LCRA protects water quality and ensures water surface safety around the Highland Lakes system through three regulatory programs.

Highland Lakes Marina Ordinance. This program requires marina facilities and large residential docks to obtain permits and comply with certain minimum safety and construction standards. LCRA issued 16 permits under this program in fiscal year 2017.

Highland Lakes Watershed Ordinance. LCRA issues permits to entities engaging in development, construction, and quarry-related activities. Permit holders must comply with certain standards to minimize storm water runoff pollution and other potential impacts their activities may have on water quality. LCRA issued 35 watershed ordinance permits in fiscal year 2017.

On-Site Sewage Facilities Program. LCRA is an authorized agent of TCEQ to conduct this regulatory activity. This program issues permits to residential septic tanks near the Highland Lakes watershed to ensure their proper design and construction, to protect water quality in the lakes. LCRA issued 471 permits under this program in fiscal year 2017.

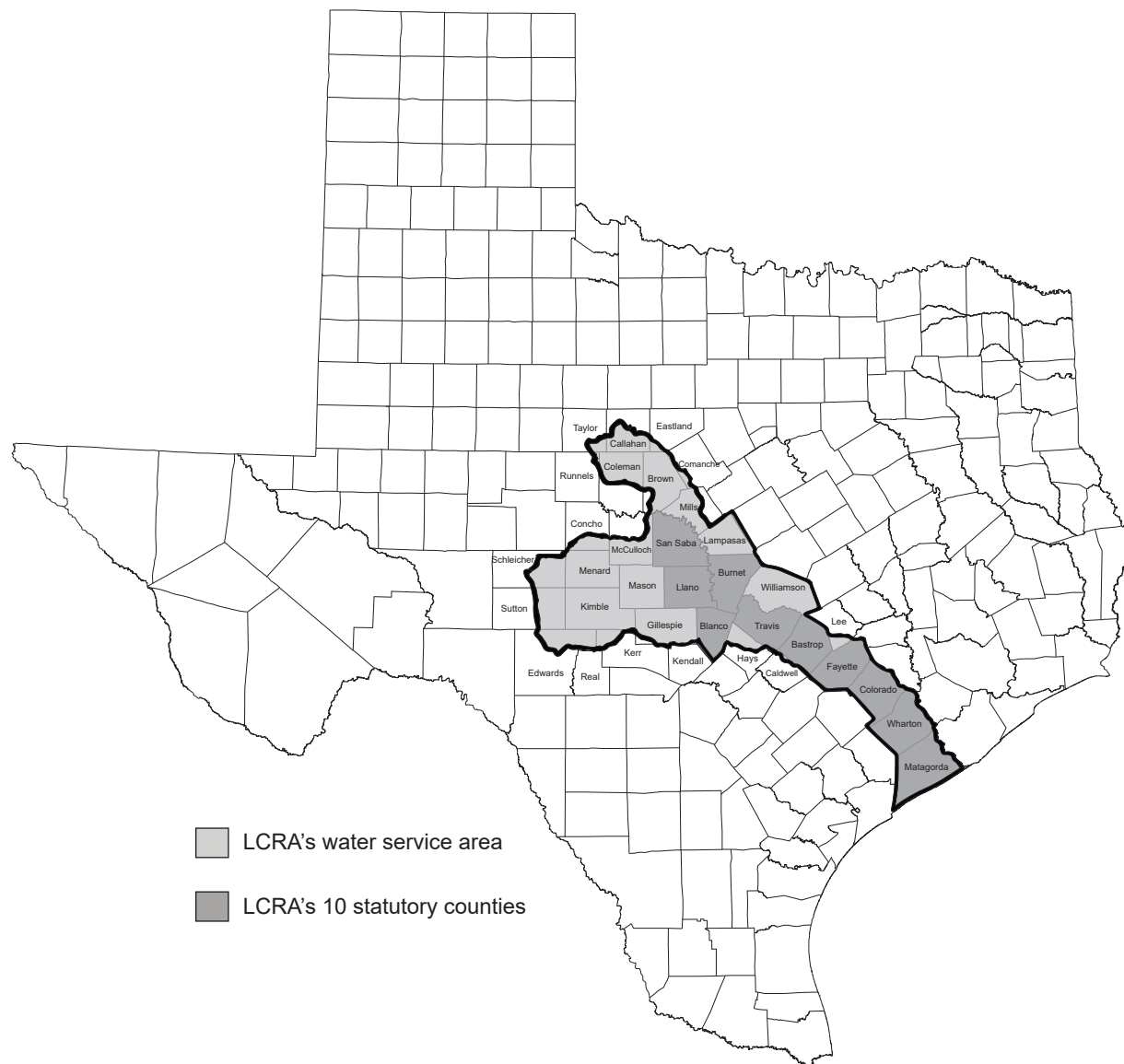
- **Recreation and community outreach.**

Parks. LCRA owns 42 parks and recreation areas covering more than 11,000 acres across the basin. These parks offer a range of activities including primitive and cabin camping, water activities, fishing, horseback riding, and zip lining, among others.

Grants. LCRA engages in several community outreach activities to establish positive relationships and enhance the lives of residents of the Colorado River basin. The Community Development Partnership Program provides economic development grants to communities for projects such as equipment for local and volunteer fire departments. In fiscal year 2017, LCRA awarded 52 grants through the program totaling about \$1.1 million.

Associated Nonprofits. LCRA partners with two nonprofit organizations it created — the Colorado River Land Trust and the Colorado River Alliance. The Colorado River Land Trust is designed to accomplish conservation efforts and promote land stewardship throughout the basin. In fiscal year 2017, the land trust completed its most recent conservation easement for about 346 acres. The Colorado River Alliance promotes water quality and conservation through educational outreach, and by fiscal year 2017 had provided education to 25,000 students.

The Lower Colorado River Authority



¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 8503.0021(a), Texas Special District Local Laws Code.

² For most public purposes, and for ratemaking, LCRA reports revenue and expenditures of \$855 million for fiscal year 2017. This amount differs from the \$1.02 billion reported in LCRA's audited financial statements, which are prepared under generally accepted accounting principles. This difference is primarily because the audited consolidated financial statements include certain revenue and expense transactions — such as certain types of energy sales and purchases as well as gains on disposition property — that are classified differently in management reports that LCRA maintains for ratemaking and cost-of-service evaluations.

ISSUES

ISSUE 1

The Growing Impact of LCRA's Important Mission Requires Higher Standards of Openness and Engagement to Improve Public Trust.

Background

The Legislature created the Lower Colorado River Authority (LCRA) 84 years ago to control floods, protect and store water, conserve land, and generate and sell electricity. Today, LCRA's three primary revenue-generating business units — wholesale electric generation, electric transmission, and water — distinguish it in size and scope from every other Texas river authority. Although LCRA does not have taxing authority or receive state appropriations, it is a government entity, and its revenue streams are still considered public funds. The authority generated \$1.02 billion in revenue in 2017, the majority of which was from electric generation and transmission. LCRA's complex operations and scope of responsibility, its long history serving diverse and often conflicting interests, and its mission's substantial impact on so many Texas communities significantly raises the bar for both the expectations and need for public transparency.

Demand for water is the biggest long-term challenge facing LCRA's water division, and LCRA's ability to effectively accomplish its mission as a water supplier is directly tied to public trust. The state-required Water Management Plan determines how LCRA allocates water from its water supply reservoirs — Lake Buchanan and Lake Travis — during water supply shortages. As the Water Management Plan demonstrates, particularly in times of water shortages, LCRA has to meet extremely varied and often competing needs — providing flood mitigation and environmental protection as well as supplying water to agriculture, a major driver of the economy downstream, and to the more than one million upstream residents of one of the fastest growing and economically dynamic areas in the country.

Recognizing the limits of relying entirely on the river to meet various water demands, LCRA plans to make substantial investments to secure additional new water supply projects into the future, but will need cooperation, buy-in, and trust from the communities in which it operates to be successful in the future. However, at points in its history, LCRA's approach to, and level of, public involvement and engagement in these projects has varied. As the 2008–2016 drought ended and the updated Water Management Plan went into effect, LCRA committed to investing tens of millions of dollars in water supply projects, aiming to complete much of the design, permitting, and land acquisition before the projects are needed.¹ But distrust from the public has potential to undermine LCRA's success in completing this work. All of the project options — from additional off-channel reservoirs and groundwater well permits to brackish groundwater desalination and treated effluent — will require some form of review and approval at the federal, state, or local level. Consequently, public involvement will be an inevitable and critical part of the process.

Citing problems with transparency and accountability, the 84th Legislature placed river authorities under Sunset review and directed Sunset staff to assess their governance, management, operating structure, and compliance with legislative requirements.² Over its more than 40-year history, Sunset has observed, documented, and applied good government standards that reflect best practices in these same areas to approximately 140 state agencies subject to the Sunset Act. Sunset staff determined river authorities, including LCRA, would benefit from these best practices to improve their openness, responsiveness,

and accountability. While the Open Meetings and Public Information Acts set out basic requirements for open government, application of best practices beyond these minimum requirements would further encourage transparency of, and meaningful public involvement in, LCRA's operations as discussed below.

Findings

Despite growing water supply needs, LCRA has not developed a formal, proactive strategy for engaging communities in its activities.

LCRA regularly vacillates between providing substantive public involvement opportunities and the minimum required.

LCRA's relatively new executive leadership, brought aboard in 2014, has had to operate from a deficit in public trust due to prior water supply decisions. While LCRA has made sincere efforts to improve stakeholder relations in recent years, its relationship with many of its stakeholders is still fraught with tension. Some of this tension is attributable to the diversity of interests LCRA serves, but the Sunset review revealed some is also a problem of LCRA's own making, and risks undermining the authority's ability to achieve its ambitious future water supply goals. Meaningful public involvement strategies should go beyond the minimum requirements set out in law, but LCRA regularly vacillates between providing substantive public involvement opportunities and simply offering the minimum required. The following material highlights areas of concern.

- **Inconsistent, reactive approach to public engagement.** When specific controversial issues arise, LCRA responds inconsistently, which often puts the authority on the defensive in its relationship with stakeholders. The following recent examples describe how the authority has not applied a thorough, consistent approach to public engagement regarding its water supply issues.

LCRA declined offers to hold informal public meetings, missing a chance to address concerns early.

Bastrop County groundwater. In 2015, LCRA purchased groundwater rights in Bastrop County and in February 2018, submitted multiple applications to the Lost Pines Groundwater Conservation District for permits to drill wells in this county. The merits of LCRA's permit applications are not for Sunset to evaluate. Additionally, the groundwater conservation district's rules require an entity to file permit requests before the formal public hearing on the permits, and LCRA's compliance with these rules is not in doubt. Prior to filing, LCRA notified and met with several local officials to inform them about and discuss the permit applications, but filing for the permits also drew significant attention from local groups concerned about the long-term impacts of LCRA's unknown plans for future groundwater pumping on landowners and the area's ecosystem. However, LCRA declined offers to hold informal public meetings to provide information to the concerned local community, missing a chance to address concerns early in the process. Opposition has since swelled, with stakeholders criticizing LCRA in an opinion piece in a major newspaper, rejecting LCRA's subsequent offers to meet, and opting instead to organize their own public meetings to discuss concerns with LCRA's proposals, without being fully informed and without LCRA's participation. LCRA is now

on the defensive, working uphill against a public trust shortage it might have alleviated with more preemptive public engagement on this project.

Arbuckle Reservoir. While the Arbuckle Reservoir was a success for LCRA in terms of its water supply goals, the project is another example of LCRA missing the mark on public engagement. Due to numerous factors, such as an existing permit and property owners' willingness to sell the needed land, LCRA was able to largely avoid environmental study requirements and fast-tracked construction of the reservoir, which limited requirements for public involvement. Commendably, throughout the planning and development of the reservoir, LCRA continually sought public input and held numerous public meetings with interested stakeholders. However, LCRA repeatedly refused to provide the key information stakeholders most wanted — details about how it intended to operate the reservoir, including water releases, and especially the potential impacts on the flow of water into Matagorda Bay. Eventually, in response to a public records request, LCRA released a technical memorandum showing a reduced flow of river water into Matagorda Bay, but it did not specify the quantity of or triggers for water releases. Because these specifics related to ongoing litigation at that time, an attorney general's opinion supported LCRA's withholding of this information. Since LCRA will have ongoing relationships with various stakeholder groups throughout the life of this reservoir, putting them in the position of having to file information requests and lawsuits to get basic information is not a successful long-term strategy for public engagement.

LCRA did not readily provide the key information stakeholders most wanted.

Summer water releases. The issue of downstream water releases from the Highland Lakes is often at the center of public debate about LCRA's management of its water supply. Summers in Central Texas are very hot with little rainfall, and like clockwork, some stakeholders around the Highland Lakes become concerned about recreation and real-estate interests as lake levels begin to drop due to evaporation, higher water use, and LCRA's downstream releases. Until recently, LCRA had a more reactive communication strategy on this issue, which allowed certain voices to have an outsized influence on public perception of LCRA's water supply decisions. In such cases, LCRA would expend energy after-the-fact, trying to invalidate false and misleading claims propagated by some of these stakeholders through mainstream local media outlets and platforms, such as the claim that the real intent behind LCRA's downstream water releases is to make money for its wholesale electric business by generating hydroelectricity from its dams. While no amount of information and engagement will appease all of LCRA's stakeholders, having a more proactive communication strategy and frequent contact with the media and stakeholders — an approach LCRA has begun to deploy during the course of the Sunset review — would help prevent or dispel false information before it spreads and improve the public's understanding of, and trust in, LCRA long term.

Until recently, LCRA had a more reactive communication strategy.

- **Ineffective system for managing complaints.** A fundamental component of a governmental entity's responsiveness to the public and stakeholders is

LCRA does not have an organization-wide system for tracking and responding to complaints.

handling complaints. LCRA manages a river that runs through multiple communities, most of which rely heavily, if not exclusively, on LCRA for flood control and water supply. LCRA has constant contact with these communities, and population growth and increased demands for resources will only amplify and increase interactions between LCRA and these stakeholders. Despite its direct impact on local communities, LCRA's governing laws do not require the authority to maintain complete information on complaints, and LCRA has not developed an organization-wide system for tracking and responding to complaints and other issues. Rather, the authority provides on its website separate avenues for filing complaints related to specific issues, such as water quality, pollution, and public safety. Issue 3 addresses LCRA's processes for complaints specifically related to its three water quality regulatory programs, but LCRA should also have an organization-wide system for acting on, and keeping proper documentation of, complaints. LCRA also lacks both a standard form accessible on its website for the public to use when making a complaint and a system for ensuring all parties to a complaint are informed about LCRA's complaint investigation procedures and the status of the complaint until resolution. Without such mechanisms, LCRA is missing useful information and a simple means for addressing public concerns in a timely fashion before they mushroom.

LCRA can rise to the occasion when required or warranted.

- **Models for effective public engagement.** As shown in the table on the following page, *Examples of Effective LCRA Public Engagement*, some of LCRA's current and previous practices could inform the authority's public engagement strategy for all of its water supply projects. In 2010, LCRA developed a participatory process for its Water Supply Resource Plan, an internal plan looking at LCRA's long-range water needs, water availability, and potential for new water supply projects to meet projected needs. Over the years, LCRA has also developed an improved public process for updating its critical, and legally required, Water Management Plan. Additionally, LCRA goes beyond the already robust minimum public engagement requirements for proposed projects as part of its transmission business. While not perfect, these examples demonstrate LCRA can rise to the occasion when required or warranted. Using these strategies more comprehensively when developing individual water supply projects could better position LCRA to get buy-in from the communities it will continue to impact and avoid unnecessary conflicts in the future.

LCRA's lack of budget transparency leads to incorrect conclusions and unnecessary distrust from stakeholders.

LCRA primarily communicates its finances to the public through annual financial statements and a business plan, along with limited additional information in its board meeting materials and public relations brochures.³ However, the authority does not provide a sufficiently transparent picture of its internal accounting, with public documents lacking the detail and interpretation needed to promote full understanding. As a result, many of LCRA's stakeholders do

Examples of Effective LCRA Public Engagement

Process for Developing Water Supply Resource Plan (2008–2010)	Process for Updating Water Management Plan	Process for Proposing Transmission Project
<ul style="list-style-type: none"> • Held three public stakeholder meetings throughout the basin • Published ads in local newspapers • Met with county judges • Mailed surveys • Administered an online survey • Provided water supply options identified through the public comment process to an outside consultant to help LCRA select the most feasible action 	<ul style="list-style-type: none"> • Holds a series of public meetings two years in advance of the plan going into effect • Announces public meetings several months ahead of its first gathering • Allocates several months to solicit and consider input • Publicly responds to the input and explains its decisions • Makes data, assumptions, and modeling results available to stakeholders and the public • Presents the proposed changes to the plan at a public board meeting for adoption 	<ul style="list-style-type: none"> • Publishes notice of its intent in a newspaper • Notifies municipalities and counties within a certain distance of a proposed project • Notifies directly affected land owners • Identifies the type of project and its estimated expense, describing the geographic area for proposed project and all routes potentially involved • Provides a highly navigable page on its website, equipped with multiple maps, easy-to-read fact sheets, and a mechanism for soliciting public feedback on the project • Holds, for projects affecting at least 25 people, at least one “open house” to introduce the project and LCRA to members of the community in which the project would take place

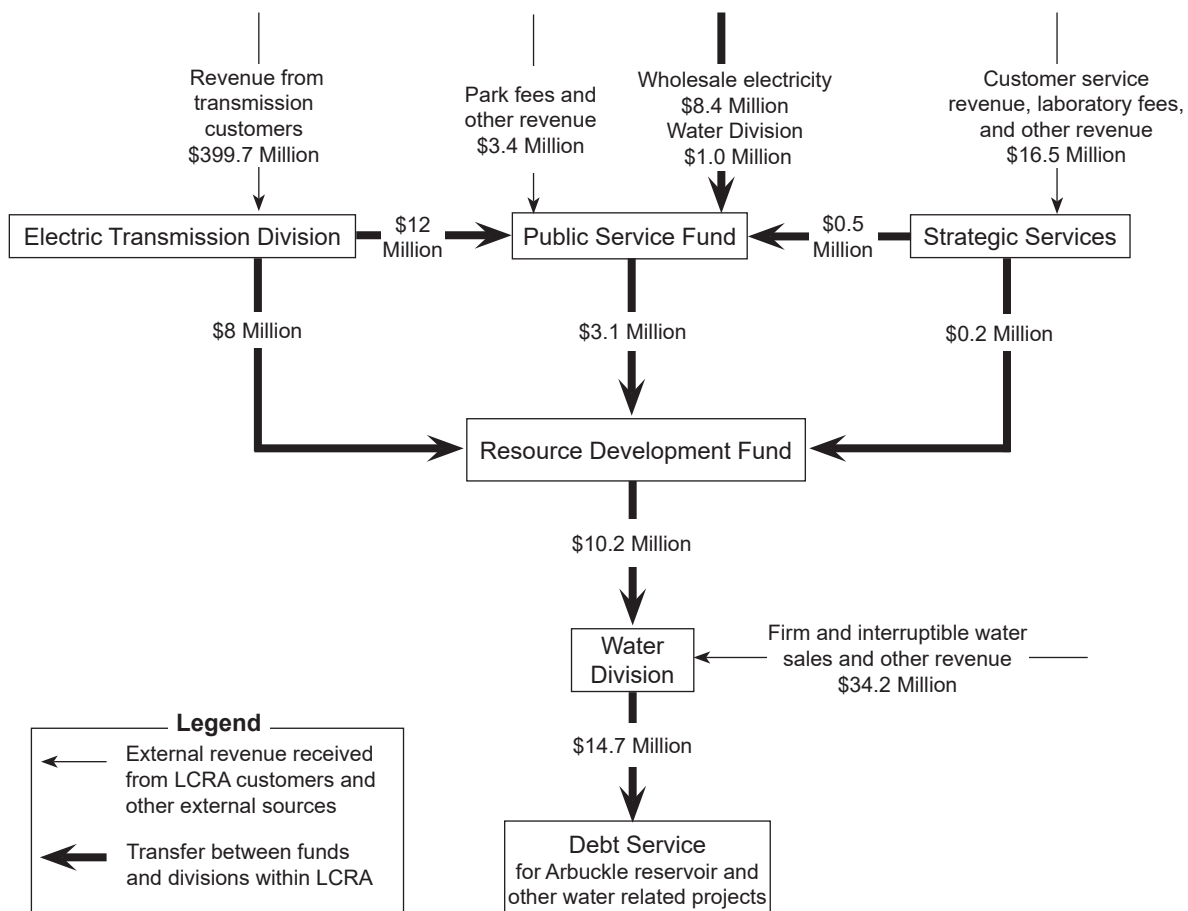
not understand its funding, leading to confusion and needless negative tensions born in some cases from limited available information and misunderstanding.

- **Water funding not clearly explained.** When responding to frequent stakeholder questions about its internal budget, LCRA typically describes its three major business units — electrical generation, transmission, and water — as self-supporting and financially independent. While the three business units all generate significant revenue, LCRA does not clearly and simply describe how much revenue each business unit generates and what that revenue pays for specifically, leading to consistently inaccurate conclusions by some of LCRA’s water stakeholders and the public. For example, throughout the Sunset review, as mentioned above, some stakeholders incorrectly claimed that LCRA improperly releases water from its hydroelectric dams purely for electrical generation, believing that LCRA uses its water resources to supplement funding for its electrical business. LCRA generally responds to this by explaining how the Electric Reliability Council of Texas requires some hydroelectric releases and providing information about the amount of water released for purely hydroelectric generation, but does not clearly address the root of the concern — that LCRA’s water and electricity operations are not completely financially independent. The persistence of public confusion over LCRA’s funding streams is understandable, given the relative difficulty of ascertaining how customer-generated revenues are used to fund each of the authority’s activities.

The Arbuckle Reservoir funding arrangement is not sufficiently transparent.

The truth is, LCRA's water division is not fully self-supporting, in part because infrastructure used for irrigation service relies on contributions from the transmission division. This relationship becomes apparent when tracing the financing for LCRA's most recent major water project — the Arbuckle Reservoir. To pay for this important project, LCRA supplements the water division's budget with money in its Resource Development Fund, a funding source created specifically with the Arbuckle Reservoir in mind. In 2017, the Resource Development Fund received 70 percent of its money from LCRA's transmission business, and most of the rest from LCRA's Public Service Fund, which itself draws significant revenue from LCRA's transmission business. Since this information is not available in an easy to understand format, Sunset staff produced the funding graphic, *Resource Development Fund Sources*, by scrutinizing and comparing line items throughout the authority's business plan to show how LCRA could help some of its stakeholders better understand how the authority's water funding works. Because of its statutory scope limitation, Sunset did not evaluate the use of transmission funds for water projects. Rather, Sunset's findings are limited to the transparency problem; this funding arrangement is not sufficiently apparent to some of LCRA's water stakeholders who do not understand how the authority's water funding works.

**Lower Colorado River Authority
Resource Development Fund Sources – FY 2017 Budgeted**



- **Lacking a public approach to budget transparency.** LCRA's financial documents are written to communicate its financial position to investors, but do not make financial information accessible or understandable to the general public or the stakeholders LCRA serves. While ensuring financial stability and maintaining a positive reputation among the sophisticated investor community is a sound and necessary goal, it should not come at the expense of providing information geared toward the public.

While LCRA's complex finances are not always easy to explain, the authority should make efforts to produce public documents with a government transparency goal in mind, and not a solely business mindset. For example, the state's comptroller of public accounts, through its Transparency Stars program, provides guidance for Texas political subdivisions to convey complex financial information using a range of methods, including narrative overviews, visualizations, and downloadable datasets.⁴ LCRA has not made this type of information sufficiently available despite its capacity to do so and having a range of interested stakeholders.

LCRA should produce public documents with a government transparency goal in mind.

- **Key information not provided to the public.** While LCRA maintains complete financial information internally and receives yearly positive financial audits, the Sunset review identified numerous examples of information the authority does not proactively publish or explain that prevent fuller public understanding of LCRA's financial information.

Lack of detail in business plan. LCRA — a billion dollar organization — publishes a 72-page business plan that generally provides revenue and expenditure information only at the highest division levels, and aggregates several functions into larger funds without breaking out details. In comparison, the Guadalupe-Blanco River Authority (GBRA), an organization a fraction of LCRA's size and scope with \$55 million in revenue, publishes a 500-page budget and work plan that provides much more detail about its budget and finances. GBRA's work plan contains pie charts with different revenue streams and expense categories for each of the authority's divisions, plus detailed line-item budgets for those who wish to delve deeper. Additionally, while LCRA's business plan contains a page dedicated to overall compensation and benefits, the authority does not publish information about executive salaries, bonuses, or board expenses. Given LCRA's numerous and sometimes distrustful stakeholders, the need for more detailed information to promote transparency is paramount.

Virtually no financial information on natural resource conservation, water quality, and parks is available to the public.

Funding for key duties not explained. Natural resource conservation, water quality protection, and parks are among LCRA's most significant constitutional and statutory duties, but virtually no meaningful financial information about LCRA's expenditures on these activities is available to the public. LCRA's Public Service Fund finances these activities, which cost nearly \$18 million in fiscal year 2017. However, the business plan only includes one page related to the financials for this fund. This page provides overall revenue and operating expenses, and states its activities include "parks, natural science centers, and natural resource protection,"

but provides no further detail on these activities. The business plan also includes a page related to funding for “water” but does not specify or explain that this information reflects the cost-of-service for water rate payers but does not capture all of the activities performed by the authority’s water division. Members of the public looking for information on the finances for the agency’s water resource planning, water conservation, water surface management, or water quality ordinances would be mistaken in looking for this information under the heading of “Water.” Instead, LCRA includes information on these activities under the Public Service Fund and Enterprise Support categories, but does not clearly label these activities or provide information sufficient for the public to understand where all water division activities and their funding appear throughout the business plan.

Little oversight of the general manager’s discretionary fund exists.

Limited visibility of discretionary fund. LCRA provides little public information on the general manager’s discretionary fund, which is used to provide cash grants or services up to \$2,500, with a maximum of \$50,000 per calendar year. In the past several years, the general manager has used this authority primarily to donate funds to schools and nonprofits, and to support charitable fundraisers such as golf tournaments. However, little oversight of the use of this fund exists. One other staff member reviews the proposed grants, but the general manager makes the final decisions. The board has no review or approval role in this process, and does not receive any information about the use of this money. This fund does not appear in any public financial documents, and the only public reference to it is in a board policy labeled “Grants and Economic Development” under the heading “grant application process.”⁵ While a \$50,000 fund out of \$928 million in annual expenses is financially insignificant, the potentially controversial uses of these types of discretionary funds merit full transparency.

- **Statutory limitations.** As a competitor in a deregulated electric market, LCRA faces a transparency stumbling block most government agencies do not encounter. The Public Information Act clearly exempts some areas of LCRA’s finances from disclosure.⁶ LCRA’s need to navigate these exemptions will complicate, but not negate the necessity of, its task of providing enhanced financial transparency and openness to its stakeholders.

Inconsistent agendas make it difficult for the public to know the topics the board will actually discuss.

LCRA’s board practices do not fully embrace open and responsive government.

The Sunset review identified several board practices that could unnecessarily limit opportunities for and discourage public engagement.

- **Inconsistent and incomplete agendas.** LCRA communicates information about its board meetings by posting announcements, agendas, and meeting materials on its website and by providing required legal notices, in compliance with the Open Meetings Act, on the Texas Secretary of State’s website and at the Travis County Clerk’s office.⁷ However, the agendas LCRA posts directly to its website always contain less information than the legal

notices. The textbox, *Inconsistent Agenda Item Examples*, illustrates how excessive and inaccurate agenda items on the legal notice, combined with items not included on the website agendas, makes it difficult for the public to know if either source of information accurately conveys the topics the board will actually discuss.

Inconsistent Agenda Item Examples

- Critical work sessions related to LCRA's business plan were routinely not included in website agendas each year from 2015 to 2018. This information was only available in the legal notices and in a footnote on one webpage, separate from the agendas.
- At the December 2017 board meeting, the board received an update from staff on the "process for updating LCRA's Water Management Plan." LCRA included this item in the legal notice, but not on the website agenda. The many interested stakeholders would have had to read the legal notice to know this item would be part of the board meeting.
- LCRA's website agendas exclude executive session topics, with a generic notice referring the reader to the legal notice for all information about executive session. In October 2017, the board approved a groundwater permit application for the water rights in Bastrop County, discussed above, after an executive session discussion. The topic, and the intention to approve the permit application, never appeared on the website agenda.
- Seven of the 13 board meetings between January 2017 and August 2018 listed "water supply planning and policy issues" as an extra agenda item in the legal notice, but the board did not discuss water supply planning and policy issues as a standalone agenda item at these meetings.

- **Lack of committee transparency.** LCRA's 15-member board of directors organizes itself into several committees, including three committees of the whole, which regularly discuss substantive issues — the Water Operations, Planning and Public Policy, and Energy Operations committees. The final board vote on items discussed in these committees usually takes place at a regular board meeting the following day, reflecting the consensus decision already discussed and arrived at by all the same board members in the committee the day before.

LCRA treats committee meetings differently from full board meetings, as shown in the textbox, *Board Meetings vs. Committee Meetings*. Although it may not be LCRA's intent, the authority's extensive use of its committees-of-the-whole shifts substantive discussion of critical issues outside of full board meetings and into meetings that are more difficult to find, watch, and participate in. Stakeholders and members of the public may not know they should attend the committee meetings to participate in the board's deliberation and discussion process, and that less discussion occurs at the regular board meetings before the actual vote. While preventing regular board meetings from dragging on with lengthy discussions of a highly technical

Board Meetings vs. Committee Meetings

Regular board meetings:

- Usually video recorded and archived on website
- Agendas posted and retained on website
- Materials posted on website
- Testimony open to the public

Committee meetings (including committees-of-the-whole):

- No recordings posted online
- Agendas posted temporarily and more difficult to find
- No materials posted on website
- Public testimony must be approved

or specific nature is beneficial, LCRA should ensure the public has the information, access, and ability to participate in the meetings where the majority of deliberation occurs.

- Restrictions on public testimony.** LCRA's statute does not contain standard language typically applied during Sunset reviews requiring the board to provide an opportunity for public comment at open board meetings. In practice, LCRA's board allows for public comment, and provides a document on its website that outlines the board's policy for public testimony. However, this document does not comport with best practices for public access, as described in the textbox, *Restrictive Public Testimony Policies*. These policies discourage and limit public input on the full range of matters under LCRA's jurisdiction, and could have a limiting effect on input related to technical or complex matters that may require written material, such as data, to fully convey. When individuals affected by a river authority's decisions have a clear opportunity to provide meaningful input to the board, the additional information and perspective improves the overall decision-making process. To Sunset's knowledge, LCRA has never denied a member of the public an opportunity to speak at a board meeting. However, requiring an agenda item for public comment and a policy that allows for reasonable opportunities for the public to provide input on all the issues under LCRA's jurisdiction, would reassure the public that the board wants and values their comments.

Restrictive Public Testimony Policies

- LCRA requires approval from the general manager and board chair to testify on items not scheduled on the board's agenda.
- LCRA does not allow members of the public to provide written materials without prior approval by the presiding officer.
- LCRA does not allow for oral comments at committee meetings, including committees-of-the-whole, without approval of the committee chair or by vote of the committee.

- No statutorily-required board member training.** LCRA's governing laws do not contain standard language establishing the type of training and information board members need to properly discharge their duties. State law requires board members to obtain Texas open meetings and public information trainings upon taking their oath of office, which LCRA executive staff provides to each newly appointed board member. However, LCRA's governing laws do not require additional training, typically applied in Sunset reviews, to ensure each member has an adequate understanding of the authority's governing laws, operations, and budget, and the scope and limitations of its authority, before making decisions regarding matters of public interest.

Recommendations

Public Engagement

Change in Statute

1.1 Require LCRA to adopt a public engagement policy for water supply projects.

This recommendation would require LCRA to adopt a comprehensive policy to guide its approach to public engagement related to its water supply projects. For this policy, LCRA should consider specifically

addressing how it will seek to engage stakeholders and the possible use of advisory committees, community panels, town hall meetings, or other more formal and ongoing strategies.

LCRA leadership and water staff should work with communications staff to identify water needs and communications needs in tandem. Further collaboration between these divisions would help ensure LCRA better communicates about its major water supply activities and delivers proactive, consistent, and understandable messages in advance of major actions or impacts to customers or stakeholders who rely on LCRA water. Having a comprehensive public engagement policy would better ensure LCRA does not revert to low-engagement procedures at the expense of more meaningful public engagement on water supply projects.

1.2 Require LCRA to develop and maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures.

This recommendation would require LCRA to develop a standard complaint form and make this form available on its website along with clear information on what to expect once a complaint is filed, including timelines for responses and resolution. Under this recommendation, LCRA would be required to maintain documentation on all complaints it receives, inform all parties to a complaint about the authority's complaint investigation procedures, and periodically notify complaint parties of the status of a complaint until resolution. Maintaining a system for acting on complaints and keeping proper documentation would help ensure LCRA addresses problems in a timely fashion.

Financial Transparency

Management Action

1.3 Direct LCRA to provide more detailed financial information in its publicly available documents.

LCRA should strive for its publicly available documents to reflect a more detailed breakdown of the authority's finances, with the public in mind as a primary audience. Financial staff should work with public communications staff to ensure information is conveyed in a digestible and understandable way. While LCRA has a right under the Public Information Act and a business interest in keeping certain information confidential, it should strive to maximize transparency wherever possible. LCRA should particularly ensure it provides clearer information about its water division as well as smaller activities, including public service fund activities, strategic services, and enterprise support. LCRA should provide, at a minimum

- departmental financial statements that break down budgeted expenditures, by use, for all departments, and including actual expenditures for at least one year in the past;
- clear revenue statements that break down budgeted and actual revenue for significant revenue streams in detail, to the extent possible under the Public Information Act, including at a minimum
 - transmission revenue,
 - wholesale electric revenue,
 - firm water revenue,
 - interruptible water revenue,
 - parks and recreation revenue,

- customer service revenue,
- laboratory revenue, and
- grant revenue;
- clear explanation of money transfers between business units, departments, and funds;
- a list of all reserve funds, their purpose, and their balances;
- long-term financial plans;
- executive management salaries and bonuses;
- board expenses; and
- a list of grants provided under the general manager’s discretionary authority.

LCRA should provide this information to the maximum extent possible while still complying with the Public Information Act requirements for public utilities. For example, the Public Information Act states that “aggregate information reflecting receipts or expenditures of funds” is not exempt. Where information is redacted, LCRA should strive to explain the nature of the information omitted and the reasoning. Detailed, understandable, readily available financial information will ensure the public and stakeholders have the opportunity to understand LCRA’s finances and the way money flows through the authority. Transparent explanations of the authority’s funding would help restore public trust and stem some of the misunderstanding and suspicion common among stakeholders.

Board Practices

Change in Statute

1.4 Require LCRA to provide an official opportunity for public testimony at its board meetings.

This recommendation would require LCRA to include public testimony as an agenda item at its regular board meetings. LCRA should clearly provide the public the opportunity to comment on each agenda item at open board meetings. LCRA should also provide the opportunity for members of the public to comment on any item under the authority’s jurisdiction, provided that board members do not engage in deliberation of or decisions about the subject of testimony that is not a specific agenda item other than to indicate they will place the subject on the agenda for a subsequent meeting if the board so desires.

1.5 Require LCRA to provide training to board members to enable them to properly discharge their duties.

This recommendation would clearly establish the type of information to be included in LCRA’s board member training. This training would need to provide board members with information regarding the authority’s governing laws; its programs, functions, bylaws, and budget; the scope of and limitations of its authority; the results from its most recent formal audit and any previous management audit required by the Texas Commission on Environmental Quality; the requirements and training available related to open meetings, open records, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

Management Action

1.6 Direct LCRA to provide more transparent, consistent, and accurate agenda meeting notices to the public.

This recommendation would direct LCRA to make a good-faith effort to provide agendas on its website that clearly reflect the intended subject matter of any upcoming meeting. Particularly, LCRA should ensure that items it considers to be of particular importance or significant public interest, such as issues related to the Water Management Plan or a work session on the authority's budget, are represented on the agendas provided on its website, and not only on the legal notice posted with the secretary of state. LCRA should also discontinue use of the generic executive session disclaimer on its website agendas and instead provide the intended executive session items on its website agendas and not solely on the legal notice provided to the secretary of state. Agendas which more accurately represent the business the board intends to cover at a given meeting would promote public trust by giving better, more reliable information when the board takes up an issue with significant public interest.

1.7 Direct LCRA to improve transparency of its committees-of-the-whole.

This recommendation would direct LCRA to apply the same transparency and accessibility practices to committee meetings that it currently applies to full board meetings for any committees-of-the-whole. LCRA should endeavor to post meeting dates, agendas, and meeting materials for these committee meetings clearly in the same location where it provides this information for full board meetings on its website, and clearly state the committee membership consists of the full board membership. Additionally, LCRA should record and post videos of these committee meetings, when possible, in the same manner it currently records and posts video of full board meetings. Ensuring the same kinds of access to all meetings consisting of the full board membership would give the public better notice and improved accessibility to the board's most in-depth substantive discussions.

1.8 Direct LCRA to amend its public testimony protocols to provide greater accessibility.

This recommendation would direct LCRA to adopt more open, less restrictive public testimony policies, and post them to the public in the same manner as the board's current protocols. While LCRA may continue to limit the time taken by speakers, it should allow for open testimony on non-agenda items and provision of written materials without prior approval by the staff or board members. Committees consisting of the full membership of the board should adopt the same public testimony policy as full board meetings. Adopting more open, accessible policies would ensure the public has access and input to the substantive deliberations about the full range of issues under LCRA's jurisdiction.

Fiscal Implication

These recommendations would not have a significant fiscal impact. Enhancing the transparency and clarity of LCRA's publicly available informational materials regarding the authority's finances and board meetings would have no additional cost. While holding additional public outreach events could entail minor additional costs, LCRA could implement an improved public engagement strategy within its existing resources.

.....

¹ Lower Colorado River Authority, “LCRA Board approves 2017 business plan,” news release, May 18, 2016, <https://www.lcra.org/about/newsroom/news-releases/Pages/LCRA-Board-approves-2017-business-plan.aspx>.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 8503.0021, Texas Special District Local Laws Code.

³ “Financial Highlights,” Lower Colorado River Authority, accessed September 25, 2018, <https://www.lcra.org/about/financial-highlights/Pages/default.aspx>; Lower Colorado River Authority, *Board Agenda*, item 1, p. 5–9, accessed September 25, 2018, <https://www.lcra.org/about/leadership/agendas/2018-08-22-lcra-agenda.pdf>.

⁴ “Transparency Stars Traditional Finances Guidelines,” Texas Comptroller of Public Accounts, accessed September 25, 2018, <https://comptroller.texas.gov/transparency/local/stars/finances.php>.

⁵ Lower Colorado River Authority, *LCRA Board Policy 404 — Grants and Economic Development*, accessed September 25, 2018, <https://www.lcra.org/about/leadership/policies/404.pdf>.

⁶ Section 552.133, Texas Government Code.

⁷ Chapter 551, Texas Government Code.

ISSUE 2

LCRA Should Clarify Its Relationship With the Colorado River Land Trust to Better Manage Expectations and Promote Independence.

Background

The Lower Colorado River Authority (LCRA) created the Colorado River Land Trust (CRLT) in 2012 as an independent 501(c)(3) nonprofit support organization to further LCRA's water quality and conservation mission in the lower Colorado River basin. As described in the textbox, *What is a Land Trust?*, having an associated land trust gives LCRA a useful tool to support land conservation activities.¹ The land trust's nonprofit status provides access to grants and other funding streams for which LCRA, as a governmental entity, does not qualify. As an independent entity, the land trust can also establish relationships with private individuals, government agencies, and other conservation organizations in Texas. To date, CRLT has conserved a total of 1,271 acres of land through five conservation projects in the lower Colorado River basin.

What is a Land Trust?

"Land trusts are charitable organizations whose mission is land and water conservation. These organizations assist landowners with the long-term conservation goals they have for their own lands. Land trusts conserve natural areas by negotiating private, voluntary agreements with property owners to leave their land undeveloped, or through outright purchases. Land trusts offer a nonprofit, voluntary solution for land conservation."

CRLT's original certificate of formation required it to operate in connection with LCRA to educate the public about conservation easements, preserve open space, protect the watershed, and encourage land and water conservation through responsible management of private lands.² A seven-member board oversees the land trust's operations, and includes two LCRA board members and three former LCRA board members. As stipulated in a service agreement between LCRA and the land trust, LCRA provides both direct funding and in-kind services such as office space, media, surveying, and land mapping. The two employees who manage the land trust's daily operations are both full-time LCRA employees.

In fiscal year 2018, CRLT operated on an annual budget of just under \$500,000, with about \$360,000 coming directly from LCRA and the remainder from various fundraising activities and donations. In February 2018, the land trust earned national accreditation from the Land Trust Accreditation Commission after demonstrating a certain level of accountability and stability.

Findings

Overlapping governance and staffing blurs lines of accountability between LCRA and the land trust.

While LCRA and the land trust mutually benefit from their association, having board members and staff serving dual roles for both organizations presents unnecessary potential for conflicts, as described below.

- **Dual role of board members.** Having five out of seven land trust board members with current or recent service on the LCRA board presents

Having LCRA employees also serve as CRLT staff creates potential conflicts of interest.

questions about which organization's interests a given member is representing when taking votes on either board. An LCRA board action in October 2017 highlights this problematic dynamic. At this meeting, the LCRA board approved the sale of a tract of land to CRLT. LCRA staff assisted the land trust in obtaining a \$1 million federal grant the land trust will use to purchase this tract from LCRA. Three of the voting board members who approved this transaction on behalf of LCRA also were members of the land trust's board of directors at the time and had previously voted, as members of the land trust board, to approve the transaction from the land trust's perspective. Neither LCRA nor CRLT has a clear recusal policy in place to provide guidance in these situations. While this example mutually benefitted both organizations' conservation goals, it also highlights the potential for other actions which may present conflicts that demand greater independence between each organization's decision-making body.

- **Blurred staff reporting lines.** The land trust's two staff members are officially full-time LCRA employees, with LCRA providing their full salary and benefits. These employees report directly to LCRA's chief administrative officer, but the land trust's board should also reasonably expect to manage its employees' actions in running the organization. Having LCRA employees also serve as CRLT staff creates potential conflicts of interest as the staff must balance their obligation to LCRA management with their duty to the nonprofit's board.

LCRA provides the majority of funding for the land trust without clear long-term performance expectations.

LCRA does not tie the significant funding and support of the land trust to clear performance expectations such as fundraising targets or executing a certain number of new conservation easements per year. Since CRLT's creation in 2012, LCRA has contributed approximately \$1.7 million in funds and in-kind services in the form of salaries, benefits, rent, and operating expenses. In most years, LCRA's contributions have represented the vast majority of the land trust's operating revenue. For example, the land trust depended on LCRA for nearly 90 percent of its operating budget in 2017 and 72 percent of its operating budget in 2018.

CRLT does not have clear performance goals or targets.

LCRA and the land trust have established a service agreement outlining the responsibilities and duties for each organization, along with a longer-range financial plan to decrease CRLT's reliance on LCRA by increasing private or corporate support through fundraising. However, neither document contains clear performance goals or targets to ensure the land trust's operations are providing a return for LCRA's investment and support.

Best practices for land trusts clearly encourage independence as a goal.

The Land Trust Accreditation Commission, an independent national accrediting body, provides emerging best practices for land trusts. Achieving and maintaining

this national accreditation is becoming increasingly important for nonprofit land trusts to build their reputation and trust, assuring potential donors, granting agencies, and landowners that their investments will be protected and managed with integrity. The textbox, *Sample of Land Trust Accreditation Standards*, lists some of the 55 accreditation standards land trusts must meet to maintain this accreditation.³

Sample of Land Trust Accreditation Standards (2018)

- Operate in accordance with established bylaws
- Maintain a board of sufficient size, skills, backgrounds, and experience to conduct its work effectively; board must provide sufficient oversight over operations
- Maintain a board development process that includes procedures for recruiting and training board members
- Assess the nature and viability of revenue and seek to diversify funding sources
- Build and maintain sufficient operating reserves to sustain operations

Maintaining clear lines of accountability for managing land trust staff and ensuring appropriate governance are critical for CRLT to maintain its national accreditation moving forward. CRLT gained accreditation in 2018, but only after the commission postponed the initial application due to concerns about the land trust's independence from LCRA. Though the commission eventually granted accreditation after CRLT updated its bylaws and made other changes, ongoing accreditation is not guaranteed. After initially accrediting a land trust, the commission conducts an audit every five years to confirm ongoing compliance and can sanction a land trust or revoke accreditation status at any time. The commission takes compliance seriously, as demonstrated recently when the commission revoked the accreditation of the Guadalupe-Blanco River Authority's associated nonprofit land trust, the Guadalupe-Blanco River Trust, in 2016. The action resulted from the land trust's failure to monitor its conservation easements annually, violating requirements for maintaining accreditation.

Maintaining clear lines of accountability is critical for CRLT to maintain its national accreditation.

LCRA's other associated water nonprofit, the Colorado River Alliance, provides a model of independence.

The Colorado River Alliance, another LCRA-affiliated nonprofit, could inform the land trust's progress towards increased autonomy. LCRA created the alliance in 1992 to further LCRA's conservation mission by providing educational programs to the public. One LCRA board member and one LCRA staff member serve on the alliance's board, but the alliance hires its own staff. In addition, upon the alliance establishing itself as an organization distinct from LCRA in 1999, LCRA created an endowment of \$250,000 as a vehicle for investment to provide sustainable support to the alliance. Today, LCRA's ongoing contribution is limited to about \$10,000 per year in in-kind services, in the form of office space. While the scope and mission of the alliance and the land trust differ, LCRA's decision to define its relationship

with the alliance and collaboratively work towards establishing the alliance as a separate organization serves as a model for CRLT in its efforts to further its independence from LCRA.

Recommendations

Management Action

2.1 Direct LCRA to clearly separate the governance and management of the land trust from its own board and staff.

To ensure a clearer boundary between LCRA's board and the land trust's board, this recommendation would direct LCRA to amend its board policies to specify that members serving on both boards should recuse themselves from votes affecting the LCRA-land trust relationship. Similarly, LCRA should work with CRLT to amend the land trust bylaws to include a recusal provision as well. The land trust bylaws should also be amended to ensure LCRA board member representation on the land trust board is limited to a minority of current or former LCRA board members, and that the remaining land trust board member positions should not have an immediate past or present affiliation with LCRA.

This recommendation would also direct LCRA to amend the service agreement with the land trust to discontinue its practice of directly employing staff who report to both the land trust board and LCRA management, instead making such staff direct employees of the land trust. Under this recommendation, LCRA could still contribute funds to the land trust to help support its staffing, and LCRA employees could continue to periodically assist the nonprofit with administrative tasks as specified in the service agreement. Establishing staff fully employed by the land trust and reporting exclusively to the land trust board would better protect against potential conflicts of interest. LCRA and CRLT should make these changes by May 1, 2019.

2.2 Direct LCRA to update its service agreement with the land trust to include performance goals and a timeline of expectations for the land trust to move towards greater financial independence from LCRA.

This recommendation would direct LCRA to amend its service agreement with the land trust to establish performance goals by May 1, 2019. These performance goals should include, at a minimum, expectations for the number of conservation easement projects executed as well as fundraising goals to support the land trust's mission. The service agreement should also specify a process for LCRA to review the land trust's performance at least every five years, to determine whether the land trust continues to contribute to the organizations' shared mission. This recommendation would ensure LCRA sets clear expectations and regularly revisits performance goals to monitor the return on its significant investment in the land trust and can respond to changing needs in the lower Colorado River basin.

Fiscal Implication

These recommendations would not have a significant short-term fiscal impact to LCRA. Depending on how LCRA implements these recommendations, LCRA would likely have reduced costs over time as the land trust develops more financial and operational independence. These savings could come in the form of a reduction to in-kind services LCRA provides to CRLT and from converting the two LCRA employees currently assigned to CRLT to land trust employees whose salaries and benefits are fully funded by the land trust.

.....

¹ “What is a Land Trust?” Texas Land Trust Council, accessed September 11, 2018, <http://www.texaslandtrustcouncil.org/index.php/about/what-is-a-land-trust>.

² LCRA updated the language of CRLT’s certificate of formation in 2017 to remove the requirement that the land trust operate in connection with LCRA.

³ Land Trust Accreditation Commission, *Accreditation Requirements Manual*, March 2018 ed. (Saratoga Springs, NY: Land Trust Accreditation Commission, 2018), 8–27.

ISSUE 3

LCRA's Water Quality Regulatory Programs Lack Best Practices That Would Improve Efficiency and Transparency for Permit Holders and the Public.

Background

The Lower Colorado River Authority (LCRA) maintains three regulatory programs designed to protect water quality and safety in the Highland Lakes region — two established under LCRA's own authority and one delegated from the Texas Commission on Environmental Quality (TCEQ).¹

- **Highland Lakes Watershed Ordinance.** LCRA actively manages storm water runoff around the Highland Lakes to reduce the impact of pollution such as pesticides, soil erosion, and other contaminants. The ordinance requires development projects, mostly construction sites, within the area to comply with standards for things like drainage, non-permeable cover, and erosion control. LCRA has issued on average 37 permits a year for the past five fiscal years under this ordinance. LCRA investigates about 19 complaints each year with an average time to resolution of 49 days.
- **Highland Lakes Marina Ordinance.** LCRA regulates the construction and operation of marinas and docks on the Highland Lakes. The ordinance sets standards to improve safety and protect water quality around these facilities, covering items such as electrical outlets, fuel storage, and sanitation. LCRA currently has approximately 160 active marina permits and issues approximately 11 per year on average. LCRA investigates about four complaints each year with an average time to resolution of 99 days.
- **On-Site Sewage Facilities (OSSF) Program.** LCRA's OSSF rules, adopted under delegated authority from TCEQ, govern the permitting and operation of residential and commercial sewage facilities within a set distance of the Highland Lakes. The rules establish certain standards for septic systems such as construction, maintenance, and reporting. Landowners within LCRA's jurisdiction must obtain LCRA permits for nearly any change to their systems or property, described in the textbox, *Activities Requiring an On-Site Sewage Facility Permit*. LCRA currently has more than 22,000 active permits and issues approximately 450 permits each year. LCRA receives approximately 230 complaints and averages about 79 complaint investigations each year, but works with permit holders to achieve compliance and has only had to take enforcement action three times in the last five years.

Activities Requiring an On-Site Sewage Facility Permit

- New construction
- Modifying an existing system
- Repairing a system
- Modifying a permitted property
- Transferring a permitted property

The Sunset Commission has a long history evaluating regulatory functions, completing numerous reviews of licensing and regulatory agencies and documenting standards to guide future reviews. While these standards provide a guide for evaluating a regulatory program's structure, they are not intended for blanket application. Sunset staff continues to refine and develop standards, reflecting additional experience and

different or changing needs, circumstances, or practices. The following material highlights areas where LCRA's rules and practices differ from these model standards and describes the potential benefits of conforming to standard practices.

Findings

The informal process for appealing LCRA's on-site sewage facility decisions potentially affects the fair treatment of permittees.

LCRA does not provide detailed information on the OSSF appeals process.

Regulatory agencies should have a standard approach to appeals, providing due process and clear expectations for both the agency and the population it regulates. LCRA does not provide detailed information on how to appeal an OSSF decision or what to expect during the appeals process. The entire appeals policy consists of a single sentence stating that a person aggrieved by an LCRA decision may appeal to the LCRA board.² LCRA does not explain how to actually file an appeal, so permittees do not know whether an appeal requires a letter, phone call, email, personal appearance, or all of the above. LCRA also does not indicate a deadline for filing a valid appeal, information on how LCRA processes an appeal, the average length of time LCRA takes to decide such cases, or what additional options may be available if the board ultimately rejects an appeal. Having such a minimal written policy may meet TCEQ requirements designed more for counties or cities that have established administrative procedures, but leaves potential LCRA appellants with no clear path to follow.³ During the Sunset review, LCRA described an informal process staff follow when receiving appeals, such as having progressive joint meetings between the appellant, LCRA staff, and potentially TCEQ staff before submitting a formal appeal to the LCRA board. This process allows for resolution of issues at a low level but is not governed by or communicated in any internal or external policies to ensure all parties understand the process and are treated fairly. In a survey, more than half the OSSF permit holders who stated an opinion viewed LCRA's mediation efforts negatively.

On average, LCRA rejects fewer than 24 permit applications per year and has not received any appeals in the last five years. While LCRA indicates the informal process works to resolve issues, the potential exists that individuals regulated by LCRA simply do not know their options. Failure to obtain an OSSF permit can have serious consequences for a private landowner. Without an OSSF permit, residences and businesses cannot operate a septic system, effectively denying them the full use of their property. LCRA has a much more thoroughly contemplated appeals process for its two Highland Lakes ordinances.⁴ Adopting a similar appeals process for the OSSF program would ensure the thousands of people directly impacted by these regulations fully understand their rights and how to exercise them.

LCRA does not encourage online applications or payments for on-site sewage facility permits, needlessly continuing an inefficient manual process.

Most state regulatory agencies now accept applications and fees online to maximize administrative efficiencies and minimize regulatory hurdles for permittees. LCRA has an online tool for OSSF permits but does not advertise it. Instead, LCRA's guidance to OSSF permit applicants only mentions a paper-based process for submitting documents in hard copy and specifically states payments must be in check or exact cash.⁵ Applicants must hand deliver or mail documentation to LCRA whose employees must scan the documents into LCRA's database, creating inefficiencies and delays. In a survey of OSSF permit holders, more than a third of respondents were dissatisfied with LCRA services available online. Transitioning the OSSF program to LCRA's existing online system would improve customer service for individuals regulated by LCRA while reducing unnecessary administrative costs.

The OSSF permit process is outdated and inefficient.

LCRA's three water quality regulatory programs lack a clear, publicly accessible complaint process and a system for tracking and analyzing complaints.

- **No clear complaint process.** A governmental entity with regulatory authority should have clear policies to guide filing, receipt, and investigation of complaints against regulated entities. Such rules ensure the public knows how to access the enforcement processes and set standards for appropriate and consistent action by the agency. As part of the complaints process, an individual should be able to file a written complaint on a simple form provided on the regulator's website, through email, or through regular mail. The form should clearly establish the information needed to allow for an investigation and provide information about what to expect throughout the process.

LCRA's informal process for receiving regulatory complaints lacks several of these standard elements. LCRA reports receiving approximately 260 complaints a year, but does not publicize its complaint process or have a centralized system for receiving complaints about the entities it regulates. Instead, complaints come through a variety of mechanisms including emails to the general "Ask LCRA" email box, and calls to LCRA's main number and its various other hotlines. Nothing publicly identifies these features as avenues for complaints, and LCRA provides no information about the complaint process or a form to collect full information needed for an investigation. As a result, complaints come in free form and may or may not contain the information necessary to properly prioritize or investigate them. In a survey of permit holders, more than half of respondents viewed LCRA's complaints process negatively. Formalizing and publishing a clear complaint process would ensure LCRA fulfills its duty as a government regulator to be responsive to the public.

LCRA does not have a clear or centralized process for regulatory complaints.

- **No analysis of complaints.** A governmental entity with regulatory authority should centrally track complaints and analyze detailed statistics about complaints received and resolved each year. The agency should use this information internally to track regulatory problem areas and agency performance, and provide it to the public in an aggregated form as a matter of transparency.

LCRA does not have an effective internal process for centrally collecting, analyzing, and using complaint data to identify issues within its regulatory programs or to report results. While program staff may have a basic idea of the regulatory environment, LCRA's board and management and the public have little information on which to gauge performance of an important LCRA duty. Aggregating and analyzing complaint data in a more formal, standardized format would provide LCRA a key oversight tool.

Recommendations

Management Action

3.1 Direct LCRA to document and publish a clear appeals process for on-site sewage facility regulatory decisions.

Under this recommendation, LCRA would formalize its existing OSSF appeals process and provide the information publicly so parties aggrieved by an LCRA decision clearly understand available recourses and what to expect during the process. LCRA should also ensure all notifications of adverse decisions include this information, and the specific next steps and deadlines to proceed. Making these changes would increase the transparency of LCRA's highest-volume regulatory program and ensure affected property owners understand their rights. LCRA should complete these changes no later than May 1, 2019.

3.2 Direct LCRA to develop and publicize an online option for submitting on-site sewage facility permit applications and payments.

LCRA should streamline its online regulatory processes, providing the same level of service to OSSF permittees as currently provided the two ordinance programs. LCRA should post information about the online process no later than May 1, 2019, in a prominent area of the LCRA website. Automating the OSSF permit process would ensure LCRA maximizes the technology already in its possession, saving time and resources while providing a higher level of customer service.

3.3 Direct LCRA to develop and publicize a clear complaints process for all three water quality regulatory programs.

LCRA should adopt a policy that clearly establishes procedures for each phase of the regulatory complaint process, including complaint receipt, investigation, adjudication, resulting actions, and disclosure to the public. Additionally, this recommendation would direct LCRA to develop a centralized way for the public to file complaints, including a simple online complaint form listing required information and details about the complaint process. Finally, LCRA should publicize its role in accepting and responding to complaints to its regulatory stakeholders. Providing the public an easy and obvious way to submit

complaints would enhance the accessibility and fairness of the complaint process and ensure LCRA receives valuable information to effectively carry out its regulatory responsibilities. LCRA should complete these changes by May 1, 2019.

3.4 Direct LCRA to collect, maintain, and report detailed information on complaints.

Under this recommendation, LCRA would create a formal internal process for tracking, analyzing, and reporting statistical complaint information to LCRA's board and management, and the public, no later than May 1, 2019. This information should consistently detail the number, source, and types of water quality regulatory complaints received and their disposition. Improving LCRA's current informal efforts would ensure complaints concerning LCRA's regulatory programs are promptly, consistently, and reliably addressed. Analysis and public reporting of complaint information would also assist LCRA in identifying regulatory problem areas and increase overall transparency.

Fiscal Implication

These recommendations simply formalize LCRA's procedures and better leverage existing technology, and could be accomplished with LCRA's existing resources.

.....

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 8503.004(u), Texas Special District Local Laws Code; Section 8503.004(q), Texas Special District Local Laws Code; and Chapters 341 and 366, Texas Health and Safety Code.

² Lower Colorado River Authority, *On-Site Sewage Facility Rules* (Austin: LCRA, 2010), Section 13.

³ 30 T.A.C. 285.11(d); "Getting a Permit for an On-Site Sewage Facility," Texas Commission on Environmental Quality, last modified May 25, 2018, <https://www.tceq.texas.gov/permitting/ossf/ossfpermits.html#permits10>.

⁴ Lower Colorado River Authority, *Highland Lakes Watershed Ordinance* (Austin: LCRA, 2014), 29–35; Lower Colorado River Authority, *Highland Lakes Marina Ordinance* (Austin: LCRA, 2011), Article 13.

⁵ "Step-by-step process to obtain an on-site sewage facility permit," Lower Colorado River Authority, accessed September 17, 2018, <https://www.lcra.org/water/quality/on-site-sewage/pages/steps-to-get-a-permit.aspx>.

ISSUE 4

LCRA's Community Development Grant Program Needs Improvements to Promote Overall Effectiveness and Fairness.

Background

The Lower Colorado River Authority (LCRA) created the Community Development Partnership Program (CDPP) in 1995 after the Legislature authorized river authorities that distribute and sell electricity to the public to “sponsor and participate in an economic development program intended to strengthen the economic base and further the economic development of the state.”¹ Each year, LCRA awards \$1 million in grants to local organizations for capital improvement projects, such as emergency equipment for first responders and improvements to fire stations, parks, and community centers that would not be possible without outside help. Since 1996, the CDPP grant program has awarded 1,672 grants, making an investment in local projects worth a total of \$267 million in LCRA’s wholesale electric and water service areas possible.

The textbox, *Organizations Eligible for CDPP Grants*, lists the types of entities eligible to participate in the program. All applicants requesting \$5,000 or more must supply 20 percent of the grant amount in matching funds. LCRA finances the grants from its Public Service Fund, an account that receives most of its funds from LCRA’s revenue-generating activities such as wholesale electric and water sales. In fiscal year 2017, LCRA spent \$243,000 administering the grant program.

Twice a year, LCRA puts out a call for projects and staff evaluates and scores all applications using a scoring matrix. A month later, a review committee appointed by LCRA’s board of directors meets to review and award the grants. The 11-member review committee includes three LCRA board members, LCRA’s general manager, six representatives of LCRA’s wholesale electric customers, and one representative of LCRA’s water customers.

Organizations Eligible for CDPP Grants

- Cities and counties
- Schools
- Libraries
- Museums
- Civic organizations
- Volunteer fire departments
- Emergency medical services
- Historical associations

Over the past 40 years, 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. These standards serve as guidelines for evaluating agencies’ grant programs as part of an overall effort to improve grant-making practices. While LCRA’s grant program generally works well and Sunset staff identified no significant problems, applying common best practices to LCRA’s grant-making activities helps ensure these legislatively authorized investments work as anticipated. The following material describes areas where LCRA’s grant-making activities could benefit from these best practices.

Findings

LCRA's grant program policies do not adequately protect against potential conflicts of interest.

A granting agency should establish a formalized conflict-of-interest policy to reduce the reality or perception of awarding grants based on relationships rather than merit. LCRA's grant program lacks a comprehensive approach to addressing potential conflicts, as described below.

No ethics policy exists for the customer representatives reviewing applications and awarding grants.

- **No specific conflict of interest policy.** LCRA does not have a conflict-of-interest policy specific to CDPP. Instead, LCRA staff and board members tasked to administer CDPP operate under LCRA's employee and board ethics policies to address conflicts of interest as they relate to the program. However, no ethics policy specific to CDPP exists to cover the customer representatives involved in reviewing applications and awarding grants.
- **No disclosure of relationships.** LCRA does not require staff or review committee members to disclose current or previous relationships with grant applicants before scoring and selection begins or at any point in the grant process. LCRA does not publicly disclose the individuals on the review committee, making identification of relationships and potential conflicts of interest impossible.
- **No recusal requirement.** LCRA does not require staff or review committee members to recuse themselves from scoring or voting on grant applications submitted by entities in which they have a financial or personal interest. While not prescribed in CDPP's process manual, in practice, if LCRA staff were to identify a conflict of interest within the CDPP program, they would remove voting power from the staff member or board member in question. However, without a disclosure requirement, LCRA bears the burden of detecting any potential conflicts before the voting and selection process begins.

LCRA does not make its criteria for scoring and awarding grants fully transparent to applicants.

Grant applicants should clearly understand the criteria on which they are competing. By program and board policy, LCRA has competitively structured the grants, but does not disclose the scoring criteria to applicants upfront, instead only providing general project eligibility information and matching funds criteria to applicants. Appendix C shows LCRA's current scoring matrix. LCRA's grant review committee established this point scoring scale to give specific weights for project elements that can have a significant impact on an applicant's chance of receiving an award. For example, being from a high-poverty, low-income area can contribute up to 20 points to an applicant's score, projects with a positive impact on water conservation can gain up to 25 points, applicants who are customers of an LCRA wholesale electric customer can gain 15 points, and applicants who do not show the ability to complete the

LCRA does not disclose its grant scoring criteria to applicants.

proposed project on time can be docked up to 20 points. However, applicants do not have access to this level of detail to fully inform their proposals and ensure fairness in opportunity to access grant funds.

Other agencies display their grant program's scoring criteria online and as part of the application materials to provide guidance on how to successfully compete for an award. For example, the Texas Department of Agriculture administers a federal block grant program and posts the scoring information on its website.² Similarly, the Texas Parks and Wildlife Department posts its recreational grant project priority scoring system online, listing the scoring criteria with assigned points and descriptions of each scoring topic.³ Publishing detailed scoring documents online and as part of the application fully informs applicants of an agency's requirements and expectations for grant application submissions.

LCRA has not clearly defined grant priorities or developed measures to track success towards achieving its very broad grant goals.

Grant-making agencies should require evidence of grant program success and use results to improve future performance. LCRA adopted all of the broad economic development purposes authorized in statute as the grant program's goals, as shown in the textbox, *Community Development Partnership Program Goals*. LCRA's internal grant scoring matrix significantly weights up to 45 percent of an applicant's score on generally meeting these goals. However, LCRA has not established specific criteria to further define these broad priorities or metrics by which to measure whether grant projects are actually meeting the program's goals. For example, LCRA has not established quantifiable benchmarks for measuring to what extent CDPP has diversified rural, low-income local economies within the basin or improved the quantity or quality of various public services in communities that have received grant awards.

The significant weighting of such broad goals in the scoring matrix without more clearly defined priorities creates a fairly subjective process overall. LCRA's grant program priorities fluctuate based on the topics of applications received in a given cycle, without an overall strategic plan targeted to community needs or clear mechanisms to measure success. In addition, while LCRA collects data on the categories of projects awarded grants, it does not analyze the data to determine trends in application topics or awards to better respond to emerging needs or trends.

Community Development Partnership Program Goals

- Encourage economic diversification
- Contribute to the health and development of a community to improve the attractiveness of the community to public and private enterprises
- Improve the quality or quantity of services essential for the development of viable communities and economic growth, including services related to
 - community planning,
 - education,
 - employment,
 - health care,
 - public safety,
 - recreation,
 - training (applies to public firefighting organizations, including volunteer fire departments, only),
 - transportation, and
 - volunteer fire departments.

While LCRA's CDPP grant program provides much needed support to many deserving community projects, it could achieve greater impact with a more systematic approach. The table, *Example of Potential CDPP Outcome Measures*, shows one example of how LCRA could establish more specific metrics to better measure how the grants contribute to the program's goals. Articulating and tracking more specific grant goals would enable LCRA to better address specific needs, evaluate long-term impacts, and maximize the positive impact of the grant program overall.

Example of Potential CDPP Outcome Measures

Existing CDPP Program Goal	Existing Output Measures Reported by LCRA	Potential Outcome Measure
<ul style="list-style-type: none"> • Improve the quality or quantity of services essential for the development of viable communities and economic growth, including services related to volunteer fire departments 	<ul style="list-style-type: none"> • Total grant amount • Items purchased by grant • Cost share dollars contributed by organization • Project start and completion date 	<ul style="list-style-type: none"> • Percent decrease in volunteer fire department response time • Percent increase in number of new volunteer fire department volunteers after project completion • Percent increase in number of trained volunteers after receiving new equipment

LCRA is not taking full advantage of available technology to effectively communicate with grantees throughout the process.

Effective use of information systems and technology can help ensure fairness and accountability in dealing with grantees while reducing the grantor's workload. LCRA subscribes to an online grant management tool but does not use its features to interface with applicants throughout the entire grant process. For example, grant applicants only receive a generic timeline of grant deadlines and do not receive any standardized communication during the two to three months between submitting a grant application and receiving the final award decisions, even though LCRA's grant management tool could generate such updates. Responses to a Sunset staff survey of grant applicants indicated frustration with the lack of regular, standardized communication. While LCRA encourages grant applicants to call with any questions, this informal process risks creating discrepancies between how LCRA treats different applicants. Taking advantage of available online application tracking and communication features would reduce the administrative burden on LCRA staff and ensure LCRA provides consistent information to all grantees.

Recommendations

Management Action

4.1 Direct LCRA to develop and adopt a conflict-of-interest policy specific to the grant program including disclosure and recusal elements.

LCRA should adopt a conflict-of-interest policy for CDPP by May 1, 2019, in time to implement it for the July 1, 2019 grant cycle start date. The policy should require LCRA staff who score grant applications

and members of the CDPP review committee who vote on grant awards to disclose conflicts of interest, including current and previous relationships with grant applicants. Under this recommendation, a review committee member who provided technical assistance to an applicant under consideration would also be required to disclose such information.

In addition, the policy should require staff to recuse themselves from scoring any application from which they would directly benefit, and should require review committee members to recuse themselves from voting on any application from which they would directly benefit. LCRA also should publish the names of CDPP review committee members and the organizations they represent on LCRA's website so that grant applicants have the ability to disclose their personal, professional, and financial relationships with CDPP review committee members in their grant application. Adopting a conflict of interest policy for CDPP would help ensure all awards are merit based while more effectively mitigating any real or perceived conflicts of interest.

4.2 Direct LCRA to update its grant application materials to more clearly disclose scoring criteria to applicants.

LCRA should include scoring criteria in the CDPP grant application, clearly describing LCRA's priorities for projects so grantees can clearly understand the criteria by which LCRA will evaluate their grant application. LCRA should also post a scoring guide or methodology online, similar to the practices of the Texas Department of Agriculture and Texas Parks and Wildlife Department. Making the scoring criteria available to grant applicants and members of the public would increase the overall fairness and transparency of the grant program. LCRA should include this scoring criteria in the grant application materials by May 1, 2019, in time to implement it for the grant cycle beginning on July 1, 2019.

4.3 Direct LCRA to update the overall goals for its CDPP grant program to include more specific program priorities and outcome measures to inform future investments.

LCRA should develop more specific overall grant program goals and associated application criteria, and create measurable benchmarks to track overall progress towards achieving these goals. LCRA should develop these goals, criteria, and benchmarks by May 1, 2019, in time to include them as part of the grant cycle beginning on July 1, 2019. LCRA should prioritize specific grant program goals in part by more systematically analyzing trends in applications received and awarded to pinpoint community needs and interest. LCRA should also identify specific benchmarks for achieving its overall stated economic development goals in the rural, low-income parts of its service area.

LCRA should also establish measures to determine the impact and outcomes of specific grants awarded according to the newly prioritized program goals. For example, within an overall program goal of enhancing public health and safety services, LCRA could consider tracking response times for communities receiving grants to improve local fire department infrastructure. LCRA should use this information to make informed strategic decisions about the program's performance in achieving its goals, and annually report progress to the LCRA board. Establishing improved goals and benchmarks for measuring success would allow LCRA to better gauge the grant program's impact on communities in the Colorado River basin as envisioned in state law.

4.4 Direct LCRA to use available technology to improve grant tracking and communication to applicants and grantees.

LCRA should create a formalized application tracking and communication mechanism for grant applicants by May 1, 2019. LCRA should ensure that all applicants receive the same information about

their application status by taking advantage of available technology. LCRA should notify applicants when their application reaches each of the following benchmarks:

- Application submission
- First round of application scoring by internal review committee
- Second round of application scoring by external review committee
- Grant decisions, with specific information about how applications were scored so that applicants can learn more about why applications were either selected or denied

Establishing an automated tracking mechanism would alleviate administrative burdens for LCRA staff associated with individual communication with grantees and ensure all grantees receive consistent information throughout the process.

Fiscal Implication

Establishing a standardized grant application tracking and communication mechanism will have a small cost to LCRA. While LCRA's existing software already has the functionality needed to track applications and communicate with applicants, opting into these features would have a minimal cost that LCRA is unable to estimate at this time. However, LCRA could potentially see a savings in staff time by automating and making communication through the process more predictable and transparent to grantees.

¹ Section 1, Chapter 326 (S. B. 219), Acts of the 74th Texas Legislature, Regular Session, 1995.

² "Community Development Fund Application and Guide," Texas Department of Agriculture, accessed August 28, 2018, [http://www.texasagriculture.gov/GrantsServices/RuralEconomicDevelopment/RuralCommunityDevelopmentBlockGrant\(CDBG\)/CDBGResources/Applications/CommunityDevelopmentFundApplicationGuide.aspx](http://www.texasagriculture.gov/GrantsServices/RuralEconomicDevelopment/RuralCommunityDevelopmentBlockGrant(CDBG)/CDBGResources/Applications/CommunityDevelopmentFundApplicationGuide.aspx).

³ "Local Parks Grant Scoring Criteria," Texas Parks and Wildlife Department, accessed August 28, 2018, <https://tpwd.texas.gov/business/grants/recreation-grants/local-parks-grants-scoring-criteria>.

ISSUE 5

LCRA Should Implement Policies to Enhance Accountability and Better Comply With the Intent of State Law.

Background

Senate Bill 523, 84th Legislature, placed 18 river authorities under Sunset review and directed Sunset staff to assess the governance, management, operating structure, and compliance with legislative requirements for each river authority.¹ The Sunset Commission has identified several good government policies, as observed and documented by Sunset staff during 40 years of state government review, that would benefit river authorities. The following material summarizes Sunset staff's analysis of how the Lower Colorado River Authority (LCRA) could benefit from changes needed to ensure compliance with requirements of the Texas Commission on Environmental Quality (TCEQ) rules, and from good government policies the Legislature typically applies to all entities under Sunset review. Sunset staff also performed a newly required assessment of cybersecurity practices given the scope of LCRA's operations.

- **TCEQ-required policies.** TCEQ has a continuing right of supervision over all water districts, including river authorities.² TCEQ rules require certain river authorities and water districts to adopt and comply with a combination of requirements in state law and other good government policies described in the textbox, *Policies Required by TCEQ*.³

Policies Required by TCEQ

Code of ethics – must include provisions to address conflicts of interest, nepotism, standards of conduct, and a prohibition on granting public money

Travel expenditures – must provide for reimbursement of necessary and reasonable travel expenditures

Investments – must comply with the Public Funds Investment Act and Public Funds Collateral Act

Professional services – must prohibit use of competitive bids and maintain a list of at least three prequalified persons or firms for contracts over \$25,000 for professional services

Industrial development and pollution control bonds – must comply with disclosure requirements of these bonds

Management policies – must obtain an independent management audit and comply with the intent of historically underutilized businesses (HUB) and equal employment opportunity (EEO) laws

In addition to TCEQ's required policy related to compliance with the intent of the HUB and EEO laws, the Sunset Act separately requires the Sunset Commission to consider the extent to which an entity under review complies with federal and state laws and rules regarding purchasing guidelines and progress for HUBs and equality of employment opportunity.⁴ Sunset staff routinely evaluates performance regarding these requirements in the course of a Sunset review, but only reports deficiencies significant enough to merit attention.

- **Sunset across-the-board (ATB) recommendations.** The Sunset Commission has developed a set of standard recommendations it applies across the board to all entities reviewed unless a strong reason exists not to do so, reflecting an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. The ATBs contain "good government" standards and reflect review criteria contained in the Sunset Act designed to

ensure open, responsive, and effective government. The concepts contained in these standards are applicable to river authorities, though may need some modification to match their unique structure and functions. As quasi-state agencies created by the Legislature, river authorities directly serve the public interest and while they do not receive a direct appropriation from the Legislature, they are largely funded with public money.

- **Cybersecurity.** The 85th Legislature tasked the Sunset Commission with assessing cybersecurity practices for agencies under review.⁵ The assessment of LCRA's cybersecurity practices focused on identifying whether the authority complied with federal and state requirements and industry cybersecurity best practices. As the owner and operator of critical infrastructure, LCRA also is subject to a variety of federal standards from organizations such as the Federal Energy Reliability Commission, the North American Electric Reliability Corporation, and the Department of Homeland Security. Sunset staff did not perform technical assessments or testing due to lack of technical expertise, but worked closely with LCRA and the Texas Department of Information Resources to gather a thorough understanding of LCRA's technical infrastructure and protocols.

Findings

LCRA's board nepotism policy does not fully comport with TCEQ requirements.

LCRA's board policy on nepotism does not fully reflect the focus, scope, or prohibitions contemplated in state law. TCEQ rules require river authorities to have a nepotism policy following state law that prohibits nepotism in hiring decisions and covers degrees of relationships within the second degree by affinity or the third degree of consanguinity, which includes siblings.⁶ LCRA's employment policy appropriately follows state law prohibiting nepotism. However, LCRA's board policy only addresses nepotism as a conflict of interest issue in contracting and does not address hiring. Also, by not including siblings, the board policy does not define degrees of prohibited relationships as broadly as the law. Finally, the policy does not prohibit board members from participating in prohibited acts. State law prohibits a board member with a conflict from appointing, confirming, or voting for the appointment or confirmation of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office.⁷ LCRA's board policy only requires a board member to file a disclosure if a potential conflict exists. While the Sunset review did not identify any prohibited actions by the board under the law, LCRA should update the policy to more closely match the law's intent.

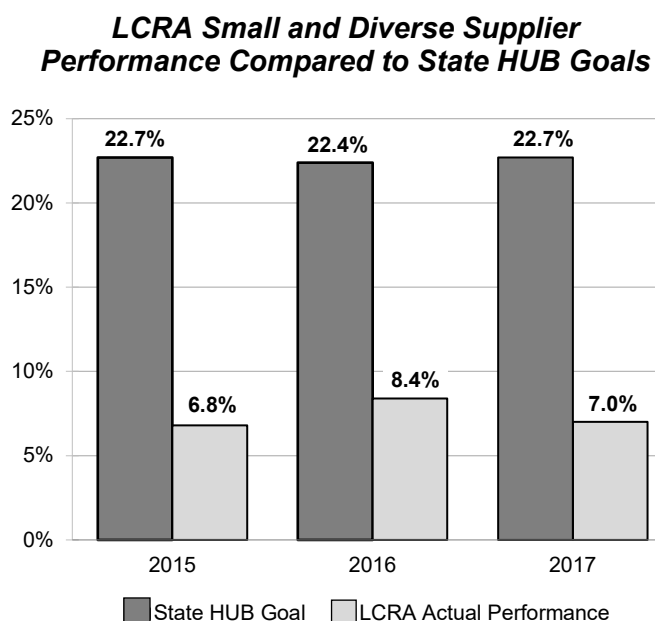
LCRA's board policy addresses nepotism in contracting, but not hiring.

LCRA's Small and Diverse Supplier Program does not fully comply with the intent of HUB laws.

LCRA's Small and Diverse Supplier Program has two stated goals — to encourage small and diverse suppliers to participate in LCRA's solicitation process and to develop mutually beneficial business relationships. LCRA's definition of small and diverse suppliers is broader than the state's HUB definition, incorporating all Texas-recognized HUBs, as well as businesses

meeting national definitions from the National Minority Supplier Development Council, Women's Business Enterprise National Council, and U.S. Small Business Administration.

LCRA has not implemented several best practices state agencies must follow to ensure good faith efforts in HUB purchasing, resulting in participation rates well below state goals. For example, LCRA has not set overall purchasing goals or established an agency point person for HUB purchasing. Nor has LCRA conducted mentor-protégé activities, developed subcontracting plans for large contracts, or tracked procurements in enough detail to evaluate performance and identify opportunities for improvement. The graph, *LCRA Small and Diverse Supplier Performance Compared to State HUB Goals*, shows how the percentage of LCRA's contracts awarded to diverse businesses compares to the aggregate state average goals for each year. In comparison, Travis County, a political subdivision in LCRA's service area, awarded an average of about 18 percent of contracts to HUB suppliers.⁸



LCRA has not taken effective steps to improve the diversity of its workforce to best meet the intent of EEO laws.

LCRA's employment of minorities and females consistently falls short of statewide civilian workforce percentages in most job categories, but the authority does not have a comprehensive plan in place to improve its workforce diversity. LCRA employs more than 1,800 staff working in a wide variety of professions across its service area. Appendix A shows LCRA has fallen short of statewide civilian workforce percentages for employment of African-American, Hispanic, and female employees in most job categories for the last three years. While some LCRA jobs require technical skills or are located in rural areas, about a third of LCRA's employees perform enterprise-wide support activities such as project management or finance, and more than two-thirds work in the Austin area. When comparing LCRA's workforce to the Austin population instead of the statewide workforce percentages, the authority does not reflect the local demographics. According to the U.S. Census Bureau's 2017 estimates, 49.5 percent of Austin's population is female, 34.5 percent is Hispanic, and 7.6 percent is African-American.⁹ LCRA's workforce is 17.8 percent female, 14.36 Hispanic, and 4.04 percent African-American.

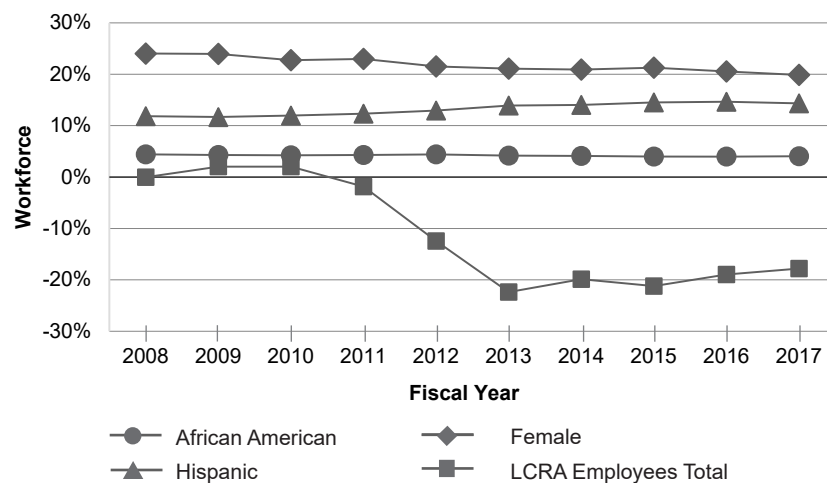
LCRA does not have a comprehensive plan to improve its workforce diversity.

LCRA also does not have a comprehensive policy or plan in place to improve its workforce diversity, leading to unfocused and ultimately ineffective efforts. LCRA has performed several outreach efforts to improve the diversity of its work force, such as attending Prairie View A&M recruiting events and working

with Glassdoor to recruit female engineers. However, these efforts are not part of a unified, focused plan aimed at specific goals, and so far, this scattered approach has been ineffective in improving LCRA's workforce diversity. As shown in the graph, *Stagnant LCRA Workforce Diversity Over Time*, LCRA's workforce diversity percentages have remained fairly unchanged over the previous 10-year period. LCRA's written guidance in board policy and the LCRA employee handbook state LCRA will comply with state and federal EEO laws, but LCRA has no specific goals for increasing workforce diversity other than generally aspiring to have a workforce that looks like Texas.

LCRA's workforce diversity percentages have remained largely unchanged over a 10-year period.

***Stagnant LCRA Workforce Diversity Over Time
FYs 2008–2017***



LCRA's statute does not reflect a good government principle typically applied during Sunset reviews relating to alternative dispute resolution.

LCRA's statute does not include a standard provision encouraging use of alternative dispute resolution procedures. Without this provision, LCRA could miss ways to improve dispute resolutions through more open, inclusive, and conciliatory processes designed to solve problems by building consensus rather than through contested proceedings or lawsuits. Alternative dispute resolution procedures could apply to internal employee grievances, interagency conflicts, contract disputes, actual or potential contested matters such as water rights disputes, and other areas of potential conflict.

LCRA should continue to implement state cybersecurity requirements and industry best practices.

Sunset staff found no issues relating to LCRA's cybersecurity practices that require action by the Sunset Commission or the Legislature, and communicated the results of this assessment directly to LCRA.

Recommendations

Change in Statute

5.1 Apply the good government standard relating to alternative dispute resolution to LCRA's statute.

This recommendation would require LCRA to develop and implement a policy to encourage alternative procedures for dispute resolution. LCRA would also coordinate implementation of the policy, provide training as needed, and collect any related data concerning the effectiveness of these procedures.

Management Action

5.2 Direct LCRA to update its board nepotism policy to fully conform to TCEQ requirements and state law.

Under this recommendation, LCRA should revise its board nepotism policy to fully comply with state law by May 1, 2019. The policy should cover when the board appoints, confirms, or votes on the confirmation of an appointment when a nepotism conflict exists, and should extend to all relatives contemplated in the law.

5.3 Direct LCRA to improve its Small and Diverse Supplier Program to better comply with the intent of HUB laws.

LCRA should establish a plan to better ensure its Small and Diverse Supplier Program complies with state law and TCEQ requirements regarding the intent and provisions of HUB laws. LCRA should complete the plan by May 1, 2019, including the following elements:

- Goals for the program
- Centrally coordinated point person
- Hosting forums for diverse business
- Mentor-protégé activities for diverse business
- Diversity subcontracting plans where feasible for contracts over \$100,000
- Tracking and reporting data to senior management and the LCRA board

LCRA management should monitor the status of the program, evaluate its effectiveness against established organizational goals, direct modifications as needed to achieve these goals, and report progress to LCRA's board annually.

5.4 Direct LCRA to plan, more proactively implement, and monitor its efforts to increase workforce diversity.

This recommendation would direct LCRA to develop a plan to diversify its workforce. LCRA should complete the plan by May 1, 2019. LCRA management should monitor progress towards achieving the plan's goals, including annually evaluating the authority's workforce diversity statistics, and report this progress to LCRA's board. This recommendation would help ensure LCRA's workforce diversity efforts are part of a coordinated plan with specified goals and objectives and measureable results.

Fiscal Implication

These recommendations would not have a significant fiscal impact to LCRA. LCRA has 70 staff dedicated to supply chain management, 13 attorneys in the general counsel's office, and a 22-person human resources staff. While the recommendations would require effort, they relate to basic management responsibilities and can be accomplished within existing resources.

.....

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

² 30 T.A.C. Section 292.1(a).

³ 30 T.A.C. Section 292.13.

⁴ All citations to Texas Statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 325.011(9)(A) and 325.011(9)(B), Texas Government Code.

⁵ Section 325.011(14), Texas Government Code.

⁶ 30 T.A.C. Section 292.13(1)(B); Section 573.041, Texas Government Code.

⁷ Ibid.

⁸ NERA Economic Consulting, *Business Disparities in the Travis County, Texas Market Area* (Austin: NERA Consulting, 2016), 10.

⁹ "Quick Facts – Austin city, Texas," U.S. Census Bureau, modified July 1, 2017, <https://www.census.gov/quickfacts/fact/table/austincitytexas/PST045217>.

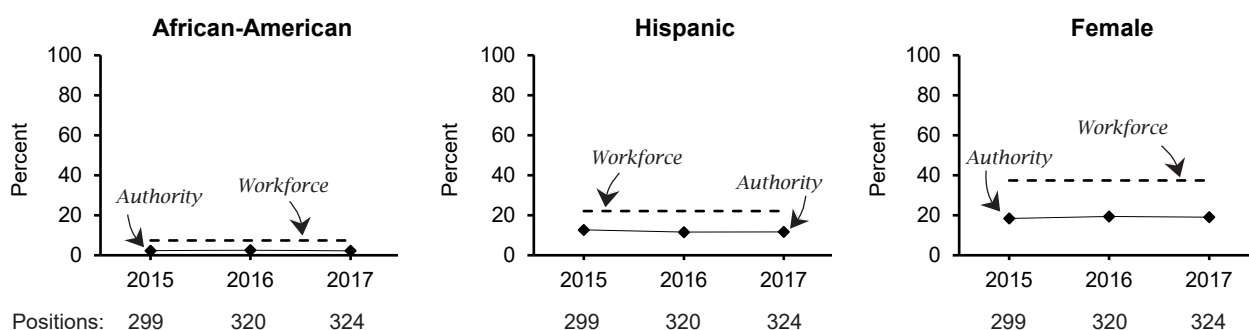
APPENDICES

APPENDIX A

Equal Employment Opportunity Statistics 2015 to 2017

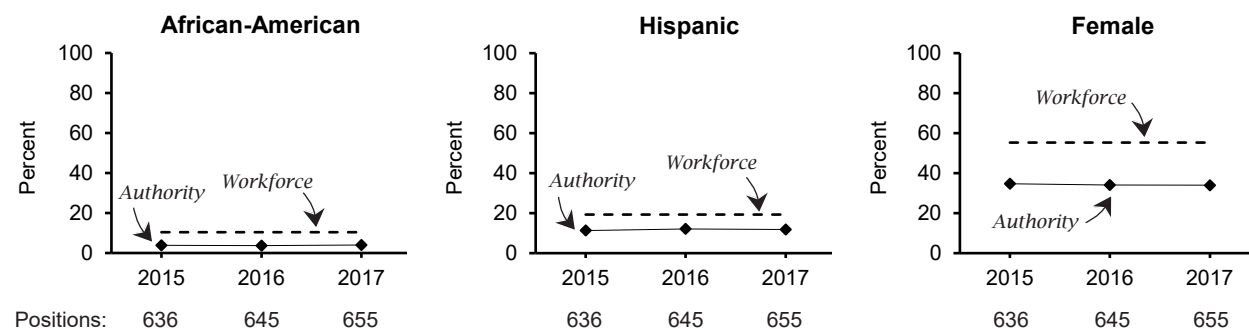
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Lower Colorado River Authority (LCRA).¹ In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.² These percentages provide a yardstick for measuring performance in employing persons in each of these groups. The diamond lines represent LCRA's actual employment percentages for each job category from 2015 to 2017. Of the 18 categories depicted, LCRA fell short of the statewide civilian workforce percentages in 17 categories.

Administration



LCRA fell below the statewide civilian workforce percentage in administration positions for African-Americans, females, and Hispanics for the past three fiscal years.

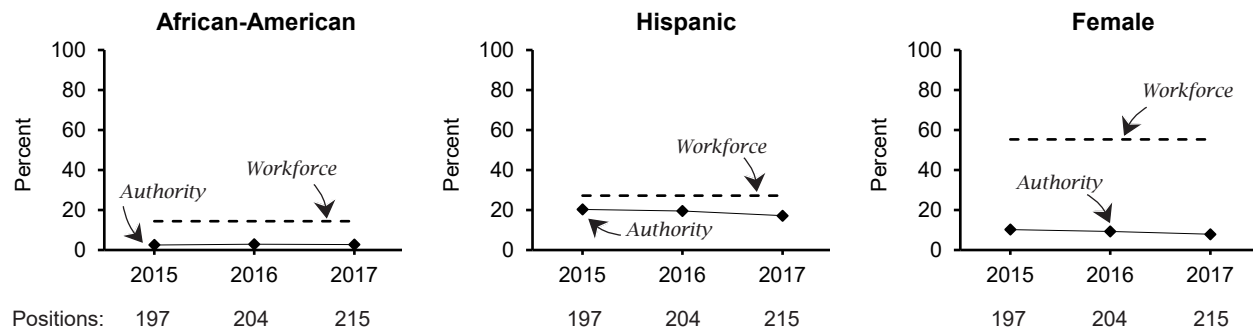
Professional



LCRA fell below the statewide civilian workforce percentage in professional positions for African-Americans, females, and Hispanics for the past three fiscal years.

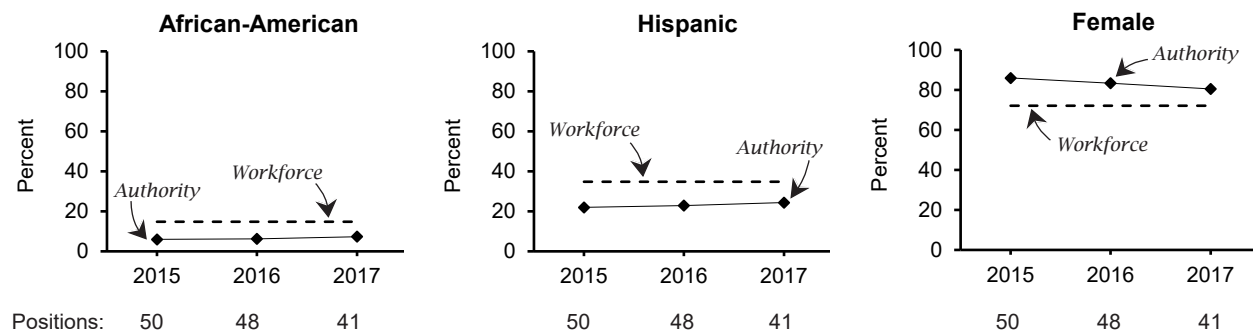
Appendix A

Technical



LCRA fell below the statewide civilian workforce percentage in technical positions for African-Americans, females, and Hispanics for the past three fiscal years.

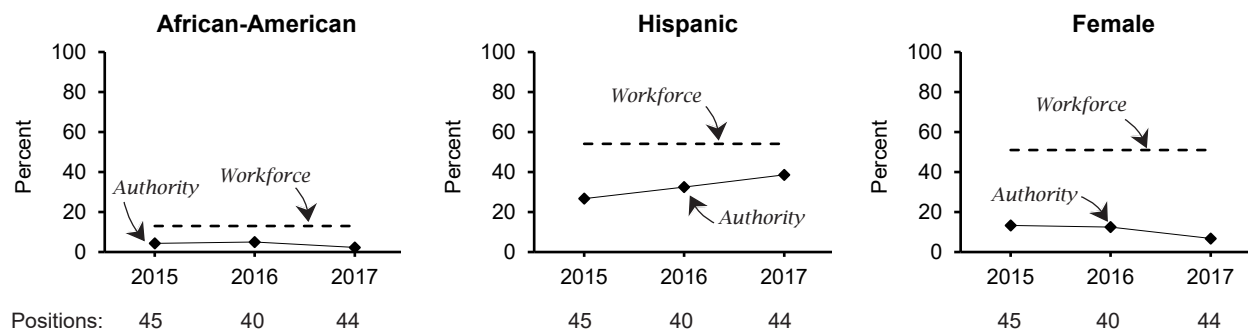
Administrative Support



LCRA exceeded the statewide civilian workforce percentage for females in administrative support positions in fiscal years 2015 through 2017, but fell below the civilian workforce percentage in administration positions for African-Americans and Hispanics for the past three fiscal years.

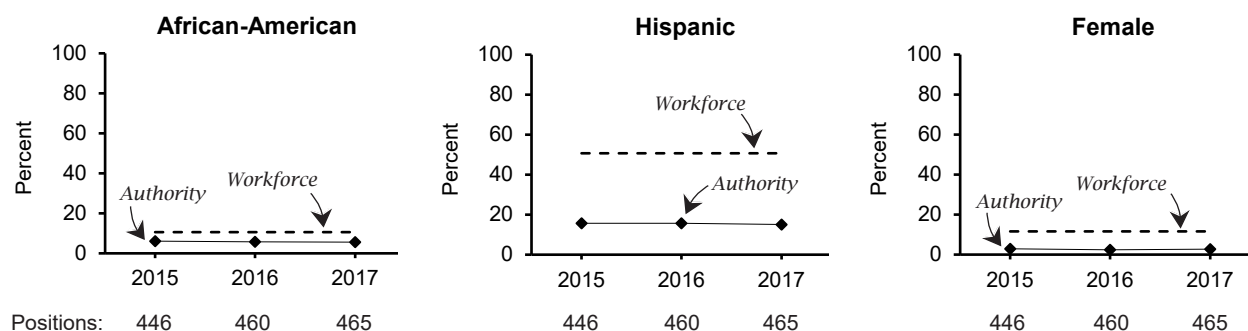
Appendix A

Service/Maintenance



LCRA fell below the statewide civilian workforce percentage in service and maintenance positions for African-Americans, females, and Hispanics for the past three fiscal years.

Skilled Craft



LCRA fell below the statewide civilian workforce percentage in skilled craft positions for African-Americans, females and Hispanics for the past three fiscal years.

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

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

APPENDIX B

The Lower Colorado River Authority's Water Management Plan

Origin

Of the six Highland Lakes, the Lower Colorado River Authority (LCRA) constructed two of them — Lake Buchanan and Lake Travis — in the late 1930's and early 1940's specifically to serve as water supply reservoirs. Decades of contested ownership claims to the water in the Colorado River by LCRA, the City of Austin, and others resulted in a 1988 court order requiring LCRA to establish and update a Water Management Plan that determines how LCRA allocates water from these reservoirs during water supply shortages. The Brazos River Authority is the only other river authority in Texas required to produce anything similar to this plan.¹

Purpose

The Water Management Plan requires LCRA to calculate a “firm yield” amount of water based on the minimum inflows the Highland Lakes received in the 1950's during the state-designated drought of record, thereby establishing two types of raw water LCRA sells — “firm” and “interruptible.” Firm water is guaranteed even during a drought. Interruptible water, which is whatever water is available after LCRA meets its firm water demands, is subordinate to firm water and, therefore, not guaranteed. See Appendix D for more information on firm and interruptible water.

Process

The 1988 court order required LCRA to submit the Water Management Plan and periodic updates to the plan to what is now the Texas Commission on Environmental Quality (TCEQ) for review and approval.² TCEQ prescribes the timeline for updating the Water Management Plan and annually reviews LCRA's compliance with the plan.

Plan history

After receiving state approval for the original plan in 1989, LCRA did so again in 1991, 1992, and 1999. In 2003, LCRA submitted an update to the plan to TCEQ, but the City of Austin, the Texas Parks and Wildlife Department, and other entities contested it. After years of negotiation, TCEQ finally approved the plan in 2010, just as significant drought conditions were setting in throughout the lower Colorado River basin and several other parts of the state. The ensuing severe drought from roughly 2008 to 2016 may soon become Texas' new drought of record, and was a contentious time for water stakeholders. As lake levels dropped to historic lows, LCRA obtained emergency orders from TCEQ each year from 2012 to 2015 that allowed LCRA to cut off most of its interruptible customers entirely and relieve pressure on the Highland Lakes. TCEQ approved LCRA's most recent update to the Water Management Plan in November 2015 but required that LCRA initiate an update of the plan in 2018.³

Current status

As part of the ongoing update process, LCRA has held five meetings with stakeholders since May, and LCRA staff plan to present the plan to the LCRA board for approval in December 2018. Upon board approval of the Water Management Plan, LCRA will submit the plan to TCEQ for review and approval in early 2019. Once TCEQ approves the plan, it will be effective until 2025.

Appendix B

.....

¹ Brazos River Authority, *Confirmed Water Management Plan for Water Permit No. 5851*, (Waco, Texas: Brazos River Authority, April 2, 2018), 2.

² *In Re: The Exceptions of the LCRA and the City of Austin to the Adjudication of Water Rights in the Lower Colorado River Segment of the Colorado River Basin, in the District Court of Bell County*, Cause No. 115, 414-A-1 Final Judgment and Decree issued April 20, 1988.

³ Texas Commission on Environmental Quality, *Approving Amendments to Lower Colorado River Authority's Water Management Plan*, Docket No. 2015-1444-WR (November 20, 2015), Appendix C8.

APPENDIX C

Lower Colorado River Authority Community Development Partnership Program Score Sheet

Topic	Description	Point Range
S.B. 219 Funding Category (1995)	Projects receive points based on the nine eligible program areas and the impact they will have on the communities in LCRA's wholesale power or water service areas. Projects meeting the following criteria will receive additional points: volunteer fire department; public safety life-saving equipment; public education; and organization or project affected by a natural disaster.	Up to 45
Matching Contribution	Applicants that contribute more than the 20 percent minimum required match receive higher scores. Applicants requesting more than \$5,000 and not meeting the minimum required match are not eligible	0, 3, or 5
Project Impact	Projects impacting more people receive higher scores.	Up to 8
Project Completion	Grant funds will enable applicant to complete overall project. If not, the applicant loses points	5 or -20
Recent Grant Recipient	Applicant that has received a grant within 2–3 years receives -5 points, and an applicant that has received a grant within 4–5 years receives -3 points.	0, -3, or -5
Applicant's Contribution	Applicants receive points based on the match contribution and number of people impacted by the project.	Up to 10
Positive Impact on Natural Resources	Projects that have a positive impact on natural resources by addressing issues such as water conservation, energy conservation, or natural disasters receive additional points.	Up to 25
Electric Customers	Applicant receives points for being a customer of an LCRA wholesale electric customer if that LCRA customer is abiding by the terms and conditions of their wholesale power contract.	0 or 15
Population of the Community or City Where the Project is Located	More points are awarded to projects in smaller, rural communities with fewer resources than those in larger communities. The largest cities lose points. Population is under 5,000 (10 points); population is 5,000–20,000 (5 points); population is 20,001–50,000 (0 points); population is over 50,000 (-5 points).	0, 5, 10, or -5
Poverty Level	Projects in areas where the percentage of persons below poverty is higher than the state level percentage receive additional points.	0 to 10
Per Capita Income	Projects in areas where per capita income falls below the state level receive additional points.	0 to 10

APPENDIX D

Firm Water vs. Interruptible Water

The distinction between the two categories of water LCRA sells — firm and interruptible — is established in the Water Management Plan that LCRA has been updating since a 1988 court order mandated it.

	Availability	Users	Contracts	Price – 2018	Number of Contracts – 2018
Firm Water	<ul style="list-style-type: none"> Guaranteed available even during drought or water shortage Firm water customers are a priority LCRA cannot promise more than it could supply during the drought of record 	Primarily located in the upper basin, the city of Austin and everything upstream of it <ul style="list-style-type: none"> Municipalities Utilities Industry Individual lakeside residences Landscaping and irrigation Recreation (e.g., golf courses) 	<ul style="list-style-type: none"> Unless temporary, three to 100 years LCRA charges firm contract holders a reservation rate for water contracted but not used Accounted for 53 percent of all water used from the Highland Lakes in 2017 	<ul style="list-style-type: none"> \$145 per acre-foot and \$72.50 per acre-foot for reserve ¹ Price includes operations and maintenance costs and river management costs Before LCRA standardized its firm water contracts, some customers entered into contracts with much lower rates 	About 3,800
Interruptible Water	<ul style="list-style-type: none"> Can be partially or entirely curtailed during drought or water shortage Subordinate to firm water customers Customers in the Garwood Irrigation District can be curtailed only under much stricter circumstances than the rest of the interruptible customers 	Primarily located in the lower basin, everything downstream of Austin <ul style="list-style-type: none"> Rice and row crop farms Duck ponds Aquaculture 	<ul style="list-style-type: none"> One year LCRA times water releases based on the crop schedule (“first crop” and “second crop”) Accounted for 22 percent of all water used from the Highland Lakes in 2017 	<ul style="list-style-type: none"> About \$37–\$54 per acre-foot Prices include operations and maintenance costs and a portion of river management costs (excluding Garwood) Prices vary based on irrigation district 	About 190

Appendix D

.....

¹ An acre-foot is equal to the volume of water one foot deep and one acre in area or 325,851 gallons.

APPENDIX E

Staff Review Activities

During the review of the Lower Colorado River Authority (LCRA), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with LCRA personnel; attended the authority's board and committee meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed LCRA documents and reports, histories, state statutes, federal regulations, legislative reports, previous legislation, and literature; and performed background and comparative research.

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

- Toured various LCRA facilities including
 - the River Operations Control Center and Environmental Services Lab in Austin;
 - four of LCRA's six dams (Tom Miller, Buchanan, Wirtz, and Mansfield);
 - irrigation operations at the Gulf Coast Plant #1 in Bay City;
 - the Arbuckle Reservoir in Wharton County;
 - recreational facilities at Black Rock Park on Lake Buchanan; and
 - the Western Maintenance Facility in Marble Falls
- Observed five Water Management Plan participant meetings and an LCRA firm water customer meeting
- Conducted three online surveys of general LCRA stakeholders, organizations applying for LCRA grants, and LCRA permit holders, and evaluated the responses
- Attended the general and water modeling subcommittee meetings of the Region K water planning group, which assists the Texas Water Development Board in the state's water planning process
- Interviewed staff from the Texas Water Development Board, Texas Commission on Environmental Quality, Public Utility Commission of Texas, and other river authorities

Sunset Staff Review of the *Lower Colorado River Authority*

————— *Report Prepared By* —————

Erick Fajardo, *Project Manager*

Mikayla Garrison

Andrew McConnell

Danielle Nasr

Trisha Linebarger

Katharine Teleki, *Project Supervisor*

Jennifer Jones
Acting Director

Sunset Advisory Commission

Location

Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

Mail

PO Box 13066
Austin, TX 78711

Website

www.sunset.texas.gov

Email

sunset@sunset.texas.gov

Phone

(512) 463-1300