Sunset Advisory Commission

Staff Report with Commission Decisions

San Jacinto River Authority

2020–2021

87th Legislature

Sunset Advisory Commission

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Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. Elaborate, custom-designed hardware accentuates the beautifully carved wooden doors. The Sargent and Co. of New Haven, Connecticut created the glass molds especially for the building in the 1880s. The Capitol hardware features incised designs of geometric and stylized floral motifs. This reflects the shift from the Renaissance Revival style of the building's interior architecture to the simpler Aesthetic Movement for its decorative details. Photo credit: Janet Wood

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How to Read Sunset Reports

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

Sunset Staff Report

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

CURRENT VERSION: Sunset Staff Report with Commission Decisions

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

Sunset Staff Report with Final Results

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

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Sunset Commission Decisions

Summary

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

Established in 1937, SJRA is one of 16 remaining river authorities the Legislature created during the 20th century to control and harness the state's rivers for public benefit. Today, SJRA collects over $112 million in annual revenue from providing wholesale water and wastewater services in Montgomery County and Eastern Harris County. SJRA also maintains Lake Conroe with the city of Houston. SJRA does not levy taxes or receive state appropriations.

Like other river authorities, the Sunset Act does not subject SJRA to abolishment but instead places its governance, management, operating structure, and compliance with legislative requirements under a limited review. While the Sunset Commission received extensive public input about matters outside the scope of this limited review, including topics under litigation and broader water policy issues, it did not address them directly. Instead, the commission focused on aspects of SJRA's operations as a governmental entity that indirectly affect some of these topics and public concerns.

With these parameters in mind, the Sunset Commission found SJRA executes its core water supply operations well but needs to improve key support functions. Accordingly, the commission recommends requiring SJRA to develop a public engagement policy and directed SJRA to improve its public communications strategy and online content. The commission also recommends SJRA leadership establish more formal processes and direction for the authority's contracting functions, and adhere to statutory good government practices in the areas of transparency and accountability.

Issue 1

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

Recommendation 1.1, Adopted — Require SJRA to adopt a public engagement policy that guides and encourages public involvement on key decisions.

Recommendation 1.2, Adopted — Direct SJRA to develop a strategic communications plan. (Management action – nonstatutory)

Recommendation 1.3, Adopted as Modified — Direct SJRA to provide prominently on its website clear, understandable information on its rates and fees, and the associated expenses paid for by these rates and fees. (Management action – nonstatutory)

Recommendation 1.4, Adopted — Direct SJRA to regularly update its website to provide current, easily accessible information. (Management action – nonstatutory)

Issue 2

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

Recommendation 2.1, Adopted — Direct SJRA to establish additional guidance for contracting needs and procurement methods and use open solicitations except in documented exceptions. (Management action – nonstatutory)

Recommendation 2.2, Adopted — Direct SJRA to consistently monitor, document, and evaluate vendor performance. (Management action – nonstatutory)

Recommendation 2.3, Adopted as Modified — Direct SJRA to improve the transparency, fairness, and effectiveness of its contracting process, including publishing on its website conflict-of-interest statements from employees who evaluate vendor responses to solicitations. (Management action – nonstatutory)

Issue 3

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

Recommendation 3.1, Adopted — Apply the standard across-the-board requirement regarding the governor's appointment of the presiding officer of the SJRA board.

Recommendation 3.2, Adopted — Apply the standard across-the-board requirement regarding grounds for removal of a board member to SJRA.

Recommendation 3.3, Adopted — Apply the standard across-the-board requirement regarding board member training to the SJRA board.

Recommendation 3.4, Adopted — Apply the standard across-the-board requirement regarding the separation of duties of board members from those of SJRA staff.

Recommendation 3.5, Adopted — Apply the standard across-the-board requirement regarding public testimony to SJRA.

Recommendation 3.6, Adopted — Apply the standard across-the-board requirement regarding developing and maintaining a system for receiving and acting on complaints and making information on complaint procedures available to SJRA.

Recommendation 3.7, Adopted — Direct the Texas Legislative Council to update SJRA's governing law. (Management action – nonstatutory)

Recommendation 3.8, Adopted — Direct SJRA to plan and monitor its efforts to increase workforce diversity. (Management action – nonstatutory)

Fiscal Implication Summary

The Sunset Commission's recommendations would not have a significant impact to the state or SJRA. SJRA should be able to implement the recommendations within its existing resources, though the full impact on the authority will depend on the implementation of recommendations and cannot be estimated.

Summary of Sunset Staff Report

Established in 1937, the San Jacinto River Authority (SJRA) is one of 16 remaining river authorities the Legislature created during the 20th century to control and harness the state's rivers for public benefit. Although serving one of the state's smaller river basins in terms of square miles, SJRA is one of the larger river authority operations and plays an influential role in the region. From its early days in water planning and soil conservation, SJRA has grown into an enterprise that collects over $112 million in annual revenue from providing wholesale water and wastewater services in rapidly growing Montgomery County and to refineries in Eastern Harris County. SJRA also maintains Lake Conroe, which it built with the city of Houston in 1973 to increase the area's long-term water supply. Today, thousands of residents and businesses reside along the lake's shores, with their recreation and livelihoods relying on SJRA and the city maintaining the water there.

Legal disputes cloud SJRA's future but reinforce the need to improve relations with the public.

As in other areas of the state, water in the basin is a precious resource that both provides sustenance and sparks confrontation. During the last decade, after using hundreds of millions of dollars of debt proceeds to expand the scope of its services, SJRA has become entangled in several high-profile legal disputes in both state and federal court, described in Appendix B. These disputes revolve primarily around surface water SJRA provides to comply with now-repealed rules to reduce groundwater pumping in Montgomery County, as well as SJRA's release of water after Hurricane Harvey. The resolution of these cases could impact not only SJRA's future and the water needs of the area's population but also how the state develops water infrastructure moving forward. These lawsuits have required considerable attention, time, and focus from SJRA's board and leadership, and reinforced the need to improve the authority's relationship with the general public. Also, in the wake of Hurricane Harvey, SJRA and other entities are now starting regional planning to identify projects and other efforts to better control flooding. While flood mitigation drew considerable attention from the Legislature and the public in the last legislative session, this reformed flood management process is too early in its implementation for Sunset staff to judge its effectiveness.

Like other river authorities, the Sunset Act does not subject SJRA to abolishment but instead places its governance, management, operating structure, and compliance with legislative requirements under review. In addition to these directives, Sunset staff customarily does not weigh in on topics in active litigation in order to avoid tilting scales in the judicial process. Sunset staff also reserves debates on policy and issues outside its scope — such as the regulation of groundwater and state oversight of water rights — for the Legislature. Accordingly, while this review received extensive public input about topics under litigation and broader water policy issues, this report does not address them directly. Instead, this review focused on other aspects of SJRA's operations as a governmental entity that affect some of these topics and public concerns.

With these parameters in mind, Sunset staff found, in general, SJRA is a sophisticated regional entity that executes its core tasks of planning, building, and maintaining water infrastructure well. SJRA's direct customers have ample input on SJRA projects and levels of service their rates ultimately pay for, and overall they gave SJRA good marks on its performance. However, the review found a need for SJRA to improve key functions that support a modern governmental entity, such as its communications with the general public and other stakeholders, who can have strong and sometimes competing interests. Sunset staff also examined SJRA's contracting function and found a pattern of informal processes that need more structure and direction from SJRA leadership. This report also includes findings and recommendations to implement best practices in the areas of openness and transparency. Together, these recommendations would help SJRA navigate the various challenges it will face to keep the water flowing in the 21st century.

The following material summarizes Sunset staff's key recommendations for the San Jacinto River Authority.

Sunset Staff Issues and Recommendations

Issue 1

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

SJRA is the primary wholesale water provider for Montgomery County and is positioned to help serve an increasing population in the upcoming decades. To help meet growing water needs and accomplish its broad mission throughout the basin, SJRA needs an effective communications strategy to advance projects, especially if the projects could result in increased costs to the general public years before they see the benefits. However, SJRA has not developed a formal strategy for engaging the general public in its activities, struggles to provide clear explanations of its wholesale water rates, and does not maintain important information on its website. A more proactive and strategic approach to communicating and engaging with the public would help SJRA begin to earn the trust of and get buy-in from the communities it ultimately serves.

Key Recommendations

- Require SJRA to adopt a public engagement policy that guides and encourages public involvement on key decisions.
- Direct SJRA to develop a strategic communications plan.
- Direct SJRA to provide clear, understandable information on its rates and fees prominently on its website.

Issue 2

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

SJRA contracts to support water development projects and maintenance of existing infrastructure, as well as services such as engineering and information technology that support the authority as a whole. While SJRA has begun improving its contracting function, the authority lacks guidance to staff and documentation in important areas, such as justifying the need to outsource services and maximizing open competition for contracts. In addition, SJRA lacks consistent documentation for monitoring the performance of its vendors. Adopting other best practices, such as requiring appropriate procurement and contract management training, would further improve the transparency and effectiveness of SJRA's contracting process. Addressing these concerns and implementing best practices would better position the authority to get the most benefit and value from its contracting efforts.

Key Recommendations

- Direct SJRA to establish additional guidance for contracting needs and procurement methods, and use open solicitations except in documented exceptions.
- Direct SJRA to consistently monitor, document, and evaluate vendor performance.
- Direct SJRA to improve the transparency, fairness, and effectiveness of its contracting process.

Issue 3

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

Over the years, Sunset reviews have included a number of standard elements designed to ensure open, responsive, and effective government. SJRA's governing law does not contain several standard provisions, including those related to the governor's appointment of the board president, grounds for removal of a board member, board member training, separation of duties of board members from those of staff, public testimony at board meetings, and maintaining a system for receiving and acting on complaints. SJRA's governing law is also uncodified and difficult for the public to find and understand. Finally, SJRA lacks goals and a plan to increase its workforce diversity.

Key Recommendations

- Apply the standard across-the-board requirements regarding governor appointment of the board's presiding officer, grounds for removal of a board member, board member training, separation of duties of board members from those of staff, public testimony at board meetings, and maintaining a system for receiving and acting on complaints.
- Direct the Texas Legislative Council to update SJRA's governing law.
- Direct SJRA to plan and monitor its efforts to increase workforce diversity.

Fiscal Implication Summary

The recommendations in this report would not have a significant impact to the state or SJRA. SJRA should be able to implement the recommendations within its existing resources, though the full impact on the authority will depend on the implementation of recommendations and cannot be estimated.

Authority at a Glance

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

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

The map on Page 8, *SJRA Watershed Area and Facility Locations*, shows SJRA's jurisdiction, which includes all or part of seven counties in East Texas.[3] Although SJRA's jurisdiction generally excludes the San Jacinto watershed within Harris County, SJRA has operated the Highlands Reservoir and canal system, which delivers untreated water to various customers in Eastern Harris County, since 1944.[4]

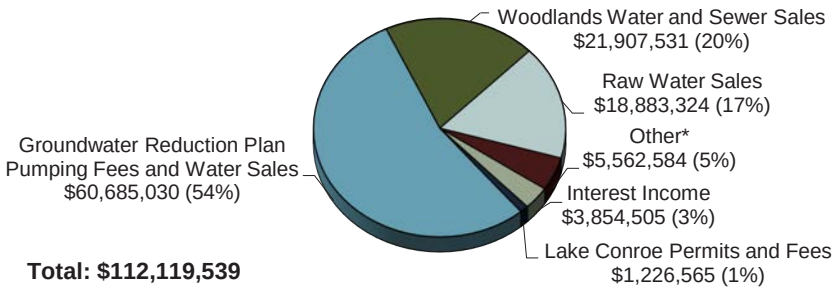
Key Facts

- **Governance.** A seven-member board of directors appointed by the governor with the advice and consent of the Senate oversees SJRA. Four of the directors must reside in Montgomery County.[5] Directors serve staggered six-year terms and elect the board's president.[6] The board meets every month except November.
- **Funding.** SJRA receives no state appropriations but has authority to issue bonds.[7] SJRA also has authority to levy taxes to pay for its operations but has not sought the required voter approval.[8] SJRA generates revenue to pay for its operations and debt service by selling water and wastewater services through contracts as well as issuing permits for structures on Lake Conroe. As the revenue and expenditure charts on the following page show, overall, SJRA collected more than $112 million and spent almost $116 million in fiscal year 2019.[9] The $3.4 million difference resulted from SJRA's operating divisions' reserve fund balances that were spent on division-specific projects. Generally, SJRA's water contracts and board policies direct its operating divisions, listed in the accompanying textbox, to spend revenue

SJRA Operating Divisions

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

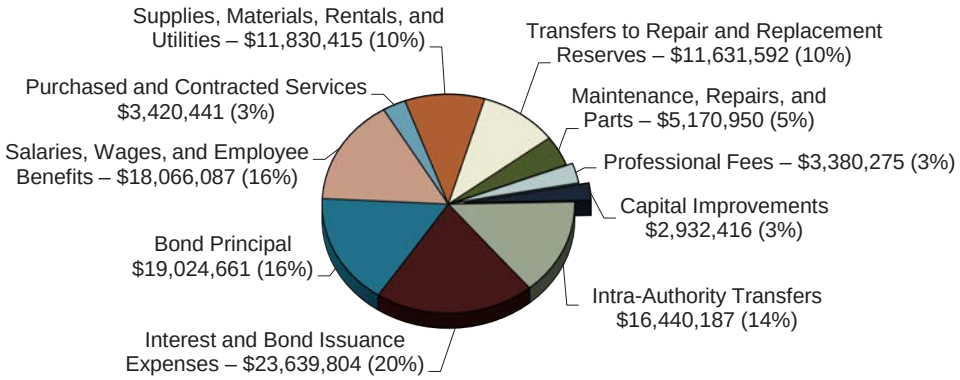
SJRA Sources of Revenue – FY 2019



Total: $112,119,539

* Other includes revenues from the city of Houston to operate and maintain Lake Conroe, grants, and customer contributions for specific capital projects.

SJRA Expenditures – FY 2019



Total: $115,536,828

from its customers on only that division's direct expenses, such as operating a treatment plant, and its share of authority-wide expenses, such as accounting, technical support, and human resources.[10]

- **Staffing.** SJRA employed 164 staff at the end of fiscal year 2019.[11] Of these, 87 directly supported water-related functions and the remainder supported authority-wide functions such as technical support, administration, purchasing, and engineering. About 70 percent of staff work at SJRA's headquarters and surface water treatment plant in Conroe while the remainder work at offices and facilities in Montgomery County and Eastern Harris County, as shown on the map on Page 8.[12] Appendix A compares the percentage of minorities in SJRA's workforce to the statewide civilian labor force for the past three fiscal years.

- **Water supply.** The Texas Commission on Environmental Quality (TCEQ) has permitted more than 168,000 acre-feet of water in the San Jacinto River basin to SJRA, which represents about 19 percent of all permitted water rights in the basin.[13] The table, *SJRA Water Rights Permits*, summarizes these rights.[14] The main reservoir SJRA operates is Lake Conroe, a joint, long-term water supply project built by SJRA and the city of Houston in 1973. SJRA operates the Lake Conroe Dam and manages water supply diversions in coordination with the city, which retains rights to two-thirds of the lake's permitted water.

SJRA Water Rights Permits FY 2019

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

Raw water. SJRA operates the Highlands Reservoir and a 27-mile canal system that brings raw water from Lake Houston to industrial, municipal, and agricultural customers in eastern Harris County through a series of open-air canals and pump stations.[15]

Treated water. SJRA provides treated wholesale groundwater to 11 municipal utility districts (MUDs) in the Montgomery County portion of The Woodlands.[16] SJRA also sells treated surface water from Lake Conroe to the 11 Woodlands MUDs, the city of Conroe, and five other utility providers, to reduce the need to pump groundwater.[17] SJRA's water supply infrastructure includes groundwater wells, water plants, storage tanks, and a potable water transmission system.

- **Wastewater treatment.** SJRA operates regional wastewater treatment plants, lift stations, and pipelines to provide treatment of wastewater for the 11 Woodlands MUDs.[18] SJRA has agreements with the MUDs to monitor equipment that businesses must install to keep fats and grease from entering the wastewater system. SJRA has also applied for a permit from TCEQ to regulate certain industrial businesses' treatment of their wastewater to prevent damage to SJRA's wastewater system.[19]

- **Groundwater reduction plan (GRP) compliance.** In 2009, the groundwater conservation district for Montgomery County adopted rules to reduce overall groundwater pumping by 30 percent.[20] To comply, SJRA constructed a plant to treat and transmit surface water from Lake Conroe, which it completed in 2015. To offset the cost of plant operations and debt service, SJRA entered into contracts with 149 retail utility providers that agreed to pay SJRA a fee for receiving surface water from SJRA or pumping area groundwater.[21] Appendix B contains more information about the litigation around the GRP and the rules that precipitated it.

- **Water quality and safety.** SJRA protects water quality and ensures water safety at Lake Conroe through several regulatory programs and a contract with Montgomery County constables to enforce SJRA's rules and regulations for these programs and general lake recreation.[22]

  Commercial and residential permitting. SJRA requires lakeside businesses and residents to obtain permits and comply with certain minimum safety and construction standards for on-water facilities, such as residential docks, bulkheads, and commercial marinas. SJRA approved 14 new commercial permits and 93 new residential structures in fiscal year 2019.

  On-site sewage facilities. As an authorized agent of TCEQ, SJRA regulates on-site sewage facilities within 2,075 feet of Lake Conroe. SJRA issues permits for residential septic tanks to ensure proper design and construction to protect the lake's water quality.[23] SJRA issued 63 new permits and conducted 231 inspections in fiscal year 2019.

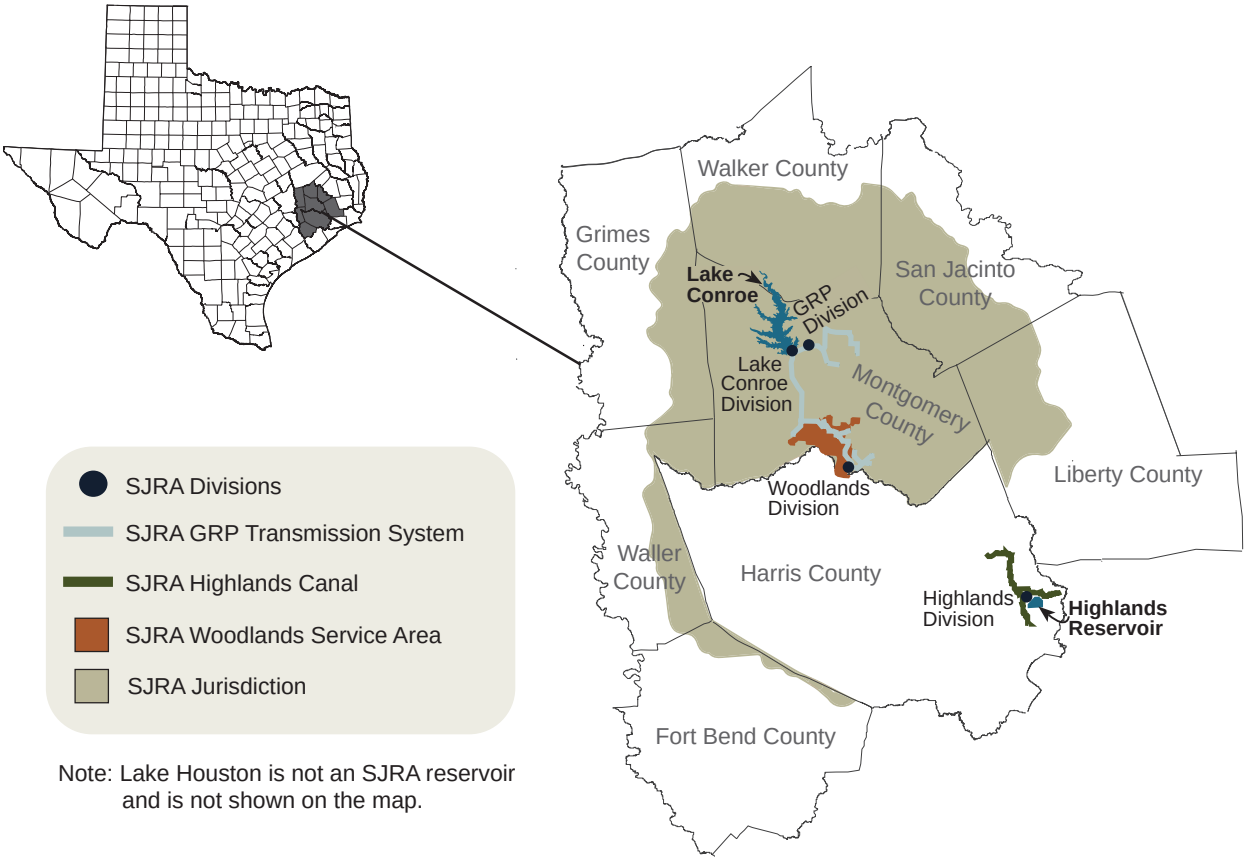
  Clean Rivers Program. SJRA collects water quality samples at 10 sites on Lake Conroe in support of the Houston-Galveston Area Council's administration of the Texas Clean Rivers Program. The council reports this information quarterly to TCEQ.[24]

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

  Seasonal lake lowering. Since 2018, SJRA has adhered to a joint agreement with the city of Houston to release water from Lake Conroe to create one foot of reservoir capacity in the spring and up to two feet of capacity in the fall while the U.S. Army Corps of Engineers and the city complete dredging and flood control infrastructure projects on and around Lake Houston.[25]

Flood planning and warning. SJRA is helping to develop a drainage plan for the San Jacinto watershed and a tool to predict peak storm water levels on Lake Conroe.[26] SJRA has also applied for grants to fund other flood mitigation projects, such as a feasibility study for flood control dams.[27]

SJRA Watershed Area and Facility Locations



Note: Lake Houston is not an SJRA reservoir and is not shown on the map.

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

2 Section 3, H.B. 832, 1937.

3 SJRA, *Water Conservation Plan for San Jacinto River Authority Woodlands Division (2019)*, p. 1-1, accessed November 9, 2020, http://www.sjra.net/wp-content/uploads/2019/03/WCP-Woodlands-02-28-2019.pdf.

[4] Section 5, H.B. 832, 1937; SJRA, *Self-Evaluation Report*, 36, accessed November 9, 2020, https://www.sunset.texas.gov/public/uploads/files/reports/San%20Jacinto%20River%20Authority%20SER.pdf.

[5] Section 1, Chapter 847 (S.B. 526), Acts of the 78th Texas Legislature, Regular Session, 2003.

[6] All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov. Section 681.0085, Texas Government Code; Section 6, H.B. 832, 1937.

[7] Section 10b, Chapter 10 (H.B. 941), Acts of the 46th Texas Legislature, Regular Session, 1939.

[8] Section 9(e), H.B. 832, 1937.

[9] SJRA, *Approved Operating Budgets For Fiscal Year September 1, 2020 to August 31, 2021*, 21, accessed November 9, 2020, https://www.sjra.net/wp-content/uploads/2020/08/FY2021-Final-Budget-as-of-08272020.pdf.

[10] SJRA, *Contract for Groundwater Reduction Planning, Alternative Water Supply, and Related Goods and Services By and Between The San Jacinto River Authority and [Participant]*, Sections 6.04(g) and 9.03, accessed November 10, 2020, http://www.sjra.net/wp-content/uploads/2015/01/GRP-Contract-04192010.pdf; SJRA, *Rate Order (Raw Water Customers)*, 1, accessed November 9, 2020, https://www.sjra.net/wp-content/uploads/2019/08/2019-O-03_Raw-Water.pdf; SJRA, *Approved Operating Budgets For Fiscal Year September 1, 2020 to August 31, 2021*, pp. 7–8 and 89.

[11] SJRA, *Comprehensive Annual Financial Report for the Fiscal Year Ending August 31, 2019*, 92–93, accessed November 9, 2020, https://www.sjra.net/wp-content/uploads/2020/02/SJRA-CAFR-2019-Final.pdf.

[12] Ibid., 93.

[13] Ibid., 94; "Water Rights and Water Use Data," Texas Commission on Environmental Quality, accessed November 9, 2020, https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/wrwud.

[14] SJRA, *Comprehensive Annual Financial Report for the Fiscal Year Ending August 31, 2019*, 94–95.

[15] SJRA, *Approved Operating Budgets For Fiscal Year September 1, 2020 to August 31, 2021*, 22.

[16] Ibid., 50.

[17] SJRA, *Groundwater Reduction Plan–Monthly Operations Report*, 2, accessed November 10, 2020, https://www.sjra.net/wp-content/uploads/2020/09/2020_09_GRP_Monthly-Operations-Report_August.pdf.

[18] SJRA, *Approved Operating Budgets For Fiscal Year September 1, 2020 to August 31, 2021*, 50.

[19] "Reducing Fats, Oils, and Grease in Your Commercial Kitchen," SJRA, accessed November 10, 2020, https://www.sjra.net/woodlands/fog-fats-oils-grease/commercial-industrial/.

[20] Lone Star Groundwater Conservation District, *Groundwater Management Plan*, accessed November 10, 2020, https://www.twdb.texas.gov/groundwater/docs/GCD/lsgcd/lsgcd_mgmt_plan2013.pdf.

[21] SJRA, *Approved Operating Budgets For Fiscal Year September 1, 2020 to August 31, 2021*, 68.

[22] SJRA, *Lake Conroe Reservoir Rules and Regulations*, accessed November 9, 2020, http://www.sjra.net/wp-content/uploads/2015/03/Lake-Conroe-Rules-and-Regulations-2015.pdf.

[23] SJRA, *Order Adopting new Rules for On-Site Sewage Facilities*, accessed November 10, 2020, http://www.sjra.net/wp-content/uploads/2015/01/Order-Adopting-Rules-for-On-Site-Sewage-Facilities-Within-2075-feet-of-Lake-Conroe-Texas_121015.pdf.pdf.

[24] Houston-Galveston Area Council, *Clean Rivers Program – Roles*, accessed November 10, 2020, http://www.h-gac.com/clean-rivers-program/documents/clean_rivers_program_roles.pdf; "Earning A 5-star (er, Frog) Rating," SJRA, last updated May 28, 2020, https://docklinemagazine.com/2020/05/lake-conroe-clean-rivers-sampling-program/; SJRA, *Lake Conroe Watershed Protection Plan Progress Report*, accessed November 10, 2020, http://www.sjra.net/wp-content/uploads/2018/03/Lake-Conroe-Watershed-Protection-Plan-2017-Progress-Report-Final.pdf.

[25] SJRA, "SJRA Board of Directors Recommends Renewing Flood Mitigation Strategy," press release, February 25, 2020, https://www.sjra.net/wp-content/uploads/2020/02/02-25-2020-Press-Release-Board-Recommendation-Lake-Conroe.pdf.

[26] "Frequently Asked Questions," San Jacinto Watershed Master Drainage Plan, accessed November 10, 2020, https://sanjacstudy.org/frequently-asked-questions/; SJRA, "SJRA Flood Forecasting and Reservoir Operations Tool Public Meeting Thursday," press release, October 22, 2019, https://www.sjra.net/wp-content/uploads/2019/10/10-22-2019-Press-Release-SJRA-Flood-Forecasting-and-Reservoir-Operations-Tool-Public-Meeting.pdf.

[27] "Grants to aid in flood mitigation projects," SJRA, accessed November 9, 2020, https://www.sjra.net/floodmanagement/grants/.

Issue 1

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

Background

Like other river authorities, state law authorizes the San Jacinto River Authority (SJRA) to conduct a broad range of activities.[1] In practice, the authority engages in long-term water supply planning; provides wholesale water and wastewater treatment services to retail utilities in the area; operates the dam at Lake Conroe and permits structures on the lake; and more recently, engages in flood management activities.

SJRA is the primary wholesale water supplier for Montgomery County and provides raw water for industrial and other water users in Eastern Harris County. As a wholesale provider, SJRA's direct customers are mostly retail utility providers and industrial water users, not the general public who ultimately consumes the water for domestic use, as explained in the *SJRA Stakeholders* textbox. As such, SJRA's interactions with the general public have historically been limited to individuals applying for permits on Lake Conroe or residents near an SJRA construction project. But in the last decade two key events, detailed in the textbox below, have increased SJRA's visibility to the general public: the implementation of the authority's groundwater reduction plan (GRP) in 2010, which increased the cost of water, and Hurricane Harvey in 2017.[2] As summarized in Appendix B, SJRA is currently embroiled in litigation associated with both events.

SJRA Stakeholders

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

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

Community interests and general public: Chambers of commerce, lions clubs, and other groups and individuals interested in water management in the San Jacinto River basin. May or may not be consumers served by a retail utility that purchases water from SJRA.

Notable Events Impacting SJRA's Visibility

Groundwater reduction plan. To comply with the 2009 rules of the groundwater conservation district for Montgomery County that required certain water users to reduce groundwater pumping by 30 percent, SJRA completed a surface water treatment plant in 2015 so any retail utility provider could contract with SJRA to get surface water to reduce its use of groundwater. Ultimately, 149 utilities entered into contracts with the authority. SJRA designed, financed, and constructed the plant and 55-mile transmission system to enable the authority and these contracted utilities, in aggregate, to meet the reduction requirement. SJRA describes the arrangement as "selling compliance" with the groundwater district's reduction rules, which a judge declared invalid in 2018. SJRA financed the project with nearly $500 million of mostly Texas Water Development Board revenue bond proceeds.

Hurricane Harvey. To safely pass storm water through and prevent damage to the Lake Conroe Dam, in the immediate aftermath of Hurricane Harvey's record rainfall in 2017, SJRA began releasing unprecedented amounts of water from Lake Conroe downstream into areas also being impacted by the storm's record rainfall.

Due to the ongoing litigation surrounding the GRP and SJRA's actions during Hurricane Harvey, Sunset staff did not assess these specific actions. However, Sunset staff did evaluate how SJRA engages and communicates with the public generally, a common feature of Sunset reviews. Similar to some other

regional entities Sunset has reviewed, such as the Lower Colorado River Authority and the Capital Metropolitan Transportation Authority, this review considered the adequacy of SJRA's engagement and communication strategies in light of the authority's increased prominence.

Findings

SJRA's important role as a water supplier requires a more robust, proactive, and strategic approach to communications.

According to the draft *2021 Region H Regional Water Plan*, Montgomery County is expected to see the greatest relative growth in water demand in the region, with a 169 percent increase during the next 50 years.[3] As the main water supplier in the county, SJRA has the potential to play a key role in helping meet this demand, depending on the outcome of its legal proceedings. However, with most of Harris County outside its jurisdiction, SJRA must rely on partnerships and contracts with its customers and other regional entities, summarized in Appendix C, to not only meet the growing water need but to accomplish its broad mission throughout the basin. For example, SJRA lacks dedicated funding to pay for flood mitigation projects, so it has partnered with the Harris County Flood Control District and others as it assumes a larger role in addressing flooding. This complex arrangement exacerbates communication challenges, but for SJRA to achieve its vision of being a trusted leader in the management of the basin's water resources, it needs an effective communications strategy to advance projects, especially if the projects could result in increased costs to consumers years before they see the benefits.

Protracted legal disputes and controversies have strained SJRA's relationship with some stakeholders.

Sunset staff observed how protracted legal disputes and other controversies have strained SJRA's relationship with some stakeholders and communities, eroding trust in its decision making and jeopardizing its ability to conduct the long-term planning and construction for which the Legislature created it. SJRA's 2019 strategic plan noted comments from community interests, such as chambers of commerce, and legislative offices that the authority's public outreach needed "significant improvement."[4] Similarly, responses to a Sunset staff survey indicated the general public was highly critical of SJRA's efforts to get input from and communicate with them, in contrast to SJRA's direct customers who were generally satisfied with the authority's performance. While those responses may not represent everyone in SJRA's basin, they highlight a disparity between the authority's relationship with its direct customers and the general public.

SJRA recognizes the need to improve its public communications but still has work to do.

Recognizing the need to improve its public communications, over the last year SJRA has increased its use of social media and started developing a communications plan, beginning with contracting for a public opinion poll and focus groups to assess the general public's understanding and opinion of the authority. While good first steps, SJRA has not finalized the content of the plan and, as discussed below, still has work to do to better position itself to effectively communicate with, earn the trust of, and get buy-in from the communities it ultimately serves.

- **Misunderstood relationship with direct customers.** As a wholesale water provider, SJRA depends on its direct customers to fund water supply projects and infrastructure improvements. However, SJRA has not clearly conveyed the role its direct customers play in the authority's budgeting and project planning processes, contributing to the misperception that SJRA makes critical decisions unilaterally. For example, SJRA does not clearly explain the extent to which its direct customers, the utilities it sells water to, are directly involved in SJRA's planning process and in setting its budget. These direct customers can recommend SJRA postpone certain infrastructure improvements or use debt service reserve funds to limit or prevent rate increases. Also, the direct customers typically approve SJRA's budget and water rates before they go to its board for official approval, and the board rarely, if ever, deviates from what the direct customers have approved.

  SJRA does not clearly explain that its customers are directly involved in setting its budget.

  Without this information, the appearance to the public is that SJRA makes these decisions on its own — decisions that directly impact the public's water bills — not realizing their utility providers play a large role in determining this as well. As a result, the public's negative perceptions are often directed solely at SJRA.

- **No formal, proactive strategy for public engagement.** SJRA actively communicates with residents impacted by its construction projects, such as informing them about road closures and construction schedules, but does not consistently engage the general public early in its decision-making and planning processes. Instead, SJRA has historically relied on its customers and other entities that serve the public directly to act as a go-between for public engagement and communication, often at the urging of these entities. SJRA's recent public opinion poll revealed most respondents had a negative opinion of the authority, no opinion of it, or had not heard of it, highlighting the need for more direct outreach to the public from SJRA rather than relying on others to speak on its behalf or look out for its interests.

  SJRA could have done more to gather input from and educate residents before lowering Lake Conroe.

  Seasonal lowering of Lake Conroe. As the *Seasonal Lake Lowering Strategy* textbox on the following page describes, SJRA began a temporary flood mitigation strategy for areas downstream of Lake Conroe in 2018 that has resulted in SJRA lowering the lake twice per year.[5] While Sunset staff did not evaluate the merits of the board's decision to recommend seasonal water releases upon request from the city of Houston, staff did assess the decision-making process. Although the decision to release this water was not SJRA's alone, the authority should have recognized the impact it would have on thousands of lake residents and missed an opportunity to get input, educate the public on the city of Houston's role in the decision, and address concerns early in the process. The first time the proposal came up for public discussion at a board meeting in April 2018, the board voted to move forward and then continued the strategy in 2019.[6] Not until hundreds of individuals attended the authority's December 2019 board meeting to voice their opposition did SJRA hold a special public meeting to discuss the strategy.[7] Further, SJRA did not publish any written communication

explaining the reasoning behind the strategy until November 2019, more than a year after first implementing it.[8] This void resulted in affected businesses and residents using Houston and SJRA press releases to argue SJRA deceived the public about how temporary the strategy really was. Ultimately, SJRA could have gone beyond the minimum requirements to gather input from and educate residents on the proposal before moving forward with a recommendation to the city of Houston.

Seasonal Lake Lowering Strategy

Following Hurricane Harvey in 2017, Governor Abbott issued a press release directing SJRA to get more involved in flood management in the region by identifying flood mitigation strategies, implementing immediate and long-term solutions, and identifying funding for these solutions. In the spring of 2018, SJRA, the city of Houston, and the Texas Division of Emergency Management coordinated on the development of a strategy to increase capacity to store rainfall in Lake Conroe while the U.S. Army Corps of Engineers and the city complete dredging and flood control infrastructure on and around Lake Houston. Under the current strategy recommended by SJRA's board, the authority agrees to lower Lake Conroe one foot in the spring and 1.5 feet in the fall. If a named storm is forecast to impact the region, the city of Houston may request that SJRA lower Lake Conroe an additional six inches.

All releases from Lake Conroe have come from the city of Houston's two-thirds share of permitted water supply in the lake. To execute the strategy, the city requests the releases noted above in writing. Despite a formal complaint by the Lake Conroe Association, Texas Commission on Environmental Quality staff indicated the strategy has not violated the city's or SJRA's water rights permits.

SJRA is missing opportunities to help build trust with the general public.

Key planning efforts. In developing two key planning documents, SJRA does not proactively include groups such as homeowners' associations or the public at large, missing opportunities to help build trust between SJRA and the general public. In 2018 SJRA hired a consultant to update its strategic plan, which included conducting focus groups with various stakeholders, including SJRA's direct customers, elected officials, and chambers of commerce.[9] However, the process did not include outreach to members of the general public or even those with a direct relationship to the authority, such as permit holders on Lake Conroe. A similar reliance on input from invited stakeholders but not the general public occurred with the authority's *Raw Water Supply Master Plan*, which feeds into the regional and state water plans and is a key tool SJRA uses to address factors unique to its operations, plan for future water projects, and identify cost-effective solutions to meet those needs.[10] While some stakeholders, such as representatives of Montgomery County, arguably represent their residents, SJRA should not rely on those entities to provide the perspective it needs. In comparison, some other river authorities, such as the Lower Colorado River Authority, have included the public in similar planning processes.

Lake Conroe permittee meetings. SJRA hosts annual meetings of commercial and on-site sewage facility permittees but not residential permittees. Although SJRA has over 4,000 residential permittees and gathering them in person could be challenging logistically, the authority could consider other forms of outreach, such as focus groups or free online surveys, to get their input.

- **Limited evaluation of communications' effectiveness.** SJRA's Public Communications Department's five-year business plan, which guides the department's activities and prioritizes areas for improvement, includes several key performance measures. However, as highlighted in the *Communications Performance Measures* table, the measures focus on assessing internal staff activity rather than gauging the reach and effectiveness of SJRA's communications efforts. Although SJRA informally evaluates some more meaningful measures, such as the top 10 Facebook stories individuals liked, it has not used other tools at its disposal. For example, SJRA uses a software program to cull media stories about the authority, but has not taken advantage of the software's sentiment analysis feature to evaluate whether the tone of stories are positive or negative. A more comprehensive set of formal measures would help SJRA identify which topics are truly engaging its various audiences, which communication platforms drive the most traffic, and how well its messages are received.

Communications Performance Measures

Service	Current Measures	Potential Output or Outcome Measures
Website	Update authority website with fresh and accurate information as necessary. Time sensitive information to be posted within 48 hours of receiving	Number of visits to SJRA's website and pages per session
		Most frequently visited pages
Social media outlets	Post authority related or industry appropriate material at least four times per week	Number (or growth) year over year of social media followers
Media relations	Respond to media inquiries and provide accurate information within 24 hours of request	Number of and tone of media stories
		Percent of media members who rate SJRA's public information as effective
Public speaking events	Work with each SJRA operating division to schedule their participation in at least one educational event per year	Number of attendees at events and special meetings
		Percent of event attendees who found information helpful

SJRA does not provide sufficiently clear information about its wholesale water rates and fees, contributing to confusion about what consumers are paying for.

As a wholesale water provider, SJRA does not set the retail water rates consumers ultimately pay. The utility providers that buy wholesale water from SJRA, such as cities, municipal utility districts, and private utilities, set retail water rates. SJRA establishes its wholesale water rates and GRP-related fees by adopting formal rate orders. Although SJRA posts these orders online, it does not provide a clear, easily accessible explanation of how it sets its water rates and fees, what they mean for consumers, or how certain retail utility providers can add to the amount charged by SJRA to cover things such as leaks in their system. A frequent complaint during the Sunset review was consumers often see an "SJRA fee" or "surface water conversion fee" listed on their monthly bill with little to no explanation. SJRA's public opinion poll confirms many consumers do not

SJRA Uses Facebook to Explain the "SJRA Fee"

October 2019: "'SJRA, I got a recent bill insert… from the city. Is your rate $3.40?' The short answer is NO. SJRA is a wholesale water provider. Our pumpage fee is $2.73 per 1000 gallons groundwater pumped and $3.15 per 1000 gallons surface water delivered. The city is a wholesale customer of ours and receives a BLEND of the two, their equivalent blended rate is $2.88 per 1000 gallons, not the $3.40 that went out on a recent bill insert…that's a mark-up of 18%..."

know what the fee is for — only about half of respondents correctly identified the fee is used for maintaining a water treatment plant and pipeline.

As highlighted in the accompanying textbox, SJRA occasionally explains through social media posts and board presentations how its rates compare to what consumers see on their bills but does not provide similar information permanently on its website in a prominent location and understandable format.[11] Consumers should not have to dig through months of social media posts to discover such critical information. While SJRA does not control utilities' ultimate retail rates and should not be responsible for explaining those to consumers, the authority does have a responsibility to explain its own rates and fees, and the impact they may have on retail rates.

In comparison, several other wholesale water providers in the region explain their rates and fees, which are higher than SJRA's, on the front page of their website and clearly describe how some retail utility providers modify the fees when passing them on to consumers to cover other costs.[12]

Despite a recent reorganization, SJRA's website does not provide clear and easily accessible information.

Examples of Website Problems

- No governing law or any explanation of how someone could locate it
- Missing key board policies, such as the ethics policy required by the Texas Commission on Environmental Quality
- No information about how someone can appeal a denial related to an on-site sewage facility permit, despite program rules indicating an appeal is possible
- Information about Lake Conroe appears in three different places on the website and can seem contradictory to the uniformed reader who may not, for example, understand the difference between pre-releases and seasonal lowering of the lake

Websites are a primary way for governmental entities to communicate with the public. SJRA's direct customers, potential vendors, and interested stakeholders rely on its website for basic information about the authority as well as critical information about decisions and ongoing projects. However, despite a reorganization last year and strategies in its business plan to drive social media followers to the website, SJRA has not done a thorough review of content. As a result, SJRA's website provides a lot of information but is still hard to navigate and contains outdated, missing, and sometimes confusing information, as highlighted in the *Examples of Website Problems* textbox.

Sunset Staff Recommendations

Change in Statute

1.1 Require SJRA to adopt a public engagement policy that guides and encourages public involvement on key decisions.

This recommendation would require SJRA to adopt a comprehensive policy to guide its approach to getting general public input in advance of major actions and projects. For this policy, SJRA should consider specifically addressing how it will engage stakeholders and the possible use of advisory committees, surveys, community panels, town hall meetings, or other more formal and ongoing strategies. SJRA's operating divisions and communications staff should continue coordinating not only on upcoming projects that would benefit from public outreach, but also on potential future projects that may benefit from public input before the authority makes key decisions. Having a comprehensive public engagement policy would better ensure SJRA proactively anticipates and interacts with those ultimately affected by its decisions.

Management Action

1.2 Direct SJRA to develop a strategic communications plan.

This recommendation would build on and provide SJRA direction in its current effort to create a communications plan. In addition to developing key messages and identifying the tools SJRA uses to communicate those messages, such as its website and social media platforms, the communications plan should include, at a minimum, the following components:

- Identification of SJRA's audiences, including its direct customers, policymakers, other regional water entities, and the general public.
- Explanation of the roles and responsibilities of SJRA staff and board members, its direct customers, and other regional water entities and partners.
- Development of meaningful output and outcome measures, such as those previously identified, to gauge the effectiveness of SJRA's communications efforts.

SJRA should use the communications plan to develop effective means of communicating with its various audiences based on their needs and expectations as well as the authority's goals, and use robust performance measures to assess its efforts and respond to changing dynamics and needs. Along with Recommendation 1.1, this recommendation would align the authority's communications function with its strategic objectives, promote the importance of proactive engagement in decision making, and enhance transparency of SJRA's operations. SJRA's board should approve the plan and could use its Communications Committee to provide input and guidance to staff to develop the plan.

1.3 Direct SJRA to provide clear, understandable information on its rates and fees prominently on its website.

This recommendation would direct SJRA to provide information, in plain language, about its water rates and fees, including a description of how SJRA sets them, the specific amounts, and how the rates and fees may or may not translate directly to charges on consumers' bills. The recommendation is not intended to have SJRA supplant utility providers' direct communications with consumers about retail rates but rather to provide clarity about its wholesale rates and fees that inevitably impact retail rates.

1.4 Direct SJRA to regularly update its website to provide current, easily accessible information.

SJRA should develop a process to routinely monitor, evaluate, and update its website and ensure the information posted is current, clear, accurate, and easily accessible. Additionally, SJRA should, at a minimum, post its governing law and ethics policy in a conspicuous location, provide its appeals process for its onsite sewage facilities permits, and remove outdated or duplicative content.

Fiscal Implication

These recommendations would not have a fiscal impact to the state. Although the recommendations are largely designed to build on SJRA's existing effort to enhance its public communications, any impact on the authority will depend on the implementation of recommendations and cannot be estimated. For example, future in-person outreach events could result in costs, but virtual meetings, such as those the authority has conducted as a result of the COVID-19 pandemic, could reduce costs. SJRA has already allocated $32,000 toward the early phases of developing its communications plan and could accomplish the recommendation within existing resources.

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1 Section 3, Chapter 426 (H.B. 832), Acts of the 45th Texas Legislature, Regular Session, 1937.

2 San Jacinto River Authority (SJRA), *Self-Evaluation Report*, 69, accessed November 9, 2020, https://www.sunset.texas.gov/public/uploads/files/reports/San%20Jacinto%20River%20Authority%20SER.pdf; Lone Star Groundwater Conservation District, *Groundwater Management Plan*, accessed November 9, 2020, https://www.twdb.texas.gov/groundwater/docs/GCD/lsgcd/lsgcd_mgmt_plan2013.pdf; San Jacinto River Authority, "History of Lake Conroe," accessed November 9, 2020, https://www.sjra.net/lakeconroe/history/.

3 Region H Water Planning Group, *2021 Regional Water Plan*, p. 2–6, accessed November 9, 2020, http://regionhwater.org/downloads/2021RegionalWaterPlan/2021_RegionH_RWP_Volume1.pdf.

4 SJRA, *2019 Strategic Plan*, 4–5, accessed November 9, 2020, https://www.sjra.net/wp-content/uploads/2019/07/SJRA-Strategic-Plan-landscape-final-web.pdf.

5 Governor Greg Abbott, "Governor Abbott Announces New Flood Prevention Efforts In Kingwood, Texas," press release, March 15, 2018, https://gov.texas.gov/news/post/governor-abbott-announces-new-flood-prevention-efforts-in-kingwood-texas; SJRA, "San Jacinto River Authority Begins Temporary Seasonal Lake Lowering", news release, August 1, 2018, http://www.sjra.net/wp-content/uploads/2018/08/08-01-2018-Seasonal-Lake-Lowering-Begins.pdf; SJRA, "SJRA Board of Directors Recommends Renewing Flood Mitigation Strategy," news release, February 25, 2020, https://www.sjra.net/wp-content/uploads/2020/02/02-25-2020-Press-Release-Board-Recommendation-Lake-Conroe.pdf; Texas Commission on Environmental Quality, Response to Complaint July 29, 2020, https://reduceflooding.com/wp-content/uploads/2020/08/Letter-to-Erich-Birch.pdf.; Lake Conroe Association, "Lake Conroe Association Files Complaint with TCEQ," press release, June 30, 2020, https://lcatx.com/lca-press-release-june-30-2020/

6 Board of Directors SJRA, April 26, 2018 and February 28, 2019, meeting minutes, accessed November 9, 2020, https://www.sjra.net/about/board/.

7 Board of Directors SJRA, December 12, 2019, meeting minutes, accessed November 9, 2020, https://www.sjra.net/about/board/.

8 "Frequently Asked Questions regarding SJRA/COH Temporary, Flood Mitigation Strategy for Lake Houston and Lake Conroe," SJRA, accessed November 9, 2020, https://www.sjra.net/wp-content/uploads/2019/11/SJRA-COH-Temporary-Flood-Mitigation-Strategy-FAQ_Final.pdf.

9 SJRA, *2019 Strategic Plan*, 5.

10 SJRA, *Raw Water Supply Master Plan Final Report*, pp. 1-8–1-9, accessed November 9, 2020, https://www.sjra.net/wp-content/uploads/2019/10/SJRA_RWSMP.pdf.

11 Facebook post edited to de-identify the specific city being referenced.

12 "Home," North Harris County Regional Water Authority, accessed November 9, 2020, https://www.nhcrwa.com; "Home," West Harris County Regional Water Authority, accessed November 9, 2020, https://www.whcrwa.com; "Why do I have a NFBWA Fee on my monthly water bill?" North Fort Bend Water Authority, accessed November 9, 2020, https://www.nfbwa.com/nfbwa-fee-on-my-bill.

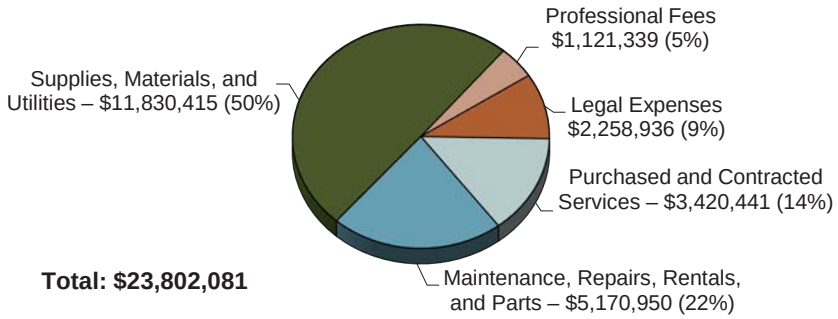
Issue 2

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

Background

The San Jacinto River Authority (SJRA) executes and manages contracts for design, engineering, construction, and inspection services to support water development projects and maintenance of existing infrastructure, as well as services that support the authority such as audits and information technology. The chart, *SJRA Contracting Expenditures*, summarizes these expenditures, which totaled almost 21 percent of SJRA's total expeditures in fiscal year 2019. Under SJRA's purchasing rules, the authority may contract for professional services, such as engineering or accounting, in cases where SJRA staff lacks technical expertise or availability. SJRA's rules also require procurements to follow the procedures in the SJRA purchasing manual.[1] The operating divisions that manage SJRA's various water supply programs procure and manage these contracts with central office support for purchasing, engineering, and project management services.

SJRA Contracting Expenditures – FY 2019



When evaluating an entity's contracting operations, Sunset uses the general framework established in the *State of Texas Procurement and Contract Management Guide*, as well as documented standards and best practices compiled by Sunset staff.[2] As a political subdivision, SJRA is not subject to many of the contracting laws on which the guide is based, as they were designed for state agencies. However, as a quasi-state agency, SJRA is subject to certain state contracting laws, such as those that govern how to procure professional services and what factors trigger conflict of interest disclosures for board members and staff.[3] Further, because the guide establishes the most comprehensive set of standards for government contracting and purchasing in the state, it serves as a good starting point for evaluating a river authority's contracting processes. While SJRA has begun making improvements in this area, addressing the following concerns and implementing best practices would better position the authority to get the most benefit and value from its contracting efforts.

Findings

SJRA's contract planning process lacks key documentation and analysis needed to ensure the authority gets the best value for contracted services.

Generally, when considering whether to outsource a function, agencies should analyze and document the need to contract, including the costs of efficiently providing the service internally or outsourcing it, before soliciting vendors. Once the determination to outsource has been made, agencies should use the appropriate procurement method, such as competitive bidding or evaluating vendors' qualifications.[4]

- **Overreliance on sole source procurements.** While exceptions should be allowed for instances when only a sole vendor or product can demonstrably meet a contracting need, open and competitive solicitations generally ensure government gets the best value for goods and services.[5] SJRA's purchasing manual suggests sole source procurements may require some justification that other acceptable sources of supply do not exist, but SJRA does not clearly require or establish a process for staff to make such a justification. Sunset staff's review of a sample of SJRA contract files found several sole source procurements that either had no justification or justification based on the benefits of a known vendor, such as convenience or prior history, rather than actual need. Some of these procurements related to services commonly available in the marketplace, such as public opinion research and social media monitoring, or services SJRA regularly procures through open solicitation. In contrast, state agencies are expected to justify sole source procurements based on documented needs, explain why their requirements are unique, and describe the risks of not using a specific vendor or product.[6] SJRA should reserve sole source procurements for when no other options are available, not to avoid open solicitations that are designed to help get the best value for the use of public funds.

SJRA should reserve sole source procurements for when no other options are available.

- **No formal needs assessment for outsourcing services.** Before deciding to outsource a service, an entity should carefully develop a business case that documents the costs and benefits of outsourcing as compared to providing the service internally. SJRA does not require a formal analysis or documentation to justify the need to outsource professional services, such as accounting and engineering, or other services, such as mowing or legal work, which SJRA has routinely outsourced.[7] For example, SJRA has contracted for its general counsel for nearly 50 years but has never completed a comprehensive cost-benefit analysis or other review of whether outsourcing this key role remains the best option. In addition, none of the contract files Sunset staff reviewed documented the need for or expected impact of contracting for services instead of performing them internally. A standard process to perform and document a needs assessment would help ensure decisions to outsource services undergo appropriate analysis and justification.

SJRA has not reviewed the need to contract for its general counsel in almost 50 years.

- **No formal process for procuring legal services.** Although SJRA spent more than $2 million for various legal services in fiscal year 2019, the board's procurement rules lack specific requirements for legal services contracts that it has for other services, such as specifying evaluation criteria, limits on a contract's duration, contract terms, or delegating contract approval.[8] Rather than using a formal solicitation process to hire attorneys, SJRA's general manager and contracted general counsel informally research, evaluate, and negotiate with identified firms before bringing a final agreement to the board for approval. In contrast, the Brazos River Authority and Lower Colorado River Authority have official policies for procuring legal services on the basis of qualification and cost.[9] Without clear guidance, SJRA's procurement of legal services lacks transparency and is at risk of being performed inefficiently and inconsistently.

SJRA's procurement of legal services lacks transparency.

Lack of documentation and guidance on vendor performance limits SJRA's ability to ensure consistent and successful outcomes.

Agencies should carefully document and monitor vendor performance to timely identify and resolve problems. SJRA's inconsistent documentation and vendor monitoring limits the authority's ability to effectively evaluate vendor performance.

- **Inconsistent vendor performance monitoring.** SJRA does not have formal policies or guidance on how its contract managers should document and report problems during a project. Instead, SJRA allows individual contract managers to resolve issues on their own, unless the problem jeopardizes the project schedule or budget. While flexibility to resolve issues as they arise may preclude unnecessary delays and maintain smooth relationships with vendors, it also allows inconsistent resolution of problems and reduces the authority's overall awareness of common issues or concerns. Without more clearly defined policies to monitor vendors, including guidance of what circumstances require escalation, SJRA risks losing the chance to fix problems early and consistently.

- **Informal vendor performance documentation.** Evaluating vendor performance as part of the project closeout process is crucial to assessing the success of a contract. While SJRA has internal forms to evaluate a vendor's performance while a contract is in progress, it does not use these forms to adjust the vendor's performance record for future reference once the contract has ended. Instead, SJRA relies on staff's recollections of a vendor's performance on prior projects when evaluating the vendor's response to an SJRA contract solicitation. While SJRA's approach supports timely completion of projects that benefit the authority, it makes SJRA's future vendor selection process unnecessarily vulnerable to staff turnover. Documenting vendor performance at contract closeout would provide SJRA better data to evaluate potential vendors, rather than depending on institutional memory.

SJRA's current approach to evaluating vendors relies heavily on institutional memory.

Additional best practices would improve the transparency and effectiveness of SJRA's contracting process.

Standard best practices for contracting procedures emerge because of their proven value to organizations. Addressing the following concerns would further strengthen SJRA's ability to deliver projects, uphold transparency and fairness in its solicitation process, and engage a more diverse pool of potential vendors.

SJRA does not require training for staff who evaluate solicitation responses or contract managers.

- **Procurement and contract management training.** SJRA does not have training requirements for either staff who evaluate vendor solicitation responses or contract managers. In comparison, state law requires state agency employees engaged in procuring or managing significant contracts to receive relevant training and continuing education.[10] While staff may have received training from a previous employment or acquired experience on the job, SJRA should identify and provide the appropriate knowledge and skills necessary to evaluate vendor solicitations and manage contracts specific to SJRA. Addressing training deficiencies would better prepare staff to perform these key roles successfully before assuming them.

- **Contracting manuals.** Manuals provide an important reference for employees to ensure they complete required tasks and follow agency expectations. SJRA's purchasing manual has not been updated since 2014 and its 432-page project management manual has not been updated since 2011, when SJRA's contracting function was larger and more complex than it is today. For example, SJRA's purchasing manual states that the professional services procurement process should begin with a risk evaluation form staff does not actually use. Providing current, up-to-date manuals would better ensure staff are trained on and perform their duties in accordance with the authority's current procurement and contracting procedures.

Identifying conflicts of interest before choosing vendors protects the integrity of the contracting process.

- **Conflicts of interest statements and non-disclosure agreements before evaluating solicitations.** Entities can protect the integrity of the vendor evaluation process by ensuring staff involved in the solicitation and evaluation of vendor proposals avoid conflicts of interest and maintain confidentiality.[11] The state seeks to achieve this end by encouraging — and in some cases, requiring — state agency employees serving on vendor evaluation committees to sign a statement affirming they have no conflict of interest with any respondents as well as agreeing they will not engage in the premature or unauthorized disclosure of information about proposed solicitations.[12] SJRA's employee manual and board policy follow general law for local entities that requires signing conflict of interest forms and seek to avoid the appearance of bias or favoritism. However, SJRA does not require staff to sign these forms before evaluating potential vendors and subcontractors. In contrast, state agencies' best practice is to receive names of vendors before reviewing responses to check for conflicts of interest, particularly if contracts exceed $1 million.[13] Ensuring staff who evaluate vendor proposals have signed non-disclosure and conflict of interest statements before accessing documents or discussing submissions would better safeguard sensitive vendor information, prevent the introduction

of bias or favoritism in SJRA's vendor selection, and further protect SJRA from the consequences of an undisclosed conflict of interest.[14]

- **Use of historically underutilized businesses (HUBs).** SJRA lacks a comprehensive approach to increase the number of contracts it awards to HUBs, potentially missing opportunities to target disadvantaged vendors.[15] Although SJRA is not subject to the same HUB requirements as state agencies, the Texas Commission on Environmental Quality requires river authorities to adopt a policy for contracting with HUB vendors. Further, Sunset staff routinely evaluates efforts of entities under review to increase their use of HUBs to promote full and equal opportunities for all businesses in government procurement. Historically, SJRA did not set goals for its HUB program or track its HUB expenditures consistently, preventing an accurate review of its HUB performance. SJRA recently updated its HUB policy and committed to tracking and annually reporting HUB expenditures to its board. However, SJRA has not adopted other best practices applicable to state agencies with similar staffing levels and operating budgets, such as developing a HUB plan with specific goals, designating a HUB coordinator, creating HUB subcontracting plans where feasible, or regularly updating senior management on HUB activity.[16] A comprehensive plan with targeted performance goals and assigned staff accountable for its progress would better focus SJRA's efforts and improve its outreach and use of historically disadvantaged vendors.

A plan with specific goals and actions could improve SJRA's use of historically disadvantaged vendors.

Sunset Staff Recommendations

Management Action

2.1 Direct SJRA to establish additional guidance for contracting needs and procurement methods and use open solicitations except in documented exceptions.

Under this recommendation, SJRA would update the board's procurement policy and procedures to ensure it contracts based on validated need and solicits vendors openly where possible. At a minimum, SJRA should:

- **Develop a policy requiring official justification to pursue sole source procurements.** The justification should include the following:
  - A description of the product or service.
  - An explanation of the planned use and business need for the product or service.
  - A description of the specifications for the product or service and why those specifications are necessary to accomplish the need for the procurement.
  - The reason that no other competing products or services will satisfy the need and examples of the operational risks of selecting competing products or services.
  - Specification about whether the authority can obtain the unique product or service only from the originating vendor or from multiple outlets, such as a store.
  - Any other information SJRA deems necessary.

- **Institute a formal needs assessment to justify outsourcing certain services.** The assessment should include an analysis that identifies why current staff availability, expertise, or particular factors of a project or SJRA operations require engaging outside vendors. The assessment should be approved and included in the contract file before proceeding to the solicitation. SJRA should perform an assessment for its all its professional service contracts as well as any non-construction service contract valued over an amount the board should establish. As part of this recommendation, SJRA should also conduct a formal needs assessment to determine whether outsourcing its general counsel services remains necessary.

- **Update the board's procurement rules to include guidance for how SJRA should solicit, evaluate, and select legal services vendors.** This policy should include general criteria for evaluation, procedures for obtaining legal services, and a requirement that legal services contracts, including the contract for SJRA's general counsel, are reviewed periodically and re-procured if necessary.

This recommendation would clarify the board's guidance and expectations for SJRA's contracting and operations and better position the authority to get the most value out of its contracted expenditures.

2.2 Direct SJRA to consistently monitor, document, and evaluate vendor performance.

This recommendation would direct SJRA to establish a standardized contract monitoring and evaluation procedure. SJRA should continue to monitor vendor performance but also complete evaluations of vendors at closeout to compare actual performance with contract objectives. As part of this recommendation, SJRA should provide clear guidance to staff on how to monitor, document, and evaluate a vendor's performance, and under what circumstances to escalate contracting problems to leadership. SJRA would not only replace its reliance on institutional memory with documented "lessons learned" when considering future contract awards, but also ensure SJRA avoids future contracts with poor performing vendors, continuously improves its contracting functions, and operates with a common understanding of vendor performance across the divisions.

2.3 Direct SJRA to improve the transparency, fairness, and effectiveness of its contracting process.

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

- **Ensure appropriate training.** SJRA should ensure staff members involved in procuring and managing significant contracts receive appropriate training applicable to their role in the contracting process. The training should include topics such as conflicts of interest; skills and strategies for managing contracts and vendors; maintaining documentation for contract changes and performance issues; and any other information SJRA deems necessary.

- **Update purchasing and contract management manuals.** SJRA should update its purchasing and contract management manuals to reflect current legal requirements and operations. Updated manuals would improve consistency and accountability of the authority's contracting process by ensuring staff is following current procedures as well as board and legal requirements.

- **Require signed non-disclosure agreements and conflict of interest statements.** Employees who evaluate vendor responses to solicitations should sign, prior to reading or discussing vendor responses, a statement affirming no conflict of interest with any responding vendors as well as an agreement to

maintain the confidentiality of information about proposed solicitations. These procedures would help prevent bias in vendor selection and protect vendor information.

- **Proactively plan and monitor HUB spending efforts.** This recommendation would direct SJRA to conduct more focused outreach to HUBs by developing a formal HUB plan to implement its updated HUB policy. The plan should identify specific goals and performance targets; designate a central HUB coordinator; and create HUB subcontracting plans where feasible for contracts over $100,000. Depending on the amount of contracting activity and progress made on other measures to increase HUB contracting expenditures, SJRA could also consider adopting additional approaches of state agencies of comparable size and resources, such as hosting forums for diverse businesses and creating a HUB mentor-protégé program. Consolidated under a formal HUB plan, these measures would match SJRA's efforts with specified goals, actions, and measurable results, which it should more regularly report to staff leadership and then its board.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the state or SJRA. While the recommendations would require effort, they relate to basic administrative responsibilities SJRA could implement with existing resources. Any costs associated with future training requirements would depend on the type and source of training SJRA determines is needed and cannot be estimated at this time.

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1 San Jacinto River Authority (SJRA), *San Jacinto River Authority Board Resolution for Procurement*, Section 1, accessed November 10, 2020, https://www.sjra.net/wp-content/uploads/2020/11/SJRA-Procurement-Resolution-and-Enabling-Legislation.pdf.

2 Texas Comptroller of Public Accounts, *State of Texas Procurement and Contract Management Guide*, accessed November 9, 2020, https://comptroller.texas.gov/purchasing/docs/96-1809-print.pdf.

3 All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov. Chapter 2254, Texas Government Code; Chapters 171 and 176, Texas Local Government Code; Chapter 49, Texas Water Code; 30 T.A.C. Section 292.13.

4 Texas Comptroller of Public Accounts, *State of Texas Procurement and Contract Management Guide*, 12.

5 Ibid, 20 and Appendix 9.

6 Ibid.

7 SJRA, *San Jacinto River Authority Board Resolution for Procurement*, Section 1.

8 Ibid, Sections 1 and 3.

9 Lower Colorado River Authority, *LCRA Board Policy, 207–Legal Matters and Alternative Dispute Resolution*, Section 207.201, accessed November 9, 2020, https://www.lcra.org/download/207-pdf/?wpdmdl=17948.

10 Section 656.052, Texas Government Code.

11 Texas Comptroller of Public Accounts, *State of Texas Procurement and Contract Management Guide*, 74.

12 Ibid.

13 Ibid; Section 2262.001 and 2262.004, Texas Government Code.

14 Section 176.013, Texas Local Government Code.

15 30 T.A.C. Section 292.13(6)(B).

16 Chapter 2161, Texas Government Code.

Issue 3

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

Background

In 2015, the Legislature directed Sunset staff to assess the governance, management, operating structure, and compliance with legislative requirements for each river authority.[1] Over the years, Sunset reviews have included a number of standard elements from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or from general law provisions imposed on state agencies. The following material summarizes changes needed to conform the San Jacinto River Authority's (SJRA) governing law to standard Sunset language generally applied to all entities under Sunset review, update outdated provisions, and improve the authority's efforts for recruiting a diverse workforce.

Findings

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

The Sunset Commission has developed a set of standard recommendations that it applies to all entities reviewed unless an overwhelming reason exists not to do so. These across-the-board provisions (ATBs) reflect an effort by the Legislature to enact policy directives to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government. As a quasi-state agency created by the Legislature, SJRA directly serves the public interest and is funded with public money.

- **Presiding officer designation.** Having the governor designate the presiding officer of governing boards ensures a more direct connection between the board and the state's highest elected official and increases the authority's accountability to the state's leadership. SJRA's governing law requires its board members to elect the board's president.[2] In contrast, the governor appoints the presiding officers of the boards that govern some of the larger river authorities in Texas, including the Lower Colorado River Authority, Brazos River Authority, and Guadalupe-Blanco River Authority.

- **Grounds for removal.** SJRA's governing law lacks the standard provision relating to grounds for removal of board members. Having a statutory basis and process for removing a member of a policymaking body who does not maintain the qualifications, has a conflict of interest, or has neglected duties can help ensure the sound function of the policymaking board.

SJRA's governing law does not establish the training board members need to properly discharge their duties.

- **Board member training.** SJRA's governing law does not establish the type of training and information board members need to properly discharge their duties. State law requires board members to obtain Texas open meetings and public information trainings upon taking their oath of office. While the authority provides training for new board members, SJRA's governing law does not require additional training to ensure each member has necessary knowledge about topics such as the authority's governing law provisions, operations, and budget before making decisions regarding matters of public interest.
- **Policymaking and staff functions.** SJRA's governing law does not provide for separating the policymaking functions of the board from day-to-day administrative functions of managing the authority. Such a provision would help avoid confusion about who is in charge of operations, which can undermine the authority's effectiveness.
- **Public testimony.** SJRA's governing law does not require an opportunity to provide public comment at open board meetings. When people affected by SJRA's decisions have an opportunity to provide meaningful input to the board, the additional information and perspectives improve the overall decision-making process. While SJRA follows board policy that requires a public comment agenda item during board meetings, having a statutory requirement for public comment on any matter under the authority's jurisdiction would reassure the public that the board encourages and values their comments.

Standardized complaint intake and tracking could help address issues that impact the public.

- **Complaint information.** SJRA's governing law does not require SJRA to maintain complete information on complaints. Maintaining a system for acting on complaints and keeping proper documentation helps protect the public by ensuring SJRA addresses problems in a timely fashion. An effective complaints system should allow an individual to file a written complaint on a simple form provided on the entity'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. Although SJRA receives and logs various types of complaints and general inquiries, having a comprehensive complaint tracking system with a standard intake form could help improve management of authority operations, alert the authority to potential problems in its jurisdiction, such as permit violations, and raise awareness of issues with high risk or high visibility.

SJRA's governing law is outdated and difficult for the public to find and understand.

While some water districts and river authorities are governed by laws that are fully compiled in a specific Texas code or statute, SJRA's governing law exists solely in session law.[3] In the absence of a codified statute, members of the public and even the river authority itself struggle to correctly compile all of the changes to its laws and understand their cumulative impact. SJRA's governing law also

contains out-of-date references to defunct state agencies and code sections that have been amended, renamed, or no longer exist, further complicating full understanding of the authority's powers and duties. For example, SJRA's governing law stipulates the board has six members, even though the Texas Constitution now requires all boards and commissions to have an odd number of members.[4] Although general law adds a seventh member to preserve the board's constitutionality, this outdated provision in SJRA's governing law misrepresents the board's actual makeup.[5]

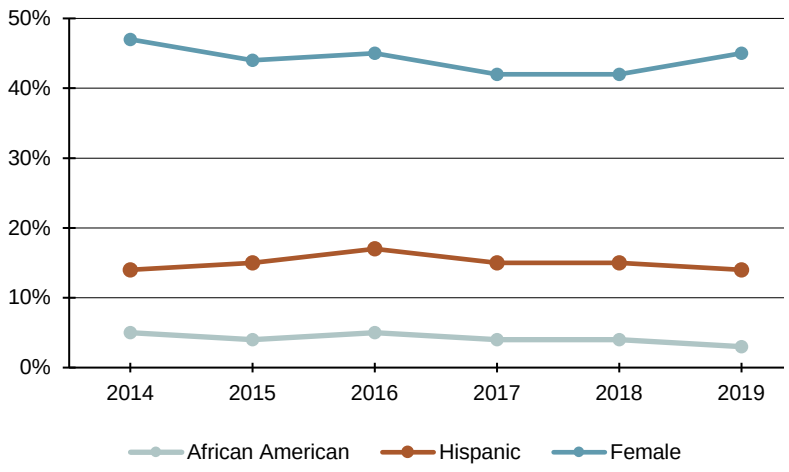
SJRA has not taken effective steps to improve the diversity of its workforce to best meet the intent of equal employment opportunity laws.

SJRA lacks a comprehensive policy or plan to improve its workforce diversity, leading to unfocused and ultimately ineffective efforts. The Sunset Act requires the Sunset Commission and its staff to consider agencies' compliance with applicable federal and state requirements regarding equal employment opportunities (EEOs).[6] Although SJRA is not subject to the same EEO requirements as state agencies, Sunset staff routinely evaluates agency performance regarding these requirements in the course of a Sunset review, but only reports deficiencies significant enough to merit attention. SJRA employs more than 160 staff working in a wide variety of occupations across its service area. While some SJRA jobs require technical skills, many SJRA employees perform enterprise-wide support activities such as project management, accounting, or administrative support, and all employees are based in either Montgomery County or Harris County, home to one of the most diverse large cities in the country.[7] Appendix A shows SJRA's employment of minorities and females consistently fell short of statewide civilian workforce percentages in most job categories in fiscal years 2017 to 2019.

A plan with goals would help SJRA improve its workforce diversity.

The authority's employee manual states SJRA will comply with state and federal EEO laws, but SJRA has no specific goals to increase its workforce diversity. SJRA advertises positions on websites for relevant industry associations and general employment like LinkedIn, but these efforts are not part of a unified, focused plan aimed at specific goals. As the *SJRA Workforce Diversity Over Time* chart shows, the percentage of minority workers in SJRA's job categories have remained mostly unchanged since SJRA started tracking EEO statistics in 2014. Establishing a plan that includes specific goals and tracking progress toward those goals could help SJRA improve its workforce diversity.

SJRA Workforce Diversity Over Time



Sunset Staff Recommendations

Change in Statute

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

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

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

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

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

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

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

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

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

As one of Sunset's across-the-board good governance standards, this recommendation would require SJRA to include public testimony as an agenda item at every regular board meeting. SJRA should clearly provide the public the opportunity to comment on each agenda item and any issue or matter under SJRA's jurisdiction at open board meetings.

3.6 Apply the standard across-the-board requirement regarding developing and maintaining a system for receiving and acting on complaints and making information on complaint procedures available to SJRA.

This recommendation would require SJRA to maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures. The authority would also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints. As a separate management action, this recommendation would also direct SJRA to develop a centralized way for the public to file complaints, including a simple online complaint form listing required information and details about SJRA's complaint processes.

Management Action

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

This recommendation would request that the Texas Legislative Council prepare legislation codifying SJRA's governing law for introduction during the 88th Legislative Session. This recommendation would also request the council to provide, by March 1, 2021, a list of any issues regarding SJRA's governing law, such as the size of SJRA's board, which would impede codification and should be addressed in the authority's Sunset bill to facilitate the codification of that law. Sunset staff would work directly with the authority and the council to determine whether and how to address the identified issues.

3.8 Direct SJRA to plan and monitor its efforts to increase workforce diversity.

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

Fiscal Implication

These recommendations would not have a significant fiscal implication to SJRA or the state. The recommendations relate to basic management responsibilities and workforce planning SJRA could implement with existing resources.

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

2 Section 6, Chapter 426 (H.B. 832), Acts of the 45th Texas Legislature, Regular Session, 1937.

3 H.B. 832, 1937. Note: H.B. 832 is the original chapter of SJRA session law; eight subsequent chapters exist.

4 Section 30a, Article XVI, Texas Constitution.

5 All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov, Section 651.0085, Texas Government Code.

6 Section 325.011(9), Texas Government Code.

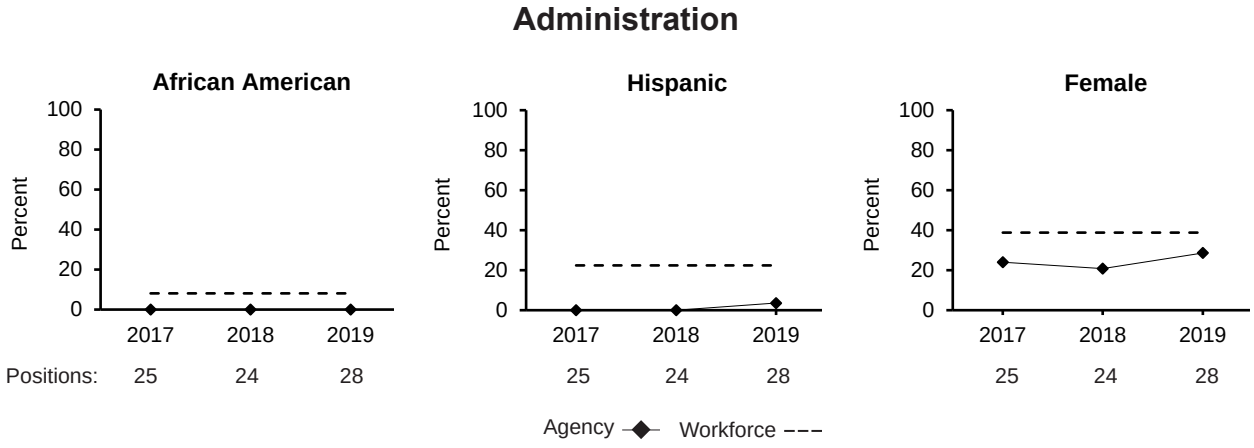
7 Katelyn Newman, "America's Most Racially Diverse Big Cities", *U.S. News and World Report*, January 22, 2020, https://www.usnews.com/news/cities/slideshows/the-10-most-racially-diverse-big-cities-in-the-the-us?slide=5.

Appendix A

Equal Employment Opportunity Statistics, FYs 2017–2019

Sunset staff routinely evaluates performance regarding workplace diversity.[1] The following material shows trend information for the employment of minorities and females in all applicable categories by the San Jacinto River Authority (SJRA). 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 agencies' performance in employing persons in each of these groups. The diamond lines represent the authority's actual employment percentages in each job category from fiscal years 2017–19.

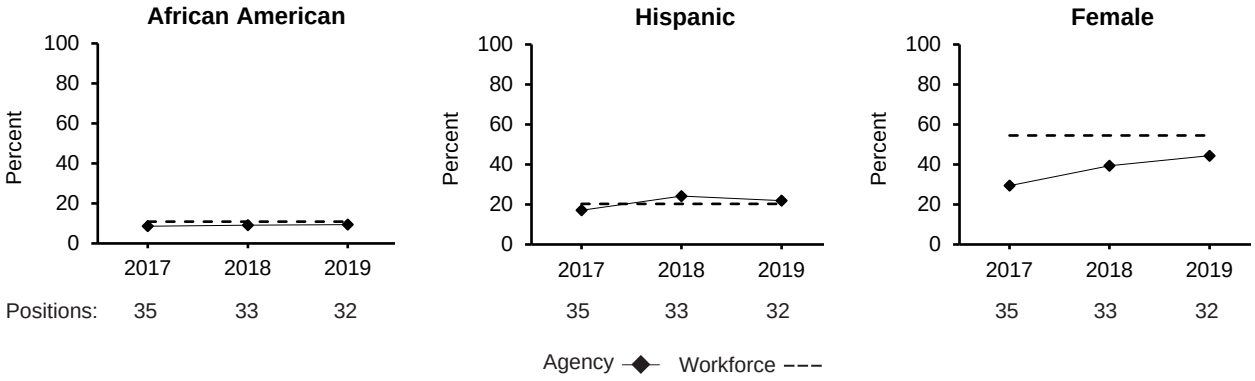
Of the 18 categories depicted, overall SJRA fell short in 16 categories, and in several instances recorded zero minority or female employees in a category during one or more years in this time period.



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

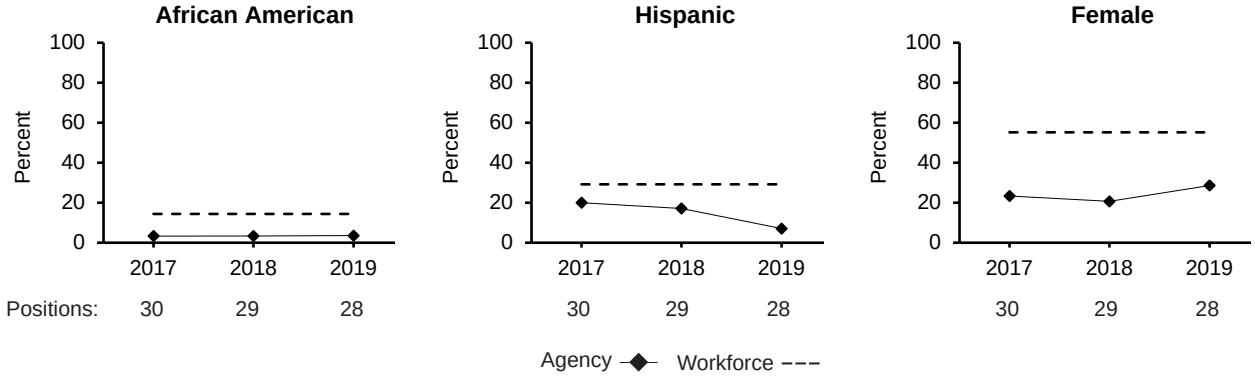
Appendix A

Professional



The authority generally met or fell slightly below the statewide civilian workforce percentage for professional positions for African Americans and Hispanics for the past three years. The authority fell below the state civilian workforce percentage in professional positions for females in all three fiscal years.

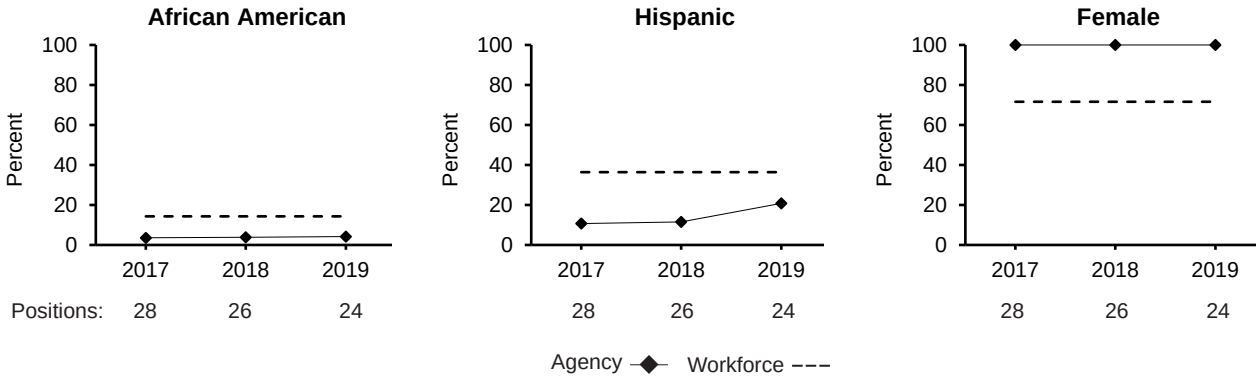
Technical



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

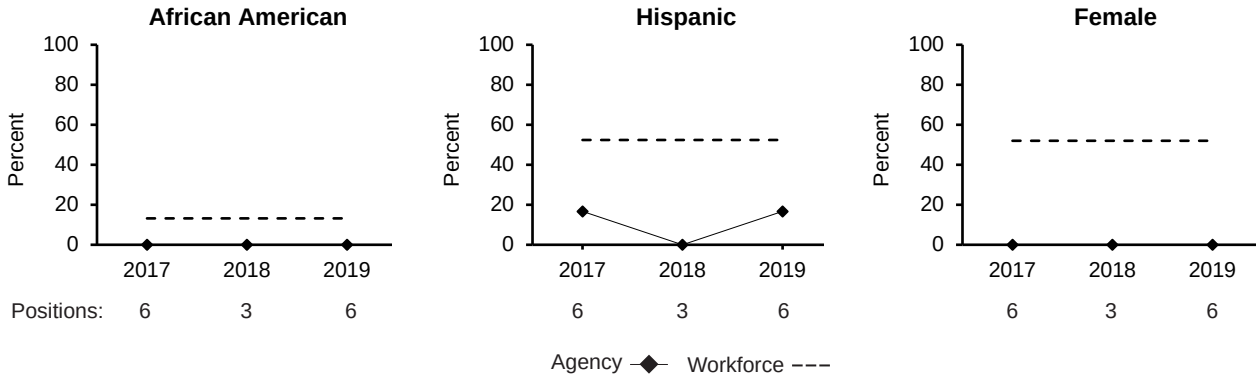
Appendix A

Administrative Support



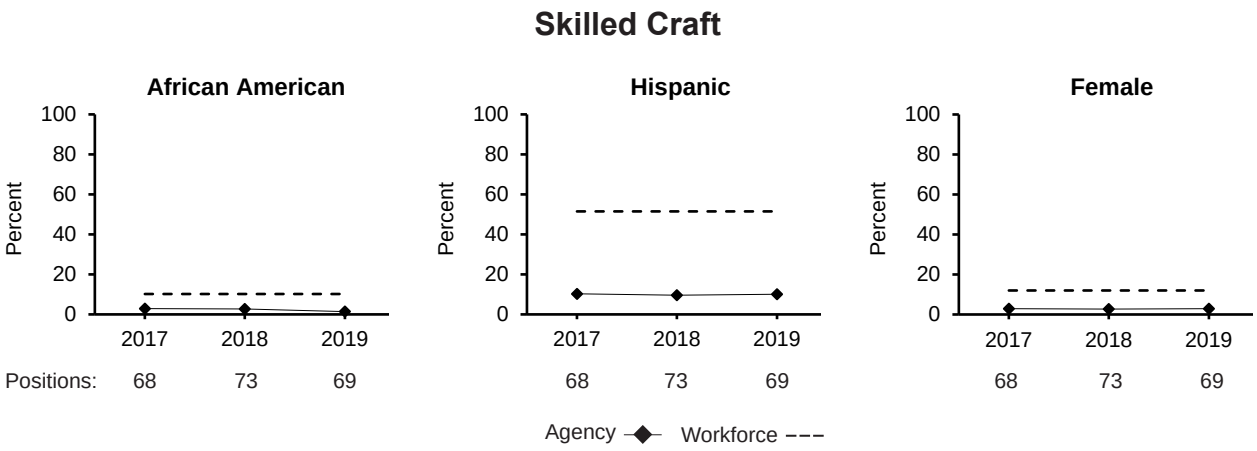
The authorty exceeded the statewide civilian workforce percentage for females in administrative support positions in all three years, but fell below the civilian workforce percentage in administrative support positions for African Americans and Hispanics in all three fiscal years.

Service Maintenance



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

Appendix A



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

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

2 Section 21.501, Texas Labor Code.

Appendix B | Litigation Events

This timeline is intended to highlight key dates involving litigation related to the San Jacinto River Authority's (SJRA) groundwater reduction plan (GRP) and Hurricane Harvey. These cases are complex, and this timeline is not intended to provide a summary of all the facts or the courts' decisions, or evaluate the merits of parties' claims. Each color in the timeline corresponds to a related case or event. All references to the status of cases are as of November 2020.

2006–2009	Lone Star Groundwater Conservation District (LSGCD), whose jurisdiction covers Montgomery County, adopts rules in several phases to reduce groundwater pumping among large users like SJRA. In response, SJRA develops a joint GRP with other large users in the county to design, finance, and construct a water treatment plant so any retail utility can contract with SJRA to get surface water to reduce its use of groundwater and meet LSGCD's requirement.
2010	SJRA establishes its GRP Division and begins charging a groundwater pumpage fee.
2015	SJRA begins delivering treated surface water and charging a fee for this service.
	LSGCD Case: City of Conroe and other utility providers file suit against LSGCD in Montgomery County over its groundwater rules related to reduced pumping.
2016	**EDJA Case:** City of Conroe and other cities stop paying increased GRP fees to SJRA. SJRA files suit under the Expedited Declaratory Judgment Act (EDJA) in Travis County to have the GRP contracts and fees declared legal and valid. On appeal, the Texas Supreme Court rules SJRA can only use the EDJA to declare whether its execution of the GRP contracts was legal and valid.[1] Case is ongoing. A separate **City Rate Case** is ongoing in Montgomery County.
2017	**Hurricane Harvey Cases:** Kingwood and Lake Houston area residents file suit against SJRA in Harris and Montgomery counties related to flooding during Hurricane Harvey. Cases are ongoing. **Information Act Case:** An individual files suit against SJRA in Montgomery County to obtain dam operations information in response to a contested Public Information Act request following Hurricane Harvey. Case is ongoing.
	Legislature passes House Bill 1982, changing LSGCD's board from nine appointed to seven elected members after November 2018 elections.[2]
2018	**LSGCD Case:** Court invalidates LSGCD's groundwater rules related to reduced pumping among large water users.[3] Appointed LSGCD board appeals.
2019	**LSGCD Case:** Newly elected LSGCD board settles suit and chooses not to appeal 2018 court decision invalidating its groundwater rules.
	Quadvest Antitrust Case: Quadvest and another private utility provider participating in the GRP file federal antitrust suit against SJRA over the GRP.[4] Case is ongoing. **Quadvest Rate Case:** Quadvest and other private utility providers participating in the GRP file suit against SJRA in Montgomery County over GRP contracts and fees. Case is ongoing.
2020	**Quadvest Breach Case:** SJRA files suit in Montgomery County to enforce the GRP contracts after Quadvest stops paying any SJRA fees for its participation in the GRP.[5] Case is ongoing.

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

[2] Chapter 20 (H.B. 1982), Acts of the 85th Texas Legislature, Regular Session, 2017.

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

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

[5] Quadvest, "Quadvest Will Stop Paying SJRA," news release, accessed September 14, 2020, https://www.quadvest.com/index.php/publications/press-release/quadvest-will-stop-paying-sjra.

Appendix C

Water Entities in the San Jacinto River Basin

Entity	Relationship to San Jacinto River Authority (SJRA)
Direct Customers	
Retail Utilities (including municipalities, municipal utility districts or MUDs, and investor-owned utilities)	SJRA's direct customers that purchase wholesale treated surface water and, in the case of MUDs, wastewater treatment services and groundwater. Also includes entities in the groundwater reduction plan (GRP) that pay SJRA a fee to pump groundwater using their own wells. Utilities establish retail water and wastewater rates that consumers pay.
Industrial and Other Raw Water Users	SJRA's direct customers, such as Chevron and ExxonMobil, that purchase wholesale raw water from the authority.
Woodlands Water Agency	Management entity for all but one of SJRA's MUD customers in The Woodlands. Establishes retail water and wastewater rates that consumers pay.
Groundwater Regulation	
GRP Review Committee	SJRA advisory committee comprised of six individuals representing the various GRP participants. Advises SJRA on matters related to the GRP and recommends the GRP Division budget and fees to the SJRA board.
Lone Star Groundwater Conservation District	A groundwater conservation district governed by a seven-member board that establishes rules to manage and protect groundwater in Montgomery County, primarily through permitting water wells and establishing pumping limits. SJRA is the largest permitted groundwater user under the district's jurisdiction and established its GRP in response to district rules.
Fort Bend and Harris-Galveston Subsidence Districts	Special purpose districts governed by boards of directors that regulate the withdrawal of groundwater to prevent subsidence within their boundaries. SJRA partners with the districts on certain projects, such as the installation and maintenance of continuously operating reference stations, which assist in monitoring subsidence.
Groundwater Management Area 14	Group comprised of five groundwater districts and two subsidence districts that jointly plan for groundwater use in the area. SJRA is an interested stakeholder.
Other Regional Entities	
City of Houston	Owns two-thirds of permitted water rights in Lake Conroe and pays for two-thirds of costs to maintain the lake.
Harris County Flood Control District	A special purpose district governed by the Harris County Commissioners Court that provides flood damage reduction projects within its boundaries. SJRA partners with the district on certain projects, such as the *San Jacinto River Regional Watershed Master Drainage Plan*.
Coastal Water Authority (CWA)	A special purpose district governed by a seven-member board that owns, operates, and maintains a canal in Harris County. The CWA canal system intersects SJRA's canal at two locations in Harris County.
Trinity River Authority	River authority adjacent to SJRA. SJRA holds water rights in the Trinity River basin.
Region H Regional Water Planning Group	Group comprised of various interests that designs strategies for surface water and groundwater to meet future water demands. Results feed into the Texas Water Development Board's *State Water Plan*. SJRA is the group administrator and a voting member.

Appendix D | Staff Review Activities

During the review of the San Jacinto River Authority (SJRA), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with SJRA 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 SJRA 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 SJRA:

- Interviewed members of the San Jacinto River Authority board of directors.
- Surveyed SJRA's direct customers, general stakeholders, and SJRA permit holders.
- Attended public meetings of SJRA's direct customers, such as the Groundwater Reduction Plan Review Committee and Woodlands Water Agency Board of Trustees.
- Attended the general meetings of the Region H Regional Water Planning Group, which assists the Texas Water Development Board (TWDB) in the state's water planning process.
- Attended the inaugural meeting of the Region 6 San Jacinto Flood Planning Group.
- Attended meetings of the Lone Star Groundwater Conservation District and Groundwater Management Area 14, which evaluate and regulate groundwater in the region.
- Attended relevant public stakeholder meetings, such as for development of the *San Jacinto River Regional Watershed Master Drainage Plan*.
- Interviewed staff from the Department of Information Resources, Office of the Attorney General, Public Utility Commission of Texas, Texas Commission on Environmental Quality, and TWDB.

Sunset Staff Review of the *San Jacinto River Authority*

REPORT PREPARED BY

Alan Leonard, *Project Manager*

Emily Johnson

Andrew Vree

Elizabeth Jones

Erick Fajardo, *Project Supervisor*

Jennifer Jones
Executive 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