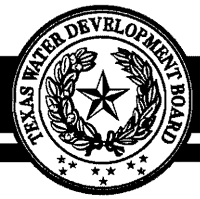


OCT 28 2010



# TEXAS WATER DEVELOPMENT BOARD



James E. Herring, *Chairman*  
Lewis H. McMahan, *Member*  
Edward G. Vaughan, *Member*

J. Kevin Ward  
*Executive Administrator*

Jack Hunt, *Vice Chairman*  
Thomas Weir Labatt III, *Member*  
Joe M. Crutcher, *Member*

October 28, 2010

Sunset Advisory Commission  
P. O. Box 13066  
Austin, Texas 78711

Re: Sunset Advisory Commission Staff Report on the Texas Water Development Board

Dear Commission Members:

The Texas Water Development Board (Board) appreciates the opportunity to review the Sunset Advisory Commission Staff Report (staff report) and to offer these comments on the Findings and Recommendations. The Board also appreciates the courtesies extended by the Sunset Advisory Commission staff during the course of their review of the agency.

## Agency at a Glance

The Board concurs with the profile of its financing, planning, and science activities.

The Board appreciates the Sunset Commission staff's thorough review and accurate profile of the Texas Water Development Board's purposes and activities.

## Issue 1: The Board's Remaining Development Fund Bond Authority is Insufficient to fulfill its Constitutional Responsibility.

The Board concurs with the statements under **Background** and with each of the **Findings**.

## Recommendations

### Constitutional Amendment

- 1.1 **Authorize the Board to issue Development Fund general obligation bonds, at its discretion, on a continuing basis, in amounts such that the aggregate principal amount outstanding at any time does not exceed \$6 billion.**

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[www.twdb.state.tx.us](http://www.twdb.state.tx.us) • [info@twdb.state.tx.us](mailto:info@twdb.state.tx.us)

TNRIS - Texas Natural Resources Information System • [www.tnr.is.state.tx.us](http://www.tnr.is.state.tx.us)  
*A Member of the Texas Geographic Information Council (TGIC)*



The Board concurs with this recommendation.

### **Change in Statute**

- 1.2 Clarify that the Board's Development Fund general obligation bonds are not considered State debt payable from general revenue for purposes of calculating the constitutional debt limit, until the Legislature appropriates debt service to the Board and the Board issues the debt.**

The Board concurs with this recommendation.

- 1.3 Authorize the Board to request the Attorney General take legal action to compel a recipient of any of the Board's financial assistance programs to cure or prevent default in payment.**

The Board concurs with this recommendation.

### **Issue 2: The lack of coordination among separate water planning processes impedes the Board's statewide water planning.**

The Board has no disagreement with the statement of the Issue.

The Board generally concurs with the findings under Issue 2.

In addition, the Board wishes to state its appreciation for the precision of this Finding: "**Stakeholders may be unaware of the DFC process and the potential effects of DFCs on their groundwater resources.**" (Emphasis added.) For reasons discussed more fully in Issue 3, the Board does not believe the DFC process has any effect on the rights of persons with legally defined interests in groundwater because, in the final analysis, under the process described in Section 36.108, Water Code, the Board makes no final determination of the desired future condition (as the Sunset Commission notes in Issue 3).

## **Recommendations**

### **Change in Statute**

- 2.1 Require the Board to certify that each groundwater management area include a voting representative from each regional water planning group whose boundaries overlap the area.**

The Board concurs with this recommendation. The Board also notes that the recommendation may not go far enough and may prove to be ineffective in ensuring an adequate voice for regional water planning interests in the determination of desired future conditions, as noted by Vice Chairman Jack Hunt at the Board's meeting on October 21, 2010.

**2.2 Require regional water planning groups to use the desired future conditions in place at the time of adoption of the Board's State Water Plan in the next water planning cycle.**

The Board concurs with this recommendation.

**2.3 Strengthen the public notice requirements for groundwater management area meetings and adoption of desired future conditions and require proof of notice be included in submission of conditions to the Board.**

The Board concurs with this recommendation.

**Issue 3: The State's processes to petition desired future conditions are fundamentally flawed.**

As a general matter, the Board agrees with the statement of Issue 3.

The Board agrees with the Sunset Commission staff report's statement at page 32 that any determination that a desired future condition (DFC) is unreasonable "is merely a recommendation" and groundwater conservation districts in a groundwater management area (GMA) do "not have to accept the Board's recommendation or make any changes to its original DFC . . ."

The Board disagrees, at page 35, that "without a contested case hearing, only a limited record exists for further court review under substantial evidence" and that there is a risk of "courts having to begin the case anew under a trial de novo standard." The Board's position in the litigation referenced in the staff report is that a substantial evidence review is appropriate and is required, even in the absence of a contested hearing under Chapter 2001, Government Code. *Texas State Board of Examiners in Optometry v. Carp*, 388 S.W. 2d 409, 414-415 (Tex. 1965); *Gerst v. Nixon*, 411 S.W. 2d 350, 353-354 (Tex. 1966).

In point of fact, it is the position of the Board in this litigation that no judicial review is authorized for the Board's decisions in DFC appeals—a position that the Board believes to be consistent with the Finding **No Clear Judicial Remedy** at page 33.

## **Recommendations**

### **Change in Statute**

- 3.1 Require groundwater management areas to document consideration of factors or criteria that comprise a reasonable DFC and to submit that documentation to the Board.**

The Board concurs with this recommendation.

- 3.2 Transfer the petition process regarding the reasonableness of a DFC from the Board to the Commission, and modify the Commission's existing DFC petition process to unify elements relating to reasonableness and implementation of DFCs.**

The Board concurs with this recommendation that the petition process should be transferred to an appropriate quasi-judicial forum. In addition, and consistent with the Sunset Commission's observation at page 35 that "[w]ithout statutory guidance, ... decisions [on desired future conditions] may not withstand judicial scrutiny", it is the Board's position that factors that must be considered by groundwater conservation districts in establishing desired future conditions should be set forth in statute. The Board recommends these factors include the criteria under current Board rules set forth in the textbox at page 32.

- 3.3 The Commission should promote mediation in DFC petition cases where appropriate.**

This recommendation is not applicable to the Board.

### **Issue 4: Structural and technical barriers prevent the Board from providing effective leadership in geographic information systems.**

The Board concurs with the statements under **Background** and with each of the **Findings**.

## **Recommendations**

### **Management Action**

**4.1 The Board should request a full TNRIS exemption from the data center services contract at DIR to accommodate its statutory emergency management responsibilities.**

The Board concurs but notes that a request for exemption of the entire agency, including the Texas Natural Resources Information System, already has been filed with the Department of Information Resources (see Attachment 1) and the request has been denied (see Attachment 2). As the Board notes in the discussion of the Board's new issue and Recommendation 7.1 to include the entire agency in exemption from the Data Services Contract (below), any exemption should be statutory.

**Change in Statute**

**4.2 Clarify TNRIS' duties regarding coordinating and advancing GIS initiatives.**

The Board concurs with this recommendation.

**4.3 Require the Board, in consultation with stakeholders, to report TNRIS' progress in executing its responsibilities and to propose new initiatives for geographic data to the Legislature.**

The Board concurs with this recommendation.

**4.4 Abolish the Texas Geographic Information Council.**

The Board concurs with this recommendation.

**Issue 5: The Board lacks data to determine whether implementation of conservation and other water management strategies is meeting the state's future water needs.**

The Board concurs with the statements under **Background** and with each of the **Findings**.

**Recommendations**

**Change in Statute**

**5.1 As part of the state water plan, require the Board to evaluate the State's progress in meeting its water needs.**

The Board concurs with this recommendation, to the extent that water plan projects continue to be funded.

**5.2 Require the Board and Commission, in consultation with the Water Conservation Advisory Council, to develop uniform, detailed gallons per capita daily reporting requirements.**

The Board concurs with this recommendation.

**Management Action**

**5.3 As additional tools and data evolve, the Board should continue exploring ways to develop metrics for additional water use sectors and incentivize water conservation efforts.**

The Board concurs with this recommendation.

**Fiscal Implication Summary**

**Issue 6: The Board's statute does not reflect standard language typically applied across-the-board during Sunset reviews.**

**Background**

The Board does not disagree with the statements under **Background** or with the **Findings**, given that the Sunset Commission staff's discussion and findings recognize that many of the current, standard "across-the-board" requirements are appropriate to regulatory agencies and, accordingly, ill-suited to the Texas Water Development Board. (As noted at page 33, "[s]ince the Legislature split the Texas Department of Water Resources into the Texas Water Development Board and the Texas Water Commission (now TCEQ), the State has clearly separated functions between TCEQ as the regulatory arm and the Board as the financial assistance and planning arm for water.")

**Recommendation**

**Change in Statute.**

**6.1 Apply standard Sunset across-the-board requirements to the Texas Water Development Board.**

The Board concurs with this recommendation, with appreciation that the Sunset Commission staff report clarifies that the across-the-board requirement for alternative dispute resolution training and process is intended to be applied only to internal functions of the agency, such as personnel matters, consistent with current practice, and will not be interpreted to authorize contests to Board decisions on financial assistance applications.

**Additional Issue: Exemption from Data Services Consolidation by Department of Information Resources.**

**Recommendation**

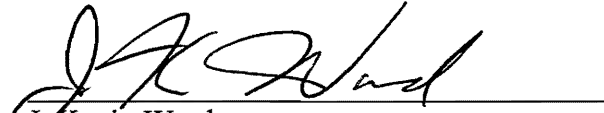
**7.1 Statutorily exempt the Texas Water Development Board from the Data Center Services (DCS) consolidation mandate.**

As mandated by HB 1516 of the 79<sup>th</sup> Legislative Session, the Board entered into an interagency contract with the Department of Information Resources (DIR) to have a selected service provider manage the agency's data center to include servers, network storage, systems administration and agency data for disaster recovery. As the Sunset Commission staff report notes on pages 43-47, the data that the Board maintains is critical and essential to the current and future management of water in Texas. The Texas Natural Resources Information System is especially critical in maintaining important geographic information systems data used by state, local, and federal emergency management decision makers in emergency response situations as well as a multitude of planning activities. Inadequate services provided under this contract adversely impact and jeopardize the agency's data and critical emergency response functions.

On July 15, 2010 the Board requested an exemption of all servers and related infrastructure from the DCS contract. (Attachment 1.) DIR denied this request. (Attachment 2.) Accordingly, the Board recommends a statutory exemption from this contract due to the jeopardy to maintenance and use of critical data, the extremely high cost of doing business under the DCS, and the numerous concerns associated with poor performance by the DCS contractor.

Sunset Advisory Commission  
October 28, 2010  
Page 8 of 8

Respectfully Submitted,



J. Kevin Ward

Executive Administrator

Attachments

cc: James E. Herring, Chairman, Texas Water Development Board  
Jack Hunt, Vice Chairman, Texas Water Development Board  
Joe M. Crutcher, Member, Texas Water Development Board  
Thomas Weir Labatt III, Member, Texas Water Development Board  
Lewis H. McMahan, Member, Texas Water Development Board  
Edward G. Vaughan, Member, Texas Water Development Board



# **Attachment 1**



# TEXAS WATER DEVELOPMENT BOARD



James E. Herring, *Chairman*  
Lewis H. McMahan, *Member*  
Edward G. Vaughan, *Member*

J. Kevin Ward  
*Executive Administrator*

Jack Hunt, *Vice Chairman*  
Thomas Weir Labatt III, *Member*  
Joe M. Crutcher, *Member*

July 15, 2010

Ms. Karen W. Robinson  
Executive Director  
Department of Information Resources  
300 West 15<sup>th</sup> Street, Suite 1300  
Austin, TX 78701

Re: Request for Exemption from the Data Center Services Contract

Dear Ms. Robinson:

As discussed in prior meetings with the Department of Information Resources (DIR), the Texas Water Development Board (TWDB) continues to experience a number of concerns with IBM Team for Texas (TFT) performance on the Data Center Services (DCS) contract mandated by House Bill 1516, 79<sup>th</sup> Regular Legislative Session. The TWDB has provided information during the Sunset Self-Evaluation process related to these concerns and further respectfully submits this request for your consideration to allow the TWDB to be fully exempted from the DCS contract.

The critical emergency response role Texas Natural Resources Information Systems (TNRIS), a division of the TWDB, provides to emergency respondents during natural or man-made disasters is currently compromised under DCS. This is the TWDB's main area of concern related to DCS. TNRIS is the state's clearinghouse for natural resource data and data related to emergency management (Texas Water Code, §16.021). The critical role that TNRIS provides requires maximum flexibility and real-time system enhancements which cannot and are not being met by DCS managed services. Staff of your agency and IBM have agreed that most of the critical data service functions managed by TNRIS during emergency management events require a highly dynamic and flexible operational platform versus the steady state operational platform provided by DCS and therefore are not compatible with DCS managed services. No suitable solution to the anticipated degradation of state services has ever been developed by IBM or DIR to address this paramount issue.

DIR and IBM have acknowledged that the TNRIS systems do not "fit" the data center model. The data center is designed for "steady state" computing. TNRIS' systems and data are "dynamic" and need to change very rapidly, at will, especially during an emergency. DIR has approved the exemption of the TNRIS development environment from the DCS contract upon transformation, but flexibility in on line data delivery is essential during an emergency event. Although DIR has agreed to exempt TNRIS' data development operations from DCS, the TWDB is requesting consideration for a full exemption of all servers and related infrastructure from the DCS contract.

In addition to our main concern of not being able to provide adequate emergency response resources to emergency management personnel, government and the general public during a natural or man-made disaster, the TWDB continues to experience a number of problems with the services currently provided through the DCS contract by IBM TFT as follows:

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[www.twdb.state.tx.us](http://www.twdb.state.tx.us) • [info@twdb.state.tx.us](mailto:info@twdb.state.tx.us)

TNRIS - Texas Natural Resources Information System • [www.tnris.state.tx.us](http://www.tnris.state.tx.us)

*A Member of the Texas Geographic Information Council (TGIC)*

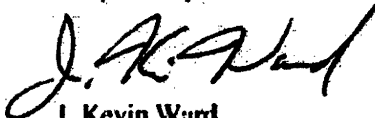


Ms. Karen Robinson  
July 15, 2010  
Page 2

- Since IBM has been managing TWDB's data center, the agency has experienced critical system outages and data backup failures, and because the TWDB's servers have not yet been transformed (moved to the state data center) and related hardware and software is aging, future failures are probable.
- TWDB was taken off line during Hurricane Ike in 2008 when IBM powered down agency servers that included TNRIS services. This severely undermined the ability of TNRIS systems and personnel to respond to that event.
- The majority of agency systems are five years old or older, are out of warranty and have not been refreshed since we entered into this contract. These systems need to be replaced to avoid failures which could impact emergency responders and agency business.
- TIT's poor performance in maintaining agency servers and aging hardware are evident by their inability to upgrade software in a timely fashion, failure to maintain critical patches on TWDB's XioTech Storage Area Network (SAN), consistent unsuccessful server backups, and incorrect invoice charges for decommissioned TWDB servers.
- A high level of TWDB oversight and resources are required as a result of the cumbersome and more difficult process for achieving resolution and results on various issues which include monitoring incidents, change requests, backups, invoices, and special projects that require TIT's involvement. As a result there are concerns that there is an insufficient number of TIT's staff available to support the contract.
- Costs under the DCS contract are excessive compared to market rates, and recent unanticipated cost increases contribute to significant unfunded budget needs in the current and future biennia.

In recent years, the state has faced greater frequency and magnitude of natural disasters and we believe it is in the best interest of Texas to strengthen the capacity to deliver timely, large-scale data services during these catastrophic events independent of the DCS management structure. Also, during periods before and after these events, allowing TNRIS operations to maintain responsibility for all of its data resources and computing environment will position the state to better respond to future events particularly with the increased demand for geographic and location based data and information for mitigating, planning, responding, and recovering from natural disasters. Therefore, the TWDB respectfully requests your consideration and approval for the TWDB's request to be fully exempted from DCS.

Respectfully,



J. Kevin Ward  
Executive Administrator

c: The Honorable Rick Perry, Governor  
Mr. Ed Robertson, Governor's Office  
Mr. Ed Swedberg, DIR  
TWDB Board Members

# **Attachment 2**



**TEXAS DEPARTMENT OF INFORMATION RESOURCES**

P.O. Box 13564 ♦ Austin, TX 78711-3564 ♦ www.dir.texas.gov

Tel: (512) 475-4700 ♦ Fax: (512) 475-4759

RECEIVED

August 27, 2010

AUG 30 2010

TWDB

KAREN W. ROBINSON  
*Executive Director*

Mr. J. Kevin Ward  
Texas Water Development Board  
P.O. Box 13231  
1700 Congress Avenue  
Austin, TX 78711-3231

DIR BOARD OF  
DIRECTORS

Dear Mr. Ward:

CHARLES BACARISSE  
*Chair*

The Department of Information Resources (DIR) has reviewed your July 15, 2010 letter requesting Texas Water Development Board (TWDB) to be fully exempted from the Data Center Services (DCS) program.

RAMÓN F. BAEZ

ROSEMARY R.  
MARTINEZ

We do acknowledge the special concerns of TWDB; specifically that Texas Natural Resources Information Systems (TNRIS) plays a critical role to the state during emergency management response. However, there is insufficient justification for granting an exemption from DCS. DIR maintains that TWDB should continue to be supported within DCS and continue to advance the state strategic direction as specified by HB1516.

THE HONORABLE  
DEBRA MCCARTT

RICHARD S. MOORE

P. KEITH MORROW

ROBERT E.  
PICKERING, JR.

The DCS service provider, IBM, is positioned to support the state in the event of an emergency. IBM provides increased support and responds to agency requests submitted through the Remedy request system, in accordance with Exhibit 2.1, Section 12.0 Crisis Management of the DCS Master Services Agreement. In 2008, as documented in the request system, TWDB staff directed IBM to power down specific servers in preparation for Hurricane Ike. Once reported by TNRIS as an error, IBM responded to the new request as a Priority 1 incident and the servers were promptly brought back online.

ADAM JONES  
*Ex Officio*

BRAD LIVINGSTON  
*Ex Officio*

CARTER SMITH  
*Ex Officio*

TWDB is an important partner in the DCS program and is appropriately part of consolidation into the state datacenter, including the TNRIS production servers. DIR understands the special considerations for GIS environments and has granted an exemption for the TNRIS development environment to accommodate the developer's dynamic data requirements.

DIR recognizes IBM's performance issues and is taking actions under the current contract and through reprocurement to change the service delivery model. We ask for your agency's participation during this reprocurement process to ensure we appropriately consider emergency management response requirements. During the transition period, DIR continues to work with the agencies and IBM to improve and monitor service delivery. We ask that you actively engage with the DCS Business Executive and IT Leadership Committees as they make key decisions and provide guidance on the future of DCS services.

If you have any questions regarding this communication, please contact DIR's Data Center Services Manager, Sally Ward, (512-463-9003) or email ([sally.ward@dir.state.tx.us](mailto:sally.ward@dir.state.tx.us)).

Sincerely,

A handwritten signature in black ink, appearing to read 'Karen Robinson', written in a cursive style.

**Karen Robinson**  
**Executive Director, Department of Information Resources**