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Rex Isom, *Executive Director*

TEXAS STATE SOIL & WATER CONSERVATION BOARD
Protecting and Enhancing Natural Resources for Tomorrow

March 18, 2010

Mr. Ken Levine
Interim Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

Dear Mr. Levine:

On behalf of the Texas State Soil and Water Conservation Board (TSSWCB), I wish to thank you and your staff for your diligent review. We are especially appreciative of the cordial, thorough and professional effort that Sarah Kinkle, Leah Daly, Hector Morales, Ksenia Zemlyanova, and Joe Walraven made to understand the mission and operations of the agency.

The TSSWCB agrees with the majority of your staff's recommendations, but there are a few issues relating to the Texas Brush Control Program where we have presented alternative actions that we believe accomplish your staff's recommendations without unnecessarily narrowing the scope of the Program.

Again, we greatly appreciated the openness of the communication during the review, and look forward to working with your staff and the Commission to increase the efficiency and accountability of the TSSWCB.

Sincerely,

A handwritten signature in black ink, appearing to read "Rex Isom", with a long horizontal flourish extending to the right.

Rex Isom
Executive Director

RI/jf

Enclosure: TSSWCB Response to Sunset Advisory Commission Staff Report



**TEXAS STATE
SOIL AND WATER
CONSERVATION
BOARD**

**RESPONSE TO
SUNSET ADVISORY COMMISSION
STAFF REPORT**

MARCH 18, 2010

TEXAS STATE SOIL AND WATER CONSERVATION BOARD

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AGENCY MISSION

It is the mission of the Texas State Soil and Water Conservation Board, working in conjunction with local soil and water conservation districts, to encourage the wise and productive use of natural resources. It is our goal to ensure the availability of those resources for future generations so that all Texans' present and future needs can be met in a manner that promotes a clean, healthy environment and strong economic growth.

AGENCY PHILOSOPHY

The Texas State Soil and Water Conservation Board will act in accordance with the highest standards of ethics, accountability, efficiency, and openness. We affirm that the conservation of our natural resources is both a public and a private benefit, and we approach our activities with a deep sense of purpose and responsibility. We believe the existing unique organizational structure of soil and water conservation districts, whereby owners and operators of the state's farm and grazing lands organize and govern themselves through a program of voluntary participation, is the most realistic and cost effective means of achieving the State's goals for the conservation and wise use of its natural resources.

Issue
1

Weaknesses in the Agency's Riskiest State-Funded Grant Programs Prevent the State From Evaluating Overall Agency Performance

Recommendation 1.1 — Change in Statute

Require the State Board to establish specific program goals and statewide grant practices, and to measure impacts for state-funded grant programs.

Agency Response:

The Texas State Soil and Water Conservation Board (TSSWCB) appreciates the Sunset Advisory Commission's staff recognition of the difficulty in measuring the impacts of natural resource conservation, and that the majority of the available techniques are extremely cost prohibitive. However, the TSSWCB agrees that some measures, that can be evaluated on a consistent basis, need to be identified and incorporated into the Water Quality Management Plan (WQMP) and Texas Brush Control / Water Supply Enhancement Program so the agency can better evaluate their impacts.

WATER QUALITY MANAGEMENT PLAN PROGRAM

Program Goals and Consistent Reporting Measures

Regarding the WQMP Program, it is not feasible to attempt to directly link the presence or absence of a body of water on the Texas 303(d) List of impaired waters with the development and implementation of WQMPs. The agency has attempted this in the past in targeted areas on a watershed-basis by contracting outside entities to use the Soil and Water Assessment Tool (SWAT) to model the potential environmental benefits of WQMP implementation. However, using elaborate land-use-based computer modeling such as this has proven to be cost prohibitive, in addition to being something that could not be performed on a statewide or annual basis.

The need to identify some form of measure, which would then lead to the ability to establish program goals, was identified by the TSSWCB several years ago. Prior to the initiation of the agency's review through the Sunset process, the TSSWCB contracted the United States Department of Agriculture – Agricultural Research Service (USDA-ARS) to customize a *farm-scale* version of the SWAT model. We believe that this tool, which could be applied to each WQMP, will be able to estimate load reductions of common pollutants associated with nonpoint source pollution. The data the model will provide would be estimates of pollutants that are contained *on-farm* as a result of the WQMP, providing a measure of how effective the WQMP is in preventing those pollutants from leaving the farm and entering

surface waters.

The agency intends to begin using this model in September 2010. After a complete year's worth of data is available, the TSSWCB may be able to identify appropriate goals for reductions in pollutants such as nitrogen, phosphorus, and sediment. The TSSWCB will then be able to communicate possible performance measures to the Legislature. However, the TSSWCB suggests extreme caution be used in attempting to set a rigid expectation for any pollutant load reduction because this remains, as a result of state and federal statute, a voluntary program impacted by economic and seasonal constraints. That remains the primary reason that a more specific performance measure has never been established for this Program.

Statewide Policies to Ensure Grantee Compliance

The Sunset Advisory Commission's staff have noted that the agency performs status reviews on WQMPs. However, a status review is a tool for determining that on-going compliance with the *implementation schedule* contained within a WQMP is being met. It is inclusive of *all* best management practices contained within the WQMP, not solely those that were cost-shared through the agency and local soil and water conservation district (SWCD).

A status review may lead to the agency discovering that compliance of a grant condition is not being met, but its purpose is broader than simply verifying compliance with grant conditions. This may seem to be less important than grant condition compliance, but the benefits a participant receives for being in the WQMP Program extend beyond simply receiving financial assistance for a practice. Participants in the WQMP Program are provided special status under the *Water Code* as meeting Texas surface water quality standards, having the authorization to use allowable mortality management measures *onsite*, and not being required to record the burial site of catastrophic die-offs of poultry in county deed records. Section 26.121, Water Code, specifies that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to or adjacent to any water in the state unless the discharge complies with a person's certified water quality management plan approved by the TSSWCB or other authorizations provided through the Texas Commission on Environmental Quality (TCEQ). So, there are significant benefits realized by participants, aside from receiving cost-share; some participants receive no cost-share at all. The TSSWCB performs status reviews to maintain the overall credibility of the Program for all participants, and to prevent *bad actors* from using it as *safe harbor* from regulatory agencies.

The status review is a tool that is actually used *after* an existing set of policies and procedures have been followed. These existing policies and procedures establish a baseline that grant conditions have been initially met. The WQMP Program rules, policies, and procedures involve a request from a landowner or agricultural producer to a local SWCD for conservation planning assistance. Once a WQMP is developed,

the participant, the SWCD, the USDA – Natural Resources Conservation Service (NRCS), and the TSSWCB collaborate to verify the WQMP meets required technical requirements. If all are met, the TSSWCB certifies the WQMP under Sec. 201.026, Agriculture Code. Once a participant has received certification, he or she may file an application for cost-share assistance through the SWCD and the TSSWCB. Best management practices that are eligible for cost-share assistance are maintained on a list approved by the TSSWCB and the SWCD. Cost-share rates are also approved by the TSSWCB and the SWCD. If the application is approved, then the participant is responsible for installing the practice. At this point a *performance certification* must be conducted through visual on-site inspection of the practice *prior to* reimbursement being provided by the TSSWCB. So the TSSWCB does follow standard grant practices, including the use of status reviews to monitor WQMP and cost-share grant compliance.

The Sunset Advisory Commission staff note that while all regional offices “supervise” similar numbers of WQMPs, status reviews performed annually by those offices range in number from 30 to 300. One of the reasons for this disparity is that frequently the agency uses federal funding provided through the Clean Water Act, Section 319(h) Nonpoint Source Grant Program as additional cost-share funding in certain areas. This federal grant, administered by the Environmental Protection Agency (EPA) through the TSSWCB, requires that the agency perform status reviews on 100% of WQMPs that are administratively tied to federal funding, but the EPA allows additional federal funding to be expended in carrying out those status reviews. Therefore, there will always be significant fluctuations between numbers of reviews performed between the various program offices, but the agency does agree to establish a *baseline* number of status reviews in all priority areas receiving state appropriated general revenue as cost-share funding.

Collecting and Analyzing Data on Verification of Activities

The TSSWCB agrees that the agency has not consistently compiled the information gathered through status reviews into a standard report that would assist in identifying potential areas of concern. Because the *process* of performing a status review is uniform across the State, the agency believes instituting a *summarization process* of all status review data into an annual report would not constitute a significant burden to Program management. This information could be compared from area to area on an annual basis to identify irregularities and other potential problems with cost-share grant compliance monitoring.

Creating a Centralized Complaint Tracking System

The TSSWCB agrees that a centralized tracking system for complaints associated with nonpoint source pollution from agricultural and/or silvicultural activities should be created and implemented. The agency has already begun the system’s development and intends to implement it in Fiscal Year 2011.

Publishing Cost-Share Grant Impacts

The TSSWCB agrees to publish any results associated with the Program via a number of statutorily required reports and the agency's website.

TEXAS BRUSH CONTROL / WATER SUPPLY ENHANCEMENT PROGRAM

Program Goals and Consistent Reporting Measures

Similar difficulties exist with the Texas Brush Control / Water Supply Enhancement Program. As noted by the Sunset Advisory Commission's staff, "researchers agree that under certain conditions, removal of water-depleting brush species, such as juniper, mesquite, or salt cedar, leads to increases in available surface and groundwater." However, attempting to attribute relative increases in surface and groundwater supplies with brush control activities on a consistent statewide basis is likely beyond the ability of science, short of an enormous amount of funding that would likely exceed the entire Program budget. Even attempting to utilize direct water quantity monitoring on every Program project area would not be cost-effective.

Recommendation 2.3 of the *Sunset Advisory Commission Staff Report* pertains to a requirement to conduct feasibility studies in order to estimate the *potential* water yield from brush control activities. While the TSSWCB generally agrees that *Recommendation 2.3* can provide the agency better information for deciding where brush control would most likely produce ground and surface water quantity enhancement (*with fiscal concerns expressed – see agency response Page 10 of this document*), the modeling results from the feasibility studies may also present a potential solution to measuring the impacts of the Program. The modeling results within feasibility studies are predictions of what may occur given a certain set of conditions. These conditions, if precise enough to specify exactly which acres of brush control should be performed within a project area, would enable the TSSWCB to then use the "*progress toward*" treating those acres as a measure for determining if the predicted conditions are being met.

Clearly the predictions are merely estimates as well, and the only true measure of success for this Program is direct water quantity monitoring. Direct monitoring of every project area would represent a tremendous financial burden for the State, and it would remain difficult to definitively associate specific water quantity enhancement with the brush control. Therefore, the TSSWCB recommends a *combination approach*. Conducting feasibility studies that include clear modeling predictions, measuring the agency's progress toward treating those acres, and then employing direct water quantity monitoring in a few targeted areas would provide the agency and the State some measure of whether the Program is being effective.

Direct water quantity monitoring can be performed in one project area, and similar project areas with *like* conditions could be expected to produce similar results. Taking this approach would allow the agency to produce monitoring results, but minimize the fiscal impacts to the Program's actual brush control activity outcomes.

Collecting and Analyzing Data on Verification of Activities

As noted by the Sunset Advisory Commission's staff, the Texas Brush Control / Water Supply Enhancement Program does not currently employ a process equivalent to a status review in the WQMP. However, a significant difference between the two programs should be noted; brush control is a *once-and-done* best management practice. Once the brush control is actually performed, the State has realized the desired outcome. Because the agency recognizes that continued maintenance is important to continued water conservation potential, the Program's rules do require participants to *agree to* continued maintenance and removal of re-growth by the participant if funding becomes available. The TSSWCB verifies that the brush control has been performed to required standards before payment is made. The agency does perform compliance checks on the 90-day grazing deferment requirement, which is required to ensure grazing doesn't inhibit the return of native grasses. The return of native grasses to an area that has been treated creates competition for re-growing brush species.

If funding became available for future follow-up treatment, the TSSWCB agrees to verify that treatment is necessary, as well as verify that treatment was conducted prior to making payments.

Publishing Cost-Share Grant Results

The TSSWCB agrees to publish any results associated with the Program via a number of statutorily required reports and the agency's website.

Recommendation 1.2 — Management Action

The State Board should use a stakeholder process to develop grant goals and performance measures, and to routinely use grant results to improve existing programs.

Agency Response:

The TSSWCB currently relies on SWCD directors and representatives from partner agencies to provide the agency input on natural resource concerns, appropriate best management practices, and cost-share grant program activities. Local SWCD directors, by virtue of being elected by landowners and agricultural producers, are the best possible collection of stakeholders for both of these programs. The TSSWCB has not routinely engaged SWCD directors and partner agencies in the

establishment of program goals, but the agency sees the benefit that it would provide.

In order to garner input from these existing stakeholders, as well as program participants, the TSSWCB agrees to initiate a formal expanded stakeholder process for both the WQMP Program and the Texas Brush Control / Water Supply Enhancement Program.

Issue
2

State Guidance for Water Supply Enhancement Provides a Confusing and Ineffective Framework for Meeting Critical Water Conservation Needs

Recommendation 2.1 — Change in Statute

Clarify the Program's focus on water supply enhancement.

Agency Response:

The TSSWCB does not support the Sunset Advisory Commission's staff recommendations to clarify the focus of the Texas Brush Control Program as being water supply enhancement, and does not support changing the statutory name to Water Supply Enhancement Program. We believe further clarification of the Program's focus would only result in increasing redundancy, and that changing the name would narrow the intended scope of the Program, as well as unnecessarily and adversely affecting participation in this voluntary program.

Clarifying the Focus of the Program

Chapter 203, Agriculture Code, already makes it *undeniably* clear that the focus of the Program is to increase the quantity of surface and ground water resources through the control of brush. There are numerous citations in the chapter, noted in the *Sunset Advisory Commission Staff Report* (Foot Note No. 4, Page 21), where the focus is singularly tied to this. The TSSWCB does not believe additional language would result in a substantive change to the Program.

Participant Confusion of the Program's Focus

The TSSWCB appreciates the Sunset Advisory Commission staff's diligent review of the Program and the delicate balance that exists between legislative intent and participant motivation. The *Sunset Commission Staff Report* indicates that some local SWCD directors and individual participants do not recognize that the Legislature's intent for the Program was to increase ground and surface water quantity. Clearly a single individual that voluntarily chooses to accept cost-share through the Program is more motivated to participate because of the aesthetic,

agricultural, wildlife, and water quantity benefits that will be *privately* realized, rather than by the overall benefit that the cumulative effect of many participants will have on the State's *public* water supplies.

The TSSWCB acknowledges that this discontinuity exists at some levels, but does not agree that having personal motivations aligned with state government intentions is requisite to achieving program goals and objectives. There is no discontinuity between the Legislature and the TSSWCB. Local perception of the Program's focus does not drive where the Program is made available; that is directed by the TSSWCB and the Legislature. So long as the TSSWCB is targeting the delivery of the Program, measuring the public benefits, and reporting them to the Legislature, a participant's understanding of the statewide or regional public benefits of their personal participation in a program is not necessary.

Private Benefits and Incentives Leading to Public Benefits Being Realized

The Program, as created by the Legislature, inherently involves both *public and private* natural resource benefits. The private benefits of an individual participant depend on their personal motivations, which are diverse and could involve improved grazing conditions, modification of habitat to increase or decrease wildlife numbers, personal preference for aesthetic conditions, and increased infiltration of rainfall, which may then translate into increased stream flows and therefore more available water for agricultural purposes. This may be why the Sunset Advisory Commission's staff have perceived *confusion*, but as stated above, the agency does not view this as a detriment to achieving program goals. Not to go unmentioned, participants provide at least 30% of the cost of brush control through this program.

So, as created by the Legislature in 1985, the Program attempts to create an overall *public* benefit by providing an incentive to individuals seeking to attain *private* benefits. At that time, the focus of the program was (and continues to be) ground and surface water quantity enhancement. The private benefits were intentionally included as a fundamental component to ensure adequate participation due to the voluntary nature of the program, without which, there would be no public benefits.

Changing the Program's Statutory Name

As noted by the Sunset Advisory Commission's staff, the TSSWCB has intentionally begun commonly referring to the Program as the Water Supply Enhancement Program. This change was made to emphasize that the appropriations recently made to the Program were specifically for increasing *public surface* water supplies, as evidenced by the creation of *Goal C, Water Supply Enhancement*, in the agency's appropriation bill pattern during the 2006-2007 biennium. Previous appropriations were made to a different funding strategy in the agency's bill pattern simply titled *Soil and Water Conservation Assistance*. Additionally, formal discussions between the agency and legislative committees during the appropriation process have resulted in a clear understanding that the funding currently being

appropriated to the TSSWCB should be used in those geographic areas where it is most likely to result in water yields to public water supplies. However, the TSSWCB does not believe that the narrowed scope of certain appropriations necessarily calls for narrowing the scope of the overall Program, which is what would essentially be the result of this recommendation.

The statutory goal of the Program has always been to provide brush control in areas that are experiencing *water conservation needs*. Water conservation may be needed for a variety of uses including agricultural, recreational, drinking water from groundwater wells, and drinking water from surface reservoirs. Fish and wildlife also require water, and due to the recent emphasis on protecting environmental flows, the Program may be needed to address this as well in the future. The Program existed completely unfunded from 1985 through 1999. The agency feels the scope of the Program should remain as currently provided for in statute to accommodate future water conservation needs for a variety of uses. Additionally, the reason this program is situated within the TSSWCB is because it is a *brush control* program, not because it is a water supply enhancement program. The agency is not currently authorized to conduct water supply enhancement through any means *other than* brush control.

The TSSWCB began commonly referring to the Texas Brush Control Program as the Water Supply Enhancement Program in an effort to emphasize the specific purpose of the agency's most recent appropriations. This was done in an effort to *better market* the express intentions of the Legislature. Contrary to the agency's efforts to make this *more* clear, the TSSWCB now recognizes that it has only resulted in creating additional confusion. Also, the Sunset Advisory Commission's staff have noted that terms such as "program," "project," and "area" are loosely and interchangeably used throughout Chapter 203, Agriculture Code. This may be another reason confusion has infiltrated the Program's vernacular.

The TSSWCB recommends that future marketing of the Program be by its official statutory name, but refer to the projects currently funded by the Legislature as water supply enhancement *projects*, and work with the Legislature to clarify the meanings of "program," "project," and "area" during the upcoming legislative session. Taking this approach would leave open the possibility for future brush control projects, with goals other than enhancing the quantity of public surface drinking water supplies, to be carried out through this Program.

Related Issues – Invasive Species

Many of the brush species addressed by the Program are also considered *invasive species*. This is clearly a term that encompasses much more than terrestrial plant life, with examples that range from feral hogs to Giant Salvinia (aquatic/non-terrestrial). However, because the TSSWCB was named as the administering agency for the Texas Invasive Species Coordinating Committee through House Bill 865 (81st Regular Session), the TSSWCB would appreciate being granted more

explicit authority to receive federal and state funding for addressing terrestrial invasive plant species.

A primary purpose for the establishment of the Committee is to improve the State's *track record* at attracting federal funding for the control of invasive species, some of which are brush. However, currently this Program is exclusively for controlling brush species that are a detriment to water conservation, which is not always an attribute of terrestrial invasive plant species.

Nevertheless terrestrial invasive brush species have the potential to spread to other areas of the state resulting in a detrimental impact on agricultural production, economics, and sometimes present impediments to local, state, or federal authorities in their efforts to maintain homeland security. To firmly establish the agency's authority to receive and deliver funds for these purposes, the TSSWCB requests legislative action that would either:

1. Expand the scope of the Texas Brush Control Program in Chapter 203, Agriculture Code, to include the control of terrestrial invasive plant species (*to not simply be a water quantity enhancement program*), or
2. Establish the agency's authority in Chapter 201, Agriculture Code, to specify the TSSWCB is the lead agency for the control of terrestrial invasive plant species, and is authorized to receive and administer state and federal appropriations on the matter.

If *Option 1* is chosen, future state-appropriated funding for water supply enhancement could still be placed within existing *Goal C, Water Supply Enhancement* of the agency's appropriation bill pattern, eliminating any potential confusion that may arise when determining what the objective is for a particular project within the overall Program. Any potential federal funding for invasive species control under the agency's jurisdiction could be appropriately placed in *Goal A, Soil and Water Conservation Assistance*, or be placed in a newly created funding strategy specific to invasive species.

If *Option 2* is chosen, the agency could use the existing cost-share program codified in Chapter 201, *Agriculture Code - Subchapter I*, to deliver the funding to end users.

The TSSWCB would appreciate any assistance the Sunset Advisory Commission could provide toward clarifying the authority of the agency to receive federal and state funding for addressing terrestrial invasive plant species.

Recommendation 2.2 — Change in Statute

Require the State Board to develop a system to rank and prioritize water supply enhancement projects, rather than areas of the State, based on water conservation need and water yield.

Agency Response:

The TSSWCB generally agrees that ranking individual projects, rather than “areas of the state,” would be a more efficient use of agency time. The TSSWCB recognizes that this recommendation, in conjunction with *Recommendation 2.4* (relating to a required project application/proposal process) and *Recommendation 2.3* (relating to required project feasibility studies), would establish a logical and straightforward approach to administering the program. This system would result in (1) projects being proposed to the agency by local SWCDs and other interested parties, (2) computer modeling being performed to estimate potential water yield associated with proposed projects, (3) the TSSWCB ranking proposals based on the information submitted and the modeling results, and then (4) the TSSWCB considering the establishment of a Program project area to be allocated cost-share funding.

While the TSSWCB acknowledges the logic and straightforwardness of this system, we offer concern over the costs associated with feasibility studies in our response to *Recommendation 2.3*.

Recommendation 2.3 — Change in Statute

Require the State Board to establish a process to contract for feasibility studies on new water supply enhancement projects.

Agency Response:

The TSSWCB generally agrees that feasibility studies provide valuable information to the agency in determining where to establish project areas that would maximize the limited funding for the Program by targeting its efforts in geographic areas that are most likely to result in measurable water yield.

The agency has received funding in past biennia through explicit appropriation riders for performing feasibility studies. These feasibility studies were performed by agency contractors and have been the bulk of the scientific basis for estimated water yield in the program to this point. However, it is the TSSWCB’s understanding that current legislative appropriations made to the Program are for actual brush management (cost-share funding and minimal program administration) rather than feasibility studies.

If feasibility studies are to become required elements, the TSSWCB would either need (1) additional appropriations or (2) legislation direction to determine the percentage of Program funding that should be removed from cost-share allocations and transferred to feasibility studies.

Recommendation 2.4 — Management Action

The State Board should develop an application process for water supply enhancement projects.

Agency Response:

The TSSWCB agrees that an application/proposal process for the Program is needed in order to comply with *Recommendation 2.2*. However, because local SWCDs are the primary stakeholder for the Program, and because SWCDs have limited resources, the TSSWCB believes any potential application process should not become too burdensome. Basic information is all that is readily going to be available to a SWCD.

Agency Recommendation for Future Program Administration

Implementing *Recommendation 1.1*, relating to Program goals and consistent reporting measures, in combination with *Recommendations 2.2, 2.3, and 2.4*, would present a straightforward and logical approach to administering the Program into the future.

If these recommendations are legislatively required, the agency agrees to quickly modify program rules to implement them. The TSSWCB envisions a program whereby:

- proposals are made to the agency on an annual basis,
- proposals are evaluated with basic criteria relating to feasibility,
- feasibility studies are carried out to predict anticipated water yield for proposed projects (if not already performed),
- water supply enhancement projects are formally established by the TSSWCB,
- specific goals for acres to be treated (obtained through feasibility studies) are established, and
- cost-share funding is allocated for the project.

This proposed process for administering the Program will likely result in some of these steps being performed in one fiscal year, and cost-share allocations being made in subsequent years (as available). Direct water quantity monitoring would be

carried out in targeted areas to evaluate success, which would then be compared to other similar projects where monitoring is not being performed. Formal project establishment, anticipated funding needs, possible verification activities to monitor continued participant grant compliance, and coordination of progress toward predicted water yield goals would all be consistent and annual administrative duties carried out by program management.

Recommendation 2.5 — Management Action

The State Board should approve brush species eligible for treatment through the Program.

Agency Response:

The TSSWCB does not agree that the agency should approve brush species eligible for treatment through the Program.

The current enabling legislation for the Program defines brush control as “the selective control of noxious brush such as mesquite, prickly pear, salt cedar, or other phreatophytes (deep-rooted plants that obtains water from a permanent ground supply or from the water table) that consume water to a degree that is detrimental to water conservation.”

All species that can tolerate *wet feet* will consume excessive water when it is readily available and on that basis could qualify for inclusion on a statewide list. However, the TSSWCB does not see a public benefit in listing species such as pecan, cypress, and oak on a list eligible for removal. These excessive water users may have historical positive environmental effects that outweigh water consumption (shade, water temperature, fish and wildlife habitat, etc).

The TSSWCB recommends maintaining the established legislated list and being granted the flexibility to determine “other pheatophytes” based on location, detriment to water consumption, and environmental benefit.

Recommendation 2.6 — Management Action

The State Board should explore the need to contract for technical expertise in administration of the Program.

Agency Response:

The TSSWCB agrees with this recommendation. On numerous occasions (and currently) the agency has contracted hydrologists and engineers to provide the agency guidance on technical aspects of the Program. The agency believes there is a

permanent need for program administration, but technical expertise is needed on a periodic basis. The TSSWCB will explore the costs and benefits of contracting or hiring a hydrologist on a permanent basis.

Recommendation 2.7 — Management Action

The State Board should continue to dedicate a portion of its funding to evaluate the effectiveness of the Program.

Agency Response:

The TSSWCB agrees that the agency should continue to dedicate a portion of its funding to evaluate the effectiveness of the Program. This will be through direct water quantity monitoring in a few diverse project areas, the results of which would be used to estimate results in similar project areas not being monitored.

Issue 3	Texas Has a Continuing Need for the Texas State Soil and Water Conservation Board
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Recommendation 3.1 — Change in Statute

Continue the Texas State Soil and Water Conservation Board for 12 years.

Agency Response:

The TSSWCB agrees with the Sunset Advisory Commission staff's assessment that Texas has a continuing need to provide technical and financial assistance to local SWCDs, abate nonpoint source pollution, administer a brush control program to enhance ground and surface water resources, and the TSSWCB is the most appropriate agency to perform these functions.

Recommendation 3.2 — Change in Statute

Apply standard Sunset across-the-board requirements to the Texas State Soil and Water Conservation Board.

Agency Response:

The TSSWCB has no comment on this recommendation. If legislatively enacted, the agency will proceed with implementation.