

AGENDA ITEM MEMO

BOARD MEETING DATE: October 5, 2022

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel

FROM: Alexis Lorick, Assistant General Counsel

SUBJECT: Response to Draft Sunset Commission Report Issue 3, updating the Separation of Board Member Duties from that of Staff

ACTION REQUESTED

Consider approving by resolution an updated separation of policy-making responsibilities of the governing body of the Texas Water Development Board, the management responsibilities of the Executive Administrator, and related delegations to the Executive Administrator.

BACKGROUND

In July 2022, the Sunset Advisory Commission (Commission) completed its required Staff Report reviewing the Texas Water Development Board (TWDB). This proposed action addresses items in Issue 3 recommending the Board update its separation of duties from those of staff.

KEY ISSUES

The Board approved Resolution No. 18-114 that included necessary updates for both the Board and the Executive Administrator coordinating agency-practices with applicable statutes, rules and policies. Since the Board approved the resolution, the Commission has recommended additional updates in the division of responsibilities between the Board and staff. These recommendations are subject to Legislative approval.

To comply with the Commission recommendation in Issue 3 of its draft Sunset Report, proposed Resolution No. 22-____ updates Resolution No. 18-114 by: (1) including in the list of policy-making responsibilities of the Board that it is required to adopt regional flood plans and a State Flood Plan; and (2) clarifies previously delegated authority and duties to the Executive Administrator in Resolutions Nos. 03-20 and 09-135.

In Resolution Nos. 03-20 and 09-135, the Board delegated to the Executive Administrator management responsibilities not clearly outlined in statute and are necessary for the effective operation of the TWDB. Furthermore, neither Resolution No. 03-20 nor 09-135 have been considered by the current makeup of the Board through formal action. As these duties are currently performed successfully by the Executive Administrator and staff, he recommends that the Board consider and deliberate on these delegations. Present consideration of these resolutions will also comply with the Commission's recommendation in Issue 3 of its draft report of the TWDB.

RECOMMENDATION

The Executive Administrator recommends approving by resolution an updated separation of policy-making responsibilities of the governing body of the Texas Water Development Board, the management responsibilities of the Executive Administrator, and related delegations to the Executive Administrator in TWDB Resolutions No. 03-20 and 09-135.

Attachments:

- 1 – Resolution 22-
- 2 – Resolution 18-114
- 3 – Resolution 03-20
- 4 – Resolution 09-135

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
SEPARATING THE RESPONSIBILITIES OF THE BOARD AND STAFF AND
AFFIRMING CERTAIN DUTIES OF THE EXECUTIVE ADMINISTRATOR

(22-)

WHEREAS, Texas Water Code § 6.111 requires the Texas Water Development Board (TWDB) to develop and implement policies that clearly separate the policy-making responsibilities of the governing body (Board) and the management responsibilities of the Executive Administrator and the staff of the Board;

WHEREAS, the Board recognizes and affirms the division of responsibilities established by the Texas Water Code, and wishes to further elaborate herein;

NOW THEREFORE, based on said considerations, the Board resolves as follows:

The Board shall:

1. appoint a person to serve as Executive Administrator at the will of the Board;
2. appoint a person to serve as Internal Auditor at the will of the Board;
3. adopt rules necessary and advisable under Government Code, Chapter 2001 to carry out the powers and duties of the Board;
4. adopt such policies that it deems necessary to carry out the responsibilities of the agency;
5. approve loans and grants made by the agency unless specifically delegated by Board rule to the Executive Administrator;
6. approve regional water plans and the State Water Plan;
7. approve regional flood plans and a comprehensive State Flood Plan;
8. approve all contracts that are not delegated by specific Board action to the Executive Administrator;
9. examine and approve budget recommendations that are to be transmitted to the Legislature (the Legislative Appropriations Request);
10. approve the following reports to the Legislature:
 - a. the agency's strategic plan;

- b. biennial report in writing to the Governor and the members of the Legislature on the activities of the Board and its recommendations for necessary and desirable legislation; and
11. take all other actions specifically required of it by law.

The Executive Administrator, or the Executive Administrator's designees, shall:

1. develop and implement policies and procedures, that do not conflict with policies adopted by the Board, that govern the internal management and organization of the agency;
2. employ and discharge personnel as necessary for the efficient operation of the agency;
3. organize and reorganize the administrative sections and divisions of the agency without further Board action;
4. determine and oversee the responsibilities of each administrative division of the agency and its staff in carrying out the authority, duties, and functions required of the agency by law;
5. prepare and maintain an equal employment opportunity policy required by Texas Water Code § 6.188;
6. negotiate all contracts for the Board and execute certain contracts as specified in past and future resolutions of the Board;
7. recommend rules or actions to the Board on any issue;
8. make recommendations to the Board regarding the agency's legislative budget request and manage the fiscal affairs of the agency;
9. in conjunction with the Internal Auditor, maintain a complaint file on each written complaint filed with the Board and take other required actions under Texas Water Code §§ 6.154 and 6.155;
10. prepare information of public interest describing functions of the Board and complaint procedures;
11. conduct all technical studies and provide technical assistance required of the agency by statute;
12. prepare all statutorily required legislative reports and submit all required legislative reports, except those listed in this resolution as requiring Board approval; and

13. report to the Bond Review Board on performance of loans as required by Texas Water Code § 17.179.

In addition to the foregoing, the Board finds it prudent to affirm and acknowledge prior delegated authorities and duties performed by the Executive Administrator, his designee, or staff previously delegated by Board Action in TWDB Resolutions Nos. 03-20 and 09-135:

1. The Executive Administrator or his designee is authorized to execute necessary closing documents for loan closings in accordance with prior Board delegation in the TWDB Minute Order of May 16, 1996, as amended by TWDB Resolution No. 03-20, including but not limited to consent forms authorizing the issuance of additional bonds, changes in paying agents and registrars, escrow releases, and modifications of debt service schedules that do not negatively impact the Board's portfolio as contemplated by Finding No. 1 of TWDB Resolution No. 03-20;
2. The Executive Administrator or his designee is authorized to redeem, defease, prepay bonds, or to take any other necessary action to mitigate prepayment risk to the Board's portfolio for all of the TWDB Financial Assistance programs in accordance with Finding Number 2 of TWDB Resolution No. 03-20. The Executive Administrator will continue to request annually the authority to make necessary payments as required by the terms of certain resolutions adopted by the TWDB authorizing the issuance of general obligation or revenue bonds for the TWDB Financial Assistance Programs.
3. The Executive Administrator or his designee shall execute Releases of Lien(s) for water supply corporations or other such private entity, as requested and when debt that is secured by said lien(s) are paid in full and a release would not otherwise negatively affect the Board's portfolio, as delegated by Finding Number 3 in TWDB Resolution No. 03-20;
4. The Executive Administrator or his designee is authorized to purchase and use any promotional items of the nature contemplated by Texas Water Code § 6.198 and to exercise independent judgement regarding the same. The Executive Administrator may maintain policies and a catalogue of promotional items related to the foregoing.
5. TWDB Resolutions No. 03-20 and 09-135 are superseded.

BE IT FURTHER RESOLVED that the Board hereby recognizes and adopts all divisions of responsibilities between the Board and the Executive Administrator established in the Texas Water Code, rules of the Board, or otherwise by state law, whether or not specifically listed herein.

APPROVED and ordered of record this 5th day of October 2022.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
SEPARATING THE RESPONSIBILITIES OF THE BOARD AND STAFF**

(18 -114)

WHEREAS, Texas Water Code § 6.111 requires the Texas Water Development Board (TWDB) to develop and implement policies that clearly separate the policy-making responsibilities of the governing body (Board) and the management responsibilities of the Executive Administrator and the staff of the Board;

WHEREAS, the Board recognizes and affirms the division of responsibilities established by the Texas Water Code, and wishes to further elaborate herein;

NOW THEREFORE, based on said considerations, the Board resolves as follows:

The Board shall:

1. appoint a person to serve as Executive Administrator at the will of the Board;
2. appoint a person to serve as Internal Auditor at the will of the Board;
3. adopt rules necessary and advisable under Government Code, Chapter 2001 to carry out the powers and duties of the Board;
4. adopt such policies that it deems necessary to carry out the responsibilities of the agency;
5. approve loans and grants made by the agency unless specifically delegated by Board rule to the Executive Administrator;
6. approve regional water plans and the State Water Plan;
7. approve all contracts that are not delegated by specific Board action to the Executive Administrator;
8. examine and approve budget recommendations that are to be transmitted to the Legislature (the Legislative Appropriations Request);
9. approve the following reports to the Legislature:
 - a. the agency's strategic plan;
 - b. biennial report in writing to the Governor and the members of the Legislature on the activities of the Board and its recommendations for necessary and desirable legislation; and

10. take all other actions specifically required of it by law.

The Executive Administrator, or the Executive Administrator's designees, shall:

1. develop and implement policies and procedures, that do not conflict with policies adopted by the Board, that govern the internal management and organization of the agency;
2. employ and discharge personnel as necessary for the efficient operation of the agency;
3. organize and reorganize the administrative sections and divisions of the agency without further Board action;
4. determine and oversee the responsibilities of each administrative division of the agency and its staff in carrying out the authority, duties, and functions required of the agency by law;
5. prepare and maintain an equal employment opportunity policy required by Texas Water Code § 6.188;
6. negotiate all contracts for the Board and execute certain contracts as specified in past and future resolutions of the Board;
7. recommend rules or actions to the Board on any issue;
8. make recommendations to the Board regarding the agency's legislative budget request and manage the fiscal affairs of the agency;
9. in conjunction with the Internal Auditor, maintain a complaint file on each written complaint filed with the Board and take other required actions under Texas Water Code §§ 6.154 and 6.155;
10. prepare information of public interest describing functions of the Board and complaint procedures;
11. conduct all technical studies and provide technical assistance required of the agency by statute;
12. prepare all statutorily required legislative reports and submit all required legislative reports, except those listed in this resolution as requiring Board approval; and
13. report to the Bond Review Board on performance of loans as required by Texas Water Code § 17.179.

BE IT FURTHER RESOLVED that the Board hereby recognizes and adopts all divisions of responsibilities between the Board and the Executive Administrator established in the Texas Water Code, rules of the Board, or otherwise by state law, whether or not specifically listed herein.

BE IT FURTHER RESOLVED, that this resolution supersedes Board Resolution 02-20 and all prior inconsistent resolutions.

APPROVED and ordered of record this the 20th day of September, 2018.

TEXAS WATER DEVELOPMENT BOARD

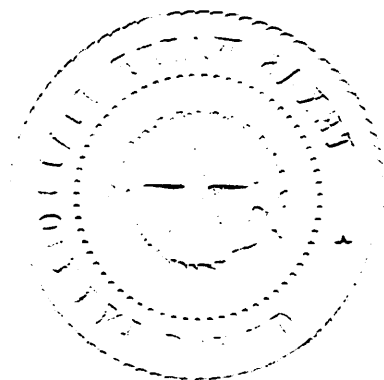


Peter M. Lake, Chairman

ATTEST:



Jeff Walker, Executive Administrator



A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
ASSIGNING CERTAIN DUTIES OF THE DEVELOPMENT FUND MANAGER
TO THE EXECUTIVE ADMINISTRATOR, AND
AUTHORIZING AMENDMENTS TO
MINUTE ORDER AND RESOLUTION NOS. 99-60, 99-61 AND 99-62

(03-20)

WHEREAS, on May 16, 1996, the Texas Water Development Board (Board) approved by minute order the authority for the Development Fund Manager (DFM) of the Board to execute all documents necessary to effect loan closings (Minute Order); and

WHEREAS, on May 19, 1999, the Board approved three resolutions to assign specific loan responsibilities to the DFM: Resolution No. 99-60 waived the requirement of publication of notice of redemption for bonds where the Board is the sole bondholder and has received timely notice of redemption and authorized the DFM to execute the necessary documents; Resolution No. 99-61 authorized the DFM to deposit to the credit of the Financial Assistance Account or the Economically Distressed Areas Program Account all prepayments for financial assistance from those accounts; and Resolution No. 99-62 authorized the DFM to execute Release of Lien at the request of a water supply corporation when the debt secured by the lien was to be repaid in full; and

WHEREAS, as a result of the recent reorganization of the various offices of the Board, the DFM will now have minimal involvement in the financial assistance and construction activities of the Office of Project Finance and Construction Assistance (OPFCA); and

WHEREAS, the performance of these duties relating to closings, redemptions, prepayments, release of liens, and closings are consistent with other OPFCA duties that are performed by the Executive Administrator (EA); and

WHEREAS, the Board finds that those responsibilities assigned to the DFM can more effectively be performed by the EA or the Deputy EA designated by the EA and that said responsibilities should be updated to reflect current financial services provided by the Board;

NOW, THEREFORE, based on said considerations and findings, the Texas Water Development Board resolves as follows:

- (1) The Minute Order of May 16, 1996 authorizing the Development Fund Manager to execute necessary documents for loan closings is amended to assign to the Executive Administrator or the Deputy EA designated by the EA the responsibilities of executing necessary documents for financial assistance closings. All other terms and conditions of the Minute Order remain in full force and effect.

- (2) Board Resolution Nos. 99-60 and 99-61 are amended solely to assign to the Executive Administrator or the Deputy EA designated by the EA the responsibilities of bond redemptions and prepayments that were previously authorized for the Development Fund Manager. All other terms and conditions of Resolution Nos. 99-60 and 99-61 remain in full force and effect.
- (3) Board Resolution No. 99-62 is amended to authorize the EA or the Deputy EA designated by the EA to execute a Release of Lien at the request of a water supply corporation or a private entity when debt which is secured by the liens is being paid in full. All other terms and conditions of Resolution No. 99-62 remain in full force and effect.

APPROVED and ordered of record this the 19th day of February 2003.

TEXAS WATER DEVELOPMENT BOARD



E. G. Rod Pittman, Chairman

ATTEST:



Kevin Ward
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AUTHORIZING THE EXECUTIVE ADMINISTRATOR
TO PURCHASE AND USE PROMOTIONAL ITEMS

(09-135)

WHEREAS, The 81st Texas Legislature, in House Bill 4110, enacted Texas Water Code §6.198, which allows the Executive Administrator, with the Texas Water Development Board's (TWDB's) approval, to "purchase, donate, sell, or contract for the sale of items to promote the programs of the board, including: (1) caps or other clothing; (2) posters; (3) banners; (4) calendars; (5) books; (6) prints; and (7) other items as determined by the board" (collectively, "promotional items"); and

WHEREAS, the TWDB finds that it is reasonable to authorize the Executive Administrator to purchase any promotional item that is of the nature contemplated by Texas Water Code §6.198, and to exercise independent judgment regarding individual items that may be purchased and used on behalf of the TWDB, as long as those items are clearly intended to be promotional items; and

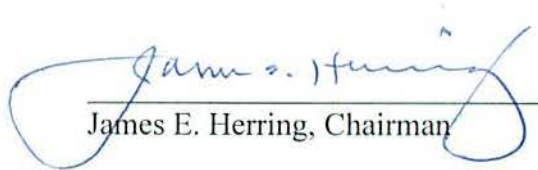
WHEREAS, the TWDB finds that it is reasonable to allow the Executive Administrator to maintain Policies regarding the purchase and use of promotional items, and a Catalogue of Promotional Items that the Executive Administrator approves for purchase and use by TWDB personnel.

NOW THEREFORE, based on these considerations, the Texas Water Development Board resolves as follows:


1. the Executive Administrator is authorized to purchase and use any promotional item that is of the nature contemplated by Texas Water Code §6.198, and to exercise independent judgment regarding individual items that may be purchased and used on behalf of the TWDB, as long as those items are clearly intended to be promotional items; and
2. the Executive Administrator may maintain Policies regarding the purchase and use of promotional items, and a Catalogue of Promotional Items that the Executive Administrator approves for purchase by TWDB personnel.

APPROVED and ordered of record this, the 19th day of November, 2009.

TEXAS WATER DEVELOPMENT BOARD


James E. Herring, Chairman

ATTEST:


J. Kevin Ward
Executive Administrator