



CHARLES PERRY  
TEXAS STATE SENATOR  
DISTRICT 28

September 26, 2019

The Honorable Ken Paxton  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

RQ-0310-KP  
FILE # ML-48624-19  
I.D. # 48624

Dear General Paxton,

Please accept this letter as a formal request for an Attorney General opinion over the Guadalupe-Blanco River Authority's enabling legislation relating to their ability to tax or assert rates on lake front property owners. I appreciate the opportunity to receive insight and clarity on the issue.

As Chairman of the Senate Committee on Water & Rural Affairs, I oversee water resources in Texas, which include both surface and groundwater management. While surface water is owned by the state, often river authorities are tasked with maintenance and management. This can include oversight of water and wastewater, infrastructure, and flood control.

In 2016, a spill gate at the dam that forms Lake Wood on the Guadalupe River system failed. The failure caused the lake to drain. During the 86th Legislative Session, at the March 23, 2019 hearing for the Senate Water & Rural Affairs Committee, we had the opportunity to hear from property owners who have been affected by the lowering of the lake. A couple of months later on May 14, 2019, the dam that forms Lake Dunlap failed causing the lake to completely drain within days. After the Lake Dunlap dam failure, discussion ensued over how these entities tasked with maintaining the infrastructure required for the lakes can adequately cover the associated costs.

These events have resulted in focusing on the Guadalupe-Blanco River Authority (GBRA) and their role in maintaining infrastructure that they are legally responsible for. GBRA also completed several engineering studies which indicated that the dams located at Lakes Dunlap, McQueeney, Placid, Meadow, and Gonzales would need to be reconstructed due to aging spill gate parts. Replacement of these structures is costly, however, according to the GBRA enabling legislation, it is required. Section 2<sup>1</sup> of the enabling legislation outlines that:

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<sup>1</sup> Section 1, Chapter 75, Acts of the 43rd Legislature, 1st Called Session, 1933.

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"without limitation of the generality of the foregoing, the District shall have and is hereby authorized to exercise the following powers, rights, privileges, and functions: (f) to prevent or aid in the prevention of damage to person or property from the water of the Guadalupe and Blanco Rivers and their tributaries; (k) to conserve and develop waters and lands for recreation purposes and any facilities in aid thereof."

While GBRA must prevent injury to those on the water, the entity is also required to maintain the recreational lakes. Further, Section 2(p) directs GBRA to improve, reconstruct, and continue other operation and maintenance of "all facilities of any kind necessary or convenient to the exercise of such powers, rights, privileges, and functions."<sup>2</sup>

However, it is not clear how GBRA will fund the operation and maintenance or replacement of infrastructure related to the lakes. Section 1 of the enabling legislation details the creation and authority of GBRA and mentions that:

"Nothing in this Act or in any other Act or law contained, however, shall be construed as authorizing the District to levy or collect taxes or assessments, or to create any indebtedness payable out of taxes or assessments, or in any way to pledge the credit of the State."<sup>3</sup>

While GBRA has water and wastewater contracts, the income from these contracts does not cover the costs of operation, maintenance, and reconstruction of the infrastructure of which GBRA is required to oversee. In addition, GBRA has small hydro-electric contracts from the dams that are in question, which will expire within the next year.

While there is an option for bonding authority in the enabling legislation, there is a lack of clarity on revenue. Section 9 begins:

"the Board shall establish and collect rates other charges for the sale or use of water, water connection, power, electric energy, or *all other services sold, furnished, or supplied by the District* which fees and charges shall be nondiscriminatory and sufficient to produce revenues adequate (a) to pay all expenses necessary to the operation and maintenance and replacements and additions to the properties and facilities of the District; (b) to pay the interest on, the principal of and the premium, if any, on all bonds issued under this Act when and as the same shall become due and payable."<sup>4</sup>

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<sup>2</sup> Section 2(p), Chapter 75, Acts of the 43rd Legislature, 1st Called Session, 1933.

<sup>3</sup> Section 1, Chapter 75, Acts of the 43rd Legislature, 1st Called Session, 1933.

<sup>4</sup> Section 9, Chapter 75, Acts of the 43rd Legislature, 1st Called Session, 1933.

In addition, Section 9(f) allows for the creation of an emergency fund for excess revenue.<sup>5</sup> The GBRA authorizes the entity to assess fees and collections to maintain their infrastructure, which would include the dams needing replacement.

Based on the above facts and specified law, I would like to request an Attorney General opinion on the discrepancies contained in statute.

- Can the GBRA establish and issue a fee for property owners whose land touches the water resource in order to fund the replacement, operation, and maintenance of the dams located at Lakes Placid, McQueeney, Meadow, Dunlap, Gonzales and Wood?
- Can the GBRA establish a taxing district by election for those property owners whose land touches the water resource in order to fund the replacement, operation, and maintenance of the dams located at Lakes Placid, McQueeney, Meadow, Dunlap, Gonzales and Wood?

Thank you for the opportunity to discuss this issue. As always, I'm committed to protecting our state's water resources and finding common sense solutions to maintaining Texas' infrastructure.

Thank you,



Charles Perry  
Chair, Senate Committee on Water and Rural Affairs

CC: Office of the Attorney General: Opinion Committee

Senator Donna Campbell  
Senator Lois Kolkhorst  
Senator Judith Zaffirini  
Representative Lyle Larson  
Representative Kyle Biedermann  
Representative John Cyrier  
Representative John Kuempel

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<sup>5</sup> Section 9(f), Chapter 75, Acts of the 43rd Legislature, 1st Called Session, 1933.