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# Texas Commission on Environmental Quality



## Summary of the Water Study

December 2016

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## **Background**

In accordance with the 2016-17 General Appropriations Act (GAA), Article IX, Section 18.01(c), the Texas Commission on Environmental Quality (TCEQ) conducted a study to determine the level of agency workload related to each fee payer group and the relative benefit each fee payer group receives from agency water quality permitting, water quality regulation and safe drinking water programs. As noted by the Legislative Budget Board (LBB) in its 2015 Government Effectiveness and Efficiency Report (GEER), the Water Resource Management Account (WRM Account or Fund 153) “provides the vast majority of state funding for the TCEQ Water Programs.” The LBB further stated that “[t]he account balance has been reduced due to expenditures exceeding revenues in recent years. This trend is expected to continue absent a fee increase or an appropriations reduction for TCEQ water programs.”

The agency Water Programs cost approximately \$111.7 million in Fiscal Year (FY) 2016. This includes \$70.9 million from the Water Resource Management (WRM) Account; \$4.1 million from General Revenue; \$2.7 million in Watermaster Administration; and, \$34 million from Federal Funds. *See Graph 1.* Consistent with the LBB’s observations in the 2015 GEER, the WRM Account has been insufficient to support the Texas Commission Environmental Quality water programs. In FY 2016, the TCEQ collected approximately \$71.4 million in revenue while managing fund obligations of approximately \$71 million.

This revenue shortfall, which has been trending since FY 2006, has resulted in the TCEQ increasing fees, including in the current fiscal year, consistent with Section 18.01(a). Section 18.01(a) provides that “[i]n the event that available funds in the [WRM] Account No. 153 are insufficient to meet appropriations in this Act and related benefit costs, the TCEQ shall increase rates for fees deposited to the [WRM] Account No. 153 for which it has rulemaking authority, including the Water Quality Fee established in Water Code, Chapter 26 and the Public Health Service Fee established in Health and Safety Code, Section 341.041, at a level to ensure that sufficient balances and revenues are available.”

The Consolidated Water Quality (CWQ) fee was raised in FYs 2016 and 2017 to address the revenue shortage. For the Public Health Service Fee (PHS Fee), rulemaking was required to increase the fee. On May 18, 2016, the Commission adopted the rule containing the PHS fee increase, which assists the agency in meeting its funding needs in FY 2017 and provides the agency flexibility to adjust these rates to meet future water funding needs.

The agency performed the Section 18.01(c) study by creating a work group with representatives from the Office of Water, the Office of Compliance and Enforcement, the Office of Legal Services, and the Office of Administrative Services. Staff compiled the costs associated with the water programs and the number of FTEs supporting each program. Using this data, the workgroup allocated the fees to the appropriate programs to determine which programs have insufficient revenue to support their costs. As noted, the study required a review of the agency’s workload in relation to the revenue generated by the associated fee payers and the benefit to the fee payers. Using this analysis, the agency was directed to develop a methodology to determine the appropriate level of fee rates that would generate revenue in proportion to the agency’s workload and the fee payer’s benefit within the current statutory provisions. The findings of the study identified several fee rates set at their statutory limit which are insufficient to support the workload of the programs.

Although the agency was not directed to produce a report, the agency is providing the results of the analysis. Without changes to the TCEQ's statutory fee authority, the CWQ Fee and PHS Fee will necessarily continue to increase in order to provide sufficient revenue for the water programs, particularly as recent events, such as the drought and increased focus and attention arising from the contamination of Flint Michigan's drinking water, have strained programmatic and compliance resources.

The analysis completed by the agency is summarized in three categories: 1) the agency's workload compared to the revenue generated; 2) programs without a dedicated fee; and 3) inequities among fee payers.

### **1) Program Costs versus Revenue Collections**

Staff's review of the agency workload relative to the revenue generated by the following specific fee payers revealed the following:

#### *1. Application Fees*

- Relative to the workload, the water permitting programs are significantly underfunded by the application fees.
- The rates for application fees are set as low as \$100 and capped at \$2,000 by statute. These rates generate \$1,048,560 in annual revenue.
- The Wastewater Permitting Program costs \$19.1 million; the Water Districts Program costs \$2.6 million; and the Water Rights Permitting Program costs \$6.2 million. The total cost for these water programs is approximately \$27.9 million per year.
- The application fees include Water Use Permits; Individual Water Quality Permits; Water District Creation; Miscellaneous Water District; Temporary or Emergency Water Use Permits; Municipal Waste Permits<sup>1</sup>, and Injection Wells<sup>2</sup>.

#### *2. Aggregate Production Operations (APO) Fees*

- The APO fees are likewise insufficient to support the program costs associated with the APO program.
- The fee ranges from \$300 to \$950 and generates approximately \$462,988 in revenue.
- The total cost of the program is \$1.2 million.
- The APO is a relatively new program with rules adopted in 2012 to collect the fee.

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<sup>1</sup> Municipal Waste Permits - There are several municipal solid waste facilities (e.g., landfills) that need authorization to discharge leachate and other landfill related wastewaters. These applications are processed, reviewed, and administered through the *Wastewater Permitting* activity.

<sup>2</sup> Injection Well Fee - This fee generates revenue from the permitting of underground injection wells, referred to as the Underground Injection Control (UIC) Program. The UIC program was established to protect underground sources of drinking water. Texas was granted primacy in 1982. In addition to the permitting fee, the UIC program (Class 1) has revenue deposited to the Waste Management Account Fund 0549. This revenue is associated with a monthly fee on the amount and type of solid waste generated at a facility and an annual fee on the types of solid waste management units.

### 3. *Wastewater Treatment Inspection Fee and the Wastewater Treatment Research Council Fees*

- The fees are insufficient to support the cost of the TCEQ's Onsite Sewage Facilities Program (OSSF). Note: Under Texas Health and Safety Code Chapter 366, a county may administer the OSSF Program as an Authorized Agent, including the assessment of fees.
- The Wastewater Treatment Inspection Fee for facilities inspected by the TCEQ ranges from \$200 - \$400. This is less than the average fee charged by Authorized Agents who inspect the majority of OSSFs in Texas; the average fee range for local programs is \$600-\$800.
- The TCEQ Inspection Fee generates \$225,905 annually in revenue.
- The Wastewater Treatment Research Council Fee is a \$10 fee for every permit issued for an onsite wastewater treatment system. The fee generates approximately \$341,188 annually in revenue. Current law limits the use of the fee to funding research grants.
- The total cost of the TCEQ OSSF Program is \$2.2 million.

### **2) Programs without a Dedicated Fee**

The WRM Account also supports water programs that do not have a dedicated fee. These programs were originally funded by General Revenue (GR). The 79<sup>th</sup> Texas Legislature shifted funding for the programs from GR to the WRM Account. *See Graph 4.* These programs include the Dam Safety Program which costs \$3 million; the Total Maximum Daily Load Program which costs \$2.5 million; the National Bays and Estuaries Program which costs \$1.8 million; and the agency's outreach programs, consisting of the Pollution Prevention and Innovative Program and the Small Business and Local Government Assistance Program, which costs \$1.3 million. Of the programs without a dedicated fee, the Dam Safety program was the only program where a potential fee payer could be identified.

#### *Dam Safety Program*

- The Dam Safety Program monitors and regulates approximately 4,000 non-exempt private and public dams in Texas.
- The Dam Safety Program does not have a direct, dedicated fee.
- The WRM Account provides \$3 million in funds to support the costs of the program.

### **3) Inequities among Fee Payers**

In both the 2007 and the 2015 Government Effectiveness and Efficiency Reports (GEER), the Legislative Budget Board discussed concerns with the inequities that may exist among fee payer groups. While there are approximately 23 different fees that comprise Fund 153, three fees account for 80 percent of the fund: the CWQ Fee, the PHS Fee and the Water Utility Regulatory Assessment Fee. In addition, with the transfer of jurisdiction over utility rates and Certificate of Convenience and Necessity (CCN) to the Public Utility Commission (PUC) in 2013, the TCEQ assesses the Water Utility Regulatory Assessment Fee but transmits \$3.1 million to the PUC and \$0.5 million to the Office of Public Utility Counsel (OPUC). The TCEQ retained its authority to regulate district creations and drinking water.

In addition to these fees identified in the GEER report, staff identified a potential inequity with the Water Use Assessment Fee. These fees are discussed below.

1. *Consolidated Water Quality (CWQ) Fee*

- The CWQ has a statutory cap at \$100,000 with an adjustment for consumer price index (CPI) up to a maximum cap of \$150,000<sup>3</sup>. When the fee is increased by the multiplier, the amount paid by entities at the cap does not increase. However, the entities below the cap generate the additional revenue. Sixty-four entities are currently at the cap. Removing the cap for these entities would generate twice as much revenue, from \$27 million to \$55 million.

2. *Water Utility Regulatory Assessment (RAF) Fee*

- Public Utilities are charged 1% for retail water or sewer service.
- Water Districts and Water Supply Corporations are assessed at a rate of .5% of the charge for retail water or sewer service.
- As noted, with the transfer of the water utility rate regulation function, this fee supports appropriations to the PUC and the OPUC. Accordingly, this fee supports PUC-regulated activities as well as TCEQ's water district and public water system supervision programs.

3. *Water Use Assessment Fee (WUF)*

- Surface water right holders are assessed a water use fee (WUF) based on the amount of acre-feet authorized in their water right. The WUF fee currently generates approximately \$1.2 million per year from 218 entities.
- The comparison of fees paid by the different groups of fee-payers reveals an inequity in the amount of fees paid by each group. Wholesale water providers typically do not pay a substantial CWQ fee and are exempt from paying the WUF for state water they sell to CWQ fee-payers. In addition, irrigation use is exempt from the fee. Of the 6000+ water right holders, only 218 pay this fee for a portion of the permitted water use.

## **Used Oil Recycling Account**

Lastly, as part of its review, staff discussed expanding the purpose of the Used Oil Recycling Fee and moving the fund balance to Fund 153. One of the original findings of the legislation, creating the used oil program and fee, recognized that without available collection centers for used oil, it was often disposed of on land or in landfills, sewers, drainage systems, septic tanks, surface waters or groundwater, water courses, or marine waters, and, further that, improper disposal of used oil is a significant environmental problem. As discussed in the Administrator's Statement of the TCEQ's FY 2018-19 Legislative Appropriations Request, the TCEQ noted that the purpose of Used Oil Recycling Account 146 -- to prevent pollution of water resources -- would continue to support programs that protect the water resources of the state while stabilizing funding for TCEQ's current Water Programs.

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<sup>3</sup> Texas Water Code §26.0291

*Used Oil Recycling Account – The transfer of the fund balance and future collections of the fee to the WRM Account would stabilize the account. The following information provides the current status of the Used Oil Recycling Account.*

- The fee is one cent per quart or four cents per gallon of oil.
- The fee generates approximately \$2.4 million per year, however, because only \$0.5 million is appropriated, the fund balance increases by \$1.9 million annually.
- The current fund balance is \$17.8 million.
- The purpose of the fee is to prevent the pollution of water from the dumping of used oil. The fee would continue to support registration of used oil collectors, transporters, marketers and recyclers at current appropriation levels.
- Transferring the existing Used Oil Recycling Account balance and future collections of the fee to WRM Account for the protection of state water resources would provide water account balance support and stabilize funding for TCEQ's current water programs.

## **Conclusion**

The WRM Account has not been able to maintain sufficient revenue over the last several biennia, requiring the agency to increase the CWQ and PHS Fees. The agency reviewed the current revenue and funding obligations to the WRM Account to determine deficiencies. The agency will not only need to adjust revenue sources to support current obligations but will also need to generate a sufficient cash flow to support the Agency's Water Programs in the future.

As the state's population grows, we can expect to experience a higher demand for water resources and an increase in the burden on agency programs that protect and manage those resources. TCEQ's FY 2018/19 Legislative Appropriations Request includes Exceptional Items that would require an additional \$7 million a year from the WRM Account

The following table provides a list of the water programs, their associated fees, and the benefits to the fee payers. The table illustrates the difference funded by the CWQ and PHS fees, since the funding sources are insufficient to support the total costs.

Program	FY 16 Program Cost	FY 16 Program Fee Collections	Difference <sup>1</sup>	Program Fee Sources	Benefits to the Fee Payer
Bays and Estuaries	1,752,367	0	(1,752,367)	No dedicated fee	The bay and estuary programs focus on conserving the sustainable use of bays and estuaries and strive to balance the economic and human needs of the region. These efforts benefit the regulated community and public by helping to develop and implement plans to protect and restore water quality in coastal areas so that aquatic life, recreation, fish consumption, and drinking water uses are maintained.
Total Maximum Daily Load	2,457,850	0	(2,457,850)	No dedicated fee	This activity benefits regulated community and public by developing plans that quantify pollutant reductions and outline measures to restore the quality of surface waters to meet their designated uses, such as: public water supply, recreational water, aquatic life, and fish consumption.
Develop Water Quality Standards	504,730	0	(504,730)	No dedicated fee	Establishing water quality standards for surface waters benefits regulated community and public by ensuring that the appropriate instream goals for water bodies are set to protect human health and aquatic life. The standards provide the basis for all water quality management decisions including permits and authorizations.
Water Assessment and Monitoring	7,639,007	0	(7,639,007)	No dedicated fee	The monitoring and assessment efforts benefit regulated community and public by collecting and evaluating the data used to inform actions designed to maintain the quality of surface waters so they meet their designated uses, such as: public water supply, recreation, aquatic life, and fish consumption.
Nonpoint Source Program	659,710	0	(659,710)	No dedicated fee	Nonpoint source pollution prevention projects benefit regulated community and public by developing and implementing plans to protect and improve water quality so that streams and lakes meet their designated uses, such as: public water supply, recreation, aquatic life, and fish consumption.
Clean Rivers Program <sup>2</sup>	7,156,163	1,232,179	(5,923,984)	Water Use Assessment - \$1,232,179	The monitoring and stakeholder participation efforts benefit the fee payers by providing information needed to inform actions designed to restore and maintain the quality of surface waters to meet their designated uses, such as: public water supply, recreation, aquatic life, and fish consumption. The CRP Steering Committee provides fee payers with water quality information and the opportunity to provide input on water quality monitoring priorities, assessments of water quality, and associated activities. The Steering Committee prioritizes the resources of the program and therefore, all fee payers and stakeholders are able to help establish how funds collected through these fees should be utilized.

Program	FY 16 Program Cost	FY 16 Program Fee Collections	Difference <sup>1</sup>	Program Fee Sources	Benefits to the Fee Payer
Wastewater Permitting	19,098,641	5,646,066	(13,452,575)	General Permits Notice of Intent - \$4,877,151 Water Quality Permit Application - \$763,315 Municipal Waste Permit Application - \$5,600 <sup>3</sup>  Total \$5,646,066	<p>Permit holders benefit from transparent procedures for implementing Texas Surface Water Quality Standards in wastewater permitting and from the opportunity to participate in the development of those procedures. Permit holders also benefit from appropriately assigned uses and water quality criteria to water bodies receiving treated wastewater, which results in permits that are protective of human health and aquatic life.</p> <p>Permit holders benefit by obtaining one consolidated state and federal permit rather than obtaining separate authorizations from TCEQ and EPA. For some types of proposed activities, general permits are developed by the TCEQ which allow permittees to get coverage under a permit by registering and implementing the best management practices required by the permit.</p> <p>The general public benefits because the permit conditions are designed to ensure waters are of sufficient quality to support recreational, public drinking water, fish consumption, and aquatic life uses.</p>
Aggregate Production Operations	1,190,105	462,988	(727,117)	Aggregate Operations Application - \$462,988	The TCEQ is responsible for conducting annual surveys to identify APOs and for conducting inspections of active registered APOs on a three-year cycle. Conducting these surveys and investigations ensures that facilities are on a level playing field with respect to compliance with environmental regulations.
Public Water System Supervision	8,981,993	5,968,768	(3,013,225)	Water Utility Regulatory Assessment - \$5,968,768 <sup>4</sup>	The Public Drinking Water System Supervision program benefits the fee payers by providing oversight and assistance for approximately 7,000 public drinking water systems in Texas. The oversight and assistance provided to the systems helps ensure systems are operating in accordance with state and federal regulations, and helps supply sufficient, safe drinking water for the citizens of the state. The assistance provided to systems enables them to provide water more efficiently and at a potentially lower cost to both the utility and the utility's customers. In addition, the work done through this program ensures compliance with the Capacity Development Plan for Texas which is required for Texas to get funding under Drinking Water State Revolving Fund (DWSRF) grants. DWSRF grant funding provides low and no-cost loans to public water systems and supports state compliance activities.

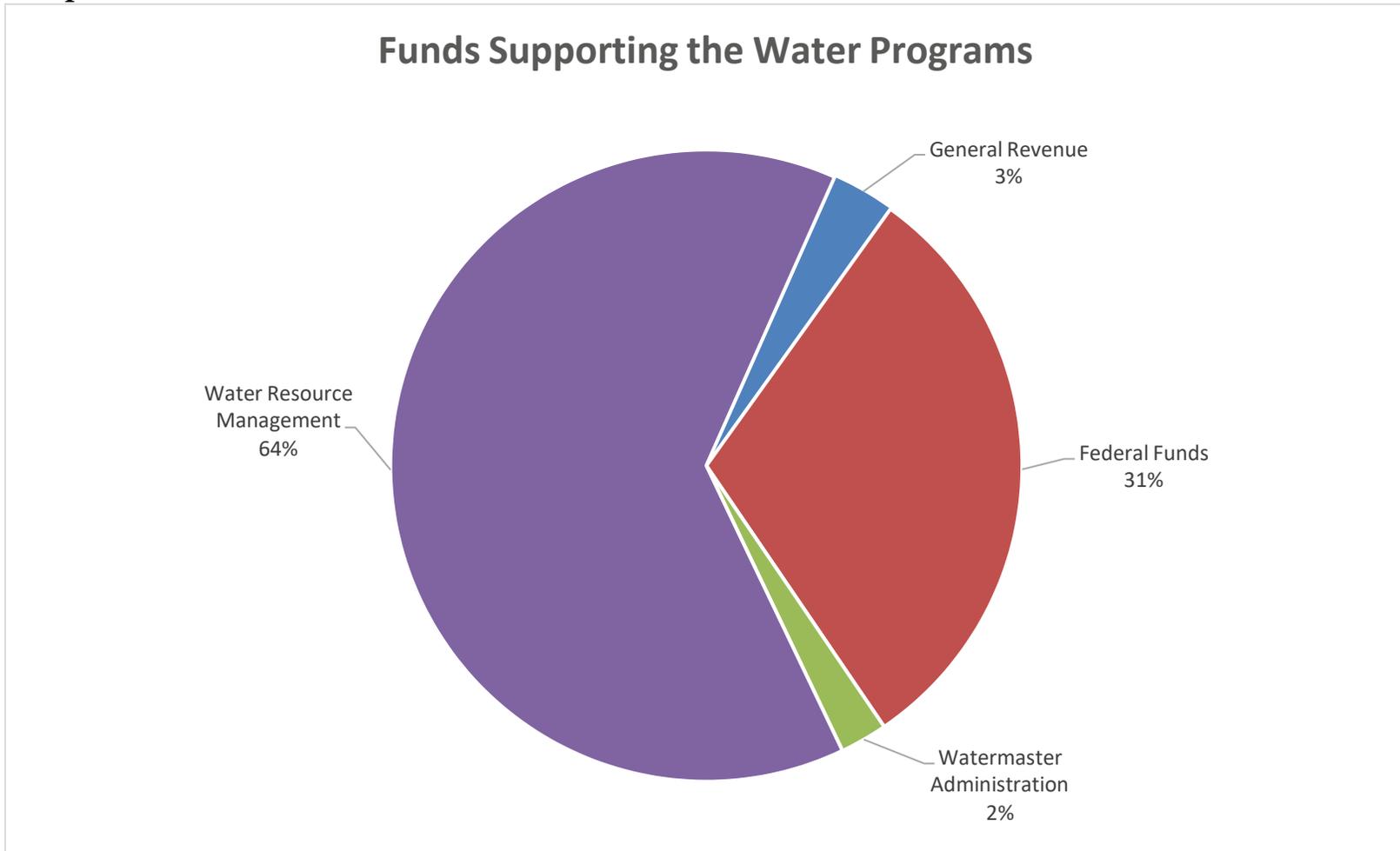
Program	FY 16 Program Cost	FY 16 Program Fee Collections	Difference <sup>1</sup>	Program Fee Sources	Benefits to the Fee Payer
Water District	2,623,670	3,679,375	1,055,705	Water District Bond Application - \$125,700 Water District Bond Proceeds - \$3,519,175 Misc. Water District Application - \$19,700 Water District Creation Application - \$14,800  Total \$3,679,375	<p>The fees associated with creation of certain water districts benefits fee payers by providing the applicant/fee payer with a TCEQ approved political subdivision of the state, which represents the initial stage for the development of infrastructure to serve future residents/customers. The fees also support the agency's review of bonds to ensure the financial viability of a proposed infrastructure need. This provides the required assurance so that districts can finance and maintain the development of infrastructure to serve current and future residents/customers. Additionally, the fees support the financial and managerial feasibility of public water systems as part of the Capacity Development Plan of Texas. Programs which support the Capacity Development Plan are a requirement for Texas to receive full funding under the Drinking Water State Revolving Fund (DWSRF) grants. DWSRF grant funding provides low and no-cost infrastructure loans to PWS and supports state compliance activities.</p>
Water Rights Permitting	6,169,237	119,445	(6,049,792)	Temporary or Emergency Water Use Permit Application - \$28,917 Water Use Permit Application - \$90,528 Water Use Permit - Construction Delay - \$0  Total \$119,445	<p>The water rights permitting program benefits fee-payers by providing a service to acquire water rights to use state water for several beneficial uses. Each water right application is evaluated to ensure water is available under specified conditions and to protect the ability of existing water rights to use state surface water per their water right. In areas where water is available on a short-term basis, the agency can provide authorization to utilize small amounts of surface water for temporary projects.</p> <p>The fee payer also benefits from surface water management activities and the agency's response to complaints. Where water is being used without authorization, the agency provides a mechanism to halt illegal diversions and enforce agency rules to obtain compliance.</p> <p>The program benefits fee payers by ensuring accurate and updated records of water rights ownership so that water rights are assigned to the rightful owners. This also allows the agency to be more effective in conducting investigations and when contacting water right holders, either to notify them of impending water right requests near them, or in the case of an emergency.</p> <p>The program also benefits fee payers by maintaining data on the annual reporting of water use, which helps support accurate determinations of water availability so that water rights are protected. This information is also important to analyze during an emergency when evaluating water rights for possible curtailment.</p>

Program	FY 16 Program Cost	FY 16 Program Fee Collections	Difference <sup>1</sup>	Program Fee Sources	Benefits to the Fee Payer
Groundwater Protection and Compliance	642,615	0	(642,615)	No dedicated fee	The program benefits the regulated community and public by supporting the evaluation of groundwater quality and quantity, and providing oversight of groundwater conservation districts to ensure they are following applicable rules. In addition, the agency maintains and updates the state water well report database which provides information on the location and type of water wells throughout Texas. These activities help to support adequate groundwater quality and quantity planning so that fee-payers have the information needed to make decisions that will ensure adequate supplies of high quality groundwater for drinking water purposes. Note: The TCEQ does not regulate the withdrawal of groundwater.
Edwards Aquifer Protection Program	1,915,550	2,317,062	401,512	Edwards Aquifer Application - \$2,371,062	The Edwards Aquifer, a karst aquifer, is a primary source of drinking water for the City of San Antonio and surrounding central Texas communities. TCEQ conducts technical reviews of Edwards Aquifer Protection Plans which provides a benefit to fee payers when plans are approved that are protective of groundwater and Texas Surface Water Quality Standards in areas that impact the Edwards Aquifer during and post-development activities.
On-Site Sewage Facilities	2,244,315	225,905	(2,018,410)	On-Site Sewage Facility Application - \$225,905 On-Site Wastewater Charge-back Permit - \$0 – Assessed only when state takes back program from county  Total \$225,905  Wastewater Treatment Research Council Fee - \$341,188 – only for Research program	The program benefits the regulated community and public by establishing the proper methods for treatment and disposal of wastewater from septic systems which improves and protects both groundwater and surface water quality so that the waters of the state meet their designated uses, such as public water supply, recreation, and aquatic life.
Clean Water Certification	8,356	37,307	28,951	Boat Sewage Disposal - \$37,307	The program benefits the regulated community and public by reducing sewage discharges into navigable water which improves and protects surface water quality so that the waters of the state meet their designated uses, such as public water supply, recreation, and aquatic life.

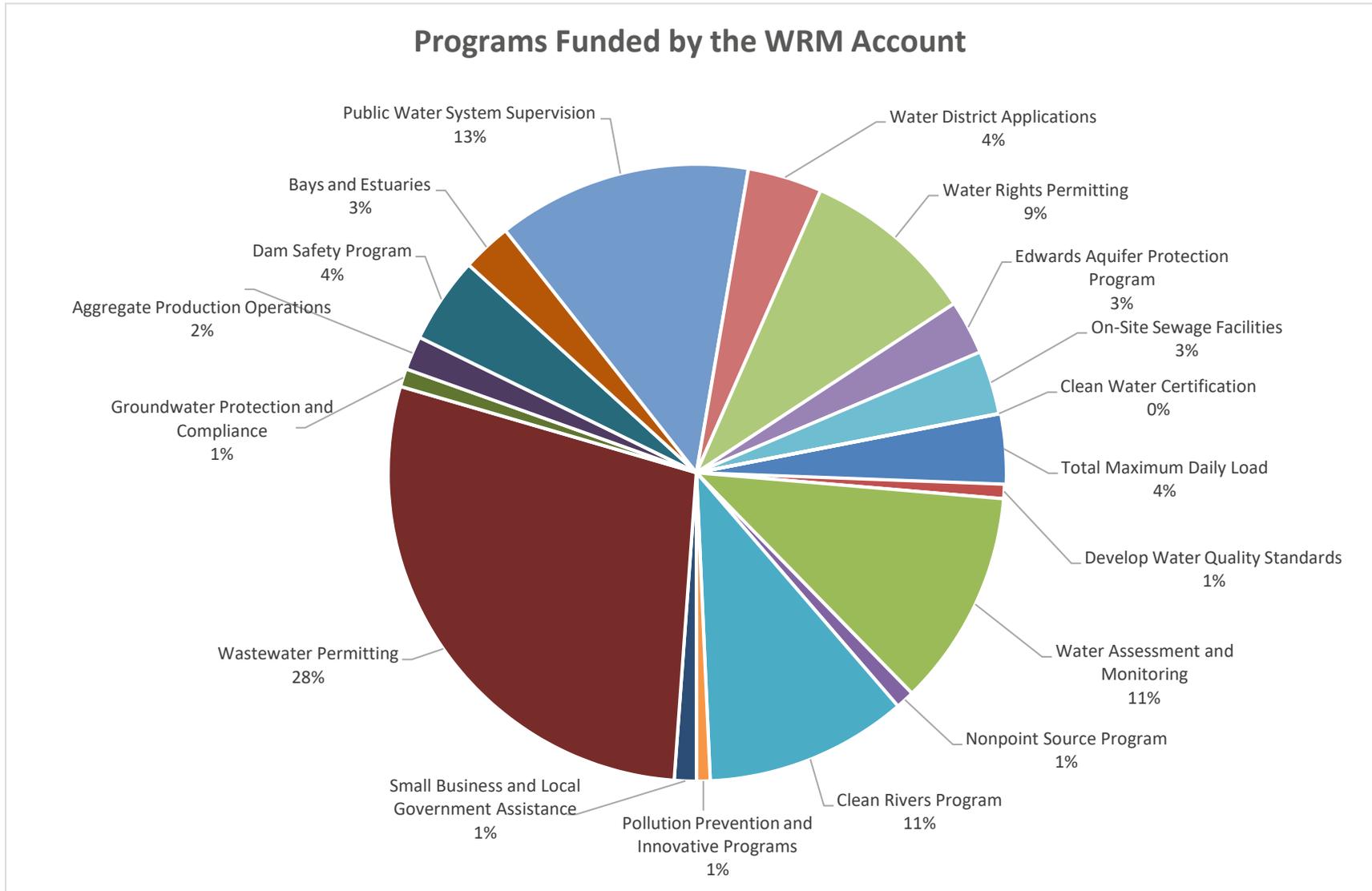
Program	FY 16 Program Cost	FY 16 Program Fee Collections	Difference <sup>1</sup>	Program Fee Sources	Benefits to the Fee Payer
Dam Safety Program	3,054,820	0	(3,054,820)	No dedicated fee	These activities benefit regulated community and public by ensuring a reliable supply of clean water is available to meet their designated use as private or public water supply and recreation activities while protecting the safety of downstream development and infrastructure.
Pollution Prevention and Innovative Programs	475,243	0	(475,243)	No dedicated fee	These activities benefit the fee payers by reducing pollution at the source and encouraging recycling to minimize its adverse impact on the environment, including groundwater and waters of the state.
Small Business and Local Government Assistance	779,776	0	(779,776)	No dedicated fee	These activities benefit the fee payers by assisting entities to be in compliance with the required regulation which helps protect and improve the water quality so that groundwater and waters of the state meet their designated uses, such as public water supply, recreation, aquatic life, and fish consumption.
<b>Total</b>	<b>67,354,148<sup>4</sup></b>	<b>19,689,095</b>	<b>(47,665,053)</b>		

1. The balance in the Difference column is funded with the revenue generated by the Consolidated Water Quality Fee (\$26.8 million) and the Public Health Service Fee (\$20.9 million). The Water Code 5.701 (p) and (q) authorize the fees collected in the Water Resource Management Account to protect the water resources in the state.
2. The Program Fee Sources for the Clean Rivers program include the Water Use Assessment Fee and the CWQ fee, which are statutorily required to support the Clean Rivers Program. The CWQ fee was created in 2001 by combining the Waste Treatment Inspection Fee and the Water Quality Assessment Fee.
3. Municipal Waste Permits - There are several municipal solid waste facilities (e.g., landfills) that need authorization to discharge leachate and other landfill related wastewaters. These applications are processed, reviewed, and administered through the *Wastewater Permitting* activity. Injection Well Fee - This fee generates revenue from the permitting of underground injection wells, referred to as the Underground Injection Control (UIC) Program. The UIC program was established to protect underground sources of drinking water. Texas was granted primacy in 1982. In addition to the permitting fee, the UIC program (Class 1) has revenue deposited to the Waste Management Account Fund 0549. This revenue is associated with a monthly fee on the amount and type of solid waste generated at a facility and an annual fee on the types of solid waste management units.
4. Water Utility Regulatory Assessment generated \$9,536,592 in fee revenue which includes the transfer to PUC and OPUC in the amount of \$3,567,824. The remaining funds of \$6 million supports the Public Water Systems Supervision Program. The total cost to the WRM Account is \$70.9 million, including the FY 16 Program Costs of \$67,354,148 plus the transfer to the PUC and OPUC of \$3,567,824.

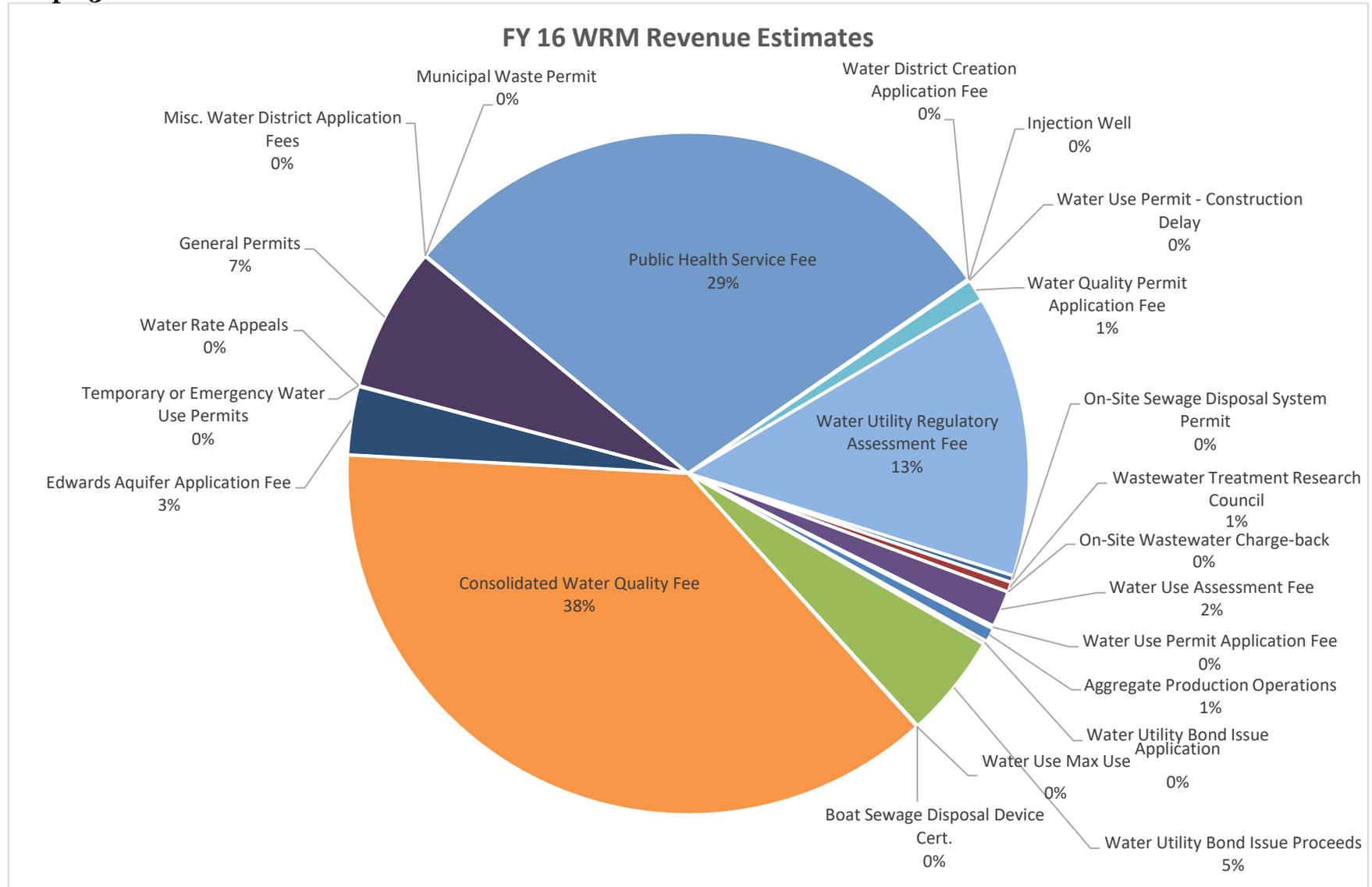
**Graph 1**



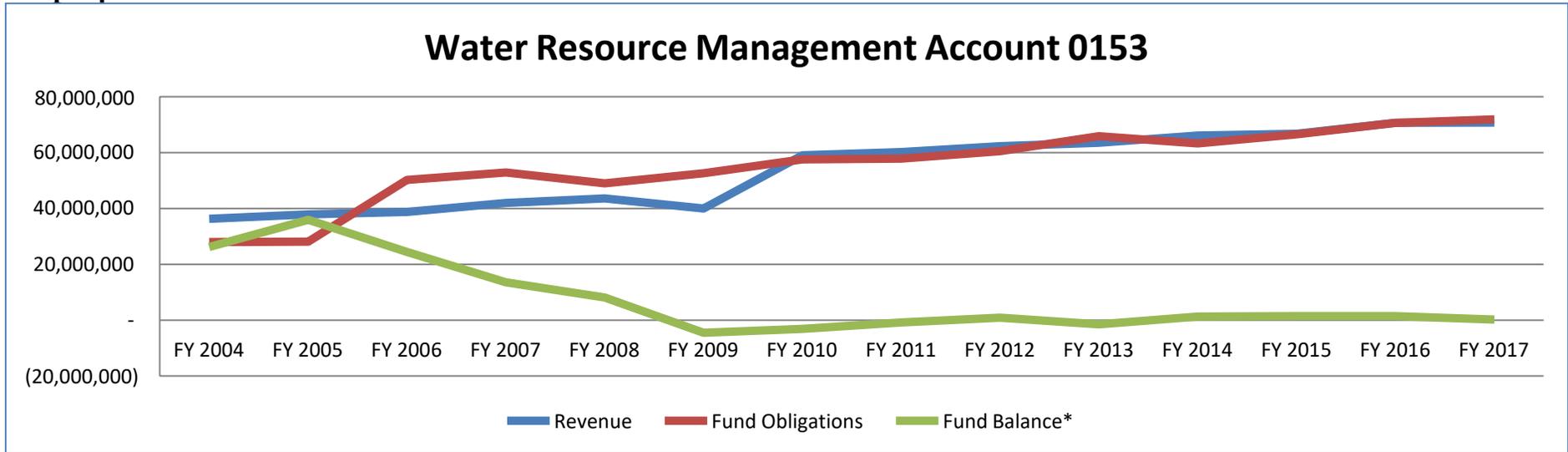
**Graph 2**



**Graph 3**



**Graph 4**



\*In FY 2005 to FY 2009, the Legislature shifted funding for the water programs from General Revenue to the Water Resource Management Account, utilizing the available fund balance.

\*In FY 2009 and forward, the revenue was not able to sustain the fund obligations, requiring increases to the CWQ and PHS fees.

## Application Fees

**Background:** For its water programs, the agency currently assesses application fees under the authority granted by Chapters 5 and 11 of the Water Code. The amount per application ranges from \$100<sup>4</sup> to 2,000<sup>5</sup>, and generates approximately \$1.1 million per year. The TCEQ total costs associated with water permitting is approximately \$27.9 million per year. The majority of these costs are supported by revenue from other fees such as the CWQ and PHS fees.

Fee	Revenue
Water Use Permit Application	\$90,528
Water Quality Permit Application	\$763,315
Temp or Emergency Water Use Permit Application	\$28,917
Water District Creation Application	\$14,800
Miscellaneous Water District Application	\$19,700
Municipal Waste Permit Application <sup>6</sup>	\$5,600
Water District Bond Application	\$125,700
General Permit Notices of Intent	\$4,877,151
Water District Bond Proceeds	\$3,519,175
<b>Total Revenue</b>	<b>\$9,444,886</b>
Program	Costs
Wastewater Permitting	\$19,098,641
Water Rights Permitting	\$6,169,237
Water Districts	\$2,623,670
<b>Total Costs</b>	<b>\$27,891,548</b>
<b>Difference: Revenue less Costs</b>	<b>(\$18,446,662)</b>

The fee rates for water permit applications were set in 1985. The statutory fee amount has not been adjusted for inflation or population growth. The water permit application rates are significantly lower than air and waste permit application fees even though the time required to review a water permit application is proportionate. The staff time for certain water permit applications can exceed 1,000 hours. This is roughly half of a full-time equivalent being allocated to the permit application of a single water permit fee payer paying less than \$2,000. The current level of assessment does not provide for an allocation of the agency's costs of administering the program to the correct revenue source.

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<sup>4</sup> Water Code 5.701(b)

<sup>5</sup> 2016-2016 General Appropriation Act Art. 6 Rider 19, VI-21

<sup>6</sup> Municipal Waste Permits- There are several municipal solid waste facilities (e.g., landfills) that require authorization to discharge leachate and other landfill related wastewaters. These applications are processed, reviewed, and administered through the *Wastewater Permitting* activity.

## Aggregate Production Operations

**Background:** In 2011, the 82<sup>nd</sup> Texas Legislature passed House Bill (HB) 571 which created the Aggregate Production Operations (APO) Program and the related fee as a means to ensure through proper registration with TCEQ that APOs are following appropriate environmental regulations. By statute, an APO is defined as a site from which certain aggregates are being removed or have been removed or extracted from the earth. The term aggregates is defined as “any commonly recognized construction material originating from an APO from which the operator extracts dimension stone, crushed and broken limestone, crushed and broken granite, crushed and broken stone not elsewhere classified, construction sand and gravel, industrial sand, dirt, soil, or caliche.”<sup>7</sup>

Implementation of the program required TCEQ to conduct annual surveys to identify all active APOs in the state. Based on the surveys and the number of registrations received since program inception, the number of APOs is far more than originally projected. In the bill analysis for HB 571, the agency estimated that there were approximately 600 active APOs which would require the agency to conduct an additional 200 site inspections per year. In FY15, the agency conducted 993 onsite surveys and 3,455 in-house surveys of APO sites. Conducting these surveys is vital to identification of facilities subject to APO regulations. Identification and inspection of regulated facilities ensures that facilities are on a level playing field with respect to compliance with environmental rules and regulations.

The Texas Legislature appropriated \$227,019 per year which directly funds the expenses associated with four investigators. The TCEQ collects approximately \$463,000 per year in revenue from the APO fee. The APO fee ranges from \$300 to \$950<sup>8</sup>. In FY15, the agency allocated additional resources to the APO Program in order to meet the increased workload resulting in approximately \$1.2 million in actual expenses, which is approximately \$727,000 more than the current revenue generated by the fee.

Program	FY 16 Revenue	Costs	Difference
APO	\$462,988	\$1,190,105	(\$727,117)

With the existing statutory cap of \$1,000<sup>9</sup>, the agency is not able to generate sufficient revenue to cover the program costs. The agency is utilizing revenue from other fee sources to support the program.

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<sup>7</sup> TWC, Chapter 28A

<sup>8</sup> 30 TAC 342.26 (Subsection B)

<sup>9</sup> Water Code 28A.101(b)

## Wastewater Treatment Inspection Fee and Wastewater Treatment Research Council Fee

**Background:** The agency's On-Site Sewage Facility (OSSF) Program costs \$2.2 million. The OSSF program is supported by the Wastewater Treatment Inspection (WTI) Fee, which generates approximately \$226,000 annually in revenue. In addition to the WTI, TCEQ collects the Water Treatment Research (WTR) fee which is a \$10 fee for every OSSF permit application, including those permits issued by Authorized Agents. This fee originally funded the Texas On-site Wastewater Treatment Research Council (TOWTRC) to provide research grants, however, the TOWTRC was sunset in 2011 and requirements for fee collection were not removed from statute nor were the revenues appropriated to the TCEQ.

Program	FY 16 Revenue	Costs	Difference
OSSF	\$225,905	\$2,244,315	(\$2,018,410)

The OSSF program is designed to eliminate and prevent health hazards by regulating and properly planning the location, design, construction, installation, operation, and maintenance of on-site sewage disposal systems, in accordance with Texas Health & Safety Code § 366.001. The OSSF Program accomplishes these goals by the creation and enforcement of a minimum state code for design, construction, installation, operation and maintenance of OSSFs, as delineated in 30 Texas Administrative Code (TAC) Chapter 30, Subchapters A and G, and 30 TAC Chapter 285. The TCEQ has established a permitting process for the installation of new or replacement OSSFs with fees ranging from \$200 for single family dwellings to \$400 for other systems.

The TCEQ also has statutory authority to delegate the program to local governmental entities. However, the agency maintains oversight authority to conduct periodic reviews and evaluations of delegated programs to ensure state rules and regulations are appropriately administered. The TCEQ has delegated OSSF regulatory authority to 341 local governmental entities which account for 97% of the approximately 34,000 OSSF permits issued each calendar year. These Authorized Agents fund the delegated programs with fee structures based upon the level of OSSF permitting activity experienced by their local programs.

While TCEQ only issues 3% of the 34,000 OSSF permits issued statewide each year, the agency also provides complaint response. Additionally, TCEQ provides technical assistance and support to local governmental entities, licensees, the OSSF manufacturing community and the regulated public, who design, construct, install, maintain and use OSSFs throughout the state.

## **Dam Safety Program**

**Background:** The TCEQ Dam Safety Program monitors and regulates approximately 4,000 non-exempt private and public dams in Texas. The Program conducts inspections on a five-year basis on nearly 1,700 of these dams that are classified as either high or significant hazard. High or significant hazard dams are those structures that could result in loss of life if the dam were to fail. The Dam Safety Program provides recommendations and reports to the dam owners to ensure that these facilities are constructed, maintained, repaired, and removed safely. A significant portion of these dams are privately owned by individuals, property owner associations, home owner associations, or clubs, or are owned by soil and water conservation districts. Although not inspected on a regular basis, Program staff also address complaints concerning low hazard dams, when appropriate. Dams designed by, constructed under the supervision of, and owned and maintained by federal agencies, such as the United States Corps of Engineers, are statutorily excluded from state regulation. Currently, there are no fees generated by the Dam Safety Program. Fees deposited in the WRM Account, such as the PHS or the CWQ, support \$3 million of the program costs.

## Consolidated Water Quality (CWQ) Fee

**Background:** The CWQ fee is assessed annually for each permit authorizing the treatment and/or discharge of wastewater. The wastewater permit is evaluated on the basis of pollutant potential and permitted limits for flow volume, traditional pollutants, toxicity, stormwater authorization, and major/minor facility status. The CWQ fee is calculated by applying a multiplier to the base fee. The multiplier is adjusted as needed to generate a sufficient amount of revenue to support fund obligations.

The CWQ fee has a statutory cap set at \$100,000 with an adjustment for consumer price index (CPI) up to a maximum cap of \$150,000<sup>10</sup>. In FY 16, the maximum cap was \$115,000 with sixty-four entities paying the maximum under the cap. The fee generates approximately \$27 million. The GEER published by the Legislative Budget Board in FY 2015 expressed concern that an inequity exists among fee payers, since adjustments to the multiplier only impact entities below the cap. The agency has increased the multiplier every year since 2012 to address the revenue shortage. Fee payers at the cap have not experienced a fee increase to the same extent as those below the cap.

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<sup>10</sup> Texas Water Code §26.0291

## Water Utility Regulatory Assessment (RAF) Fee

**Background:** By statute, Public Utility customers are charged 1 percent and Water District and Water Supply Corporation customers are assessed at a rate of one half percent of the charge for retail water or sewer service.

The revenue from this fee is intended to pay for the costs and expenses incurred by the state in the regulation of districts, water supply or sewer service corporations, and public utilities<sup>11</sup>. This includes, but is not limited to: review of bond application to evaluate the financial and engineering feasibility of a project, management of water systems, rate setting, and compliance monitoring, which are additional services provided by the Commission to these entities above what is required for a public water system. Since TCEQ experiences no significant difference in the amount of workload and resources needed, there is no justification for the difference in assessment percentage of the two fee paying types.

The entities required to pay the RAF fee are not under the jurisdiction of either a city council or county commission. The Public Utility Commission has appellate jurisdiction over the rates of these systems. The RAF fee is intended to fund the cost of the additional oversight associated with these systems.

The TCEQ, the Public Utility Commission and the Office of Public Utility Counsel receive appropriations from the WRM Account. In the GEER, the LBB expressed the concern that if funds in the WRM Account were insufficient to cover appropriations, “it is unclear which agency(ies) would bear the consequences”. One solution proposed in the GEER report is the equalization of the RAF for all fee payers.

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<sup>11</sup> Texas Water Code §5.701 (n-1)

## Water Use Assessment Fee

### Background

Two fees, the Water Use Assessment Fee (WUF) assessed on water rights and the Water Quality Assessment fee assessed on wastewater discharges set forth in TWC 26.0291, were established to support the Clean Rivers Program (TWC 26.0135) created in 1991. The Clean Rivers Program (CRP) was designed to provide a comprehensive assessment of water quality across the state. The WUF was assessed on water rights because the program provided a service for evaluating in-stream water quality and helping to ensure the water diverted was of sufficient quality. The Water Quality Assessment fee was assessed on wastewater permits because the program provides a service of targeted water quality data collection where site-specific permit conditions would ensure effluent limits were appropriate.

In 2001, as part of the TCEQ Sunset Review, HB 2912 consolidated the Water Quality Assessment fee with the Waste Treatment Inspection fee under TWC 26.0291. The resulting combined fee became known as the Consolidated Water Quality fee or CWQ. As part of this fee consolidation, an exemption was created for WUF fee-payers who were also paying the CWQ. Because of this exemption, no WUF is assessed on that portion of a municipal or industrial water right directly associated with a facility paying the CWQ. Although the purposes for the original fees remained intact, the creation of this exemption had the effect of exempting entities that previously paid a fee for water rights. The legislation also removed language specifying that the fees shall recover no more than \$5 million annually. With this legislation, the fees making up the new CWQ would now be deposited into the general Water Resource Management Account, along with the WUF. The legislation consolidated the original purposes for each of the fees, placed them under the consolidated fee section, and added new language providing that the fee may be used for any water resource management program related to the activities of the persons required to pay a fee under the section.

Today, surface water right holders are assessed a water use fee (WUF) based on the amount of acre-feet authorized in their water right. There are several exemptions from the fee including: water rights with less than 250 acre-feet (AF) of water; irrigation use; and "...the portion of a municipal or industrial water right directly associated with a facility or operation for which a fee is assessed..." for a wastewater permit. Agency rules (30 TAC Chapter 21) set the fees at \$0.385/AF for consumptive uses (e.g., municipal, industrial, mining) and \$0.021/AF for non-consumptive uses (e.g., hydroelectric). The fee generates approximately \$1.2 million per year.

*Exemption for Associated Wastewater Permit:* Through the process of evaluating the equitable assessment of fees under the WUF, TCEQ examined whether the "directly associated" exemption is appropriately assessed to ensure equity amongst water and wastewater fee-payers. The exemption for a "directly associated" wastewater facility is applied in two ways:

- (1) An entity is exempted from the WUF for the portion of the water right that is assigned to municipal and/or industrial use and is associated with its own municipal or industrial wastewater facility that is assessed the CWQ fee; and
- (2) In accordance with the agency's practice, an entity is exempted from the WUF for the portion of the water right that is assigned to municipal and/or industrial use and is sold (contracted) to an organization that pays the CWQ fee.

Below are the results of an evaluation of the WUF exemption and actual CWQ fees paid for three different groups of fee-payers:

- Municipal (small, medium, and large) - Currently, the WUF is \$0 for the small and medium sized communities, and \$13,283 for the large community, while the CWQ fee is \$15,989, \$115,000, and \$1,651,174, respectively.
- Wholesale Water Providers (river authorities, water districts) - Currently, the WUF is \$0, \$62,390, and \$115,577 for 3 example organizations, while the CWQ fees they actually paid were \$1,250, \$9,900, and \$6,417 respectively.
- Industrial (power generators, industry) - Currently, the WUF is \$0 for two and \$193 for one of three example organizations, while the CWQ fees were \$115,000, \$175,090, and \$346,692, respectively.

The comparison of fees paid by the different groups of fee-payers reveals an inequity in the amount of fees paid by each group. Wholesale water providers typically do not pay a substantial CWQ fee and are exempt from paying the WUF for state water they sell to CWQ fee-payers.

*Irrigation Exemption:* The exemption for irrigation use in water rights was put in place to minimize the effect on farmers. When the only consumptive use is irrigation/agriculture, then the water right is wholly exempt from paying the WUF. If the water right has multiple consumptive uses assigned to a single amount of water, then the amount of water (e.g. municipal, industrial, and irrigation) is divided by the number of consumptive uses, and the irrigation/agriculture portion is exempt from the WUF. In summary, these exemptions result in \$1 million per year in wholesale contract context and \$1.5 million for the irrigation exemption.

## Used Oil Recycling Account

**Background:** The Used Oil Recycling Account 146 was created in 1991 by the 72nd Texas Legislature and was established for public education, grants, and registration of used oil collectors, transporters, marketers, and recyclers. One of the original findings of the legislation, creating the used oil program and fee, recognized that without available collection centers for used oil, it was often disposed of on land or in landfills, sewers, drainage systems, septic tanks, surface waters or groundwater, water courses, or marine waters, and, further that, improper disposal of used oil is a significant environmental problem. The purpose was to prevent pollution of water resources from the dumping of used oil.

An oil manufacturer or importer who makes a first sale of automotive oil in the state is required to remit a fee of one cent per quart or four cents per gallon of oil. A first sale of oil does not include the sale of oil to a manufacturer or distributor or the sale of oil to a subsequent purchaser who maintains a used oil collection center. The fund balance as of August 31, 2015 was \$17.8 million. The fee generates approximately \$2 million per year and only \$0.5 million is appropriated to the TCEQ, so the fund balance is projected to grow by \$1.5 million annually.

Transferring the existing Used Oil Recycling Account balance and future collections of the fee to WRM Account would provide water account balance support and stabilize funding for TCEQ's water programs.<sup>12</sup> Also, the purpose of the automotive oil sales fee would continue to support programs that protect the water resources of the state. Further, there is no new fee, as the fee is already being assessed. This is beneficial to individual, existing TCEQ WRM Account fee payers as well as the general public. As Texas' population grows, it is imperative to achieve revenue reliability to ensure the protection of Texas' water resources. The fee would also continue to support registration of used oil collectors, transporters, marketers and recyclers at current appropriation levels.

The table below reflects the transfer of the fee and fund balance from the Used Oil Recycling Account to the Water Resource Management Account. FY 18 reflects the increase in fund balance and the addition of the fee from the Used Oil Recycling Account.

Water Resources Management Account 0153						
	Actual FY 2015	Budget FY 2016	Budget FY 2017	Budget FY 2018	Budget FY 2019	Budget FY 2020
Beginning Fund Balance	(730,230)	(507,001)	230,270	20,445,783	21,148,833	21,236,035
Revenue	66,730,323	71,418,028	70,736,000	73,076,000	73,164,000	73,164,000
Fund Obligations	66,507,095	70,680,757	71,910,778	72,372,950	73,076,798	73,076,798
Ending Fund Balance	(507,001)	230,270	(944,508)	21,148,833	21,236,035	21,323,237

<sup>12</sup> The Commission has identified this item as a legislative recommendation for the 85<sup>th</sup> Legislative Session.