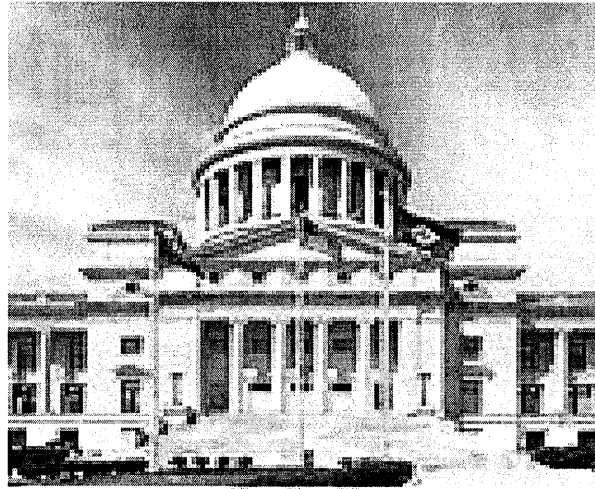


Report of the Water Provider Legislative Task Force as established by Act 1056 of 2017

(as of 9/12/18)



Findings Vision for the Future Action Plan with Recommendations

January 1, 2019 Report to:

Governor of the State of Arkansas
Director of the Arkansas Economic Development Commission
Arkansas State Chamber of Commerce
Arkansas Municipal League
Arkansas Association of Counties
Water Providers
Members of the Senate Committee on City, County, and Local Affairs (2019)
Members of the House Committee on City, County, and Local Affairs (2019)

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draft for discussion 10/17/18

Task Force Members

Senate

Senator Alan Clark – Co-Chair

Chair of Senate Committee on City, County, and Local Affairs

Senator Ronald Caldwell

Majority Party of the General Assembly appointed by the President Pro Tempore and the Speaker

Senator Scott Flippo

Designee of the President Pro Tempore of the Senate

House

Representative Tim Lemons – Co-Chair

Chair of House Committee on City, County, and Local Affairs

Representative Fredrick J. Love

Minority Party of the General Assembly appointed by the President Pro Tempore and the Speaker

Representative Justin Boyd

Designee of the Speaker of the House

Non-Legislative Members

Judge Rick Davis, Garland County Judge

Designee of Association of Arkansas Counties

Appointed by the President Pro Tempore of the Senate

Mr. Mark Bennett, Chief of Water Development

Designee of Arkansas Natural Resources Commission

Jean Noble, Grants Management

Arkansas Economic Development Commission

Appointed April, 2018)

Tom Fox, FTN Associates

Designee of the Arkansas State Chamber of Commerce

Jack Critcher, Legislative Liaison, Arkansas Municipal League

Appointed by the Speaker of the House of Representatives

Barry Weathers, Arkansas Home Builder
Appointed by the Governor

Dennis Sternberg, ARWA CEO
Designee of Arkansas Rural Water Association

Jennifer Enos, Springdale Wastewater Facilities Director
Designated by the President of the Arkansas Water Environment Association

Daniel K. Dawson, General Manager, Searcy Water Utilities
Designated by the President of the Arkansas Water and Wastewater Managers Association

Alan Fortenberry, P.E., CEO Beaver Water District
Designated by the Chair of the Arkansas Water Works and Water Environment Association

Dale Kimbrow, Manager of Planning, Regionalism & Future Water Source, CAW
Designated by the CEO of Central Arkansas Water

Barry Haas, Consumer Advocate
Appointed by the Governor

Liaison Members

Dr. Bob Blanz, Arkansas Department of Environmental Quality (ADEQ)

Jeffrey Stone, Arkansas Department of Health (ADH)

Introduction

While “every facet of our nation’s infrastructure system is in need of investment, including roads, bridges, ports, and railways, America’s water infrastructure, in particular, desperately needs attention. The costs of inaction are great. Just a single day of water service disruption in the U.S. would result in a loss of \$ 43.5 billion in sales and a \$ 22.5 billion loss in the national gross domestic product. One-fifth of the U.S. economy would essentially come to a standstill if it did not have access to reliable and clean water. (.E. Mortimer & M. Leongini, Why Water Infrastructure Investments Would Make a Big Splash, U.S. Chamber of Commerce, 2015). The American Society of Civil Engineers (ASCE) estimates that our country’s water infrastructure needs an additional \$ 1 trillion is necessary to maintain and expand service to meet demands over the next 25 years. (<https://www.infrastructurereportcard.org/cat-item/drinking-water/>)

When evaluating Arkansas’s public water supply on the basis of capacity, condition, funding, future need, operation and maintenance, public safety, resilience, and innovation, the 2017 report by the American Society of Civil Engineers (ASCE) rates Arkansas at a D+. Arkansas’ public water supply accounts for approximately 404 million gallons per day to serve 2.6 million people. Both the ASCE (2017) and Office of Water, EPA (March 2018) estimate \$7.4 billion in drinking water infrastructure needs over the next 20 years. A comparison of the 1995 \$ 3.7 billion in needs with the most recent estimate of \$ 7.4 billion assessment of needs, it suggests that the State is losing the battle and is in a hole twice as deep as it was 20 plus years ago. Arkansas’ water transmission and distribution system, which consists mostly of buried pipes, represents 72% of the capital needs of drinking water facilities in the State. Of the 2,615 miles of water transmission and distribution lines that will require replacement or rehabilitation within the next 20 years, 14% of these projects are at a critical state to keep water flowing especially in some areas of rural Arkansas and need attention now. (<https://www.infrastructurereportcard.org/cat-item/drinking-water/>) **MR. BENNETT AND MR. HAAS TO ADD ADDITIONAL HARD**

DATA HERE. The health and welfare of our people and our state’s economy are at risk.

Testimony to the Legislative Water Provider Task Force has confirmed the concern over the state’s aging water infrastructure and other challenges in relation to the provision of water. These will be detailed later in the report.

Motivated by legislative questions regarding the current status of water provision in Arkansas, the degree of consumer protection for the citizens of Arkansas, the financial and operational strength of many of the States' water providers, and potential barriers to economic development in the State related to water issues, Act 1056 of 2017 was passed in regular session. Pursuant to Act 1056 of 2017, AN ACT TO CREATE THE WATER PROVIDER LEGISLATIVE TASK FORCE; AND FOR OTHER PURPOSES, (Exhibit A) the Water Provider Legislative Task Force was established. Stated goals of Act 1056 (d)(1) were "to provide a better water provider system, to aid in obtaining basic water service for as many Arkansans as possible, and to enhance economic development in the State. Consistent with the stated goal, Act 1056 also outlined certain beliefs in relation to the provision of water:

- Utilities by their inherent nature are often monopolies (a) (1),
- The people grant these monopolies as a way of enhancing service and economic development (a) (2),
- If service is being well provided, the most people possible are enjoying the use of the service, and economic development is aided, then it may be said the monopoly is being used well (a)(3),
- If service is not well provided, people are denied service, and economic development is diminished or thwarted, then it may be said the monopoly is not being used well (a)(4),
- A monopoly should not be granted or allowed to continue in the same hands if the people served or people who should be served are being harmed (a)(5),
- No utility provides a more basic need for human life and economic development than a water provider (a)(6),
- To this date in the State, no monopoly has been given more power to decide whether to serve or not to serve than a water provider (a)(7),
- To determine whether a water provider is providing adequately or not in exchange for the monopoly granted, there needs to be standards by which to judge the water providers (a)(9),
- The people of this State deserve to have a fair set of standards when seeking to obtain a service so basic to human life (a)(10),

- In general, within a service area of a water provider, a water customer shall not be discriminated against based on race, gender, marital status, religion, or the political subdivision within which the water customer resides (c) (1),
- Within a water provider service area, a water customer should not be made to meet new requirements to obtain water unless all similar water customers regardless of location, also meet those requirements (c)(2),
- Within a service area already serviced by a water provider, a water customer shall not be required to annex into a municipality or other political subdivision if that requirement was not in place when the area became part of the water provider's service area (c)(3).

Pursuant to Act 1056 of 2017, the Task Force was directed to study and provide a blueprint for water security and development for Arkansas that 1.) enhances the water provider system within the State, 2.) provides for access to basic water service for as many Arkansans as possible in as broad a way and as economically as possible, and 3.) enhances economic development within the State in a dependable and structured way (d)(1), (2)(A)(B). The Task Force is also tasked with providing a vision report for where Arkansas should be in the future and an action report including recommendations and best practices, new service and any other area the Task Force chooses to report on by January 1, 2019. Working toward the completion of the statutorily mandated tasks, the Task Force met monthly to most frequently several times a month at the State Capitol complex with an August 2018 meeting AT Beaver Water District in northwest Arkansas. . Data related to the current infrastructure and asset management status of water provision, problems being experienced by water providers and consumers, and barriers to economic development within the State were obtained through data collection, presentations and testimony from state agencies, water providers, elected officials and consumers (Exhibit ____).

What follows are the major challenges identified by the Task Force related to the provision of water, the vision report for where Arkansas should be in the future and an action report including recommendations and best practices to address the current problems and barriers that are threatening 1.) the financial and operational solvency of many of the state's water providers, 2.) the efficient and economically feasible delivery of clean water to the citizens of Arkansas, 3.) consumer rights in relation to water, and 4.) further economic development in certain areas of the state.

Executive Summary:

Vision of Water Security and Development in Arkansas

Given the complexity of water provision, a short succinct vision statement did not seem to clearly capture the testimony, presentations, statistics, and discussion entered into by the Task Force. There was general consensus that water providers should serve the areas that they had agreed to serve and IDEALLY.

(The Vision) should be that clean, safe, affordable, abundant drinking water be available to all the citizens of Arkansas provided by financially and operationally sound public, private, or community water providers whose policies for access and distribution are implemented in a manner that is absent of political agendas and demonstrates commitment to protection of consumer and agricultural rights.

However, certain identified essential realities and circumstances could potentially impact the vision statement and must be considered when striving for such an ideal vision:

- Arkansas natural resources-especially water- must be protected while promoting residential, natural habitat, agricultural, and economic development.
- Not all Arkansas residents may live and work in areas where it is feasible in terms of either cost or engineering principles to supply water from a public, private or community water system.
- Water capacity issues that are supported by hard data and verified by the appropriate state agency(ies) may at times delay or prohibit access from a public, private or community water system..
- Water providers, especially small systems, frequently lack both economies of scale and financial, managerial, and technical capacity, which can lead to problems of meeting Safe Drinking Water Act standards. ASCE 2017.
- Many of Arkansas citizens may not have the financial resources to pay the rates that are necessary to cover the full costs of water acquisition, production, distribution and depreciation. (Does this belong here or not?)
- Politicians promoting political, annexation and financial agendas frequently make decisions about water supply, operations, and access; not water providers or commissions/water boards who represent the consumers in the assigned service areas..

(Note: It is recognized that many Arkansas citizens obtain water from privately-owned single household wells, but this source of water is outside the assigned task of Act 1056 of 2017 and was not addressed by the Task Force.)

Summary of Major Challenges as Identified by the Water Provider Legislative Task Force impacting the Vision of Water Security and Development in Arkansas: (note: more comprehensive discussion of each challenge to follow in the main body of the report)

- 1. Currently, jurisdiction and oversight of water utilities is spread across primarily three state governmental agencies: Arkansas Natural Resource Commission, Arkansas Department of Health, and Arkansas Department of Environmental Quality. However, under the current structure no one agency has the full authority/leverage/means to fully monitor and initiate needed changes toward the goals of access at justifiable rates, water provider sustainability and protection of consumer rights.**

Recommendations:

- a. **EXAMPLE:** While maintaining current monitoring and regulatory responsibilities of Arkansas Department of Health and the Arkansas Department of Environmental Quality, work with: (include groups to include here) _____ to develop operating procedures, estimated costs, and corresponding legislation expanding the regulatory, monitoring, and leverage responsibilities of the Arkansas Natural Resource Commission or other state agency(ies) or (maybe the planning districts across the state?) toward the goals of both consumer protection and public water provider sustainability. Note: Arkansas is divided into 8 planning and Development Districts. Each planning district covers six to twelve Arkansas counties which are bound together by common economic problems and opportunities. The planning districts provide many services including but not limited to grant writing, administration and oversight for economic development projects in Arkansas. The Planning and Development Districts work with local and state entities and list as official partners: Arkansas Economic Development Institute, Arkansas Association of Counties, Arkansas Municipal League, Arkansas Economic Development Commission, and Arkansas Economic Developers. Water commissions with diverse representation from ANRC, AHD, ADEQ, appropriate water industry representatives and appointed and elected members to provide water provision

oversight within each district to ensure protection of consumer rights and water provider sustainability, etc.???

b. Others??

- 2. Primarily due to municipalities', commissions', boards' lack of due diligence and/or fear of political consequences resulting in unwillingness to institute rate structures that provide necessary revenues to properly operate and maintain a public utility, the State's water infrastructure, is aging and many water providers report no or very limited financial ability to reinvest in the water system to maintain, upgrade, and replace critical aging infrastructure. Such practices result in utilities dependent on loans and/or grants to provide operating, CIP funds and funds for depreciation. In a climate of tightening State and Federal budgets, loan/grant-dependent utilities often find themselves in a financially non-sustainable position.**

Recommendations:

- a. Water commissions made up of diverse appointed and elected representation with knowledge of water systems, business principles, etc. and provide educational programs and expectations to promote water provider and infrastructure sustainability.
- b. Develop ANRC or other state agency/group (planning districts) leverage or legislation or other means for public utilities to determine full-costs via standard approved rate studies and institute full-cost pricing of services, particularly water rates that cover the costs of not only providing the service but also a percentage of funds to be set aside to provide for depreciation and upgrades to the system to promote present and future sustainability. Insert recommended percentages here to be set aside for depreciation, etc. here?
- c. Water (and sewer) utilities be identified as enterprise fund departments with all generated revenue mandated to stay within the respective utility budgets to ensure adequate funding for operations, management, depreciation, upgrades, etc. rather than being diverted to the general funds of government entities. **(Question: how do you monitor compliance?)**
- d. Encourage assistance programs for the most impoverished customer base. Such as?
- e. Encourage utility providers, particularly water providers, to develop educational programs for the public.
- f. OTHERS?

3. **Some areas of the State are experiencing losses of population; thereby, decreasing the revenue base to levels in some cases that do not even support the day to day operations much less the long term sustainability of the water systems.**

Recommendations:

- a. Encourage regionalization or some forms of consolidation of utilities and/or resources to provide greater efficiencies in operation and greater financial stability, realizing that in some cases user costs may increase as systems extend lines to serve more sparsely settled areas.
 - b. Recognize that rate structures for extension areas may need to be different.
 - c. Grant or low interest loan for needed system extensions? **Question: Has long term (40 year) loans been part of the problem for some small water systems in that the long term indebtedness on one project made them incapable of financially addressing other critical projects and upgrades/replacements, etc.?)**
 - b. others??
4. **With aging and retirement of operators across the state, there is a growing deficiency of knowledge and adequately trained and skilled water operators and technical support.**

Recommendations:

- a. Encourage continued efforts by the drinking water industries and organizations to actively promote education and licensing of workers to fill the gap of those retiring.
 - b. Encourage the drinking water industry and associated organizations to educate local municipalities, commissions, boards and the general public as to the importance and expertise required to be an operator/manager and equate that to compensation that promotes recruitment and retainment.
 - c. When feasible, encourage feasible forms of regionalization, consolidation and/ or sharing of personnel and resources in order to ensure expert management and operations of utilities.
 - d. others??
5. **Given many municipalities' concerns over both sales tax and ad valorem revenue streams, water access and denial policies are, in some instances, being used as tools to achieve political agendas, forced annexation and increased revenue sources. Associated with the need for increased revenue, some cities use water revenue to subsidize the general fund and budgets of other city departments and services. Such practices have**

the potential to limit the ability of the water system to reinvest in the water system to maintain, upgrade, and replace critical aging infrastructure as previously described.

Recommendations:

- a. Investigate needed ANRC or other state agency (planning districts) leverage and/or legislation that would **require municipalities to honor agreements regarding water provision within the current ANRC-designated water provider area or release the area(s) in question to another water provider who is willing to service the area(s) at no additional costs.**
- b. Encourage municipality water providers willing to serve areas outside the corporate limits to clearly define any annexation or other requirements for service prior to initiation of any actions implying water provision to those areas.
- c. Commissions – taking away use of water by politicians?? Some mechanism or authority to hold water providers who don't do the right thing and demonstrate irresponsibility accountable. Commissions who violate consumer rights and good management practices answer to ANRC, planning districts, what other state agency? Oversight by the already established planning districts or to whom?
- d. others??

6. **In general, there seems to be a gap in the factual knowledge by the public and local, state, and federal leaders as to what is required to efficiently operate a water utility—financially, personnel qualifications, sustainability, compliance with regulations, environmentally, and politically.**

Recommendations:

- a. More education of the public and leaders (**Question: How much education is occurring and is it being effective?**)
- b. More involvement of upper level business people that comprise boards, commissions, councils, etc.
- c.

7. Other?

Detailed Discussion of Challenges to the Vision with Recommendations and Action Plans (is the body of the report to elaborate and give supporting testimony and data for each major challenge identified)

- I. **Challenge: 1. Currently, jurisdiction and oversight of water utilities is spread across primarily three state governmental agencies: Arkansas Natural Resource Commission, Arkansas Department of Health, and Arkansas Department of Environmental Quality. However, under the current structure no one agency has the full authority/ leverage/means to fully monitor and initiate needed changes toward the goals of access at justifiable rates, water provider sustainability and protection of consumer rights**

- II. **A. Staff to Go back through all minutes and any other data and summarize and give selective examples of testimony that support the inclusion of the respective challenge as listed above in the report and give summary of more specifics here. Paragraph or two here to further elaborate on and present data supporting this challenge statement.**

:
Specifics on Recommendation:

- A. Actions with responsible parties and loose time frames?
- B. Evaluation method if possible or will one of the actions in many cases going to be to develop the evaluation method?

Do this more detailed discussion for each challenge

Add Summary if necessary with timelines or whatever the task force wants.