

**WATER PROVIDER LEGISLATIVE TASK FORCE
AS ESTABLISHED BY ACT 1056 OF 2017**

**SUMMARY REPORT OF:
VISION FOR THE FUTURE,
CHALLENGES,
RECOMMENDATIONS
2017-2018 TASK FORCE MEETINGS**



SENATOR ALAN CLARK, SENATE CO-CHAIR

REPRESENTATIVE TIM LEMONS, HOUSE CO-CHAIR

*WATER PROVIDER LEGISLATIVE TASK FORCE
JANUARY 1, 2019*

Water Provider Legislative Task Force

**SUMMARY REPORT OF Findings, Vision, Recommendations
2017-2018 Task Force Meetings**

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1. “Arkansas Water Plan Update” (2014), Arkansas Water Plan. Crystal Phelps, General Counsel– Arkansas Natural Resource Commission.
2. *Water Provider Legislative Task Force, Act 1056 (SB 376) of 2017, Appointments.*
3. “Arkansas Water Plan Compliance” (9/21/18). J. Ryan Benefield, Deputy Director, Arkansas Natural Resource Commission.
4. “National Water Program Guidance.” (2018-2019) Publication Number: 800D17001. Environmental Protection Agency (EPA).
5. *In the Chancery Court of Garland County, Arkansas, Consent Order. (11/3/1994).* Burchwood Bay, et.al. vs. Trice Ellis, et. al. Board of Directors, City of Hot Springs, Arkansas.
6. “History of the Regional Water and Sewer System Serving Hot Springs and its Environs in Garland County, Arkansas.” Compiled by Ray Owen, Jr. P.E., Attorney; Don Beavers, P.E. (retired); Donald R. Brady, P.E. (retired); Milton Raabe, P.E., (retired); Bill Reinhardt, Operations Director (retired).
7. “Why Water Infrastructure Would Make a Big Splash.” (2015). Mortimer & Leongini. U.S. Chamber of Commerce Series.
8. “Drinking Water Survey and Needs Assessment.” (March 2018). 6th Report to Congress. Office of Water, (4606M) EPA 816-K-17-002.
9. “Water and Waste Disposal Loan & Grant Program in Arkansas. Stephen Lagasse, Community Programs Director, USDA.
10. *The Future of Water Affordability Programs.” (10/2018).* Cromwell, Kostiuk, Locklear. www.waterworld.com.

11. Educational Training Strategies for Surrounding States Municipal Bodies, (2018). Kimbrow, D., et. al. (BLR staff to revise this handout)

WATER PROVIDER LEGISLATIVE TASK FORCE MEMBERS

Arkansas 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

Arkansas 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

Ms. Jean Noble, Director, Grants Management Division
Designee of the Arkansas Economic Development Commission

Mr. Tom Fox, FTN Associates
Designee of the Arkansas State Chamber of Commerce

Mr. Jack Critcher, Legislative Liaison, Arkansas Municipal League
Appointed by the Speaker of the House of Representatives

Mr. Barry Weathers, Arkansas Home Builder
Appointed by the Governor

Mr. Dennis Sternberg, ARWA CEO
Designee of Arkansas Rural Water Association

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

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

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

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

Mr. Barry Haas, Consumer Advocate
Appointed by the Governor

Liaison Members

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

Mr. Michael Grappe, Arkansas Department of Environmental Quality (ADEQ)

Mr. Jeffery Stone, Arkansas Department of Health (ADH)

TASK FORCE ROLE

While every facet of our nation's infrastructure system is in need of investment, including roads, bridges, ports, and railways; America's water and wastewater 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 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 needs, 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's public water supply accounts for approximately 404 million gallons per day to serve 2.9 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, suggests that the state is losing the battle and in a hole twice as deep as it was 20-plus years ago. Arkansas's water transmission and distribution system, which consists mostly of buried pipes, represents 72% of the capital needs of the state's drinking water facilities. Of the 2,615 miles of water transmission and distribution lines, which will require replacement or rehabilitation within the next 20 years, 14% of these projects are at a critical stage, especially in areas of rural Arkansas and many need attention now.

(<https://www.infrastructurereportcard.org/cat-item/drinking-water/>)

The health and welfare of our people and our state's economy are at risk. Testimony heard by the Water Provider Legislative Task Force confirmed concerns regarding the state's aging water and wastewater infrastructure, plus additional challenges faced providing potable water and wastewater service. 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 state's water providers, plus potential barriers to economic development in water-related issues, the Water Provider Legislative Task Force was established by Act 1056 of 2017 "*AN ACT TO CREATE THE WATER PROVIDER LEGISLATIVE TASK FORCE; AND FOR OTHER PURPOSES*" passed during the General Session of the 91st Arkansas General Assembly. The stated goals of Act 1056 are "To provide a better water provider system, to aid in obtaining basic water service for as many Arkansans as possible, and enhance economic development statewide." Act 1056 outlines certain beliefs in relation to the provision of water, in that no utility provides a more basic need by human life and for economic development than a water provider. (Appendix A)

Act 1056 directs the Task Force to study and provide a blueprint for Arkansas's water security and development to 1) enhance the water provider system within the state, 2) outline Best Management Practices to provide access to water in as broad a way and as economically feasible as possible, and 3) provide for water needs and practices to bring economic development to the state in a dependable and structured way.

The Task Force is tasked with providing a Vision Report outlining where Arkansas should be in the future; plus an Action Report to include recommendations and Best Practices, new services, and other areas the Task Force chooses to report on by January 1, 2019. Working toward the completion of the statutorily mandated tasks, the Task Force met frequently throughout 2017 and 2018 at the state Capitol, including an August 2018 meeting at the Beaver Water District in northwest Arkansas.

Information related to current water and wastewater infrastructure, asset management status of water provision, problems faced by water providers and consumers, and barriers to economic development within the state, was obtained through data collection and presentations and testimony given by state agencies, water providers, elected officials, and consumers (Appendix C). What follows are major challenges identified by the Task Force regarding the provision of water, includes recommendations and Best Management Practices for addressing current problems and barriers that threaten access to water; also the financial and operational solvency of many of the state's water providers, the efficient and economically feasible delivery of clean water to the citizens of Arkansas, consumer rights in relation to water, and further economic development in underserved areas of the state.

2017-2018 WATER PROVIDER LEGISLATIVE TASK FORCE
MEETING TOPICS
Total of 22 meetings

August 30, 2017

- A. Election of the Permanent Co-Chairs of the Task Force: Senator Alan Clark; Representative Tim Lemons.
- B. Overview of Act 1056 of 2017
- C. Adoption of Rules of Procedure
- D. Update on the Arkansas State Water Plan -. Crystal Phelps, General Counsel, Arkansas Natural Resources Commission and Mark Bennett, Chief of Water Development, Arkansas Natural Resources Commission

September 21, 2017

- A. Discussion of Regulation and Jurisdictional Limitations and Consumer Protections:
 - Charles “Chuck” Harder, Deputy Attorney General, and Cory Cox, Legislative Director, Office of Arkansas Attorney General,
 - John Bethel, Executive Director, Arkansas Public Service Commission,
 - Ryan Benefield, Deputy Director, Arkansas Natural Resources Commission
- E. Discussion of Local Municipal Water Issues between Sherwood and Jacksonville:
 - Greg Heslep, Developer, Mayor Virginia Young, City of Sherwood, Stephen Cobb, City Attorney, City of Sherwood and Roger Fitzgibbon, Attorney, Gill Law Firm.

October 11, 2017

- A. Discussion of Water Issues in Northwest Arkansas --Senator Bart Hester, Senate District 1
- B. Roundtable Discussion of Drafting a Vision of Where Arkansas Should Be in the Future as Related to the Provision of and Access to Clean, Affordable Water for all Consumers; Residential, Business and Industry, Agricultural and Other.

November 8, 2017

- A. Discussion of Issues Due to Declining Populations Facing Rural Communities Trying to Maintain Water and Wastewater Systems and Infrastructure:
 - City of Brinkley—Rob Parkman, Water Superintendent, Carl Frien, Water Commissioner, and Brad Wingfield, Engineer, PMI Engineers
 - City of Turrell—Mayor Dorothy Cooper
 - City of Earle—Mayor Sherman Smith
 - City of Altheimer—Mayor Zola Hudson and Malcolm Scott, Water Superintendent
 - City of Wabbaseka—Mayor Myra Edwards
 - City of Humphrey—Mayor Cleveland Hatch and William Tibbett, Water Superintendent

January 3, 2018

- A. Discussion of Cities and Towns Experiencing Rapid Growth, Resulting in Difficulties with Operational Problems Such As Infrastructure Expansion and Replacement, Water Shortages, Jurisdictional Complications, Funding, Licensing, and Other Issues –
 - Larry Oelrich, Director of Public Works, City of Prairie Grove, Washington County

- Frank Holzkamper, Water Superintendent and Wastewater Utility Superintendent, City of Centerton, Benton County
- Tim Nyander, Utilities Director, City of Fayetteville, Washington County
- Mayor Terry Robinson, City of Wooster, Faulkner County
- Greg Dell, COO, Conway Corp, Faulkner County
- Jerry Kopke, Rural Communities Assistance Program, Communities Unlimited, Fayetteville
- Dennis Sternberg, CEO, Arkansas Rural Water Association

B. Overview of Water Resources Development and Grants Program at the Arkansas Natural Resources Commission (ANRC) --Mark Bennett, Manager, Water Development Division, ANRC- **(postponed due to time constraints)**

February 7, 2018

- A. Discussion of the Arkansas Department of Emergency Management’s Contingency Plans and Response to Critical Infrastructure Failures of Utility Systems --A. J. Gary, Executive Director, Arkansas Department of Emergency Management (ADEM)
- B. Discussion of Former Water Issues in Saline County and Solutions Found --Perry Y. Young, Attorney, Jensen, Young, & Houston, PLLC
- C. First Vision statement draft distributed.

April 11, 2018 (all-day meeting)

- A. Review of the History and Background of Water and Sewer Issues in Garland County and the City of Hot Springs:
 - Ray Owen, Jr. Attorney, Owen, Farnell, & Garner and Don Beavers, P.E. (retired),
 - Bill Malone, Engineer, North Garland County Regional Water District.
 - Bob Mathis, former State Representative and former Mayor, City of Hot Springs.
- B. Discussion of Ongoing Problems with Obtaining Water and Sewer Service in Garland County and the City of Hot Springs:
 - Joe Gibson, owner of GTS Heating and Air,
 - Perry Young, attorney at law,
 - Chris Thornton, J.C. Thornton Company,
 - David Hull, Sonic Drive-In franchisee,
 - Stan Smith, owner, S&S Plumbing Business Properties,
 - Jay Grinder, General Manager, Wilson’s Home Improvement,
 - Andy Bishop, co-owner, Bishop Aviation,
 - Garland County Judge Rick Davis,
 - Senator Alan Clark, Senate District 13,
 - Bob Driggers, retired electrical engineer.

May 9, 2018

- A. Discussion of Cherokee Village water issues:
 - Representative Scott Baltz,
 - Mayor Russell Stokes, City of Cherokee Village
 - Darrell Kehrli, Chairman, Sharp County Water Facilities Board
- B. Discussion of the Proposed Water Project for the Unincorporated Old Smokey Community, Grant County
 - Mayor Jeff Westbrook, Town of Tull

- C. Discussion of Expansion of Water Boundaries Facing the City of Sheridan and the Local Rural Water Association:
 - Representative Kenneth Bragg
 - Gary Brown, Brown Consulting Services,
 - David Fitzgerald, former manager, Sheridan Water Works
- D. Review of the Vision Statement and Recommendations by Task Force Members

May 23, 2018

- A. Discussion of Water Supply and Boundary Issues Faced by the City of Bella Vista and the Bella Vista Property Owners Association (POA)
 - Mayor Peter Christie, City of Bella Vista.
- B. Discussion of the Hot Springs Municipal Water System and issues between the system and property owners:
 - Bill Burrough, Deputy City Manager, City of Hot Springs
 - Bryan Albright, City Attorney, City of Hot Springs (1994 Consent Order directing the city to refrain from treating county land owners differently than city residents regarding access to water.

July 11, 2018

- A. Discussion of the U.S. Chamber of Commerce Report “Why Water Infrastructure Investments Would Make a Big Splash” – Investing in Water Infrastructure to Promote Economic Growth. Mr. Kenny Hall, Executive Vice President, Arkansas State Chamber of Commerce, contacted the U.S. Chamber on behalf of the Task Force and arranged for one of the co-authors, of the article, Ms. Colleen Newman, to give an overview by telephone to the members during the meeting.
- B. Representative Fred Love requested for a comprehensive water system study to be performed by the Arkansas Natural Resources Commission (ANRC) to assess current water systems and necessary improvements needed to have at hand a current cost assessment when federal dollars become available.
- C. Starting Questions for Drafting Final Recommendations of the Water Provider Legislative Task Force were discussed.

August 8, 2018 – Beaver Water District Facility

- A. Tour
- B. Presentation on Management, Operation, and Challenges of a Regional Drinking Water Utility from a Drinking Water Perspective --Larry S. Lloyd, P.E., Chief Operating Officer, Beaver Water District
- C. Presentation on Management, Operation, and Challenges of a Wastewater Utility from a Wastewater Perspective --Rick Pulvirenti, P.E., Chief Operating Officer and Director of Engineering, Springdale Water Utilities
- D. Presentation and Discussion of Public Outreach and Educational Programs by Utilities to Educate the Public --Alan D. Fortenberry, P.E., Chief Executive Officer, Beaver Water District [Exhibit G]

August 22, 2018: meeting jointly:

1. Water Provider Legislative Task Force

2. Senate Committee on Agriculture, Forestry, and Economic Development
 3. Senate Committee on City, County, and Local Affairs
 4. Senate Committee on State Agencies and Governmental Affairs
 5. House Committee on Agriculture, Forestry, and Economic Development
 6. House Committee on City, County, and Local Affairs
 7. House Committee on State Agencies and Governmental Affairs
- A. Comments and Introductions of U.S. Department of Agriculture (USDA) Personnel --David Branscum, Arkansas State Director, Rural Development, USDA:
-Overview of the USDA Water and Waste Disposal Loan and Grant Program, --Dr. Carrie Castille, Louisiana State Director, Rural Development, USDA
 - B. Overview of the Arkansas USDA Community Programs: Water/Wastewater & Community Facility, - David Branscum, Arkansas State Director, Rural Development, USDA and Steve Lagasse, Arkansas Program Director, Rural Development, USDA

September 13, 2018

- A. Discussion of the Glen Rose Fire District and Rural Water Issues in Hot Spring County- Gerald Black, rural water customer, town of Perla's Water System
- B. Discussion of Volunteer Fire Departments, Water and Fire Hydrant Issues:
 - Chief David Steele, Shaw Volunteer Fire Department and ISO Consultant,
 - Dwayne Franklin, ISO Consultant,
 - Kendall Snyder, Fire/EMS Coordinator, Arkansas Department of Emergency Management (ADEM).

September 26, 2018

- A. Discussion of the Process and Start of the Initial Drafting of the Final Report

October 10, 2018 (all-day meeting)

- A. Preliminary Drafting of the Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

October 25, 2018

- A. Discussion of Amended EPA Report "Drinking Water Infrastructure Needs Survey and Assessment" (Sixth Report to Congress)
- B. Discussion of Water Issues Between the City of Rockport and the City of Malvern:
--Mayor Darrell Hughes, and Don Robinson, Alderman, City of Rockport
- C. Preliminary Drafting of the Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

November 8, 2018

- A. Continued drafting of Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

November 20, 2018 (all-day meeting)

- A. Continued drafting of Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

November 26, 2018

- A. Continued Drafting of the Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

December 4, 2018 (all-day meeting)

- A. Arkansas Water Plan Presentation
--Edward Swaim, Water Resources Division Manager, Arkansas Natural Resources Commission (ANRC)
- B. Continued Drafting of the Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017 [

December 12, 2018 (all-day meeting)

- A. Continued Review of the Draft Water Provider Task Force Vision Report, Action Report, Suggested Best Practices for Providing New Services, and Other Areas as Specified in Act 1056 of 2017

January 8, 2019

- A.

SUMMARY REPORT

Vision of Water Security and Development in Arkansas

Given the complexity of water provision, an abbreviated Vision Statement would not clearly capture the testimony, presentations, statistics, and discussion entered into by the Task Force. General consensus is that the state's water providers should comprehensively serve their areas; ideally:

Clean, safe, affordable, and abundant drinking water should be available to all the citizens of Arkansas, without discrimination; and where economically feasible, provided by financially and operationally-sound public, private, or community water providers whose policies regarding the access and distribution of water are implemented in a manner that is absent of political agendas and demonstrates a commitment to the protection of consumer, industrial, economic, and agricultural rights, as well as the protection of Arkansas's vital water resources.

Certain identified essential realities and circumstances potentially impact the Vision Statement and must be considered when striving for such an ideal vision:

- Arkansas's natural resources, especially water, must be protected when promoting residential, agricultural, industrial, and economic development, while maintaining and preserving natural habitats.
- Not all Arkansas residents live and work in areas where it is achievable in terms of either cost or engineering capabilities to supply water from a public, private, or community water system due to differences in treatment, distribution, population density, availability of resources, etc. There are isolated areas of the state where it is not economically feasible to provide a "public water system" to local residents.
- Water capacity issues commonly supported by hard data and verified by appropriate state agency(s) do at times delay or prohibit access to 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 Arkansas citizens do not have the financial resources to pay the rates necessary to cover the full costs of water acquisition, production, distribution, and depreciation.

- Local policies based on established boundaries have hindered decisions on water supply, availability of water, operations, and access versus the needs and rights of consumers, and for economic development.
- Decisions should be based on sound research and consumer needs, and where those needs stimulate economic development.

(Note: It is recognized that many Arkansas citizens obtain water from privately-owned sources outside the assigned scope of Act 1056 of 2017 and was not addressed by the Task Force.)

Summary of Major Challenges Identified by the Task Force Impacting the Vision of Water Security and Development in Arkansas

The efficacy of current water- related legislation should be carefully evaluated with new legislation drafted and supported where needed to address the challenges and recommendations that follow.

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

While maintaining current monitoring and regulatory responsibilities of the Arkansas Department of Health (ADH) and the Arkansas Department of Environmental Quality (ADEQ), there is a need to work with other applicable state and federal agencies to develop operating procedures, estimated costs, and corresponding legislation expanding the regulatory, monitoring, and leverage responsibilities of the Arkansas Natural Resources Commission (ANRC) or other state agency(s) or the state's planning districts toward the goals of both consumer protection and public water provider sustainability. The state has the responsibility to be concerned about water. If systems are in trouble, the appropriate state agency or agencies must have the authority and leverage to ensure that utilities institute policies and practices that safeguard: the financial and operational solvency of water providers and the efficient and economically feasible delivery of clean water to the citizens of Arkansas, while respecting consumer rights in relation to water and promoting further economic development in the state.

Sufficient oversight may or may not already exist within state agencies. Arkansas's State Water Plan recommends "receivership proceedings should be initiated for public water/wastewater providers who have defaulted on loans". The Task Force heard testimony from various utilities/cities across the state that can't even make payroll or make critical repairs; much less address major depreciation, upgrades, or replacement projects. Again, we ask: who or what state agency has the authority/expertise to make needed decisions to force water providers or their governing bodies to make the needed changes?

Upon the identification of a water or wastewater provider in fiscal distress, the appropriate state agency must have the regulatory authority to give aid and to evaluate rates based on current and future needs, to assist in some form of regionalization or at least consolidation of function(s) and to assist the utility to develop a sound plan to address fiscal, operational, repair and replacement concerns and that water continues to flow.

At the water district or system level, testimony brought to light a perceived lack of diverse representation within district or system utility governance and policy making. Some of the worst challenges and problems seen by the Task Force seem due, in part, to a lack of representation in the policy making process of a utility.

Recommendations:

1.A A state agency shall be designated to identify water and wastewater systems in fiscal distress, address areas of fiscal concern, and take steps to either bring the system back to fiscal stability or consolidate the system with another willing system. A state agency shall be designated to identify, publish, and maintain a list of water and wastewater systems in fiscal distress.

1.B A system will be deemed to be in fiscal distress if it fails to obtain a rate study, fails to comply with a rate study, or has been found by the Arkansas Department of Environmental Quality (ADEQ) or Arkansas Department of Health (ADH) to be in significant non-compliance with ADEQ or ADH regulations due to an inability to adequately provide funds needed for operation, maintenance, and compliance measures. Upon the identification of a water provider in fiscal distress, the appropriate state agency must have the regulatory authority to give aid and to evaluate rates based on current and future needs, assist in some form of regionalization or at least consolidation of function(s), and assist the utility to develop a sound plan to address fiscal, operational, refurbishment, and replacement concerns and that water continues to flow.

1.C To ensure fiscal adequacy, each water or wastewater system shall obtain a valid rate study no less than once every five (5) years. Rates derived from this study shall be implemented as recommended.

1.C.i The designated state agency will define the parameters of the rate study with one of the components to include a review of the system's refurbishment and replacement account and asset management plan, which evaluates the remaining useful life and eventual replacement of infrastructure. The rate study shall address the guidelines as set forth by the American Water Works Association (AWWA) and/or the Water Environment Federation (WEF).

1.C.ii A system will be advised to maintain a minimum of five percent (5%) per annum of its gross revenues or a higher amount of funds within its dedicated replacement and refurbishment (depreciation) account until a more accurate amount (percentage) is determined by the rate study, asset management plan, or an engineering study of the system. The intent is to ensure that rates are adequate to not only fund operation and maintenance but to also keep the system in good repair and maintain a sufficient reserve /depreciation fund to ensure ongoing fiscal sustainability into the future.

1.C.iii Rate studies should be conducted by professional engineers, certified public accountants, or other persons approved by the designated state agency.

1.C.iv All systems will be required to complete and submit a rate study to the designated state agency within five (5) years according to the following schedule: systems serving less than 500 customers by July 1, 2022; systems serving 501 to 1,000 customers by July 1, 2023; and systems serving greater than 1,000 customers by July 1, 2024. All rate studies will then be required on a five (5) year cycle.

1.C.v Looking toward the merits of regionalization and consolidation, and to ensure the sustainability of water and wastewater systems, the creation of new systems with less than 300 customers will only be considered and approved by state agencies if ADH or ADEQ determines public health or the environment is threatened without its creation or there is no other viable available alternative. All water and wastewater systems seeking new consideration and approval shall be organized through a governmental entity such as, but not limited to, an improvement district, or a county or a municipality and must prove the system's ability to remain fiscally sustainable with future costs addressed. It is recommended that if a new wastewater system is necessary, its maintenance and future costs be tied to the property it serves as administered by a governmental entity such as an improvement district, etc.

- 1.C.vi Any new water or wastewater system must complete a technical, financial, and managerial capacity review conducted by ADH, ADEQ or ANRC.
- 1.C.vii Any system planning an expansion shall obtain a rate study that includes consideration of the financial impact of the expansion prior to construction of the expansion.
- 1.D Once required to have a rate study, each retail water and wastewater system shall file its most recent rate study annually with Legislative Audit at the same time the system files its required audit or statement of agreed-upon procedures (due within one year following the system's fiscal year end) required by ACA. §14-234-119.
- 1.E The designated state agency shall review each system's rate study and determine whether the system is in fiscal distress:
- 1.E.i If a water or wastewater system fails to maintain minimum rates recommended by the rate study, the designated state agency shall consider the system to be in fiscal distress.
 - 1.E.ii If a water or wastewater system fails to conduct a rate study, the designated state agency shall consider the system to be in fiscal distress.
- 1.F At least once a year, the Director of the designated state agency will provide notice to any system identified as being in fiscal distress of its fiscal distress designation. The system will have the opportunity to appeal the Director's decision to the adjudicatory body of the designated agency, and later to circuit court pursuant to the designated agency's rules and the Arkansas Administrative Procedure Act rules.
- 1.G A fiscally distressed system shall file a system-wide improvement plan with the designated state agency, which includes specific actions to be taken by the system to correct financial, technical, and managerial deficiencies within the system.
- 1.G.i The designated state agency shall execute a determination approving, approving in part, modifying, or denying the plan.
 - 1.G.ii The same appeals process described for appealing the decision identifying a system as in fiscal distress also applies to appealing the decision regarding the improvement plan.
 - 1.G.iii If the designated state agency determines the system's improvement plan has been implemented, the agency shall issue a determination removing the fiscal distress designation.
- 1.H No state agency shall provide financial assistance of any type to a water or wastewater system in fiscal distress until an approved system improvement plan is in place, unless expenditures are for consolidation efforts or for immediate urgent needs to ensure preservation of the public peace, health, and safety, such as needs associated with a declared emergency or disaster.

1.I Except in cases of a declared emergency or disaster, a system in fiscal distress must obtain written permission from the designated state agency before incurring additional debt, or accepting assistance for the refurbishment or replacement of facilities or construction of facilities not within the system's improvement plan, or transferring assets to another entity.

1.J The designated state agency may take additional actions to bring a system back to fiscal stability including the following:

I.J.i Require the system to adopt and maintain a user rate structure necessary to fund operation, maintenance, and replacement of the system; principal and interest obligations; and adequate depreciation to recover the cost of the system over its useful life;

I.J.ii Employ licensed or other personnel for the financial, technical, and managerial operation of the system;

I.J.iii Appoint a receiver; or

I.J.iv Take steps to reorganize, restructure, or consolidate the system.

1.K In an effort to minimize the impact of political agendas in utility policy, water commissions/boards are strongly recommended in municipalities that are large enough to support such commissions/boards and/or when twenty (20%) or more of utility customers outside the municipal limits are served. In the event that 20% or more of the retail customer base is outside the system municipal limits, a water commission or board shall be created for the purpose of governance and oversight of the utility system with duties as outlined by federal and state guidelines. (Wholesale water is excluded from the recommended 20% requirement.) Note: It is not the intent of the Task Force to negatively impact any utility systems that were formed under specific legislation and/or already have commissions/boards who are demonstrating satisfactory accountability and fiscal stability. District or system water commissions or boards shall have diverse voting representation from business, industry, consumers, and other appropriate areas to promote accountable, knowledgeable oversight within each district or system and to ensure water provider sustainability and respect for consumer rights.

In the event water system oversight and governance is by a local government entity such as a city Board of Directors or City Council, water commissions/boards are strongly recommended in municipalities large enough to support adequate representation on a commission/board and/or again when 20% or more of utility customers reside outside the municipal limits. While such an established commission or board shall be independent from the local government entity body; when

needed or desired, the respective governmentally elected officials may sit on the new independent water commission/board along with any additional appointed or elected commission/board members. A minimum of 51% of the commission/board membership should represent the retail customer base inside the respective government entity limits. The suggestion for legislative consideration is that one (1) commission/board member is added for every 20% of retail customers outside the municipal corporate limits. In order to maintain the recommended majority of commission/board members residing within the municipal limits, a cap of two (2) members (40% of retail customer base outside the corporate limits) is suggested. The Task Force recognizes that in some cases in small municipalities, it may be difficult to identify qualified willing commission/board members; however, it is also noted through Task Force testimony that many of the most severe problems are occurring in water systems within these same small municipalities. Current legislation should be reviewed and changed if needed to accommodate adequate representation of consumers on recommended water commissions/boards.

1.L The State Water Plan makes note that “training programs should be developed for utility boards” on how to “operate their facilities and manage infrastructure.” The recommendation is to encourage more educational outreach by the ANRC, ADH, ADEQ, along with such agencies as Arkansas Rural Water Association (ARWA) to utilities and governing bodies instructive to proper utility asset and fiscal management and operations. (Publication – *“Effective Utility Management”*). It is a recommendation that such training may also need to somehow be tied to financial assistance requests. It is strongly recommended that anyone overseeing utilities receive reasonable, duty-specific content education. Without appropriate education, all who serve and consequently the respective utility system are set up for potential failure. The appropriate resources must be available to the training agencies so that the training can be taken to the respective governing and management bodies or can be delivered effectively through technology so as to facilitate access to the critical content.

1.L.i It is recommended that within one (1) year of the election or appointment all elected and appointed members of a water or wastewater governing body such as a commission, board of directors, or city council receive training on the key regulatory and management responsibilities of the position.

See Appendix E for suggested specific training content.

1.L.ii Within one (1) year of election or appointment, a majority of an elected and appointed water or wastewater governing body such as a commission, board of director, or city council

shall be mandated to receive a minimum of eight hours of training on the key regulatory and management responsibilities.

(Appendix E).

1.L.iii Failure to receive training in 1.L.i and 1.L.ii as required shall place the water or wastewater system in Fiscal Distress. This designation is due to the importance of the required training to successfully manage a system.

1.L.iv It is recommended that the Association of Arkansas Counties and the Arkansas Municipal League incorporate water and wastewater training into the training provided to County Judges, a designated number of Quorum Court members, and other designated elected officials at the city and county levels. While these elected officials may not directly oversee water and/or wastewater operations, they address water and wastewater issues in their service to their constituents.

1.L.v It is also recommended that an Advisory Board be formed as per Appendix E to oversee the development and tracking of a training curriculum.

1.L.vi The training curriculum should be systematically and regularly evaluated to ensure that content is revised and updated, if needed, to reflect best practices of the water/wastewater industry's body of knowledge.

2. **CHALLENGE:** Primarily due to lack of due diligence, along with fear of political consequences, municipalities, commissions, and local boards are unwilling to institute rate structures that will provide the necessary revenues to properly operate and maintain a public utility. The state's water and wastewater infrastructures are aging and many water providers report no, or very limited financial ability to reinvest in their systems to maintain, upgrade, and replace deteriorating critical infrastructure. Such practices result in utilities relying on loans and grants to provide operating, Capital Improvement Plan (CIP) funds, and other revenue to cover depreciation costs. In a climate of tightening state and federal budgets, loans and grants utilities depend on are decreasing in availability, often placing utilities in financially unsustainable positions.

Some cities use water revenue to subsidize their general funds and to supplement the budgets of other city departments and services, and to increase revenues. Such practices have the potential to limit the ability of the water system to reinvest in its water system for maintenance, upgrading, and replacement of aging critical infrastructure, as previously described. This puts utility managers in an untenable position.

Recommendations:

2.A. Rates should be set to adequately cover all costs for operation and maintenance, debt service, required reserves, depreciation, future capital expenses and an annual audit or agreed upon procedure.

2.B. To ensure fiscal adequacy, a valid Rate Study should be performed by each water and wastewater system no less than once every five years. Rates derived from this study should be implemented as recommended. The Rate Study and its implementation should be reviewed by the Arkansas Natural Resources Commission (ANRC). If a water or wastewater system fails to conduct a Rate Study or implement it, that system shall be considered to be in Fiscal Distress.

2.C. ANRC or other state agency should have the leverage and the means to require 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 determine a percentage of funds to be set aside to provide for depreciation and upgrades to the system, which will promote present and future sustainability. Water providers shall set aside no less than three percent (3%) of gross revenue in a restricted reserve fund to provide for major replacement or repair projects that are prioritized by rate studies, master plans, or asset management plans that identify 5-10 year long-term needs. This reserve fund shall not be used for annual operations and ongoing maintenance of the system.

2.D. ANRC should continue monitoring the status of the state's water systems, identify necessary critical improvements and the associated estimated costs of such needs in order to have on hand current cost assessments when any federal dollars should become available. While dollar needs for water and wastewater infrastructure are difficult to obtain and calculate, EPA does a periodic survey of water and wastewater needs. In the 2015 Drinking Water Needs Survey and Assessment (<https://tinyurl.com/y7eyh695> report/citation) Arkansas's twenty-year drinking water infrastructure needs were estimated to be \$7.4 billion in 2015 dollars. Of that amount \$5.5 billion were in transmission and distribution needs, \$900 million in treatment system needs, \$640 million in water storage needs, \$217 million in water source improvements, and \$156 million in other needs. In 2015 dollars, the total water infrastructure need in 2011 was \$6.8 billion. The water infrastructure needs increased by \$600 million between 2011 and 2015.

In the 2012 Clean Watersheds Needs Survey (https://www.epa.gov/sites/production/files/2015-12/documents/cwns_2012_report_to_congress-508-opt.pdf report/citation) EPA estimated Arkansas's twenty-year wastewater needs to be \$710 million in 2012 dollars. Of this amount, \$169 million were

in advanced wastewater treatment needs, \$124 million in secondary wastewater treatment needs, \$117 million in infiltration-inflow correction, \$107 million in new interceptor sewers construction needs, \$102 million in rehabilitation or replacement of sewers, \$91 million in new sewer collector needs. In 2012 dollars, the total wastewater infrastructure need in 2008 was \$534 million. The wastewater needs increased by \$176 million between 2008 and 2012. The rigorous requirements of the 2012 Clean Water Watersheds Needs Survey make it likely that the numbers reported understate wastewater infrastructure needs.

ANRC should continue to monitor the condition of the state's water and wastewater systems, cost assessments to educate the public of infrastructure needs, and to have such information available if federal, state, or other funding should become available.

2.E. Water and wastewater utilities are to be identified as an enterprise fund department with all generated revenue mandated to stay within utility budgets to ensure adequate funding for operation and maintenance, management, debt service, depreciation, upgrades, etc. rather than being diverted to the general funds of government entities. Although strongly discouraged, franchise fees and excess funds beyond expenses related to operation and maintenance, management, and reserves supporting debt service, depreciation, upgrades, etc. may be utilized outside the utility under strict monitored and audited guidelines.

2.F. As recommended in Section 1.E, those who oversee the management of water or wastewater systems shall participate in mandatory ongoing education.

2.G. Investigate feasibility of assistance programs for the most impoverished customer base. If the Arkansas Constitution, Article 12 prohibits assistance programs being provided by water providers, then the Task Force would hope that water providers would investigate the possibility of different rate structures for the most impoverished of their customer base and work with others within the community to identify referrals to agencies that might be able to provide some assistance programs.

2. **CHALLENGE:** Many areas of the state are experiencing a loss of population, which has decreased the revenue base to levels that in some cases cannot support day-to-day operations, much less the long-term sustainability of their water and wastewater systems. While this is a true statement, primary responsibility to maintain a properly functioning utility falls back on the ratepayers. This statement is identified in the Arkansas Water Plan (AWP) (section 2.5). A

consumer's ability to pay is somewhat subjective based on their priorities – drinking water is the most economic utility bill individuals have and yet it has a low priority.

Recommendations:

- 3.A. The Task Force respects local control. However, it is more important for people have clean, safe water. The Task Force strongly encourages regionalization, or some form of consolidation of utilities, management, and resources to provide greater efficiencies in operation and greater financial stability. It is recommended that ADH, ADEQ and/or ANRC be granted authority to require some form of consolidation when the need arises, especially in situations where there is habitual water provider noncompliance. Again, while local control is to be respected as much as possible, if a water provider is failing or requires some form of aid, then there shall be assistance from the respective state agency in the development of an improvement plan. This improvement plan should include consolidation in some form. Consolidation can take various forms depending on the needs of the water providers. One example might be several systems might be operated by a few key personnel rather than each system duplicating the same key positions.
- 3.B. Review and amend statutory requirements that discourage regionalization and consolidation. Strongly recommend that economic incentives be put into place for strong successful water providers/systems to be able to consolidate with troubled, failing systems. Economic development within the state depends on the dependable, plentiful provision of water.
- 3.C. The Task Force recognizes that the potential is that in some cases such as a system(s) consolidating with a failing system(s) and in situations where systems extend lines to serve more sparsely settled areas; customer costs may increase.
- 3.D. The Task Force recognizes that rate structures for rural extension areas may need to be different.
- 3.E. Identify programs, grants, or low-interest loans for needed system extensions, replacements and other qualified major projects. The Task Force recognizes the value of certain long term loans. The problem lies in ineffective and uneducated management of those loans considering only the loan repayment but not taking action to institute additional restricted funds for depreciation. In some areas the declining customer base and decreasing revenue are problematic.
4. **CHALLENGE:** With operators aging and retiring across the state, there is a growing shortage of adequately trained and skilled water and wastewater supervisors with the necessary,

detailed knowledge to efficiently operate water systems. The aging and retirement is also causing an increasing lack of technical support.

Recommendations:

4.A. Encourage the 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 or manager, and equate that to suitable compensation which promotes recruitment and retention, and provides incentives for individuals to consider a career in the industry.

4.B Encourage continued efforts by water industries and organizations to actively promote the recruitment, education, and licensing of workers to fill the gap of retiring employees.

4.C. Where feasible, encourage achievable forms of regionalization, consolidation and sharing of personnel and resources to ensure the expert management and operations of local utilities.

5. **CHALLENGE:** Municipalities have been one of the most important ways that Arkansans have organized to provide drinking water and deal with wastewater. In doing so, they understandably have often required that those outside the city annex into the city to receive those services.

Testimony brought to light issues such as annexation, the potential for increased collection of sales tax and ad valorem taxes, and other concerns have resulted in water access that in some circumstances is being denied within the ANRC-recognized service area, and was accepted by the water provider, even in areas where property owners have paid for infrastructure already in place. Situations like this can be avoided through proper research by the individual prior to development. There is concern that residential and economic development in Arkansas is being hindered, and in some cases totally stopped, by using water access as a political tool. The Task Force hopes these are isolated issues. In most cases, if not all, the availability of water is not the only factor in creating adversarial situations. Service area problems are occurring across the state. Resolving those problems through state government or bureaucracy at a higher level is not the preferred solution. Localized service problems cannot always be resolved with simple solutions. Most are resolved through negotiations between systems, but if such negotiations fail then the designated state agency should be empowered to arbitrate. However, some service problems presented to the Task Force were complicated by factors other than just water access. As stated in the Vision Statement earlier in this report, the Task Force consensus is while commercial customers may use more water than

residential customers, when no capacity or engineering issues exist and commercial customers are limited or denied, the reason may very well be political.

There was concern by some on the Task Force that consumers have limited due process and minimal security in relation to water provision. It was also expressed that some consumers receive limited justification for rate structures and current legislation and state agencies' statutory scope of authority provide for limited protection in the court system. Others on the Task Force did not believe this to be the case. However, the overall consensus of the Task Force was that under reasonable circumstances and barring legitimate obstacles to service, water providers should service their ANRC-recognized service areas. It is readily recognized that the majority of local utilities in the state are responsive and accountable to their customers. Rate adjustments are generally accompanied by open meetings with opportunity for input from the public. For the most part, the local bodies responsible for establishing rates are very cognizant of the impact of adjustments and their policies.

Recommendations:

5.A. Recommend legislation to give authority to ANRC or other state agency the ability to require water providers to honor written agreements regarding water provision within the current ANRC-recognized service area or release the area(s) in question to another water provider who is willing to service the area(s) at no additional costs to property owners who have already paid for the infrastructure. It is understood that property owners should pay the costs of any needed extensions to connect to the willing provider. Said written agreements could be between water providers or between water providers and consumers.

5. B. Encourage municipal water providers who are willing to provide service to areas outside their corporate limits to do so through legally constituted written agreements executed by all parties and to clearly define any annexation or other requirements for any access or service prior to the initiation of any action to provide water to those areas. Failure to clearly define all requirements or any annexation for initial or future service on the initial written agreements should bar requirements being added at a later date without the mutual written agreement of all parties.

5. C. Establish protocols and practices that eliminate or at least limit the ability to use water as a means to promote political agendas. That could include the establishment of a separate utility commission or board that operates more independently of municipal governance where practicable.

A water or wastewater providers' primary purpose is to provide water and service to as many customers as possible, barring any capacity, engineering, or written contractual limitations. Where the water or wastewater provider is being prohibited from providing service to customers in its ANRC-recognized service area by the will of the local governing authority or by other means, or who practice irresponsibly in relation to consumer rights and not following best management practices in providing water or wastewater service, ANRC or the designated state agency shall intervene.

5. D. Unless a provider has made the decision not to extend service outside their political boundaries, no one should be denied access to service where suitable distribution and collection infrastructure already exists. This includes for reason of race, gender, religion, and political subdivision. Proper engineering practices should be followed and the costs should be borne by the customer.

5. E. Since legal recourse may be beyond the means of many water and wastewater customers, it is recommended that a consumer appeals process be developed through ANRC, or other appropriate state agency who is accessible and fair to all concerned. ANRC, or other appropriate state agency, shall develop these policies and procedures to include mediation and guidelines for dismissing frivolous complaints and issues so as not to overburden ANRC or the designated state agency.

6. **CHALLENGE:** A gap exists in the public and the local, state, and federal leaders' understanding as to what is required to efficiently operate and manage a water/wastewater utility, such as personnel qualifications, financial sustainability, regulatory compliance, environmental constraints, and political parameters.

Recommendations:

6.A. More education of the public, lawmakers, and others is needed to communicate the importance and value of safe and clean water provision. Educating K-12 teachers and encouraging field trips would be an important component of this education.

6.B. There are many examples of successful educational programs in the state. An important element that is lacking is the involvement of upper level business people who comprise boards, commissions, councils, and legislatures. Educational initiatives should include, but not limited to Public Service announcements, Health Fairs, business and industry contacts, community groups, and other appropriate public venues.

7. **CHALLENGE:** Ensuring Arkansas's water integrity for the present and into the future for drinking water, agricultural, industrial, commercial, recreational and environmental water uses.

Recommendations:

7. A. Implementation of the Arkansas Water Plan (AWP), should be continued and should be viewed with a higher level of importance to ensure that the desired results are accomplished. Additional resources for the implementation of the AWP would help to address many of these issues.

Draft 1/8/13

APPENDIX A

Act 1056 of 2017

***“AN ACT TO CREATE THE WATER PROVIDER
LEGISLATIVE TASK FORCE; AND FOR OTHER
PURPOSES”***

(SEE ATTACHMENT)

Draft 1/8/19

APPENDIX B

TASK FORCE RULES OF PROCEDURE

2017-2018

(SEE ATTACHMENTS)

Draft 1/18/19

APPENDIX C
AGENDAS AND MINUTES

(SEE ATTACHMENTS)

Draft 1/18/19

APPENDIX D

SUPPLEMENTAL REPORTS

Draft 1/8/19

APPENDIX E

Key Regulatory and Management Responsibilities and Educational Training Strategies for Governing Bodies

The Arkansas Department of Health (ADH) currently has a contract with Communities Unlimited to provide Board member training for those city councils or governing boards who request it. Communities Unlimited provides this type of training both in Arkansas and other states as well.

Key Regulatory Responsibilities of a Board Member:

- Accountability and Liability
- Insurance
- Safe Drinking Water Act and Associated Regulations
- State Primacy Agency Roles and Regulations
- Operator Requirements and Oversight
- Clean Water Act and Safe Water Act Requirements

Key Management Responsibilities of a Board Member:

- Policies and Procedures
- Personnel Management
- Financial Management
- Emergency Preparedness
- Hold open meetings and Keep open records

Committee/Advisory Board for Development of Required Training:

- Arkansas Department of Health
- Arkansas Department of Environmental Quality
- Arkansas Natural Resources Commission
- U.S. Department of Agriculture/Rural Development
- Arkansas Rural Water Association
- Arkansas Municipal League
- Communities Unlimited
- Arkansas Water Works & Water Environment Association
- Arkansas Environmental Training Academy

Content Development:

- ADH and ADEQ-Developed Water/Wastewater Operator Training Guidelines
- State and Federal Financing Entities --ANRC and USDA/Rural Development
- Arkansas Municipal League

- Arkansas Rural Water Association
- Communities Unlimited
- Tap into Local Colleges to assist in curriculum development
- State Legislature—do they have guidelines for legislator training?

Possible Training Venues (*with emphasis on providing training at the local level*):

- Arkansas Rural Water Association Annual Conference and scheduled meetings in Lonoke or on-site with small Utility Boards/City Councils/Mayors
- Arkansas Water Works and Water Environment Association Annual Conference
- Arkansas Department of Health training
- Arkansas Department of Environmental Quality training
- Arkansas Municipal League Annual Winter/Summer Conferences
- Communities Unlimited – at the local systems or other designated locations around the state
- Arkansas Water and Wastewater Managers Association Annual Conference
- Association of Arkansas Counties Annual Conference

Monitoring:

- State/Local Governments’ Orientation for Newly Elected Officials
- Arkansas Natural Resources Commission – based on Water and Wastewater Operator Tracking System
- Arkansas Department of Health – Currently Monitors Water Operators throughout Arkansas

Curriculum for Continuing Education Units (CEUs)

- Water/Wastewater systems and how they operate
- Rates/Business Principals
- Infrastructure Sustainability
- Importance of Water Operator Expertise
- Operator/Manager Compensation, Retainment, etc.
- Mississippi Board and Elected Officials Training Material (Build off that)
- Arkansas Freedom of Information Act
- Preparing Agendas and Conducting a Proper Meeting

*****Recommendations are based on current availability. Future recommendations and guidelines will need to be taken into consideration***