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

(as of 10/18/18)

Findings

Vision for the Future

Action Plan with Recommendations

January 1, 2019 Report to:

Governor of the State of Arkansas
Executive 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)

Table of Contents

Table of Contents will develop as Report develops and is revised

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, Director, Grants Management Division
Designee of the Arkansas Economic Development Commission

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 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, 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's 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 UPDATED DATA HERE.**

The health and welfare of our people and our state's economy are at risk. Testimony to the Water Provider Legislative Task Force has confirmed concerns over the state's aging water and wastewater infrastructure, plus 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, plus potential barriers to economic development in state related water 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", which was 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 in the State". Act 1056 outlines certain beliefs in relation to the provision of water, in that no utility provides a more basic need for human life and economic development than a water provider. (Appendix A)

Act 1056 directs the Task Force to study and provide a blueprint for water security and development for Arkansas to 1) enhance the water provider system within the State, 2) outline best management practices for providing 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 for where Arkansas should be in the future and an Action Report, which are to include 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 frequently throughout 2017 and 2018 at the State Capitol complex, including an August 2018 meeting at the Beaver Water District in northwest Arkansas.

Data related to the current infrastructure, the 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 (Appendix C). What follows are the major challenges identified by the Task Force regarding the provision of water that includes recommendations and Best Management Practices to address current problems and barriers that threaten access to water:

- 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
- 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 succinct Vision Statement did not clearly capture the testimony, presentations, statistics, and discussion entered into by the Task Force. General consensus was that the state's water providers should serve the areas that they agreed to serve, ideally:

Clean, safe, affordable, and abundant drinking water will 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 could 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 that are 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 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 as Identified by the Water Provider Legislative Task Force impacting the Vision of Water Security and Development in Arkansas:

1. **Currently, 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 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.**

Recommendations:

a. While maintaining current monitoring and regulatory responsibilities of Arkansas Department of Health (ADH) and the Arkansas Department of Environmental Quality (ADEQ), 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 Resources Commission (ANRC) or other state agency(s) toward the goals of both consumer protection and public water provider sustainability (ex. Planning Districts?). Water commissions with diverse representation from ANRC, AHD, ADEQ, appropriate water industry representatives, and appointed and elected officials are needed to provide water provision oversight within each district to ensure protection of consumer rights and water provider sustainability??? *Include inside and outside the city limits, pro rata share, representative 20%*

b. Encourage more educational outreach by these agencies to utilities and governing bodies instructive to proper utility management. (Publication – "Effective Utility Management"). Sufficient oversight already exists within state agencies. The question becomes; do they have the leverage/means needed to change the way utilities/cities that are in trouble function? Arkansas's State Water Plan recommends "receivership proceedings should be initiated for public water/wastewater providers who have defaulted on loans". What about the number of utilities/cities we heard from that can't even make payroll or fix their water tank? Again, we ask: who has the authority/expertise to make these decisions? Also, the Plan makes note of "training programs should be developed for utility boards" on how to "operate their facilities and manage infrastructure", as was mentioned in last month's meeting.

2. **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 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 that utilities depend on are decreasing in availability, often placing utilities in financially unsustainable positions.

Recommendations:

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.
b. To insure 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 should be considered to be in Fiscal Distress.
c. Develop ANRC or other state agencies or planning districts to leverage the 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 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. ***Insert recommended percentages here to be set aside for depreciation, etc. here?***
d. Water and wastewater utilities need to be identified as enterprise fund departments with all generated revenue mandated to stay within the respective 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, unless only borrowing.
e. Water commissions should ideally be made up of a diversity of appointed and elected members with knowledge of water systems, business principles, and Best Practices, and who will encourage educational programs to promote water provider stability, infrastructure sustainability, and develop educational programs for the public.
f. Encourage assistance programs for the most impoverished customer base.

3. **Many areas of the State are experiencing a significant loss of population; which has decreased their revenue base to levels that in some cases cannot support day-to day-operations, much less the long-term sustainability of their water systems. True statement, but primary responsibility to maintain a properly functioning utility falls back on the ratepayers. This statement is identified in the State Water Plan (section 2.5).**

Recommendations:

a. Encourage regionalization, or some form of consolidation of utilities, management, and resources to provide greater efficiencies in operation and greater financial stability. In some cases, customer costs may increase when systems extend lines to serve more sparsely settled areas.
b. Recognize that rate structures for rural extension areas may need to be different.
c. Identify programs, grants, or low-interest loans 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 operators aging and retiring across the state, there is a growing shortage of adequately trained and skilled water and wastewater supervisors with necessary, detailed knowledge, and is also causing an increasing lack of technical support.**

Recommendations:

a. Encourage continued efforts by drinking water industries and organizations to actively promote the education and licensing of workers to fill the gap of retiring employees.
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 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.
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.
d. Others??

#___ Due to concerns over the ability of consumers to pay sufficient rates and the fear of political consequences, many water governing bodies are resistant to implementing common business practices such as full-cost pricing, which could result in water rates that would cover the costs of providing the service, along with adequately maintaining and upgrading their systems to ensure future sustainability. ***Very true statement – especially regarding political consequences. Consumer's ability to pay is somewhat subjective based on their priorities – drinking water is the most economic utility bill that individuals have and yet it has the highest value. Most utilities have some type of assistance program for the most impoverished part of their customer base, but in most cases, the cost of water is priced so that anyone can afford it.***

5. **Given that many municipalities have concerns over sales tax and ad valorem revenue streams, water access, and restrictive policies, which in some instances are being used as tools to achieve political agendas to force annexations, and increase revenue sources. Some cities use water**

revenue to subsidize their general funds and to supplement the budgets of other city departments and services and increase revenues. *For utility managers, this is a double edge sword. This again is a local issue which should probably be resolved locally. Annexation would be considered forced, only by those who are in the minority on a petition, election, or Ordinance Election.* 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.

Recommendations:

a. Investigate the need to give authority to ANRC or other state agency (planning districts) the ability to leverage or recommend legislation that would require municipalities to honor agreements regarding water provision within the current ANRC-designated water provider area to release an area(s) in question to another water provider who is willing to service the area(s) at no additional costs.
b. Encourage municipal water providers who are willing to provide service to areas outside the corporate limits, and to clearly define any annexation or other requirements for service prior to initiation of any actions signifying water provision to those areas.
c. Commissions – taking away use of water by politicians??? Need some mechanism or authority to penalize water providers who don't do the right thing and who practice irresponsibility accounting. Commissions who violate consumer rights and best management practices answer to ANRC, planning districts, what other state agency??? Oversight by the already established planning districts or to whom?
d. Others??

#__. In some areas of the State, water access is being ~~selectively~~ denied within the assigned, exclusive? Arkansas Natural Resources Commission service area accepted by the provider. *Don't necessarily agree with use of word "selectively", implying there is no justifiable reason for the action by the utility, or that the utility is prejudiced in some way against the consumer. In many cases, situations like this can be avoided through proper research by the individual prior to development. Service area problems are common place however, resolving those via 'state gov't' is not a preferable solution. They are too localized to resolve with one stop solution. Most all are resolved in negotiations between utilities. Some of these situations that we have heard about are complicated by factors other than just water.*

#__. Consumers have limited due process, virtually no security in relation to water provision, at times limited justification for rate structures, and current legislation provides inadequate protection in the court system. *We don't believe this to be true. Local utilities are responsive and accountable to their customers. Any rate adjustments are accompanied by open meetings, with input from the customers. The local bodies responsible for establishing rates are very cognizant of the impact of adjustments.*

#__. Residential and economic development in Arkansas is being thwarted and in some cases totally stopped by the use of water access as a political tool. *This is an isolated issue*. *Again, in most cases, if not all, the availability of drinking water is not the only factor in play in creating the adversarial situation.*

6. **In general, there seems to be a gap in the public and the local, state, and federal leaders' understanding as to what is required to efficiently operate a water utility, such as personnel qualifications, financial sustainability, compliance with regulations, environmental constraints, and political parameters.**

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, and legislatures.

There are many examples of successful educational programs over the state, but what is lacking is the involvement of upper level business people that comprise boards, commissions, councils, and legislatures.

Please note these problems are not isolated to Arkansas – they extend across the country. And, the answer is not additional bureaucracy at a higher level.

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.** ***This should not be construed to be a detriment. In many cases, the Arkansas State Water Plan has addressed various means of resolving issues. ANRC has responsibility/authority related to the use of the state natural resource, financial control with those utilities that receive funding, planning, and many other aspects concerning this important resource. ADH has primacy for enforcement of the Safe Drinking Water Act regulations of EPA, including licensing of operators, monitoring of systems, education, protection of water sources, and other aspects which protects the health of our citizens, and the ADEQ has primacy for the enforcement of Clean Water Act regulations of EPA related to wastewater treatment, water quality protection matter related to streams and water bodies, operator licensing, and many other issues to the preservation of the environmental quality. Education is a key component, but not for just the general public, but specifically for those in authority which provide the resources to properly operate/manage a sustainable utility.***

Implementation and enforcement of requirements of State Water Plan, Safe Drinking Water Act, and Clean Water Act, should be continued, if not increased, and should be viewed with a higher level of importance to ensure that the desired results are accomplished. Additional resources for these agencies to carry out their programs and responsibilities would help at addressing many of these issues.

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.