

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representatives Northcutt, Fletcher, Choate, G. Hendrix, Jordan, Angel, Wilkins and**
5 **McGinnis**

A Bill

ACT 838 OF 1995
HOUSE BILL 1701

For An Act To Be Entitled

9 "TO AMEND VARIOUS PROVISIONS OF TITLE 14 CHAPTER 116 OF
10 THE ARKANSAS CODE RELATING TO THE REGIONAL WATER
11 DISTRIBUTION ACT TO ALLOW THE BOARD OF DIRECTORS OF A
12 REGIONAL WATER *DISTRIBUTION* DISTRICT TO ADOPT A PROPOSED
13 IMPROVEMENT PLAN FOR A PROJECT AREA, INCLUDING THE ABILITY
14 TO ASSESS BENEFITS, TO CLARIFY THE DISTRICT'S AUTHORITY TO
15 ENTER INTO CONTRACTS WITH THE UNITED STATES; TO GIVE A
16 DISTRICT AUTHORITY TO ACCEPT APPROPRIATIONS FROM THE
17 STATE; TO ALLOW A DISTRICT TO ENTER LAND WITHIN THE
18 DISTRICT TO MAKE SURVEYS; TO CLARIFY THE DISTRICT'S
19 AUTHORITY RELATING TO EXISTING RIPARIAN USERS; AND FOR
20 OTHER PURPOSES."

Subtitle

21
22
23 "TO AMEND VARIOUS PROVISIONS OF TITLE
24 14, CHAPTER 116 OF THE ARKANSAS CODE
25 RELATING TO THE REGIONAL WATER
26 DISTRIBUTION *DISTRICT* ACT."

27
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29

30 *SECTION 1. Arkansas Code 14-116-103 is amended to read as follows:*

31 *"§14-116-103. Definitions. As used in this chapter, unless the context*
32 *otherwise requires:*

33 *(1) 'Acquire' means and includes construct, acquire by purchase, lease,*
34 *devise, gift, or other mode of acquisition;*

35 *(2) 'Board' means a board of directors of a regional water distribution*
36 *district organized under this chapter;*

1 (3) 'Commission' means Arkansas Soil and Water Conservation Commission;

2 (4) 'Court' means the circuit court creating the water district
3 pursuant to subchapter 2 of this chapter;

4 (5) 'Improvement project area' means an area established by the court
5 within the district for which an approved improvement plan has been developed
6 and for which assessment of benefits may be made to pay the cost of
7 development, construction, operation and maintenance of the improvement plan
8 and its works of improvement.

9 (6) 'Improvement plan' means a plan developed by a water district to
10 carry out any of the purposes contained in §14-116-102 or the ancillary
11 benefits derived therefrom within an improvement project area.

12 (7) 'Obligation' includes bonds, notes, debentures, interim
13 certificates or receipts, and all other evidences of indebtedness issued by a
14 regional water distribution district formed under this chapter;

15 (8) 'Person' includes any natural person, firm, association,
16 corporation, business trust, partnership, federal agency, state agency, state
17 or political subdivision thereof, municipality, or any body politic;

18 (9) 'Reservoir' means any impoundment of water through the construction
19 of a dam by or under the direction and supervision of the United States Army
20 Corps of Engineers, or by the water district, with federal financial or other
21 assistance furnished by the United States Secretary of Agriculture under the
22 provisions of the Watershed Protection and Flood Prevention Act or any other
23 federal law;

24 (10) 'Water district' or 'district' means a nonprofit regional water
25 distribution district organized pursuant to the provisions of this chapter;

26 (11) 'Works of improvement' means any facilities developed by the water
27 district as district as part of an improvement plan which need not be located
28 exclusively within a proposed improvement project area or within the water
29 district."
30

31 SECTION 2. Arkansas Code 14-116-201 is amended to read as follows:

32 "14-116-201. Authority to petition for district establishment.

33 When there is water available for industrial, municipal, or agricultural
34 irrigation water supply purposes from wells, lakes, rivers, tributaries, or
35 streams of this state or bordering on this state or from reservoirs heretofore

1 created by the construction of multipurpose dams by or under the direction and
2 supervision of the United States Army Corps of Engineers, on any of the
3 rivers, tributaries, or streams of or bordering on this state, or when the
4 Congress of the United States of America has enacted a law authorizing the
5 construction of a reservoir by or under the supervision and direction of the
6 United States Army Corps of Engineers, on any of the rivers, tributaries, or
7 streams of or bordering on this state, or when a proposed reservoir on any
8 stream of this state is to be constructed by a water district established
9 under this chapter with federal or other assistance furnished by the United
10 States Secretary of Agriculture under the provisions of the Watershed
11 Protection and Flood Prevention Act or any other federal law, then one hundred
12 (100) or more qualified voters residing and owning lands situated within the
13 boundaries of the water district proposed to be established under the
14 provisions of this chapter may petition the circuit court in the county to
15 establish a water district for the purposes set out in this section."

16

17 SECTION 3. Arkansas Code 14-116-202(3) is amended to read as follows:

18 "(3) A brief and concise statement showing the necessity for forming
19 and operating the proposed water district, describing the benefits to be
20 received therefrom by the residents and property owners in the territory
21 proposed to be embraced in the water district and if the water district
22 proposes to use project improvement plan and assessments, a statement that
23 such petitioners are aware of the power of the district under this act to levy
24 taxes;"

25

26 SECTION 4. Arkansas Code §14-116-207 is amended to read as follows:

27 "§14-116-207. Exclusion of land for irrigation purposes.

28 (a) Any owner of real property within the territory of the proposed
29 water district may, at any time before the entry of the order establishing the
30 district and before the entry of the order establishing an improvement project
31 area including such real property, petition the court to exclude his property
32 for agricultural irrigation water uses.

33 (b) To exclude the property from the district the court must make the
34 following determination:

35 (1) the property is supplied by adequate agricultural irrigation

1 water from surface sources or other sources; and

2 (2) the property is not and will not in the future be benefited
3 by the improvements of the proposed water district."

4

5 SECTION 5. Arkansas Code §14-116-402 is amended to read as follows:

6 "§14-116-402. District Powers. Each water district shall have power
7 to:

8 (1) Sue and be sued, complain and defend, in the district's name;

9 (2) Adopt a seal which may be altered at pleasure, and to use it, or a
10 facsimile thereof, as required by law;

11 (3) (A) Acquire absolute title to and use for any purpose and at any
12 place water stored in any reservoir or other water source created by the
13 construction of a multipurpose dam by or under the direction and supervision
14 of the United States Army Corps of Engineers or by the water district with
15 federal financial or other assistance furnished by the United States Secretary
16 of Agriculture under the provisions of the Watershed Protection and Flood
17 Prevention Act as amended with financing provided by any federal, state or
18 other source;

19 (B) Acquire water storage and withdrawal rights in any reservoir or
20 other water source created by the construction of a multipurpose dam by or
21 under the direction and supervision of the United States Army Corps of
22 Engineers or by the water district with federal financial or other assistance
23 furnished by the United States Secretary of Agriculture under the provisions
24 of the Watershed Protection and Flood Prevention Act, as amended, or with
25 financing provided by any federal, state or other source;

26 (C) Transport, distribute, sell, furnish, and dispose of the water from
27 whatever source derived to any person at any place;

28 (D) Construct, erect, purchase, lease as lessee and in any manner
29 acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor,
30 exchange, and mortgage real property, personal property, easements, interests
31 in real property, plants, buildings, works, machinery, supplies, equipment,
32 apparatus, facilities, property rights, and transportation and distribution
33 lines, facilities, equipment, or systems necessary, convenient, or useful;

34 (E) Regulate, define, and control the rate and location of any
35 withdrawal or transfer of water which is owned, acquired, or developed by the

1 water district in natural or manmade channels; provided that riparian owners
2 of natural water courses are not obligated to pay for their historical
3 riparian use from such natural water courses;

4 (F) Authorize persons to enter for any purpose water which has been or
5 is being transported or is held by the water district, but only if the water
6 district has acquired absolute title to land under the water or has obtained
7 permission of the owner of the land under the water; provided this provision
8 shall not limit a district_s authority to enter on lands for inspection or
9 other purposes consistent with purposes of this chapter;

10 (4) Assist its customers in the preparation of their premises for the
11 use of water furnished by the water district and install upon the premises
12 fixtures, machinery, supplies, apparatus, and equipment of any and all kinds
13 and character, and in connection therewith, and for that purpose, to purchase,
14 acquire, lease, sell, distribute, install, and repair fixtures, machinery,
15 supplies, apparatus, and equipment of any and all kinds and character and to
16 receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds,
17 and other evidences of indebtedness;

18 (5) Acquire, own, hold, use, exercise, and to the extent permitted by
19 law, to sell, mortgage, pledge, hypothecate, and in any manner dispose of
20 franchises, rights, privileges, licenses, rights-of-way, and easements
21 necessary, useful, or appropriate;

22 (6) Purchase, receive, lease as lessee, or in any other manner acquire,
23 own, hold, maintain, sell, exchange, and use any and all real and personal
24 property, or any interest therein;

25 (7) (A) Borrow money and otherwise contract indebtedness, to issue its
26 obligations therefor, and to secure the payment thereof by mortgage, pledge,
27 or deed of trust of all or any part of its property, assets, franchises,
28 rights, privileges, licenses, rights-of-way, easements, revenues, or income.

29 (B) The obligations may be in the form of negotiable bonds, but may be
30 registered as public obligations under the Registered Public Obligations Act
31 of Arkansas, may be issued in one (1) or more series, may bear such date or
32 dates, may mature at such times, not exceeding forty (40) years from their
33 respective dates, may bear interest at rate or rates, may be in such form, may
34 be executed in such manner, may be payable in such medium of payment, may be
35 payable at such place or places, within or without the State of Arkansas, may

1 be subject to such terms of redemption, and may contain such terms, covenants,
2 and conditions as the resolution of the board authorizing the bonds may
3 provide.

4 (C) The resolution of the board authorizing the bonds may provide for
5 the execution by the water district of a trust indenture with a bank or trust
6 company, within or without the State of Arkansas, which defines the rights of
7 the holders and registered owners of the bonds and provides for the
8 appointment of a trustee for the holders and registered owners of the bonds.

9 (D) The trust indenture may control the priority between successive
10 issues and may contain such other terms, covenants, and conditions that are
11 deemed desirable including, without limitation, those pertaining to the
12 custody and application of the proceeds of the bonds, the collection and
13 disposition of revenues, the maintenance and investment of various funds and
14 reserves, the nature and extent of the security, the rights and duties of the
15 water district and the trustee for the holders or registered owners of the
16 bonds, and the rights of the holders or registered owners of the bonds.

17 (E) The bonds may be sold at such price, including sale at a discount,
18 and in such manner as the board may determine.

19 (F) All bonds, whether previously or subsequently issued pursuant to
20 the provisions of this act, shall be exempt from all state, county, and
21 municipal taxes;

22 (8) Sell and convey, mortgage, pledge, lease as lessor, and otherwise
23 dispose of all or any part of its property, assets, franchises, rights,
24 privileges, licenses, rights-of-way, and easements;

25 (9) In connection with the acquisition, construction, improvement,
26 operation, or maintenance of its transportation and distribution lines,
27 systems, equipment, facilities, or apparatus, use the bed of any stream
28 without adversely affecting existing riparian rights, any highway or any
29 right-of-way, easement, or other similar property rights, or any tax-forfeited
30 land owned or held by the State of Arkansas or any political subdivision;
31 however, this provision does not entitle riparian users to receive water
32 owned, acquired or developed by the water district without paying the
33 district_s water user charges;

34 (10) Have and exercise the right of eminent domain for the purpose of
35 acquiring rights-of-way and other properties necessary in the construction or

1 operation of its property and business in the manner now provided by the
2 condemnation laws of this state for acquiring private property for public use;
3 however, this power shall not be used by an irrigation water district for the
4 acquisition or construction of farm irrigation reservoirs or natural water
5 courses and any surplus property obtained by an irrigation water district
6 under this power shall be first offered to the person or persons owning the
7 remaining property from which it was taken at the price paid as eminent domain
8 damages before it may be sold to others;

9 (11) Accept gifts or grants of money, services, franchises, rights,
10 privileges, licenses, rights-of-way, easements, or other property, real or
11 personal;

12 (12) Make any and all contracts necessary or convenient for the exercise
13 of the powers granted in this chapter;

14 (13) (A) Fix, regulate, and collect rates, fees, rents, or other charges
15 for water and any other facilities, supplies, equipment, or services furnished
16 by the water district.

17 (B) Rates shall be just, reasonable, and nondiscriminatory.

18 (C) If any district distributes water to consumers outside the
19 district, the rates, fees, rents, and other charges for water and other
20 facilities, supplies, equipment, or services furnished to consumers outside
21 the district shall be calculated to pay the cost of such distribution outside
22 the district. No part of the cost of distributing water or providing other
23 services outside the district shall be borne by the members of the district,
24 and there shall be no increase in the cost to members in the district as a
25 result of furnishing water to consumers outside the district;

26 (14) Conduct its affairs within and without this state;

27 (15) Elect, appoint, or employ officers, agents, and employees of the
28 water district and define their duties and fix their compensation;

29 (16) Do and perform all acts and things and have and exercise any and all
30 powers as may be necessary, convenient, or appropriate to effectuate the
31 purposes for which the water district is organized;

32 (17) Accept appropriations from the state upon such terms and conditions
33 as may be imposed by law or regulation to be used in the furtherance of the
34 purposes for which the water district was created;

35 (18) With notice enter upon any land within or outside the water district

1 for inspection purposes or other purposes as are necessary, convenient and not
2 inconsistent with the purposes of this chapter;

3 (19) Notwithstanding the powers conferred by this section, a water
4 district shall comply with all laws of the State of Arkansas regarding the
5 acquisition, storage, transportation, distribution, treatment or disposal of
6 water, including without limitation laws related to minimum stream flow,
7 nonriparian water use, ground water use, Arkansas Water Plan compliance and
8 public water supply.

9 (20) Notwithstanding any other provisions of this chapter, no
10 irrigation district shall have the power to acquire title to or use any water
11 stored in any reservoir created by a dam constructed before July 1, 1995, or
12 to acquire water storage or withdrawal rights in any such reservoir. The last
13 sentence shall not apply to United States Army Corps of Engineers projects
14 whose main purpose is navigation. Irrigation districts may obtain water from
15 wells, from excess surface water as defined in § 15-22-304, and from
16 reservoirs constructed after July 1, 1995._

17

18 SECTION 6. Subchapter 4 of Chapter 16 of Title 14 is amended by adding
19 a new section to read as follows:

20 "§14-116-407. Contracts - Water District and United States.

21 The board is authorized to:

22 (a) Cooperate with the United States or any agency or instrumentality
23 thereof, hereinafter referred to as the United States, in the development of
24 plans for the construction, operation, and maintenance of any facilities which
25 the water district is authorized to construct, operate and maintain;

26 (b) Negotiate a contract with the United States or give such assurance
27 as may be required by the United States for the construction, operation and
28 maintenance of such facilities or any part thereof by the United States.

29 (1) The contract or assurance may provide for the payment by the
30 water district to the United States of the agreed costs thereof in the form of
31 construction charges, operation and maintenance charges, water storage rental,
32 or service charges.

33 (2) Construction charges may include the cost of works of
34 improvement for any project addressing the purposes contained in §14-116-102
35 and ancillary benefits derived therefrom including but not limited to fish and

1 wildlife, prevention of seepage on irrigated lands, prevention of erosion, and
2 sediment damages and the conservation, development, utilization and disposal
3 of water.

4 (3) The contract or assurance may provide for the repayment of
5 the various charges by the water district primarily or exclusively from
6 revenue to be derived by the district from the sale under contract between the
7 district and its water users from the district works, with payment to be made
8 either in the form of agricultural products, cash or, if an improvement
9 project area has been created under subchapters 5, 6 or 7 of this chapter,
10 with revenues derived from assessments levied pursuant thereto.

11 (4) The contract or assurance may provide that the water district
12 shall furnish lands, easements, and rights-of-way and that property so
13 acquired by the district may be conveyed to the United States insofar as the
14 property may be required for the construction, operation, and maintenance of
15 works thereon by the United States for the benefit of the district.

16 (5) The contract or assurance may provide that the water district
17 shall save and hold harmless the United States from any liability or damages
18 due to or arising out of the construction, operation, and maintenance of any
19 of the works."

20

21 SECTION 7. Chapter 116 of Title 14 is amended by adding Chapters 5, 6,
22 and 7 to read as follow:

23 "§14-116-501. Proposed improvement plan for assessment based water
24 district projects.

25 (a) Upon the securing of a petition described in subsection (b), a
26 water district may, if the order establishing the district expressly so
27 permits, develop an improvement project plan for any purpose contained in §14-
28 116-102 that would benefit the lands within the district. All such
29 improvement plans for improvement project areas shall be appropriately
30 identified by a number or a name selected by the district. The district may
31 employ an independent engineer or seek the assistance of federal or state
32 agencies in developing the plan. The plan must include a preliminary survey
33 and a report and should include the following as a minimum:

34 (1) the territory which will be benefited by the proposed
35 improvement (the territory need not consist of contiguous parcels of land);

1 (2) the general character of the improvements;

2 (3) an estimate, in reasonable detail, of the expenses involved;

3 (4) the proposed works of improvement and their proposed
4 locations as can be estimated;

5 (5) the general nature, purposes, utility, and need of the
6 proposed improvements and their feasibility;

7 (6) an estimate, to the extent it is known, of the method of
8 financing for works of improvement;

9 (7) the amount, if any, proposed to be assessed generally against
10 the benefitted lands;

11 (8) whether, and if so, to what extent any lands, lakes or
12 natural water courses, rivers, tributaries or streams within the project
13 improvement area are likely to be damaged by or as a result of the acquisition
14 or construction of improvements constituting part of the plan of improvement;

15 (9) the plan for compensating landowners for damages, if any;

16 (b) Upon the securing of a petition by a majority of the owners of the
17 benefitted lands and the owners of a majority in value of the benefitted lands,
18 as shown by the last assessment of real property within a proposed improvement
19 project area within the water district, the district shall update and complete
20 a final improvement plan which shall contain a final survey and report.

21 (c) The petition shall describe generally the proposed improvement plan
22 as contained in the preliminary survey and the report.

23 (d) Upon completion of the final improvement plan for an improvement
24 project area, a copy of the final survey and report shall be submitted to the
25 Commission for its approval and to other appropriate federal and state
26 agencies for comment. The Commission shall solicit written comment from
27 appropriate federal and state agencies on the items described in the final
28 survey and report, including but not limited to the United States Army Corps
29 of Engineers, the United States Fish and Wildlife Service, the Arkansas Game
30 and Fish Commission, the Arkansas Department of Natural Heritage and the
31 Arkansas Department of Pollution Control and Ecology. Upon receipt of
32 comments from such agencies, the Commission shall make such comments available
33 to the public and shall solicit comments from the public, giving notice by
34 publication in a newspaper published and having a general circulation in the
35 water district, once a week for two weeks, of the commission's intent to hold

1 a hearing, to be held not less than twenty (20) days after first publication
2 of such notice, at which hearing comments from the public will be heard. The
3 commission shall duly consider all comments received from such agencies and
4 the general public, if any, and shall thereafter approve, modify or disapprove
5 such final report and survey, and notify the district_s board of directors of
6 its action in the matter.

7 (e) If the Commission approves the report, or approves the report with
8 modifications, and after the board reviews comments, the board may adopt the
9 final improvement plan, with any necessary amendments and/or revisions to the
10 final survey and report.

11 §14-116-502. Court Approval of Project Improvement Plan -- Appointment
12 of Assessor.

13 (a) The board shall by petition request court approval of the
14 improvement plan. As part of its petition, the board shall submit a copy of
15 the final survey and report along with such additional information or maps
16 necessary so that the court may understand therefrom the purpose, utility,
17 feasibility, and need for the improvement plan.

18 (b) Upon the filing of the petition by the board, the court clerk shall
19 give notice thereof by certified registered letter to each landowner, at the
20 address contained in the records of the county tax collector, owning property
21 within the proposed improvement project area and by publication for two (2)
22 weeks in a newspaper published and having a general circulation in the water
23 district calling upon all persons owning property within the proposed
24 improvement project area, which shall be described in the notice, to appear at
25 a hearing before the court on some day to be fixed by the court, to show cause
26 in favor of or against the property improvement plan for the proposed
27 improvement project area.

28 (c) Based upon a review of the petition and attachments, the court, if
29 it determines that the improvement plan is in the best interest of the owners
30 of land within the proposed improvement project area, shall authorize the
31 district to employ an assessor. If the court determines that the improvement
32 plan is not in the best interest of the owners of land within the proposed
33 project area, it shall deny the petition.

34 (d) The assessor retained by the district shall take the oath of office
35 as required by the Arkansas Constitution, Article 19, Section 20, and shall

1 also swear that he will well and truly complete his duties of assessor. The
2 district may from time to time change assessors, but the assessor selected
3 must be approved by the court.

4 (e) The assessor shall review the petitions of the land-owners to
5 determine if at least a majority of the owners of the benefited lands and the
6 owners of a majority in value of the benefited lands, as shown by the last
7 assessment of real property within a proposed improvement project area have
8 signed said petitions.

9 (f) Upon certification by the assessor that the requirements of
10 subsection (e) have been met, the court shall enter an order approving the
11 improvement plan and establishing the project improvement area.

12 (g) The courts findings shall have the force and effect of a judgment,
13 from which an appeal may be taken within thirty (30) days, either by any such
14 owner of land or by the board, but if no appeal is taken within that time, the
15 order shall be deemed to be conclusive and binding upon all the land within
16 the boundaries of the improvement project area, and upon the landowners.

17 §14-116-503. Expenses - plan preparation, adoption, and approval.

18 All costs and expenses incurred in the preparation, adoption, and
19 approval of an improvement plan shall be paid by the water district out of its
20 general funds, but all such costs and expenses paid or otherwise incurred by
21 the district, upon the approval of the improvement plan, shall be repaid to
22 the general funds of the district out of the proceeds of the first taxes or
23 other revenues collected by the district for carrying out the improvement
24 plan; provided, that nothing in this chapter shall authorize punitive
25 assessments to be made against any landowner.

26 §14-116-504. Alteration of Plans.

27 (a) The board may at any time after the court has approved the
28 improvement plan, make alterations in the plan and its works of improvement
29 provided such changes do not change the benefits of the improvement plan. Any
30 such change in the improvement plan shall be filed with the court clerk.

31 (b) If alterations in the improvement plan would change the court
32 approved assessment of benefits and damages, the changed assessment must be
33 submitted to the court for consideration according to the procedures
34 established in this chapter; except that only owners of lands whose
35 assessments are changed may object.

1 §14-116-505. Additional works of improvement.
2 After the work contemplated by the original improvement plan has been
3 completed, the board may adopt and file with the court clerk a plan for
4 additional works of improvement for the improvement project area, and the
5 proceedings with respect to such additional plan, including the right of
6 appeal, shall be the same insofar as may be practicable as those required in
7 connection with the original plan; except that the petitions of the landowners
8 shall not be required.

9 §14-116-601. Assessment of benefits and damages.

10 (a) After the court issues an order approving the improvement plan, the
11 assessor shall proceed to assess the land within the project area on the basis
12 of benefits accruing to the land from the improvement plan.

13 (b) Taking into account available funding sources and in the discretion
14 of the district the total tax levied against all individual and separate
15 parcels of land within the project area shall be sufficient to pay up to the
16 estimated cost of the improvement, all related costs including but not limited
17 to the interest, bond issuance, legal, accounting, appraisals, the debt
18 issuance and related costs and up to an additional twenty percent (20%) for
19 unforeseen contingencies.

20 (c) The amount of interest which will accrue on notes, bonds, or other
21 evidences of indebtedness issued by a water district shall be included in and
22 added to the taxes levied against the land in the project area, but the
23 interest to accrue on the notes, bonds, or other evidences of indebtedness
24 shall not be construed as a part of the costs of construction in determining
25 whether the expenses and the costs of making the improvements exceed the
26 assessment of benefits.

27 (d) The tax so levied shall be a lien upon the land within the
28 improvement project area from the time that the tax is levied by the court and
29 shall be entitled to preference over all demands, executions, encumbrances, or
30 liens whensoever created. It shall continue until the tax and all related
31 costs and expenses with penalties shall have been paid.

32 (e) A separate book for each improvement project area shall be
33 maintained with respect to assessments of benefits on the basis of benefits
34 accruing to the land from the improvement plan.

35 (f) The assessor shall cause to be inscribed in the book the

1 description of each tract of land. The assessor shall assess the value of the
2 benefits to accrue to each tract by reason of the improvement plan, including
3 without limitation the works of improvement, and shall enter the assessment of
4 benefits opposite the description, together with an estimate of what the
5 landowner will be required to pay on the assessment.

6 (g) There shall be placed opposite the description of each tract of
7 land the name of the owner, as shown by the last county assessment, but a
8 mistake in the name shall not vitiate the assessment. Evident errors which
9 occur in the county assessment list may be corrected.

10 (h) The assessor shall also assess all damages that will accrue to any
11 landowner by reason of the proposed improvements, including all injury to
12 lands taken or damaged.

13 §14-116-602. Assessments - Filing and Recording; Appointment of Board
14 of Adjustment.

15 (a) When an assessment is completed, the assessor shall subscribe an
16 original and one (1) copy of the assessment and deposit the original with the
17 court clerk, where it shall be kept and preserved as a public record.

18 (b) The copy shall be certified by the court clerk after court
19 confirmation and returned to the assessor to be preserved with the records of
20 the water district.

21 (c) Upon the filing of assessment with the court clerk, the court shall
22 appoint a three (3) member board of adjustment to hear complaints as provided
23 for in § 14-116-605. Members of the board of adjustment shall be owners of
24 land within the improvement project area and shall serve without compensation,
25 except that the water district shall pay the board of adjustment and its
26 members necessary and reasonable expenses associated with hearing complaints
27 and reporting its recommendations to the court.

28 §14-116-603. Appeal - Notice; Hearing of assessment complaints.

29 (a) Upon the filing of assessment, the court clerk shall give notice
30 thereof by publication for two (2) weeks in a newspaper published and having a
31 general circulation in the water district.

32 (b) The notice of hearing shall give a description of the land assessed
33 and state that the owners of the land may appear before the board of adjustment
34 on a day named therein and present complaints, if they have any, against the
35 assessment of any land in the improvement project area.

1 (c) The day so named shall be not less than ten (10) days nor more than
2 thirty (30) days after the last publication of the notice.

3 (d) If no complaint is made on the assessments levied, the assessments
4 as deposited with the court clerk shall be conclusive and the court shall
5 enter an order confirming the assessment.

6 (e) Findings of the court shall have the force and effect of a
7 judgment, from which an appeal may be taken within thirty (30) days, either by
8 any such owner of land or by the board.

9 §14-116-604. Acquiescence in damage assessment; Condemnation.
10 If such owner has been given notice by certified mail posted at least thirty
11 (30) days prior to the date of the hearing provided for in § 14-116-603, he
12 shall be construed to have accepted the assessment of damages in his favor
13 made by the assessor or the have acquiesced in the failure to assess damages
14 in his favor unless he gives to the court clerk, not later than the date of
15 the hearing provided for in §14-116-603, notice in writing that he demands an
16 reassessment of his damages. In this event, the board shall institute an
17 action to condemn the land that will be taken or damaged in carrying out the
18 works of improvement included in the improvement plan.

19 §14-116-605. Assessments - Complaints.

20 (a) Any owner of land within the improvement project area who conceives
21 himself to be aggrieved by the assessment of benefits or that the assessment
22 of any land within the project area is inadequate shall present his complaint
23 to the board of adjustment on the day named in the notice of hearing. At that
24 time the board of adjustment shall consider the complaint and make
25 recommendations to the court thereon, either confirming the assessment or
26 increasing or diminishing it.

27 (b) After review of the evidence presented to the board of adjustment
28 and the recommendation of the board of adjustment, the court shall enter its
29 findings thereon, either confirming the assessment or increasing or
30 diminishing it.

31 §14-116-606. Reassessments.

32 (a) In no event shall a reduction of assessments be made after the
33 assessment of benefits has been confirmed by the court as provided in §14-116-
34 603 and obligations based on the assessments have been incurred, but any
35 reduction in benefits shall be paid for by the water district as damages. The

1 claim for those damages shall be secondary and subordinate to the rights of
2 the holders of bonds or other obligations or evidences of indebtedness which
3 have theretofore been issued.

4 (b) If by reason of a change of the improvement plan pursuant to §14-
5 116-504, or change in land use or any other reason the board determines that
6 current assessment on any land within the improvement project area has become
7 inequitable, the board may direct the assessor to reassess the property. The
8 assessor shall reassess the land in question, increasing the assessment if
9 greater benefits will be received and reducing the assessment if benefits have
10 decreased or if damages will be sustained.

11 (c) All reassessments shall be made, advertised, and confirmed as is
12 provided for the original assessment of benefits under this subchapter.

13 (d) If any obligation of the water district arising from the
14 improvement plan shall be outstanding at the time of a reassessment, the total
15 liability thereon of land against which assessments of benefits have been
16 confirmed shall be no less than the liability of the property by reason of the
17 original assessment.

18 §14-116-607. Payment of taxes.

19 (a) When the tax levies are made, the landowners shall have the
20 privilege of paying the taxes in full, without interest, within thirty (30)
21 days after the levy becomes final.

22 (b) All taxes levied may be paid in installments, so that not more than
23 ten percent (10%) of the allocated tax shall be collectible in any one year
24 against the wishes of the landowner. The deferred installments of the taxes
25 shall bear interest at a rate established by the board and shall be payable
26 only in installments as levied.

27 (c) If any landowner shall pay in full the levy of taxes against his
28 land as herein provided, that land shall not be further liable by reason of
29 the assessment of benefits or any reassessment thereof except a reassessment
30 because of changed plans as provided in §14-116-606(b), and then only to the
31 extent of the increase in assessment, if any, because of the greater benefit
32 thereby received. However, in case of any additional assessment for greater
33 benefit, any landowner who shall have paid his previous tax levy in full shall
34 have the privilege of paying in full the increase in tax levied in the manner
35 herein provided.

1 §14-116-608. Levy of tax - Lien - Appeal from tax assessment.

2 (a) The court shall at the same time that the assessment of benefits is
3 filed or at any subsequent time when called upon by the board enter an order,
4 which shall have the force and effect of a judgment, providing that there
5 shall be levied against the land within the project area a tax sufficient to
6 pay the estimated cost of the improvement, with up to twenty percent (20%)
7 added for unforeseen contingencies. This tax shall be a charge against the
8 land in the proportion to the amount of the assessment of benefits thereon and
9 may be paid in full or in annual installments as provided in §14-116-607.

10 (b) The tax so levied shall be a lien upon the land within the
11 improvement project area from the time that the tax is levied by the court and
12 shall be entitled to preference over all demands, executions, encumbrances, or
13 liens whensoever created. It shall continue until the tax, with such
14 penalties and costs as may accrue thereon, shall have been paid.

15 (c) The remedy against such levy of taxes shall be by appeal, and this
16 appeal shall be taken within twenty (20) days from the date of the order by
17 the court. On this appeal, the presumption shall be in favor of the legality
18 of the tax.

19 §14-116-609. Levy of tax for preliminary expenses.

20 (a) If the board does not deem it to the advantage of the project area
21 to proceed immediately with the construction of the works of improvement upon
22 the filing and confirmation of the assessment of benefits, it may cause to be
23 levied and collected a tax based upon the assessment of benefits and
24 collectible from the benefited land in the improvement project area in the
25 proportion to the amount of the assessment of benefits thereon for the purpose
26 of paying preliminary expenses for development of the improvement plan for the
27 improvement project area.

28 (b) The board shall report to the court the rate of taxation necessary
29 to be levied to pay the preliminary expenses, and thereupon it shall be the
30 duty of the court to make levy of taxes upon the benefited land in the project
31 area sufficient to pay the preliminary expenses, with ten percent (10%) added
32 for unforeseen contingencies. This tax shall be extended upon the tax books
33 of the county and collected along with other taxes in the same manner as taxes
34 levied for construction purposes, as provided in this chapter.

35 (c) If any project area is abandoned before the making of the

1 assessment of benefits, the tax for preliminary expenses shall be levied at
2 the rate fixed by the board upon the real property therein upon the basis of
3 the assessment for county and state purposes.

4 §14-116-610. Levy of tax for operation and maintenance.

5 (a) On or before the first Monday in October of each year, the board
6 shall estimate the amount necessary for the ensuing calendar year for
7 operation and maintenance of the works of improvement provided for in the
8 improvement plan, taking into account all available funding, and shall submit
9 the estimate to the court, with a request that a tax levy be made for the
10 amount needed.

11 (b) If the court finds the amount to be fair and reasonable, it shall
12 enter an order, which shall have the force and effect of a judgment, providing
13 that there shall be levied against the benefited land within the improvement
14 project area a tax sufficient to pay the estimated cost of operation and
15 maintenance.

16 (c) This tax may be a flat charge per acre or a charge against the
17 benefited land in the proportion to the amount of the assessment of benefits
18 on the land.

19 §14-116-611. Extension of taxes on county tax books; collection of
20 taxes.

21 (a) Copies of the assessment necessary for the assessment and
22 collection of taxes by the county shall be provided by the district to the
23 appropriate county officials of each county within the improvement project
24 area.

25 (b) The amount of the taxes herein provided for shall be annually
26 extended upon the tax books of the county, or counties if the improvement
27 project area is situated in more than one (1) county, and collected by the
28 collector of the county along with the other taxes. For his services in
29 making this collection, the collector shall receive a commission as is
30 provided by law.

31 (c) The collections shall be paid over to the board by the collector at
32 or before the time that he is now required to make settlement with the county
33 treasurer for general taxes.

34 (d) The collection of taxes levied hereunder, the proceedings for the
35 collection of delinquent taxes, and the periods of redemption from sales for

1 foreclosure of tax liens shall be in accordance with §§14-117-423 through 14-
2 117-427.

3 §14-116-701. Authority to borrow money or issue bonds, etc.

4 The board may borrow money at a rate of interest from any agency of the United
5 States, the state or any other public or private lending source; may issue
6 promissory notes, negotiable bonds, or other evidences of indebtedness as
7 required by the lender thereof and may pledge and assign all assessments and
8 revenues relating to the improvement project area for the repayment thereof.

9 §14-116-702. Terms and form of bonds, etc.

10 (a) Bonds or other evidences of indebtedness issued under the terms of
11 this subchapter shall bear such date or dates, mature at such time or times
12 not in excess of forty (40) years, and any such bonds shall be sold at public
13 sale through competitive bidding, and any such bonds and other evidences of
14 indebtedness and be in such form and denomination as the board may determine.

15 (b) The board may sell, exchange, or hypothecate these obligations from
16 time to time at such interest rates and such prices as specified by the board.

17 §14-116-703. Refunding bonds. Refunding bonds may be issued and may be
18 sold, exchanged, or hypothecated by the board.

19 §14-116-704. Security for bonds - Delinquencies.

20 (a) All bonds issued under the terms of this chapter that are made
21 payable from the proceeds of assessments shall be secured by a lien on all
22 benefited lands in each individual improvement project area unless the board
23 shall be able to sell bonds payable out of revenue only; provided, however,
24 that land in any district which is not part of a project improvement area
25 shall not be assessed with respect to any costs relating to such project
26 improvement, and shall not be encumbered with any lien relating to bonds
27 issued with respect thereto. The board shall see to it that a tax is levied
28 annually and collected under the provisions of this chapter so long as it may
29 be necessary to pay any bond issued under its authority.

30 (b) (1) If any bond or interest on any bond issued by the board is not
31 paid within thirty (30) days after its maturity, it shall be the duty of the
32 court, on the application of any holder of the bond or interest so overdue, to
33 order the collection of the taxes aforesaid. At its discretion, the court may
34 appoint a receiver therefor.

35 (2) The proceeds of the taxes and collections of each improvement

1 project area shall be applied, after payment of costs, first to overdue
2 interest and then to payment pro rata of all bonds issued for that project
3 area which are then due and payable.

4 (3) The board or receiver may be directed by suit to foreclose
5 the lien of the taxes on delinquent parcels of land.

6 (4) The suits so brought by the receiver shall be conducted in
7 all matters as suits by the board, as herein provided, and with like effect.

8 (5) The decrees and deeds herein shall have the same presumptions
9 in their favor.

10 (6) However, when all such sums have been paid, the receiver
11 shall be discharged, and the affairs of the district with respect to the
12 improvement project area shall be conducted by the board as provided in this
13 chapter."

14

15 SECTION 8. Arkansas Code 15-22-304(b)(4) is amended to read as follows:

16 "(4) Maintenance of instream flows for fish and wildlife, water
17 quality, aquifer recharge requirements and navigation; and"

18

19 SECTION 9. Arkansas Code 15-22-304 is amended by adding a new
20 subdivision at the end thereof to read as follows:

21 "(e) For purposes of transfer of the excess surface water as defined
22 above in the White River Basin, the transfer amount shall not exceed on a
23 monthly basis an amount which is fifty percent (50%) of the monthly average of
24 each individual month of excess surface water."

25

26 SECTION 10. Chapter 116 of Title 14 of the Arkansas Code is amended by
27 adding at the end thereof a new section to read as follows:

28 "The provisions of Arkansas Code Title 14, Chapter 116, the Regional
29 Water District Act, as now or hereafter amended shall not be applicable to
30 agencies of the State of Arkansas or of political subdivisions of the State,
31 nor to lands owned by such agencies."

32

33 SECTION 11. If any provision of this act or the application thereof to
34 any person or circumstance is held invalid, such invalidity shall not affect
35 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

3

4 SECTION 12. All laws and parts of laws in conflict with this act are
5 hereby repealed.

6

7 SECTION 13. All provisions of this act of a general and permanent
8 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
9 Code Revision Commission shall incorporate the same in the Code.

10

11

12 /s/Rep. Northcutt, et al

13

14 APPROVED: 3-31-95

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