

MINUTES

WATER PROVIDER LEGISLATIVE TASK FORCE

FEBRUARY 7, 2018

The Water Provider Legislative Task Force met Wednesday, February 7, 2018 at 1:30 p.m. in Room 151, State Capitol Building, Little Rock, Arkansas.

Legislative Task Force members present: Senator Alan Clark, Co-Chair. Representatives Justin Boyd, and Fredrick Love.

Non-Legislative Task Force members present: Jack Critcher, County Judge Rick Davis, Jennifer Enos, Tom Fox, Barry Haas, Kenneth Burleson, designee for Alexandra Johnson, Dale Kimbrow, and Jeffery Stone.

Other members present: Senators Bryan King, Bill Sample, and Stephanie Flowers. Representatives Fred Allen, Bob Ballinger, Charles Blake, Jana Della Rosa, Trevor Drown, Jon Eubanks, Kenneth Ferguson, Vivian Flowers, Mickey Gates, Jimmy Gazaway, Austin McCollum, Reginald Murdock, Aaron Pilkington, and James Sorvillo.

**Call to Order**

Senator Clark called the meeting to order.

**Opening Remarks by Co-Chairs**

Senator Clark advised that Representative Lemons was unable to attend the meeting.

**Consideration of Motion for Approval of Minutes – January 3, 2018 [Exhibit C]**

A motion to approve the minutes of the January 3, 2018 Task Force meeting was made by Judge Davis and seconded by Representative Boyd. The motion carried.

**Discussion of the Arkansas Department of Emergency Management's Contingency Plans and Response to Critical Infrastructure Failures of Utility Systems**

Senator Clark recognized A. J. Gary, Executive Director, Arkansas Department of Emergency Management (ADEM) and the Security Advisor, Arkansas Department of Homeland Security. Mr. Gary described ADEM's programs and services, which include Emergency Support Functions (ESF). The Public Works and Engineering ESF provide coordinating structural inspections, engineering, emergency repairs to water and wastewater treatment facilities, distribution of emergency potable water, debris removal, and emergency power support. Mr. Gary outlined what ADEM's Emergency Management response is when a community has a disaster that causes a critical infrastructure failure:

- ADEM works with county judges, county emergency managers, and coordinates with state agencies

- Organizes obtaining and providing resources, including truckloads of bottled water in the event of a water service failure

When a state or local disaster is declared, the Arkansas National Guard can provide personnel and water tankers. When the National Guard responds, funding for the Guard's assistance comes from state mitigation funds. Federal funding is available when a national disaster is declared. In a situation when a water pump failure causes a community to lose service, ADEM will respond by working with the county judge and local emergency managers. However, public assistance funds would not be available. Mr. Gary gave an example of a state mitigation project:

- A county road is washed out each time it floods
- The county can apply to ADEM for mitigation funds using a 50/50 match of up to \$150,000
- The county can use the funds to build up the roadbed, preventing future problems when flooding occurs

Legislators discussed the state mitigation funds. Mr. Gary explained that mitigation funding is part of the total disaster funding for the state. It is provided through an annual appropriation of \$13 million deposited into the Governor's Disaster Fund and is managed by ADEM.

#### **Discussion of Former Water Issues in Saline County and Solutions Found**

Senator Clark recognized Perry Y. Young, Attorney, Jensen, Young, and Houston, PLLC. Mr. Young told Task Force members that he has been involved in water litigation issues for over twenty years. He gave highlights of a former situation in Garland County:

- Twelve Water Improvement Districts were formed in rural areas of the county approximately twenty years ago
- Infrastructure, including underground water pipes, was installed
- The Improvement Districts entered into contracts with the city of Hot Springs to take over the districts
- Many years later property owners within the Improvement Districts requested service from Hot Springs
- Hot Springs refused to provide the requested service citing limited water capacity as its reason
- No legal remedy currently exists for the Water Districts to obtain service without being incorporated into the city limits of Hot Springs

Task Force members discussed possible solutions. Mr. Young suggested that although expensive, rural property owners could form new water improvement districts, install infrastructure, and access a water source outside the Hot Springs city limits. He also suggested consideration be given to establishing an independent public utilities commission to oversee water and sewer systems throughout the state.

Mr. Young gave highlights of a water litigation case initiated fifteen years ago involving Benton, Bryant, and the Salem Water Users Association, which he represents:



- Fifteen years ago both Benton and Bryant were trying to expand their city boundaries
- During that time period, the Arkansas Rural Water Association was developing a water supply plan for rural Saline County
- The plan would have provided water to all rural water associations in the county and would have prevented Benton and Bryant from expanding into those areas
- Five lawsuits were filed during this time period, which stopped Benton and Bryant from expanding their city limits
- The Salem Water Users Association negotiated separate agreements with Benton and Bryant and resolved four of the five lawsuits
- The Salem Water Users Association continues to receive monies from both cities to pay off the remaining federal loans

Senator Clark recognized Crystal Phelps, General Counsel, Arkansas Natural Resources Commission (ANRC), and asked for her comments. Ms. Phelps told Task Force members that any time public funds are used to construct a public water project, the project becomes part of the state's Water Plan, giving the ANRC authority over the service boundaries of water and sewer utilities. Ms. Phelps responded to a question concerning the possibility of rural property owners in Garland County forming another water improvement district. She referenced the issue presented in a previous Task Force meeting involving Jacksonville and Sherwood, which relates to the situation in Garland County:

- Properties within Sherwood city limits were recognized by the ANRC as being within Jacksonville's service territory
- Sherwood was unable to provide service to the properties which was preventing development
- Jacksonville stated that it would provide service to the properties within its service territory on the condition the properties be annexed into Jacksonville
- Sherwood made an appeal to the ANRC to allow them to provide service
- The ANRC made the decision to remove the properties from Jacksonville's service territory and award the territories to Sherwood
- The ANRC decision was appealed to the Circuit Court who upheld the ANRC decision

Discussion continued concerning areas within the state that are unable to receive water and sewer service from existing providers who choose not to provide service. Ms. Phelps was asked if any remedy currently exists. She stated that no current remedy exists through the ANRC. However, if the authority of the ANRC were expanded it could act upon a petition submitted by individuals who reside within a service area and are not receiving water, with the provider having no intent to provide water or sewer service.

Ms. Phelps responded to a question regarding a recommendation in the State Water Plan concerning ANRC seeking the authority to merge water and sewer systems when necessary to bring about economic viability. Ms. Phelps said the ANRC does not currently have this authority but does believe in the regionalization model. Regionalization would be the best model particularly when systems are failing and there aren't the resources

needed to provide good service. Additionally, the ANRC has not developed a specific document seeking that authority.

Senator Clark asked Lance Spicer, Assistant City Manager, Hot Springs, if he would like to make any comments. Mr. Spicer had no comments.

Senator Clark commented that the purpose of the Task Force is to discover existing problems and develop solutions. He believes the ANRC is in the best position to assist the Task Force. Ms. Phelps was asked if the ANRC would be willing to draft plans expanding the authority of the ANRC and present them to the Task Force. Ms. Phelps responded saying they would do so. A motion was then made to request the development of a plan by the ANRC to expand its authority in an effort to provide water to all of the citizens in the state and to provide assistance to consumers who have complaints. The motion was made by Mr. Kimbrow and seconded by Judge Davis. The motion carried.

Due to an illness, Mark Bennett, Manager, Water Development Division, ANRC, was unable to attend. Senator Clark approved the suggestion that Agenda Item F, Mr. Bennett's presentation, be taken up at a future meeting.

Senator Clark provided a draft vision statement to be taken up at a future meeting.

Senator Clark announced the next Task Force meeting is tentatively scheduled to be held Wednesday, March 7, 2018 at 1:30 p.m. in Room 151 of the State Capitol. This date may change due to the Fiscal Session.

There being no further business, the meeting adjourned at 3:00 p.m.