

**Rick Davis,  
Garland County  
Judge**

**To:** Water Provider Task Force Members

Garland County Judge Rick Davis  
Former CEO of Daveco Construction, Inc. (Heavy Highway, Utility and Airport Construction license)

**From:** Former Project Coordinator of Hot Springs Utilities (2003-2005)

**cc:** Karen Holiday

**Date:** April 11, 2018

**Re:** Water Service issues in Garland County

---

**I think this information is relevant to the work of the Water Provider Task Force. I appreciate your time in reading this.**

- Garland County may be somewhat unique in that 2/3 of the population of the county live outside Hot Springs city limits with the biggest percentage of Hot Springs water revenue generated at 1 ½ times rate from outside the city limits.
- The voters of Garland County voted into effect the general fund revenue streams for both Garland County and Hot Springs- ½ cent county-wide sales tax to Garland County and 1 ½ cent city-wide sales tax to Hot Springs. County does receive 3/8 cent county-wide sales tax dedicated to the detention center operations and maintenance. With the exception of a few mills, almost all property tax money is dedicated to public schools. There are some periodic temporary sales tax referendums dedicated to specific projects such as construction and road projects.
- Consequently, much of Hot Springs revenue for their general fund and police and fire protection is generated by the 2/3 of the county population who choose to drive into Hot Springs and spend money for goods and services within the city limits. Out of over 98,000 people living within the approximately 735 sq. miles in Garland County, only approximately 35,000 live within the 35-40 square miles of Hot Springs.
- The present service area of the city water system is an area far larger than the corporate limits of Hot Springs extending far to the west and to the east into Hot Spring County. Higher revenue collections in the unincorporated areas have funded expansion and improvements within the HS city limits.
- Back in the 1980's, the western part of the county initiated plans to build their own water system. Land was purchased but before the system could be built, Hot Springs discouraged the construction of another water system promising to service the area. Again without any requirements for annexation.
- Property owners within the water improvement districts paid for all water infrastructure, with the understanding that water would be provided, and once paid for, Hot Springs acquired all infrastructure

free and clear and collected 1 ½ times rate from unincorporated consumers without annexation requirements.

- Through the years, the water commission was dissolved and the Hot Springs City Board of Directors assumed full authority over the water and sewer systems. The financial status went from major surpluses of funds to one of current major indebtedness.
- To my knowledge, water improvement districts and water connections have continued through the years with service connections continuing until around 2012-2013.
- Around 2012-2013, HS Board of Directors passed policy imposing restrictions and **denying properties to further connections to the water/sewer systems in the unincorporated areas within their ANRC designated service area and within improvement districts where property owners had paid for the existing infrastructure.** However, developers who develop within the city limits or those who annex can have all the water they want. Again, there were no annexation requirements during the time that property owners were paying thousands of dollars for the infrastructure and right for service.
- The primary reason given by the Board of Directors was that there was a water crisis in 2012 that necessitated connection restrictions outside the city limits of Hot Springs.
- To my knowledge the year with the highest number of days that water demand was at 80% of maximum capacity was 2012 with the number reported (55 days) amounting to 15% of the total year. I was told during my time as Project Coordinator for Hot Springs Utilities (2003-2005) that the 80% of capacity threshold triggered the need for pursuing additional water source(s); not denying water connections within the system. I'm hoping that the Health Department will clarify that benchmark from the Health Department's perspective.
- Hot Springs has now obtained water rights to both Lake Ouachita and Lake DeGray. I applaud Hot Springs' efforts to secure additional water sources for the future.
- What is relevant to the Task Force's work are a number of documents and emails that have been submitted to me by concerned citizens who obtained them through the Freedom of Information Act. **Most of these documents originated during the time of the change in connection policy and reflect the following:**
  - AR. Dept. of Health survey for Hot Springs Utilities states that the system has not experienced extreme shortages of source water but emergency actions should be planned for in the future. There are storage issues.
  - Report from the city's economic and financial consulting firm (Economists.com), dated July 18, 2014 states on page 2 that, "The City's account growth has slowed in 2014 and water consumption has fallen significantly since 2012. Total water usage during the most recent 12-month period, July 2013 – June 2014, was the lowest level of the past 7 years."
  - Email dated Aug. 1, 2014 from the city engineer states, "I hear that some want us to slow down the work on the next water source because we are not in a water emergency or a water crisis. Actually, **we are planning for the future water needs and thankfully we are not in a crisis.**"



- Email dated August 5, 2014 from HS Utilities Director to the city engineer and leadership states, "We need to all be on the same page when speaking about our water status. In terms of language, **we are not in a crises or emergency** as classically defined by the AWWA, EPA or ADEQ. However, we clearly fall within the emergency planning criteria established by the aforementioned.
- Unaccounted-for-water losses during the time of the connection policy change restricting water connections outside the city limits were anywhere from 42.7% in 2010 to 21.56% in 2012 (Arkansas Department of Health survey report dated 1/7/2013) well above the national average of 10-15%. Current reporting by the Hot Springs Sentinel Record (4/8/18) reports UAW losses of 28.53% in 2014 and 27.72% in 2016. As the numbers reflect, the UAW loss % dropped significantly during the time that the new water connection policy was implemented and public outcry over restrictions was loud.
- Reported treatment plant capacity calculations are puzzling. Reported daily combined demand production amounts divided by the maximum combined treatment capacities of both treatment plants will result in differing demand % of maximum treatment capacity depending on the maximum production capacity numbers used to calculate. Some Hot Springs documents supplied to me through FOIA suggest calculation with an approx. maximum treatment capacity of 21-22 MGD; other documents say full treatment capacity is 25 MGD. The city's official website (cityhs.net) states a maximum treatment capacity of 27.5 MGD. Maximum system treatment capacity as reported by ADH survey letter dated May 5, 2015 is 28.33 MGD. Which is it? This significantly impacts the demand of capacity % calculation and decision making. The lower the MGD used for maximum treatment capacity of the two treatment plants results in a higher percentage of maximum capacity used during higher demand times. The Emails (July 28, 2015) from utilities director to city leadership offering different calculation method were met with the reply to suggest keeping the calculations using the same what appears to be 21-22 MGD maximum capacity figure.
- Official city website (cityhs.net) also gives the latest water connection report from April 1, 2013 to October 31, 2016. This states that there were 1,496 requests for water connections during that period. Of those 1,431 (96%) were approved and 65 (4%) were denied. However, a vast majority of those calling me stated that they were told to not even apply as they would be denied. So, I'm not sure of the accuracy of the reported numbers in showing the current situation. On the same page on the website, it is reported that of the 1,496 requests for water, 351 were inside the city and 684 were outside the city limits. However if you add 351 and 684 you get 1,035 requests; not 1,496. That is a difference of 461. Where are the additional 461 requests? In reviewing the other reported percentages, it is obvious that further percentages are being calculated using the 1,035 number of requests and not the reported 1,496 total requests. What is the true picture?
- Based on FOIA emails, comments made during meetings, and a March 2015 HS Board of Directors' resolution suggest to me that the issue is not an emergency water crisis but an attempt to stop growth and development outside the city limits of Hot Springs where Hot Springs would get no sales tax revenue. From all the evidence that I've seen, this is a revenue issue driving the denial of connections; not a water issue.
- Email from previous city manager dated July 28, 2014 regarding the connection denial for 2 new WalMart supercenters outside the city limits states, *"I feel no compulsion to create tax base for*



*other governmental entities utilizing city assets...If we continue to expand our system outward where land is cheaper, then the city will continue to lose population and retail tax base...If Albert Pike [WalMart] declines from Airport Rd. to MLK, then we have lost this entire corridor. A Walmart at Pittman Rd. would raise well over a million dollars a year for County government...The city of HS needs to expand its boundaries to capture tax base."*

What is important is that both of these properties had paid for the existing infrastructure for water and any needed upgrades would have been paid for by the developer; not the city. Also, the current "municipal" water system extends to the far reaches of the county and into Hot Spring County.

- The same email chain shows an email from the previous Hot Springs Mayor (July 28, 2014), *"It appears the reason for not approving water and sewer [proposed WalMart supercenters] is the 'water shortage crisis.' I am not aware of a crisis now since we have purchased water from DeGray...I really hate for this to appear to be only about control."*
- Email dated April 18, 2015 from a HS City Director to the previous city manager and city attorney states, *"Now that there has been an **attempt to require city of HS to provide water to all accepted water districts**, I question the wisdom of accepting them."*
- **City of Hot Springs resolution dated March 3, 2015 states,**

*"Protect and Expand the Sales-Tax-Based Revenue Base of Hot Springs"*

*While the actions of the Hot Springs Board of Directors to implement a water-extension policy has been based on a shortage of water, discussions in the Water Committee clearly opened the issue of retail development and its impact on sales tax revenue in the city and county. The City's need to protect its revenue base must be addressed. New retail business development outside the City seriously threatens the financial viability of Hot Springs over the long term. Therefore, the expansion of water extensions to retail businesses is untenable. The expansion of water extensions to the planning area for non-retail business does not threaten the tax base already existing in Hot Springs. There may be instances where retail development is proposed to the City in a way that does not threaten the tax base of the Hot Springs. The City Board of Directors on a case-by-case basis can address these instances. Proposed Actions:*

- *After approval for more water from the Corps of Engineers, connect non-retail businesses in the planning area that meet the 'zoning requirements' adopted by the City.*
- *Refrain from water extensions to retail businesses in the Planning Area with few exceptions. As exits in current policy, the Hot Springs Board of Directors on a case-by- case basis could approve exceptions if the approval is in the best interests of both the City and the applicant."*
- **Last year, during the legislative session, the current Hot Springs City Manager came to me and said that if the County would share its sales tax revenue to the amount of approximately \$ 3.3 million each year with the city of Hot Springs, then the water issue would go away.**

Denials for businesses and large developments continue with some businesses within the ETJ being granted one 5/8 inch line which in many cases continues to restrict the ability to develop the property. Property that cannot obtain good sources of water is becoming worthless. Property owners who have paid for the infrastructure and the

right to connect continue to be denied connections. Businesses are being forced to drill wells and put in septic tanks in areas within the Hot Springs' ANRC recognized service area.

I and the citizens of Garland County **respectfully ask the Task Force to recommend actions that will offer the citizens of Arkansas some consumer protection from the use of water as a political tool to leverage control over where development can or cannot occur; hence, hurting the denied areas. Recognizing that most water providers in the state are honorably serving their ANRC service areas to the best of their ability, all I and the citizens of Garland County are asking is that water providers who have accepted areas for service as designated by ANRC be required to serve those areas to the best of their ability and that all customers within a water provider service area be treated equitably. If the water provider chooses not to serve for whatever reasons, then that area be released so that another water provider can serve the area.**

As always, I'll be glad to discuss this further should any of you feel the need.

Rick Davis,  
Garland County Judge