

MINUTES

WATER PROVIDER LEGISLATIVE TASK FORCE

MAY 23, 2018

The Water Provider Legislative Task Force met Wednesday, May 23, 2018 at 1:30 p.m. in Room 151, State Capitol Building, Little Rock, Arkansas.

Legislative Task Force members present: Senators Alan Clark, Co-Chair and Scott Flippo. Representatives Tim Lemons, Co-Chair and Justin Boyd.

Non-Legislative Task Force members present: Mark Bennett, Dr. Bob Blanz, Jack Critcher, County Judge Rick Davis, Jennifer Enos, Alan Fortenberry, Tom Fox, Barry Haas, Dale Kimbrow, Jean Noble, Dennis Sternberg, and Jeffery Stone.

Other members present: Representatives Mickey Gates, Justin Gonzales, Reginald Murdock, and Danny Watson.

Call to Order

Senator Clark called the meeting to order.

Opening Remarks by Co-Chairs

Senator Clark thanked the members for attending the meeting.

Consideration of Motion to Approve May 9, 2018 Meeting Minutes [Exhibit C]

A motion to approve the minutes of the May 9, 2018 Task Force meeting was made by Senator Scott Flippo and seconded by County Judge Rick Davis. The motion carried.

Discussion of Water Supply and Boundary Issues Faced by the City of Bella Vista and the Bella Vista Property Owners Association (POA)

Mayor Peter Christie, City of Bella Vista, was sworn in under oath by Senator Clark. He gave an overview of the development of the Bella Vista community by the Cooper Family/Cooper Communities starting in 1965. It was intended to be a retirement community. The Bella Vista Property Owners Association was created in 1972 with water service included in its declaration as an amenity for residents. The community has grown to its current population of 30,000 and elected its first mayor in 2006. Mayor Christie currently serves as mayor after assuming office in January 2015. He said the majority of water service is provided by the Bella Vista POA serving 47 square miles of service area. The POA buys water from the City of Bentonville. Mayor Christie said the community's greatest challenge to economic growth and increasing the commercial tax base is access to water. John Cooper, III, grandson of the original developer, controls the company and access to water service. Mayor Christie gave an example of a request for service Mr. Cooper denied. An investor with numerous investments in the community requested service be extended to commercial property. Mr. Cooper denied the request and stated that he may build a hotel in the future and did not want any competition. Mayor Christie believes this control holds the community hostage for any future development and limits its ability to supplement tax growth. Mayor Christie was asked what assistance he believes the state can provide. He asked the Task Force to draft legislation that would prevent a developer from controlling access to water supplies. He believes developers have the

right to regain the capital spent to build a water system. But, at some point, whether it is ten or fifteen years, the control should stop.

Discussion of the Hot Springs Municipal Water System [Exhibit E]

Bill Burrough, Deputy City Manager, City of Hot Springs, was sworn in under oath. Mr. Burrough gave a PowerPoint presentation. He gave the historical background of the city's water system and an overview of the current water connection policy. He said the city adopted a Water and Wastewater Master Plan in 2004 that included planning out from 2004 to 2024. The Master Plan reported the maximum production of water from the Ouachita and Lakeside treatment plants is 25.5 million gallons of water per day. A statement included in the Master Plan indicates that additional customers would adversely affect the city's current customers. The City of Hot Springs began working to obtain an additional water supply in 2004 through the U.S. Corps of Engineers. A request was made to the Corps of Engineers to raise Lake Ouachita's flood pool or reallocate water to the hydro power plant with the intent of obtaining an additional water supply. A study by the Corps of Engineers determined that raising the flood pool is unfeasible. The city then entered into a reallocation cost study providing funding and partnering with the Mid-Arkansas Water Alliance (MAWA), a non-profit corporation focused on obtaining water reallocations through the Corps of Engineers. The reallocation cost study for hydro power began in 2013 with the understanding that the process would take a number of years to complete. Mr. Burrough said the city also developed a five-year water management strategy and implemented a water extension and connection policy, including efforts to reduce water consumption. He then discussed in detail, reports and studies concerning the city's water capacity. One of the reports, a sanitation survey conducted by the Arkansas Department of Health (ADH) concluded that the maximum sustainable flow of water from the Ouachita treatment plant and the Lakeside treatment plant combined is 25 million gallons of water per day. Part of the ADH survey directed the city to begin planning to increase the source, treatment, and distribution capacity to ensure that current and future water demands can be met and sustained. Mr. Burrough said the city is in the planning phase to build a new treatment plant and obtain an additional water source through the U.S. Corps of Engineers. The plant is estimated to be completed within four to five years.

Mr. Burrough discussed the city's water extension and connection policy, which has been changed a number of times over the years. He specifically commented on a statement from a 2007 city ordinance that directed the city's Board of Directors to consider each request for service. The board shall approve, deny, or modify each request and further provided that any such request within the corporate limits of the city shall be given priority over projects outside the city limits. He described the city's obligations to its current customers, including a contract with the Royal Water Facilities Board to provide water to its customers with no connection or extension limitations. Mr. Burrough stated that in order for the city to meet its commitments, the city's water policy does not allow approval of other projects until funding and capacity issues are resolved. Specifically, water and wastewater extensions will not be approved for new subdivisions and developments outside of the city limits and extensions of water mains outside of the city limits to serve single family homes. He said this particular policy was implemented in 2013, and was much more stringent than it is today. Mr. Burrough said the policy has since been amended, which gives administrative approval for connections and extensions to the city manager to set application fees and provide for single family connections outside the city limits for each lot on record.

Mr. Bryan Albright, City Attorney, City of Hot Springs, was sworn in under oath by Senator Clark. Mr. Albright responded to questions regarding the 1994 Consent Order directing the city to refrain from treating county land owners differently than city residents regarding access to water. Mr. Albright

said the Consent Order was written by his predecessor and his opinion is that only a court could make a determination.

Task Force members held detailed and in-depth discussions with Mr. Burrough on topics including:

- The contract between the city and the Royal Facilities Board with a suggestion that the city modify its agreement
- Average daily water supply and demand and peak demand
- The ADH Sanitation Survey report conducted by the Arkansas Department of Health (ADH)
- The perception of a water shortage suggesting Garland County relinquish its half-cent sales tax to the city for access to water

Chris Thornton, Thornton Home Builders, was sworn in under oath by Senator Clark. Mr. Thornton referenced a presentation he gave at the April 11, 2018 meeting of the Water Provider Task Force where he described his experience with the City of Hot Springs when attempting to develop 17 acres of land in Garland County. He gave highlights of his efforts to comply with the city's demands, including agreeing to annexation which would have allowed the completion of the apartment complex he was building. The Task Force heard an audio recording of a City of Hot Springs Council meeting where Mr. Thornton was told his request for water and sewer service had been approved because he had agreed to annex his property.

Legislators continued discussion of the issues presented by Mayor Christie, also Mr. Thornton, and others regarding difficulties throughout the state where water and wastewater service is either unavailable or controlled by entities refusing service.

Senator Clark announced tentative meeting dates for the Task Force, July 11, 2018 at 1:30 p.m. in Room 151 and August 8, 2018 in Rogers, Arkansas.

There being no further business, the meeting adjourned at 4:30 p.m.