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**Bilenda Harris-Ritter  
George Pierce Ritter**

June 13, 2014

**THE NEED FOR CITIZEN CONTROL  
OF WATERWORKS**

**A. Introduction**

Article 3, Section 1 of the Arkansas Constitution states:

All political power is inherent in the people and government is instituted for their protection, security and benefit; and they have the right to alter, reform or abolish the same, in such manner as they may think proper.

Where those who are to serve the people are unelected and unaccountable, this section of our Constitution ceases to be. That is the situation with the suburban improvement district whose customers all reside in the City of Maumelle.

Representative Lowery has responded to concerns raised by many Maumelle residents in preparing this Interim Study Proposal (ISP). Based on the situation in Maumelle with regard to the unelected and unaccountable water management, it is our opinion that two additional issues need to be addressed as part of this ISP.

First, include Suburban Improvement Districts whose customers all reside within an existing municipality – regardless of which entity existed first. In our opinion, one of the fundamental problems those living in the City of Maumelle have experienced is in dealing with a Suburban Improvement District that has an identical area of jurisdiction.

Second, include Public Water Authorities in your study. Plans are now underway by Maumelle Water Management to replace the Suburban Improvement District with a Public Water Authority. If this change is made, we believe the problems in Maumelle with lack of accountability on rate making and water supply will be exacerbated.

**B. History**

The area that is now the City of Maumelle was formerly a “New Town” development undertaken in the 1970’s through the assistance of the Department of Housing and Urban Development. As

part of this development, a Suburban Improvement District was created that managed this unincorporated area including its utilities, police and fire protection.

The City of Maumelle was incorporated in 1985. The Suburban Improvement District then transferred all of its operations and assets to the City except for its water and sewer facilities. It continued to operate these under the name of Maumelle Water Management. All of its customers, both commercial and residential, were and continue to be located within the city limits of Maumelle.

Relations between the residents of Maumelle and Maumelle Water Management have not always been harmonious. In 1995, the City enacted Ordinance 271. It granted the City the authority to approve water rates and other terms and conditions for services and products provided by Maumelle Water Management.

In spite of many citizens complaining to City officials about the statements and actions of Maumelle Water Management over the years, the City has not really taken action on them beyond discussions at City Council. Maumelle Water Management has continued to maintain that it is independent of any municipal authority even though all of its customers are located within the city limits of Maumelle.

In 2012, relations between Maumelle Water Management and residents of Maumelle again became exacerbated. That was a dry year and Maumelle Water Management experienced well failures. At one point, Maumelle Water Management employees turned off water meters for sprinklers without notice to the ratepayers. Ratepayers were then notified of severe restrictions imposed by Maumelle Water Management on lawn water usage. Complaints to City officials about Maumelle Water Management skyrocketed. How did Maumelle Water Management respond?

Water Commissioner Mary Peyton sent the following email to the Mayor, members of the City Council and Maumelle Water Management officials on July 31, 2012.

I suggest that we divide the City into three groups by subdivision. [The Fire Chief] and I can determine the approximate [number] of residents in each group keeping in mind that the heaviest usage is probably in the more expensive subdivisions. That will not be difficult to determine. In that regard, group 1 will water on Monday and Thursday, group 2 will water on Tuesdays and Fridays, group 3 will water on Wednesdays and Saturdays. No watering anywhere on Sundays. Watering twice a week will maintain the grass and landscaping and hopefully the integ [sic] . . . .

Whether we want to or not, we need to police the non-watering areas every day including Sunday. In that regard, we would probably need a couple of temporary people (with flack jackets and gas masks). We might be able to use a couple of security guards from a temp agency. Residents should be warned that they will be fined if they are found to be out of compliance with the order. If we water by subdivision, the residents themselves will become water cops. (A copy of this email is attached as Exhibit "1.")

Ms. Peyton is one of the three unelected commissioners who sit on the governing board of Maumelle Water Management. She has held this position for many years. This governing board of Maumelle Water Management is self-perpetuating. If a vacancy occurs, the remaining members of the Board choose a successor. In addition, Maumelle Water Management either expressly or by implication claims it has no legal obligation to answer to the City of Maumelle or its ratepayers with respect to its water supplies or the rates paid.

### C. Public Water Authorities

Like most Suburban Improvement Districts, a PWA is governed by a self-perpetuating Board of Directors. Initial directors are approved by the Natural Resources Commission. (Ark. Code Ann. § 4-35-204(b)(1).) After that the Board is free to choose successor directors.

Successor directors shall be elected *either by the board* or by the water users as set forth in the bylaws. (Ark. Code Ann. § 4-35-204(b)(2)(B).)

Since the Board gets to write its own bylaws, it is obviously free to select the option that gives it the authority to pick successor directors. (See Ark. Code Ann. § 4-35-204(b)(1).)

There are no term limits for these directors. (Ark. Code Ann. § 4-35-204(b)(2)(C).)

In addition, no public input or consent is necessary from residents, ratepayers or homeowners in order to form a PWA. All it takes is any “two or more persons” and the approval of the Arkansas Natural Resources Commission to form a PWA. (Ark. Code Ann. § 4-35-201.) Once a PWA is formed, no other public agency or the public can exercise any authority over it. The PWA has been deemed by the Legislature to be an independent, stand alone public agency.

[A PWA] shall constitute a *public body politic* and governmental entity of the State of Arkansas. (Ark. Code Ann. § 4-35-203(a).)

There is no oversight of how a PWA manages its revenues or establishes water rates. It can:

- 1) Pay all expenses necessary or *desirable* for the prudent conduct of its affairs.
- 2) Create *adequate* reserves.
- 3) Use its revenues for “*other purposes approved by the board.*” (§ 4-35-110.)

This certainly appears to be an unconstitutional delegation of authority by the Legislature. For example, what is an “adequate” amount of reserves? The PWA sets that standard. It could make its reserves arbitrarily high or low because it has unbridled discretion to do so. The Legislature has therefore created an unelected, unaccountable public body with absolute discretion to determine rates consumers pay for their water. The only recourse would be a legal action. Since there are no standards concerning adequacy of reserves, it would be extremely difficult to demonstrate that there was a PWA abuse of discretion.

PWA revenues can be spent for "other purposes approved by the board." The PWA is again the ultimate authority. The Legislature has therefore delegated to these unaccountable bodies the power to determine how the public's money should be spent without the public having a voice.

**D. Conclusion**

The Legislature should either abolish or significantly limit the powers of unelected water boards and commissions that are not accountable to the public. We ask this Committee to consider legislation that would insure the citizens of this State are made the ultimate authorities as to the control of their waterworks and the rates they are charged.

Respectfully Submitted,

RITTER LAW

  
George P. Ritter

RITTER LAW

  
Bilenda Harris-Ritter

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## RE: Watering restriction update

From: Mary Peyton <mpeyton@cbrpm.com>

Barry Heller <barryh@maumellewater.com>; Dave Kaufman

<cprkaufman@sbcglobal.net>; George Glenn

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To: Dave Kaufman <dkaufman@kcc.com>; Mike Watson

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<Joshua@maumelle.org>; JaNan Davis <jdavis@maumelle.org>;

Tony Brainerd <tonybrainerd@sbcglobal.net>; Ken Saunders

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Burch Johnson <burchjohnson@aol.com>; Jan Hogue

<jan3540@msn.com>; Steve Ibbotson

<maumelleward4@yahoo.com>

Date: Tue, Jul 31, 2012 3:58 pm

I suggest that we divide the City into three groups by subdivision. George Glenn and I can determine the approximate # of residents in each group keeping in mind that the heaviest usage is probably in the more expensive subdivisions. That will not be difficult to determine. In that regard, group 1 will water on Monday and Thursday, group 2 will water on Tuesdays and Fridays, group 3 will water on Wednesdays and Saturdays. No watering anywhere on Sundays. Watering twice a week will maintain the grass and landscaping, and hopefully the integ

Whether we want to or not, we need to police the non-watering areas every day including Sunday. In that regard, we would probably need a couple of temporary people (with flack jackets and gas masks). We might be able to use a couple of security guards from a temp agency. Residents should be warned that they will be fined if they are found to be out of compliance with the order. If we water by subdivision, the residents themselves will become water cops.

I'm not sure how to handle the commercial and industrial outside watering. We'll need to work on that.

Mary Peyton

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