

**Arkansas Natural Resources Commission
Water Plan Compliance Review Procedures
Title 6
(Effective 2007 2012)**

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**Arkansas Natural Resources Commission
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Subtitle I. General provisions

Section 601.1 The Arkansas Water Plan.

The Arkansas Natural Resources Commission is responsible for preparing and overseeing the Arkansas Water Plan (“the Plan”). The Plan is the state policy for the orderly development and management of the state's water and related land resources and is prepared in the public interest of the entire state. All approved water and wastewater development projects shall coordinate the use of water resources within the region in which the project is located and within the state as a whole.

Section 601.2 Enabling and pertinent legislation.

- A. Ark. Code Ann. §14-208-102, Right to acquire rural water service properties, facilities, and customers.
- B. Ark. Code Ann. §15-20-201 et seq., Arkansas Natural Resources Commission.
- C. Ark. Code Ann. §15-22-223, Protection of Service Areas.
- D. Ark. Code Ann. §15-22-503, Arkansas Water Plan.

Section 601.3 Definitions.

The following definitions shall apply to all parts of these rules:

- A. “Applicant” means a political subdivision or state agency requesting water plan compliance approval.
- B. “Arkansas Water Plan” or “Plan” means the comprehensive program for the orderly development and management of the state's water and related land resources.
- C. “Commission” means the Arkansas Natural Resources Commission.
- D. “Executive Director” means the person appointed to administer the affairs of the Arkansas Natural Resources Commission.
- E. “Master plan” means a plan designed to address a political subdivision’s water or wastewater needs that specifically references and delineates the applicant’s plans for future growth of its system.
- F. “Municipality” means both Arkansas municipal corporations and consolidated municipal water improvement districts.
- G. “Political subdivision” means any county, municipality, district, or any agency, instrumentality, or function thereof of the State of Arkansas.
- H. “Property acquisition” means the annexation of any part of an assigned service area of a rural water service or municipality within the boundaries of a Arkansas municipality and is further described by Ark. Code Ann. § 14-208-102.
- I. “Rural water service” means any entity under Arkansas law that is not owned by a municipality and is a water association, water improvement district, or water authority.

J. "Service area" means either an area that is provided water or wastewater service by a system or an area not receiving water or wastewater service that is included within a system's approved Master Plan or water development project as an area where the system will provide service in the near future.

K. "Water plan approval" or "Water plan compliance" or "water plan certification" means authorization from the Commission to construct, operate, manage, or maintain a water development project.

L. "Water development project" means the construction, acquisition, ownership, replacement, operation, and maintenance of facilities, including land, easements, and works of improvement, for the protection, conservation, preservation, development, utilization, and proper disposal of the state's water resources and related land resources. Reference to water development project within this title also includes wastewater development projects.

Section 601.4 Applicability.

A. All political subdivisions must obtain water plan compliance approval prior to construction of a water development project.

B. The term "project" as used in this title shall include the following projects:

1. Development of a new water supply source or water or wastewater treatment plant;
2. Development of a new or different location for water withdrawal or wastewater discharge;
3. Any increase to water or wastewater treatment plant capacity;
4. System expansion that would result in:
 - a. Use of water exceeding eighty percent (80%) of the drinking water system's capacity to produce drinking water;
 - b. Increasing wastewater flow by greater than eighty percent (80%) of existing treatment capacity; or
 - c. An increase of more than twenty percent (20%) of the current average water usage or treatment capacity;
5. A project involving flood control or drainage;
- ~~7. Projects that would serve areas that are being served by other entities or projects that would serve areas on which other projects have, or have applied for, water plan certification.~~
6. Transfer of a service area currently receiving service from one utility to another;
7. Transfer of a service area not yet receiving service from a utility but included within another political subdivision's approved service area or within another entity's application for water plan compliance approval;
8. Acquisition of properties, facilities, or customers belonging to another system.
or
9. Proposal of a master plan for water plan compliance certification.

Section 601.5 Factors considered in compliance determination.

When determining whether a water development project should be approved for compliance with the Arkansas Water Plan, the Executive Director shall consider the following factors:

1. Purpose of the project,
2. Existing conditions,
3. Benefits expected from the project,
4. General nature of the project,
5. Geographic area to be served by the project,
6. Necessity of project,
7. Feasibility of project,
8. Estimated cost and affordability, and
9. Degree to which the project coordinates regional water resources.

Section 601.6 Unless exempt, projects must comply with the Plan.

A. No political subdivision or agency of the state shall spend any state funds on or engage in any water development project until the political subdivision or agency files a preliminary engineering report describing the project with the Commission, and the Commission approves the project as being in compliance with the Arkansas Water Plan.

B. No political subdivision or agency designated by the Commission as having responsibility for constructing, operating, managing, and maintaining a project shall be dissolved, merged, abolished, or otherwise changed during the life of the water development project approved under the Plan without prior approval of the Commission.

Section 601.7 Projects exempt from review.

The following projects are exempt from Water Plan compliance review:

- A. Local drainage facilities for recreational developments of less than five acres;
- B. Drainage facilities associated with street construction or improvements;
- C. Installation of new ~~customers~~ meters or connections from existing mains;
- D. Any project in which game protection funds, or federal or state outdoor recreation assistance grant funds, are to be spent provided such project will not diminish the benefits of any existing water development project; and
- E. Projects that do not meet the applicability requirements of Section 601.4.

Subtitle II. Application

Section 602.1 Fee.

The Commission will collect an application fee of \$200.00 from any applicant proposing a project requiring water plan compliance certification.

Section 602.2 Application.

A. All applications for approval of a project pursuant to Ark. Code Ann. §15-22-503(e) shall be in writing and signed by a representative of the applicant. The original application shall be filed with the Executive Director of the Commission.

B. The application shall contain the following:

1. Full name, address, telephone, and fax number of the applicant;
2. Names of the applicant's representative making application and the licensed water or wastewater operator operating the system;
3. Common name of the project printed in boldface capital letters;
4. The name, address, telephone, and fax number of applicant's consulting engineer;
5. The name, address, telephone and fax number of applicant's attorney;
6. Anticipated date of commencement of operation of the project;
7. List of all applications made to federal, state, or local agencies for approval of the project or any portion thereof and the action taken by said agencies;
8. Political subdivision, agency, board or commission which will have responsibility for constructing, operating, managing or maintaining the project improvements. If more than one, then identify the responsibility of each;

C(1). If an applicant meets any one of these conditions:

- a. The utility has fewer than 500 meters or connections,
- b. The utility's average water demand is less than 60,000 gallons per day, or
- c. The utility's actual or National Pollutant Discharge Elimination System

(NPDES) permitted flow is less than 150,000 gallons per day;

(2) The applicant must provide:

- a. A list of all water or wastewater facilities within five miles of the project boundaries,
- b. A written statement confirming that applicant has consulted with all named utilities about the possibility of combining services; and
- c. A list of all industries and businesses that will use the facilities to be built by the project.

Section 602.3 Preliminary engineering report.

The application shall be accompanied by a preliminary ~~survey and engineering~~ report prepared by an engineer licensed by the state of Arkansas ~~or, if none, the application shall so state~~. The report shall contain the following:

- A. Purpose of the project;
- B. Location of the project or discharge;
- C. General nature of improvements, facilities, dams, structures, pipelines, and other works constituting the project;
- D. Benefits expected to result from completion of construction of the project;
- E. Necessity for the project;
- F. Feasibility of the project;
- G. Applicant's most recent Arkansas Health Department Sanitary Survey or NPDES Permit;
- H. Applicant's water source or receiving stream on the date of the application;
- I. Source of water for the project;

- J. Summary description of the project, including all alternatives considered;
- K. Estimated cost of ~~the project~~ each alternative, including the difference in operation and maintenance costs before and after the project;
- L. Location of any environmentally sensitive areas within the project area;
- M. Anticipated date of commencement of construction of the project, including dates of any phases of construction; and
- N. A list of all water or wastewater systems within a five-mile radius of the project boundaries.

Section 602.4 Geographic service area.

The applicant ~~may~~ shall include in its application a United States Geological Survey 7.5-minute quadrangle map, a similarly scaled map, or an electronic map file delineating the geographic area to be served by the project.

Section 602.5 Alternative filing – state clearinghouse.

Applicant may file an application under the State of Arkansas Project Notification and Review System (APNRS) in lieu of a filing under Section 602.2 of these rules if the APNRS filing contains the information required in Section 602.2 and is accompanied by a preliminary ~~survey~~ and engineering report as required in Section 602.3.

Section 602.6 Alternative filing – other Commission programs.

The filing of an application under the Commission's Administrative "Rules And Regulations To Obtain Financial Assistance," "Rules For Utilization of Surface Water," or "Rules and Regulations Governing The Arkansas Dam Safety Program" may be accepted in lieu of a filing under Section 602.2 of these rules if the application contains the information required in Section 602.2 and is accompanied by a preliminary ~~survey and engineering~~ report as required in Section 602.3.

Subtitle III. Notice of and hearing on application

Section 603.1 Procedure generally.

A. Commission staff shall review the application to ascertain the accuracy of the data contained in the application and whether the project would comply with the Arkansas Water Plan.

B. After completing its review, the Commission staff shall recommend the approval or disapproval of the application, and shall state reasons for its recommendation in writing.

C. After obtaining a recommendation from Commission staff, the Executive Director shall schedule a hearing on any completed application.

Section 603.2 Notice - publication.

The Executive Director shall give the applicant and any other party who has requested notice ten days notice of the hearing on the application. The Executive Director shall also publish notice of the hearing in a newspaper as required by Ark. Code Ann. § 15-22-206. The Commission shall pay the cost of giving and publishing notice.

Section 603.3 Notice of hearing contents.

Notice of the hearing on the application shall state:

1. Time and place of the hearing,
2. Name of hearing officer,
3. Nature of the hearing,
4. Matters to be considered at the hearing,
5. The Commission staff's preliminary recommendation ~~and reasons therefore,~~
6. Matters of fact and law asserted,
7. Legal authority under which the hearing will be held, and
8. A statement that all interested persons will be given an opportunity to respond to the application or to the Commission staff's recommendation and to appear at the hearing in person or by counsel and present evidence and oral and written argument.

Section 603.4 Notification of nearby public water systems.

A. When a project or portion of a project may physically or economically affect public water or wastewater systems within five miles of any portion of the proposed project, the applicant shall notify all systems within five miles of the project area by certified mail or personal delivery. The notification shall consist of the application submitted to the Executive Director, along with all attachments thereto.

B. Application shall provide notice prior to the hearing described in this subtitle.

C. Prior to a compliance determination, the applicant shall certify to the Executive Director that either (1) there are no public water systems for which notification is required, or (2) notification was given to named systems as required by this section. The applicant may be required to submit additional information such as the domestic return receipt, affidavit, or other proof of notice.

Section 603.5 Hearing officer.

The Executive Director or his or her designee shall preside at hearings on applications and shall have the powers granted presiding officers by the Arkansas Administrative Procedure Act.

Subtitle IV. Review of master plans

Section 604.1 Procedures generally.

A. Applicant shall:

1. Submit a Master Plan in the same form as applications for approval of other projects, and
 2. Specify a time-frame for constructing each phase of the proposed project.
- B. The Commission:
1. Shall review the Master Plan in the same manner as other projects, and
 2. May approve the Master Plan for a period of ten years following the date of the Final Determination.

Section 604.2 Effect of approval.

A. ~~Final determination on a Master Plan provides the applicant with the presumption that it will construct the projects as set out in the Master Plan during the specified time frame, to the exclusion of other water providers. If the Executive Director approves the Master Plan, the applicant shall construct the project in the timeframe and manner approved in the Master Plan.~~

B. Upon notice to the applicant and opportunity for hearing, the Commission may reconsider the Final Determination of a Master Plan when sufficient progress toward implementing the projects described in the Master Plan has not been made.

Section 604.3 Additional reporting requirements.

A. As each project listed in a Master Plan is developed for construction, the applicant shall notify the Commission.

B. If the scope of work represents a significant departure from the Master Plan, the project shall be submitted as a separate project for review.

Subtitle V. Review of proposed transfer of service area

Section 605.1 Protection of service areas.

It is unlawful for a person to provide water or wastewater services to an area where such services are being provided by a current provider that has pledged or uses revenue derived from services within the area to repay financial assistance provided by the Commission, unless approval for such activity has been given by the Commission and the new provider has received approval under the Arkansas Water Plan, if applicable.

Section 605.2 Conditional approval based on partial payment to the Commission.

A. As a condition of its approval, the Commission may require the payment of an equitable portion of the outstanding financial assistance provided.

B. Any payment made shall reduce the outstanding balance of the financial assistance provided by the Commission to the current provider.

Section 605.3 Approval process.

Upon agreement of the providers exchanging territory, the providers shall submit a written proposal to the Executive Director of the Commission for consideration.

A. The proposal may be made part of an application for project approval under the Arkansas Water Plan.

B. The Executive Director will determine whether the impact of the exchange is sufficient to warrant payment of an equitable portion of the current provider's outstanding financial assistance.

C. If the Executive Director determines that payment is required, the following factors shall be considered in determining the sufficiency of the payment:

1. The impact of the transfer of the area on the current provider's existing indebtedness and its ability to repay the debt;
2. The value, including depreciation, of the current provider's facilities in the area to be transferred;
3. The amount of any expenditures by the current provider for planning, design, or construction of service facilities outside the area that are directly and reasonably allocable to the area to be transferred;
4. Any demonstrated impairment of service or increase in cost to consumers of the current provider remaining after the transfer of the area;
5. The impact of future lost revenues from the current provider's existing consumers in the area to be transferred, but only until the indebtedness is retired;
6. Necessary and reasonable legal expenses and professional fees; and
7. Other relevant factors as determined by the Commission.

Subtitle VI. Review of acquisition of properties, facilities, or customers belonging to another system

Section 606.1 Procedures generally

A(1) . Prior to acquiring rural water or wastewater service properties, facilities, and customers pursuant to Ark. Code Ann. § 14-208-102, a municipality shall receive approval from the Arkansas Natural Resources Commission that the action complies with the Arkansas Water Plan.

(2). Similarly, a municipality containing an area within its corporate limits that is served by another municipality, may elect to purchase the other municipality's customers, distribution or collection properties, and facilities located within the acquiring municipality using the same procedures applicable to municipalities acquiring properties, facilities, and customers from rural systems.

B. Both systems, the one doing the acquiring and the one being partially or wholly acquired, shall submit a written proposal using the factors in Section 605.3(C) to the Executive Director, addressing the amount of consideration to be paid to the rural service or municipality

whose customers or facilities are being acquired for the proposed acquisition and any costs attributable to the negotiation or appraisal.

C. The Commission shall review the amount of consideration to be paid to the rural service or municipality for the proposed acquisition and any costs attributable to the negotiation or appraisal in accordance with the factors identified in Sections 601.5 and 605.3(C).

D. The Commission shall:

1. Approve the application under the Plan if it determines the requirements of Section 605.3 are satisfied;

2. Deny the application under the Arkansas Water Plan if it determines the requirements of Section 605.3 are not satisfied; or

3. Issue a letter to the municipality that the proposed action is exempt from review under the Arkansas Water Plan.

Subtitle VII. Compliance determination

Section 607.1 Compliance criteria.

The Executive Director shall not approve any application unless he determines that (a) the project complies with and implements the goals and objectives of the Arkansas Water Plan; and (b) the project adequately coordinates the use of water resources within the region in which the project is located and within the state as a whole.

Section 607.2 Determination of compliance.

A. The Executive Director may approve all or part of an application.

B. An applicant may refile at any time any application, or part thereof, which has been disapproved if the Executive Director determines that circumstances surrounding the original disapproval have significantly changed to allow reconsideration.

Section 607.3 Notice of decision.

A copy of the decision shall be provided to the applicant and to any aggrieved party so requesting.

Section 607.4 Incorporation into Arkansas Water Plan.

Upon approval of the application, the project shall constitute an amendment of the Arkansas Water Plan, and the Arkansas Water Plan shall be deemed amended accordingly.

Subtitle VIII. Review of decision

Section 608.1 Request for review by Commission.

A. Any decision of the Executive Director may be reviewed by the Commission pursuant to the procedure set out in Title I, Subtitle V of the Commission's Rules of Organization and General Operation.

B. All action taken and all hearings conducted on the question of approval of the application shall be in compliance with the Arkansas Administrative Procedure Act. The Commission shall pay the costs of recording such hearings, and shall furnish a transcript of the record thereof in the event of Commission or judicial review of any such hearing.

C. The approval or disapproval of the application by the Commission shall constitute a final adjudication under the Arkansas Administrative Procedure Act.