

MARK-UPArkansas Natural Resources Commission
Rules Governing Water Authorities

Title 17

(Effective ~~October 2, 2003~~ August 1, 2014)

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Subtitle I. General provisions

Section 1701.1 Purpose and enabling legislation.

These rules implement Title Four, Chapter Thirty Five, Subchapters One and Two of the Arkansas Code Annotated, by establishing a procedure by which two or more persons or a qualified corporation ~~involved in the sale, transmission, and distribution of potable water to members of the public and others may form or convert~~ may form or convert to a water authority for one or more of these allowed purposes:

- A. To sell, transmit, and distribute potable water to members of the public and others; or
- B. To collect, remove, reduce, treat, purify, dispose and handle liquid and solid waste, sewage, industrial waste, and refuse.

Section 1701.2 Definitions.

A. "Applicant" means two or more persons or a qualified corporation seeking to form or convert to a water authority ~~to provide, distribute, transmit, treat, pump, or store raw or potable water to or for the benefit of the general public and commercial, industrial, and other water users~~ for one or more allowed purposes.

B. "Application" means all documents submitted by the applicant to the Executive Director as required in Sections 1702.1 and 1703.1.

C. "Certificate of Existence" means the document issued by the Executive Director which brings a water authority into existence.

D. "Commission" means the Arkansas Natural Resources Commission.

E. "Executive Director" means the Executive Director/Ex-Officio Secretary of the Commission.

~~F. "Geographic service area" means the area currently provided water service by a public water system or an area in which a public water system is constructing facilities for service.~~

F. "Qualified corporation" means any nonprofit corporation originally formed pursuant to the Arkansas Nonprofit Corporation Act of 1993, codified at § 4-28-201 et seq., or a predecessor statute, ~~which provides, distributes, transmits, treats, pumps, or stores raw or potable water to or for the benefit of members of the general public and commercial, industrial, and other users or which proposes to accomplish, develop, or construct any~~ of the foregoing formed for one or more of the allowed purposes.

G. "Service area" means a specific region for which Applicant has received water plan compliance approval to provide water or sewer service pursuant to ANRC Title VI, Water Plan Compliance Review Procedures.

H. ~~“Water users”~~ “Users” means members of the public and commercial, industrial, and other users who ~~purchase their raw or potable drinking water~~ receive services directly from a water authority.

I. “Water authority” means a public body politic and governmental entity organized pursuant to Ark. Code Ann. § 4-35-101 et seq.

J. “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.

Section 1701.3 Hearing.

The Executive Director at his or her discretion may conduct a hearing with respect to any application for a Certificate of Existence under this title or for approval of an amendment to a water authority’s articles or bylaws requested pursuant to ~~under~~ this Title.

Section 1701.4 Approval of service area requires water plan certification.

A. The Executive Director’s decision to issue a Certificate of Existence to an applicant approves formation or conversion to a water authority.

B. Any applicant proposing to provide water or sewer service must obtain approval of service area through the Commission’s Water Plan Compliance Review Procedures, Title 6, and will need to apply to that program independently of the water authority application.

C. Any applicant who has already received water plan compliance approval to provide water or sewer service to a service area will retain such approval as a water authority.

D. The Executive Director must provide written approval for any amendment to an article or bylaw that would change a water authority’s water or sewer service area. Before the Executive Director will provide written approval, the authority must first receive water plan compliance approval pursuant to ANRC Title VI, Water Plan Compliance Review Procedures.

Subtitle II. Formation of a water authority

Section 1702.1 Formation of water authority- application.

Two or more persons, which may include cities, counties, ~~or other~~ public bodies, or non-profit corporations, may apply to form a water authority by presenting to and filing the following with the Executive Director:

A. Articles of formation and constitution which must include the following information:

1. The name of the water authority, which must be “The _____ Public Water Authority of the State of Arkansas,” or similar name;
2. The location of the water authority’s principal office;
3. The number of directors of the water authority, which must be at least five and subject to change and modification as provided in its bylaws;

4. The names and addresses of the proposed initial board of directors of the water authority;
5. The name and address of the water authority's agent for service of process;
6. ~~The proposed geographic service area over which the water authority will have jurisdiction~~ A general description of the area to which the authority will provide service; and
7. ~~a brief statement describing the water source from which the water authority plans to obtain its water;~~
7. A brief statement showing the necessity for forming the proposed water authority and describing the benefits to be received by the residents and property owners ~~in the authority's geographic service area~~ who will receive service from the authority; and
9. ~~If the purpose of the water authority is to provide potable water for sale to retail customers:~~
 - (a) ~~a certification by Applicant that the proposed geographic service area is not within five miles of another public water system's current retail water service, or~~
 - (b) ~~a certification and proof that a copy of the application was provided to all public water systems within five miles of applicant's proposed geographic service area prior to submission to the Executive Director; and~~
- B. A copy of the applicant's proposed bylaws;
- C. A statement and certification from the Secretary of State that the name of the proposed water authority is not identical with that of any other water authority, or so nearly similar thereto as to lead to confusion and uncertainty;
- D. A filing and review fee of \$750, which the Commission will deposit in the Water Development Fund as provided in Ark. Code Ann. §15- 20-209 and §15-22-514;
- E. Any other information that the initial board of directors may deem necessary and appropriate; and
- F. Any other information and documents which the Executive Director may designate and require.

Section 1702.2 Review procedure.

- A. When the Executive Director receives an application, the Executive Director must review it to ascertain its completeness and accuracy.
- B. The applicant must provide any additional items or information requested by the Executive Director.

~~Section 1702.3 Public notice.~~

- ~~A. When the Executive Director receives an application, the Executive Director will publish notice two times, at least one week apart, in a newspaper having general circulation in the county where the applicant's principal office will be located.~~
- ~~B. The notice must contain the name of the applicant, the name of the proposed water authority, its address, and proposed geographic service area.~~

Section 1702.4 Approval of formation.

~~A. Based upon the application, information provided by persons responding to public notice of the application within ten days of the last publication, and any information deemed pertinent by the Executive Director, the Director will determine whether to issue a Certificate of Existence.~~

~~B. The Executive Director may consider any of the following in making his or her decision:~~

- ~~1. location of the project,~~
- ~~2. source of water for the project,~~
- ~~3. applicant's water source on the date of application,~~
- ~~4. benefits and necessity of formation, and~~
- ~~5. anticipated date of commencement of water service service-related construction, including dates of any phases of construction;~~

~~B. The Executive Director will approve or disapprove formation and will state reasons for disapproval in writing.~~

~~D. The Executive Director may approve the whole application or a portion of the application.~~

~~E. The Executive Director may make approval conditional upon the commencement of construction or operation within a specified timeframe to prevent water authorities from claiming jurisdiction over areas that will not immediately receive service.~~

~~F C. The water authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title 1, Rules of Organization and General Operation.~~

Subtitle III. Conversion of existing qualified corporations

Section 1703.1 Conversion to a water authority – application.

Whenever a qualified corporation desires to convert to and become reconstituted as a water authority, the qualified corporation must file with the Executive Director:

A. A resolution duly adopted by the applicant's board of directors evidencing the desire to convert to and become reconstituted as a water authority and certifying that the applicant:

1. Was initially formed as a non-profit corporation;
2. Cannot directly access the tax-exempt capital markets other than through a conduit issuer; and
3. Desires to realize interest rate savings as a result of its conversion and reconstitution as a water authority;

B. Articles of conversion and reconstitution which must be signed by a majority of the water authority's proposed initial board of directors and which must state the following information:

1. The name of the water authority, which must be "The _____ Public Water Authority of the State of Arkansas," or similar name,

2. The location of the water authority's principal office,
 3. The number of directors of the water authority, which number must be at least five and subject to change and modification as provided in its bylaws,
 4. The names and addresses of the proposed initial board of directors of the water authority,
 5. The name and address of the water authority's agent for service of process, and
 6. The qualified corporation's existing ~~geographic~~ service area and a general description of any other areas to which the authority would like to provide service; proposed geographic service area over which the water authority will have jurisdiction, and
 - ~~7. A brief statement describing the water source from which the water authority plans to obtain its water;~~
- C. A copy of the water authority's proposed bylaws along with any other information which the proposed initial board of directors may deem necessary and appropriate;
- D. A statement and certification from the Secretary of State that the name of the proposed public water authority is not identical with that of any other water authority, or so nearly similar thereto as to lead to confusion and uncertainty;
- E. A filing and review fee of \$750, which the Commission must deposit in the Water Development Fund as provided in Ark. Code Ann. §15-20-209 and §15-22-514;
- F. Any other information that the proposed initial board of directors may deem necessary and appropriate; and
- G. Any other information and documents which the Executive Director may designate and require.

Section 1703.2 No members.

A. In addition to the requirements of Section 1703.1, if the qualified corporation seeking to become a water authority has members, the qualified corporation must also submit a resolution approved by the members that conforms to the requirements of Section 1703.1 A.

1. Membership approval of conversion must be obtained in the manner determined prior to conversion under the qualified corporation's articles, bylaws, or applicable statutes.

2. After conversion, the water authority will have no members.

B. Any entity that converted to a water authority according to the Commission's rules and existing law prior to Act 1330 of 2003 will be deemed to have complied with this title.

Section 1703.3 Review procedure.

A. When the Executive Director receives an application, the Executive Director will review it to ascertain its completeness and accuracy.

B. The applicant must provide any additional items or information requested by the Executive Director.

Section 1703.4 Approval of conversion.

A. Based upon the application and any information deemed pertinent by the Executive Director, the Director will determine whether to issue a Certificate of Existence.

~~B. The Executive Director may consider any of the following in making his or her decision:~~

- ~~1. location of the project,~~
- ~~2. source of water for the project,~~
- ~~3. applicant's water source on the date of application,~~
- ~~4. benefits and necessity of formation, and~~
- ~~5. anticipated date of commencement of water service construction, including dates of any phases of construction,~~

~~C. The Executive Director will approve or disapprove conversion and will state reasons for disapproval in writing.~~

~~D. C.~~ The water authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title 1, Rules of Organization and General Operation.

~~Section 1703.5 Public notice.~~

~~A. If the Executive Director approves conversion, the Executive Director will publish notice two times, at least one week apart, in a newspaper having general circulation in the county where the Applicant's principal office is located.~~

~~B. The notice must contain the name of the applicant, the name of the water authority, its address, and state that a certificate of existence has been issued and the effect of its issuance.~~

Subtitle IV. Certificate of Existence

Section 1704.1 Issuance of Certificate of Existence.

A. If the application is found by the Executive Director to be complete and accurate, the Executive Director will issue a Certificate of Existence. The water authority referred to therein will come into existence as a public body politic and governmental entity of the state under the name set forth in the Certificate of Existence.

B. The water authority will then be vested with the rights and powers granted in Title Four, Chapter Thirty Five, Subchapter One of the Arkansas Code Annotated.

Section 1704.2 Filing with Secretary of State.

After issuance of the Certificate of Existence, the Commission will file the water authority's articles of constitution or articles of conversion and reconstitution in the office of the Secretary of State. In cases of conversion, filing with the Secretary of State

will terminate and dissolve the previous corporate existence of the qualified corporation effective as of the date of the issuance of the Certificate of Existence.

Subtitle V. Amendment to articles or bylaws

Section 1705.1 Amendment to articles.

A. Any amendment to articles must be filed with the Executive Director along with the following information:

1. The name of the water authority,
2. The text of the amendment adopted,
3. The date of each amendment's adoption, and
4. A statement that the amendment was approved by a sufficient vote of the board of directors.

B. If the amendment concerns a change to the water authority's geographic service area, the water authority must first apply for and obtain water plan approval ~~the Executive Director will follow the procedure in Subtitle VI pursuant to ANRC Title VI, Water Plan Compliance Review Procedures before the Executive Director will approve the amended article.~~

Section 1705.2 Amendments to bylaws.

~~A. With the exception of the amendments listed below, bylaws may be amended without the Executive Director's notice or approval.~~

~~B. If the proposed amendment to bylaws changes the number of directors or procedure for nominating or electing directors, then the water authority must receive written approval from the Executive Director.~~

~~—1. The Executive Director will review the proposed amendment and will give the water authority written notice of the decision.~~

~~—2. If the Executive Director disapproves the proposed amendment, the Executive Director will issue the reason or reasons for his decision in writing.~~

~~—3. The water authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title 1, Rules of Organization and General Operation.~~

~~C. If the water authority intends to limit or expand its geographic service area, the Executive Director will follow the procedure in Subtitle VI.~~

A. A water authority is only required to obtain written approval for a proposed bylaw amendment from the Executive Director if the proposed amendment changes any of the following:

1. the number of directors,
2. the procedure for nominating or electing directors, or
3. the water authority's geographic service area.

B. If the proposed amendment concerns a change to the water authority's geographic service area, the water authority must first apply for and obtain water plan approval pursuant to ANRC Title VI, Water Plan Compliance Review Procedures before the Executive Director will approve the amended bylaw.

C. The Executive Director will review the proposed amendment and will give the water authority written notice of the decision.

D. If the Executive Director disapproves the proposed amendment, the Executive Director will issue the reason or reasons for his decision in writing.

E. If the water authority submitted the proposed bylaw amendment to the Executive Director for review before following its own internal procedures for amending bylaws, the water authority will need to provide documentation to the Executive Director showing that the amended bylaw has been validly adopted before the authority will be deemed to have complied with Ark. Code Ann. § 4-35-208.

F. With the exception of a proposed amendment changing geographic service area, the water authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title 1, Rules of Organization and General Operation.

Subtitle VI. Changes to geographic service area

~~Section 1706.1. Executive Director approval required.~~
~~Any water authority intending to expand or limit its geographic service area, must file required documentation with the Executive Director before expanding or limiting geographic service area. Applicant must also submit a filing and review fee of \$250, which the Commission will deposit in the Water Development Fund as provided in Ark. Code Ann. §15-20-209 and §15-22-514.~~

~~Section 1706.2. Certification of notice to affected entities.~~
~~The water authority must provide the Executive Director with~~

~~A. certification that the proposed change to geographic service area is not within five miles of another public water system's current retail water service or~~

~~B. certification and proof that a copy of the proposed geographic service area was provided to all public water systems within five miles of applicant's proposed geographic service area prior to submission to the Executive Director.~~

~~Section 1706.3. Description of geographic service area.~~
~~A. The water authority must submit a map, legal description, or other description satisfactory to the Executive Director describing the proposed geographic service area change.~~

~~B. If the Director approves the description as adequate to place public systems within the five mile vicinity on notice of the location of the proposed change, the Director must publish notice of the description and proposed change two times, at least one week apart, in a newspaper having general circulation in the county where the applicant's proposed change is to be located.~~

~~—1. The notice must contain the name of the applicant, the name of the water authority, its address, and proposed geographic service area.~~

~~Section 1706.4 Approval of geographic service area change.~~

~~A. Based upon evidence submitted by applicant, information provided by persons responding to public notice of the application within ten days of the last publication, and any information deemed pertinent by the Executive Director, the Director will determine whether to approve the change to geographic service area.~~

~~B. The Executive Director may consider any of the following in making his or her decision:~~

- ~~—— 1. with regard to expansion, whether the area to be added is already served by another public water system,~~
- ~~—— 2. source of water for the project,~~
- ~~—— 3. benefits and necessity of change, and~~
- ~~—— 4. anticipated date of commencement of water service to new area.~~

~~C. The Executive Director will review the proposed geographic service area change and will give the water authority written notice of the decision.~~

- ~~—— 1. If the Executive Director disapproves the proposed change, the Executive Director will issue the reason or reasons for his decision in writing.~~

Subtitle ~~VII~~ VI. Dissolution

Section ~~1707.1~~ 1706.1 Articles of dissolution.

Any water authority that intends to transfer, merge, consolidate, or otherwise dissolve its existence, must file articles of dissolution with the Executive Director.

Section ~~1707.2~~ 1706.2 Disposal of assets.

Upon dissolution, any assets of a water authority remaining after payment of claims and liabilities of the water authority must be transferred to the successor water authority, if applicable, or to the Commission.