

**Minutes of the  
ARKANSAS NATURAL RESOURCES COMMISSION**

**September 18, 2013**

The regular meeting of the Arkansas Natural Resources Commission was held Wednesday, September 18, 2013, at 9:30 a.m., at the Lakeport Plantation Museum, 601 Highway 142, Lake Village, Arkansas.

Commissioners in attendance were Chair Ann Cash; Vice-Chair Corbet Lamkin, Don Richardson, Fred Fowlkes, Jerry Hunton, and Mike Carter.

Staff members participating included: Randy Young, Executive Director; Edward Swaim, Chief, Water Resources Management Division; Crystal Phelps, General Counsel; Adrian Baber, Chief, Conservation Division; Mark Bennett, Chief, Water Development Division; Cynthia Bearden, Agency Controller; Deanna Ray, Associate General Counsel; Bob Fowler, Land Resource Specialist; and Pat Smith, Executive Assistant.

Chairman Cash called the meeting of the Arkansas Natural Resources Commission to order.

A list of guests is attached to the minutes.

**APPROVAL OF MINUTES; JULY 17, 2013**

Upon motion by Dr. Lamkin, second by Mr. Fowlkes, the Commission approved the minutes of the July 17, 2013, regular meeting, with the stipulation that the transcript of the Eoff hearing be included in the minute record (a copy of transcript held in legal division).

**REPORT OF THE EXECUTIVE DIRECTOR**

**Report on Boeuf-Tensas Feasibility Study** – Mr. Young stated that this feasibility study began in partnership with the Corps of Engineers approximately 10 years ago. The results of the study, to date, have identified a small feasibility project in the northern part of the basin, which doesn't address the biggest concern of individuals in the basin. Meanwhile, Louisiana officials and their legislative assembly have alleged that they are not getting their fair share of water - not only from the Boeuf-Tensas Basin, but from the other basins across our border under the terms of the Red River Compact. ANRC has asked the Corps to rescope and work toward execution of a new Project Management Plan.

Chairman Cash and Mr. Young had discussions with officials in Louisiana about financing half of the \$300,000 needed for a new Corps of Engineers study. Louisiana officials were interested in conducting a study, but could not commit half of the \$300,000 needed. The Corps requested ANRC to fully commit the \$300,000 with no contributed funds from the federal government.

ANRC is committed to providing contributed funding specifically toward the completion of the Boeuf-Tensas Basin Southeast Arkansas Feasibility Study. That was communicated to the Corps and Mr. Young referenced two letters that were written by him to Colonel Cross and Ms. Petersen. The Corps responded that ANRC had to provide the full \$300,000.

Recently, ANRC received a firm commitment from Louisiana that they will contribute the \$150,000. The Boeuf-Tensas Irrigation District will contribute the remaining \$150,000. Chairman Cash stated that another meeting will be held with the Corps to get an exact Project Management Plan so as not to duplicate what has already been done.

**STATUS OF FINANCIAL ASSISTANCE PROGRAMS**

Mrs. Cynthia Bearden presented the financial assistance report. (Copy of report attached to the minutes).

Dr. Lamkin asked the status of the Wabbeseka project considering funds were approved in 2009 but never used. Mr. Bennett advised that ANRC is working with several entities in the area to efficiently use funds. Wabbeseka's water treatment plant needs rehab; Altheimer has a relatively new water treatment plant that needs repair, and the Dept. of Correction at Tucker has its own water treatment plant. Staff would like for Wabbeseka to look at all options before building its plant. Grand Prairie Regional Water Distribution District is considering building a treatment plant that could serve them all.

#### **LEGAL DIVISION**

**UPDATE ON TARRANT REGIONAL WATER DISTRICT (TRWD) v. HERRMANN** – Mrs. Phelps stated that this case was decided in June and involved Texas's claim that it had the right to 'cross border access' to Oklahoma's water. TRWD is responsible for providing drinking water to north central Texas which has grown exponentially since Arkansas, Louisiana, Oklahoma, and Texas negotiated the Red River Compact Commission's rules in 1978. TRWD has tried and failed to buy water from Oklahoma thereby initiating the federal lawsuit against Oklahoma.

The Supreme Court decided that Oklahoma's statutes were valid and that Texas's arguments were not valid which would give them the right to Oklahoma's water. This case helped Arkansas because the same arguments could have been presented by other states wanting 'cross border access' to Arkansas's water.

**UPDATE ON CABOT v. ANRC** – Mrs. Phelps advised that Cabot dismissed its appeal of the Executive Director's Water Plan Compliance decision to allow Ward to serve Tract A.

**REPORT ON EOFF DAM LAWSUIT** - Mrs. Ray stated that in an Order by the Commission, Mr. Eoff was given a deadline of October 1<sup>st</sup> to significantly complete the removal of his dam. If he failed to follow the Order, the Commission reserved the right to levy a \$10,000 fine contingent upon no unforeseen circumstances not of Mr. Eoff's doing.

August 15<sup>th</sup> was his deadline to submit new plans from a new engineering firm for dam removal, and September 6<sup>th</sup> was his deadline to submit restoration plans from the new engineer if he chose to obtain one. On August 15<sup>th</sup>, ANRC received an email from one of Mr. Eoff's attorneys with an attached letter to Crafton Tull contesting the fact that Crafton Tull fired Mr. Eoff. Mr. Eoff's attorneys are threatening to force Crafton Tull to remain his engineer.

The Commission was asked to determine if that event was an unforeseen circumstance not caused by Mr. Eoff's doing. If the Commission does find that it is, the Commission can delay fining him on October 1<sup>st</sup>, and, if not, the Commission can levy the \$10,000 fine. Mr. Young stated that after the hearing in Clinton, Mr. Eoff told him that he had already fired Crafton Tull. Mrs. Ray read Crafton Tull's letter verbatim to the Commission addressed to Mr. Eoff.

Upon motion by Mr. Carter, second by Mr. Richardson, the Commission approved the following: 1) Petition for the enforcement of the fine of \$10,000, and if necessary, to levy property; 2) File a motion to compel Mr. Eoff to follow the Commission's Order, and to request a supercedeas bond of \$750,000 which is the amount set forth at the hearing for removal of dam, and 3) Proceed with obtaining all bids and permits necessary to remove the dam at Mr. Eoff's expense.

**FINANCIAL ASSISTANCE**

**RESOLUTIONS 2013-01 AND 2013-02**

Upon motion by Dr. Lamkin, second by Mr. Hunton, the Commission adopted Resolution 2013-01 approving a proposal to issue one or more series of State of Arkansas Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bonds under the authority of Act 5607 of 1997; and 2013-02 approving a proposal to Issue One or More Series of State of Arkansas Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bonds Under the Authority of Act 531 of 2007, and authorizing the Executive Director or the Chairman to review bids and accept the bid having the lowest true interest cost for each series of bonds; and providing for other matters in connection with the issuance of the bonds.

**APPLICATION FOR FINANCIAL ASSISTANCE**

Mr. Bennett presented staff recommendations for the referenced projects below requesting financial assistance from the Water Development Fund (WDF), and the Arkansas Drinking Water State Revolving Loan Fund (DWSRF).

Upon motion by Mr. Fowlkes, second by Mr. Richardson, the Commission approved the following recommendations:

**GUM SPRINGS (CLARK COUNTY) (WDF)**

**Up to \$25,750.00**

*PURPOSE OF FUNDS: To provide water service to about 20 new water customers along South Wood and Caraway Roads.*

The Commission approved a deferred loan for Gum Springs in an amount up to **\$25,750.00** from the Water Development Fund. This deferred loan is for twenty-two (22) years with a repayment schedule of twenty (20) years at three percent (3%) interest. Payment upon principal is to be deferred for two (2) years and interest to be waived for two (2) years. An administrative fee in an amount up to \$750.00 is to be retained by the Commission. Approval is contingent upon the town establishing and maintaining a depreciation reserve fund. The funds will be used along with a Clark County ACEDP grant to construct the project.

**TURRELL (CRITTENDEN COUNTY) (WDF)**

**Up to \$2,060.00**

*PURPOSE OF FUNDS: To analyze the condition of the elevated water storage tank and determine suitability and cost of returning the tank to service.*

The Commission approved a grant for Turrell in an amount up to **\$2,060.00** from the Water Development Fund. An administrative fee in an amount up to \$60.00 is to be retained by the Commission. These funds will be disbursed to Arkansas Rural Water for costs associated with the analysis. Approval is contingent upon the city establishing and maintaining a depreciation reserve fund.

**CLINTON (VAN BUREN COUNTY) (DWSRF)**

**Up to \$3,000,000.00**

*PURPOSE OF FUNDS: To make repairs and upgrades at the water treatment plant, including without limitation the construction of a clarifier to reduce turbidity of raw water.*

The Commission approved loan funds in an amount up to **\$3,000,000.00** for the City of Clinton from the Arkansas Drinking Water State Revolving Loan Fund in accordance with the established funding priorities. The loan repayment schedule will not exceed twenty (20) years. The combined rate will be established by the Executive Director at the time of loan closing. Approval is contingent upon the city establishing and maintaining a depreciation reserve fund.

Dr. Lamkin voiced concern regarding this loan because of the lawsuit with Mr. Dan Eoff. He said the project would be adversely affected if Mr. Eoff's dam failed, and that approval of this loan makes the removal of the dam even more critical. Mr. Richardson agreed that the dam needed to be removed.

**LOCKESBURG (SEVIER COUNTY) (DWSRF)** **Up to \$1,091,800.00**

*PURPOSE OF FUNDS: To replace the water distribution system in order to reduce excessive water loss.*

The Commission approved loan funds in an amount up to **\$1,091,800.00** for the City of Lockesburg from the Arkansas Drinking Water State Revolving Loan Fund in accordance with the established funding priorities. The loan repayment schedule will not exceed twenty (20) years. The combined rate will be established by the Executive Director at the time of loan closing. Approval is contingent upon the city establishing and maintaining a depreciation reserve fund.

**LOCKESBURG (SEVIER COUNTY) (DWSRF)** **Up to \$1,240,000.00**

*PURPOSE OF FUNDS: To replace the water distribution system in order to reduce excessive water loss.*

The Commission approved funds in an amount up to **\$1,240,000.00** of which the total amount will be in the form of a loan with principal forgiveness for Lockesburg from the Arkansas Drinking Water State Revolving Loan Fund in accordance with the established funding priorities. Approval is contingent upon the city establishing and maintaining a depreciation reserve fund.

**CHANGE IN TERMS OF FINANCIAL ASSISTANCE**

Upon motion by Dr. Lamkin, second by Mr. Fowlkes, the Commission approved the change in terms for Bodcaw. Mr. Carter abstained from voting.

**BODCAW (NEVADA COUNTY) (00261-WSSW-D)** **\$223,079.00**

The entity provides water service to eastern Hempstead County, western and southern Nevada County. This loan was used to extend service to the Falcon area of southern Nevada County in 2002-03. The loan was in the amount of 233,079.00 and payment of principal and interest was deferred for ten years. In addition to this debt, Bodcaw also has two other loans they are repaying that have a combined balance of \$1,453,340.51 as of June 30, 2013. Bodcaw currently has 501 customers. That number has come down from a high of 550 customers. The current user rate is \$42.70 per month for 4,000 gallons of usage. This makes the affordability for water 1.45% of the Median Household Income for Bodcaw.

Increasing the current rates to meet this new debt service payment raises affordability concerns and the number of customers continues to decline. By forgiving \$117,079 of the \$233,079, the affordability ratio can stay below 1.50% which is our guideline for affordable rates.

Therefore, the Executive Director is authorized to forgive \$117,079 of the current balance on loan 00261-WSSW-D.

**WEST POINT-GEORGETOWN (WHITE COUNTY)** **\$222,209.00**  
**(PAB-95A09)**

The project provides sewer collection in the towns of West Point and Georgetown and transfers the sewage to Kensett for treatment. The project was constructed by the West Point-Georgetown Regional Wastewater Treatment District in 2001-02 with approximately \$3.4 million in grant funds from the Arkansas Economic Development Commission and \$242,000.00 in loan funds from ANRC. The project anticipated a minimum of 215 users and currently has about 150 users. The current user rate is \$33.45 per month for 4,000 gallons of usage. This makes affordability for sewer 1.44 percent of the Median Household Income for Georgetown and 2.11 percent for West Point.

In 2011 the system suffered significant damage from the White River flooding. While the Federal Emergency Management Agency provided some assistance in repairs, the system is still burdened with repayment of costs from the repairs.

Increasing current rates raise affordability concerns and the number of customers continues to decline. By forgiving the current loan, revenues would be available to make necessary repairs and replacements within the system.

Therefore, the Executive Director is authorized to forgive the remaining balance and any outstanding interest of loan PAB95A-09.

**TURRELL (CRITTENDEN COUNTY)** **\$15,450.00**  
**(00918-WSSW-L)**

The purpose of the funds is amended to include making emergency repairs at the town's sewer pump stations. These funds may be disbursed to Arkansas Rural Water to pay expenses incurred by Arkansas Rural Water in making the pump station repairs.

**DEOBLIGATION OF FUNDS BY EXECUTIVE DIRECTOR**

Mr. Bennett reported that the Executive Director has deobligated funds for the following:

**GRADY (LINCOLN COUNTY)** **\$206,000.00**  
**(00876-WDF-L)**

City chose not to go forward with the loan.

**GUM SPRINGS (CLARK COUNTY)** **\$103,000.00**  
**(00865-WDF-L)**  
**(00866-WDF-G)** **\$15,450.00**

Project funded with ACEDP and loan approved above.

**REPORT ON WILLOW SLOUGH**

Mr. Young asked Mr. Bennett to give a brief report regarding the Willow Slough Drainage District's project to remove two log jams. Mr. Bennett advised that the low bidder sought assistance from another contractor and they brought in state of the art equipment and were able to complete the project in approximately 15-20 days. The Corps and landowners were very satisfied with the contractor's work. AAMr. Gene Sullivan has since visited with Mr. Bennett about additional funding for projects below these log jams that also need to be removed.

**CONSERVATION DIVISION**

**APPOINTMENTS/REAPPOINTMENTS TO CONSERVATION DISTRICT BOARDS**

Upon motion by Mr. Fowlkes, second by Mr. Hunton, the Commission approved the following appointments:

**APPOINTMENTS**

*Ouachita County CD*  
*Poteau River CD*

*Allen Ware Russell*  
*Larry R. Horn*

Upon motion by Dr. Lamkin, second by Mr. Carter, the Commission approved the following reappointments:

**REAPPOINTMENTS**

*Arkansas County CD  
Garland County CD  
Johnson County CD*

*Sloan Hampton  
Gene Parker  
Jason James  
Robert Kimbrough*

**CONSERVATION DISTRICT ACTIVITY REPORT** – Mr. Bob Fowler introduced Mr. John McAlpine with the Drew County Conservation District. Mr. McAlpine gave an overview of the many activities conducted by the district. He stated that over a period of two years, the district had experienced several secretarial turnovers. After the resignation of the last secretary, the district realized that it couldn't afford a full-time secretary and approached the L'Aigle District to divide secretarial duties between the districts. That plan has proved to be very successful.

**REPORT ON DISTRICT'S VOTING RECORDS** – Mr. Carter stated that he had requested these voting records which cover a three-year period. He added that after looking at the number of voters, there does not appear to be a lot of interest in these elections. If these districts want to go forward, and continue getting appropriations from ANRC, they need to show the Commission that these funds are being well spent and not propagating a system that is out of date. He reiterated that annual funding needs to be re-examined by the Commission and that the districts need to re-invent themselves for continued funding.

Mrs. Debbie Moreland stated that in the past the only time persons displayed any interest in voting was when they were displeased with the candidates. People are not willing to drive 30 miles to vote on an issue if they are happy with the status quo. She said another option would be the ability to vote by mail, or to increase the voting period, which currently is just one day. She stated that multiple issues need to be addressed, (1 Change the way districts are voting, (2 Educate counties on the importance of what districts are doing, and (3 Change functions and responsibilities of districts. She advised that she and Mr. Baber were working on new material for director training, specifically, their roles and responsibilities.

Mr. Richardson stated that there needs to be fewer conservation districts. He likes the Nebraska Model where the state has only 15 conservation districts located on watershed lines. As a Commissioner, he hopes to accomplish the goal of fewer districts over the next four years.

Mrs. Moreland interjected that successful models need to be set up so that districts can achieve that goal voluntarily.

**FUNDING DISTRIBUTIONS FOR CONSERVATION DISTRICTS FROM 2011-2013** – Dr. Lamkin asked why there was no information on funding for Garland, Lafayette, and Prairie Counties.

Mrs. Bearden stated that Garland County experienced turnovers with their employees and she did not receive information for FY12, but that information for FY13 is now coming in. She said that she will update this list and make it available to the Commission. Dr. Lamkin stressed that he expects the districts to turn in reports on time.

**WATER RESOURCES MANAGEMENT DIVISION**

**Status Report on Arkansas Water Plan** – Mr. Swaim directed the Commission to newsletters dated August/September 2013. He advised that the planning process has moved past the halfway point towards the completion date of November 2014. At that time, the Commission will be requested to consider and adopt the Executive Summary as a rule. He announced that Rick Brown and Nicole Rowan left CDM Smith due to unrelated circumstances, and that new employees will take up the effort.

Mr. Swaim gave information on the upcoming public meetings over the state in October.

### **ACTIVITY REPORT**

Of special interest, Mrs. Debbie Moreland stated that county judges contacted AACD to request partnering on a program called 'Unpaved Roads'. Pennsylvania has had a program in place since 1997 that deals with this issue and is funded through the state legislature. The annual appropriation is 5 million dollars.

Funds go through the Commission to the conservation districts. After the conservation district looks at the request, it is submitted to the Commission for approval. The grants typically go up to about \$20,000. AACD has already been working with a group to set up criteria for the grants. The districts will receive a 10 percent processing fee for every grant approved. The target area for Arkansas will primarily be the western, northwestern districts because that's where the biggest issues are right now. The districts will guide the county judges on such subjects as endangered species.

Mrs. Moreland announced that there will be a Southwest Arkansas Water Tour in El Dorado in October. Representative Shepherd is the Chairman of the Ag Committee and has worked with her on arrangements for the tour. He wants to focus on the oil industry.

### **COMMISSION TRAVEL EXPENSE REIMBURSEMENT**

**Approval of Travel Reimbursement** – Upon motion by Mr. Hunton, second by Mr. Fowlkes, the Commission approved reimbursable expenses for the Chairman or his designated representative to attend the following:

- (1) Southwest Arkansas Water Tour, October 15-16, 2013, El Dorado, Arkansas
- (2) Water Plan Public Meetings:
  - October 1, Heber Springs, 3:00 p.m.
  - October 7, Batesville, 3:00 p.m.
  - October 8, Mt. Ida, 3:00 p.m.
  - October 8, Fayetteville, 3:00 p.m.
  - October 9, Harrison, 3:00 p.m.
  - October 10, Texarkana, 1:30 p.m.
  - October 11, Monticello, 3:00 p.m.
- (3) Water Availability Work Group Meeting, October 22, 2013, 1:00 p.m. - 4:45 p.m.  
William F. Laman Public Library, 2801 Orange Street, North Little Rock, AR

### **OTHER BUSINESS**

**Selection of Nomination Committee for 2014 Officers** – Mrs. Cash selected Mr. Richardson to chair the nomination committee, consisting of Commissioners Fowlkes and Hunton.

Mrs. Cash thanked everyone to southeast Arkansas. Mr. Young thanked Mrs. Cash and her family for hosting the dinner last night.

### **ADJOURN**

There being no further business, the meeting was adjourned.

Jon Sweeney, PE  
Deputy Director/Chief Engineer  
Acting for: J. Randy Young, PE

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J. Randy Young, P.E.  
Executive Director and Secretary

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11-25-13  
Date

