

BEFORE THE ARKANSAS SOIL AND WATER CONSERVATION COMMISSION

**In the matter of: Application for Approval of Extensions
to the City of Fort Smith Water System
Service Area**

WPC 2004 01 20-002

Order

On November 4, 2004, the Arkansas Soil and Water Conservation Commission convened to hear appeals filed by the South Sebastian County Water Users Association and the City of Fort Smith of the Executive Director's Final Determination, Arkansas Water Plan Compliance, in the matter of the Application for Approval of Extensions to the City of Fort Smith Water Service Area, WPC 2004 01 20-002. South Sebastian was present by its attorney, Peter G. Kumpe, and the City of Fort Smith was present by its attorney, Jerry L. Canfield. The Commission's staff was represented by Edward C. Swaim, General Counsel. Arguments were heard by the Commission.

Findings of Fact and Conclusions of Law

1. The Executive Director entered the Final Determination in accordance with Arkansas Code Annotated § 15-22-503 and Title VI of the Commission's Rules.
2. The appeals were properly taken under the terms of Titles I and VI of the Commission's Rules and the Arkansas Administrative Procedure Act, Arkansas Code Annotated § 25-15-201, *et seq.*
3. The record of the Executive Director's decision was provided to the commissioners by mail prior to the hearing.
4. The Executive Director's Final Determination was entered into consistent with constitutional and statutory provisions, within the Commission's statutory authority, on lawful procedure, not affected by other error or law, based upon substantial evidence of record, and was not arbitrary, capricious, or characterized by abuse of discretion.
5. Legal arguments and factual matters included in Fort Smith's hearing brief but not part of the record available to Director Young prior to his Final Determination, and the memorandum from the United States Department of Agriculture, Rural Development included in South Sebastian's brief were excluded from the Commission's consideration of this matter.

Order


1. The Executive Director's Final Determination is upheld and is hereby adopted by the Commission in its entirety and made a part of this Order as Exhibit A with the following modifications:

a. The attached map and description of Fort Smith's project as agreed upon by the parties is attached and made part of this Order as Exhibit B.

b. The Final Determination is conditioned on the approval of the terms of the transfer by the United States Department of Agriculture, Rural Development.


c. The first sentence of Paragraph 8(E) of the Final Determination is modified to read as follows: Unless and until the determination of price for South Sebastian's assets in the area (pipes, pumps, valves, etc.), as mutually agreed to by South Sebastian and Fort Smith and approved by the Commission's staff, is made and South Sebastian is paid, only South Sebastian will serve the area.

BY ORDER OF THE COMMISSION THIS ___ DAY OF NOVEMBER, 2004.



Alec Farmer
Chairman

ATTEST:



J. Randy Young, P.E.
Ex-Officio Secretary