

Title 15. Natural Resources and Economic Development
Chapter I. Arkansas Natural Resources Commission, Department of
Agriculture
Subchapter B. Water
Part 22. Water Plan Compliance Review Procedures

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

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

Subpart 1. General Provisions

15 CAR § 22-101. The Arkansas Water Plan.

(a) The Arkansas Natural Resources Commission is responsible for preparing and overseeing the Arkansas Water Plan ("the plan").

(b) The plan is:

(1) The state policy for the orderly development and management of the state's water and related land resources; and

(2) Prepared in the public interest of the entire state.

(c) All approved water and wastewater development projects shall coordinate the use of water resources within the:

(1) Region in which the project is located; and

(2) State as a whole.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-102. Definitions.

The following definitions shall apply to this part:

(1) "Applicant" means a political subdivision or state agency requesting water plan compliance approval;

(2) "Arkansas Water Plan" or "plan" means the comprehensive program for the orderly development and management of the state's water and related land resources;

(3) "Commission" means the Arkansas Natural Resources Commission;

(4) "Director" means the person appointed to administer the affairs of the Arkansas Natural Resources Commission;

(5) "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;

(6) "Municipality" means both Arkansas:

(A) Municipal corporations; and

(B) Consolidated municipal water improvement districts;

(7) "Political subdivision" means any county, municipality, district, or any agency, instrumentality, or function thereof of the State of Arkansas;

(8) "Property acquisition" means the annexation of any part of an assigned service area of a rural water service or municipality within the boundaries of an Arkansas municipality and is further described by Arkansas Code § 14-208-102;

(9) "Rural water service" means any entity under Arkansas law that is not owned by a municipality and is a:

(A) Water association;

(B) Water improvement district; or

(C) Water authority;

(10) "Service area" means either an area:

(A) That is provided water or wastewater service by a system; or

(B) 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;

(11)(A) "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.

(B) Reference to "water development project" within this part also includes wastewater development projects; and

(12) "Water plan approval", "water plan compliance", or "water plan certification" means authorization from the Arkansas Natural Resources Commission to construct, operate, manage, or maintain a water development project.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-103. 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 part shall include the following:

(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;

(6) Transfer of a service area currently receiving service from one (1) utility to another;

(7) Transfer of a service area not yet receiving service from a utility but included within another:

(A) Political subdivision's approved service area; or

(B) 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.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-104. Factors considered in compliance determination.

When determining whether a water development project should be approved for compliance with the Arkansas Water Plan, the Director of the Arkansas Natural Resources Commission 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.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-105. 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:

(1) Political subdivision or agency files a preliminary engineering report describing the project with the Arkansas Natural Resources Commission; and

(2) 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.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-106. Projects exempt from review.

The following projects are exempt from Arkansas Water Plan compliance review:

(1) Local drainage facilities for recreational developments of less than five (5) acres;

(2) Drainage facilities associated with street construction or improvements;

(3) Installation of new meters or connections from existing mains;

(4) 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

(5) Projects that do not meet the applicability requirements of 15 CAR § 22-103.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

Subpart 2. Application

15 CAR § 22-201. Fee.

The Arkansas Natural Resources Commission will collect an application fee of two hundred dollars (\$200) from any applicant proposing a project requiring water plan compliance certification.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-202. Application.

(a)(1) All applications for approval of a project pursuant to Arkansas Code § 15-22-503(e) shall be:

- (A) In writing; and
- (B) Signed by a representative of the applicant.

(2) The original application shall be filed with the Director of the Arkansas Natural Resources 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; and
- (8)(A) Political subdivision, agency, board, or commission that will have responsibility for constructing, operating, managing, or maintaining the project improvements.

(B) If more than one (1), then identify the responsibility of each.

(c) If an applicant meets any one (1) of these conditions: the utility has fewer than five hundred (500) meters or connections, the utility's average water demand is less

than sixty thousand gallons per day (60,000 gpd), or the utility's actual or National Pollutant Discharge Elimination System (NPDES) permitted flow is less than one hundred fifty thousand gallons per day (150,000 gpd), then the applicant must provide a:

- (1) List of all water or wastewater facilities within five (5) miles of the project boundaries;
- (2) Written statement confirming that applicant has consulted with all named utilities about the possibility of combining services; and
- (3) List of all industries and businesses that will use the facilities to be built by the project.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-203. Preliminary engineering report.

(a) The application shall be accompanied by a preliminary engineering report prepared by an engineer licensed by the state of Arkansas.

(b) The report shall contain the following:

- (1) Purpose of the project;
- (2) Location of the project or discharge;
- (3) General nature of improvements, facilities, dams, structures, pipelines, and other works constituting the project;
- (4) Benefits expected to result from completion of construction of the project;
- (5) Necessity for the project;
- (6) Feasibility of the project;
- (7) Applicant's most recent Department of Health Sanitary Survey or NPDES Permit;
- (8) Applicant's water source or receiving stream on the date of the application;
- (9) Source of water for the project;
- (10) Summary description of the project, including all alternatives considered;

(11) Estimated cost of each alternative, including the difference in operation and maintenance costs before and after the project;

(12) Location of any environmentally sensitive areas within the project area;

(13) Anticipated date of commencement of construction of the project, including dates of any phases of construction; and

(14) A list of all water or wastewater systems within a five-mile radius of the project boundaries.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-204. Geographic service area.

The applicant 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.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-205. 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 15 CAR § 22-202 if the APNRS filing:

(1) Contains the information required in 15 CAR § 22-202; and

(2) Is accompanied by a preliminary engineering report as required in 15 CAR § 22-203.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-206. Alternative filing — Other commission programs.

The filing of an application under 15 CAR pt. 2, 15 CAR pt. 20, or 15 CAR pt. 23 may be accepted in lieu of a filing under 15 CAR § 22-202 if the application:

- (1) Contains the information required in 15 CAR § 22-202; and
- (2) Is accompanied by a preliminary engineering report as required in 15 CAR § 22-203.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

Subpart 3. Notice of and Hearing on Application

15 CAR § 22-301. Procedure generally.

(a) Arkansas Natural Resources Commission staff shall review the application to ascertain:

- (1) The accuracy of the data contained in the application; and
- (2) Whether the project would comply with the Arkansas Water Plan.

(b) After completing its review, the commission staff shall:

- (1) Recommend the approval or disapproval of the application; and
- (2) State reasons for its recommendation in writing.

(c) After obtaining a recommendation from commission staff, the Director of the Arkansas Natural Resources Commission shall schedule a hearing on any completed application.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-302. Notice — Publication.

(a) The Director of the Arkansas Natural Resources Commission shall:

(1) Give the applicant and any other party who has requested notice ten (10) days' notice of the hearing on the application; and

(2) Publish notice of the hearing in a newspaper as required by Arkansas Code § 15-22-206.

(b) The Arkansas Natural Resources Commission shall pay the cost of giving and publishing notice.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-303. 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 Arkansas Natural Resources Commission staff's preliminary recommendation;
- (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:
 - (A) Respond to the application or to the commission staff's recommendation; and
 - (B) Appear at the hearing in person or by counsel and present evidence and oral and written argument.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-304. Notification of nearby public water systems.

(a)(1) When a project or portion of a project may physically or economically affect public water or wastewater systems within five (5) miles of any portion of the proposed project, the applicant shall notify all systems within five (5) miles of the project area by:

- (A) Certified mail; or
- (B) Personal delivery.

(2) The notification shall consist of the application submitted to the Director of the Arkansas Natural Resources Commission, along with all attachments thereto.

(b) Application shall provide notice prior to the hearing described in this subpart.

(c)(1) Prior to a compliance determination, the applicant shall certify to the director that either:

(A) There are no public water systems for which notification is required;

or

(B) Notification was given to named systems as required by this section.

(2) The applicant may be required to submit additional information such as:

(A) The domestic return receipt;

(B) An affidavit; or

(C) Other proof of notice.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-305. Hearing officer.

The Director of the Arkansas Natural Resources Commission or his or her designee shall:

(1) Preside at hearings on applications; and

(2) Have the powers granted presiding officers by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

Subpart 4. Review of Master Plans

15 CAR § 22-401. Procedures generally.

(a) The 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 Arkansas Natural Resources 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 (10) years following the date of the final determination.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-402. Effect of approval.

(a) If the Director of the Arkansas Natural Resources Commission 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 Arkansas Natural Resources 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.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-403. Additional reporting requirements.

(a) As each project listed in a master plan is developed for construction, the applicant shall notify the Arkansas Natural Resources 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.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

Subpart 5. Review of Proposed Transfer of Service Area

15 CAR § 22-501. 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 Arkansas Natural Resources Commission, unless:

- (1) Approval for such activity has been given by the commission; and
- (2) The new provider has received approval under the Arkansas Water Plan, if applicable.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-502. Conditional approval based on partial payment to the commission.

(a) As a condition of its approval, the Arkansas Natural Resources 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.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-503. Approval process.

(a) Upon agreement of the providers exchanging territory, the providers shall submit a written proposal to the Director of the Arkansas Natural Resources Commission for consideration.

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

(c) The 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.

(d) If the 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:

- (A) Existing indebtedness; and
- (B) 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 Arkansas Natural Resources Commission.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

Subpart 6. Review of Acquisition of Properties, Facilities, or Customers Belonging to Another System

15 CAR § 22-601. Procedures generally.

(a)(1) Prior to acquiring rural water or wastewater service properties, facilities, and customers pursuant to Arkansas Code § 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 (1) doing the acquiring and the one (1) being partially or wholly acquired, shall submit a written proposal using the factors in 15 CAR § 22-503(d) to the Director of the Arkansas Natural Resources Commission, addressing:

(1) 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

(2) 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 15 CAR § 22-104 and § 22-503(d).

(d) The commission shall:

(1) Approve the application under the plan if it determines the requirements of 15 CAR § 22-503 are satisfied;

(2) Deny the application under the Arkansas Water Plan if it determines the requirements of 15 CAR § 22-503 are not satisfied; or

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

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

Subpart 7. Compliance Determination

15 CAR § 22-701. Compliance criteria.

The Director of the Arkansas Natural Resources Commission shall not approve any application unless he or she determines that the project:

(1) Complies with and implements the goals and objectives of the Arkansas Water Plan; and

(2) Adequately coordinates the use of water resources within the region in which the project is located and within the state as a whole.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-702. Determination of compliance.

(a) The Director of the Arkansas Natural Resources Commission may approve all or part of an application.

(b) An applicant may refile at any time any application, or part thereof, that has been disapproved if the director determines that circumstances surrounding the original disapproval have significantly changed to allow reconsideration.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-703. Notice of decision.

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

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

15 CAR § 22-704. Incorporation into Arkansas Water Plan.

Upon approval of the application, the:

- (1) Project shall constitute an amendment of the Arkansas Water Plan; and
- (2) Arkansas Water Plan shall be deemed amended accordingly.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.

Subpart 8. Review of Decision

15 CAR § 22-801. Request for review by commission.

(a) Any decision of the Director of the Arkansas Natural Resources Commission may be reviewed by the Arkansas Natural Resources Commission pursuant to the

procedure set out in Subpart 5 of Rules of Organization and General Operation of the Arkansas Natural Resources Commission, 15 CAR pt. 1.

(b)(1) 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, Arkansas Code § 25-15-201 et seq.

(2) The commission shall:

(A) Pay the costs of recording such hearings; and

(B) 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.

Authority. Arkansas Code §§ 15-22-503, 15-22-505.