

ARKANSAS WATER PLAN EXECUTIVE SUMMARY
PUBLIC REVIEW DRAFT COMMENTS

Date: 10-24-14

Page Number: 1, 2 & 6

Location on Page: On p. 1, item 1, left column

Comment: Item # 1 on p. 1 contains the first mention in the document of “a groundwater gap.” There is no explanation or definition of the term “groundwater gap” until a reference in the last sentence of the first paragraph on p. 2 & a definition/explanation on p. 6 @ 2.4., the first bullet point. For the uninformed reader, the first reference to the term without definition or explanation could be confusing. Using the p. 6 definition at the first mention of “groundwater gap” on p. 1 would be helpful to the reader’s understanding & might alleviate potential confusion.

Also, note that on p. 2 (see above) the reference to what I assume to be the groundwater gap is stated as 7 million acre feet of water demand over water supply while on p. 6 the reference to the gap is stated as “approximately 8.2 million AFY.” Perhaps I am misreading the two references as inconsistent, but I wanted to point out the potential inconsistency.

You may contact me about my comments.

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Date: 10-24-14

Page Number: 5

Location on Page: Right column, 3rd bullet point, under 2.1 Demand Projections

Comment: In the document there are several references to the “Arkansas Method,” this, I believe, being the first. For clarity, should a brief, summary of the Arkansas Method be included at some point (perhaps here)? I recognize that may not be possible.

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Date: 10-24-14

Page Number: p. 6

Location on Page: Right column, first bullet point under 2.4 Gap Analysis & right column first bullet point under 2.5 Water and Wastewater Infrastructure (& at other points in the document re infrastructure costs & gaps)

Comment: Obviously funding infrastructure repair & improvements is a major challenge to implementation of the Water Plan. Is there any possibility the plan could be more specific as to how the infrastructure repair & improvements will be funded? Seeking specific legislation? Grants?, etc.

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Date: 10-24-14

Page Number: p. 13

Location on Page: Right column, Item 2 under Implementation Plan

Comment: Re the ANRC proposing statutory changes to eliminate the 25% limitation on nonriparian withdrawals. Should note be made here or at another appropriate location that the absolute limitation on nonriparian withdrawals is set by case law. That is, that water cannot be transferred off the riparian owner's land (or at the most outside the watershed) if another riparian is harmed due to there being insufficient water in the stream to satisfy the needs of that other riparian. A statutory change to allow greater transfers of water to nonriparians probably would have to protect the rights of riparians under those circumstances. *See, Harrell v. City of Conway*, 224 Ark. 100, 271 S.W.2d 924 (1954) The Arkansas Supreme Court has indicated that, at least under some circumstances, the rights of riparians are vested rights that could not be constitutionally negated by either the court or, presumably, the legislature. *See, e.g., Harris v. Brooks*, 225 Ark. 436, 283 S.W.2d 129 (1955).

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Date: 10-24-14

Page Number: 18

Location on Page: Right column, item 1 under Recommendations

Comment: The Recommendation is that:

“Public entities operating water and wastewater infrastructure or flood control and drainage projects should develop sustainability plans that evaluate”

Should there be a suggestion of possible mechanisms for insuring that the public entities will develop sustainability plans? For instance, that the ANRC pursue legislation or regulations requiring development of the sustainability plans?

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Page Number: 23

Location on Page: Right column, item # 1

Comment: Could a sub item “e.” be added to the list that the Science Technological Work Group consider proposing incentives for agricultural users to more accurately report water use?

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Date: 10-24-14

Page Number: 35

Location on Page: Left column, Discussion of 4.2 2014 AWP Implementation

Comment: For both the implementation & ongoing review & update of the Water Plan should a named position or entity be created either within ANRC (or otherwise) charged with seeing to the implementation, review, & update? Of course, the person or entity would report to the Executive Director of the ANRC.

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Page Number: 35

Location on Page: Left column, 2nd paragraph under 4.2 2014 AWP Implementation

Comment: Would a structural mechanism provided by legislation or other authority be advisable if the ANRC, ADEQ, AGFC, Agriculture, & ADH are to form a water policy work group as described? That is, would the likelihood that the work group will be formed & become operational be enhanced if there is a structural mechanism provided?

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Page Number: 36

Location on Page: Left column, 2nd paragraph under 4.2.2 Scheduled AWP Updates

Comment: Should the ANRC five year updates of the Water Plan be required by legislation or regulation?

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Page Number: 46

Location on Page: Left column, first paragraph, first sentence under 5.4.1 Legal Framework

Comment: The first sentence of the paragraph states:

“The legal framework for management and use of water resources in the State is based on State and federal case law, and rules and regulations enacted by State and federal agencies.”

Should state and federal statutes be added to the components of the legal framework? That is, statutes in addition to case law & rules & regulations? Perhaps the intention is that case law establishes the basic framework while statutes enhance the framework & as a result are not mentioned?

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Page Number: 46

Location on Page: Left column, 2nd paragraph, last sentence

Comment: Under reasonable use riparian rights theory a riparian doesn't have the right to the "free and unrestricted use of the stream flow" as stated in the sentence, but has the right to the flow of the stream not unreasonably diminished by other riparian owners. That is, other riparians may restrict the flow of the stream if their restriction is not unreasonable.

In addition to the right to receive the reasonable quantity of the flow of the stream, a riparian also has the right to the flow of the stream not unreasonably diminished in quality (in addition to quantity). See *Harrell v. City of Conway*, 224 Ark. 100, 271 S.W.2d 924 (1954); *Harris v. Brooks*, 225 Ark. 436, 283 S.W.2d 129 (1955)

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Location on Page: Left column, 3rd paragraph, 2nd sentence

Comment: By placing within parenthesis “(i.e., interbasin transfer)” immediately following “watershed,” the sentence appears to equate watersheds with basins. The two terms are not equivalent, watersheds may exist within basins. In addition, strict traditional riparian doctrine may prohibit transport of water beyond the riparian tract, not outside the watershed.

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Location on Page: Right column, last sentence, 1st paragraph under Surface Water Quality

Comment: This comment may be due to my misreading of the sentence - The sentence is:

“Changes in water quality since the 1990 AWP are identified through discussion of historical biennial water quality assessments conducted by ADEQ (as required by Section 305(b) of the CWA) and analysis of water quality data.”

Are the changes in water quality since the 1990 as being identified through” a reference to material in the 2014 Water Plan document? If so, where?

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