

BEFORE THE ARKANSAS NATURAL RESOURCES COMMISSION

**In the matter of: Shaw Community Water and Sewer
Public Facilities Board Application for
Water Plan Compliance**

WPC 2005 02 01-001

On December 13, 2005, the Arkansas Natural Resources Commission convened to hear an appeal by the Shaw Community Water and Sewer Public Facilities Board (Shaw PFB) of the Executive Director's Final Determination, Arkansas Water Plan Compliance, in the matter of the Board's Application for Water Plan Compliance. Commissioners Ann Cash, Corbet Lamkin, David Feilke, Robert White, Daniel Bryant, and Alec Farmer were present, and Chairman Robert Newell presided. The Shaw PFB was present by its attorney, Dustin Dyer, and the Commission's staff was represented by Edward Swaim, General Counsel. Arguments were heard by the Commission.

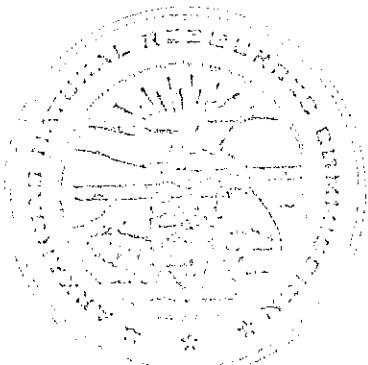
Findings of Fact and Conclusions of Law


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 appeal was properly taken under the terms of Titles I and VI of the Commission's Rules and the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201, *et seq.*
3. The record of the Executive Director's decision was provided to the commissioners and to the Shaw PFB's attorney 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.

Order

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

BY ORDER OF THE COMMISSION, the decision having been made on December 13, 2005, is now entered for that day.




Ann Cash
Chairman

BEFORE THE ARKANSAS NATURAL RESOURCES COMMISSION

IN THE MATTER OF: Shaw Community Water and Sewer Public Facilities Board
WPC# 2005 02 01 - 001

FINAL DETERMINATION
ARKANSAS WATER PLAN COMPLIANCE

This application was considered for Water Plan Compliance pursuant to Arkansas Code Annotated §15-22-503 (1993) and the Arkansas Natural Resources Commission's *Rules For Water Development Project Compliance With the Arkansas Water Plan*. Based upon the record of this matter, I, acting as referee for the Arkansas Natural Resources Commission, do make the following findings of fact and conclusions of law:

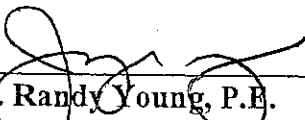
1. The Applicant is the Shaw Community Water and Sewer Public Facilities Board of Saline County, Arkansas.
2. The application was filed on February 1, 2005.
3. Notice of Hearing was published on August 10, 2005, in the *Benton Courier*, a paper of general circulation in Saline County, Arkansas.
4. A hearing was held on August 25, 2005 at 1:00 p.m., in the Gene Moss Building of Tyndall Park at 913 East Sevier Street, Benton, Arkansas.
5. Mrs. Nina Huey and Mike Bolin, P.E. represented the Applicant at the hearing. The hearing was well attended by Shaw residents and others. Testimony and argument were heard during the hearing, and written comment and argument were received at the hearing and by mail during the comment period. The entire record was considered in reaching this Final Determination.
6. This project involves the construction of a distribution system to serve the Shaw Community. Water for the system would be supplied by the City of Benton.
7. I have reviewed the application and record and hereby determine that the project would not implement the goals and objectives of the Arkansas Water Plan because it would not coordinate the efficient use of water resources in the project vicinity and surrounding region.

8. Specific findings concerning the project are:

- (A) The Town of Tull has served the area encompassed by the Applicant's proposed project with water service since the late 1960s. To construct the project, Tull borrowed significant amounts of money from the United States Department of Agriculture (USDA). Since that time, Tull has borrowed additional funds from USDA and the Arkansas Natural Resources Commission for further improvements to the system.
- (B) The customers in the Shaw community are dissatisfied that they are not directly represented on the Tull Town Council and as a result formed a Public Facilities Board to construct this project. There is no remedy to the lack of representation that the Commission can provide under the Arkansas Water Plan.
- (C) The proposed water distribution system would be constructed in an area already served by the Tull water system. The Tull water system has demonstrated it has the managerial, financial and operational abilities to run a water system. This duplication of services runs counter to the Arkansas Water Plan.
- (D) If a duplicate system were constructed, Tull would have to be compensated for its infrastructure and debt service attributable to the area the Applicant would serve. Federal law (7 U.S.C. 1926(b)) and state law (A.C.A. § 15-22-223) prohibit the construction of a project to serve Tull's customers without repaying an equitable portion of Tull's outstanding debt.
- (E) Because this project involves adding new customers, the Applicant had to notify every water system within five miles of the proposed project. The Applicant had to provide information on the project and on the hearing date and time. The Applicant notified four water systems: Bauxite, Benton, Sardis Public Water Authority and Tull. The Applicant notified each by certified mail. Tull made comments and gave arguments at the hearing and in writing.

Based upon the above findings and recommendations regarding this proposal, it is determined that this water development project does not meet the objectives of the Arkansas Water Plan.

This determination entered the 19th day of September, 2005.



J. Randy Young, P.E.
Executive Director

ARKANSAS NATURAL RESOURCES COMMISSION
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