

IN THE MATTER OF THE APPLICATION
OF SALINE COUNTY RURAL DEVELOPMENT
AUTHORITY FOR RULEMAKING

1. History

On April 7, 1993, the Saline County Rural Development Authority ("RDA") filed a written request with the Arkansas Pollution Control and Ecology Commission ("Commission") seeking the initiation of a rulemaking proceeding. Any person is permitted to file a request to issue, amend, or repeal any rule or regulation under Regulation No. 8, Part II, Section 3.

The RDA proposes to construct a water supply reservoir on the North Fork of the Saline River in Saline County, Arkansas (the "North Fork") to be known as Lake Avilla. The first step in the RDA's permitting process is to obtain a Section 401 Certification from the Arkansas Department of Pollution Control and Ecology ("Department"). The Commission's Water Quality Standards (Regulation No. 2, as amended) currently contains language that designates the uses of the North Fork. Due to these designated uses, the construction of a dam on the North Fork is prohibited. The RDA proposes to amend Regulation No. 2 so as to change the designated uses which would allow the Department to issue the Section 401 Certification.

On June 4, 1993, the RDA filed a two volume application for rulemaking with the Commission. The RDA plans to construct an

earth fill dam on the North Fork which would create Lake Avilla. This lake will provide a raw water source for Saline County to meet projected county demand through the year 2050. The lake will have a storage capacity of 83,000 acre-feet and an annual firm yield of 30 million gallons per day (MGD). The inundation zone will be surrounded by a 300-foot buffer zone to protect water quality. Within the buffer zone, development would be limited to recreational facilities, such as hiking trails, picnic areas and boat ramps. RDA, Volume 2, Environmental Assessment, p. S-1.

On June 21, 1993, the Department submitted its position to the Commission's Regulations Committee. After reviewing the RDA's documentation, the Department concluded that the present water quality standards were appropriate, were promulgated in compliance with applicable federal and state regulations, and that adequate justification had not been submitted to remove or modify the designated uses applicable to the North Fork. ADPC&E Staff Position Concerning RDA Application For Rulemaking, June 21, 1993.

On June 25, 1993, the Regulations Committee recommended to the Commission that it had the authority to grant the RDA's request for a rulemaking proceeding, and the request met the minimum requirements set forth in Regulation No. 8, Part II, Section 3. Pursuant to Minute Order No. 93-92, the Commission initiated this rulemaking proceeding.

On June 25, 1993, RDA submitted its proposed amendatory language. M. Samuel Jones' letter, June 25, 1993. The proposed amendments are:

Section 4 (E): Physical Alternation of Habitat-Significant physical alterations of the habitat within a waterbody which result in the elimination of the fishable/swimmable use are not allowed. Also, such alterations resulting in the elimination of any designated use in extraordinary resource waters, ecologically sensitive waterbodies or natural and scenic waterways are not allowed. In other waters where significant physical alterations of the habitat within a waterbody are proposed, the Department must be assured that no significant degradation of any existing use or water quality necessary to protect that use will occur. When it is determined that the potential exists for such degradation, the Department may require an evaluation of all practicable alternatives to the project including: an environmental assessment of the impacts of each socio-economic evaluation of the project in the local area. The Commission may, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's Continuing Planning Process, allow the designated uses to be altered from one subcategory to another subcategory to provide for important economic or social benefits to the area of concern, provided that existing uses are maintained and protected. The Arkansas Soil and Water Conservation Commission has responsibility for the regulation of the withdrawal of water from streams and reservoirs, and such withdrawals are not within the jurisdiction of this regulation. As a minimum, the following information should be submitted to the Department Director before initiation of the public participation process.

(1) Economic analysis of the project impact on the local area;

(2) An economic and engineering analysis of all alternatives to the proposed physical alternation; and

(3) Other provisions outlined in the "State Continuing Planning Process" (see Appendix B).

Any waterbody for which such alterations are approved will be so listed in Appendix A with the appropriate designated uses.

Sections 3(C)(2): maintenance of natural flow regime except for alterations permitted under Section 4 (E).

Ouachita Mountain Ecoregion

Extraordinary Resource Waters.

Saline River-entire segment including North, Alum, Middle and South Forks and Proposed Lake Avilla.

Ecologically Sensitive Water Bodies.

Saline River, including Alum, Middle, North (except proposed Lake Avilla) and South Forks and Ten Mile Creek-location of Endemic Ouachita Madtom and threatened Arkansas Fatmucket Mussel (except South Fork and Ten Mile Creek).

(New Language)

Public Water Supply: proposed Lake Avilla. (Lake Avilla represents a subcategory of use designated for the North Fork of the Saline River and this use, a public drinking water supply, represents a more stringent use than the other swimmable and fishable uses designated for the North Fork).

On July 28, 1993, the Department published notice of the three public hearings to be held on September 13, 1993 in Warren; September 16, 1993 in Benton; and September 20, 1993 in Sheridan, Arkansas. The record reflects that approximately 39 persons made oral comments at Warren; 63 persons made oral comments at Benton; and 36 persons made oral comments at Sheridan.

The period for submitting written comments began on July 28, 1993 and concluded on September 30, 1993. Written comments were also submitted prior to and after the period described above. The Commission received approximately 124 written comments and over 376 cards concerning the proposed amendments.

On October 22, 1993, the Commission directed the Department to prepare a summary of the comments received and to provide the summary to the Commission by November 12, 1993. The Commission also scheduled a meeting for November 19, 1993, to ask clarifying questions and to vote on the RDA's proposed amendments to Regulation No. 2.

On November 12, 1993, the Department issued its Responsiveness Summary For Proposed Changes to Regulation No. 2 to Accommodate Construction of Lake Avilla on the North Fork of the Saline River ("Responsiveness Summary").

On November 17, 1993, the Regulations Committee met and asked clarifying questions of the RDA, Department, and other persons who submitted comments on the proposed amendments.

At its regularly scheduled monthly meeting on November 19, 1993, the Commission considered the RDA's request to amend Regulation No. 2. The Commission asked clarifying questions of the RDA's legal counsel and its expert witnesses; the Department's legal counsel and its staff members; and of other persons submitting comments on the record.

2. Jurisdiction

The Commission has the power and duty to adopt, modify, or repeal rules and regulations implementing or effectuating the powers and duties of the department and the commission. The Commission has been granted the authority to prescribe rules and regulations concerning water quality standards. Ark. Code Ann. §8-4-202(a) and (b)(3). Pursuant to law, any person has the right to petition the Commission for the issuance, amendment, or repeal of any rule or regulation. Ark. Code Ann. §8-4-202(c). Therefore, the Commission has jurisdiction over this rulemaking proceeding.

3. Clean Water Act and Regulations

The Commission is guided by the requirements of the Federal Water Pollution Control Act or the Clean Water Act (33 USCS §1251 et seq), and the Arkansas Water and Air Pollution Control Act (Ark. Code Ann. §8-4-101 et. seq). The objective of the Clean Water Act is:

... to restore and maintain the chemical physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act:

2. it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the waters be achieved by July 1, 1983. 33 USCS §1251(a)(2).

The Clean Water Act requires each state to enact water quality standards which are to be approved by the Administrator of the Environmental Protection Agency ("EPA"). 33 USCS §1313. Regulation No. 2, Section 1(A) establishes water quality standards for all surface waters in Arkansas. This regulation was last amended and adopted in October, 1991 and it states in part:

It is the purpose of these regulations to preserve and protect the quality of this water so that it shall be reasonably available for all beneficial uses and thus promote the social welfare and economic well-being of the people of the State. It is further the purpose of these regulations to designate the uses for which various waters of the State shall be maintained and protected; to prescribe the water quality standards required to sustain the designated uses; and to prescribe regulations necessary for implementing, achieving and maintaining the prescribed water quality. Regulation No. 2, Section 1(B).

Regulation No. 2, Section 2, defines the terms "designated uses" and "existing uses" as follows:

Designated Uses: Those uses specified in water quality standards for each waterbody or stream segment whether or not they are being attained.

Existing Uses: Those uses listed in Section 303 (c)(2) of the Act (i.e., public water supplies, propagation of fish and wildlife, recreational uses, agricultural and industrial water supplies and navigation) which were actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the water quality standards.

Section 4(A) of Regulation No. 2 provides that:

"Substantially all the waters of the State have been designated for specific uses as shown in Appendix A." The designated uses for which this Commission has found applicable to the North Fork of the Saline River are: Extraordinary Resource Waters and Ecologically Sensitive Waterbody.

These two designated uses are defined in Section 4(C) of Regulation No. 2, as follows:

Extraordinary Resource Waters - This beneficial use is a combination of the chemical, physical and biological characteristics of a waterbody and its watershed which is characterized by scenic beauty, aesthetics, scientific values, broad scope recreation potential and intangible social values.

Ecologically Sensitive Waterbody - This beneficial use identifies segments known to provide habitat within the existing range of threatened, endangered or endemic species of aquatic or semi-aquatic life forms.

The designated uses of the North Fork prohibit significant physical alterations to the stream habitat such as construction of a dam. Regulation No. 2, Section 4(E). To avoid this prohibition, the RDA seeks a change in the designated uses of the North Fork in order to construct the dam.

Federal regulations provide that each state must specify the appropriate water uses to be achieved and protected as stated in 40 CFR §131.10(a):

The classification of the waters of the State must take into consideration the use and value of water for public water supplies,

protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation.

States are prohibited from removing a designated use if the use is found to be an existing use. This prohibition is found in 40 CFR §131.10(h) which states:

States may not remove designated uses if:

- (1) They are existing uses, as defined in §131.3, unless a use requiring more stringent criteria is added; or ...

However, states are permitted to remove a designated use under the criteria set forth in 40 CFR §131.10(g) which states:

States may remove a designated use which is not an existing use, as defined in §131.3, or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible because:

- (1) Naturally occurring pollutant concentrations prevent the attainment of the use; or
- (2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or
- (3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or
- (4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in

a way that would result in the attainment of the use; or

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

(6) Controls more stringent than those required by sections 301(b) and 305 of the Act would result in substantial and wide spread economic and social impact. Emphasis theirs).

If a designated use which is not an existing use is to be removed, then Regulation No. 2, Section 4(D)(1) requires a "Use Attainability Analysis" to be performed to justify:

(a) removing a fishable/swimmable designated use, which is not an existing use, from a waterbody; or

(b) to identify a subcategory of a fishable/swimmable use which requires less stringent criteria.

If the Commission finds that a designated use is not an existing use, then it is necessary for the RDA to demonstrate that a designated use is not attainable. It must first show that one or more of the criteria set forth in 40 CFR §131.10(g) has been met. Next, it would be required to perform a "Use Attainability Analysis" under Section 4(D) of Regulation No. 2 or demonstrate that the requirements of Section 4(G) of Regulation No. 2 have been met. For the reasons set out below, it is not necessary for the Commission to determine whether the RDA met its burden of proving that a designated use is not attainable.

4. Discussion

1. The primary issue to be decided is whether the designated uses of the North Fork are existing uses.

The RDA contends that there is no "existing use" issue in this case. It points out that the definition of "Existing Uses" does not include the terms extraordinary water resources or ecologically sensitive waterbody. Since these designations are not part of the definition, they are not existing uses. The RDA concludes that the Commission does not need to concern itself with arguments about whether these designated uses constitute existing uses. M. Samuel Jones's letter, September 10, 1993, pp. 2 and 3.

The RDA supports its position by relying upon a Responsiveness Summary to the 1990 revisions of Regulation No. 2 which was prepared by the Department. The material quoted by the RDA from the Responsiveness Summary is:

The Department has since 1987 repeatedly stated to EPA, the Commission, and the public our position in this matter. The question of what is an existing use has never been answered by Congress or EPA. The Department began its search for the definition of existing uses during the 1987 triennial revision process by researching the Act and ensuing regulations and guidelines, but was unable to discover any such definition. We concluded that it was the states' discretion to define this term and we promptly did so by adding a definition of "existing use" to the glossary. In our definition we quoted directly from Section 303 c (2) (B) of the Act to describe those uses which would be considered to be eligible to be "existing uses" (ie; public water supplies, propagation

of fish and wildlife, recreational uses, agricultural and industrial water supplies, and navigation). We purposely did not list extraordinary, scenic or ecologically sensitive streams as an existing use. M. Samuel Jones letter, September 10, 1993, pp. 2 and 3.

The position of the RDA is that the only existing uses are the uses for public water supplies, propagation of fish and wildlife, recreational, agricultural and industrial water supplies, and navigation. In analyzing these existing uses with respect to the North Fork, the RDA states that the North Fork has not been designated for navigation and the other existing uses will be enhanced, not degraded. M. Samuel Jones' letter, September 10, 1993, pp 2 and 3.

The definition of "Existing Uses" specifically incorporates into it Section 303(c)(2) of the Clean Water Act. The pertinent language is:

Such standards shall be established taking into consideration their use and value for public water supplies, propagating of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation. (Emphasis added).
33 USCS §1313(c)(2)(A)(Supp.).

The term i.e. is used in the definition of "Existing Uses". It is the abbreviation for the Latin term id est and means "that is". In United States v. King, 849 F.2d 1259, 1260(9th Cir.1988), the Court quoted the following concerning the abbreviation of i.e.:

"i.e. ... introduces another way ... of putting what has been already said."

The term i.e. is not meant, as the RDA argues, to limit the language of Section 303(c)(2). It only restates a part of the Act. The words "and other purposes" contained in Section 303(c)(2) have not been eliminated in the Commission's definition of "Existing Uses." Due to this broad language, the Commission has the discretion to designate appropriate water uses to be achieved and protected. In classifying waters of the state, the Commission takes into consideration the use and value of water for purposes other than those identified in the definition. The phrase "and other purposes" may include taking into consideration the existence of habitat which supports rare or endemic species. It may also include taking into consideration such factors as scenic beauty and recreational potential. These other existing uses have been designated by this Commission as an ecologically sensitive waterbody and extraordinary water resource.

The Commission finds that it has the discretion to designate existing uses other than those specifically identified in the definition of "Existing Uses". Therefore, the RDA's argument that the Commission is limited by the specific uses contained in our definition is without merit.

The RDA next contends that the Ecologically Sensitive Waterbody designated use should be removed because it can no longer be sustained. RDA, Vol. 1., Legal Issues, p. 1. This designated use is based upon the presence of the endemic Ouachita

Madtom ("Madtom") and the threatened Arkansas Fatmucket Mussel ("Fatmucket").

The RDA's Environmental Assessment ("EA") addresses both the madtom and fatmucket. The Ouachita madtom is a federal Category 2 species and an Arkansas endemic species found in the North Fork, Dog Creek and Caney Creek. It is the only fish species with state or federal status collected in the Lake Avilla project area. EA at 6-17, 6-18. A Category 2 species, as defined by the United States Fish and Wildlife Service ("USFWS"), means that further biological research and field study is required to determine if the madtom should be listed as threatened or endangered. This species is ranked as very rare in Arkansas. EA at 6-18.

The Lake Avilla project will impact the madtom habitat along the North Fork within the inundation zone. The madtom inhabits the North Fork of the Saline River, as well as upstream and downstream of the inundation zone. EA at 7-16.

On October 22, 1992, the USFWS issued a Status Review of the madtom in which it stated that it was recommending changing the status of the Ouachita Madtom to Category 3 C. A Category 3 C species is one for which enough information is available to conclude that a proposal to include the species under the Endangered Species Act ("ESA") protection is not warranted at this time. USFWS Letter, October 22, 1992.

The RDA concludes that the presence of the madtom as a species endemic to the North Fork can no longer be justified and that the ecologically sensitive waterbody designation should be removed. RDA, Vol. 1, Application, p. 4.

The Arkansas Fatmucket Mussel exists in the Ouachita River system in the Saline, Ouachita and Caddo River basin. In the Saline River basin, it is found in the North Fork, the Middle Fork, and the Alum Fork. It inhabits small to medium sized rivers. EA at 6-20 and 6-21. The fatmucket will be extirpated if Lake Avilla is constructed and it is not relocated. EA at 7-17. It is the RDA' position that based on a non-jeopardy opinion written by the USFWS, that construction of the project will not adversely affect the status of the fatmucket. RDA, Vol. 1, Application, p. 3. In addition, the RDA proposes to fund a life cycle study of the fatmucket to determine the yet unknown fish host of the fatmucket.

Dr. John Harris is regarded as an expert on the fatmucket and the fatmucket study was performed principally by him for the RDA. Dr. Harris concluded that until the fish host is known, a comprehensive recovery plan cannot be developed. RDA, Vol. 1, Application, pp. 2 and 3. At the Commission's November 19, 1993 meeting, Dr. Harris stated that the project would eliminate the fatmucket in the nine mile inundation zone and will impact the fatmucket both upstream and downstream from the proposed lake.

He also stated that the jury was still out with respect to the successful relocation of the fatmucket.

The Arkansas Wildlife Federation ("AWF") and the Ozark Society ("Society") filed a joint letter by Samuel E. Ledbetter on September 30, 1993 and the Society also filed a separate letter by Stewart Noland on September 30, 1993. The AWF and Society contend that the designated use of Ecologically Sensitive Waterbody is based on the presence of a fish, the endemic Ouachita Madtom, and a shellfish, the threatened Arkansas Fatmucket Mussel. They state that it is undisputed that the North Fork provides habitat for these rare species and that any physical alterations as proposed by the RDA would result in the removal of this designated use which depends on the maintenance of the physical habitat necessary to support these two fish species. Therefore, this use is being attained.

Samuel Ledbetter letter, September 30, 1993, p. 3.

The Society's comments state that the designated use of ecologically sensitive waterbody is an existing use based on the facts which show the North Fork provides habitat for threatened and endemic species. "Consequently, under the criteria of the federal regulation, these designated uses that are existing uses may not be removed." Stewart Noland letter, September 30, 1993, pp. 4 and 5.

The AWF and Society also dispute the RDA's claim that the USFWS found the project will not have a substantial impact on the

fatmucket. Samuel Ledbetter letter, September 30, 1993, p. 8. The USFWS, in a letter dated February 4, 1993, states that the project would result in a significant adverse impact to the fatmucket. RDA, Vol. 2, USFWS letter of February 4, 1993.

The USFWS appeared at a public hearing and stated that its purpose is to conserve threatened and endangered species and the ecosystems upon which they depend. The USFWS is opposed to the project because of a loss of high quality free flowing stream habitat, and the adverse impacts to the threatened fatmucket. Curtis James, public comments, September 16, 1993.

The Department states that even if the two species are found elsewhere, they are still located in a very limited area. The fact that these species exist in the project area justifies the designation of the North Fork as an Ecologically Sensitive Waterbody. The Department concludes that the madtom will be eliminated from a major part of the North Fork by inundation. The fatmucket will be lost within and below the lake. It also points out another important factor which is, if the unknown host fish is eliminated from the stream above the lake, the mussel population will also be eliminated from this area.

Responsiveness Summary.

The Environmental Protection Agency ("EPA") submitted comments on the proposed project. It stated that the North Fork is currently designated as an ecologically sensitive waterbody due to the existence of the endemic Ouachita madtom and the

threatened Arkansas fatmucket mussel. The EPA states: "This ecologically sensitive designation is an existing use because those species in fact inhabit the river." The EPA also said: "The proposed revision does not provide for the continued use of the river for the madtom and fatmucket and according to the EPA, this appears inconsistent with EPA's regulatory requirements." EPA letter, September 7, 1993, p. 1.

The RDA also contends that the Extraordinary Resource Waters designation should be removed from the North Fork. It argues that the practices of timber clear-cutting, animal grazing and watering, agricultural practices, and non-point sources of pollution have lowered general water quality of the North Fork to levels which barely sustain its designations as swimmable and fishable. It claims neither the Department nor any other state or local agency possesses any real land use enforcement powers regarding activities along and about the North Fork. The RDA concludes that these practices will complete the total degradation of the North Fork. However, the RDA states that it has powers under Arkansas law to institute and maintain land use controls as part of a comprehensive plan to develop and manage a public water supply reservoir. RDA, Vol. 1, Application, pp. 6 and 7.

The RDA states that the stream as a whole is now much shallower than it was several decades ago. The siltation is the

product of land clearing and timber cutting as well as dredging and gravel washing operations. RDA, Vol. 1, Application p. 8.

The RDA argues that extensive bank scouring, cave-ins and near stream timber toppling has resulted in the intensified velocity and volume of water movement through the streambed after significant rainfall. This erosion and scouring has destroyed the natural gravel bars and reduced the North Fork to a series of shallow pools with low water quality. These factors have degraded the aesthetics qualities of the North Fork. RDA, Vol. 1, Application, p. 9.

The AWF and Society state that the Extraordinary Resource Water designation is being attained on the North Fork which is all that is required by the Clean Water Act. This is supported by comments from persons familiar with the river. Samuel Ledbetter letter September 30, 1993, pp. 3 and 4. The photographs of the North Fork provided by Beth Brickell at the public hearing on September 16, 1993 reflects the scenic beauty and water levels in the North Fork at various times of the year. The Society states that many comments have been filed indicating that the North Fork has scenic beauty, aesthetics, recreational potential, scientific value and intangible social values. It is the last major system in the State without impoundments and its free-flowing stream is rare. The Society points out that the RDA argues that Lake Avilla will provide a different quality of these values, but the Society also points out that the RDA does not

dispute they exist presently. The Society contends the facts show that the designated use of Extraordinary Resource Waters exists. Stewart Noland letter September 30, 1993, p. 4.

The Society disputes the RDA's contention that land use controls are the only method of preventing future degradation of the North Fork's water quality. The Society states that the Clean Water Act provides for the implementation of best management practices and that the Department has implemented these practices. These best management practices will prevent the degradation of water quality on the North Fork. Noland letter, p. 5.

The Department states that the Extraordinary Resource Water designation is still appropriate and it does not agree that any degradation justifies removal of the designated use. Responsiveness Summary.

The Commission has afforded two levels of protection to the North Fork of the Saline River which are: Ecologically Sensitive Waterbody and Extraordinary Resource Waters. The Clean Water Act, federal regulations and Regulation No. 2 requires that these uses be protected if they are being achieved.

The Commission designated the North Fork as an Ecologically Sensitive Waterbody due to the presence of two species, the Ouachita Madtom and Arkansas Fatmucket Mussel. These designations are reviewed by the Commission every three years and the designation has been maintained because the North Fork

provides habitat for the threatened Arkansas Fatmucket Mussel and the endemic Ouachita Madtom. It is undisputed by the parties that the madtom and fatmucket exist in the North Fork and it is clear from the record evidence that the physical habitat for these species will be significantly impacted by the construction of a dam on the North Fork. The Commission finds that this use is being achieved.

The North Fork is also designated as an Extraordinary Resource Water. The North Fork received this designation in 1987 due to its unusual recreational and scenic value. This designation went through the public hearing process and was approved by the Commission. The record evidence also reflects that efforts are being made by state agencies to protect the water quality of the stream through implementation of land management practices. The evidence further shows that the stream has a good fishery, it has recreational value and scenic beauty, and therefore, this designated use is being achieved. The RDA's Environmental Assessment and its arguments that this designated use can no longer be justified is simply not supported by the evidence in this proceeding.

The Commission appropriately designated the North Fork as an Ecologically Sensitive Waterbody and as an Extraordinary Water Resource in its Regulation No. 2. The record evidence reflects that these designations are still appropriate. Considering all the evidence submitted through the comments, the Responsiveness

Summary and clarifying questions asked by the Commissioners, the Commission finds that the Extraordinary Resource Waters and the Ecologically Sensitive Waterbody designated uses are existing uses.

2. General comments received by the Commission.


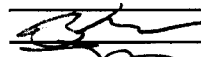
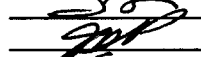
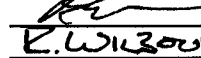
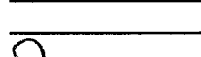
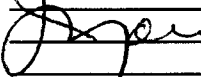
Numerous oral and written comments were made and are part of the record in this proceeding. The Responsiveness Summary prepared by the Department contains examples of the broad categories of comments submitted to the Commission. Examples of these comments are: the project is for recreational purposes only; other sources of raw water supplies are available to Saline County; Saline County needs a raw water supply; the sales tax is illegal; the dam is to promote real estate development; if water quality standards are changed, a precedent will be set; and the proposed amendments have statewide impact.

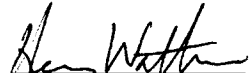
These comments reflect the importance of these proposed amendments to both supporters of the Lake Avilla project and those opposed to it. The comments have provided the Commission with a great deal of information and they reflect the public interest in this proceeding. However, these comments are not relevant to the issues identified and do not need to be addressed due to our finding that the designated uses are existing uses.

IT IS THEREFORE, ORDERED THAT:

1. The Saline County Rural Development Authority's proposed amendments to Regulation No. 2 are disapproved.

COMMISSIONERS

	H. Watkins, III
_____	A. Carter
_____	J. Hill
	B. Mobley
_____	J. Mobley
	J. Pascale
	E. Waddell
	R. Wilbourn
_____	N. Williams
_____	W. Wright
	R. Young
_____	S. Nichols


Chairman

SUBMITTED BY: O'Malley PASSED: November 19, 1993

cc: M. Samuel Jones, III, CERTIFIED MAIL P 136 270 203
Samuel E. Ledbetter,
Steve Weaver, ADPC&E