

BEFORE THE ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

IN THE MATTER OF:

**RIVER VALLEY REGIONAL WATER DISTRICT
2806 BRYAN ROAD, VAN BUREN, AR 72956
REQUEST TO INITIATE RULEMAKING
TO AMEND APCEC REGULATION NO. 2
SECTION 2.304**

NO. _____

**THIRD PARTY PETITION TO INITIATE RULEMAKING
TO AMEND REGULATION NO. 2, SECTION 2.304**

River Valley Regional Water District (“River Valley”) hereby petitions the Commission to initiate a rulemaking proceeding to amend APCEC Regulation No. 2, Section 2.304, to establish a procedure by which regional water distribution districts and other public water authorities would be able seek Commission approval to use extraordinary resource waters as a source of drinking water supply. A copy of the proposed amendment to Section 2.304 is attached as Exhibit A. In support of this petition River Valley states the following.

1. River Valley Regional Water District is a public, nonprofit regional water distribution district organized under the authority of Ark. Code Ann. § 14-16-101, et seq. River Valley’s mission is to acquire safe and dependable water supplies and to distribute water efficiently to consumers and communities in the Crawford County area.

2. River Valley currently plans to utilize water from upper Lee Creek as a source of drinking water supply. More specifically, River Valley plans to utilize water that would be impounded by the proposed Pine Mountain Dam, a Corps of Engineers project that has been authorized by Congress for many years and for which an environmental impact statement is currently being prepared. If the environmental impact statement indicates that the proposed Pine

Mountain Dam is a meritorious project, with benefits that justify any potential adverse effects, River Valley expects that it will return to the Commission to seek approval for the project.

3. APCEC Regulation No. 2 designates Lee Creek from the Arkansas state line upstream to its headwaters as an extraordinary resource water. See APCEC Regulation No. 2, Appendix A, at p. A-14. The proposed location of the Pine Mountain Dam project is on a portion of Lee Creek that is designated as an ERW.

4. Section 2.304 of Regulation No. 2 expressly prohibits any significant alteration of any ERW. There is currently no procedure in Regulation No. 2 that would allow a party to ask the Commission for approval of any proposed alteration to an ERW regardless of how strong the public need might be for the proposed alteration. The only way an alteration to an ERW can be allowed under the current provisions of Regulation No. 2 is for the Commission to remove the ERW designation from the stream altogether, and thereby eliminate all of the attendant protections for the stream in question. Stated simply, Section 2.304 creates an “all or nothing” legal dilemma: an ERW must be protected against any alteration regardless of how justified the alteration may be, or the ERW must be stripped of all protection by completely removing the ERW designation

5. River Valley believes that the “all or nothing” structure of Section 2.304 is inappropriate and counterproductive. The inflexible “all or nothing” protection for ERW streams unnecessarily increases the level of public controversy that attends any proposal to designate a new ERW and any proposal for a use that might affect an existing ERW.

5. The lack of any procedure that would allow more limited alteration of an ERW has been a recurring source of concern which has never been resolved. Concerns about the lack of a procedure were expressed when the very first ERW designations were presented to the

Commission. These concerns have recurred repeatedly, particularly in the context of seeking sources of drinking water supply. The most recent recurrence of these concerns took place at the Commission's April 23, 2004 meeting. At that meeting, former State Representative John Hall made the following statement in commenting on ADEQ's proposed triennial revision of Regulation No. 2:

“[S]ome parts of our state are rich in water, but others, such as Central, Northwest and West Arkansas, have seen such rapid growth that existing supplies will not sustain current growth trends.

This imminent shortage is precisely why many here today are petitioning to have ERW's wiped off the books. But the primary concern that I foresee is not the actual list of ERW streams, but rather the inflexibility of Regulation 2 with regard to developing future water supplies.

“At present, Regulation 2 does NOT provide a process by which a city, county or water district can follow to create an additional water supply as current sources become insufficient. Absent action by the Commission, the opportunity for greater discord will increase, which would only serve to stifle Arkansas' growth and tax base.

“My purpose here today is to ask the commission to consider steps that can be taken to implement a fair and balanced process that communities can follow to develop future water supplies.”

A complete transcript of Rep. Hall's Statement before the Commission is reproduced as Exhibit F of this Petition. The Minutes of the Commission's April 23, 2004 meeting summarizes ADEQ's response to the public comments on the ERW issue by stating that “ADEQ understands that the public has a significant interest in the ERW issue,” and the Department stated that suggestions for change proposed at the meeting “would be more appropriately raised in a petition for third party rulemaking.” See Minutes of Commission's April 23, 2004 Meeting, at p. 3, reproduced as Exhibit G of this Petition.

6. River Valley accepts the Department's invitation to address the procedures in Regulation No.2 by means of a third party petition for rulemaking. River Valley hopes that the

Department will support the initiation of the rulemaking proceeding requested in this petition so there can be the type of dialogue that Department advocated in April of 2004.

7. This petition proposes to amend Section 2.304 to establish a procedure by which regional water distribution districts and other public water authorities could, under limited circumstances, request Commission approval to use extraordinary resource waters as a source of drinking water supply. More specifically, this petition proposes to amend Section 2.304 by inserting the following underscored language:

2.304. Significant physical alterations of the habitat within extraordinary resource waters, ecologically sensitive waterbodies or natural and scenic waterways are not allowed; **provided, however, that such alterations may be allowed for the purpose of providing for drinking water needs if: (i) the alteration is requested by a regional water distribution district, public facilities board, public water authority, or other public entity; (ii) the alteration is part of a proposal that has been certified by the Natural Resources Commission to be in compliance with the State Water Plan; (iii) an environmental impact statement is prepared and submitted to the Commission which meets the standards for environmental impact statements in 40 C.F.R. Part 1502 as of December 9, 2005; (iv) public notice of the proposed alteration is published and members of the public and the Arkansas Department of Environmental Quality are afforded at least 45 days in which to submit comments; and (v) the Commission approves the proposed alteration as providing benefits that justify the anticipated adverse effects.** In other waters, where significant physical alterations of the habitat 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. In order to make such determinations, the Department may require an evaluation of all practicable alternatives to the project including: an environmental assessment of the impacts of each alternative, an engineering and economic analysis, and a socio-economic evaluation of the project in the local area.

8. The procedure that would be established under the proposed amendment would be available only under very limited circumstances:

- The procedure could be initiated only by a regional water distribution district or other public entity engaged in providing water to the public;
- The procedure could be invoked only for a project certified by the Natural Resources Commission as being in compliance with the State Water Plan;

- The procedure would require preparation of a formal environmental impact statement that meets the information and analytical standards established by the Council on Environmental Quality for federal agency environmental impact statements;
- The procedure would require at least 45 days of public notice and opportunity to comment on the proposal; and
- The procedure would require an affirmative vote of the Commission approving any proposal as having benefits that justify the anticipated adverse effects.

9. The procedure that would be established under the proposed amendment would resolve at least some of the concerns that have given rise to such controversy regarding the inflexibility of the regulations governing ERW streams.

10. It is important to note that this petition does not seek to change the current status of any designated ERW. Instead, the petition simply seeks to establish a procedure under which regional water districts and other public water authorities would be able to ask the Commission in the future for permission to use an ERW as a source for drinking water supply. If the amendment proposed in this petition is ultimately adopted by the Commission, the procedural steps required under the amendment should assure that any request advanced under the amendment for alteration of an ERW would be supported by an extraordinarily strong body of information and analysis, including a formal environmental impact statement.

11. The amendment proposed in this petition will not affect any small business within the meaning of Executive Order 05-04. As set forth more fully in Exhibit D, the amendment would not apply to any small business, and it would not impose any obligation or requirement on any small business. The amendment would simply establish a procedure by which a limited number of public entities would be able to ask the Commission for permission to use extraordinary resource waters as a source of drinking water supply.

12. The amendment proposed in this petition would not constitute a regulation that is more stringent than federal requirements within the meaning of Ark. Code Ann. § 8-1-203(b)(1)(B) or APCEC Regulation No. 8, Section 3.5.3. Therefore no economic impact and environmental benefit analysis is required for the proposed amendment

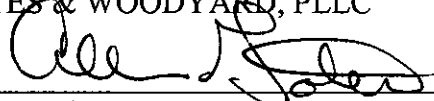
13. The Legislative Questionnaire and Legislative Financial Impact Statement for this proposal are attached as Exhibits B and C of this Petition.

14. The proposed Minute Order that would initiate the rulemaking requested in this Petition is attached as Exhibit H of the Petition.

WHEREFORE, River Valley Regional Water District respectfully requests that the Commission initiate a third party rulemaking to consider the amendment to Regulation No. 2, Section 2.304 set forth in this petition.

Respectfully submitted,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, PLLC

By  _____
Allan Gates, Ark. Bar I.D. # 72040

ATTORNEYS FOR RIVER VALLEY REGIONAL
WATER DISTRICT

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 2

REGULATION ESTABLISHING WATER QUALITY STANDARDS FOR SURFACE WATERS OF THE STATE OF ARKANSAS

DRAFT



Arkansas Pollution Control and Ecology Commission
Regulation No. 2, As Amended

**Regulation Establishing Water Quality Standards for Surface Waters
of the State of Arkansas**

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may be found in the November 1983 EPA publication entitled *Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analysis*. Other scientific methods, including the use of existing technical data, may be used for justifying the removal of a designated use; provided the methods are agreed upon prior to the study. Such other methods may include the use of information previously gathered through technical studies and/or use attainability analysis. Use attainability analysis procedures may be found in the State of Arkansas Continuing Planning Process document (CPP). Any waterbody on which a use attainability analysis is approved shall be so listed in Appendix A with appropriate criteria.

Reg. 2.304 Physical Alteration of Habitat

Significant physical alterations of the habitat within extraordinary resource waters, ecologically sensitive waterbodies or natural and scenic waterways are not allowed; provided, however, that such alterations may be allowed for the purpose of providing for drinking water needs if: (i) the alteration is requested by a regional water distribution district, public facilities board, public water authority, or other public entity; (ii) the alteration is part of a proposal that has been certified by the Natural Resources Commission to be in compliance with the State Water Plan; (iii) an environmental impact statement is prepared and submitted to the Commission which meets the standards for environmental impact statements in 40 C.F.R. Part 1502 as of December 9, 2005; (iv) public notice of the proposed alteration is published and members of the public and the Arkansas Department of Environmental Quality are afforded at least 45 days in which to submit comments; and (v) the Commission approves the proposed alteration as providing benefits that justify the anticipated adverse effects. In other waters, where significant physical alterations of the habitat 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. In order to make such determinations, the Department may require an evaluation of an practicable alternatives to the project including: an environmental assessment of the impacts of each alternative, an engineering and economic analysis, and a socio-economic evaluation of the project in the local area.

Reg. 2.305 Short Term Activity Authorization

The Director may authorize, with whatever conditions deemed necessary and without public notice, short term activities which might cause a violation of the Arkansas Water Quality Standards. This authorization is subject to the provisions that such activity is essential to the protection or promotion of the public interest that no permanent or long-term impairment of beneficial uses is likely to result from such activity. Nothing herein shall be intended to supersede existing state and federal permitting processes or requirements.

Activities eligible for authorization include, but are not limited to:

- (A) wastewater treatment facility maintenance;
- (B) fish eradication projects;
- (C) mosquito abatement projects;
- (D) algae and weed control projects;

- (E) dredge and fill projects;
- (F) construction activities;
- (G) tracers used in hydrological studies; or
- (H) activities which result in overall enhancement or maintenance of beneficial uses.

The Director shall specify the degree of variance from the standards, the time limit of activity and restoration procedures where applicable.

Such authorization shall not be granted for activities which result in the adverse impact on any federally threatened or endangered species or on critical habitat of such species.

Reg. 2.306 Procedures for Removal of any Designated Use Except Fishable/Swimmable, and Modification of Water Quality Criteria not Related to Fishable/Swimmable Uses

This procedure is applicable in those cases where the Commission chooses to establish less stringent water quality criteria without affecting a fishable/swimmable use or when the Commission chooses to remove a use other than fishable/swimmable which is not an existing use.

The Commission may allow a modification of the water quality criteria or the removal of a use which is not a fishable/swimmable use to accommodate important economic or social development in a local area, if existing uses are maintained and protected fully and the requirements for public participation in the Continuing Planning Process are met. As a minimum, the following information shall be submitted to the Department Director before initiation of the public participation process:

- (A) Technological or economic limits of treatability.
- (B) Economic analysis of the impact on the local area.
- (C) Documentation that the use being removed is not an existing use and that all other designated uses will be protected.

Modifications made pursuant to this section may be required to be rejustified for continued support. As community water needs change, or technological advancement, including long-term environmental improvement projects, make treatment options more practicable, the Commission may reevaluate the need for the establishment of the more stringent water quality criteria or the removed use.

Any waterbody on which such alterations are approved will be so listed in Appendix A with the applicable changes noted.

Reg 2.307 Use Subcategories

The Commission may adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses, for instance, to differentiate between cold and warm water fisheries or agricultural and domestic water supply.

Reg. 2.308 Site Specific Criteria

In establishing criteria:

- (A) Establish numerical criteria values based on:
 - (1) 304(a) Guidance; or
 - (2) 304(a) Guidance modified to reflect site conditions [WER] or
 - (3) other scientifically defensible methods;
- (B) Establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria.

Reg. 2.309 Temporary Variance

A temporary variance to the water quality standards may be allowed for an existing permitted discharge facility. The variance will be for specified constituents and shall be no longer than a three year period. A variance must be approved by the Arkansas Pollution Control and Ecology Commission and the U.S. Environmental Protection Agency. A variance will be considered when it is determined that a standard, including designated use, can ultimately be attained or when preliminary evidence indicates that a site specific amendment of the standards may be appropriate. A variance may be granted only to the applicant and will not apply to other discharges into the specified waterbody.

**QUESTIONNAIRE
FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL
AND JOINT INTERIM COMMITTEE**

**DEPARTMENT/AGENCY
DIVISION
DIVISION DIRECTOR
CONTACT PERSON
ADDRESS
PHONE NO.:**

FAX NO.:

TO: Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule?
*Arkansas Pollution Control and Ecology Commission, Regulation No. 2,
Regulation Establishing Water Quality Standards for Surface Waters of the State
of Arkansas*

2. What is the subject of the proposed rule?
*Amendment of Section 2.304 of Regulation No. 2 to establish a procedure by
which regional water distribution districts and other public water authorities
would be able to request approval from the Arkansas Pollution Control &
Ecology Commission to use waterbodies designated as extraordinary resource
waters as a source of drinking water supply.*

3. Is this rule required to comply with federal statute or regulations?
Yes ___ No X

4. Was this rule filed under the emergency provisions of the Administrative Procedure
Act?
Yes ___ No X

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the
Administrative Procedure Act? Yes ___ No ___

Is this a new Rule? Yes ___ No X



If yes, please provide a brief summary explaining the regulation

Does this repeal an existing rule: Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

5. Is this an amendment to an existing rule? Yes X No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substance changes.

See Attachments A and B.

6. Cite the state law that grants the authority for this proposed rule. If codified, please give the Arkansas Code citation.

Act 472 of the Acts of Arkansas 1949, [Part 1], § 3 as amended ARK. CODE ANN. § 8-4-201

7. What is the purpose of the rule? What is it necessary?

Section 2.304 of Regulation No. 2 currently prohibits any significant alteration of any water body designated as an extraordinary resource water. As a consequence, the only way that a water body designated as an extraordinary resource water can be used as a source of drinking water supply is to completely remove the ERW designation, thereby eliminating all attendant protections for the water body in question. The proposed amendment would add to Section 2.304 a procedure by which regional water distribution districts and other public water authorities would be able to request approval from the Arkansas Pollution Control & Ecology Commission to use an extraordinary resource water body as a source of drinking water supply without removing the extraordinary resource water designation from the water body in question.

The complete prohibition in Section 2.304 against any significant alteration of extraordinary resource waters has been the source of recurring complaints because of its inflexible, "all or nothing" nature. Either an ERW must be completely protected against any change, or it must be completely stripped of all protections that arise from ERW status. The amendment is needed to provide a more flexible procedure for reaching an appropriate balance between the protection of the environmental interests in preserving extraordinary resource waters on the one hand, and the protection of the public health and welfare interests at issue in assuring safe and dependable drinking water supplies on the other.

8. Will a public hearing be held on this proposed rule? Yes X No _____ If yes, please complete the following:

Date: week of February 13, 2006

Time: to be determined by ADEQ

Place: Little Rock, Arkansas at a location to be determined by ADEQ

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)

The period for receiving all written comments by the public shall conclude ten (10) business days after the date of the public hearing pursuant to Arkansas Pollution Control and Ecology Commission Regulation No. 8, Part 3, Section 2.2.3, unless an extension of time is granted. Thus, the public comment period will expire on or before March 6, 2006.

10. What is the proposed effective date of this proposed rule? (Must provide a date.)

The regulation becomes effective twenty days after filing of the final regulation as adopted by the Commission with the Secretary of State.

11. Do you expect the rule to be controversial? Yes X No _____ If yes, please explain.

Most proposals related to extraordinary resource waters have generated strong public interest. Some members of the public strongly object to any proposal that could be viewed as reducing the protection for extraordinary resource waters. Other members of the public strongly object to the inflexible prohibitions against any alteration that attach to a water body once it is designated as an extraordinary resource water. The proposed amendment would not change the current status of any designated extraordinary resource water, it would only establish a procedure for requesting Commission approval. Nevertheless, it is likely that strong advocates and opponents of extraordinary resource waters will view this proposed rulemaking as an occasion to voice their concerns about the merits of the current system for protecting extraordinary resource waters, or the lack thereof.

12. Please give the names of persons, groups, or organizations that you expect to comment of these rules? Please provide the position (for or against) if known.

For or Neutral:

*Arkansas Natural Resources Conservation Commission
Mr. John Riggs, Mayor of Van Buren, Arkansas
Mr. Jerry Williams, Crawford County Judge*

Against:

*Ozark Society
Sierra Club*

Position Unknown

Arkansas Department of Environmental Quality

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 2

REGULATION ESTABLISHING WATER QUALITY STANDARDS FOR SURFACE WATERS OF THE STATE OF ARKANSAS

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Attachment "A"

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Any waterbody on which such alterations are approved will be so listed in Appendix A with the applicable changes noted.

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The Commission may adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses, for instance, to differentiate between cold and warm water fisheries or agricultural and domestic water supply.

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EXECUTIVE SUMMARY

Arkansas Pollution Control & Ecology Commission Regulation No. 2 designates certain streams and waterbodies as extraordinary resource waters. Section 2.304 of Regulation No. 2 prohibits any activity that would result in any significant alteration of any extraordinary resource waters. River Valley Regional Water District proposes that the Commission amend Section 2.304 to establish a procedure by which regional water districts and other public water authorities would be able to request approval from the Pollution Control & Ecology Commission to use a waterbody designated as extraordinary resource waters as a source of drinking water supply. The procedure proposed by River Valley would have relatively narrow application. As proposed by River Valley:

- The procedure could be initiated only by a regional water distribution district or other public entity engaged in providing water to the public;
- The procedure could be invoked only for a project certified by the Natural Resources Commission as being in compliance with the State Water Plan;
- The procedure would require preparation of a formal environmental impact statement that meets the information and analytical standards established by the Council on Environmental Quality for federal agency environmental impact statements;
- The procedure would require at least 45 days of public notice and opportunity to comment on the proposal; and
- The procedure would require an affirmative vote of the Commission approving any proposal as having benefits that justify the anticipated adverse effects.

River Valley Regional Water District is a public, nonprofit regional water distribution district organized under the authority of Ark. Code Ann. § 14-16-101, et seq. to serve water users in the Crawford County area. River Valley is interested in the adoption of the proposed

amendment because it plans to utilize upper Lee Creek, which has been designated as an extraordinary resource water, as a source of drinking water supply. More specifically, River Valley plans to utilize water that would be impounded by the proposed Pine Mountain Dam, a Corps of Engineers project that has been authorized by Congress for many years and for which an environmental impact statement is currently being prepared. If the environmental impact statement indicates that the proposed Pine Mountain Dam is a meritorious project, with benefits that justify any potential adverse effects, River Valley expects that it will return to the Pollution Control & Ecology Commission to seek approval for the project. If the proposed amendment to Section 2.304 is adopted, River Valley would follow that procedure. If the proposed amendment is not adopted, the current provisions of Regulation No. 2 would require any public water authority seeking to use extraordinary resource waters as a source of drinking water supply to have the ERW designation removed altogether, thereby eliminating all attendant protections for the waterbody in question.

FINANCIAL IMPACT STATEMENT

[PLEASE ANSWER ALL QUESTIONS COMPLETELY]

Department: Arkansas Department of Environmental Quality

Division: Water Division

Person Completing this Statement: Allan Gates, representing third-party petitioner, River Valley Regional Water District

Telephone No.: 501-688-8816 **Facsimile No.:** 501-918-7816

e-mail: agates@mwsqw.com

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

Short Title of this Rule: A proposed amendment to Section 2.304 of Arkansas Pollution Control and Ecology Regulation No. 2 to establish a procedure by which regional water districts and certain other public entities would be able to request approval from the Arkansas Pollution Control & Ecology Commission to use extraordinary resource waters as a source of drinking water supply.

1. Does this proposed, amended or repealed rule or regulation have a financial impact?
Yes _____ No X
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year
 General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total 0

Next Fiscal Year
 General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total 0

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

Current Fiscal Year
 \$ 0

Next Fiscal Year
 \$ 0

River Valley Regional Water District is seeking to amend Section 2.304 of Arkansas Pollution Control and Ecology Regulation No. 2 to establish a procedure by which regional water distribution districts and other public water authorities would be able to request



approval from the Arkansas Pollution Control & Ecology Commission to use Extraordinary Resource Waters as a source of drinking water supply. The proposed amendment would not impose any obligation or requirement on any party. The amendment would create a procedure that could be used by regional water distribution districts, public facilities boards, and public water authorities who wish to use Extraordinary Resource Waters as a source of drinking water supply.

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

Current Fiscal Year
\$ 0

Next Fiscal Year
\$ 0

927632.1

STATEMENT REGARDING COMPLIANCE
WITH EXECUTIVE ORDER 05-04
(ECONOMIC IMPACT ON SMALL BUSINESSES)

Arkansas Executive Order 05-04 provides that:

Before submitting proposed rules for adoption, amendment, or repeal, the agency shall first determine whether the proposed rules affect small businesses. As a part of its analysis, the agency shall examine whether a means exists to make the rules less costly for small businesses without compromising the objective of the rules. Executive Order 05-04, Section 2 (issued Feb. 1, 2005)

If an agency determines that a proposed rule does not affect small businesses, nothing further is required under the Executive Order. If an agency determines that a proposed rule does affect small businesses, the Executive Order requires that an economic impact statement be prepared and submitted to the Director of the Department of Economic Development for review and comment before the rulemaking is initiated.

The amendment to Section 2.304 of APCEC Regulation No. 2 proposed by the River Valley Regional Water District does not affect small businesses. The amendment does not impose any regulatory burden or obligation on any private business entity, large or small. The amendment does not require any action by any small businesses. It does not restrict any opportunities that are available to any small businesses. The amendment does not impose any fees on any small businesses. It does not create any reporting or notification obligations for any small businesses. The amendment does not require any small businesses to make any applications or secure any permits. Stated simply, the amendment does not apply in any way to any small businesses. The amendment merely creates a procedure by which regional water districts and other public water authorities can, under limited circumstances, seek approval from the Pollution Control and Ecology Commission to use extraordinary resource waters as a source of drinking water supply.



Because the amendment proposed by River Valley Regional Water District does not affect any small businesses and does not impose any fees, costs, or obligations on any small businesses, there is no means by which the proposal could be made less costly for small businesses.

Based on this analysis, the River Valley Regional Water District respectfully submits that no economic impact statement regarding the proposal is required under Executive Order 05-04, and no review by ADED is called for.

ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS

Answer to best of the proponent's ability, as required by APC&EC Regulation 8, Chapter 3.5

STEP 1: DETERMINATION OF ANALYSIS REQUIREMENT (to be included in petition to initiate rulemaking)

1A. Is the proposal expressly addressed by a Federal requirement? **NO**

Yes. See 1B.

No. Economic Impact/Environmental Benefit Analysis is not required.

1B. If 1A is YES, is proposed regulation equivalent, or more stringent, or less stringent than federal requirement?

- If equivalent – Economic Impact/Environmental Benefit Analysis is not required.
- If more stringent – Economic Impact/Environmental Benefit Analysis is required.

If less stringent – Economic Impact/Environmental Benefit Analysis is not required, but does require federal agency approval prior to adoption if the [proposal is part of an authorized state program.

STEP 2: THE ANALYSIS (to be included in petition to initiate rulemaking, if required)

2A. ECONOMIC IMPACT

1. Who will be affected economically by this proposed rule, what are the costs associated with this rule, and who will bear the costs of this proposed rule? Define specific public and/or private entities.

2. What are the economic benefits associated with the proposed rule, who will benefit from this proposed rule and how?

3. List sources of information used to determine economic impacts to public and/or private entities.

4. List any fee changes imposed by this proposal, and justification for each.

5. What is the probable cost to ADEQ in manpower and associated resources to implement and enforce this proposed change, and what is the source of revenue supporting this proposed rule?



6. Is there a benefit or adverse impact to any other state agency to implement or enforce this proposed rule?
7. Are there any less costly, non-regulatory, or less intrusive methods that would achieve the same purpose of this proposed rule?

2B. ENVIRONMENTAL BENEFIT

1. What issues affecting the environment are addressed by this proposal?
2. How does this proposed rule protect, enhance, or restore the natural environment for the well being of all Arkansas?
3. What detrimental effect will there be to the environment or to the public health and safety if this proposed rule is not implemented?
4. What risks are addressed by the proposal and to what extent are the risks anticipated to be reduced?

Transcript of Testimony

RE: Regulation 2, Arkansas Department of Environmental Quality

John Hall

Van Buren, AR

Arkansas Pollution Control and Ecology Commission Meeting

April 23, 2004

Little Rock, Arkansas



Mr. Chairman and Members of the Commission, thank you for the opportunity to speak today.

My name is John Hall. As many of you know, I served in the State Legislature for six years and have since returned to my farm in west Arkansas. My purpose for testifying is to highlight an aspect of Regulation 2 that I have yet to hear anyone discuss—the process for obtaining a waiver or exemption for building future water supplies.

You can pickup the newspaper on any given day and immediately recognize that water supply, water quality and protecting our environment are critical issues facing our state. Many of our state's cities and towns are facing water shortage and quality problems; If not today, certainly within the next 30 to 50 years.

Yes, some parts of our state are rich in water, but others, such as Central, Northwest and West Arkansas, have seen such rapid growth that existing supplies will not sustain current growth trends.

This imminent shortage is precisely why many here today are petitioning to have ERW's wiped off the books. But the primary concern that I foresee is not the actual list of ERW streams, but rather the inflexibility of Regulation 2 with regard to developing future water supplies.

At present, Regulation 2 does NOT provide a process by which a city, county or water district can follow to create an additional water supply as current sources become insufficient. Absent action by the Commission, the opportunity for greater discord will increase, which would only serve to stifle Arkansas' growth and tax base.

My purpose here today is to ask the commission to consider steps that can be taken to implement a fair and balanced process that communities can follow to develop future water supplies. One such option might be to require those seeking to develop an additional water supply to obtain a favorable Environmental Impact Statement.

While I'm sure that many would rather the bar be set much lower by requiring only an Environmental Assessment, the more thorough and exhaustive EIS, which typically takes two years to complete, would be more judicious.

Mr. Chairman, we desperately need a thoughtful process by which new, safe and clean water supplies can be developed. Thank you again for taking the time to consider this suggestion.

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

REGULAR COMMISSION MEETING
8:30 a.m., Friday, April 23, 2004

Arkansas State Police Headquarters
No. 1 State Police Plaza
Little Rock, Arkansas

Commissioners Attending: W. Thompson, G. Black, S. Henderson, C. McGrew, R. Mathis, R. Quillin, T. Schueck, J. Shannon, L. Sickel E. Valdez, M. Woodward and R. Young.

Commissioners Absent: B. Ackerman.

Visitors: Kevin Pride, E.C.H.O.; Ken Smith, Audubon; Harry Short, City of Van Buren; John Hall, River Valley Regional Water; Barry H. Haas, Little Rock; Connie Burks, Harrison; Mary Rivera, Gepp; Jarmis Harper, ALCOA; John Henley, Chairman ILLIT, Searcy County; Bill Shepherd, Audubon Society of Central Arkansas; Leonard Uecker, Save Greers Ferry Lake Inc.; Carl Garner, Save Greers Ferry Lake Inc.; Michael Farar, Ozark Society; William Saunders, Arkansas Canoe Club; Debbie Dan, Arkansas Canoe Club; George Crook, NTBA Inc.; Charles Oberste, Sierra Club; Barb Meyer, Little Rock; Vince Blubaugh, GBMC & Associates; Dotson Collins, Governor's Office; Arnold Jochums, Attorney General's Office; Randy Thurman, Arkansas Environmental Federation; Austin Gelder, Arkansas Democrat-Gazette; Carol Griffee, Little Rock.

Chair Thompson called the meeting to order at approximately 8:30 a.m. He acknowledged special guests Senator John Hall and Representative Larry Prather.

Quorum

The Commission Secretary called the roll and declared a quorum.

Approval of Minutes

Chair Thompson asked for a motion to approve the minutes of the March 26, 2004 meeting. Commissioner Mathis made a motion to approve the minutes with one correction to his statement about who attended a meeting at the Capitol. He meant Steve Martin, not Martin Maner. Commissioner Shannon seconded the motion. The minutes were approved with the correction.

Director's Report

Director Devine reported on a meeting held between farmers and the Soil and Water Conservation Commission Advisory Committee in Russellville regarding the nutrient-watershed phosphorus issue.



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Devine reported on a meeting with Senator Blanche Lincoln's office about an old issue regarding Koppers in North Little Rock. Commissioner Charles McGrew and Director Devine met with a group of people concerned about this issue and reassured them of the Health Department's and Arkansas Department of Environmental Quality's ("ADEQ") concern regarding public health and safety and assured them that the situation was being monitored.

Devine updated the Commission on the Monte Ne Cove issue in the Northwest Arkansas Beaver Water District regarding sediment problems. He stressed that ADEQ is monitoring it closely and trying to determine the reason why this is occurring.

He discussed a letter received from Environmental Protection Agency ("EPA") Administrator Mike Leavitt to Governor Huckabee regarding the ozone designation issue in Crittenden County.

Devine gave the Commission an update on the Pine Bluff Arsenal trial burns and requested Mr. Mike Bates to give a more detailed report on the trial burn testing in the incinerator. Bates reported on the activity of ADEQ staff and the staff at Pine Bluff Arsenal regarding the Chemical Stockpile Demilitarization Project and reported on the surrogate trial burns and stated that the next phase is the agent trial burn.

The Director reported on the Environmental Council of States meeting that ADEQ hosted in Hot Springs. He stated that Commissioner Mathis attended and thanked staff members Becky Allison, Mary Leath, and Becky Keogh for helping him host the conference.

Devine discussed the Ash Grove Cement tour that was held on April 14th. A wildlife presentation was also made at the Foreman Elementary School.

Commissioners asked questions regarding ozone designation of Crittenden and Shelby Counties. Discussion followed.

Commissioner Mathis thanked Director Devine for his report on Crittenden County and agreed that Memphis contributed to the air quality in Crittenden County.

Commissioner Young thanked Director Devine and his staff's support of the Soil and Water Conservation Commission in their rulemaking process on the nutrient management program.

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Commissioner Young asked questions regarding the Monte Ne Cove issues. An update was given by Mr. Martin Maner. Discussion followed.

Public Comments

All public comments were delayed until the discussion on adopting Regulation No. 2 was before the Commission.

Regulation No. 12 - Storage Tanks, Docket No. 04-001-R

Commissioner Young reported that changes to Regulation No. 12 were due to legislative changes that occurred in 2003 and federal revisions. The rulemaking process was complete and no public comments were received. Commissioner Young moved to adopt the amendments. Commissioner Sickel seconded the motion. The motion passed. (Minute Order No. 04-12)

Regulation No. 2 - Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, Docket No. 03-003-R

Commissioner Young asked Jennifer Tucker to speak regarding changes to Regulation No. 2. Ms. Tucker gave a brief overview of the changes to the regulation. She stated that Section 303C of the Clean Water Act requires each state to perform a triennial review of its water quality standards and our triennial review process began in 2001. There were six (6) public information meetings in the fall of 2001 held throughout the state. A Water Quality Standards Work Group was established with various members of the public and ADEQ staff which met on seven (7) occasions to discuss changes to the standard. This rulemaking does not propose changes or additions to Extraordinary Resource Water ("ERW") designations. However, ADEQ understands that the public has a significant interest in the ERW issue and has proposed several alternatives to the Commission for consideration. Six (6) public hearings were held throughout the state in January 2004. There were several public comments received. Many of these comments were either inapplicable to this rulemaking or would be more appropriately raised in a petition for third party rulemaking. The Department requests the Commission to move forward regarding Regulation No. 2 and to adopt the minute order in the packet.

Mr. Martin Maner discussed changes that were being offered due to public concerns as alternatives for the Commission to approve. He explained all the changes being made to the regulation and the reasons for the changes. The next step is to incorporate the comments that were received into the final regulation. ADEQ reviewed all comments and recommended proposed final language for

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Commission approval on various amendments. However, on Reg.2.302, Maner offered three options, which were:

#1) take no action, #2) delete "and its watershed" from the regulation language and #3) add clarifying language.

Questions were asked about whether an additional public comment period would be required if option #2 or #3 were chosen. Discussion followed. Judge O'Malley stated that it was his opinion that an additional public comment period would be required because the regulation comes from a statute that says "If as a result of comments the Commission changes a proposed regulation to the extent that the rule would have an effect not previously expressed in the notice required in a particular section the Commission shall provide another adequate public notice and public comment period. This subsection shall not require a second public notice and public comment period if the final regulation is a logical outgrowth of the regulation proposed in the prior notice." The prior notice had no changes to the ERW definition. It was his opinion that option 2 or 3 are not a logical outgrowth of what was originally sent to the public. Therefore, if the Commission chose either option, it would have to be sent out for a public comment period. Discussion followed.

Public Comments

Mrs. Connie Burks from Harrison argued for deleting "and its watershed" from the regulation. She also spoke about the following three subjects: 1) validity of the Ecoregions concept 2) validity of ERW designations and 3) economic impact analysis. Discussion followed.

Mr. Elton Roe argued that ERW designations in Regulation No. 2 were more stringent than federal law. ADEQ states that fishable and swimable are the mandatory requirements of the Clean Water Act. Therefore, he disagrees that ERW designations are not more stringent than federal law. He also spoke about the Clean Water Act Tier 1, 2, and 3. He closed with the statement that water quality regulations should not impede or preclude the necessary and favorable social and economic development of private land. Discussion followed.

Mr. Kevin Pride, representing E.C.H.O., an environmental coalition actively focusing on the issues that influence and impact the Middle Fork of the Saline River watershed argued against changes to the regulation and stated that current ERW protection has not been strong enough to protect the Middle Fork. He requested the Commission to expand the limits of ERW protective jurisdiction,

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actively urging state agencies toward a comprehensive Middle Fork restoration effort through interagency consultation and cooperation. Discussion followed.

Mr. Terry Horton, Executive Director of the Arkansas Wildlife Federation, argued against changes and requested that we adopt the minute order and start a new triennial review process. He stated that if changes were made today he believed this would require that Regulation No. 2 be sent out for public hearings again. He argued that any new changes could be made in the new triennial review or through third party rulemaking. Discussion followed.

Mr. Fred Wiseman, a Jonesboro citizen and property owner urged the Commission to vote for option #1. He also spoke about economics and tourism and how ERW designation benefits state revenues due to the increase of tourism dollars. Discussion followed.

Mr. John Hall requested that a process for obtaining a waiver or exemption for building future water supplies be added to Regulation No. 2. At present Regulation No. 2 does not provide a process by which a city, county or water district can follow to create an additional water supply as current sources become insufficient. Discussion followed.

Mr. Ken Smith, representative of the National Audubon Society, argued against changes to Regulation No. 2 especially deleting "and its watershed" from the regulation. He requested that Greers Ferry Lake, Maumelle Lake and Beaver Lake and their watersheds be added to ERW designations. He encouraged the members of the Commission to work together to avoid stove pipe management enforcement and make every effort to use a coordination cooperation effort. Discussion followed.

Mr. Barry Haas argued against changes to Regulation No. 2, to leave "and its watersheds" in the regulation and to improve the level of protection and protect ERW designations. He also requested Lake Maumelle be added to the ERW designations.

Mr. Bill Shepherd representing the Audubon Society of Central Arkansas, argued against changes to Regulation No. 2 and to protect the environment at all costs. He stated that protecting the environment provides the state with great drinking water and supplies the state with tourism dollars. Discussion followed.

Mr. Dennis Norton, a resident and cattle farmer from Harrison, requested the Commission to remove ERW designations from all

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stream segments in Boone County as requested by the Boone County Quorum Court. He also explained how the designations and regulations were making it difficult for cattle farmers to make a living because of all the restrictions they were forced to follow. Discussion followed.

Ms. Mary Rivera, a resident of Gepp argued for removal of ERW designations from Regulation No. 2 as requested by the quorum courts and for removing "and its watershed" from the regulation. Discussion followed.

Mr. John Henley, a resident of St. Joe, wanted to take ERW designations out of Regulation No. 2. He argued for education of landowners, not more regulations.

Mr. Ronnie Tinsley, a resident and cattle farmer from Harrison, argued against ERW designations and explained how it was making it difficult for cattle farmers to make a living because of all the restrictions that were placed on them. Discussion followed.

Mr. Bill Saunders, a resident of Little Rock and a representative of the Arkansas Canoe Club argued against changes to Regulation No. 2. He supported the changes that were already made and not the changes that were being requested by other residents. He requested to keep ERW designations, approve the minute order, and start the new Triennial Review process.

Mr. Leonard Uecker, a resident of Quitman and representative of Greers Ferry Lake, Inc. argued against deleting "and its watersheds" from the regulation. He also requested Greers Ferry Lake be added to the ERW designations. Discussion followed.

Mr. Michael Farar, a resident of Little Rock, requested to keep "and its watershed" in the regulation. He also requested to add Greers Ferry Lake to the ERW designations. Discussion followed.

Commissioner Young presented the following motions. He made a motion to adopt as a logical outgrowth of the comments received, deletion of the sentence beginning: "The determination of mean...", which is set out in Regulation 2.507.

Commissioner Young made a motion to adopt, as a logical outgrowth of the comments received, the words "Expressed as cells per liter," which is in the definition of "Objectionable algal densities" in Regulation 2.106.

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Commissioner Young made a motion to adopt, as a logical outgrowth of the comments received, the third sentence in Regulation 2.509 to read as follows: "Because nutrient water column concentrations do not always correlate directly with stream impairments, impairments will be assess by a combination of factors such as water clarity, periphyton or phytoplankton production, dissolved oxygen values, community structure and possibly others."

Commissioner Young made a motion to adopt, as a logical outgrowth of the comments received, the addition of the words "nutrient surplus" so that the sentence in Regulation 2.509 reads as follows: "Additionally, waters in nutrient surplus watershed as determined by Act 1061 of 2003 Regular Session of the Arkansas 84th General Assembly and subsequently designated nutrient surplus watersheds may be included under this Regulation if point source discharges are shown to provide a significant phosphorus contribution to waters within the listed nutrient surplus watersheds."

Chair Thompson asked for a second. Commissioner Woodward seconded the motion. Commissioner Schueck and Commissioner Quillin announced their recusal to vote on the minute order. Motion passed.

Commissioner Young made a motion to adopt Option #3 set out in the responsiveness summary in Reg.2.203 as a logical outgrowth of the regulation proposed in the public notice and that option #3 be added to Regulation 2.203, outstanding resource waters. He proposed that the clarification language be added following the next to last sentence that ends with the word watershed. The proposed language is: "It is not the intent of the ERW designated use definition to imply that ERW status dictates regulatory authority over private land within the watershed other than what exists under local, state or federal law". Commissioner Black seconded the motion.

Commissioner Mathis made a substitute motion to take no action and have the next Triennial Review decide what changes were to be made. He stated that this motion would adopt option #1 leaving "and its watershed" in the regulation. Commissioner Henderson seconded the motion. A roll call vote was taken with Commissioners Black, Sickel, Valdez, Woodward and Young voting "No." Commissioners Henderson, McGrew, Mathis, and Shannon voted "Yes." The motion failed.

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A roll call vote on Commissioner Young's motion was taken with Commissioners Henderson, McGrew, and Mathis voting "NO." Commissioners Black, Shannon, Sickel, Valdez, Woodward, and Young voted "Yes." The motion passed.

Commissioner Young made a motion to approve the minute order with the changes that were authorized. Commissioner Black seconded the motion. The motion passed. **(Minute Order No. 04-13)**

Chair Thompson recognized Chief Martin Maner, Attorney Jennifer Tucker, and the people in customer service, James Gilson, Tamara Robinson and Doug Szenher for their work on Regulation No. 2.

Adjourn

There being no further business the meeting was adjourned.

THE NEXT COMMISSION MEETING IS SCHEDULED FOR 9:30 a.m., Thursday, May 27, 2004.

APPROVED MINUTE ORDERS
REGULAR COMMISSION MEETING
APRIL 23, 2004

- 04-12** The Commission adopted changes to Regulation No. 12 (Storage Tanks).
- 04-13** The Commission adopted changes to Regulation No. 2 (Regulation Establishing Water Quality Standards For Surface Waters of the State of Arkansas).

On November 23, 2005, River Valley Regional Water District filed a Petition to Initiate Third Party Rulemaking to Amend Regulation No. 2, Water Quality Standards. Pursuant to Ark. Code Ann. § 8-4-202(c), the Arkansas Pollution Control and Ecology Commission ("Commission") has sixty (60) days in which to either institute rulemaking proceedings or to give written notice denying the petition for rulemaking.

The Commission's Regulations Committee met on December 9, 2005 to review River Valley's Petition. Having considered the Petition, the Regulations Committee recommended the Commission institute a rulemaking proceeding to consider adopting the proposed revision to Regulation No. 2. The Regulations Committee also proposed adoption of the following procedural schedule so consideration of this matter may proceed in an efficient and orderly manner.

1. River Valley shall file an original and twenty-five (25) copies and a disk containing all materials required under this Minute Order. Any other party filing any pleading in this docket with the Commission Secretary shall file an original and two (2) copies and a disk containing the pleading and all other materials filed with it; and the party shall serve on River Valley a copy of the pleading and all materials filed with the Commission.

2. Persons submitting written public comments shall submit their written comments to the ADEQ. Within ten (10) business days following the adoption or denial of the proposed rule, the ADEQ shall deliver the originals of all comments to the Commission Secretary.

3. River Valley has filed with the Petition a black-lined version of the section of Regulation No. 2 which will be amended by the proposed rule.

4. River Valley has submitted to the ADEQ's public affairs office, the following:

- a. A proposed public notice to be used in mailing notice to interested persons, for publishing in appropriate industry, trade, or professional publications as the Commission may select. The proposed public notice may, in the ADEQ's discretion, be approved for use or the ADEQ may choose to prepare its own public notice. The public notice shall conform to the requirements of Regulation No. 8, Section 3.1.3. The public notice shall be published not later than 45 days prior to the public hearing. By agreement, River Valley shall pay the costs of the newspaper publications and the costs of the appropriate industry, trade, or



professional publications chosen by the Commission. River Valley shall file only the original proof of publication with the Commission. The ADEQ shall be responsible for mailing the public notice to all persons who have requested advance notice of rulemaking proceedings and the cost of the mailing.

- b. Sixty-five (65) copies of the executive summary of the proposed rulemaking.
- c. Eight (8) bound copies of the Petition and all supporting documentation.

5. A public hearing or hearings shall be conducted the week of February 13, 2006 in Little Rock, Arkansas. The exact date, time and location of the public hearing will be determined by the ADEQ's Public Affairs office.

6. The period for receiving all written comments by the public, River Valley and the ADEQ shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8, Part 3, Section 2.2.3, unless an extension of time is granted.

7. River Valley and the ADEQ shall each file, not later than March 15, 2006 a Statement of Basis and Responsiveness Summary as required by Regulation No. 8, Part 3, Section 3.6.2(1), (2) and (3).

8. River Valley and the ADEQ shall each file not later than March 15, 2006 a proposed Minute Order deciding the matter.

9. The ADEQ shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and/or from the Joint Interim Committee on Administrative Rules and Regulations.

10. The Regulations Committee will consider this matter at its May, 2006 meeting. Members of the Regulations Committee may ask questions of any persons that made oral or written comments. The Regulations Committee will make a recommendation to the Commission.

11. At the Commission's regularly scheduled May, 2006 meeting, the presentation of oral statements and legal arguments will be regulated as follows:

- a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the one (1) hour oral statement period may be extended.
- b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.
- c. Legal counsel or other designated persons representing River Valley and the ADEQ shall be permitted ten (10) minutes in which to address the Commission.
- d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

12. If River Valley desires a transcript of the public hearing, Regulations Committee meeting, and Commission meetings, or if required by the Commission, River Valley agrees to pay all costs for the preparation of a transcript of the public hearing, Regulations Committee meetings and Commission meetings which concern this docket and occur after the adoption of this Minute Order. If transcript of the rulemaking proceedings is required, the court reporter will

be employed by River Valley, and the court reporter shall deliver the original transcript to the Commission Secretary.

13. The Commission authorizes the Chair of the Regulations Committee, in consultation with the Chair of the Commission, to revise the procedures and schedules set out above.

14. Executive Order 05-04 requires that the Commission determine whether a proposed rule affects small businesses. Based on the information contained in the Petition and the explanation given by River Valley and its counsel, the Commission finds the proposed amendment to Regulation No. 2 does not affect small businesses. Therefore, the Commission concludes that the procedures set forth in Executive Order 05-04 are not applicable to the proposed amendment to Regulation No. 2.

The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in this docket. The Commission adopts, without modification, the procedural schedule set forth above.

COMMISSIONERS:

**R. Quillin
B. Ackerman
L. Bengel
S. Henderson
C. McGrew
D. Samples**

**T. Schueck
J. Shannon
L. Sickel
W. Thompson
B. White
R. Young**

Chair, E. Valdez, Submitted By: Allan Gates

DATE PASSED: 12/09/05