

Exhibit D to Huntsville Petition

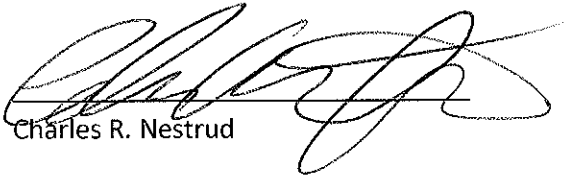
Arkansas Economic Development Commission

(Memorandum Stating that more than ten (10) business days have passed since submittal of the
Economic Impact Analysis to AEDC)

MEMORANDUM:

On May 30, 2013 the Commission's Administrative Hearing Officer provided the attached proposed rule to revise Regulation No. 2, and Economic Impact Analysis to the Arkansas Economic Development Commission for review of the proposed changes to Regulation No. 2. Ten (10) days have passed, and there has been no comment from the Arkansas Economic Development Commission.

Dated this 13 day of June, 2013.

A handwritten signature in black ink, appearing to read 'Charles R. Nestrud', is written over a horizontal line. The signature is stylized and cursive.

Charles R. Nestrud

Chuck Nestrud

From: Charles Moulton <charles.moulton@arkansasag.gov>
Sent: Thursday, May 30, 2013 3:29 PM
To: pbrown@arkansasedc.com
Cc: Chuck Nestrud; 'Goff, Patricia (Commission)'
Subject: City of Huntsville
Attachments: Economic Impact Statement for AEDC.pdf; 2348_001.pdf

Dear Ms. Brown –

Attached is the City of Huntsville's proposal to initiate Third-party Rulemaking to amend Arkansas Pollution Control and Ecology (APCEC) Regulation No. 2. The City of Huntsville seeks a determination from the Arkansas Economic Development Commission (AEDC) that its requested amendment to Regulation No. 2 does not impact small business.

The attachments consist of a copy of the City's proposed amendment to Regulation No. 2 and AEDC's Economic Impact Statement of Proposed Rules or Regulations.

Thank you in advance for your assistance with this. Should you have any questions my telephone number is 692-7892.

Sincerely,

Charlie Moulton
Acting Administrative Hearing Officer

From: Chuck Nestrud [<mailto:CNestrud@cnjlaw.com>]
Sent: Thursday, May 30, 2013 9:30 AM
To: Charles Moulton; 'Goff, Patricia (Commission)'
Cc: Shon Simpson
Subject: City of Huntsville

On behalf of the City of Huntsville, I am transmitting an Economic Impact Statement and proposed revisions to Regulation No. 2 to be forwarded to AEDC. Huntsville intends to submit the third party rulemaking petition in time for submission to the Commission at its June meeting. Please forward these documents today to provide time for AEDC review. Chuck Nestrud

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**City of Huntsville Petition to Initiate Third Party Rulemaking
Economic Impact Statement for Arkansas Economic Development Commission Review**

**ARKANSAS POLLUTION CONTROL & ECOLOGY
COMMISSION
ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT
ANALYSIS**

Rule Number & Title: *Regulation No. 2. Establishing Water Quality Standards for Surface Waters of the State of Arkansas.*

Petitioner: *City of Huntsville ("Huntsville")*

Contact/Phone/Electronic mail: *Chuck Nestrud / (501) 372-5800 / cnestrud@cnjlaw.com*

Analysis Prepared by: *Chuck Nestrud*

Date Analysis Prepared: *05/29/2013*

2A. ECONOMIC IMPACT

1. Who will be affected economically by this proposed rule?

State: a) the specific public and/or private entities affected by this rulemaking, indicating for each category if it is a positive or negative economic effect; and b) provide the estimated number of entities affected by this proposed rule.

The proposed rule will revise the chloride, sulfate, total dissolved solids ("TDS") water quality criteria in Town Branch from the point of discharge of the City of Huntsville wastewater treatment plant downstream to the confluence with Holman Creek, in Holman Creek from the confluence with Town Branch downstream to the confluence with War Eagle Creek, and in War Eagle Creek from the confluence with Holman Creek, and remove the designated but not existing Domestic Water Supply use from those stream segments.

Assuming the proposed rule is approved by the Commission and the U.S. Environmental Protection Agency ("EPA"), the Arkansas Department of Environmental Quality ("ADEQ") will be able to rely on the revised criteria to amend the City of Huntsville National Pollutant Discharge Elimination System ("NPDES") permit limits for chloride, sulfate and TDS. Huntsville will therefore be positively impacted by the rule. No entities would suffer negative economic impact as a result of the proposed rule.

Sources and Assumptions: To approve the proposed rule, the Commission and EPA will rely on a technical document prepared by Huntsville—the City of Huntsville, Arkansas Section 2.306 Site Specific Water Quality Study: Town Branch, Holman Creek and War Eagle Creek that discusses the proposed revisions to the dissolved minerals criteria for Town Branch, Holman Creek and War Eagle Creek ("the Report").

2. What are the economic effects of the proposed rule? State: 1) the estimated increased or decreased cost for an average facility to implement the proposed rule; and 2) the estimated total cost to implement the rule.

The economic effects of the proposed rule are significant and beneficial for Huntsville. Huntsville has investigated technologies and alternatives to comply with the current minerals criteria, which is summarized in the Report. Reasonably available control technology does not exist that would allow Huntsville to discharge in a manner that would maintain the existing minerals criteria. Approval of the proposed rule modifying the criteria to reflect long term historical site specific conditions is the only reasonable approach so that the permit limits can be adjusted.

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

No changes to fees are proposed or anticipated for the proposed rule.

4. 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?

Huntsville anticipates that ADEQ will administer and enforce the proposed rule with the same number of staff and resources it currently relies on to implement the permitting program.

Sources and Assumptions: *not applicable*

5. Is there a known beneficial or adverse impact to any other relevant state agency to implement or enforce this proposed rule? Is there any other relevant state agency's rule that could adequately address this issue, or is this proposed rulemaking in conflict with or have any nexus to any other relevant state agency's rule? Identify state agency and/or rule.

ADEQ would rely on the proposed rule to amend Huntsville's NPDES permit. There is no known impact to another state agency nor is there another state agency's rule that could address any of the proposed changes. The rule is not in conflict with any other relevant state agency rule. To Huntsville's knowledge, the rule does not have any nexus to any other relevant state agency's rule.

Sources and Assumptions: *not applicable*

6. Are there any less costly, non-regulatory, or less intrusive methods that would achieve the same purpose of this proposed rule?

No.

Sources and Assumptions: *not applicable*

2B. ENVIRONMENTAL BENEFIT

1. What issues affecting the environment are addressed by this proposal?

The proposed rule will revise the chloride, sulfate and TDS water quality criteria in Town Branch, Holman Creek and War Eagle Creek, remove the designated but not existing Domestic

Water Supply use from those stream segments. As explained below, these changes will not change any designated uses and will not adversely impact the environment.

2. How does this proposed rule protect, enhance, or restore the natural environment for the well being of all Arkansans?

The criteria proposed in the rule are protective of the fisheries in Town Branch, Holman Creek and War Eagle Creek. To approve the rule, the Commission and EPA will also confirm that the proposed criteria are protective of these fisheries and the environment.

Sources and Assumptions: *The Report.*

3. What detrimental effect will there be to the environment or to the public health and safety if this proposed rule is not implemented?

Without the proposed rule, Huntsville would not be able to consistently meet permit limits that are based on the existing minerals criteria. The proposed rule would allow Huntsville to continue discharging historical levels of dissolved minerals, which have been demonstrated to have no adverse impact the environment, public health, or safety.

Sources and Assumptions: *The Report.*

4. What risks are addressed by the proposal and to what extent are the risks anticipated to be reduced?

ADEQ would be able to rely on the criteria proposed in the rule to issue a permit to Huntsville that reflects historical dissolved minerals in its effluent.

Sources and assumptions: *not applicable*

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



BY _____
SECRETARY OF STATE
STATE OF ARKANSAS

11 SEP 16 PM 3:34

FILED
MAY REGISTER DIV.

REGULATION NO. 2

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

Adopted by the Arkansas Pollution Control and Ecology Commission on (August 26, 2011)

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

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

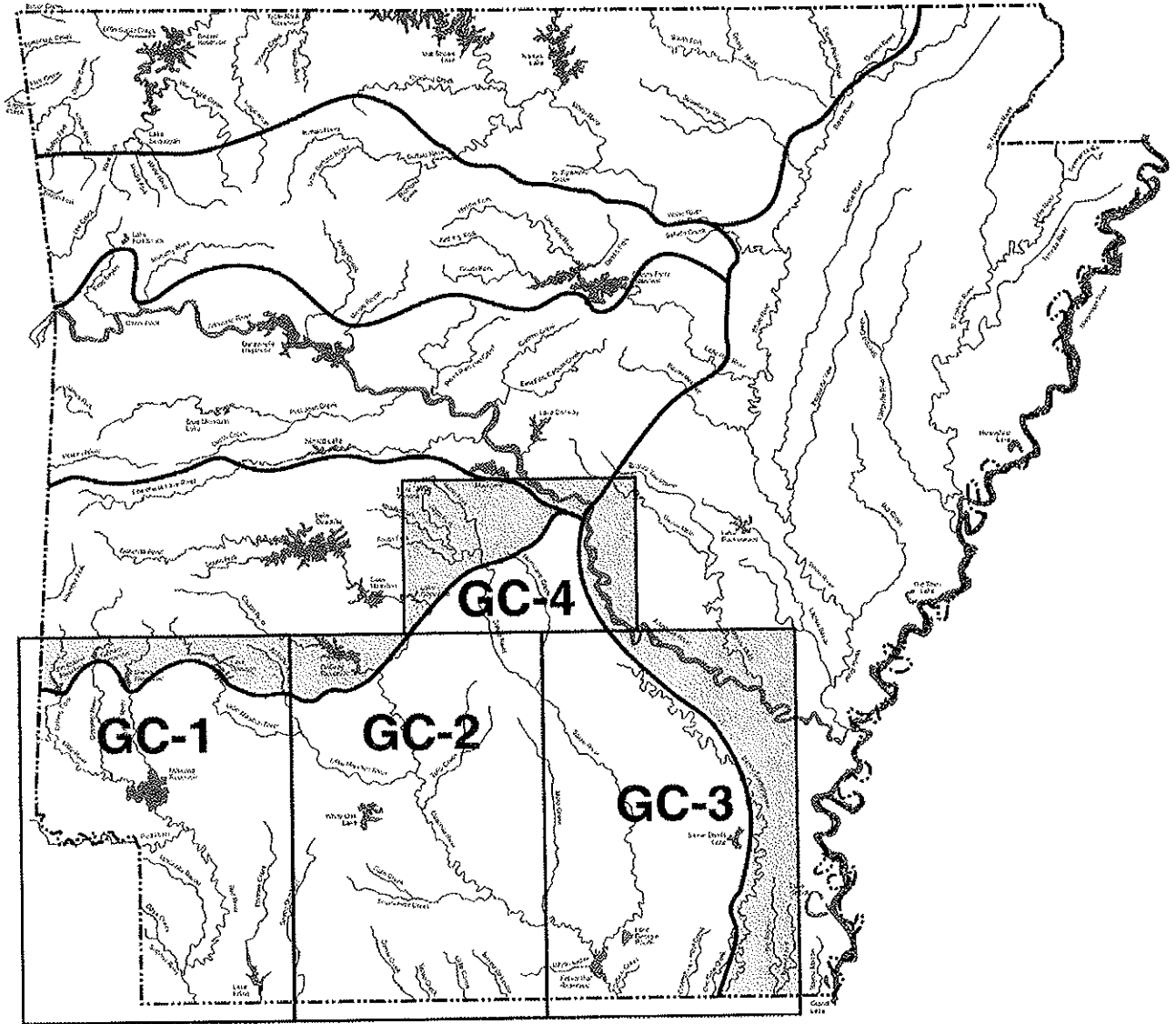
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Index to Plates of the Gulf Coastal Plain



DESIGNATED USES: GULF COASTAL ECOREGION
(Plates GC-1, GC-2, GC-3, GC-4)

Extraordinary Resource Waters

Saline River (GC-3, GC-4)
Moro Creek - adjacent to natural area (GC-3)

Natural and Scenic Waterways

Saline River from the Grant-Saline County line to mouth (GC-3)

Ecologically Sensitive Waterbodies

Little River above Millwood Reservoir - location of Ouachita rock pocketbook and pink mucket mussels (GC-1)
Grassy Lake and Yellow Creek below Millwood Reservoir - unique ecosystem and biota (GC-1) Lower Little
Missouri River - location of peppered shiner and longnose darter (GC-2)
Lower Saline River - location of peppered shiner, crystal darter and goldstripe darter (GC-3)
Ouachita River near Arkadelphia - location of flat floater, Ouachita rock pocketbook and pink mucket mussels
(GC-2)

Streams with Substantial Springwater Influence

L'Eau Frais (GC-4)
Cypress Creek (GC-4)
East and West Fork Tulip Creeks (GC-4)
Others to be determined

Primary Contact Recreation - all streams with watersheds greater than 10 mi² and all lakes/reservoirs

Secondary Contact Recreation - all waters

Domestic, Industrial and Agricultural Water Supply - all waters

Fisheries

Trout

Little Missouri River from Narrows Dam to confluence with Muddy Fork (GC-1)

Lakes and Reservoirs - all

Streams

Seasonal Gulf Coastal fishery - all streams with watersheds of less than 10 mi² except as otherwise provided in Reg. 2.505
Perennial Gulf Coastal fishery - all streams with watersheds of 10 mi² or larger and those waters where discharges equal or exceed 1 CFS

Use Variations Supported by UAA

Loutre Creek - perennial fishery, except seasonal from railroad bridge to mouth (GC-2, #1)
Unnamed tributary to Smackover Creek - no fishable/swimmable uses (GC-2, #2)
Unnamed tributary to Flat Creek - no fishable/swimmable uses (GC-2, #4)
Dodson Creek - perennial fishery (GC-4, #5)
Jug Creek - perennial fishery (GC-2, #6)
Lick Creek - seasonal fishery; no primary contact (GC-1, #7)
Coffee Creek and Mossy Lake - no fishable/swimmable or domestic water supply uses (GC-3, #8)
Red River from Oklahoma to confluence with Little River - No domestic water supply use (GC-1, #9)
Bluff Creek and unnamed tributary - no domestic water supply use (GC-1, #10)
Mine Creek from Highway 27 to Millwood Lake - no domestic water supply use (GC-1, #11)
Caney Creek - no domestic or industrial water supply use (GC-1, #12)

Use Variations Supported by UAA

- Bois d'Arc Creek from Caney Creek to Red River - no domestic or industrial water supply use(GC-1,#13)
- Town Creek below Acme tributary - no domestic water supply(GC-4,#14)
- Unnamed trib. from Acme - no domestic water supply(GC-4,#14)
- Gum Creek - no domestic water supply use(GC-2,#15)
- Bayou de Loutre from Gum Creek to State line - no domestic water supply use(GC-2,#16)
- Walker Branch - no domestic water supply use(GC-2,#17)
- Little Cornie Bayou from Walker Branch to State line - no domestic water supply use(GC-2,#18)
- Alcoa unnamed trib to Hurricane Cr.and Hurricane Cr. - no domestic water supply use(GC-4,#19)
- Holly Creek - no domestic water supply use(GC-4,#20)
- Dry Lost Creek and Tribs. - no domestic water supply use(GC-4.#21)
- Lost Creek - no domestic water supply use(GC-4,#22)
- Albemarle unnamed trib (AUT) to Horsehead Creek - no domestic water supply use(GC-2,#27)
- Horsehead Creek from AUT to mouth - no domestic water supply use(GC-2,#27)
- Dismukes Creek and Big Creek to Bayou Dorcheat -- no domestic water supply
- Boggy Creek from the discharge from Clean Harbors El Dorado LCC downstream to the confluence of Bayou de Loutre - no domestic water supply use
- Unnamed tributary to Flat Creek from EDCC Outfall 001 d/s to confluence with unnamed tributary A to Flat Creek - no domestic water supply use (GC-2, #37)
- Unnamed tributary A to Flat Creek from mouth of EDCC 001 ditch to confluence with Flat Creek - no domestic water supply use (GC-2, #38)
- Flat Creek from mouth of UTA to confluence with Haynes Creek - no domestic water supply use (GC-2, #39)
- Haynes Creek from mouth of Flat Creek to confluence with Smackover Creek - no domestic water supply use (GC-2, #40)

SPECIFIC STANDARDS: GULF COASTAL ECOREGION

(Plates GC-1, GC-2, GC-3, GC-4)

	<u>Typical Streams</u>	<u>Spring Water Streams</u>	<u>Lakes and Reservoirs</u>
Temperature °C (°F)*	30 (86)	30 (86)	32 (89.6)
Ouachita River			
(state line to Little Missouri River)	32 (89.6)		
Red River	32 (89.6)		
Turbidity (NTU) (base/all)	21/32	21/32	25/45
Red River (base/all)	50/150		
Minerals	see Reg. 2.511		see Reg. 2.511
Dissolved Oxygen (mg/l) **	<u>Pri.</u>	<u>Crit.</u>	see Reg. 2.505
<10 mi ² watershed	5	2	
10 mi ² - 500 mi ²	5	3	
>500 mi ² watershed	5	5	
All sizes	6	5	
All other standards	(same as statewide)		

* Increase over natural temperatures may not be more than 2.8°C (5°F).

** At water temperatures $\leq 10^{\circ}\text{C}$ or during March, April and May when stream flows are 15 CFS and greater, the primary season D.O. standard will be 6.5 mg/l. When water temperatures exceed 22°C , the critical season D.O. standard may be depressed by 1 mg/l for no more than 8 hours during a 24-hour period

Variations Supported by UAA

- Loutré Creek - from headwaters to railroad bridge, critical season D.O. standard - 3 mg/l; primary season - 5 mg/l;
from railroad bridge to mouth, critical season D.O. - 2 mg/l (GC-2, #1)
- Unnamed tributary to Smackover Creek - headwaters to Smackover Creek, year round D.O. criteria - 2 mg/l
(GC-2, #2)
- Unnamed tributary to Flat Creek - from headwaters to Flat Creek, year round D.O. criteria - 2 mg/l (GC-2, #4)
- Dodson Creek - from headwaters to confluence with Saline River, critical season D.O. standard - 3 mg/l (GC-4, #5)
- Jug Creek - from headwaters to confluence with Moro Creek, critical season D.O. standard - 3 mg/l (GC-2, #6)
- Lick Creek - from headwaters to Millwood Reservoir, critical season D.O. standard - 2 mg/l (GC-1, #7)
- Coffee Creek and Mossy Lake - exempt from Reg. 2.406 and Chapter Five (GC-3, #8)
- Red River from Oklahoma to confluence with Little River - total dissolved solids - 850 mg/l (GC-1, #9)
- Bluff Creek and unnamed trib. - sulfates 651 mg/l; total dissolved solids 1033 mg/l (GC-1, #10)
- Muddy Fork Little Missouri River - sulfates 250 mg/l; total dissolved solids 500 mg/l (GC-1, #24)
- Little Missouri River - sulfates 90 mg/l; total dissolved solids 180 mg/l (GC-1, #25)
- Mine Creek from Highway 27 to Millwood Lake - chlorides - 90 mg/l; sulfates - 65 mg/l; TDS - 700 mg/l
(GC-1, #11)
- Caney Creek - chlorides 113 mg/l; sulfates 283 mg/l; total dissolved solids 420 mg/l (GC-1, #12)
- Bois d'Arc Creek from Caney Creek to Red River - chlorides 113 mg/l; sulfates 283 mg/l; dissolved solids 420
mg/l (GC-1, #13)
- Town Creek below Acme tributary - sulfates 200 mg/l; TDS 700 mg/l (GC-4, #14)
- Unnamed trib. from Acme - sulfates 330 mg/l; TDS 830 mg/l (GC-4, #14)
- Gum Creek - chlorides 104 mg/L; TDS 311 mg/L (GC-2, #15)
- Bayou de Loutré from Gum Creek to State line - Chlorides 250 mg/l; TDS solids 750 mg/l (GC-2, #16)
- Walker Branch - chlorides 180 mg/l; total dissolved solids 970 mg/l (GC-2, #17)
- Ouachita River - from Ouachita River mile (ORM) 223 to the Arkansas-Louisiana border (ORM 221.1), site specific
seasonal D.O. criteria: 3 mg/L June and July; 4.5 mg/L August; 5 mg/L September through May. These
seasonal criteria may be unattainable during or following naturally occurring high flows, (i.e., river stage
above 65 feet measured at the lower gauge at the Felsenthal Lock and Dam, Station No. 89-o, and also for
the two weeks following the recession of flood waters below 65 feet), which occurs from May through
August. Naturally occurring conditions which fail to meet criteria should not be interpreted as violations of
these criteria (GC-3, #26)
- Alcoa unnamed trib. to Hurricane Cr. And Hurricane Cr. - see Reg. 2.511 (CG-4, #19)
- Holly Creek - See Reg. 2.511 (CG-4, #20)
- Saline River bifurcation - see Reg. 2.511 (GC-4, #23)
- Dry Lost Creek and tributaries - see Reg. 2.511 (GC-4, #21)
- Lost Creek - see Reg. 2.511 (GC-4, #22)
- Atbemarle unnamed trib (AUT) to Horsehead Creek - chlorides 137 mg/l; TDS 383 mg/l (GC-2, #27)
- Horsehead Creek from AUT to mouth - chlorides 85 mg/l; TDS 260 mg/l (GC-2, #27)
- Bayou Dorcheat - sulfates 16 mg/l (GC-2, #27)
- Dismukes Creek - chlorides 26 mg/L; TDS 157 mg/L (GC-2, #28)
- Big Creek from Dismukes to Bayou Dorcheat - chlorides 20 mg/L; TDS 200 mg/L (GC-2, #28)
- Bayou de Loutré from Chemtura outfall to Loutré Creek - maximum water temperature 96°F (GC-2, #29)
- Unnamed tributary of Lake June below Entergy Couch Plant to confluence with Lake June - maximum water
temperature 95°F (limitation of 5 degrees above natural temperature does not apply) (GC-1, #30).
- Unnamed tributary from Great Lakes Chemical Company Outfall 002 to Bayou de Loutré - chloride 65, sulfate 35 mg/L,
TDS 141 mg/L (GC-2, #31)
- Unnamed tributary from Great Lakes Chemical Company Outfall 004 to Bayou de Loutré - chloride 239 mg/L.,
TDS 324 mg/L (GC-2, #32)
- Bayou de Loutré from mouth of UT004 to mouth of Loutré Creek, chloride 278 mg/L (GC-2, #33)
- Unnamed tributary from Great Lakes Chemical Company Outfall 003 (UT003) downstream to unnamed tributary
to Little Cornie Bayou - chloride 538 mg/L, sulfate 35 mg/L, and TDS 519 mg/L (GC-2, #34)
- Unnamed tributary of Little Cornie Bayou to confluence with Little Cornie Bayou - chloride 305 mg/L and TDS

325 mg/L (GC-2, #35)
 Little Cornie Bayou from mouth UTA to state line- chloride 215mg/L,sulfate 25mg/L and TDS 500mg/L, (GC-2, #36)

Unnamed tributary to Flat Creek from EDCC Outfall 001 d/s to confluence with unnamed tributary A to Flat Creek
 Chloride 23 mg/L, Sulfate 125 mg/L, TDS 475 mg/L, (GC-2, #37)
 Unnamed tributary A to Flat Creek from mouth of EDCC 001 ditch to confluence with Flat Creek,
 Chloride 16 mg/L, Sulfate 80 mg/L, TDS 315 mg/L, (GC-2, #38)
 Loutre Creek from Hwy 15 South to the confluence of Bayou de Loutre Chloride, 256mg/l; Sulfate 997mg/l, TDS, 1756* (GC-3. #41)
 Bayou de Loutre from Loutre Creek to the discharge for the City of El Dorado South facility Chloride, 264mg/l; Sulfate 635mg/l, TDS, 1236* (GC-3. #42)
 Bayou de Loutre from the discharge from the City of El Dorado-South downstream to the mouth of Gum Creek. Chloride, 250mg/l; Sulfate 431mg/l, TDS, 966 (GC-3. #43)
 Bayou de Loutre from the mouth of Gum Creek downstream to the mouth of Boggy Creek Chloride, 250mg/l; Sulfate 345mg/l, TDS, 780 (GC-3. #44)
 Bayou de Loutre from the mouth of Boggy Creek downstream to the mouth of Hibank Creek Chloride, 250mg/l; Sulfate 296mg/l, TDS, 750 (GC-3. #45)
 Bayou de Loutre from the mouth of Hibank Creek downstream to the mouth of Mill Creek Chloride, 250mg/l; Sulfate 263mg/l, TDS, 750 (GC-3. #46)
 Bayou de Loutre from the mouth of Mill Creek downstream to the mouth of Buckaloo Branch Chloride, 250mg/l; Sulfate 237mg/l, TDS, 750 (GC-3. #47)
 Bayou de Loutre from the mouth of Buckaloo Branch downstream to the mouth of Bear Creek Chloride, 250mg/l; Sulfate 216mg/l, TDS, 750 (GC-3. #48)
 Bayou de Loutre from the mouth of Bear Creek to the final segment of Bayou de Loutre. Chloride, 250mg/l; Sulfate 198mg/l, TDS, 750(GC-3. #49)
 Bayou de Loutre (Final Segment) to the Arkansas / Louisiana State Line. Chloride, 250mg/l; Sulfate 171 mg/l, TDS, 750(GC-3. #50)
 Boggy Creek from the discharge from Clean Harbors El Dorado LCC downstream to the confluence of Bayou de Loutre. Chloride, 631mg/l; Sulfate, 63 mg/l, TDS, 1360; Selenium, 15.6 u/l
 McGeorge Creek (headwaters to Willow Springs Branch) Sulfate, 250 mg/L; TDS, 432 mg/L (GC-4. #52)
 Willow Springs Branch (McGeorge Creek to Little Fourche Creek) Sulfate, 112 mg/L; TDS 247 mg/L (GC-4. #53)
 Little Fourche Creek (Willow Springs Branch to Fourche Creek) TDS, 179 mg/L (GC-4. #54)

Variations Supported by EIP

Holly Creek; Selenium, Chronic Standard, 17µg/l (GC-4, #1)

1. Criteria for the Town Branch, Holman Creek and War Eagle Creek should be amended as follows:

Town Branch from Point of Discharge of the City of Huntsville WWTP downstream to the confluence with Holman Creek.		Holman Creek from the confluence with Town Branch downstream to the confluence with War Eagle Creek.			War Eagle Creek from the confluence with Holman Creek.			
Site Specific Criteria Proposed		Site Specific Criteria Proposed			Site Specific Criteria Proposed			
Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)
185	525	41	185	525	41	185	525	41

2. It should be specified that a critical background flow of 4.0 cfs be applied by listing Town Branch, Holman Creek, and War Eagle Creek (with asterisks) in Reg. 2.511.
3. Removal of the Domestic Water Supply use is requested for Town Branch beginning at Latitude 36.112330°, Longitude -93.732833° and extending downstream to its confluence with Holman Creek at Latitude 36.118158°, Longitude -93.736039°; and for Holman Creek beginning at its confluence with Town Branch at Latitude 36.118158°, Longitude -93.736039° and extending downstream to its confluence with War Eagle Creek at Latitude 36.140824°, Longitude -93.729594°.

Plate GC-1 (Gulf Coastal Plain)

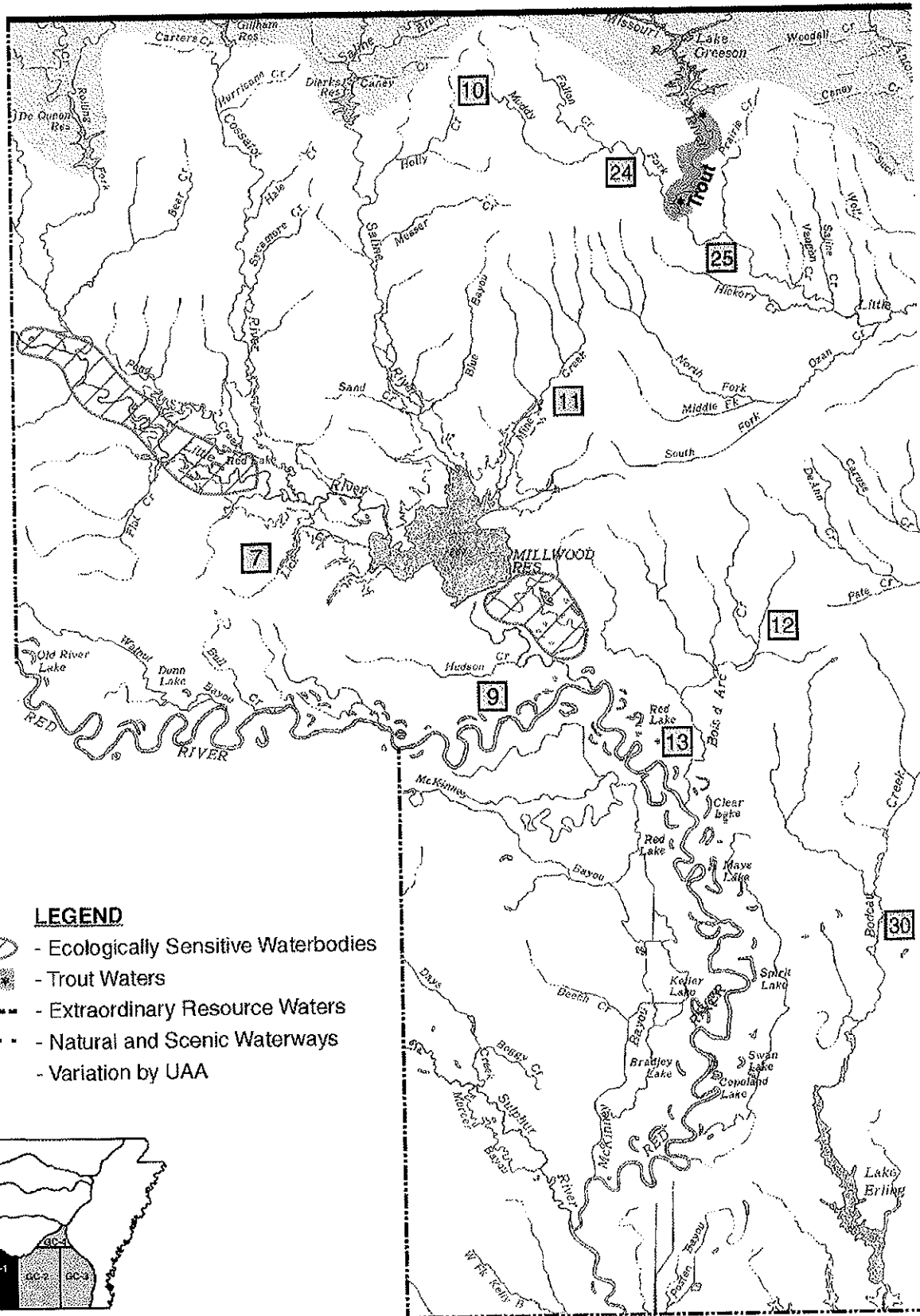


Plate GC-2 (Gulf Coastal Plain)

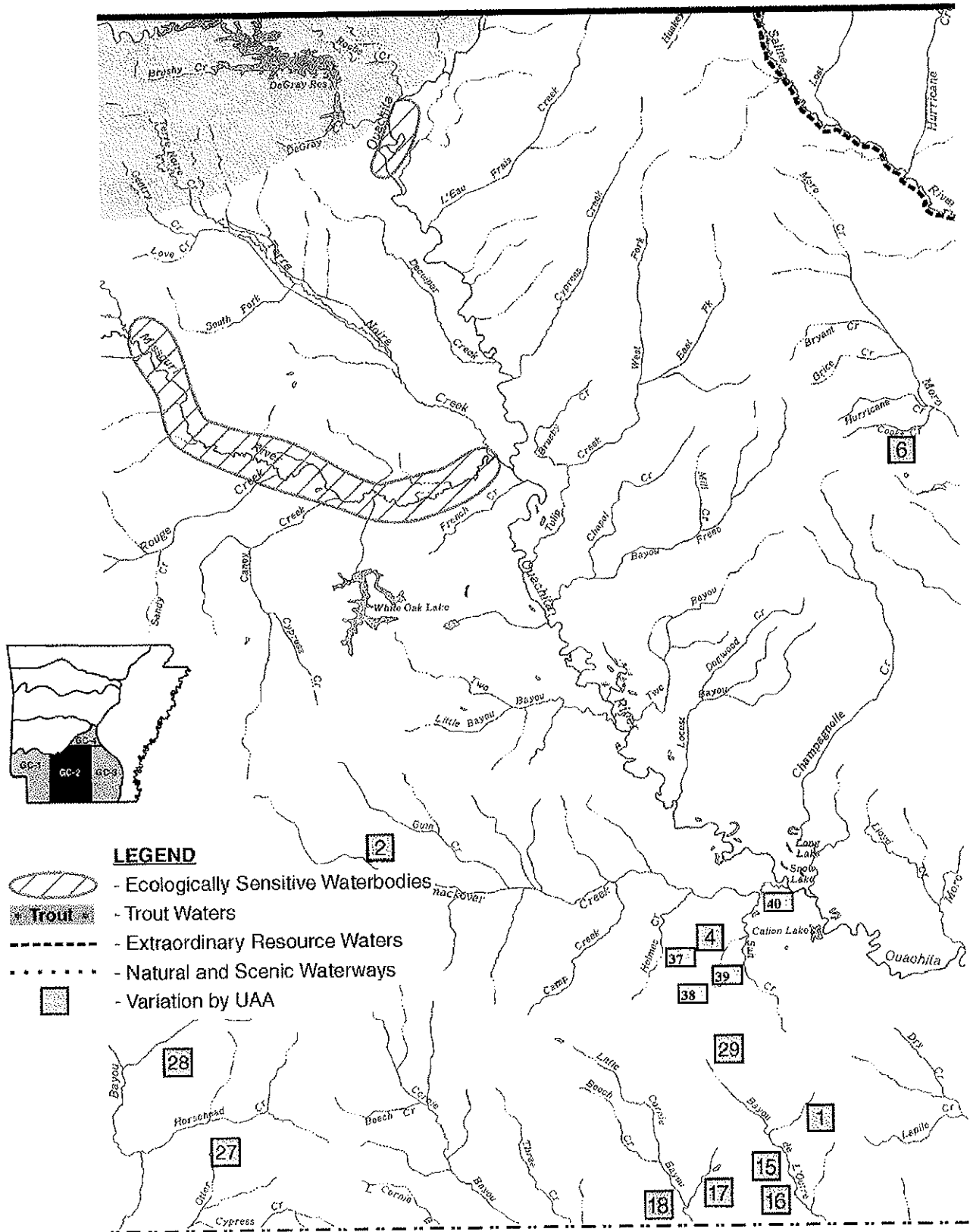


Plate GC-3 (Gulf Coastal Plain)

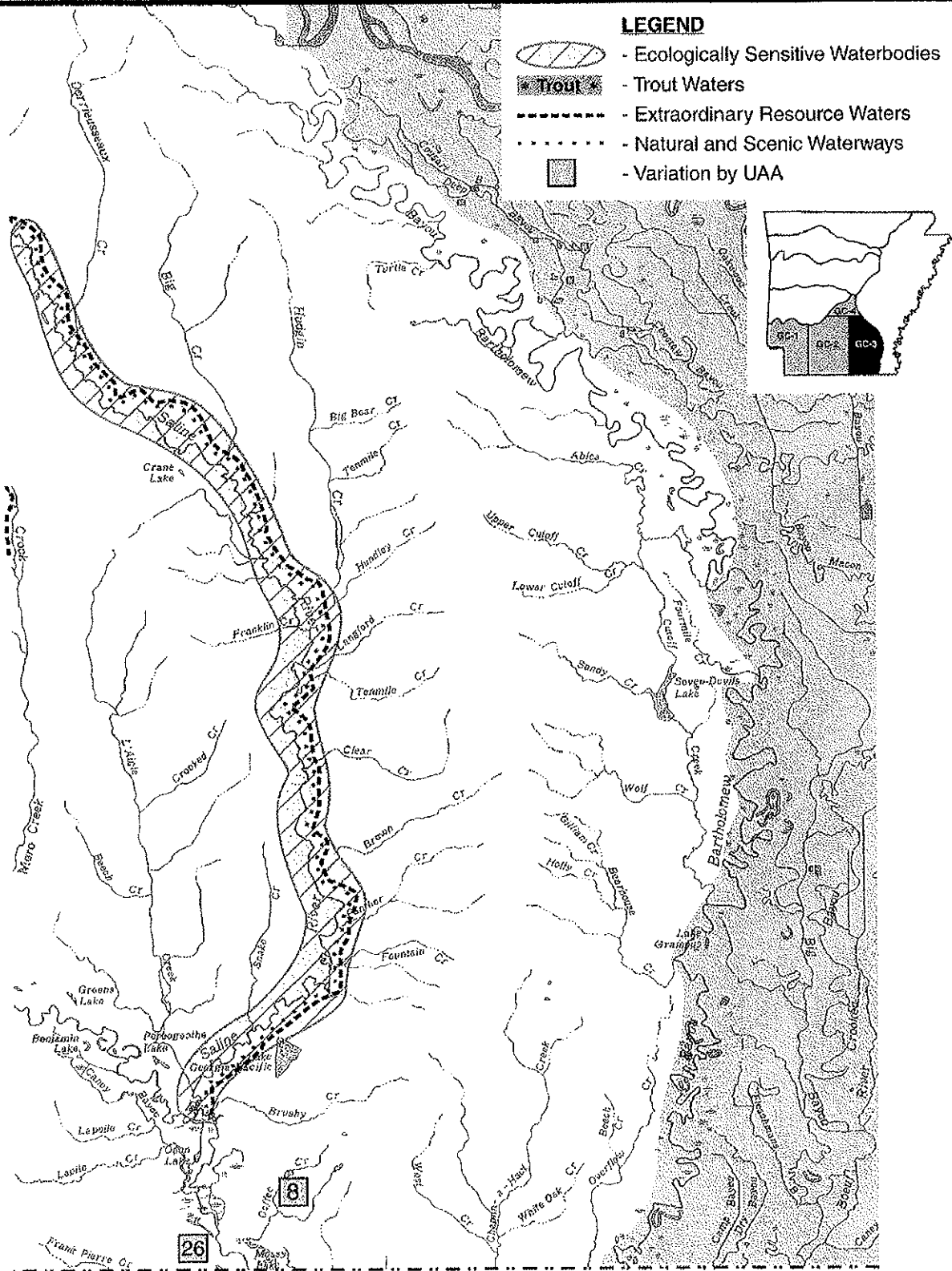
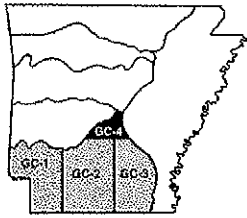








Plate GC-4 (Gulf Coastal Plain)



LEGEND

-  - Ecologically Sensitive Waterbodies
-  - Trout Waters
-  - Extraordinary Resource Waters
-  - Natural and Scenic Waterways
-  - Variation by UAA
-  - Variation by EIP

