

**Archived:** Friday, October 2, 2020 4:12:04 PM  
**From:** [Colene Gaston](#)  
**Sent:** Friday, October 2, 2020 4:04:40 PM  
**To:** [CPP-antideg-comments](#); [Harper, Jake](#)  
**Cc:** [Blanz, Bob](#); [Leamons, Bryan](#); [Martin, Joe](#); [Davis, Donnally](#); [Lane Crider](#); [Bill HagenBurger](#); [James McCarty](#)  
**Subject:** BWD Public Comments on AIM and CPP  
**Importance:** Normal  
**Attachments:**  
[2020 10 02 BWD Public Comments re AIM and CPP.pdf](#);

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Dear Jacob,

Attached is Beaver Water District's public comment letter regarding the proposed Antidegradation Implementation Methods (AIM) and the Continuing Planning Process (CPP) document. The two attachments to the comment letter will be sent in a separate email. Thank you very much for your assistance.

Best regards, Colene

Colene Gaston  
Staff Attorney  
Beaver Water District  
P.O. Box 400  
Lowell, AR 72745  
479.756.3651





October 2, 2020

Via email: CPP-antideg-comments@adeq.state.ar.us and harper@adeq.state.ar.us

Jacob Harper  
Division of Environmental Quality  
Arkansas Department of Energy and Environment  
5301 Northshore Drive  
North Little Rock, AR 72118

Re: Proposed Antidegradation Implementation Methods and  
Proposed Revised Continuing Planning Process Document

Dear Mr. Harper:

The following comments regarding the Division of Environmental Quality's (DEQ's) proposed Antidegradation Implementation Methods (AIM) and proposed revised Continuing Planning Process (CPP) document are submitted on behalf of Beaver Water District (BWD). BWD is the largest of the four drinking water utilities whose source of raw water is Beaver Lake and is the second largest drinking water utility in Arkansas. BWD provides drinking water to over 358,000 people and numerous businesses and industries in Northwest Arkansas.

These comments are in addition to comments I made as BWD's representative during the June and July 2020 Stakeholder Workgroup process. BWD's comments below focus on important, overarching issues. These numbered "Issues" often contain multiple comments and requests and should be treated as such, even though they are grouped together under one issue number and heading for organizational purposes.

**Issue 1, Allow for Meaningful Public Participation:** BWD appreciates that it was given the opportunity to participate in the Focus Group that considered DEQ's draft AIM over a four month period ending in July 2018 and to participate in the Stakeholder Workgroup that was convened in June and July of 2020 to review DEQ's new draft version of the AIM and its draft revised CPP. In 2018, the draft AIM was written to be a Chapter in the draft CPP document. BWD has no knowledge of what transpired regarding the AIM between July of 2018 and June of 2020. It is evident, however, that the June 2020 draft AIM is markedly different from the 2018 version. The differences largely do not appear to have been based upon the input made during the Focus Group's review.

Similarly, no changes were made to incorporate input from the Stakeholder Workgroup when the proposed AIM and proposed revised CPP were released for public comment on July 26, 2020. Multiple members of the Stakeholder Workgroup had requested that DEQ address the Workgroup's questions and comments and revise the draft AIM and CPP accordingly, *prior* to issuing its proposed AIM and proposed revised CPP for public notice and comment. This could have clarified vague and unclear provisions in the documents and aided in the public's ability to understand, review, and constructively comment on the proposed documents. BWD assumed that was a primary reason for both DEQ and stakeholders to devote time to the Workgroup process.

Stakeholder Workgroup members also requested a lengthy public comment period, given the complexity of the AIM and the CPP and their importance in protecting the quality of the waters of the State. Instead, DEQ chose to abruptly issue the proposed AIM and proposed revised CPP simultaneously for only a thirty-day public comment period and during a time that proposed amendments to the State's surface water quality standards in Arkansas Pollution Control and Ecology Commission (APCEC) Regulation No. 2 (hereinafter, "Reg. 2") were also out for public notice and comment. The public comment period for the AIM and CPP was scheduled to conclude on August 26, 2020. The public comment period for Reg. 2 was scheduled to end on September 8, 2020. BWD and others requested that the comment period for the AIM and CPP be extended. BWD's request is Attachment A hereto and is incorporated herein by reference. DEQ extended the public comment period on the AIM and CPP to October 2, 2020.

BWD appreciates the extension of the comment period on the AIM and CPP. The public participation process on the proposed AIM and CPP, however, should not end with the close of the public comment period. Approximately sixty-eight days is simply insufficient time for the public to digest and adequately comment on documents that it has taken DEQ literally decades to draft and that were issued with provisions that were known to be unclear. More importantly, it is difficult to comment on the AIM and CPP when their foundational underpinnings, the water quality standards in Reg. 2, are in the process of being changed. BWD's comments on the proposed amendments to Reg. 2, which is Attachment B hereto and is incorporated by reference herein, point out multiple instances where the proposed changes to Reg. 2 may remove the authority for effluent limitations and other terms and conditions commonly included in National Pollutant Discharge Elimination System (NPDES) permits. The water quality standards in Reg. 2, the NPDES requirements in APCEC Regulation No. 6 (hereinafter, "Reg. 6"), and the AIM and CPP are supposed to work in concert and not in isolation. The public participation process for reviewing the AIM and CPP should be designed to ensure that happens.

***BWD requests that DEQ do the following to provide meaningful public participation and to produce an AIM and a CPP that preserve and protect the waters of the State:***

- 1. Finalize the appropriate amendments to Reg. 2 from the current triennial review process.*
- 2. Decide and inform the public regarding what will be done with the proposed amended version of Reg. 6 that has not received legislative approval.*
- 3. Review the public comments on the AIM and CPP submitted during the Stakeholder Workgroup meetings and the instant comment period.*
- 4. Prepare a response to the public comments and revise the AIM and CPP accordingly.*
- 5. Issue the revised proposed AIM and CPP for at least a sixty-day, and preferably a ninety-day, public comment period. Or first issue the revised proposed AIM for public comment and, following the conclusion of that comment period, issue for public comment the revised proposed CPP.*

**Issue 2, Promulgate the AIM as a Rule:** BWD believes that the AIM should be promulgated as a rule. Otherwise, it is only guidance and will be subject to objection, manipulation, and legal challenge. See, for example and without BWD agreeing with the decision, APCEC Docket No.

03-007-P, Order No. 6, Recommended Decision in the Matter of Eastman Chemical Company, p. 34 and APCEC Minute Order 05-07.

BWD understands DEQ's desire for flexibility and the relative ease of making changes in guidance documents as compared to rules. These benefits are offset, however, by the increased burden on DEQ staff when they do not have the full force and effect of a rule to support permit decisions and other water program decisions and determinations. Wastewater dischargers and other regulated entities may be less willing to accept DEQ determinations and more willing to pressure staff to adopt the regulated entities' positions. DEQ may concede its appropriate positions to avoid legal challenges.

In addition, having the AIM as a rule would facilitate the application of the State's Antidegradation Policy in Reg. 2, Chapter 2 by other government agencies and offices in the context of their programs to address activities that affect water quality, such as nonpoint source pollution, mining, oil and gas developments, instream habitat and streambank alteration, and hydropower operations. This is important because the water quality standards and the Antidegradation Policy should drive all water quality management decisions, not just those that are part of the NPDES program.

Multiple states have promulgated their antidegradation implementation methods as rules or regulations. One need look no further than Arkansas' neighboring state of Oklahoma for an example. *BWD requests that DEQ promulgate the AIM as a rule, either as part of Rule 2 or as a stand-alone rule. BWD believes that this would best be undertaken as reasonably soon as DEQ has completed a meaningful public participation process (see Comment, 1 above) and has made appropriate revisions to the proposed AIM. BWD acknowledges that a reasonable alternative to undertaking promulgation of the AIM as a rule in the near future would be to utilize the AIM as guidance for a limited time to assess its strengths and weaknesses and to revise it appropriately. Should DEQ choose this course, BWD requests that DEQ announce its timeline and plan prior to finalizing the initial AIM guidance.*

**Issue 3, Consider Promulgating the CPP as a Rule:** BWD acknowledges the difficulty inherent in promulgating the CPP as a rule and in adopting subsequent amendments. It is much longer than the AIM and covers a broader array of subject areas. Nonetheless, the rationale for promulgating the AIM as a rule also applies to the CPP. See Issue 2, above, which is incorporated herein by reference. *BWD requests that DEQ consider promulgating the CPP as a rule and convening a stakeholder workgroup or similar on this issue.*

**Issue 4, Apply the AIM to Waters of the State:** The 2018 draft AIM applied to all "Waters of the State." That term is statutorily defined in A.C.A. § 8-4-102(10) as "all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state."

In the 2020 proposed AIM, DEQ proposes to limit antidegradation review to the subset of NPDES permits that authorize discharges to waters that meet the federal definition of “Waters of the United States” (WOTUS). The definition of WOTUS is complicated, highly litigated, and continues to be subject to change. The definition of Waters of the State, on the other hand, is clear and has remained constant for decades. It also provides broader protection than the current definition of WOTUS. Arkansas’ water quality standards in Reg. 2 apply to Waters of the State, including the Antidegradation Policy in Chapter 2 of Reg. 2. The Arkansas Water and Air Pollution Control Act, A.C.A. §§ 8-4-101 *et seq.*, applies to Waters of the State. Wastewater discharge permits are issued pursuant to both the NPDES regulations and the Arkansas Water and Air Pollution Control Act. As a legal matter, the AIM must apply to Waters of the State to fulfill the State’s statutory and regulatory requirements.

As a matter of established science, wetlands, streams in karst areas, ephemeral streams, and headwaters streams greatly influence the water quality and ecological health of downstream water bodies. Limiting antidegradation protections to only WOTUS would jeopardize a subset of Waters of the State that are critical to maintaining the physical, chemical, and biological integrity of downstream waters, including streams, lakes, and reservoirs that are utilized as sources for drinking water.

For the above legal and scientific reasons, *the language of the proposed AIM should be revised to provide in clear terms that the AIM is to apply to “Waters of the State” (as defined by A.C.A. § 8-4-102(10)) and that all references to “WOTUS” in the proposed AIM be deleted and replaced by “Waters of the State.”*

**Issue 5, Expand and Clarify the Activities in the AIM that Are Eligible for Antidegradation Review:** Section 7 of the proposed AIM generally limits the activities eligible for antidegradation review to certain new or expanding wastewater discharges. This restriction improperly eliminates antidegradation review for existing permits that do not propose “changes to the facility’s effluent which would result in significant increases of pollutant loadings.” (Proposed AIM, lines 265 – 267). In addition, *“significant increases of pollutant loadings” is vague and should be defined.*

A State AIM has been required by the federal Clean Water Act (CWA) and its implementing regulations since at least 1987, and arguably long before that. *At a minimum, all NPDES permits that have been issued since 1987 should undergo an initial antidegradation review at the time of the next permit renewal or modification, whichever comes first.* Consideration should be given to the ways this review process might need to differ from the antidegradation review for new and expanding wastewater discharges. That is not to suggest, however, that permittees that have escaped the required antidegradation review during the last thirty-plus years should be reviewed in a way that serves to “grandfather” them in without application, among other things, of a practicable alternatives analysis, a social development analysis, and an economic analysis where appropriate.

The proposed AIM does not even apply to all new wastewater discharges. Lines 279 to 290 of the proposed AIM provide, in pertinent part:

**General Permits:** In an effort to expedite permit timeliness, antidegradation requirements will be incrementally addressed for all general permits during the renewal process within 5 years of approval of this antidegradation implementation procedure. However, activities covered by general permits may still be subject to an antidegradation review if during the application (Notice of Intent) period the activity is determined likely to cause significant degradation.

...

**General Antidegradation Reviews:** the Division may develop a general antidegradation review for small domestic dischargers (generally less than or equal to 50,000 gallons per day) into Tier 2 waters.

*Upon adoption of the AIM, antidegradation review eligibility requirements should immediately apply to new or renewed General Permits and to any Notices of Intent (NOIs) under a General Permit.* Wastewater discharges authorized by General Permits do not categorically have less of an impact on water quality than wastewater discharges authorized by individual permits. General Permits should be subjected to the same level of scrutiny as individual permits. Additionally, the proposed “general antidegradation reviews for small domestic dischargers” cannot be done as each receiving water will have different characteristics.

While lines 265 to 267 of the proposed AIM use the vague and undefined requirement of “significant increases of pollutant loadings” to narrow the field of discharges subject to antidegradation review, lines 285 to 286 would provide an exception where there is “significant degradation” to the do-it-later approach to antidegradation review of NOIs. *If the AIM is not revised as requested above to make antidegradation review eligibility apply as soon as the AIM becomes effective to new or renewed General Permits and to any Notices of Intent (NOIs) under a General Permit, then the vague and undefined term “significant degradation” must be defined or otherwise revised. Any new or revised definitions should err on the side of expanding, rather than contracting, eligibility for antidegradation review. This rule-of-thumb should hold true for all vague and undefined terms in the proposed AIM.*

Last, antidegradation review should apply to many activities and actions besides those that are subject to NPDES permitting. The State’s water quality standards in Reg. 2, including the antidegradation policy, do not apply only to NPDES permits or just to the actions of DEQ. A stated purpose of the water quality standards is to “enhance the quality, value, and beneficial uses of the water resources of the State of Arkansas, to aid in the prevention, control and abatement of water pollution, to provide for the protection and propagation of fish and wildlife and to provide for recreation in and on the water.” See Reg 2.102. *The AIM should be revised to include procedures for antidegradation review of activities and actions pursuant to sections*

***303(d), 401, and 404 of the CWA, for water quality standards revisions, and for management of nonpoint source (NPS) pollution, at a minimum.***

**Issue 6, Expand and Clarify the Parameters to be Assessed:** The proposed AIM follows a parameter-by-parameter approach “for the purpose of determining the level of antidegradation review applicable to the waterbody.” See lines 76 – 78 of the proposed AIM. The proposed AIM, however, incorrectly limits the parameters assessed to the numeric water quality criteria in Reg. 2. Reg. 2 also contains approximately eleven narrative water quality criteria in the Chapter 4, General Standards and the Chapter 5, Specific Standards. These narrative criteria largely are designed to limit the deleterious effects of effluent on receiving waters.

***All narrative water quality criteria should be assessed for the purpose of determining the level of antidegradation review applicable to a waterbody. This will require the inclusion in the AIM of particularized methods for determining Baseline Water Quality and Assimilative Capacity, among other things, for the narrative water quality criteria. Until such time as there are numeric water quality criteria for phosphorus and other nutrients, the application of the narrative water quality criteria for nutrients in Reg. 2.509 is of singular importance.*** The Beaver Lake watershed, for example, was declared to be a Nutrient Surplus Area by Act 1061 of 2003 (codified at A. C. A. § 15-20-1104). Nutrient pollution in the Beaver Lake watershed has the potential to adversely impact the Lake’s water quality and can have a direct bearing on what it costs BWD to provide our customers with drinking water that meets or exceeds all federal and state regulatory requirements. Across the State, harmful algal blooms have impacted waterbodies, and statewide the levels of nutrient loads and concentrations are generally increasing or remaining constant, rather than decreasing.

BWD has long advocated for the inclusion of numeric criteria for nutrients in Reg. 2. See Comment 24 in Attachment B. Until that happens and for AIM purposes, DEQ should utilize the recommended ambient, numeric nutrient criteria issued by the U.S. Environmental Protection Agency (EPA) in 2000 and the numeric nutrient criteria work that DEQ has done for the Arkansas Ecoregions. The Associate Director of the DEQ Office of Water acknowledged during the 2020 Stakeholder Workgroup meetings that DEQ has completed the work on its own numeric nutrient criteria for the Ozark Highlands and Boston Mountains Ecoregions. DEQ should include in the AIM the methods and procedures to utilize the State’s narrative nutrient criteria for the purpose of antidegradation review, and preference in the selection of methods and procedures should be given those that are the most protective. This is necessary for the appropriate application of the AIM to be a potentially effective tool to control HABs, cyanotoxins, hypoxia, eutrophication, and problems related to disinfection by-products and unpleasant tastes and odors in drinking water.

**Issue 7, Clarify the Procedures to Be Applied to Lakes and Reservoirs and Increase Their Level of Protection:** The proposed AIM fails to provide clear procedures for lakes and reservoirs. ***At a minimum, detailed procedures must be included for the Baseline Water Quality, Assimilative Capacity, and Critical Flow determinations for lakes and reservoirs.*** For



example, the procedures should account for lake or reservoir depth, volume, and hydrologic retention. (This also applies to wetlands and navigation system waters due to their unique physical, chemical, and biological attributes).

The draft AIM reviewed by the 2018 Focus Group contained protections for lakes and reservoirs that are missing from the proposed AIM. For example, all waterbodies currently used for domestic water supply (which are often lakes and reservoirs) were defined as Exceptional High Quality Waters and were given an elevated level of “Tier 2.5” consideration. *DEQ should at least include in the AIM updated versions of the lake, reservoir, and domestic water supply protections discussed during the 2018 AIM Focus Group process. Additionally, DEQ should include in the AIM new provisions that recognize and account for the importance of protecting lakes, reservoirs, and domestic water supplies that are not listed as Outstanding Resource Waters in Reg. 2 and that, consequently, are not afforded Tier 3 protections in the proposed AIM. Consideration should be given to designating critical domestic water supplies as Tier 3 waters.*

**Issue 8, Include a Margin of Safety in the AIM:** The 2018 Focus Group had lengthy discussions regarding the inclusion of Margins of Safety in the AIM, particularly in the determinations of Baseline Water Quality, Assimilative Capacity, and Critical Conditions. The Margin of Safety concept is missing from the proposed AIM. Existing water quality data is often limited or inadequate, and there is the potential that monitoring or modelling data developed to fulfill the requirements of the AIM will not be representative of critical conditions or be otherwise sufficiently protective. *The AIM should be revised to incorporate Margins of Safety into critical calculations and determinations.*

**Issue 9, Include Procedures to Determine, Track, and Report Cumulative Impacts:** “Nonsignificant Lowering of Water Quality” (see lines 67 – 70 in the proposed AIM), as well as “Significant Lowering of Water Quality” (see lines 101 – 105 in the proposed AIM), needs to be tracked so that it is clear when over ten percent of the assimilative capacity has been cumulatively utilized in the water body and a Tier 2 review is needed for the next activity. The issue of accurately determining cumulative impacts also is dependent upon the universe of waters and activities that are eligible for antidegradation review (see Issues 4 and 5, above). *The AIM should be revised to include procedures to determine, track, and report cumulative impacts in a manner that is accurate and comprehensive and that is clear and readily accessible to the public.*

**Issue 10, Clarify and Expand the Procedures for Public Review:** Section 10, lines 520 to 523 of the proposed AIM regarding “Public Review” is one sentence and states: “Prior to approval and issuance of a permit or certification for a proposed activity that will cause significant degradation of water quality, public notice is provided in accordance with the APC&EC Rule 8.” Rule 8 contains administrative procedures to be followed for permits, for grant, loan, and tax credit decisions, for enforcement decisions, for emergency actions, for adjudications, and for rulemaking. It is not clear exactly how the provisions are to be applied to permits, certifications,

and other actions that are subject to antidegradation review. For permits, if DEQ intends that the antidegradation review be subject only to public notice and comment at the same time and in the same manner as draft permits, BWD objects. *Antidegradation review and decisions should be subject to public notice and comment separate from and earlier in the process than the issuance of a draft permit or other draft decision of DEQ. BWD also requests that public drinking water utilities be given particularized notice of antidegradation review decisions for activities to occur in the watershed of their source waters.*

**Issue 11, Include Public Drinking Water Utilities in the Intergovernmental Coordination and Review:** Section 11, lines 524 to 534 of the proposed AIM requires “intergovernmental coordination” of “relevant public entities,” but it does not specify the relevant entities. Based on prior experience, DEQ does not intend the intergovernmental coordination to include public drinking water utilities. This is unfortunate, as public drinking water utilities are often the most knowledgeable entities when it comes to their raw water sources and the watershed for those sources. *Section 11 of the AIM should be revised to be more specific and to include public drinking water utilities in the intergovernmental coordination and review.*

Thank you for your consideration of these comments. It is BWD’s sincere hope that DEQ will, as requested in Issue 1, above: review the public comments on the AIM and CPP submitted during the Stakeholder Workgroup meetings and the instant comment period; prepare a response to the public comments and revise the AIM and CPP accordingly; and issue the revised proposed AIM and revised proposed CPP for additional public comment periods. BWD remains committed to participation in any such opportunities.

Sincerely,



Colene Gaston  
Staff Attorney

*Attachments:*

Attachment A, BWD August 18, 2020, Request for Extension of Public Comment Period  
Attachment B, BWD September 8, 2020, Public Comments on Reg. 2

*Cc via email to Department of Environmental Quality:*

Robert Blanz, Ph.D., Associate Director, Office of Water Quality (blanz@adeq.state.ar.us)  
Bryan Leamons, P.E., Senior Operations Manager, OWC (leamons@adeq.state.ar.us)  
Joe Martin, Branch Manager, Water Quality Planning, OWC (joe.martin@adeq.state.ar.us)  
Donnally Davis, Office of Communications (davis@adeq.state.ar.us)

*Cc via email to U.S. Environmental Protection Agency, Region 6, Water Division:*

Russell Nelson, Regional Water Quality Standards Coordinator (nelson.russell@epa.gov)

BWD Public Comment Letter  
Re: Proposed AIM and Proposed Revised CPP  
October 2, 2020  
Page 9

*Cc via email to Beaver Water District Staff:*  
Lane Crider (lcrider@bwdh2o.org)  
Bill HagenBurger (bhagenburger@bwdh2o.org)  
James McCarty (jmccarty@bwdh2o.org)

**Archived:** Friday, October 2, 2020 4:19:02 PM

**From:** Colene Gaston

**Sent:** Friday, October 2, 2020 4:14:25 PM

**To:** CPP-antideg-comments; Harper, Jake

**Cc:** Blanz, Bob; Leamons, Bryan; Martin, Joe; Davis, Donnally; Lane Crider; Bill HagenBurger; James McCarty

**Subject:** Attachments for BWD Public Comments on AIM and CPP

**Importance:** Normal

**Attachments:**  
2020 08 18 BWD to DEQ re Extension of AIM and CPP Public Comment Periods (Attachment A).pdf;2020 09 08 BWD Public Comments on Proposed Changes to Reg. 2 (Attachment B).pdf;

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Jacob,

Here are the two attachments (A and B) to be posted with Beaver Water District's public comment letter on the AIM and CPP.

Once again, thank you, and best wishes for the weekend, Colene

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**From:** Colene Gaston

**Sent:** Friday, October 2, 2020 4:04 PM

**To:** 'CPP-antideg-comments@adeq.state.ar.us' <CPP-antideg-comments@adeq.state.ar.us>; Jacob Harper (harper@adeq.state.ar.us) <harper@adeq.state.ar.us>

**Cc:** Robert Blanz (blanz@adeq.state.ar.us) <blanz@adeq.state.ar.us>; Leamons, Bryan <LEAMONS@adeq.state.ar.us>; Joe Martin (joe.martin@adeq.state.ar.us) <joe.martin@adeq.state.ar.us>; Davis, Donnally <davis@adeq.state.ar.us>; Lane Crider <lcrider@bwdh2o.org>; Bill HagenBurger <bhagenburger@bwdh2o.org>; James McCarty <jmccarty@bwdh2o.org>

**Subject:** BWD Public Comments on AIM and CPP

Dear Jacob,

Attached is Beaver Water District's public comment letter regarding the proposed Antidegradation Implementation Methods (AIM) and the Continuing Planning Process (CPP) document. The two attachments to the comment letter will be sent in a separate email. Thank you very much for your assistance.

Best regards, Colene

Colene Gaston  
Staff Attorney  
Beaver Water District  
P.O. Box 400  
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479.756.3651

2020 08 18 BWD to DEQ re Extension of AIM and CPP Public Comment Periods (Attachment A).pdf

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August 18, 2020

Via E-mail: [keogh@adeq.state.ar.us](mailto:keogh@adeq.state.ar.us) and  
[CPP-antideg-comments@adeq.state.ar.us](mailto:CPP-antideg-comments@adeq.state.ar.us)

Secretary Becky Keogh  
Department of Energy and Environment  
5301 Northshore Drive  
North Little Rock, AR 72118

Re: Antidegradation Implementation Methods (AIM) and  
Continuing Planning Process (CPP) Documents  
Request for Extension of Public Comment Periods

Dear Secretary Keogh:

On Sunday, July 26, 2020, you issued a public notice for a thirty-day public comment period on the Department of Energy and Environment (DE&E), Division of Environmental Quality's (DEQ's) draft Antidegradation Implementation Methods (AIM) and draft Continuing Planning Process (CPP) documents. Beaver Water District (BWD) respectfully requests extensions of the public comment periods for both the draft AIM and the draft CPP documents for at least sixty (60) days from the current public comment deadline of Wednesday, August 26, 2020, at 4:30 p.m. Central Time to at least Tuesday, October 27, 2020. The reasons for the requested extensions include:

- The public comment period for the AIM and the CPP overlaps with the public comment period for DEQ's proposed amendments to Regulation No. 2 ("Reg. 2"), which are part of DEQ's triennial review of the State's surface water quality standards that is required pursuant to the federal Clean Water Act (CWA). The public comment period for the proposed amendments to Reg. 2 concludes Tuesday, September 8, 2020, at 4:30 p.m. Central Time.
- The AIM document is approximately eighteen (18) single-spaced pages long. The CPP document is approximately one hundred seventeen (117) single-spaced pages long. The marked-up version of the proposed amendments to Reg. 2 is approximately one hundred thirty (130) single-spaced pages long. Each of these three documents is complex and oftentimes highly technical. They also are interrelated. To fully understand each document, one must regularly consult the other documents, as well as the federal CWA regulations.
- The water quality standards in Reg. 2 are the foundation for the AIM and CPP documents. Public comments on Reg. 2 should be addressed by DEQ and, ideally, any changes to Reg. 2 in response to comments should be made prior to the close of the public comment periods on the AIM and CPP. Otherwise, the public will be unable to ascertain the full meaning of provisions in the AIM and CPP when preparing comments.

- The CPP document is a wholesale revision of the current CPP that was last issued in 2000. The proposed changes are so comprehensive that DEQ, understandably, chose not to prepare a marked-up version of the document showing the changes between the 2000 and draft 2020 versions. Presumably, one of the reasons that it took DEQ twenty (20) years to propose revisions and updates to the CPP, which the CWA requires, was the complexity of the issues involved.
- A state AIM has been required by the CWA since 1987. Arkansas is one of only two states that have failed to meet this requirement in the intervening thirty-three (33) years. This long delay also reflects, in part, the complexity of the issues involved. Although being the shortest-by-far of the three DEQ water quality documents currently out for public comment, the AIM is critical in terms of the State's ability to fulfill the mandate of CWA section 101(a) "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." BWD believes that a well thought-out and drafted AIM also is essential for the protection and maintenance of Arkansas' drinking water sources. Every word of this first-time AIM document deserves careful consideration.
- BWD acknowledges DEQ's efforts to engage select stakeholders prior to the issuance of the AIM and CPP for public comment. Unfortunately, we must conclude that those actions were largely window-dressing. No changes to the draft AIM and CPP were made by DEQ in response to comments made during the stakeholder workgroup virtual meetings.
- In addition, the process for participation in the stakeholder workgroup via virtual meetings was flawed from the outset. The schedule for meetings was not made available at the start of the process, and there was, to BWD's knowledge, no consultation with stakeholders regarding the timing of the meetings. Notice of the three stakeholder workgroup virtual meeting dates and times -- June 22, July 7, and July 22 -- was given only four, eight, and six business days, respectively, in advance (note that DEQ characterizes the June 22 morning and afternoon sessions as "two meetings"). The process for reviewing the AIM and CPP documents was compressed and was not calculated to maximize, or even facilitate, the ability of volunteer stakeholders to prepare for and attend the virtual meetings, much less to provide comments. More significantly, it was not until the stakeholder workgroup meeting on July 22 that participants were informed that DEQ would be making no changes to the AIM and CPP documents and that it had decided to issue those documents just four days later for a thirty-day public comment period. BWD's representative on the stakeholder workgroup, among others, objected to DEQ's intended course of action.
- Regardless of any opportunities provided to select stakeholders in advance, the public (including the members of the stakeholder workgroup) should have a meaningful opportunity to review and comment on the AIM and CPP documents during the formal public comment periods. A simultaneous thirty-day comment period for both documents

that overlaps with the public comment period for Reg. 2 would be wholly inadequate under the best of circumstances. Current circumstances, however, are far from ideal.

- In recognition of the global pandemic, DE&E issued an unprecedented Enforcement Guidance to provide regulated entities flexibility and alternative approaches to compliance. The challenges presented by the pandemic to the public's ability to simultaneously review and comment on multiple, complex documents that will serve as the bases for DEQ's water quality programs deserve no less consideration and accommodation.

Thank you for your consideration of BWD's request to extend the public comment periods for the AIM and CPP documents to at least Tuesday, October 27, 2020. Given the current, impending deadline, we look forward to a prompt response.

Sincerely,



M. Lane Crider, P.E.  
Chief Executive Officer

*Cc via email to Department of Environmental Quality, Office of Water Quality:*

Robert Blanz, Ph.D., Associate Director (blanz@adeq.state.ar.us)

Bryan Leamons, P.E., Senior Operations Manager (leamons@adeq.state.ar.us)

Joe Martin, Branch Manager, Water Quality Planning (joe.martin@adeq.state.ar.us)

*Cc via email to Department of Environmental Quality, Office of Communications:*

Donnally Davis (davis@adeq.state.ar.us)

Jacob Harper (harper@adeq.state.ar.us)

*Cc via email to U.S. Environmental Protection Agency, Region 6, Water Division:*

Charles Maguire, Director (maguire.charles@epa.gov)

Russell Nelson, Regional Water Quality Standards Coordinator (nelson.russell@epa.gov)

*Cc via email to Beaver Water District Staff:*

Bill HagenBurger (bhagenburger@bwdh2o.org)

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September 8, 2020

Via email: *Comment@adeq.state.ar.us* and *harper@adeq.state.ar.us*

Jake Harper  
Division of Environmental Quality  
Arkansas Department of Energy and Environment  
5301 Northshore Drive  
North Little Rock, AR 72118

Re: Triennial Review Proposed Amendments to APCEC Regulation No. 2

Dear Mr. Harper:

The following comments regarding the proposed amendments to the Arkansas surface water quality standards in Arkansas Pollution Control and Ecology Commission (APCEC) Regulation No. 2 (hereinafter, "Reg. 2") are submitted on behalf of Beaver Water District (BWD). BWD is the largest of the four drinking water utilities whose source of raw water is Beaver Lake and is the second largest drinking water utility in Arkansas. BWD provides drinking water to over 358,000 people and numerous businesses and industries in Northwest Arkansas. BWD's comments begin with three over-arching issues and then follow with comments on specific sections in the order in which they appear in Reg. 2 (these comments will use "Rule 2" when referring to the proposed amended language).

**Comment 1, Triennial Review Process:** The Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) is required by section 303(c)(1) of the federal Clean Water Act (CWA) to conduct a review and update of the State's surface water quality standards every three years (the so-called, "Triennial Review"). BWD was a participant in DEQ's 2013 Triennial Review Stakeholder Workgroup. That Triennial Review resulted in amendments to Reg. 2 that were adopted by APCEC on February 28, 2014. Participants in the 2013 Triennial Review Stakeholder Workgroup suggested multiple revisions to Reg. 2 that DEQ chose to defer to the next Triennial Review. The next Triennial Review was not begun until 2019. BWD was also a participant in the 2019 Triennial Review Stakeholder Workgroup. Contrary to its commitment in the 2013 Triennial Review, DEQ in the 2019 Triennial Review largely did not consider the deferred issues or new issues raised by the 2019 Stakeholder Workgroup. Instead, DEQ moved forward with what it termed a "clean-up" rule (*i.e.*, changing Arkansas Department of Environmental Quality to Arkansas Department of Energy and Environment, Division of Environmental Quality, changing "regulation" to "rule," providing "clarification" and "minor corrections . . . illustrative of the regulatory intent;" making changes to incorporate United States Environmental Protection Agency (EPA) decisions on previous versions of the rule, removing permitting language that is to be moved to APCEC Regulation No. 6, and making "non-substantive stylistic and formatting" corrections) (see DEQ's Petition to Initiate Rulemaking to Amend Regulation No. 2, pp. 1-9).

*DEQ should not wait another three or more years to consider the substantive issues raised by the 2013 and 2019 Stakeholder Workgroup participants that were deferred or not addressed. BWD*

*requests that as soon as APCEC acts on the 2019 Triennial Review update of Rule 2, DEQ begin a stakeholder-involved process to consider further revisions to Rule 2.*

**Comment 2, Removal of Permitting Language:** DEQ's Petition to Initiate Rulemaking to Amend Regulation No. 2 (hereinafter, "DEQ Petition") lists five categories of proposed amendments. One of those categories is to, "remove permitting language from Reg. 2 (Rule 2) that is being adopted into Rule 6 – Regulations for the State Administration of the National Pollutant Discharge Elimination System (NPDES), Rule 6.404." (DEQ Petition, pp. 8-9). That language carries the following footnote: "If Rule 6 revisions are not adopted by APCEC and not approved by EPA, then this language will remain in Rule 2." (DEQ Petition, p. 9). In June 2020, however, DEQ's proposed revisions to Regulation No. 6 (hereinafter, "Reg. 6") failed to receive the requisite approval of the Arkansas legislature. The currently effective version of Reg. 6 is from 2015, and it does not include the permitting language that DEQ now proposes to delete from Reg. 2.404, 2.409, 2.502, 2.503, 2.504, 2.505, 2.507, 2.508, 2.509, 2.510, 2.512(D), and Appendix A.

*The "permitting language" should not be deleted from Reg. 2 until the same or more stringent language has been added to a revised Reg. 6 that has received all necessary approvals, including that of the Governor, the General Assembly, APCEC, and EPA. To do so would, among other things, likely result in objections to and appeals of NPDES permits containing terms and conditions based on provisions that are no longer contained in any effective regulation.*

**Comment 3, Definitions and Use of Defined Terms:** Rule 2.106 provides the definitions for certain terms used in Rule 2. For multi-word terms, only the first letter of the first word is capitalized. Throughout Rule 2, there is inconsistent capitalization of even the first word of terms that are defined in Rule 2.106. Because of this, it is difficult to recognize those words and terms in the text that have particularized meanings that may differ from the ordinary meaning of the words.

*The first letter of all words in each term defined in Rule 2.106 should be capitalized in that section and throughout the Rule.*

**Comment 4, Rule 2.104, Policy for Compliance:** This section is entirely a permitting provision, but DEQ has not proposed to remove it from Reg. 2.

*BWD recommends that the language of Rule 2.104 be added to Reg. 6. Once that is done and there is a fully-approved and effective Rule 6, Rule 2.104 should be deleted. See Comment 2, above.*

**Comment 5, Rule 2.106, Definitions for All Flows and Storm Flows:** DEQ proposes to delete the definition for All Flows and add Storm Flows as a newly-defined term that has the same definition that was deleted for All Flows. These proposed changes and the related proposed changes to the Turbidity criteria at Rule 2.503 are confusing, to say the least. They involve the historical evolution of the Turbidity criteria, which EPA has detailed in the comments it submitted in this rulemaking docket on September 3, 2020. BWD incorporates EPA's comments by reference herein, and generally adopts EPA's recommendations on this issue.

*BWD requests that any changes to the definitions for All Flows and for Storm Flows be designed to preserve the level of protection that any water quality criterion utilizing these terms was originally established to provide.*

**Comment 6, Rule 2.106, Definition for Critical Flows:** This definition begins with, “The flow volume used as background dilution flows in calculating concentrations of pollutants from permitted discharges” and then further defines the critical flow for certain parameters. It appears to largely be a permitting provision, but DEQ has not proposed to remove it from Reg. 2. The term does appear elsewhere in Rule 2, however, including in Rule 2.501.

*BWD questions whether this provision as written is appropriate for Rule 2, whether the definition should be revised to reflect its use in the water quality standards context, and whether the permitting language should instead be included in Reg. 6. See Comment 2, above.*

**Comment 7, Rule 2, Chapter 2, Antidegradation Policy:** On July 26, 2020, DEQ issued its draft Antidegradation Implementation Methods (AIM) document for public comment. DEQ intends the AIM to be a stand-alone guidance document that is not incorporated into Rule 2.

*BWD suggests that the AIM either be incorporated into Rule 2, Chapter 2 or that it be promulgated as a separate rule. Otherwise, actual implementation of the Rule 2 Antidegradation Policy will be subject to objection, manipulation, and legal challenge.*

**Comment 8, Rule 2.302, Designated Uses:** The Designated Uses are defined in this section. The parameters or water quality criteria that apply to each use are not listed in this section or elsewhere in Rule 2.

*BWD suggests that Rule 2.302 include a listing of the water quality criteria that will be used to evaluate each Designated Use. BWD would particularly like to see this specified for the Domestic Water Supply use.*

**Comment 9, Rule 2.302(G), Domestic Water Supply Designated Use:** This section is proposed to provide: “This beneficial use designates water that will be protected for use in public and private water supplies. Conditioning or treatment may be necessary prior to use.”

*BWD requests that the last sentence in this provision be changed to read as follows: Conditioning or conventional treatment consisting of no more than flocculation, coagulation, sedimentation, filtration, and disinfection may be necessary prior to use. (Words added are underlined).*

**Comment 10, Rule 2.308, Site Specific Criteria:** This section lists the methods that can be used to establish numeric water quality criteria. EPA addressed this issue in the comments it submitted in this rulemaking docket on September 3, 2020. BWD incorporates EPA’s comments by reference herein.

*BWD suggests adding to this section language to the effect that preference will be given to the method that produces the more protective criteria.*

**Comment 11, Rule 2.404, Mixing Zones:** DEQ proposes to delete this section, the last sentence of which provides that, “A mixing zone shall not include any domestic water supply intake.”

*BWD objects to this deletion until the same or more stringent language has been added to a revised Reg. 6 that has received all necessary approvals, including that of the Governor, the General Assembly, APCEC, and EPA. See Comment 2, above.*

**Comment 12, Rule 2.409, Toxic Substances:** This section is proposed to state: “Toxic substances that may cause toxicity to human, animal, plant or aquatic biota or interfere with normal propagation, growth, and survival of aquatic biota shall not be allowed into any waterbody.”

*BWD supports this proposed revision, although the deleted portion of the section suffers from the same problem outlined in Comment 2, above*

**Comment 13, Rule 2.502, Temperature:** First, there is a conflict between the proposed change to this section listed on page 2 of the Petition and what appears in the marked-up draft Rule. BWD assumes the location of the phrase “For the purpose of determining effluent limits” is in error. Second, the deletion of the first sentence of Rule 2.502 regarding the prohibited variation from natural background temperature (including the duration) is a substantive, less-protective change to the criteria for which DEQ has not provided the requisite scientific justification.

*BWD objects to the deletion of the first sentence of Rule 2.502, as the deletion lacks scientific justification and is inconsistent with the requirements of 40 C.F.R. § 131.11. See also Comment 2, above.*

**Comment 14, Rule 2.503, Turbidity:** DEQ proposes to delete the use of the term All Flows in this section and replace it with Storm Flows. EPA’s September 3, 2020, comments in this rulemaking docket include a significant discussion of this proposed change. BWD incorporates EPA’s comments by reference herein, and generally adopts EPA’s recommendations on this issue.

*Storm Flows need to be clearly differentiated from Base Flows and both should be calculated in a way that preserves the level of protection that any water quality criterion utilizing these terms was originally established to provide.*

**Comment 15, Rule 2.503, Turbidity:** The units for the numeric Turbidity criteria in the table in this section are designated as NTU. Rule 2.106 defines NTU as Nephelometric Turbidity Unit and provides, in part, that, “NTU are considered comparable to the previously reported Jackson Turbidity Units (JTU). May be reported as Formazin Turbidity Units (FTU) in equivalent units.” The United States Geological Survey (USGS) commonly reports Turbidity measurements in Nephelometric Turbidity Ratio Units (NTRU). Other methods for reporting Turbidity also are utilized. Because only NTU is listed in Rule 2.503, however, DEQ has previously rejected

Turbidity data that are not reported as NTU for purposes of water quality assessments pursuant to sections 303(d) and 305(b) of the CWA. This means that significant amounts of Turbidity data collected by USGS, including data for Beaver Lake and its tributaries, are rejected by DEQ.

*NTRU should be added to the numeric Turbidity criteria in Rule 2.503, either as separate columns or by changing the headings after finding that the NTRU values are interchangeable with the NTU values. At the very least, the NTU definition in Rule 2.106 could be revised to include the use of NTRU measurements of Turbidity.*

**Comment 16, Rule 2.504, pH:** DEQ proposes to delete from Rule 2.504 that, “As a result of waste discharges, the pH of water in streams or lakes must not fluctuate in excess of 1.0 standard unit over a period of 24 hours.” This deletion would be a substantive, less-protective change to the pH criteria for which DEQ has not provided the requisite scientific justification.

*BWD objects to the deletion of the quoted sentence from Rule 2.504, as the deletion lacks scientific justification and is inconsistent with the requirements of 40 C.F.R. § 131.11. See also Comment 2, above.*

**Comment 17, Rule 2.505, Dissolved Oxygen (DO):** DEQ proposes to remove multiple provisions at the end of the DO criteria for Rivers and Streams. While the provisions to be deleted pertain to effluent discharge limits, they also contain substantive, protective criteria, including the maximum allowable magnitude of diurnal DO depression.

*BWD objects to the deletion of the provisions at the end of the criteria for Rivers and Streams in Rule 2.505. The proposed deletions lack scientific justification and are inconsistent with the requirements of 40 C.F.R. § 131.11. See also Comment 2, above.*

**Comment 18, Rule 2.507, Bacteria:** DEQ proposes to delete the last sentence in the first paragraph of this section, which states, “No mixing zones are allowed for discharges of bacteria.”

*BWD objects to this deletion until the same or more stringent language has been added to a revised Reg. 6 that has received all necessary approvals, including that of the Governor, the General Assembly, APCEC, and EPA. See Comment 2, above.*

**Comment 19, Rule 2.507, Bacteria:**

EPA issued Recreational Water Quality Criteria (RWQC) recommendations regarding bacterial indicators on or about November 29, 2012. According to EPA, the recommended RWQC were based on the latest research and science, including “an extensive review of the available scientific literature and evaluation of new information from studies . . . and after public notice and comment . . . .” See EPA RWQC, Office of Water Document 820-F-12-058, p.1 (2012).

BWD’s interest, of course, is in minimizing pathogens in our source water. The science regarding the protection of public health during primary contact recreation also supports BWD’s

goal of protection of our drinking water source. BWD encourages DEQ to consider EPA's recommended criteria in the 2012 EPA RWQC for primary contact recreation, including:

**Enterococci:** Culturable enterococci at a geometric mean (GM) of 30 colony forming units (CFU) per 100 milliliters (mL) and a statistical threshold value (STV) of 110 CFU per 100 mL; and

**Escherichia coli (E.Coli):** Culturable E. coli at a GM of 100 CFU per 100 mL and a STV of 320 CFU per 100mL; and

The waterbody GM should not be greater than the applicable GM magnitude in any 30-day interval. There should not be greater than a ten percent excursion frequency of the applicable STV magnitude in the same 30-day interval.

*To the extent that the 2012 EPA RWQC for Bacteria are more protective and scientifically defensible than the Bacteria criteria in Rule 2.507, ADEQ should incorporate the appropriate, more-protective provisions into Rule 2.507.*

**Comment 20, Rule 2.507, Bacteria:** Rule 2.507 provides an allowable exceedance rate of twenty-five percent (25%). EPA's 2012 RWQC document, on the other hand and for example, recommends that the geometric mean value for *E.Coli* (and enterococci) not be exceeded in any 30-day interval. For the *statistical threshold value for E.Coli* (and enterococci), the 2012 EPA RWQC document also recommends that there should not be greater than a ten percent (10%) excursion frequency in the same 30-day interval. See EPA RWQC, Office of Water Document 820-F-12-058 (2012).

*The allowable exceedance rate of twenty-five percent (25%) in Rule 2.507 should be deleted and replaced with a more protective and scientifically justifiable provision.*

**Comment 21, Rule 2.508, Toxic Substances:** The first sentence in the first paragraph of this section is proposed to state: "Toxic substances that may cause toxicity to human, animal, plant or aquatic biota or interfere with normal propagation, growth, and survival of aquatic biota shall not be allowed into any waterbody."

*BWD supports this proposed revision, although the deleted portion of the section suffers from the same problem outlined in Comment 2, above. See also Comment 12, above, regarding Rule 2.409.*

**Comment 22, Rule 2.508, Toxic Substances:** EPA has published new and updated national recommended Toxics criteria for parameters, including for Cyanotoxins, that are not listed in Rule 2.508. Forty C.F.R. § 131.20(a) requires DEQ to either adopt its own criteria for the parameters for which EPA has issued criteria recommendations or provide an explanation for its failure to do so as part of its Triennial Review.

*DEQ should include criteria in Rule 2.508 for the missing parameters, especially for Cyanotoxins (Microcystins and Cylindrospermopsin).*

**Comment 23, Rule 2.509, Nutrients:** DEQ proposes to remove the Reg 2.509 numeric phosphorus requirements for point source discharges into certain waterbodies in the legislatively designated nutrient surplus watersheds and on Arkansas's list of impaired waterbodies (the so-called, "303(d) List"). The Beaver Lake watershed was declared to be a Nutrient Surplus Area by Act 1061 of 2003 (codified at Ark. Code Ann. § 15-20-1104). The Reg. 2.509 numeric phosphorus requirements have been an important tool in limiting nutrient loadings to Beaver Lake. Discharges of nutrient-containing wastewater into the Beaver Lake watershed have the potential to adversely impact the Lake's water quality and can have a direct bearing on what it costs BWD to provide our customers with drinking water that meets or exceeds all federal and state regulatory requirements.

*Before the numeric phosphorus requirements are deleted from Rule 2.509, the same or more stringent requirements must be included in a revised Reg. 6 that has received all necessary approvals, including that of the Governor, the General Assembly, APCEC, and EPA. See Comment 2, above. The failure to do this would likely result, among other things, in objections to and appeals of NPDES permits containing terms and conditions based on these provisions that are no longer contained in any effective regulation.*

**Comment 24, Rule 2.509, Nutrients:** DEQ has long promised that ambient, numeric phosphorus and other nutrient criteria would be added to Rule 2. EPA issued recommended ambient, numeric nutrient criteria in 2000, and it recently proposed new statistical models for deriving numeric nutrient criteria for Lakes and Reservoirs. While BWD does not necessarily endorse the new models, they could provide tools for states to use, in conjunction with the 2000 recommended nutrient criteria, in the development of numeric nutrient criteria. Both appear to be unnecessary, however, for DEQ's issuance of proposed numeric nutrient criteria for the Ozark Highlands and Boston Mountains Ecoregions. The Associate Director of the DEQ Office of Water acknowledged during the recent 2020 AIM Stakeholder Workgroup meetings that DEQ has completed the work on its own numeric nutrient criteria for these two Ecoregions. Instead of proposing these criteria for inclusion in Rule 2 at this time or soon, though, DEQ has decided to wait until it has developed numeric nutrient criteria for all six of the State's Ecoregions.

*BWD recognizes that it is a complex task to develop appropriate numeric nutrient criteria. BWD objects, however, to DEQ's ongoing delay in the issuance of proposed numeric nutrient criteria. The criteria for the Ozark Highlands and Boston Mountains Ecoregions, or for a combination of the two Ecoregions, should be proposed for inclusion in Rule 2.509 either now or soon. See Comment 1, above. Enforceable, numeric nutrient criteria are needed, among other things, to control harmful algal blooms, cyanotoxins, hypoxia, eutrophication, and problems related to disinfection by-products and unpleasant tastes and odors in drinking water.*

**Comment 25, Rule 2.510, Oil and Grease:** DEQ proposes to delete the last sentence of Rule 2.510, which states that, "No mixing zones are allowed for discharges of oil and grease."



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*BWD objects to this deletion until the same or more stringent language has been added to a revised Reg. 6 that has received all necessary approvals, including that of the Governor, the General Assembly, APCEC, and EPA. See Comment 2, above.*

**Comment 26, Rule 2.511(A), Mineral Quality, Site Specific Mineral Quality Criteria:** The formatting and order of listed stream segments for the White River from the headwaters to the Missouri state line has been revised.

*BWD suggests that the listing for the Kings River be moved to reflect that its confluence with the White River is downstream of the other listed stream segments for the portion of the White River (including Beaver Reservoir) between the Missouri state line and WHI0052. Also, the line, "White River (Missouri state line, including Beaver Reservoir)(to WHI0052)" probably should be revised to be, "White River (Missouri state line to WHI0052, including Beaver Reservoir)."*

**Comment 27, Rule 2.511(B), Mineral Quality, Ecoregion Reference Stream Minerals Values:** This provision has long been one of the more controversial sections of Reg. 2. BWD recognizes the practical complications that flow from the Ecoregion numbers being water quality criteria, as well as the reasons for interim relief from the criteria. BWD remains optimistic that a workable and legally sufficient resolution will be adopted pursuant to the 2017 DEQ Mineral Criteria Development Strategy.

*For the record, however, BWD restates what it has said in previous comments on Reg. 2.511(B): The numbers in the Table in Reg. 2.511(B) were originally adopted by APCEC and approved by EPA as water quality criteria applicable to streams and other waterbodies in the various Ecoregions that are not otherwise listed in Reg. 2.511(A). The requisite process to remove the numbers across-the-board as water quality criteria has not been undertaken.*

Thank you for your consideration of these comments.

Sincerely,



Colene Gaston  
Staff Attorney

*Cc via email to Department of Environmental Quality:*

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