

**A PROPOSED CHANGE TO REGULATION 2**  
**REGULATION ESTABLISHING WATER QUALITY STANDARDS**  
**FOR SURFACE WATERS OF THE STATE OF ARKANSAS**

**SUBMITTED BY THE**  
**ARKANSAS ENVIRONMENTAL FEDERATION**

**April 24, 2002**

**A petition to classify a limited portion of Crooked Creek as an Extraordinary Resource Water, while continuing to allow mining and other uses on all other portions of Crooked Creek.**

## **EXECUTIVE SUMMARY**

This third party rulemaking petition is to propose a modification of the Arkansas Water Quality Standards Regulation Number 2 of the Arkansas Department of Environmental Quality (ADEQ), which is currently undergoing triennial review mandated by law. The proposed modification is to add a section of Crooked Creek to the list of Extraordinary Resource Waters for the Ozark Highlands Ecoregion. The area of classification is from the confluence of Crooked Creek and Hazzah Creek, approximately 9.3 stream miles below Harrison, Arkansas, to the Highway 14 Bridge near Yellville, Arkansas, a total length of approximately 39.5 miles.

Crooked Creek has long been controversial due to its use for gravel mining in specific portions of the creek, and the world-class smallmouth bass fishing available in other portions of the creek. This proposed modification would allow continued gravel mining in the areas already proven as worthwhile gravel sources, while protecting the unique outstanding smallmouth bass fishing area as the Extraordinary Resource Water it is.

The proposed stream segment does not currently have mining operations present, and apparently has not been mined since 1986. There are no gravel mining permits pending before the Pollution Control & Ecology Commission, nor with the Arkansas Department of Environmental Quality for this stream segment. Therefore, the proposed ERW designation will have no direct financial impact on property owners along the Creek.

Furthermore, the stream segment proposed to be classified as an Extraordinary Resource Water is specifically defined and limited to avoid any financial impact on municipal wastewater treatment operations for Yellville and Harrison. The downstream distance from Harrison Arkansas is sufficient to negate the impact of the city's municipal waste discharges.

## **BASICS**

The area of Crooked Creek from the confluence of Hazzah Creek to the Highway 14 Bridge is an area of great scenic beauty and aesthetics. The area has a proven broad scope recreational use.

The Ozark Highlands Ecoregion supports diverse communities of species of fish and other aquatic life. Crooked Creek, especially between its confluence with Hazzah Creek and the Highway 14 Bridge is an excellent example of an extraordinary resource stream. A key species common in this area is smallmouth bass – a species only present in extraordinary stream areas. The limited area included in this proposed rule modification is nationally recognized as one of the most outstanding smallmouth bass streams in the United States. The stream in this area is world-class in its scenic beauty and aesthetics.

Limiting the stream area proposed as an extraordinary resource water allows continued gravel mining in areas of the creek where gravel mining has historically been permitted under ADEQ Regulation Number 15 the Arkansas Open-Cut Mining and Land Reclamation Code. The modification as proposed in the limited area will not result in stricter wastewater treatment limits for municipal treatment operations for Yellville, Arkansas or Harrison, Arkansas. There are no permitted municipal wastewater discharges in the area proposed for classification as an Extraordinary Resource Water.

This limited area classification is consistent with the fishing and recreational usage of the area to be classified as an Extraordinary Resource Water. As proposed, the rule modification also continues to allow other historical uses in other areas.

## **REGULATION AMENDMENTS**

Attachment A contains the redlined versions of each section of Regulation 2, which is modified by these amendments.

## **SIGNIFICANT REGULATION NUMBER 2 DEFINITIONS**

**Section 2.203—Outstanding Resource Waters:** Where high quality waters constitute an outstanding state or national resource, such as those waters designated as extraordinary resource waters, ecologically sensitive or natural and scenic waterways, those uses and water quality for which the outstanding waterbody was designated shall be protected by:

1. Water quality controls;
2. Maintenance of natural flow regime;
3. Protection of instream habitat; and
4. Pursuit of land management protective of the watershed.

## **Section 2.302—Designated Uses**

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

## **POTENTIAL NEW WATER QUALITY CRITERIA**

The EPA has reviewed Arkansas' current Water Quality Standards, which were implemented as part of the last Triennial Review. EPA states in written comments to ADEQ that Arkansas' current WQS criteria outlined in *Regulation Number 2, Section 2.508—Toxic Substances* are deficient and should be revised in regard to:

- Ammonia
- Aluminum
- Cadmium
- General Nutrients
  - Phosphorous
  - Nitrates

Such revisions will impact more than Crooked Creek. They will impact all Arkansas waterbodies as they are developed within the framework of the current Triennial Review.

**BEFORE THE ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION**

**IN RE: Water Quality Designation of the Segment of Crooked Creek Commencing at the Confluence with Hazzah Creek and Ending at the Highway 14 Bridge**

**THIRD-PARTY PETITION FOR AMENDMENT OF REGULATION NO. 2:  
REGULATION ESTABLISHING WATER QUALITY STANDARDS FOR  
SURFACE WATERS OF THE STATE OF ARKANSAS**

In accordance with Arkansas Pollution Control & Ecology Commission (APC&EC) Regulation No. 8, § 3.4 – “Third-Party Petitions for Rulemaking” – the Arkansas Environmental Federation (AEF) petitions the APC&EC to change the designated use of a section of Crooked Creek in Boone and Marion Counties of North Central Arkansas to the status of “Extraordinary Resource Water” in Regulation No. 2. In support of its petition, AEF states:

**Proposed Changes to Regulation No. 2**

AEF petitions to add the following item to the list of Extraordinary Resource Waters for the Ozark Highland Ecoregion set out in Appendix A to APC&EC Regulation No. 2 (July 2001) at page A-6:

*Crooked Creek, from its confluence with Hazzah Creek in Boone County to the Arkansas Highway 14 bridge crossing in Marion County (OH-2).*

A marked-up copy of the revised Designated Uses table for the Ozark Highlands Ecoregion, including AEF’s proposed addition, is attached as Exhibit A.

AEF also petitions to illustrate with a dashed line that segment of Crooked Creek that is designated as Extraordinary Resource Water on the map identified in Regulation No. 2, Appendix A, page A-9, as Plate OH-2. A revised Plate OH-2 is attached as Exhibit B.

## Reasons for Proposed Changes to Regulation No. 2

1. The segment of Crooked Creek described above combines chemical, physical, and biological characteristics that maintain a nationally recognized smallmouth bass fishery as well as other aquatic species indigenous to Ozark Highland streams. Important aquatic and biotic resources endemic to Crooked Creek, which are key indicators of extraordinary characteristics of this segment of Crooked Creek, include Dusky Strip Shiner, Northern Hogsucker, Rainbow Darter, Rock Bass, Slender Madtom, Banded Skulpin, Southern Redbelly Dace, Whitetail Shiner and Ozark Minnow<sup>1</sup>. The scenic beauty and exceptional fishing of this area attract tourists and support businesses based upon the tourism trade. This portion of Crooked Creek exhibits such scenic and aesthetic appeal, recreational potential, and rare aquatic habitat as to qualify as an “Extraordinary Resource Water” as defined by § 4(C) of Regulation No. 2.
2. In the rapidly developing north central Arkansas area, this segment of Crooked Creek provides a sustainable resource that can be enjoyed for local profit by future generations without disrupting short-term commercial or municipal interests. The segment proposed for an enhanced designated use continues to support the historical fishery for which Crooked Creek has become nationally renowned, as well as the associated businesses that support the tourism trade attracted by the area’s unique scenic beauty and fishing opportunities. This segment of Crooked Creek can be assigned “Extraordinary Resource Water” status without affecting upstream or downstream municipal discharges, or disrupting established gravel mining operations subject to the prohibitions of A.C.A. § 15-15-57-310(f)(2).
3. The AEF Petition differs from past legislative and administrative initiatives concerning protection for Crooked Creek because it geographically excludes areas currently mined for gravel as authorized by permits issued by the Arkansas Department of Environmental Quality and it excludes those areas of the Creek that have been subjected to extensive development. This Petition focuses upon the segment of Crooked Creek least altered by human enterprise and presents a viable compromise that sustains both current and future uses of the stream.
4. The legislatively mandated Triennial Review of Regulation # 2 is currently underway. This well-established process provides a unique opportunity to review and consider the potential ERW status of a limited portion of Crooked Creek, with full public participation, based upon sound science within the framework of the State’s overall water quality protection efforts.

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<sup>1</sup> Robinson, H.W. and T.M. Buchanan. Fishes of Arkansas. *University of Arkansas Press*, Fayetteville (1988).

### **III. Request for Initiation of Rulemaking**

1. Pursuant to § 3.4.4 of Regulation No. 8, the AEF respectfully requests the APC&EC to initiate rulemaking procedures concerning this Petition within the rule time frames. The AEF recognizes that Regulation No. 2 is currently undergoing legislatively mandated Triennial Review and we encourage the APC&EC to integrate this change into the Triennial Review process to insure full public participation, based upon sound science within the framework of the State's overall water quality protection efforts.

Respectfully submitted,

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Executive Director  
Arkansas Environmental Federation  
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Date

Exhibit A

Amendments to:

Designated Uses: Ozark Highlands Ecoregion  
(Plates OH-1, OH-2, OH-3, OH-)



## **DESIGNATED USES: OZARK HIGHLANDS ECOREGION**

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

### **Extraordinary Resource Waters**

Current River (OH-4)

Eleven Point River (OH-4)

Strawberry River (OH-3, OH-4)

Spring River, including its tributaries: Field Creek, Big Creek, English Creek, Gut Creek and Myatt Creek (OH-4)

South Fork Spring River (OH-3, OH-4)

North Sylamore Creek (OH-3)

Buffalo River (OH-2, OH-3)

Kings River (OH-2)

Bull Shoals Reservoir (OH-2, OH-3)

Crooked Creek, from its confluence with Hazzah Creek in Boone County to the Arkansas Highway 14 bridge crossing in Marion County (OH-2)

### **Natural and Scenic Waterways**

Strawberry River from headwaters to Sharp-Izard County Line (OH-3, OH-4)

Kings River - that segment in Madison County (OH-2)

Buffalo River (OH-2, OH-3)

North Sylamore Creek (OH-3)\*

### **Ecologically Sensitive Waterbodies**

Numerous springs and spring-fed tributaries which support southern cavefish, Ozark cavefish, Arkansas darter, least darter, Oklahoma salamander, cave snails, cave crawfish and unique invertebrates (OH-1, OH-2, OH-3)

Strawberry River - location of Strawberry River darter (OH-3, OH-4)

Spring River - snuffbox and pink mucket mussels; Ozark hellbender (OH-4)

Eleven Point River - location of Ozark hellbender (OH-4)

Current River - location of flat floater and pink mucket mussels (OH-4)

Illinois River - Neosho mucket (OH-1)

**Primary Contact Recreation** - all streams with watersheds of greater than 10 mi<sup>2</sup> and all lakes/reservoirs

**Secondary Contact Recreation** - all waters

**Domestic, Industrial and Agricultural Water Supply** - all waters

### **Fisheries**

#### **Trout**

Bull Shoals Reservoir - lower portion (OH-2)

White River from Bull Shoals Dam to Dam #3 (OH-3)

North Fork White River (OH-3)

Spring River from Mammoth Springs to South Fork Spring River (OH-4)

Upper White River from Beaver Dam to State Line (OH-1)

**Lakes and Reservoirs** – all

### **Streams**

Seasonal Ozark Highlands fishery - all streams with watersheds of less than 10 mi<sup>2</sup>  
except as otherwise provided in §2.505

Perennial Ozark Highlands fishery - all streams with watersheds of 10 mi<sup>2</sup> and larger  
and those waters where discharges equal or exceed 1 CFS

### **Use Variations Supported by UAA or Other Investigations**

Railroad Hollow Creek - no fishable/swimmable uses (OH-1, #1)

Columbia Hollow Creek - seasonal fishery March-June (OH-1, #2)

Curia Creek - below first waterfall, perennial fishery (OH-4, #3)

Moccasin Creek - below Highway 177, perennial fishery (OH-3, #4)

Stennitt Creek- from Brushy Creek to Spring River, no domestic water supply use (OH-4)

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\* As designated in the National Wild and Scenic Rivers System

Exhibit B

Dashed Line Description of Proposed ERW Designation

Plate OH-2 (Ozark Highlands)

(Please download the PDF file of this plate. It is a separate pdf file document.)

Exhibit C

Arkansas Environmental Federation Position Paper

and

Listing of Members of Board of Directors  
Arkansas Environmental Federation

Position Paper of the Arkansas Environmental Federation  
Extraordinary Resource Water Designation (ERW) for Crooked Creek ~ April 24, 2002

The Arkansas Environmental Federation (AEF) is a 35 year-old non-profit association representing over 350 manufacturing firms and related consulting, legal, equipment supply and engineering firms, in addition to academia and local and regional governments. We work to educate our membership, the public and public policy makers on issues related to environmental protection and pollution prevention, and to focus on initiatives industries are taking to protect and improve the state's environment.

The AEF, headquartered at Union Station in Little Rock, conducts at least half dozen environmental training seminars annually for plant managers and environmental professionals who work in manufacturing, utility and government settings. The AEF's Board of Directors is comprised of 30 representatives of some of the leading industries in Arkansas, as well as non-voting representation by the State Chamber of Commerce and Arkansas Department of Economic Development.

The AEF Board unanimously adopted a resolution on February 13, 2002, which authorizes the AEF to petition the Pollution Control and Ecology (PC&E) Commission to include within the Triennial Review process for Regulation # 2 Water Quality Standards (WQS) the designation of approximately 39.5 miles of Crooked Creek between the confluence of Hazzah Creek and the Arkansas Highway 14 Bridge as an Extraordinary Resource Water (ERW) for the following reasons:

- This stretch of Crooked Creek currently does not have, and likely will never have commercial gravel mining operations. Nor are there any mining permits pending for this area of Crooked Creek, which is widely recognized as the last remaining exceptional fishery on the Creek. The ERW designation will have little, if any, direct negative financial impact on landowners, but will promote recreational businesses and economic development.
- Gravel mining on Crooked Creek continues to be perceived by the general public as a public policy deficiency and a threat to a truly remarkable natural resource. The mining permit process requires constant monitoring by the ADEQ staff and the PC&E Commission. For all concerned, including elected officials, there needs to be some finality to the ongoing debate, publicity and rhetoric.
- There is widespread public support, (including within the board rooms of AEF member companies) to "do what's right on Crooked Creek."
- The designated stretch begins over 9 miles below Harrison. Water quality experts tell us that there will be no impact to the city's sewage treatment requirements at this distance. The designation ends upstream from Yellville, and therefore will have no impact on that municipal system.
- ERW streams exist throughout Arkansas, not just on Lee Creek and Kings River (which represent only 5% of the State's ERWs). There is no widespread opposition to ERW usage in other areas. Without some balance in public debate, a highly vocal minority may succeed in stripping the State's ERW authority. Their concerns are not Crooked Creek specific, but appear to be based philosophically upon property rights.
- The U.S. Environmental Protection Agency (EPA) will be working to ratchet down criteria numbers for aluminum, ammonia and nutrients (nitrates & phosphorus) during the current Triennial Review of Regulation # 2, which will dramatically impact industry and agriculture (particularly in northern and northwest Arkansas). ADEQ support in developing more *reasonable numbers* and in defending those numbers before EPA will be of crucial

importance in achieving criteria that is protective of the environment without choking industry and agriculture. The support of ERW designation by the AEF (which is often vocally critical of ADEQ's regulatory initiatives) may remove some of the historic adversarial tensions between ADEQ and the regulated community, fostering a more cooperative working relationship, which may promote the development of more *reasonable water criteria numbers* in Regulation # 2.

- ERW designation on Crooked Creek will send a clear message to EPA that the State is working to protect its most sensitive water bodies, even though it may be attempting to establish higher WQS numbers than EPA proposes elsewhere. As EPA becomes more actively involved in the current Oklahoma/Arkansas watershed dispute, clear indicators that Arkansas is serious about its water quality will be needed.

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(Refer to Extraordinary Resource Waters statewide map on the ADEQ website at [www.adeg.state.ar.us](http://www.adeg.state.ar.us).)