

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT- Regulation No. 2
Water Quality Standards
Third-Party Rulemaking
Arkansas Environmental
Federation

Docket No. 02-008-R

MINUTE ORDER NO. 02-11

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On April 24, 2002, the Arkansas Environmental Federation ("AEF") filed a Third-Party Petition for Amendment of Regulation No. 2: Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. AEF's petition requests that the Commission initiate rulemaking procedures to add the following to the list of Extraordinary Resource Waters:

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

The designation of part or all of a stream as Extraordinary Resource Water ("ERW") is the highest designation permitted under Regulation No. 2. The procedures for considering a proposed amendment to a rule that designates a stream as an ERW requires giving notice of the proposed rule, conducting public hearings, having various legislative committees review the proposed rule, developing a Statement of Basis and Purpose and responsive summary, considering all public comments, and making of a final decision. This process is time-consuming and expensive. Therefore, the Commission will not automatically initiate the rulemaking process simply because a third-party files a petition. Instead, the Commission closely reviews a third-party petition and exercises discretion in deciding whether or not to initiate the rulemaking process.

Regulation 8, Section 3.4.2 requires a third-party petition to contain "the reasons the changes are necessary." Those reasons must be convincing. A third-party petition to designate a stream as an ERW must contain documentation and scientific evidence showing that the stream meets the criteria of an ERW designation. See, Regulation No. 2, Section 2.302(A).

The petition alleges that this segment of Crooked Creek combines chemical, physical, and biological characteristics that maintain a nationally recognized smallmouth bass fishery and other aquatic species indigenous to Ozark Highland streams. It contends

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this segment of Crooked Creek qualifies for ERW status, that this status will not affect upstream or downstream municipal discharges, and that it will not disrupt established gravel-mining operations. AEF claims this segment of Crooked Creek presents a viable compromise that sustains both current and future uses of the stream.

AEF's third-party petition and attachments do not include any documentation or scientific evidence supporting the reasons asserted in the petition for an ERW designation. The petition contains no evidence showing that this segment of Crooked Creek "... 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." The petition contains no scientific evidence showing that an ERW designation will not have an impact on upstream or downstream municipal discharges and that it will not disrupt short-term commercial or municipal interests.

The Commission finds that AEF's allegations are not supported by any convincing documentation or scientific evidence. Therefore, the Commission denies AEF's petition to initiate the rulemaking process to amend Regulation No. 2.

COMMISSIONERS

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Randall [Signature]
Bastie [Signature]
Chair

SUBMITTED BY: R. Young, B. Bush PASSED: 5-23-02