

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

DEPARTMENT/AGENCY
DIVISION
DIVISION DIRECTOR
CONTACT PERSON
ADDRESS
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FAX NO

TO:

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

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1. What is the short title of this rule? *Arkansas Department of Environmental Quality, Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas*
 2. What is the subject of the proposed rule? *Amendment to classify a portion of Crooked Creek as Extraordinary Resource Waters, while continuing to allow mining and other uses on all other portions of Crooked Creek. See Attachment A.*
 3. Is this rule required to comply with federal statute or regulations? Yes ____ No X
If yes, please provide the federal regulation and/or statute citation.
 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ____ No X

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

When does the emergency rule expire? _____

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

Is this a new rule? Yes ____ No X

If yes, please provide a brief summary explaining the regulation.

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 Yes ____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire.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

5. Is this an amendment to an existing rule? Yes X No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substance changes. *See Attachment B*
6. Cite the state law that grants the authority for this proposed rule? *If codified, please give Arkansas Code citation. Act 472 of the Acts of Arkansas for 1949 as amended; Ark. Code Ann. 8-4-101 et seq*
7. What is the purpose of the rule? *To add to the list of designated extraordinary resource waters of the Ozark Highlands ecoregion approximately a 39.5 mile segment of Crooked Creek.*

Why is it necessary? *The designation is an allowed beneficial use that is defined in ADEQ's Regulation # 2 as:*

"...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 recreational potential and intangible social values."

Crooked creek is a nationally recognized fishery. This stream segment meets the ERW definition, which will protect it from future significant physical alterations of the stream habitat.

8. Will a public hearing be held on this proposed rule? Yes X No
If yes, please complete the following: *A public hearing or hearings on this Petition shall be held concurrently with the public hearings to be scheduled for ADEQ's Amendments of Regulation No. 2 resulting from its Triennial Review. The exact date, time and location of the public hearing or hearings will be determined by ADEQ's Public Affairs Office.*
- Date: *TBD*
Time: *TBD*
Place: *TBD*
9. When does the public comment period expire for permanent promulgation? (Must provide a date.) *The period for receiving all written comments by the public shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8, Part 3, Section 2.2.3, unless an extension of time is granted.*
10. What is the proposed effective date of this proposed rule? (Must provide a date.) *The rule will become effective upon the concurrent effective date of ADEQ's scheduled amendments to Regulation No. 2 resulting from its Triennial Review.*
11. Do you expect this rule to be controversial? Yes X No If yes, please explain. *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. Property rights advocates have voiced concerns about the use of ERW as a water quality regulatory tool. However, 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 a Extraordinary Resource Waters 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.

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

For

*Arkansas Environmental Federation
Arkansas Wildlife Federation
Ozark Society*

Against

*Arkansas Farm Bureau
Various County Governments that have passed resolutions opposing ERW as a water
quality management tool*

Attachment A

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.

Attachment B

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 mi² 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 mi² except as otherwise provided in §2.505

Perennial Ozark Highlands fishery - all streams with watersheds of 10 mi² 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)

* As designated in the National Wild and Scenic Rivers System