

BEFORE THE ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

IN THE MATTER OF:

**RIVER VALLEY REGIONAL WATER DISTRICT
2806 BRYAN ROAD, VAN BUREN, AR 72956
THIRD PARTY RULEMAKING TO AMEND
APCEC REGULATION NO. 2**

Secretary
Arkansas Pollution Control and Ecology
101 East Capitol, Suite 205
Little Rock, AR 72201
Filed 1/12/17 PLB

NO. 06-003-R

**RIVER VALLEY REGIONAL WATER DISTRICT'S
REQUEST TO WITHDRAW THIRD PARTY RULEMAKING**

River Valley Regional Water District (the "District") respectfully requests to withdraw this Third Party Rulemaking. In support of this Request the District states the following.

1. In January 2006, the District filed a Petition for Third Party Rulemaking to amend APC&EC Regulation No. 2. The Rulemaking sought to establish a procedure by which public water authorities could seek permission to develop a waterbody designated as an Extraordinary Resource Water as a source of drinking water supply.

2. After numerous public hearings and extensive public comment, ADEQ proposed an alternative amendment to Regulation No. 2 that was substantially similar to the change requested by the District. See ADEQ Second Amended Petition to Initiate Rulemaking, APC&EC Docket 06-010-R. The District agreed to stay further action on its Third Party Rulemaking while the Department sought Commission approval and EPA review of the Department's alternative.

3. In 2007 the Commission approved the Department's alternative amendment of Regulation No. 2. That amendment was codified as Reg. 2.310 and Appendix E.

4. In January 2008 EPA issued a decision that deemed Reg. 2.310 and Appendix E to be procedural in character and stated that no approval was required. But the same decision by EPA disapproved a closely related amendment regarding Extraordinary Resource Waters. The related amendment was codified in Reg. 2.304 and Appendix D. *See* EPA January 24, 2008 Phase I Record of Decision, accessible at:

<https://www.adeq.state.ar.us/water/planning/reg2/pdfs/record-of-decision/2007-epa-action-ltr-rod-ar-tr-phase-1.pdf>.

5. In response to EPA's disapproval of the amendment of Reg. 2.304 and Appendix D, ADEQ indicated it would ask the Commission to rescind those provisions in the next Triennial Review of Regulation No. 2. As a precaution, the District left its Third Party Rulemaking pending but inactive while ADEQ and EPA proceeded with rescission of the provisions in Reg. 2.304 and Appendix D that EPA had disapproved.

6. In 2010 ADEQ initiated a Triennial Review of Regulation No. 2, but the Department abandoned the rulemaking before any final action was taken by the Commission.

7. In 2013 ADEQ initiated another Triennial Review of Regulation No. 2. As a part of this rulemaking the Department asked the Commission to rescind the disapproved provisions of Reg. 2.304 and Appendix D. The Commission approved this request at its February 2014 meeting. APC&EC Minute Order 14-10 (Feb. 28, 2014).

8. On October 31, 2016 EPA issued a decision which approved the Commission's 2014 rescission of the amended provisions of Reg. 2.304 and Appendix D. *See* EPA October 31, 2016 Record of Decision, accessible at: <https://www.adeq.state.ar.us/water/planning/reg2/pdfs/record-of-decision/20161028-final-ar-td.pdf>.

9. The precautionary considerations which prompted the District to keep its original Third Party Rulemaking pending no longer exist. As a consequence, the District respectfully requests that its Third Party Rulemaking be withdrawn.

10. A Proposed Minute Order granting the District's Request to Withdraw the Third Party Rulemaking is attached as Exhibit A.

Conclusion

For the reasons stated above, the District requests that the Commission grant this Request to Withdraw Rulemaking by adopting the attached Minute Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January, 2017, I served a copy of the foregoing Request to Withdraw Third Party Rulemaking electronically and by U.S. Postal Delivery on the following:

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A handwritten signature in cursive script, appearing to read "Allan Gates", written over a horizontal line.

Allan Gates