

**BEFORE THE ARKANSAS COMMISSION ON POLLUTING CONTROL &  
ECOLOGY**

**IN RE:**

**REQUEST BY RIVER VALLEY )  
REGIONAL WATER DISTRICT )  
TO INIATE RULEMAKING TO )  
AMEND REGULATION NO. 2, )  
SECTION 2.304 )**

**DOCKET NO. 06-003-R**

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ARK. POLLUTION CONTROL  
& ECOLOGY COMMISSION  
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**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY  
RESPONSIVE SUMMARY FOR  
THIRD PARTY RULEMAKING  
TO AMEND REGULATION NO. 2, REGULATION ESTABLISHING WATER  
QUALITY STANDARDS FOR SURFACE WATERS  
OF THE STATE OF ARKANSAS**

**BACKGROUND**

The Arkansas Pollution Control and Ecology Commission (the "Commission") conducted four (4) public hearings around the State (Little Rock, Mountain Home, Van Buren, and Springdale) to receive oral and written public comments during the public hearings on the changes to Regulation No. 2, Section 2.304 (Physical Alteration of Habitat), proposed by the Third Party Petitioner, River Valley Regional Water District. The Van Buren public hearing was held on March 27; the Mountain Home public hearing was held on April 3; the Springdale public hearing was held on April 10; and the Little Rock public hearing was held on April 17, 2006. In addition, the Commission also solicited written or electronic mail comments via U.S. Postal Service or e-mail, through 4:30 p.m. June 2, 2006.

Regulation No. 2, Section 2.304 currently prohibits significant physical alterations of extraordinary resource waters, natural and scenic waterways, and ecologically sensitive waterbodies. The changes proposed to Regulation No. 2, Section 2.304, by River Valley Regional Water District ("RVRWD") seek to establish a procedure to allow the significant physical alteration of extraordinary resource waters, natural and scenic waterways, and ecologically sensitive waterbodies in the State of Arkansas.

In the third party petition (No. 06-003-R) to initiate rulemaking to amend Regulation No.2, Section 2.304, RVRWD's proposed rulemaking states in part;

1. RVRWD is a public, nonprofit regional water distribution district organized under the authority of Ark. Code Ann. § 14-16-101, et seq. River Valley's mission is to acquire safe and dependable water supplies and to distribute water efficiently to consumers and communities in the Crawford County area,
2. RVRWD currently plans to utilize water from upper Lee Creek as a source of drinking water supply. More specifically, River Valley plans to utilize water that would be impounded by the proposed Pine Mountain Dam, a Corps of Engineers project that has been authorized by Congress for many years and for which an environmental impact statement is currently being prepared. If the environmental impact statement indicates that the proposed Pine Mountain Dam is a meritorious project, with benefits that justify any potential adverse effects, River Valley expects that it will return to the Commission to seek approval for the project,
3. The procedure that would be established under the proposed amendment would be available only under very limited circumstances:
  - The procedure could be initiated only by a regional water distribution district or other public entity engaged in providing water to the public;
  - The procedure could be invoked only for a project certified by the Natural Resources Commission as being in compliance with the State Water Plan;
  - The procedure would require preparation of a formal environmental impact statement that meets the information and analytical standards established by the Council on Environmental Quality for federal agency environmental impact statements;
  - The procedure would require at least 45-days of public notice and opportunity to comment on the proposal;
  - The procedure would require an affirmative vote of the Commission approving any proposal as having benefits that justify the anticipated adverse effects.

The Commission received 981 written comments during the public comment period. Of this number, 380 written comments, including a total of 436 signatories, supported the proposal and 601 written comments, including a total of 611 signatories, opposed the proposed change to Regulation No. 2. Additionally, 77 individuals, including representatives of RVRWD and ADEQ, provided oral comments on the record during the public hearings.

Due to the large volume of comments received, the comments were grouped into similar categories, as allowed by Regulation No. 8, Part 3, Section 3.6.2(2). An index of the comments is provided on pages 3-7. A list of signatories to written comments submitted during the public comment period is included as Attachment A. A list of individuals providing oral comments during the public hearings is included as Attachment B.

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## I. COMMENTS OPPOSING PROPOSAL

**Comment 1: River Valley's proposal confers powers on the Arkansas Pollution Control and Ecology Commission ("Commission") which are not authorized by statute.**

*"State law gives the Commission two primary functions: rulemaking and adjudicatory review of the Director's decision. Ark. Code Ann. § 8-1-203. The water district's proposal allows a party to seek approval from the Commission for significant alteration of the state's extraordinary resource waters, natural and scenic waterways, and ecologically sensitive waterbodies, which constitute our ORW streams. Section 2.203 of Regulation No. 2. The water district's proposal, if adopted, gives the Commission the power to authorize or approve specific projects or activities. The Commission's exercise of this power is neither rulemaking nor adjudicatory review. Approving the significant alteration of the habitat of an ORW stream is, in fact, a permitting decision, for which no statutory authority exists." – State Representative Sam Ledbetter*

*"Under the language of the proposed amendment, the APCEC would make the original determination as to whether the environmental impact statement (EIS) for the proposed project that includes significant physical alteration of ERWs and other protected waters [meets the standards set forth in the language of the amendment.] This type of initial decision-making goes beyond the role of the APCEC set out in APCEC Regulation 8, Sections 2.1.14, 2.1.15, 2.2.4, 2.2.5, 2.3.5, 2.4.3, 2.4.4 and Part 3) and would appear to exceed the APCEC's statutory authority. As a practical matter, the decision-making involved would seem to best be left to the ADEQ Director with the support of his staff." – Colene Gaston, Fayetteville.*

*"River Valley's proposal gives the Commission the power to authorize or approve specific projects or activities. The Commission's exercise of this power is neither rulemaking nor adjudicatory review of a Director's decision. It is something else... Being neither rulemaking nor adjudicatory review, no statutory authority exists giving the Commission the power to engage in this type of decision-making. Furthermore, no practice or procedure exists for the review of any such decision."—Arkansas Department of Environmental Quality ("ADEQ").*

**Response 1: We concur. River Valley Regional Water District's proposal seeks Commission approval for specific projects or activities where such approval is not authorized or allowed by statute. Such approval is not rulemaking nor is it adjudicatory review. In conferring upon the Commission the power to grant or deny a party's request to dam an ERW, RVRWD's proposal requires the Commission to act in excess of its statutory authority.**

**Comment 2: River Valley's proposal violates state and federal antidegradation policies because damming a free flowing extraordinary resource water to form a lake would destroy a stream fishery.**

*"Stream fisheries are both a designated and an existing use for all Arkansas streams. In Arkansas, lake and stream fisheries are not interchangeable. Regulation No. 2 defines lake and stream fisheries. A lake fishery is defined as:*

*Water which is suitable for the protection and propagation of fish and other forms of aquatic life adapted to impounded waters. Generally characterized by a dominance of sunfishes....May include substantial populations of catfishes....Forage fishes are normally shad or various species of minnows. Unique populations of walleye, striped bass and/or trout may also exist [emphasis added]. ( Regulation No. 2, Section 2.302(F)(2)).*

*A stream fishery is defined as:*

*water which is suitable for the protection and propagation of fish and other forms of aquatic life adapted to flowing water systems whether or not the flow is perennial [emphasis added]. (Regulation No. 2, Section 2.302(F)(3)).*

*In Arkansas' water quality standards, the state is divided into ecoregions. Arkansas' water quality standards identify the fish communities that are characteristic of the streams found in each ecoregion. For example, Lee Creek, is designated as a Boston Mountains Ecoregion stream fishery. This designated use is an existing use. Damming Lee Creek would destroy the existing stream fishery because such a fishery requires flowing water. Impounded water supports lake fisheries. Flowing water supports stream fisheries. Water that is impounded cannot support both a lake and a stream fishery. When a stream is dammed, the stream fishery is eliminated.*

*... Under the state and federal antidegradation policies, existing uses must be maintained and protected. Stated another way, existing uses may not be destroyed. When a stream fishery is destroyed, an existing use is destroyed. Damming any free flowing ORW, would destroy the stream fishery, an existing use for all Arkansas streams, thereby violating both state and federal antidegradation policies." – ADEQ (footnotes omitted)*

**Response 2: We concur.**

**Comment 3: While the River Valley Regional Water District seeks the change to Regulation 2.304 for their specific proposal to dam Lee Creek, the change would impact ALL rivers and streams designated as Extraordinary Resource Waters, Ecologically Sensitive Waterbodies, and Natural and Scenic Waterways. The cumulative impacts within the state and to interstate waters, such as the portion of Lee Creek in Oklahoma, far outweigh the necessity of the change.**

*"While the petition from the RVRWD is specific to their purpose, the scope of the proposed change is wide and would substantially reduce protection for ERW's, ESW's, and natural and scenic waterways throughout the state of Arkansas. The fact that these streams have been designated as such suggests that they have important economic, scientific, aesthetic and recreational values that deserve the highest standard and scrutiny to be significantly altered, as proposed by the RVRWD." – United States Fish and Wildlife Service ("FWS")*



*"Buffalo National River is classified as an ERW under the Pollution Control and Ecology Commission's (Commission) Water Quality Standards (Reg. 2) and could be directly affected by the Commission's decision....Arkansas is fortunate to have numerous streams and water bodies, but few are designated as ERWs. Citing an outdated Environmental Impact Statement for one project hardly justifies a sweeping change to Arkansas' State-wide regulations and certainly does not consider the cumulative impacts of such a decision on ERWs such as the Buffalo River." – National Park Service ("NPS")*

*"Although the petitioners appear to be most interested in seeking a change in regulations to allow an impoundment on Lee Creek, Oklahoma is equally concerned about the implications of the proposed change for the Mountain Fork of the Little River as the proposed rule change is not limited to Lee Creek, but rather changes the rule for all "Extraordinary Resource Waters". The Mountain Fork and Lee Creek are two of only a handful of "Outstanding Resource Waters" in the State of Oklahoma – a distinction similar to Arkansas' "Extraordinary Resource Waters" designation. As such, they are afforded more stringent protections under Oklahoma's Water Quality Standards in an effort to maintain and protect their exceptional water quality and unique biological characteristics. These protections include a prohibition against any degradation of these streams. Clearly, impoundment of these streams would fall within the definition of degradation.*

*Furthermore, portions of Lee Creek and the Mountain Fork have been designated by our Legislature as "Scenic Rivers" (82 O.S. §1452). The Oklahoma Scenic Rivers Act (82 O.S. §1451 et seq.) prohibits any impoundment of a Scenic River that would interfere with the free-flowing condition of the stream. The Act also includes a directive that "no agency or official of state government shall authorize or concur in plans of local, state, or federal agencies for the construction, operation, or maintenance of any dam or related project in any scenic river area." – Oklahoma Secretary of the Environment*

*"This rule change has become synonymous with the proposed impoundment of Lee Creek. However, it is important to consider the long-term implications of this proposed change. Though the need for water is growing throughout our state, we have chosen to protect just 16% of our streams from impoundment. Regardless of the legality of the change, if it is allowed we will be opening the door for other ERWs to be 'significantly physically altered.' It may take five years, or it may take a century, but this proposed rule change will lead to the wholesale degradation of our ERW waters." – Environmental Law Society, University of Arkansas School of Law*

**Response 3: We concur.**

**Comment 4: River Valley's proposal violates portions of the Clean Water Act. A dam on Lee Creek or future proposals under the changed regulation could violate federal laws.**

*"Arkansas' Regulation 2.203 implements the federal requirement at 40 CFR part 131.12(a)(3) which requires water quality to be maintained and protected in Outstanding Natural Resource Waters (ONRWs). States may not, consistent with this requirement, affirmatively authorize activities that would result in long term water quality degradation*

*in an ONRW; only "some limited activities which result in temporary and short-term changes in water quality" may be allowed (48 Fed. Reg. 51400, 51403 (November 8, 1983)). The River Valley's proposed amendment would establish a procedure under which the Commission could exempt proposed water supply projects on Outstanding Resource Waters from the requirements imposed by the State's anti-degradation policy without regard to maintaining their water quality as required by 40 CFR 131.12(1)(3). Adoption of the proposed regulation might thus render the State's anti-degradation policy inconsistent with the requirements of the Clean Water Act."* – Environmental Protection Agency, Region 6 ("EPA")

*" Natural and scenic waterways are included in this petition. It is of note that, in addition to the Regulation 2 designation, these streams also have other state and federal regulations regarding stream alterations. These other regulations would still have to be addressed by a water district, even if the Regulation 2 requirements were modified. Additionally, many of the streams designated as ERWs, ecologically sensitive waterbodies, or natural and scenic waterways are also listed on the Nationwide Rivers Inventor (NRI). Any federal money used in relation to alterations on NRI streams would have to be addressed through coordination with the National Park Service."* – Arkansas Natural Heritage Commission ("ANHC")

**Response 4: We concur.**

**Comment 5: Dam building significantly degrades water quality. Thus, River Valley's proposal will likely lead to violations of federal and state antidegradation laws.**

*"Finally, science shows that degradation of water quality can occur for significant distances downstream from a reservoir. Water quality problems and degradation can result in several ways, including destabilization of stream banks and the stream channel from changes in duration and magnitude of high flows. Significant changes in water quality are likely to occur in the impounded water. Discharge of these waters likely will affect the aquatic community and the ecological integrity of downstream waterbodies, including Federally listed threatened and endangered species. If the State of Arkansas were to agree to allow impoundment of its Extraordinary Resource Waters, water releases from the impoundment would nevertheless have to meet Oklahoma's Water Quality Standards applicable at the state line, including its inherently stringent antidegradation provisions."* – Oklahoma Secretary of the Environment

*"When considering the impact of an impoundment on a stream, one must consider both "in-reservoir" effects as well as "downstream" (tailwater effects)....Clearly, the most profound impact is the physical flooding of the land within the reservoir area. It is not difficult to argue that 30 plus feet of water over land is a very different environment from a flowing stream. The physical differences in "pooled" water as opposed to a flowing stream result in both chemical and biological responses to this altered environment...It is well documented that the releases from reservoirs can have a significant impact on water quality of the receiving stream. When depressed concentrations of oxygen are found in tailwaters, the ability of the stream to assimilate sewage discharges can be lowered. This*

*can have the impact of causing some municipalities which discharge into such waters to have increased sewage treatment costs.” – Joe Nix, Ph.D., Arkadelphia*

*“[Our] area of focus is the North Fork and White Rivers from below the dams down to Batesville. We’ve experienced firsthand the effects of damming our streams. Surely both of these rivers would have been considered an “extraordinary resource” before they were dammed. We’ve been told they no longer qualify because they’re no longer natural flowing streams and are stocked with exotic species. The native smallmouth bass populations were destroyed by the dams. Extensive erosion is occurring on both rivers. Low dissolved oxygen levels has resulted in both streams being added to the “Impaired Waterbodies” list as trout often die from lack of oxygen near the dams. A strange alga, nicknamed “Didymo,” has appeared on the White River. No one seems to know what to do about it. We do know that algae often appear in tail waters below dams. Certainly, no one anticipated this might occur at the time these rivers were dammed.” – Friends of the North Fork and White Rivers*

*“It is ludicrous and insulting for the District to claim that their rulemaking will allow them to dam Lee Creek and that it would remain an ERW. You cannot destroy an Extraordinary Resource Water and claim that the very river you destroyed is still an Extraordinary Resource Water!” – Heather Huckeba, no town given*

*“[D]ams (1) alter the natural flow regime of a waterway both by reducing the velocity of the flow of the upstream river and changing the volume and velocity of the flow downstream, (2) alter the flow of sediment by increasing sedimentation in the reservoir and by creating ‘hungry water’ downstream that can scour the riverbed, (3) cause thermal stratification within the reservoir that significantly alters natural habitat, water quality and uses, (4) cause eutrophication within the reservoir, (5) cause gas supersaturation, and (6) cause declines in aquatic, riparian and wetlands biodiversity upstream, in the reservoir and downstream.” – Hank Bates, on behalf of Ozark Society, Arkansas Conservation Partnership, Arkansas Canoe Club, Arkansas Citizens First Congress, Arkansas Wildlife Federation, Audubon Arkansas, Audubon Society of Central Arkansas, Friends of the North Fork and White Rivers and Sierra Club*

*“I would like to submit three questions for the record that I’d like to see answered in the deliberation of any proposed rule changes relating to the ERW status of streams in Arkansas: First, how can a stream be dammed without degrading the stream? Secondly, how can a stream be dammed while protecting the existing flow/eb regime? And, then, thirdly, how will our endangered species be protected if their habitat is flooded?...Now I ask these three questions to get them in the record so that, hopefully, the people proposing the rule will address that.” – Dave Robertson, Van Buren public hearing*

**Response 5: We concur.**

**Comment 6: River Valley’s proposal violates Regulation 2.**

*“Reg. 2 required ERWs to be protected by: (1) water quality controls, (2) maintenance of natural flow regime, (3) protection of instream habitat, and (4) encouragement of land*

*management practices protective of the watershed. There is a vast body of science, research and studies that clearly show allowing dams and diversions to be built on ERWs would run contrary to the protection measures mandated in Reg. 2.” – NPS*

*“Arkansas’ Antidegradation Policy is set forth in Chapter 2 of Regulation 2 and includes the two following requirements:*

- Regulation 2.201 provides: ‘Existing water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.’*
- Regulation 2.203 provides that the ‘use of water quality for which the outstanding water body was designated shall be protected by (2) maintenance of natural flow regime, (3) protection of instream habitat....”*

*RVRWD’s proposal allowing dams and other significant physical alterations of the natural habitat within ORWs directly conflicts with each of these provisions....[D]ams and other significant physical alterations of the natural habitat would alter and degrade existing designated uses (including those uses specified in Regulation 2.302) and existing water quality. In addition, dams and other significant physical alterations of the natural habitat within ORWs obviously would interfere with the maintenance of natural flow regime and endanger and impair instream habitat.” – Hank Bates, on behalf of Ozark Society, Arkansas Conservation Partnership, Arkansas Canoe Club, Arkansas Citizens First Congress, Arkansas Wildlife Federation, Audubon Arkansas, Audubon Society of Central Arkansas, Friends of the North Fork and White Rivers and Sierra Club*

**Response 6: We concur.**

**Comment 7: The proposed amendment to Regulation 2.304 violates the Clean Water Act regulations.**

*“Designated uses can only be changed or removed in accordance with the provisions set forth in 40 C.F.R. §131.10. Most significantly, 40 C.F.R. §131.10(h)(1) provides that “states may not remove designated uses if... ‘[t]hey are existing uses, as defined in §131.3, unless a use requiring more stringent criteria is added.’” It is indisputable that a dam or other significant alteration of natural habitat on an ORW would effectively remove designated uses.... It is also indisputable that the designated uses on ORW water bodies are existing uses, as defined in 40 C.F.R. §131.3. Finally, it is clear that RVRWD’s proposed rulemaking would not require “more stringent criteria.” Accordingly, the proposed rulemaking is inconsistent with, and would violate, the Clean Water Act regulation set forth in 40 C.F.R. §131.10...*

*40 C.F.R. §131.12 requires that “[t]he State shall develop and adopt a statewide antidegradation policy.” Under this regulation, Arkansas’s Antidegradation Policy “shall, at a minimum, be consistent with the following:” (1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected....(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected....Under these provisions, neither ADEQ, the Commission or any other entity of the State of Arkansas can authorize activities that would result in the impairment of existing uses or degradation of water quality. RVRWD’s proposed revision*

*would establish a procedure under which the Commission could approve dam projects and related projects without regard to maintaining and protecting existing uses and existing water quality. This proposed revision therefore would be inconsistent with, and in violation of, the federal Clean Water Act regulations.*— Hank Bates, on behalf of Ozark Society, Arkansas Conservation Partnership, Arkansas Canoe Club, Arkansas Citizens First Congress, Arkansas Wildlife Federation, Audubon Arkansas, Audubon Society of Central Arkansas, Friends of the North Fork and White Rivers and Sierra Club

**Response 7: We concur.**

**Comment 8: Although the proposal references the standards for environmental impact statements under 40 C.F.R. Part 1502, the proposal actually does not establish any objective criteria by which a decision can be made under the changes to Regulation 2.304.**

*"The proposed amendment would require that "an environmental impact statement...which meets the standards for environmental impact statements in 40 C.F.R. Part 1502 as of December 9, 2005" be prepared for the Commission's consideration in actions for approval of water supply projects on Outstanding Resource Waters. EPA Region 6 notes that this statement appears to suggest that an objective federal evaluation of a proposal's potential environmental impacts would be available for the Commission to consider in taking approval actions. However, it is EPA's understanding following our April 24, 2006, conference call with the River Valley's attorney Allan Gates, that the "environmental impact statement" referred to in the proposed amendment does not necessarily refer to a federal Environmental Impact Statement (EIS). The National Environmental Policy Act (NEPA) requires EISs to be prepared for major federal actions significantly affecting the quality of the human environment. 42 U.S.C. §§4332(2)(C). The Council on Environmental Quality's (CEQ) implementing regulations found at 40 C.F.R. Parts 1500-1508 ensures that EISs prepared by federal agencies provide a full and objective analysis of the environmental effects associated with a proposed project. The third party rule proposed by the River Valley does not require that the "EIS" be prepared by a federal agency and would thus allow an applicant to submit a document in EIS format which does not fully disclose facts or analyses adverse to its application. At best, such a document would be of little value to the Commission or the public in considering the merits of a proposal." – EPA*

*"In addition, the criteria to be met described in the petition are no more protective than that required for any type of public drinking water supply project. The criteria also seem to indicate that the commission can ultimately decide whether to approve a request regardless of the selected alternative, or quality of the Environmental Impact Statement (EIS)." – FWS*

*"River Valley states that its proposal assures any request to "alter" an ERW "would be supported by an extraordinarily strong body of information and analysis, ...." River Valley proposes that an environmental impact statement (also known as an "EIS"), completed in accordance with the requirements of 40 CFR Part 1502, must be submitted to the Commission when a party seeks approval to dam an ERW. Presumably the EIS is*

*the central component or crux of the “extraordinarily strong body of information and analysis” to be considered in making the decision to allow an ERW to be dammed....*

*The first question River Valley’s proposal raises is, who will be preparing the EIS? Under River Valley’s proposal, it can be anyone. Under the National Environmental Policy Act (NEPA), federal agencies are mandated to prepare an EIS whenever a major federal action significantly affecting the quality of the human environment is undertaken. NEPA also created the Council on Environmental Quality (CEQ) to ensure that federal agencies comply with the law. Under River Valley’s proposal, how will the Commission ensure the EIS is completed in accordance with the requirements of 40 CFR Part 1502?*

*Under the federal regulations, when an agency decides to prepare an EIS, it publishes a notice of intent (NOI) and engages in a scoping process. It has been noted:*

*The NOI should describe the proposed action and possible alternatives, the agency’s intent to prepare an EIS, the agency’s proposed scoping process, and any planned scoping meetings, and the name and address of a contact person in the agency.*

*Under River Valley’s proposal, no NOI is required. Under the NEPA regulations, once the NOI is published, the federal agency will engage in the scoping process. With reference to the scoping process, it has been noted:*

*The agency must then engage in the “scoping process,” a process to determine the scope of issues to be addressed in the EIS and for identifying the significant issues related to a proposed action. Scoping may or may not include meetings, but the process should involve interested parties at all levels of government, and all interested private citizens and organizations. Scoping is also the appropriate point to allocate responsibilities among lead and cooperating agencies, identify other environmental requirements that are applicable to the proposal, set any time and page limits, and, in general, structure the process in such a way that all identifiable participants are informed and involved at appropriate points. A well designed scoping process can have an extremely positive ripple effect throughout the rest of the NEPA process.*

*Under River Valley’s proposal, no such scoping process is required....*

*The critical part of the EIS is the alternatives analysis. On this point, it has been written:*

*The “heart” of the EIS is the alternatives analysis, which inevitably leads to the question of which alternatives must be analyzed. The answer to that, ...is addressed on a case-by-case basis, with the key judicial standard being that of reasonableness [emphasis added].*

*The federal EIS’ alternatives analysis has been the subject of extensive litigation....*

*With regard to what is required in a federal EIS, it has been noted:*

*The purpose of the EIS requirement is to provide decision makers with sufficiently detailed information to aid in determining whether to proceed with the action in light of its environmental consequences. What level of detail is sufficient depends on the nature and scope of the proposed action. The discussion of environmental*

*effects of alternatives need not be exhaustive. What is required is information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned.*

*By comparison, under Regulation No. 2, to dam any waterway in the state other than an ORW:*

*the Department may require an evaluation of all practicable alternatives to the project including: an environmental assessment of the impacts of each alternative, an engineering and economic analysis, and a socio-economic evaluation of the project in the local area. (Regulation No. 2, Section 2,304)...*

*In Arkansas, the significant physical alteration of the habitat of ORWs is prohibited. But, for all waters other than high water quality ORWs, all practicable alternatives to such a project are to be considered. The "all practicable alternatives" language suggests a fairly exhaustive inquiry. For this reason, comments appropriately have been made on the record of this rulemaking stating that under River Valley's proposal, it is easier to dam an ORW than an unnamed ditch and that River Valley's proposal allows dams to be constructed on ORWs by completing a relatively lenient process when compared to the requirements considered in Regulation No. 2 for damming all other waters in the state."*  
– ADEQ (emphasis in original and footnotes omitted)

**Response 8: We concur.**

**Comment 9: The proposed rule change could lead to increased litigation over the requirement of an Environmental Impact Statement.**

*"[T]he proposed amendment would for the first time incorporate into Arkansas regulations an Arkansas EIS requirement. There has been extensive federal litigation under the National Environmental Policy Act regarding EISs. Do we want to open the door to similar State court litigation or should we perhaps first carefully think through the EIS requirement and its associated procedures?"* – Colene Gaston, Fayetteville

*"NEPA's requirements have been extensively litigated throughout the years. It is not known whether federal court decisions interpreting NEPA will be followed by Arkansas courts which will be interpreting a part of the federal regulations incorporated by reference in a state regulation. What is not in doubt, however, is that incorporating a portion of the NEPA requirements in a state regulation will fuel litigation in Arkansas' state courts. And the principle question will be what alternatives information will be sufficient to permit a dam to be built on Arkansas' ORWs?"* – ADEQ

**Response 9: We concur.**

**Comment 10: The Proposed Procedures for Approving Dams on Outstanding Resource Waters is Vague and Less Stringent Than the Procedures for Altering the Physical Habitats of Other Waters of Lesser Quality.**

*"The proposed amendment to Regulation 2.304 established a process for approving dams and other activities that alter natural flow regime, water quality, and designated uses*

*that is less stringent than the process for other waters of lesser quality. Moreover, most of the proposed limitations are nothing more than reiterations of requirements that already exist elsewhere in other extant laws:*

- Limiting initiation of the procedure to public entities engaged in providing drinking water provides little protection. Any credible dam proposal for the sole purpose of drinking water obviously would include the involvement of such a public agency.*
- The requirement that the proposal be certified by the Natural Resource Commission ("NRC") to be in compliance with the "State Water Plan" is surplusage. Pursuant to Ark. Code Ann § 15-22-503(e)(1), all such projects must be "approved by the commission [NRC] to be in compliance with the plan." Moreover, the focus of the State Water Plan is the allocation and balancing of water rights and needs; and it does not directly relate to the purposes of Regulation 2, e.g., protection of water quality standards and use designations. In short, this proposed language adds nothing to current law.*
- The provision related to an environmental impact statement pursuant to 40 C.F.R. Part 1502 is vague and ineffective. The Conservation Groups agree with EPA's (Region 6) comment that because the proposed rulemaking does not require that the "EIS" be prepared by a federal agency in full compliance with federal law, it would allow an applicant to submit a document labeled an "EIS" that does not fully analyze or disclose the project's environmental impacts. As EPA stated: "At best, such a document would be of little value to the Commission or the public in considering the merits of a proposal."*
- Public notice and opportunity for comment adds no protection greater than that which is currently available to any waters in Arkansas. For example, an opportunity for public notice and comment would have to be provided pursuant to the Section 401 and 404 processes under the Clean Water Act.*
- Finally, the requirement that the Commission make a determination that the proposed alteration provides "benefits that justify the anticipated adverse effects" is problematic for three reasons. One, it is vague and provides no criteria for balancing benefits and adverse effect, nor any requirement to favor feasible alternatives that would not impact Outstanding Resource Waters. Two, it is no way tied to the "EIS;" the "EIS" could be completely disregarded in the final decisionmaking. Third, and most remarkably, it is less stringent than the standard ADEQ applies to all "other waters" of lower quality. Regulation 2.304 provides: In other waters, where significant physical alteration of the habitat are proposed, the Department must be assured that no significant degradation of any existing use or water quality necessary to protect that use will occur. In order to make such determinations, the Department may require an evaluation of all practicable alternatives to the project including: an environmental assessment of the impacts of each alternative, an engineering and economic analysis; and a socioeconomic evaluation in the local area. (Emphasis added).*

*Therefore, under the RVRWD's proposed rule making all "other waters" would require a more stringent test than our most cherished streams such as Buffalo River, Cossatot, Piney, Saline, Mulberry, Little Red, Spring, Illinois, Strawberry, etc. Simply put, this is bad policy." - Hank Bates, on behalf of Ozark Society, Arkansas Conservation*



Partnership, Arkansas Canoe Club, Arkansas Citizens First Congress, Arkansas Wildlife Federation, Audubon Arkansas, Audubon Society of Central Arkansas, Friends of the North Fork and White Rivers and Sierra Club (emphasis in original)

**Response 10: We concur.**

**Comment 11: The requirement that a project under the proposed amendment be in compliance with the State Water Plan is essentially meaningless.**

*"The water district's proposal requires the project to be certified by the Natural Resources Commission ("NRC") to be in compliance with the State Water Plan. I have two concerns with this requirement. First, pursuant to Ark. Code Ann. § 15-22-503(e)(1), the construction of any water development project is required to obtain approval from the NRC that the project is in compliance with the State Water Plan. Since the construction of a dam to supply drinking water is mandated by state law to be certified by the NRC as in compliance with the State Water Plan, this exact same requirement in the water district's proposal for amending the Water Quality Standards is essentially meaningless. The certification, already a requirement of state law, adds nothing to the "process" the water district seeks to adopt. Secondly, the NRC and the Arkansas Pollution Control and Ecology Commission each have their own separate and distinct authorities as set out in state law. The NRC is charged with developing the State Water Plan which serves as a "guide for efficient development of land and water resources," is largely unenforceable, and consists of twelve basin reports and an executive summary. The Water Quality Standards are enforceable regulations adopted by the Arkansas Pollution Control and Ecology Commission to protect and maintain the water quality necessary to sustain the designated uses of the state's surface waters. The certification of a project under the State Water Plan does nothing to further the purposes of Arkansas' Water Quality Standards." – State Representative Sam Ledbetter*

**Response 11: We concur.**

**Comment 12: The requirement of certification of compliance with the State Water Plan by the Natural Resources Commission will create an unworkable conflict of interest within the Arkansas Pollution Control and Ecology Commission.**

*"Furthermore, the proposed change creates an unworkable conflict of interest. The director of the NRC is a member of the Arkansas Pollution Control and Ecology Commission, and the proposed rule change in effect grants the NRC director the authority to remove protections afforded ORW streams by the Arkansas Pollution Control and Ecology Commission by simply including a water project involving an ORW stream in the State Water Plan. This creates a clear conflict of interest that I believe necessitates the NRC director's removal from the Arkansas Pollution Control and Ecology Commission. In 1991, there was an effort to remove the agency heads from the Arkansas Pollution Control and Ecology Commission. That effort consumed a great deal of everyone's time. Ultimately, a compromise was reached that changed the Commission's composition. I anticipate that if the water district's proposal is adopted, another effort will be made with far greater vigor to remove those from the Commission with inherent conflicts of interest such as will exist if this proposal is adopted. I do not*

*believe that any of us are interested in another legislative battle like the one we experienced in 1991.” – State Representative Sam Ledbetter*

**Response 12: We acknowledge the comment.**

**Comment 13: River Valley’s proposal will create a significant conflict with the State of Oklahoma.**

*“As you undoubtedly know, this is not the first time that the issue of impounding the waters that flow between Arkansas and Oklahoma has arisen. In the 1980s the City of Ft. Smith announced its intention to construct a reservoir on Lee Creek. The State of Oklahoma ultimately filed a lawsuit against Ft. Smith in an effort to prevent the irreparable damage to the unique habitat and pristine conditions found in Lee Creek that would have resulted from the construction of such an impoundment. After intense negotiations involving the Governors of our two states, Oklahoma agreed to drop its lawsuit under the condition that the proposed reservoir would not impact the flow regime, habitat, or water quality of the Oklahoma portion of this stream. This agreement further required that any future plans to modify Lee Creek could only be accomplished upon the approval of our State agencies and/or Legislature.*

*While the 1980s deliberations were focused on the downstream portions of Lee Creek, the pending proposal for upstream damming gives us even greater concern as it threatens to alter the flow regime, habitat, and water quality along the entire length of Lee Creek within our borders. Significantly, the City of Ft. Smith rejected the option of constructing an upstream reservoir on Lee Creek due to the environmental consequences of such action. We concur with Ft. Smith’s findings and cannot envision an upstream damming scenario that would adequately safeguard the “Outstanding Resource Water” (antidegradation) protections prescribed by Oklahoma’s Water Quality Standards. Accordingly, the State of Oklahoma must oppose any modifications that might cause degradation of these treasured water resources....Both Arkansas and Oklahoma are faced with many challenges as we strive to protect our remaining exceptional water resource assets. Oklahoma has a great number of technical resources, as well as historical documents and agreements, at our disposal if it becomes necessary for us to take a more active role in this proposal.” – Oklahoma Secretary of Environment*

*“The State of Oklahoma is currently suing six NWA poultry firms over the issue of pollution of rivers/streams that flow from NW Arkansas into Oklahoma. They contend that these company’s (sic) poultry growers are polluting these waters through the land application of poultry litter as fertilizer. Since Lee Creek flows into Oklahoma, and has Oklahoma’s designation as exceptional water (Scenic River), I am confident that we can expect the State of Oklahoma to sue Arkansas over this proposed change to Lee’s (sic) Creek, as it will adversely affect their portion of the creek’s water quality and uses. Moreover, I believe that Oklahoma will not be the only entity suing our State if this proposed rule change is made.” – Harry Mock, Fayetteville*

**Response 13: We acknowledge the comments. In addition, 40 CFR § 131.10(b) requires, “in designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of**

downstream waters and shall ensure that its water quality standards provide for the maintenance of the water quality standards of downstream waters.”

**Comment 14: The proposed change will only lead to further conflicts over dams on ERW streams.**

*“Make no mistake, every proposed dam on an ERW will come down to a huge battle, not unlike the one that the people of Marshall and Searcy County have endured. We will argue endlessly about whether \$50 year is too much for water rates to increase, how the costs were developed and whether a dam will affect downstream water quality. There will be accusations about who is actually benefiting from the construction of the lake and whether we have provided citizens with adequate access to lake recreation with the dams that have already been constructed.*

*The Commission stands at a point in time when it can affirm that some of our remaining undammed streams, those with high quality, are off limits. By rejecting this proposal, the Commission will greatly simplify the decision-making process for those water utilities that are trying to plan for their long range future.” – Rex Robbins, North Little Rock*

*“We do have one ERW stream in our watershed, North Sylamore Creek. It’s being extensively studied as it’s one of the few streams in the state where high water quality still exists and the stream channel is mostly intact. Citizens in our area are deeply concerned that the action you are considering would initiate a process that could result in this stream being dammed. Where do we draw the line?” – Friends of the North Fork and White Rivers*

*“My parents and the community I grew up in spent many years fighting a proposal to dam the Eleven Point River. This project, sponsored by a water district, was initially proposed in 1938. I remember the fight to stop the dam as it continued into the 1960’s. The proponents of the dam obtained petitions from city councils and chambers of commerce claiming they represented 450,000 people in support of the dam. They claimed to have the support of more than 4500 paid members. They claimed the dam was feasible and would be of great economic advantage to Randolph County. In truth, the dam was opposed by those who would lose their homes, family farms, and churches. The community I grew up in fought hard to preserve the Eleven Point River in its natural state. In 1988, the Eleven Point River was designated an extraordinary resource water. Despite this hard won battle, waged over a quarter of a century, River Valley’s proposal once again would allow the Eleven Point to be a potential target for damming. This is unconscionable, and I write to oppose the River Valley Regional Water District’s proposed rulemaking.” – Linda Bly, Little Rock*

**Response 14: We acknowledge the comments. ADEQ is committed, through the current Triennial Review process, to gather input from the public, scientists, engineers, federal and state resource agencies, and other interested stakeholders. This input will aid ADEQ in clarifying the procedure allowing Outstanding Resource Waters, in appropriate circumstances, to be used as domestic drinking water supplies.**

**Comment 15:** River Valley's proposal goes beyond just providing drinking water to provide for recreation. The proposal would allow ORW streams to be dammed for recreational uses, under the auspices of providing drinking water supplies.

*"[R]iver Valley's proposal states t hat significant physical alterations of the habitat within ERWs may be allowed for the purpose of providing drinking water. The information available about their project, including River Valley's own brochure, states that the lake to be created by damming Lee Creek will not be used just for drinking water, but for recreational purposes as well.... Under River Valley's proposal any ERW in the state can be dammed to create a recreational lake, if it first poses, in part, as a drinking water supply." – Linda Bly, Little Rock*

*"Though their claim is to meet growing demand for potable water in their geographic area, other less environmentally shortsighted and irreversibly damaging means are available to meet their water demands. It is not unreasonably cynical to accuse them of the ulterior motive of desiring to dam Lee Creek in order to create a large recreational lake much like every other impoundment created from other free flowing streams and rivers all across America. In doing so they will destroy Lee Creek and evict a unique ecosystem, a flora and fauna that occur nowhere else, and they will permanently destroy one of Arkansas' most beautiful and pristine waterways. In addition, they will set a precedent that will weaken the protection for all other Arkansas ERWs. Revision of Regulation 2 would be in the short term bad environmental policy and in the long term potentially catastrophic to Arkansas' natural aquatic ecosystems." – Eric Sundell, Professor of Biology, Director and Curator, UAM Herbarium, Monticello*

*"If River Valley's proposed rulemaking can be used to dam Lee Creek, then it is establishing a process to allow dams on any outstanding resource water in the state of Arkansas for any reason, so long as some part of the water impounded is dedicated to drinking water. Under River Valley's proposal, the Mulberry River could be dammed for the combined uses of drinking water and flood control. The Cossatot River could be dammed for the combined uses of producing hydroelectric power and drinking water. The Eleven Point River could be dammed for crop irrigation and drinking water." - ADEQ*

**Response 15:** We acknowledge the comments. The brochure provided by RVRWD to the Commission states that a goal of the Pine Mountain Lake project is to "provide recreational opportunities for area citizens."

**Comment 16:** The Pine Mountain Dam would not be allowed under the language of the proposed rule change because this project would not be built solely for a drinking water supply.

*"On its face, RVRWD's proposal would allow significant physical alterations of the natural habitat within ORW water bodies only for the "purpose of providing for drinking water needs." Yet, RVRWD has proposed this revision for the specific purpose of damming Lee Creek, an Extraordinary Resource Water. This dam project – the Pine Mountain Dam & Lake Project – is a multipurpose dam. Over one-third of the lake's 261,000 acre-feet storage capacity is for the exclusive purpose of flood control. The*

*remaining capacity is for the combined (and sometimes competing) purposes of water supply, lake recreation and releases to downstream fisheries. Therefore, it is clear that the dam project that is the catalyst for this proposed rulemaking would not be allowed under the plain meaning of the proposed language. The Pine Mountain dam is not only "for the purpose of providing for drinking water needs." This is a critical issue because the additional purposes will cause significant physical alterations of the natural habitat that would not occur were RVRWD to pursue an alternative project limited to the purpose of providing drinking water."* – Hank Bates, on behalf of Ozark Society, Arkansas Conservation Partnership, Arkansas Canoe Club, Arkansas Citizens First Congress, Arkansas Wildlife Federation, Audubon Arkansas, Audubon Society of Central Arkansas, Friends of the North Fork and White Rivers and Sierra Club

**Response 16:** We concur. Under RVRWD's proposed language to Section 2.304, "Significant physical alterations of the habitat within extraordinary resource waters, ecologically sensitive waterbodies, or natural and scenic waterways are not allowed; provided, however, that such alteration may be allowed for the purpose of providing for drinking water needs if....". In addition, Paragraph 8 of RVRWD's petition to initiate rulemaking states, "the procedure that would be established under the proposed amendment would be available only under very limited circumstances: The procedure could be initiated only by a regional water distribution district or other public entity engaged in providing water to the public." However, the brochure provided by RVRWD to the Commission states that a goal of the Pine Mountain Lake project is to "provide recreational opportunities for area citizens."

**Comment 17:** This proposal is best addressed in the Triennial Review process than in a third party rulemaking proceeding.

*"EPA is aware that the Arkansas Department of Environmental Quality intends to address the underlying issue during the upcoming triennial review of the State's water quality standards, which may prove to be a better forum for resolving the petitioner's concerns."* - EPA

*"By using the Triennial Review process, Lee Creek can specifically be addressed without significantly lowering protection standards for all other ERW, ESW and natural and scenic waterways in the state, which is the current proposal from the RVRWD. From an ESA perspective, the Service would be able to consult on the proposed action as it relates specifically to Lee Creek, and would not have to consider all listed species in all ERW, ESW and natural and scenic waterways. In addition, the triennial review allows for multiple stakeholder input from around the state through public meetings, and participation on a technical working group. The input from these meetings allows ADEQ to develop water quality standards that are consensus based, and in compliance with all state and federal laws. These consensus based standards should be given priority over third party rulemaking petitions since a petition may not reflect adequate input from all stakeholders. A third party rulemaking petition may also not have the statewide perspective on water quality and quantity issues as would a state agency entrusted with insuring safe and adequate water for the state."* - FWS

*"The Arkansas Department of Environmental Quality's Triennial Review process offers an opportunity for discussion and public input concerning the use of ERW streams as a source for drinking water. We believe this is a more appropriate avenue for the River Valley Regional Water District to voice concerns." - ANHC*

*"Another aspect of this issue to consider is that there already is a formalized way to handle proposed changes to Water Quality Standards and this is the Triennial Review process that ADEQ goes through each 3 years. This triennial review is going on currently so there already is a mechanism to handle these type proposed regulation changes. This review process brings this decision out in the open to the public so that their comments, questions and opinions can be heard fully on this matter." – Arkansas Game and Fish Commission ("AGFC")*

*"[A]side from the issue of whether or not Arkansas' extraordinary resource waters, ecologically sensitive waterbodies, or natural and scenic waterways should ever be dammed for drinking water purposes, the proposed amendment raises several complicated procedural questions and issues that could more readily addressed in the context of the Arkansas Department of Environmental Quality's more collaborative triennial review process than in the APCEC's more formal, and perhaps unavoidably adversarial, third-party rulemaking process." – Colene Gaston, Fayetteville*

**Response 17: We concur. 40 CFR § 131.10 (a) requires, "each state must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish, and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation." § 131.10(b) requires, in designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the maintenance of the water quality standards of downstream waters." Further, 40 CFR § 131.20 (a) State Review requires, "the State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards." This review procedure is commonly known as the Triennial Review process and is currently underway at ADEQ. It is clear from the above citations, the proposal to utilize Outstanding Resource Waters as domestic water supplies would be better served through the current Triennial Review Process. In addition, ADEQ is committed, through the current Triennial Review process, to gather input from the public, scientists, engineers, federal and state resource agencies, and other interested stakeholders. This input will aid ADEQ in clarifying the procedure allowing Outstanding Resource Waters, in appropriate circumstances, to be used as domestic drinking water supplies.**

**Comment 18: Of 20,000 stream miles in Arkansas, only about 16% of those miles are designated extraordinary resource waters and given extra protection.**

*"Of all of Arkansas' streams, only a small percentage are designated an extraordinary resource water. Among them are Lee Creek and Eleven Point River, two of the state's most beautiful free-flowing streams. Indeed our state is known as The Natural State in large part for the natural, free-flowing streams that are home to healthy and thriving water life and that are beloved and frequented by Arkansans and others alike. All of us are fortunate today to live in a state with ample water resources. With wise management of these water resources, all of us can be assured of plentiful safe, reliable and affordable drinking water without jeopardizing our state's natural streams." – State Representative David Johnson*

**Response 18: We concur.**

**Comment 19: ERWs have been designated and protected for nearly 20 years. The proposed rule changes should not be allowed to undermine earlier protection efforts.**

*"The protections afforded ORWs in Section 2.304 were established by the Commission almost twenty years ago and have been maintained for the last two decades. It is important to note, however, that a number of Arkansas' high quality, free-flowing streams were designated as exceptional or extraordinary long before 1988. In 1967, the Arkansas Legislature passed Act 437, which established a State Stream Committee for the purposes of identifying and protecting high quality streams in the State. In 1975, this committee was brought under the State Natural and Cultural Heritage Commission by Act 112. In 1979, the Legislature created the Natural and Scenic Rivers Commission... Throughout the early evolution period of the State Stream Committee and later through the efforts of the State Natural and Cultural Heritage Commission and Natural and Scenic Rivers Commission, numerous attempts were made to list and describe criteria for selecting high quality streams. The process was difficult due to frequent reorganization of the various committees and commissions charged with the stream preservation task. However, in 1973, under the guidance of the Clean Water Act and with the assistance from people originally selected for the State Stream Committee and those involved with the Natural and Cultural Heritage Commission, ADEQ designated [thirteen] streams as exceptional or extraordinary. [These] streams were originally placed in Regulation No. 2 and designated as "AA" streams after considerable public and government review... In 1988, a number of changes were adopted, amending Regulation No. 2. First, water quality standards based on ecoregions were established. Then the name of "AA" streams was changed to Extraordinary Resources Waters ("ERWs"). Also, additional waterbodies were added to the list of ERWs, and the definition of Extraordinary Resource Waters was established...Although this definition has several subjective terms, it has remained unchanged throughout numerous reviews." - ADEQ (footnotes omitted)*

*"In 1987 when the APC&E revised Regulation 2 to create the ERW designated use, it was with the full understanding that these water bodies were to be treated carefully and given special protection from that point forwards...A dam of Lee Creek would destroy the free flowing character of Lee Creek and thus eliminate the designated use. Further, the*

*3<sup>rd</sup> Party Rulemaking Petition puts at risk all ERWs and free-flowing streams in Arkansas from new dams.” – Audubon Arkansas*

*“I personally helped to celebrate the 150<sup>th</sup> year of Arkansas statehood by placing the Upper Lee Creek stream segment on the state Registry of Scenic Rivers in 1986. I am enclosing the nomination form and related materials so that this official record will show that there was a careful and studied process that resulted in this designation and in the following 1987 ERW designation that protects Upper Lee Creek. (Enclosures available for public review at ADEQ Public Outreach and Assistance Division).” – Patrick Horan, Fort Smith*

**Response 19: We concur.**

**Comment 20: The proposed changes to Regulation 2.304 will have significant impacts on threatened and endangered species throughout the state.**

*“These designated water bodies provide habitat for multiple threatened and endangered species as well as numerous state and national species of concern....If the petition is approved by the EPA under Section 7 of the ESA, and given the broad nature of the petition, consultation would most likely be required for all ERW, ESW, and natural and scenic waterways in the state. This would impact approximately 30 receiving streams and multiple listed species. Quantifying the potential cumulative effects of the petition to all receiving streams in multiple watersheds, and their associated listed species, would result in a complex and cumbersome consultation process.” - FWS*

*“River Valley Regional Water District has made the petition specifically in relation to a proposal to dam Lee Creek. However, the petition extends to all ERWs, ecologically sensitive waterbodies, and natural and scenic waterways....As a state agency, the ANHC seeks to preserve natural diversity in Arkansas. Towards this end the agency maintains a database of known locations of elements of conservation concern. This includes plants, animals, and high quality examples of natural community types. Database information comes from the scientific community through technical journals and reports, museum and herbarium collections, and field surveys by biologists. These data are made available to state and federal agencies, and the public for use in environmental planning. The database was utilized by ADEQ for designation of streams as ERW, ecologically sensitive waterbodies, and natural and scenic waterways. The streams with these designations provide crucial habitat for many species of conservation concern in Arkansas. A recent review of the database indicates 148 aquatic or semi-aquatic species occur within these designated streams. Nineteen of these species are of federal concern (either listed as endangered or threatened or are candidates for listing by the U.S. Fish and Wildlife Service.) Apart from the aquatic species, 128 terrestrial species occur within a .25 mile corridor of these streams. This includes five additional species listed as endangered or threatened by the U.S. Fish and Wildlife Service. In most cases these plants and animals have very specific habitat requirements and would not persist if significant stream alterations were to occur. These stream corridors also support colonial bird nesting sites and known high quality examples of 20 different natural community types. Eleven ANHC natural areas are within .25 mile of these streams....[Section 2.304 of Regulation 2] is*



*one of the few protections afforded to the sensitive species supported by these streams. Dramatic stream alterations could have significant adverse impacts to rare species and unique habitats. We do not believe it is possible to significantly alter these streams and maintain their beneficial uses for threatened, endangered and endemic species.” - ANHC*

**Response 20: We concur.**

**Comment 21: The proposed changes to Regulation 2.304 could significantly impact several State Natural Areas, protected by the Arkansas Natural Heritage Commission.**

*“Eleven ANHC natural areas are within .25 mile of these streams.” - ANHC*

**Response 21: We concur.**

**Comment 22: Extraordinary Resource Waters are of critical scientific importance and provide many environmental benefits.**

*“Beyond the protection of endangered species these water bodies also have critical scientific importance in establishing baseline conditions for water quality in Arkansas. These streams serve as the benchmark to assess conditions in other water bodies throughout Arkansas.” - FWS*

*“Ironically, the very reason the River Valley has selected Lee Creek as their potential water source is due to the creek’s qualities that allow it to fall under the protection of the ERW law. To ammend (sic) this law would be a direct violation against the laws of Nature that maintain the balance of this creeks quality of water.” – Danny Rowe, Student, UAM, Arkansas Forest Resource Center*

*“[T]here is great potential for damage ...to the watershed and the water supply itself, which is purified in passing through the forest and the extensive free flowing watershed.” – Steve and Arlone Folkers, Mountain View*

*“We can’t afford to cover up our very best waters with large lakes. For 25 years, these streams have been a source of joy to many and a natural laboratory for understanding natural processes.” – Debbie Doss, Little Rock public hearing*

**Response 22: We concur. Outstanding Resource Waters provide numerous environmental benefits including scientific values. These waters serve as “reference streams” and water quality, macroinvertebrate, and other scientific data collected from these streams provide useful information for the assessment of other waters within the same ecoregions.**

**Comment 23: Extraordinary Resource Waters are an important economic resource to the State by offering unique recreational opportunities. Several comments were submitted by Arkansans and residents of other states that described their recreational use of Lee Creek and other Extraordinary Resource Waters.**

*"A majority of these designated streams serve as an important economic resource to the state by offering unique recreational opportunities that have been identified in multiple outdoor media sources. The unique recreational opportunity is related to the fact that streams having these qualities and values are relatively and increasingly rare in the state. This is especially true when compared to the recreational opportunities advocated by the RVRWD through their proposed construction of a dam on Lee Creek." - FWS*

*"The Arkansas Department of Parks and Tourism estimated that in 2005 recreation and tourism brought \$4,632,561,000 into our State. These activities generated \$259,424,000 in State tax revenue, and \$97,284,000 in local tax revenue. This is easily one of the largest sources of revenue for our State. Many of these folks are attracted to just the sort of activities that Lee's (sic) Creek offers." – Harry Mock, Fayetteville*

*"Our club feels very strongly that damming Lee Creek would not only destroy a great smallmouth fishery but it would also have numerous other negative impacts to the surrounding environment....The reasons behind damming Lee Creek are not substantial enough to justify destroying one of our state's most important resources...Accepting this proposal will not only wreck Lee Creek, it will also wreck the classification of all other ERWs in the state." – Arkansas Fly Fishers*

**Comment 23(a): use of ERWs by out of state visitors:**

*"While I live in Iowa, over the last ten years I have made one or two annual trips to Arkansas to canoe or kayak on the wonderful rivers and creeks that Arkansas has protected through its Extraordinary Resource Waters (ERW) provisions. On these trips I spend my Iowa earned dollars in the Arkansas economy for groceries, fuel, restaurants, motels and hotels, supplies, equipment, canoe rentals, shuttles, etc....If Arkansas disturbs the effective protections that ERW provides to one of the state's most precious and attractive resources, its rivers and other protected waters, then the damaging effects will be both ecological and economical. People like myself may soon find ourselves making more use of the rivers and streams in the Missouri Ozarks instead of in Arkansas." – Victor Elias, Van Meter, Iowa*

*"As a tourist who often visits the beautiful State of Arkansas for camping and canoeing along the scenic rivers, creeks and streams of the Natural State, I am writing to express my opposition to the idea of damming Lee Creek. The short-term water benefit to nearby communities is very limited, at best, and damming will result in devastation of the natural environment including plants, animals, fish, birds and other aspects of the natural order." – Marc W. McCord, Dallas Downriver Club*

*"I spend more tourism dollars in Arkansas than in any other state my family visits. The primary reason we come to Arkansas is to enjoy your free flowing rivers and streams. When we are not on canoes, we come to hike the Ozark Highlands Trail and trails near the Mulberry and Buffalo Rivers....At this point, my husband and I plan to retire in northwest Arkansas, hopefully near one of the free flowing streams remaining" – Teresa Meinders Burkett, Tulsa, Oklahoma*

**Comment 23(b): use by Arkansans:**

*"I enjoy places like this to vacation at and since the price of gas is so high, I will be taking more vacations in the state, hopefully at Lee Creek." – Craig Roe, Des Arc*

*"I feel like I have grown up on Lee Creek over the last 20 years. We hike, boat, fish, camp in and around the creek from Devils Den to Short Oklahoma. We paddle the big water during the rainy season in kayaks, it is some of the best whitewater around. I have spent countless hours riding the waves in Football Field rapid, surfing the Ledge, and playing in Buck-n-Flush along side people from Texas, Oklahoma, Missouri, and Kansas. During the low water times we canoe, fish, and swim some of the best small mouth fishing stretches I've ever been on. In the winter we camp along the shore and enjoy the solitude and beauty that has long disappeared in other parts of the country." – Rob Pollan*

*"I am 80, and quite possibly I have seen, waded, and fished more miles of our Ozark Streams than any other individual still living. Our streams are not what they were when I started enjoying them, but each of them is unique, each has its own beauty. I urge you to continue to guard and preserve them." – James F. Barnett, Batesville*

*"The Vice President of the Arkansas Canoe Club (ACC) and I attended the Governor's presentation of the Henry Awards last spring, March 8, 2005 – we received an award for all the things we do to keep the streams and lakes, including ERWs, clean and beautiful, and promote the safe use of these waters – which in turn, offers a Mecca for tourist and the billions of dollars they bring to Arkansas. Please – no dam on Lee Creek, or any other ERW stream!!" – Bobby O. Stout, Clinton*

*"I am currently a senior in High School and I am very opposed to the building of a dam on Lee Creek. I have spent a lot of my childhood in the Arkansas wilderness and I believe it is a great place to take kids. The loss of Lee Creek and the surrounding area would be a loss of one of the most [accessible] wilderness areas in the state. Another reason I would hate to see Lee Creek dammed is that for the past 10 years of my life I have kayaked or canoed that stream regularly. Lee Creek is one of the most beautiful creeks in the Ozarks. Damming Lee Creek would be such a waste of pristine wilderness for just another lake that we don't need." – name illegible, Bentonville*

*"I oppose any changes to the Regulation and everything's been said I wanted to say except for the gentleman that said we were....selfish. I've raised foster kids for 15 years, sir, and I've taken them out to our creeks and our streams and I've seen these come from places that we would never want to see you know: Abusive relationships; sexual abuse; physical abuse; been locked in the closet. And they don't know these places exist, you know, our creeks and our streams. And I take them out and we camp and we hike and we enjoy these sites. And I can see these kids heal from the river. It's not selfish. Selfish is taking that away from our kids and our future generations." – Clint Parker, Springdale public hearing*

**Response 23 (A & B): We concur. Outstanding Resource Waters provide many recreational opportunities that are enjoyed by not only Arkansans, but by visitors to**

our State as well. A portion of the total revenue generated by tourism in the Natural State, can be attributed to the recreational uses on Outstanding Resource Waters.

**Comment 24: Comments submitted by people that moved to Arkansas for the natural beauty.**

*"I am a recent transplant to Arkansas. But in my short time here I have come to enjoy and appreciate the state's most beautiful rivers and lakes. Not only have I benefited from recreation on and around these extraordinary bodies of water, but so do people from all over the country. Billions of dollars are added to Arkansas' economy through tourism and recreation. Birding is also a multi-billion dollar industry that can enliven a local economy, as the folks in Brinkley can attest. Many birds require pristine riparian habitat. Protect the water to protect the habitat to protect the birds to encourage birding and ecotourism in Arkansas. It's a straightforward chain of events. Everyone can benefit in this way."* – Dan Scheiman, Little Rock

*"My husband and I moved to Arkansas 22 years ago, because we fell in love with its beautiful rivers. And I urge you not to make any changes to Regulation No. 2 through the third party review process. If any changes are needed to Regulation 2, I urge you to use the Triennial Review process, which included the entire state and not just a few cities in Northwest Arkansas."* – Margaret Bartelt, Little Rock public hearing

**Response 24: We acknowledge the comments.**

**Comment 25: Extraordinary Resource Waters are already designated for use as drinking water supplies and can be utilized using methods other than damming.**

*"ERW streams are already designated for use as drinking water supplies under the current regulation. One example is the Middle Fork Saline River which is an ERW stream and is the drinking water supply for Hot Springs Village. These ERW streams cannot be dammed but off-channel reservoirs can be built to be used for providing drinking water. This has been done in other areas of the United States and is a viable means of providing a consistent water source from a stream. In addition, structures to provide drinking water on a consistent basis can be constructed on ERW streams, as can be seen by the example of a low-head weir on the Saline River at Benton."* – AGFC (emphasis in original)

*"ERWS are already designated for drinking water use in Regulation No. 2 and no change is required to use ERWs for drinking water. Two cities, Hot Springs Village and Benton, currently use ERWs for drinking water. In both instances, a low head weir is used to create a pool that allows the cities to draw water from the ERWs during high flows, which is then stored in offsite storage basins to provide a reliable and continuous water supply. The low head weirs do not interfere with the water quality and natural flow regime of these valuable resources and do allow the instream habitat to be protected."* – Debra and Stuart Frye, Little Rock

**Response 25:** We concur. Outstanding Resource Waters are currently designated in Regulation No.2 as domestic water supply. In addition, ADEQ is committed, through the current Triennial Review process, to gather input from the public, scientists, engineers, federal and state resource agencies, and other interested stakeholders. This input will aid ADEQ in clarifying the procedure allowing Outstanding Resource Waters, in appropriate circumstances, to be used as domestic drinking water supplies.

**Comment 26:** The need for drinking water is understandable, but a balanced approach must be taken that protects our water resources.

*"Additionally, the Forests understand the desire for municipalities and other water suppliers to secure an adequate supply of water for the needs of Arkansas citizens. As a stakeholder the Forests, would seek to balance this call with its mandated mission to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations."* – United States Forest Service, Ozark-St. Francis National Forests

*"Maintaining and protecting the water quality of Arkansas' Outstanding Resource Waters, many of which are located in the Second Congressional District, is our duty under state and federal law. Similarly, ensuring the availability of a safe, affordable and dependable source of drinking water is among government's most important responsibilities. Fortunately, these two goals can both be accomplished. It is not an all or nothing choice."* – U.S. Representative Vic Snyder, Little Rock

*"I am a paddler, fisherman, and outdoor enthusiast. I am also a realist, and realize that our citizens need drinking water from some of these water resources, and that the current designation of extraordinary resource water allows for such use. However, removing this protective designation will only deteriorate our water resources and ultimately harm our entire state."* – Jordan Johnson, Little Rock

*"I have lived in Northwest Arkansas since 1969 and have been active in business, development of the area, and therefore understand the business issues related to water. I am on the Northwest Arkansas Business Council and was on the founding board of the regional airport. This has given me a good understanding of problems related to growth and our natural resources. I also have a pretty good understanding of the shortsighted solutions being considered by area cities and counties as related to the growth issues. I have spent many days on the rivers of Arkansas with my family over the past 36 years and currently live on the War Eagle River. Allowing dams to be built on these EWR rivers is a bandaid to the real problem which is controlled (sic) growth and conservation."* – Ken Ewing, Hindsville.

**Response 26:** We concur. In addition, the requirements found at 40 CFR § 131.10 – 131.12 subpart B-Establishment of Water Quality Standards, mandate that States establish designated uses for water bodies, develop water quality criteria sufficient to protect the designated uses, and develop and adopt a statewide antidegradation

policy and identify the methods for implementing such policy. This ensures that a balanced approach is taken to establish and protect these designated uses.

**Comment 27: The protection of Extraordinary Resource Waters is important to human communities.**

*"While some damming certainly serves important human values such as providing water to communities and businesses, overdoing it threatens other extremely important values, such as the ecological health of our land. The forests, the wildlife, the plant life, even the local "climate" all need undammed waterways in order to thrive; and of course, "human" communities do not thrive or flourish when these (apparent) non human interests are compromised."* – Allison B. Wallace, Asst. Professor, American Studies, Honors College, UCA, Conway

**Response 27: We concur.**

**Comment 28: The proposed rule change may set a precedent for decreased environmental protection and should not be allowed.**

*"Let's not be the first state to back off the well crafted regulations and create a national "tidal wave" of regression on water quality. Some times the cheapest option is not the best way."* – Steve Heye, Little Rock

*"I oppose changes in regulations protecting ERWs. Relaxing changes in the regulations will result in degradation of Arkansas streams."* – Gerald Toler, Eureka Springs

*"Of course, we want clean water for everyone to drink...Our own Department of Environmental Quality is laboring diligently and has already made a lot of progress in finding some good, workable solutions, as you've already heard today. We believe that clean drinking water and natural streams are not an either/or proposition. Twenty-five years of good science has provided us with a lot of answers. This rule change is not the answer."* – Debbie Doss, Little Rock public hearing

**Response 28: We concur.**

**Comment 29: Protection for ERW streams should be increased, rather than allowing this proposed rule change.**

*"The state needs more inspectors, a system to proactively enforce environmental standards, and [a] real plan to address the problems in our watersheds. Until builders and contractors are actually held to the laws and given an incentive to do the right thing we will continue to have a growing problem with our water quality. By incentive I mean that we should enact fines that will put a big enough dent in their budget that they would not be able to proceed. A few fines like that and the states contractors would start to take notice of the rules and regulations. This would also help pay for the extra inspectors I mentioned. I realized that budget is an issue for ADEQ but if you are to accomplish what your department stands for some major changes need to be enacted."* – Angie Myal, Hardy

*"Rapid growth and development in Arkansas should instead alert the Arkansas Pollution Control and Ecology Commission to strengthen and enforce ERW regulations to protect water sources that are under rapidly escalating demands as water supplies....The dramatic increase in demands on Greers Ferry Lake as a water source (Conway usage just added) have truly made it a Regional Water Supply. The PC&EC and ADEQ must increase efforts to protect this source if it is to meet future demands for water." – Save Greers Ferry Lake, Inc.*

**Response 29: We acknowledge the comments. We are encouraged by the support for additional resources to administer and enforce the Commission's Regulations.**

**Comment 30: Extraordinary Resource Waters, such as Lee Creek, should be protected for future generations.**

*"Please rule against the proposed change so that future generations like my son Max will be able to reap the benefits of the Natural State, just like thousands of others who travel here from surrounding states to enjoy our natural wilderness." – Rob Pollan, submitted along with photos of his family recreating on a portion of Lee Creek that would be inundated under the Pine Mountain Dam project.*

*"Many of our citizens have worked long years to develop what protections we have. Succeeding years will find these protected resources ever more valuable. We depend upon you to defend the assets which belong to us all." – Catherine Hamilton Hopinstall, Little Rock*

*"I beg you to not let this happen. I am old now but there are many generations to come after me who I believe should have the right [to] experience the same joy I did in such places." – Dorothy Meyer, Maumelle*

*"[M]y wife Angie and I are expecting our first child in September, and I hope that I will be able to teach him how to navigate the Mulberry and Big Piney, to fly fish on Lee Creek, and to enjoy the natural beauty that sets our state apart." – Jordan Johnson, Little Rock*

**Response 30: We concur.**

**Comment 31: Several comments expressed general opposition to a dam on Lee Creek and any changes to Regulation No. 2 regarding Extraordinary Resource Waters. In addition to Rob Pollan's photos mentioned in Comment 30 above, one commenter submitted a photo of a his property before and after alteration to a stream. One commenter submitted a DVD video of Lee Creek. The public may view these photos and DVD at ADEQ's Public Outreach and Assistance Division in Little Rock.**

*"Some other reasons that this is a bad idea: It is about building a dam on Lee Creek. This is only the first step in the whole process. Folks, if they didn't think they could get this done, they wouldn't be proposing this rule. And the reason they're pulling all of us*

*out of our homes this weekend is because they think this is worth their time to do. We think it's worth our time to fight it."* – Tom McKinney, Springdale public hearing

*"Arkansas has more than enough water in existing lakes, reservoirs and the Arkansas River to meet our water needs for decades to come. Communities should work together to make the best use of existing water supplies. Extraordinary Resource Waters (ERW's) are the purest water bodies in Arkansas. People from all 50 states and many countries come to Arkansas just to enjoy our streams providing millions of dollars in income to the state. In 2005, tourism and recreation added \$6.4 billion in economic value to Arkansas. These streams are the most important waters for fishing and outdoor recreation. Arkansas' most rare and endangered wildlife inhabit these waters. There is no need to change Regulation 2. It would weaken protections of our very best streams. Please vote against the unnecessary changes to Regulation 2."* – 71 form letters submitted this comment (emphasis in original)

**Response 31:** We concur. In addition, we think it is appropriate during the current Triennial Review process to further clarify using Outstanding Resource Waters as domestic water supplies. As stated above, ADEQ is committed, through the current Triennial Review process, to gather input from the public, scientists, engineers, federal and state resource agencies, and other interested stakeholders. This input will aid ADEQ in clarifying the procedure allowing Outstanding Resource Waters, in appropriate circumstances, to be used as domestic drinking water supplies.

**Comment 32:** Comments opposing the proposed changes to Regulation 2.304 were submitted by property owners that would be affected by the construction of a dam on Lee Creek.

*"I live on the property that part of the Pine Mountain Dam is going to be sitting on. My grandfather, Floyd Franklin, moved onto this property with his family when he was only 7 years old in 1917. He stayed right here and raised eleven children. One of which continues to live on this property, Steve Franklin, which is my dad. I now live in my grandfather's old house and have my own daughter on the way. My dad and his brothers and sisters grew up here, and my brother and me grew up here. I intend on my own children to do the same. This property has been in the family for almost 100 years. I am not trying to tell you my life story, I'm just giving you one of the reasons that I don't want this dam to get built here. And I know that several other people will have to move that have almost the same story. These properties weren't bought in the last few years, they were handed down through several generations. And in my opinion, no amount of money would ever replace their value. I have read that Arkansas has more than enough water to provide for our needs for decades. I don't think that damming another creek would make much difference. The more water we have the more we will waste. I think a better solution would be to get everyone to conserve, even if just a little. Maybe wash you car a little less often. Take shorter showers. Quit wasting water on grass. Answer this – which is more important, a green lawn or stripping people of their home? I don't want to leave my property just so a few more people can have a lawn just a little bit greener than their neighbors.... Besides, what worries me the most is that when I drive through town and see a ditch full of trash, possibly sewage, and whatever nasty things that would keep*



*me from getting any closer, is that some people want Arkansas (sic) most beautiful rivers and streams to have less protection than that ditch. Just so we can build another dam and take away a lot of people's family heritage." – Brian Franklin, Natural Dam*

*"[I] live in the Valley that would be flooded if the proposed rule change is granted and Pine Mountain Dam is built. I know you say this is not about the dam issue. When you walk in the back door there, there lays the pamphlet, 'Pine Mountain Dam: Looking to the Future.'*

*It has something to do with it or it wouldn't be back there on that table. You see, the reason for my very being branched out in the Valley and on the Creek that would be destroyed if the extraordinary resource water ruling is changed and the dam built and I love the Valley. My grandchildren are the seventh generation to live on the land that I lived [on], that my ancestors purchased in 1852. My father and grandfather wrote many letters, attended many meetings and made many phone calls opposing this Pine Mountain Dam in the 1960s.*

*When Lee Creek was designated ERW, the people in the Valley could finally put their mind at ease a little bit concerning this dam and we need to lay this issue to rest once and for all, instead of allowing it to resurface every few years. Why designate any stream as an ERW if you're going to come along and remove protection on it? This designation was put there to be permanent; not ever to be changed and disregarded....*

*I realize that some say that if the extraordinary resource water rule is changed, that it won't change anything. If that's so, why change it? But that's not so. It would change everything. It would open the door for the other protected streams to also be destroyed and the communities to be pushed out, along with their histories. There's so much history here to share with my grandchildren....*

*Our friends and loved ones are buried in those cemeteries....Just a couple of weeks ago, I visited with a neighbor who was born and raised in the community. He said that it was a shame to think after 86 years, that you might not have a final resting place – a final resting place of his choice near the Creek in the land that he loved....*

*And with all the rules and regulations that would govern the lake, you can have more recreation on Lee Creek as it is right now in its own beautiful and natural setting. You can get in at the bridge and walk and wade and fish all the way to the natural dam. You can swim in it. You can canoe in it. You can have a baptizing in it. You can catch crawdads in it. You can camp around it. You can have a picnic on it. You can teach your grandchildren to skip rocks and you won't be able to do these things in a no body contact lake....You can do all these things on Lee Creek just as it is. We don't need to allow our natural resources to be destroyed. What will happen to the wildlife? Where will it go? Where will we go: Our community destroyed; our homes destroyed; our history gone; no place to call home. You can't put a price on that. It's priceless." – Connie Crowley, Springdale public hearing*

**Response 32: We concur. The construction of the proposed Pine Mountain project will displace the local residents within the impoundment area. In addition, cultural resources, roads, cemeteries, and property will be inundated.**

**Comment 33: The proposed impoundment on Lee Creek would impact the Ozark Big-Eared Bat, an endangered species and two species of concern, the longnose darter and Ouachita creekshell.**

*"In regards to Lee Creek, the proposed impoundment could impact the Ozark Big-Eared Bat, *Plecotus townsendii ingens*, which is a federally threatened species under the Endangered Species Act (ESA). An estimate of the extent of the impoundment has shown that habitat of the Ozark Big-Eared Bat, on and adjacent to, the Ozark National Forest will be impacted. The resulting consultations from the initiation of this project would require an analysis of potential impacts to the Ozark Big-Eared Bat. In addition to the federally listed Ozark Big-Eared Bat, two species of concern have been documented in Lee Creek. The first, the longnose darter, *Percina nasuta*, is a species of concern in Arkansas, Oklahoma and Missouri, due to low numbers and the vulnerability of isolated populations. The darter prefers upland streams that are silt free and composed of cobble and gravel bottoms. Darter populations have been reduced in the state by prior reservoir construction (Robison and Buchanan 1988). The second species of concern, the Ouachita creekshell, *Villosa arkansasensis*, is a freshwater mussel that occurs in Arkansas and Oklahoma and prefers headwaters composed of cobble and gravel bottoms. (AGFC 2005)." - FWS*

**Response 33: We acknowledge the comment.**

**Comment 34: There is no emergency or water shortage crisis that necessitates the proposed rule change.**

*"Despite some alarmist groups' recent assertions that Arkansas is running out of water, we are in truth a state rich in water resources. We have an abundance of lakes and rivers and average rainfall totals that are very enviable to some of our neighboring states in the Midwest and West. Advocates of the proposed changes to Reg. 2 have asserted that the current drought is reason to believe that we're running out of water. But the current drought conditions are so sensational because they are so rare. While it does cause hardship to be at the low end of the average in terms of rainfall right now, it is not a reason to alter important environmental protections or launch large dam projects costing taxpayers tens if not hundreds of millions. Those actions would be prudent in a real emergency, but we are clearly not in an emergency at this time." – Bill Herring, Fayetteville*

*"RVRWD has proposed a draconian solution to a problem that does not exist. They already have a sufficient, affordable supply of potable water for decades to come, and could extend that period if they would only work with their neighbors like Van Buren County and the City of Ft. Smith. We strongly encourage them to do just that." – Audubon Society of Central Arkansas*

*"This is all about money. The River Valley Authority is seeking to find a way to manipulate the government and the people in order to save money. If it was about a water shortage then, yes, I would understand. It isn't though. It is about seeking a cheaper alternative to their water supply then (sic) what they currently have. How do we put a price on what we have? I don't think it is reasonable to sacrifice the greater good*

*and what the people want for the sole purpose of a few. Especially when it is all about economics.” – Mark Massey*

**Response 34: We acknowledge the comments. ADEQ is committed, through the current Triennial Review process, to gather input from the public, scientists, engineers, federal and state resource agencies, and other interested stakeholders. This input will aid ADEQ in clarifying the procedure allowing Outstanding Resource Waters, in appropriate circumstances, to be used as domestic drinking water supplies. Thereby, giving public entities the ability to properly plan for the long-range future water needs of their communities.**

**Comment 35: The City of Van Buren/RVRWD wants this reservoir for reasons other than just supplying drinking water.**

*“The City of Van Buren receives water from the City of Fort Smith. Van Buren population according the US Census in 2004 was 20,637. In 1990 the population was 14,979. The growth over the ten year period is 5,658 people or less than 566 people a year. The population growth for Van Buren is nominal. Fort Smith has recently extended the height of a dam at Lake Fort Smith to supply both Van Buren and Fort Smith. Van Buren wants its own water supply for possible reasons besides drinking the water. Van Buren wants to resell the water as a public utility or create a lake community. Possibly, it could be for hidden reasons.” – Kevin Fendley, Fayetteville*

**Response 35: We acknowledge the comment.**

**Comment 36: The proponents of the proposed rule change are serving special interests with this petition.**

*“Arkansas is a beautiful state and we request that our public servants consider all citizens and visitors instead of just a few people who want to make money by building in an area where they can ‘pad their own pockets.’” – Eva Golden, Little Rock*

*“These protected streams are definitely the last pieces of ‘natural’ this Natural State has. If we allow special interests to push for dams, lake developments and subdivisions will inevitably be created. These unnatural developments benefit a few while eternally generating environmental degradation.” – Derek Linn, Morrilton (emphasis in original)*

*“The negative environmental impact as well as the negative social impact would cause permanent damage, all for nothing short of GREED!!” – Janelle Roller, West Fork (emphasis in original)*

**Response 36: We acknowledge the comments.**

**Comment 37: There are other alternatives to providing drinking water than using Extraordinary Resource Waters.**

*“Recently Farm Bureau, which I am a member of, highlighted the very successful project in southeast Arkansas to use water from the White River for residential and industrial purposes instead of the badly strained Sparta aquifer....Most notably the project planners*

*opted against the construction of dams for economic and environmental reasons and for expediency. That type of project is a modern solution to water supply needs, and there are dozens of such examples around the nation, as the high costs of large dam projects become more and more apparent and dams are decommissioned and not rebuilt....*

*Despite the claims of those wanting to dam ERW streams, purification of Arkansas River water costs little, if any, more than purification of water from freshwater lakes in the state. Chemical engineers in Northwest Arkansas have stated [publicly] that the cost would be no greater than operating the water plant at Beaver Lake. Additionally, the Arkansas River can supply far more water than Arkansas will need in the foreseeable future. Pulaski Co. currently consumes about 58 million gallons of water per day (gpd) and has a maximum processing capacity of about 174 million gpd. Low flows on the Arkansas R. at Fort Smith run somewhere in the 3 BILLION gallons per day range. So Arkansas' highest population county (by far) would on average only consume about 2% of the usual MINIMUM flow on the Arkansas R. Clearly assertions that drawing water from the Arkansas R. would potentially affect navigation or downstream water use are entirely overblown." – Bill Herring, Fayetteville*

*"The RVRWD clearly has chosen to pursue one alternative to the exclusion of all others. In public meetings, when questioned about what efforts had been made to conserve water, they seemed to lack a basic understanding of how the question of "conservation" was even related to the issue of "adequate supply." To me, this indicates a fundamental gap in the skill set needed to evaluate all alternatives, and thus insure the needs of the people of Crawford County will be met at the lowest possible cost far into the future. As an engineer, I find it amazing that someone could fail to grasp such a fundamental concept, that the "supply=demand" equation can best be balanced by tackling, or at least fairly examining, both sides of the equation. I think it is also my background as an engineer, and not my perspective as a conservationist, that causes me to be the most frustrated with the apparent unwillingness of RVRWD to consider more than one alternative solution to their problem, and to instead pursue one option that starts with changes to Regulation 2 and ends with a dam on Lee Creek." – Cowper Chadbourn, no city given*

*"Last year, Fort Smith and most of the members of River Valley used 25.2 million gallons per day of drinking water. In the year 2000, Crawford's County population was 53,247. In 1990, Crawford County's population was 42,493. Crawford County's population has increased over the last decade, and the area may require additional drinking water in the future. Fortunately, the region has options other than damming Lee Creek, for supplying drinking water, not the least of which is the Arkansas River. The Arkansas River may serve as a drinking water supply through direct removal, offsite storage basins which hold excess water diverted from the river during times of high flow, and vertical wells drilled and/or infiltration galleries installed in the Arkansas River alluvium. Although objections have been raised in the past over using water from the Arkansas River, drinking water treatment technologies are available which would allow the use of the Arkansas River. Also, currently, due to the reduced water supply resulting from the construction of Lake Fort Smith's expansion and the drought conditions affecting the Lee Creek Reservoir, tailwater at Lee Creek Dam is now being used as an alternate source of*

*drinking water for the area. The tailwater includes Arkansas River water. Approval of the tailwater as an alternate drinking water supply was provided by the Arkansas Department of Health and Human Services on January 2006.*

*Finally, in addition to using the Arkansas River, there are many affordable modern day conservation measures that can be employed to stretch the existing water supplies.” – ADEQ (footnotes omitted)*

*“These reservoirs will be used to maintain and increase rates of development in specific local areas of our State. We are all for appropriate forms of development, but not at the cost of losing these precious resources. It will only be a matter of time before the applications come in. ‘If you build it, they will come.’ Once you allow one area to dam a stream, how do you tell municipalities in other parts of the state that they cannot dam their local ERW streams? These streams were designated ERW to protect them for ALL residents of the state and they should not be dammed to increase unsustainable development in isolated areas. This action will undermine the working of market forces, conservation and other innovative approaches to obtaining public water, including using the Arkansas River. We should completely exhaust every other approach possible before thinking about damming these streams. As you know, Crawford County has other sources of water at this time. It’s not like there is going to be some “emergency” where we need to dam a stream quickly because everyone is dying of thirst.” – Friends of the North Fork and White Rivers*

**Response 37: We concur.**

**Comment 38: One comment was received regarding participation of the members of the Pollution Control and Ecology Commission in the decision to initiate the proposed rulemaking.**

*“Of the 13 PC&E members, 6 failed to either attend or vote at the 12-9-05 meeting. If half these members are disinterested in voting on such important water resource issue (sic) as proposals to destroy these Extraordinary Resources, then PC&E should defer to ADEQ recommendations and the interested public.” – Jim Wood, Dardanelle*

**Response 38: We acknowledge the comment. However, the issue was fully reconsidered in the January 27, 2006, Commission Meeting with all Commissioners in attendance.**

**Comment 39: The existing dam on Lake Fort Smith should provide an adequate source of water for the region. The River Valley Regional Water District should cooperate with Fort Smith to provide water for the entire region.**

*““River Valley seeks to dam Lee Creek for use as a drinking water supply. River Valley consists of Crawford County and the City of Barling. Most of the members of River Valley currently purchase water from the City of Fort Smith.*

*Crawford County hosts Fort Smith’s water supply. In 1983, Van Buren and Fort Smith entered into a contract which reflects that Fort Smith would construct and operate a*

*drinking water reservoir on land donated by Van Buren in exchange for Van Buren being treated as an ordinary, customer user of the Fort Smith water system and not being treated as a surplus user. The contract reflects "the parties desire to set forth the cooperative arrangement whereby such impoundment and reservoir will be constructed and operated for the mutual benefit of the citizens of Fort Smith, Van Buren and surrounding areas." Additionally, Van Buren entered into an agreement with Fort Smith to purchase not less than an average daily minimum of 4.8 million gallons per day from Fort Smith, with no limit on the maximum quantity of water it could purchase, for twenty years. This agreement was entered in December 2001.*

*The City of Fort Smith is currently expanding its water supply by raising the dam at Lake Fort Smith 101 feet and removing the dam at Lake Shepherd Springs to form one large lake that will hold nearly five times as much water as the original Lake Fort Smith and Lake Shepherd Springs combined. The City of Fort Smith has concluded that this enlarged lake is projected to meet regional needs through 2050. However, the population projections developed by Fort Smith before building the Lake Fort Smith expansion differ from those developed by River Valley. River Valley's projections conclude that Lake Fort Smith will not meet the region's needs through 2050, as the City of Fort Smith has projected. River Valley concludes that the expanded Lake Fort Smith will prove inadequate by 2018, or twelve years from now. A summary of the differences in population projections and possible reasons for these differences are outlined in a news release prepared by the City of Fort Smith entitled, "Fort Smith's Water Supply Planning Efforts," which is attached to and incorporated into these comments." – ADEQ (footnotes omitted)*

*"The existing dam of Lake Fort Smith was expanded to account for the growing volume/need by the Van Buren and other River Valley areas. Why do we need to build another dam (12 miles away) when the existing dam will suffice?" – Danny Rowe, Student, UAM, Arkansas Forest Resource Center*

*"Rather than encouraging cities to work independently of each other, and often in conflict with each other, our public policy with respect to natural resources should encourage the cooperation of all interested and affected parties." – Bryon Eubanks, Arkadelphia*

*"Drinking water for Van Buren can be supplied in other ways at significantly lower costs than the Pine Mountain Dam desired by the River Valley Water District. The region currently has a more than adequate supply (projected at greater than 50 years) from the increased capacity of nearby Lake Fort Smith alone. The Nature Conservancy worked with the water district and the US Forest Service to increase Lake Fort Smith's water storage capacity to ensure adequate regional drinking water supplies without destroying ecologically significant free flowing streams. The loss of ERW protections state-wide due to the inability of two water districts to work together would be a tragedy for the natural world and Arkansas." – The Nature Conservancy of Arkansas*

*"We want to make it very clear that we do not oppose in any way people's efforts to acquire a clean source of drinking water. That is the reason we supported the expansion of Lake Fort Smith as a regional water supply – the regional water supply that is currently being used by members of River Valley for their drinking water. But that is not what this petition is all about. The members of River Valley have a reliable and long-term source, actually three sources, of good drinking water – the expanded Lake Fort Smith, Lee Creek Reservoir, and the Arkansas River. If they have these sources of water then what is the unspoken reason behind why River Valley wants to dam Lee Creek? In the case of Lake Fort Smith and Lee Creek Reservoir, they just do not want to do business with the City of Fort Smith who owns both of these bodies of water. As for the Arkansas River, apparently, even though it meets all Arkansas drinking water standards, River Valley just does not want to use it. So, the actuality of the situation that exists is, an adequate and long term supply of water is present to serve the members of River Valley but just because they do not want to use it, NOT a justification to gut the ERW protections for ALL of the designated streams in Arkansas and in no way justifies a conclusion by the DPC&E that this rule making procedure should continue." – Ozark Headwaters Group, Arkansas Chapter, Sierra Club*

**Response 39: We concur. In addition, ADEQ and the Arkansas Natural Resources Commission has strongly encouraged regionalization of waste water treatment districts and encourages this same cooperative, regional approach to water supply districts.**

**Comment 40: The full costs of this dam have not been thoroughly explored, including possible decommissioning in the future.**

*"I do not believe the full cost of a Dam has been thoroughly explored. The cost analysis needs to include the cost of building, maintaining, and ultimately decommissioning the Dam. In addition to the financial cost, the environmental loss is something we can not put dollars against. However, we do know that if we impound any of the ERW rivers, the environmental loss is permanent." – Danny Rowe, Student, UAM, Arkansas Forest Resource Center*

*"[I] moved to Arkansas some years ago from Maine, where "de-licensing" of dams – such as the one in Waterville, ME, that had nearly destroyed the salmon populations of the Kennebec River – is underway. The trend across the country is in this direction, AWAY from dams and reservoirs. To dam Lee Creek would therefore be a decidedly regressive step." – Allison B. Wallace, Asst. Professor, American Studies, Honors College, UCA, Conway*

**Response 40: We concur.**

**Comment 41: River Valley's proposal is an unwarranted waste of taxpayer's dollars.**

*"[R]iver Valley's proposal, if adopted, will lead, inexorably, to an unwarranted waste of taxpayer's dollars and unnecessary delays in focusing its planning for future water needs on realistic alternatives. First, time and money will be wasted to study damming Lee*

*Creek. Then to pay for and defend various permitting and regulatory decisions, which will be appealed at every stage of the process, due to the highly controversial proposal to dam Lee Creek. If Crawford County truly will need water in the future, then it needs to look to more realistic and affordable options than damming Lee Creek. In doing so, it will no longer need to advance this unfortunate and ill-conceived third party rulemaking."* – Linda Bly, Little Rock

*"I strongly believe the current effort by PC&E Commission to weaken Regulation 2 is not in the public interest of Arkansans who demonstrated in their 1996 1/8% (sic) Conservation Sales Tax vote that they place great value on our forests, streams, wetlands and other water resources. This proposed rule change to allow Dam construction on ERW streams is nothing but a first option "quick fix" that seems poised to make it easier to trade off these extraordinary resource waters."* – Jim Wood, Dardanelle

*"There seems to be a false sense of economics regarding construction of an impoundment. If the Corps of Engineers is paying for the dam, pipelines and a treatment facility, then it is the taxpayers, you and I, who are paying for it. If only RVRWD benefits, then they should pay for it....[I]t is unreasonable to study or propose a costly dam when other viable options for water exist."* – Ozark Society

**Response 41: We concur.**

**Comment 42: One commenter presented a list of questions regarding the impacts of the proposed rulemaking on each ORW stream.**

*"Given the requirements of the Clean Water Act and its implementing regulations..., the requirements of the Endangered Species Act..., and the extensive scientific evidence regarding the impact on water quality, existing uses, and natural flow regime caused by impoundments..., it is imperative that each of the following issues be analyzed prior to the adoption of this rulemaking:"*

- 1) For each and every ORW..., please describe all investigation and research that has been conducted by RVRWD or any other entity in preparation for the proposed rulemaking related to the question of how an impoundment would impact or alter the water quality, natural flow regime and designated uses of the water body.*
- 2) For each and every ORW..., please describe how an impoundment would impact or alter the water quality, natural flow regime and designated uses of the water body.*
- 3) For each and every ORW..., please describe all investigation and research that has been conducted by RVRWD or any other entity in preparation for the proposed rulemaking related to the question of whether there are currently any plans or identified needs for the use of such water body as a drinking water source.*
- 4) For each and every ORW..., please describe whether there are currently any plans or identified needs for the use of such water body as a drinking water source. In doing so, please address the following issues:*
  - a) Identify any water district or political entity that has plans to utilize the ORW as a drinking water source.*
  - b) Identify any water district or political entity that has taken the position that they need the ORW for a drinking water source.*



*c) Identify all other alternatives for drinking water sources available to any water district or political entity identified in response to subparts (a) and (b).*

*d) Identify all studies of alternative sources that have been conducted by any water district or political entity identified in subparts (a) and (b) or on its behalf.*

*5) For each and every ORW..., please describe all investigation and research that has been conducted by RVRWD or any other entity in preparation for the proposed rulemaking related to the question of whether any of the aquatic, semi-aquatic or terrestrial species listed in DAH's comment letter will be adversely impacted by the construction of an impoundment.*

*6) For each and every ORW..., identify any aquatic, semiaquatic or terrestrial species listed in [the Arkansas Natural Heritage Commission's] comment letter that may be adversely impacted by the construction of an impoundment. – Hank Bates, on behalf of Ozark Society, Arkansas Conservation Partnership, Arkansas Canoe Club, Arkansas Citizens First Congress, Arkansas Wildlife Federation, Audubon Arkansas, Audubon Society of Central Arkansas, Friends of the North Fork and White Rivers and Sierra Club*

**Response 42: We believe these questions are addressed to RVRWD, as they initiated the third-party rulemaking.**

## **II. COMMENTS SUPPORTING PROPOSAL**

**Comment 1: Crawford County has experienced significant population growth and the proposed rule change would meet increased demands on public water supplies.**  
*"[P]opulation growth continues to place new demands on existing public water sources....Arkansas has an abundance of excess surface water."* – Arkansas Natural Resources Commission ("ANRC")

*"The proposed Lee Creek Project would provide a dual benefit as a Water Supply. 1) It would relieve about 30% of the required output by the City of Fort Smith's two treatment plants, pushing further expansion requirements well into the future. 2) A controlled release of several million gallons per day from the Upper Reservoir into the Lower Lee Creek reservoir would eliminate the emergency withdrawal of water from the Lee Creek tailwater in the future. That concept is sound water supply management, the current water supply crisis in Crawford and Sebastian County illustrates the critical need for such management."* – Harry Short, Missouri

*"Van Buren and Crawford County, Arkansas, has enjoyed significant population growth over the past decades, and will not be able to enjoy similar future growth without adequate water supplies."* – Van Buren Rotary Club

**Response 1: We acknowledge the comments. Currently, several entities that make up the RVRWD are under a long-term contract with the City of Fort Smith for water supply.**

Crawford County hosts Fort Smith's water supply. In 1983, Van Buren and Fort Smith entered into a contract which reflects that Fort Smith would construct and operate a drinking water reservoir on land donated by Van Buren in exchange for Van Buren being treated as an ordinary, customer user of the Fort Smith water system and not being treated as a surplus user. Additionally, Van Buren entered into an agreement with Fort Smith to purchase not less than an average daily minimum of 4.8 million gallons per day from Fort Smith, with no limit on the maximum quantity of water it could purchase, for twenty years. This agreement was entered in December 2001.

The City of Fort Smith is currently expanding its water supply by raising the dam at Lake Fort Smith 101 feet and removing the dam at Lake Shepherd Springs to form one large lake that will hold nearly five times as much water as the original Lake Fort Smith and Lake Shepherd Springs combined. The City of Fort Smith has concluded that this enlarged lake is projected to meet regional needs through 2050. However, the population projections developed by Fort Smith before building the Lake Fort Smith expansion differ from those developed by River Valley. River Valley's projections conclude that Lake Fort Smith will not meet the region's needs through 2050, as the City of Fort Smith has projected. River Valley concludes that the expanded Lake Fort Smith will prove inadequate by 2018, or twelve years from now. A summary of the differences in population projections and possible reasons

for these differences are outlined in a news release prepared by the City of Fort Smith entitled, "Fort Smith's Water Supply Planning Efforts," which was attached to the Additional Comments of ADEQ and is incorporated by reference into this response.

Last year, Fort Smith and most of the members of River Valley used 25.2 million gallons per day of drinking water. In the year 2000, Crawford County's population was 53,247. In 1990, Crawford County's population was 42,493. Crawford County's population has increased over the last decade, and the area may require additional drinking water in the future.

Fortunately, the region has options other than damming Lee Creek, for supplying drinking water, not the least of which is the Arkansas River. The Arkansas River may serve as a drinking water supply through direct removal, offsite storage basins which hold excess water diverted from the river during times of high flow, and vertical wells drilled and/or infiltration galleries installed in the Arkansas River alluvium. Although objections have been raised in the past over using water from the Arkansas River, drinking water treatment technologies are available which would allow the use of the Arkansas River. Also, currently, due to the reduced water supply resulting from the construction of Lake Fort Smith's expansion and the drought conditions affecting the Lee Creek Reservoir, tailwater at Lee Creek Dam is now being used as an alternate source of drinking water for the area. The tailwater includes Arkansas River water. Approval of the tailwater as an alternate drinking water supply was provided by the Arkansas Department of Health and Human Services on January 2006.

**Comment 2: The proposed rule change is necessary because there is currently no procedure or process for using an ERW for drinking water without removal of the ERW designation.**

*"[C]urrent regulations of the Arkansas Pollution Control and Ecology Commission (APCEC) do not provide for the use of excess surface water from Extraordinary Resource Waters without first removing their designation." – ANRC*

*"The present rules lock away Extraordinary Resource Waters (ERW) so that they can never be used to keep up with our state's ever-growing water supply needs. This might be acceptable if Arkansas had unlimited alternative supplies of clean and safe drinking water. Unfortunately, our water resources are not unlimited. Everyone wants to preserve and protect the environment, but we also have to recognize and meet fundamental social and economic needs....Given the extensive planning necessary to develop new water supply sources, which often takes decades, it is absolutely imperative to establish a procedure like that proposed by RVRWD. Unlike the current regulation, the proposed change states clearly what standards a community must meet in order to justify use of an ERW as a drinking water source. The RVRWD proposal would institute a clear, fair and objective method for balancing social and economic needs against environmental preservation. Adopting such a procedure will help communities as they*

*plan to develop adequate drinking water supplies in an orderly and objective fashion.” – U.S. Representative John Boozman*

*“A lot of people have said that if a community really needs drinking water then of course they should be able to get it, even if it is from an ERW. If people are really being honest about that, then they should agree that there should be a process for deciding how to balance ERW protection against drinking water needs. I think the River Valley proposal does an outstanding job of that.” – Linda McHenry, Cedarville*

*“In regard to the larger picture in Arkansas’ water supply, revising Regulation 2 to allow use of ERW streams for water supplies, this issue was discussed during the initial phases of enactment of Reg. 2. The Arkansas Soil and Water Commission voiced strong concern over the language of Regulation 2 in 1989 prohibiting ‘physical alteration’ of an ERW as precluding any use of the ERW for water supply. This sensible concern on the Commission’s part was brushed aside. Now Arkansas is paying a heavy price for this lack of foresight. Underground aquifers across the state are being depleted at rates far faster than they can be replenished. The demand for potable water is growing constantly, yet the ERW program has severely hobbled the timely response of the Water Supply Industry in Arkansas. While environmental concerns are certainly a priority, Water Supply is critical to the continued growth and quality of life for Arkansas residents.” – Harry Short, Missouri*

**Response 2: We disagree. Currently, Appendix A of Regulation No.2, lists all Outstanding Resource Waters for use as a domestic water supply. In addition, Outstanding Resource Waters can and are currently being used as domestic water supplies. Regulation No. 2 currently allows Outstanding Resource Waters to be used as domestic water supply as long as the conditions of the following sections are met: Reg. 2.201 – Existing uses, “existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected”, and Reg. 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 the natural flow regime, (3) protection of instream habitat, and (4) encouragement of land management practices protective of the watershed.” Further, pursuant to Reg. 2.305 – Short Term Activity Authorizations, “the Director may authorize, with whatever conditions deemed necessary and without public notice, short term activities which might cause a violation of the Arkansas Water Quality Standards.” “This authorization is subject to the provisions that such activity is essential to the protection or promotion of the public interest and that no permanent or long-term impairment of beneficial uses is likely to result from such activity.” “Nothing herein shall be intended to supersede existing state and federal permitting processes or requirements.” Finally, pursuant to § 401 and § 404 of the Federal Clean Water Act, the installation of a proposed structure that will utilize water from Outstanding Resource Waterbodies, could be permitted.**

For example, the Middle Fork of the Saline River is an ERW, which currently serves as a drinking water supply for Hot Springs Village. Furthermore, the Saline River, an ERW, currently serves as a drinking water supply for the City of Benton. In both instances, weirs and offsite storage basins allow access to the water as a drinking water supply. Although these weirs may pre-date the ERW designation, the construction of these devices are not prohibited today under state law, if the proposed structure does not constitute a “significant physical alteration of the habitat.” “Significant” is the operative term. To construct a weir on an ERW today, an applicant must: 1) demonstrate that the structure will not be a “significant” physical alteration of the habitat; and 2) if such a demonstration can be made then the applicant must obtain a short term activity authorization as set forth in Section 2.305 of Regulation No. 2. Under Section 2.305, a short term activity, such as construction, which may cause a violation of the water quality standards, can be authorized by the Director where the proposed activity is “essential to the protection or promotion of the public interest and that no long-term impairment of beneficial uses is likely to result from such activity.” The construction of features such as a low-head weir or piping to offsite storage basins designed to provide drinking water would no doubt meet the requirement of an activity essential to the promotion or protection of the public interest and, if designed properly, could be constructed in such a way to ensure that no long-term impairment of beneficial uses results from their construction.

ADEQ is committed, through the current Triennial Review process, to gather input from the public, scientists, engineers, federal and state resource agencies, and other interested stakeholders. This input will aid ADEQ in clarifying the procedure allowing Outstanding Resource Waters, in appropriate circumstances, to be used as domestic drinking water supplies.

**Comment 3:** The proposed rule change contains significant safeguards, such as the development of environmental impact statements and public input, to prevent degradation of ERWs.

*“[With] environmental analysis, evaluation under the Arkansas Water Plan, public review and comment, and oversight by the Arkansas Pollution Control and Ecology Commission to ensure that there will be no significant degradation of use, Extraordinary Resource Waterways may help provide the people of Arkansas with safe drinking water without detracting from their value to the beauty and ecology of our state.” - ANRC*

*“The proposed changes to Regulation 2 are sensible and sound management. Changes to Regulation 2 will not doom the ERW program. The safeguards built into the proposed revisions will allow all sides to be heard regarding the use of any ERW stream and a viable solution found to the problem. The proposed changes allow for good resource management. They should be enacted.” – Harry Short, Missouri*

**Response 3:** We disagree that the proposed rule change contains safeguards to prevent degradation of ORWs. RVRWD’s proposal did not contain any provisions

or safeguards to prevent degradation to Outstanding Resource Waters. RVRWD's proposed rulemaking states in part, "an environmental impact statement is prepared and submitted to the Commission which meets the standards for environmental impact statements in 40 CFR § 1502 as of December 9, 2005," is a misleading statement. The Council on Environmental Quality's ("CEQ") implementing regulations found at 40 CFR § 1500-1508 ensure that environmental impact statements prepared by federal agencies, under the National Environmental Policy Act ("NEPA"), provide a full and objective analysis of all environmental effects associated with a proposed project.

A project under RVRWD's proposed rulemaking is not necessarily "a major federal action significantly affecting the quality of the human environment", nor is a public water provider a federal agency bound by NEPA requirements. (42 U.S.C. §§ 4332(2)(C)). Therefore, RVRWD's proposal fails to provide any mechanism to ensure the proper and necessary environmental assessments are performed. Commenters provided evidence that damming free-flowing streams will disrupt the natural flow regime, disrupt in-stream habitat, and adversely impact the water quality, including water quality downstream of the dam.

**Comment 4: Change of status between ERW stream and ERW lake would prevent violation of anti-degradation regulations.**

*"I know somebody made the distinction tonight, I believe it was ADEQ...between an ERW stream and an ERW lake or reservoir. I don't think that the ERW is the designated use. There is no distinction between streams and lakes and ERW status, so what we're proposing is to change this from an ERW stream to and ERW lake, that fits well within the anti-degradation rules."* – Mark Yardley, Springdale public hearing

**Response 4: We disagree. Pursuant to 40 CFR § 131.3 (e) "existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are being attained", and § 131.3(f) "designated uses are those specified in water quality standards for each water body or segment whether or not they are being attained". Further, § 131.10(h) "states may not remove designated uses if: (1) they are existing uses as defined in § 131.3, unless a use requiring more stringent criteria is added." There are specific designated uses for streams and lakes. ERW is a specific designated use. Regulation No.2, Reg. 2.203 describes 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) encouragement of land management practices protective of the watershed." In addition, both stream and lake fisheries are designated uses. Regulation No.2, Reg. 2.302 (F)(2) -A lake fishery is defined as, "water which is suitable for the protection and propagation of fish and other forms of aquatic life adapted to impounded waters". Reg. 2.302 (F)(3) defines a stream fishery as, "water which is suitable for the protection and propagation of fish and other forms of aquatic life adapted to flowing water systems whether or not the flow is**

perennial". By design, dams alter the natural flow regime of a stream. When a free flowing Outstanding Resource Water stream is dammed and its waters impounded to form a lake, the natural flow regime of the stream is no longer maintained and the instream habitat is not protected. Without maintaining the natural flow regime and protecting the instream habitat, the existing uses, including stream fisheries, and the water quality of the state's Outstanding Resource Waters cannot be protected. In addition, the physical, chemical, and biologically characteristics are altered as well. Therefore, the designated uses of an Outstanding Resource Water designated use are not maintained when a stream is converted to an entirely different form of waterbody. Because of these changes and impacts, when a free-flowing outstanding resource water is dammed, the resulting lake does not become an outstanding resource water.

**Comment 5: The proposed rule change is needed to allow for long-range planning of public water supplies.**

*"Supplying clean, safe drinking water to a community requires long range planning. The rule proposed by River Valley will give local governments an objective set of criteria that will help them make the very long term planning decisions that must be made to secure adequate water supplies for the future. All interested persons agree that Extraordinary Resource Waters (ERW) should be available for drinking water use if the need is great and there is no realistic alternative source. The problem is that one cannot wait until there is no realistic alternative source. The problem is that one cannot wait until there is a crisis to develop a water supply. It takes many years to plan, finance and construct the infrastructure needed to tap into a new drinking water supply. If a community waits until its drinking water needs are urgent, it will be many years too late to plan rationally....To continue without a procedure only contributes to the increasing rancor between those who seek to lock away streams forever and those who would abolish all ERWs. I believe River Valley's proposal strikes the right balance between people and ecosystem." – U.S Representative Marion Berry*

*"The public needs the ability to plan for future water needs. I support the proposed rule because it will help water districts to know what they would have to go through if they were thinking about an ERW as a possible source of drinking water." – Fred Snipes, Van Buren*

*"I support the proposed changes to Section 2.304 of Reg. No. 2 that would establish a procedure to allow physical alteration of ERW's. As Mayor of a City we need to plan for future growth needs. Since the exploration is very costly and of a benefit to all. I feel it is only fair that ERW's be considered also." – Gary O'Kelley, Mayor of Kibler*

*"Drinking water supplies take a very long time to develop. Plans for drinking water need to be made and implemented long before there is a crisis. I do not agree with people who say this rule is not needed because there is no crisis. We need to know how to plan long before there is a crisis. I support the proposal. If people don't like this procedure, they should say what kind of standard and procedure they would like to see. Having no procedure and no standards is not reasonable." – Debra Kent, Van Buren*

*"I do not agree with the idea that we have to choose between absolute protection of wilderness streams or complete abandonment of all protections of the streams. I think drinking water use can be compatible with the protection of environmental values. I support the River Valley proposal because I think it establishes a procedure that fairly balances all of the relevant interests of society."* – Wanda Foulk, Cedarville

*"First I would like to say you made a good decision to allow the third party rule making to proceed. Extraordinary Resource Waters are just what those three words indicate. They are outstanding water resources and prohibiting the use of them for a drinking water supply was never intended. The rules need to allow for that in extreme circumstances. I trust the Commission will make rule changes that will protect the water bodies but utilize the water resources to benefit local communities. Allowing a third party to initiate rule making will assure the water districts that a workable rule can be established. What other extraordinary use of an ERW's would rank higher than drinking water for a community that was in need of a supply. This rule change doesn't impact any water supply, but it will allow a reasonable avenue for a water district to take in extreme needs of drinking water....This change does not weaken the rules but strengthens them."*  
– William V. (Bill) Bush, Little Rock

**Response 5: We disagree. Planning for water supplies is not foreclosed by the existence of a stream being designated as an ORW. Currently, Appendix A of Regulation No.2, lists all Outstanding Resource Waters as domestic water supply. In addition, Outstanding Resource Waters can and are currently being used as domestic water supplies. Regulation No. 2 currently allows Outstanding Resource Waters to be used as domestic water supply as long as the conditions in the following sections are met: Reg. 2.201 – Existing uses, "existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected", and Reg. 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 the natural flow regime, (3) protection of instream habitat, and (4) encouragement of land management practices protective of the watershed." Further, pursuant to Reg. 2.305 – Short Term Activity Authorizations, "the Director may authorize, with whatever conditions deemed necessary and without public notice, short term activities which might cause a violation of the Arkansas Water Quality Standards." "This authorization is subject to the provisions that such activity is essential to the protection or promotion of the public interest and that no permanent or long-term impairment of beneficial uses is likely to result from such activity." "Nothing herein shall be intended to supersede existing state and federal permitting processes or requirements." Finally, pursuant to § 401 and § 404 of the Federal Clean Water Act, the installation of a proposed structure that will utilize water from Outstanding Resource Waterbodies, could be permitted. In addition, ADEQ is committed, through the current Triennial Review**



process, to gather input from the public, scientists, engineers, federal and state resource agencies, and other interested stakeholders. This input will aid ADEQ in clarifying the procedure allowing Outstanding Resource Waters, in appropriate circumstances, to be used as domestic drinking water supplies. Designation of a waterbody as an Outstanding Resource Water does not foreclose the long-range planning for securing public water supplies.

**Comment 6: Time is of the essence and the proposed rule change will prevent a water shortage crisis.**

*"I am a lifelong resident and property owner in Crawford County, have children and numerous family members in the area, and live within the city limits of Alma. I have also worked in community banks in Crawford County for over 22 years.... Time is of the essence and our area and county can waste no time in proceeding to provide a continued and dependable water supply while maintaining environmental balance and also increasing recreational opportunities." – Rex Woods, Alma*

*"As the former chairman of the River Valley Regional Water District, it was my goal to assist in every way possible for Crawford County, AR to develop its own, independent water supply.... The significantly lower than average rainfall for the past years and the projection that 2006 rainfall may also be below average highlights a problem that has been looming for the past decade. This prolonged drought condition has resulted in Fort Smith having to pump from the Lee Creek Tail water in order to meet the projected summer demand for drinking water in 2006.... The unfortunate truth is that the City of Van Buren and other Crawford County water purchasers simply have no other source to turn to in times of crisis. As stated below, the City of Van Buren stopped using Lee Creek as a source for potable water as a part of the water purchase agreement with the City of Fort Smith. The water treatment [facility] that had served the City of Van Buren since 1923 was demolished and a wastewater treatment plant constructed upstream from the intake structure...." – Harry Short, Missouri*

**Response 6: We disagree. The City of Van Buren and RVRWD have several alternatives for domestic water supplies. Lake Fort Smith is being expanded. Construction is almost complete. This expanded water supply, which is located in Crawford County, is projected to serve the area through the year 2050. RVRWD's proposed rulemaking does not include any justification or documentation of any impending water shortage crisis, or the absence of available alternatives for drinking water.**

**Comment 7: The Arkansas River is not a viable alternative because withdrawals for drinking water may reduce the amount of water available for the lock and dam system. The Arkansas River as a single source is also more vulnerable to significant pollution events upstream.**

*"There have been many of you who suggested that the Arkansas River could be our source of drinking water for the future... Those of you don't know Arkansas River is a series of locks and dams and, in order for those to function properly, there has to be a*

*certain level of water maintained between those locks and dams for it to remain a viable navigational river. And if that becomes the source of drinking water for that area of the state, then I'm not sure how we're going to maintain those levels in those locks and dams; and...the navigational district will, undoubtedly, force us to stop using that source of water if we prevent the locks and dams from functioning properly.*" – Mark Yardley, Springdale public meeting

*"And the one thing that keeps coming up the most...is that the Arkansas River should be our choice for our supply. And that is a source that is not dependable and there's an...array of reasons...There's an issue of any type of accidental spill along the River that would immediately cause us to lose our supply of water. But the primary thing is that this section of the Arkansas River that's in our county is a navigational stream and it has a series of locks and dams that control the water level in the River, it must maintain a certain level of water at all times in order to function."* – Mark Yardley, Mountain Home public meeting

**Response 7: We disagree. RVRWD has not provided, in support of the proposed rule making, any analysis of the infeasibility of using the Arkansas River as a domestic water supply and subsequent impacts to the navigation system. In addition, even in times of low flow, millions of gallons of water flow through the Arkansas River near Van Buren every day and public supply withdrawals should not have a measurable impact to the lock and dam system. However, if it did, water withdrawals for the Arkansas River could be pumped to storage reservoirs, and depending on the size of the reservoirs, enough capacity could be stored to provide a reliable, dependable source of safe drinking water, given modern technologies.**

**Comment 8: River Valley has made a thorough investigation of alternative sources of drinking water and Lee Creek is the most logical.**

*"River Valley Regional Water Board made a thorough investigation of not only Lee Creek but also the Arkansas River, Cedar Creek, Webber Creek and the possibility of combining Cedar and Webber Creeks. Lee Creek was found to be the most logical and economical source."* – Judge Jerry Williams, Crawford County

**Response 8: We acknowledge the comment. However, RVRWD has not provided, in support of this proposed rulemaking, any results of any study conducted to look at alternatives for domestic water supplies.**

**Comment 9: The proposed rule change will allow public entities to request alterations to ERWs when there is no other feasible option for a public drinking water supply.**

*"The existing Regulation No. 2 will not allow Communities to plan for future drinking water needs, unless that planning excludes consideration of an ERW. For many communities in Arkansas, the use of an ERW may be the only feasible option."* – John Ballentine, Mayor, City of Alma

**Response 9:** We disagree. Currently, Appendix A of Regulation No.2, lists all Outstanding Resource Waters as domestic water supply. In addition, Outstanding Resource Waters can and are currently being used as domestic water supplies. Regulation No. 2 currently allows Outstanding Resource Waters to be used as domestic water supply as long as the conditions in the following sections are met: Reg. 2.201 – Existing uses, “existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected”, and Reg. 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 the natural flow regime, (3) protection of instream habitat, and (4) encouragement of land management practices protective of the watershed.” Further, pursuant to Reg. 2.305 – Short Term Activity Authorizations, “the Director may authorize, with whatever conditions deemed necessary and without public notice, short term activities which might cause a violation of the Arkansas Water Quality Standards.” “This authorization is subject to the provisions that such activity is essential to the protection or promotion of the public interest and that no permanent or long-term impairment of beneficial uses is likely to result from such activity.” “Nothing herein shall be intended to supersede existing state and federal permitting processes or requirements.” Finally, pursuant to § 401 and § 404 of the Federal Clean Water Act, the installation of a proposed structure that will utilize water from Outstanding Resource Waterbodies, could be permitted. In addition, ADEQ, through input from the public, scientists, engineers, federal and state resource agencies, and other interested stakeholders, is committed to clarifying the procedure allowing Outstanding Resource Waters, in appropriate circumstances, to be used as domestic water supplies. This process is being developed during the current Triennial Review. This process does not inhibit the long-range planning process for securing public water supplies.

**Comment 10:** The proposed rule change and the Pine Mountain Project will offer recreation opportunities.

*“We need to utilize our resources in a responsible way. The lake will offer recreation and wildlife habitat for many.” – Alan Gregory, Harrison*

**Response 10:** We acknowledge the comment; however, RVRWD’s proposed rulemaking should not allow the Pine Mountain Project to proceed as a “multi-purpose” project. Paragraph 7 of RVRWD’s petition to initiate rulemaking states, “this petition proposes to amend Section 2.304 to establish a procedure by which regional water distribution districts and other public water authorities could, under limited circumstances, request Commission approval to use extraordinary resource waters as a source of drinking water supply.” [Emphasis added]. It is clear from the language in Paragraph 7 of the petition that the intent of the proposed rulemaking was to allow the use of extraordinary resource waters as a source of drinking water and not for recreation, flood control, fish and wildlife habitat, or other uses. If the

Pine Mountain project were limited to drinking water only, it would not likely be constructed by the Corps of Engineers. The amount of water required for drinking water purposes would be significantly less because one-third of the size of the proposed lake is designated for flood control alone. If the RVRWD's proposed rulemaking is allowed by the Commission, we would open the flood gates to abuse – any ORW could be dammed for any reason so long as some portion would be allocated for drinking water.

**Comment 11:** The proposed rule change and the Pine Mountain Project will offer protection from flood events.

*"I have witnessed so [much] damage this creek can do when in flood stage. On north lee creek road, I have seen 5 feet of water in the road. More then (sic) one time. My sons and I have lost over 40 head of cattle, in the last 5 years, the cattle washed down stream and drowned, others suffered loss as well, some of the cattle lodged in drifts, and others washed all the way to the lake that is used for drinking water...." – Cecil R. Payton, Chester (Cove City community)*

**Response 11:** We acknowledge the comment; however, RVRWD's proposed rulemaking would not allow the Pine Mountain Project to proceed as a "multi-purpose" project. Paragraph 7 of RVRWD's petition to initiate rulemaking states, "this petition proposes to amend Section 2.304 to establish a procedure by which regional water distribution districts and other public water authorities could, under limited circumstances, request Commission approval to use extraordinary resource waters as a source of drinking water supply." [Emphasis added]. It is clear from the language in Paragraph 7 of the petition that the intent of proposed rulemaking was to allow the use of extraordinary resource waters as a source of drinking water and not for recreation, flood control, fish and wildlife habitat, or other uses. If the Pine Mountain project were limited to drinking water only, it would not likely be constructed by the Corps of Engineers. The amount of water required for drinking water purposes would be significantly less because one-third of the size of the proposed lake is designated for flood control alone. If the RVRWD's proposed rulemaking is allowed by the Commission, we would open the flood gates to abuse – any ORW could be dammed for any reason so long as some portion would be allocated for drinking water.

**Comment 12:** This project lies wholly within the jurisdiction of the state of Arkansas, and will not cause a conflict with Oklahoma.

*"[I]t has been a mistake [the Pine Mountain] project has been delayed this long, because drinking water is a serious problem, not only in this area, but throughout the growing areas of this State. Presently, tail waters of the Arkansas River on the Lee Creek entry into the Arkansas River are being used for drinking water.*

*Lee Creek is not a free flowing stream, because within approximately a mile or two of its entry into the Arkansas River is presently a dam for water supply, and but for one serious problem, if probably could have furnished water, but there is an imaginary line, known as the Oklahoma-Arkansas border a short distance above the impoundment dam, and the creek flows through the State of Oklahoma for a number of miles, which has made it*

*impossible that the impoundment be sufficient to serve a serious purpose, and there is little opportunity that this problem will go away.*

*The improvements of the Lake Fort Smith impoundment has both added to the present problem, and is completely inadequate to furnish sufficient drinking water for many years.... We have no reasonable control over Lee Creek above the present Fort Smith impoundment for many miles, as the major creek source is in the State of Oklahoma.... Based on my knowledge of the area involved in the proposed Pine Mountain project... the entire watershed is within the State of Arkansas, and it should be at least 5 miles upstream from where it enters Oklahoma, and is subject to Arkansas Regulations. The project would not interfere with any permitted use of creeks in the area.... In fact, amendment of rules sufficiently to permit the "Pine Mountain Water System" or Program, to proceed would be a great improvement for the benefit of the entire area, permitting a conservation of water resources and wildlife area, and improve, rather than interfere with, the ecology of the entire area." – Fines F. Batchelor, Jr., Van Buren*

**Response 12: We disagree. While the proposed Pine Mountain Project is entirely within the State of Arkansas, both state and federal regulations prohibit the construction of the project due to the elimination of the designated use. Pursuant to 40 CFR § 131.3 (e) "existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are being attained", and § 131.3(f) "designated uses are those specified in water quality standards for each water body or segment whether or not they are being attained". Further, § 131.10(h) "states may not remove designated uses if: (1) they are existing uses as defined in § 131.3, unless a use requiring more stringent criteria is added." Reg. 2.201 – Existing uses, "existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected", and Reg. 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 the natural flow regime, (3) protection of instream habitat, and (4) encouragement of land management practices protective of the watershed." Under 40 CFR § 131.10 (a), "each state must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish, and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation." Under 40 CFR § 131.10(b), in designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the maintenance of the water quality standards of downstream waters." Furthermore, the State of Oklahoma has stated in its comments on the proposed rulemaking that it "cannot envision an upstream damming scenario that would adequately safeguard the "Outstanding Resource Water" (antidegradation) protections prescribed by Oklahoma's Water Quality Standards."**

**Comment 13:** The proposed rule change is needed because Lee Creek has always served as a drinking water supply and should not have been designated as an ERW. *"Environmental opponents of the Lee Creek Project cite the wild and unspoiled nature of the Upper Lee Creek watershed. While this viewpoint is popular, it does not stand up to historical scrutiny. Lee Creek has been a source of drinking water for Crawford County from the beginning of settlement in the region, and no doubt for the Native American residents prior to that....Van Buren did not relinquish Lee Creek as a water source until the Lower Lee Creek Reservoir was built in the late 80's. The stream was dammed in the 1950's by the City of Van Buren with a weir mechanism to trap water flowing into the Arkansas River. Once a flow restricting device is installed, whether it is a weir or a full-fledged dam, the stream is changed forever...Lee Creek Reservoir irrevocably placed Upper and Lower Lee Creek into the water supply category, Regulation 2 notwithstanding."* – Harry Short, Missouri

*"This regulation should of never been placed on Lee Creek to start with since it has always been a water supply in Crawford County and has an existing dam on it now for the benefit of Fort Smith. The City of Fort Smith wants their contract users to look for other water sources because they won't have enough water for their selves and they would cut the contract users off if possible....I personally own forty acres in Natural Dam that would be flooded by the proposed Pine Mountain project. The drought we have been experiencing this past year has made me and others realize that Crawford County is in dire need of another water supply....In reference to the statement made by the Director of Arkansas EPA that Benton had put a weir on the Saline River that pumps water to holding ponds and that maybe this should be done at Lee Creek, to begin with the Saline River is a much larger river than Lee Creek and you couldn't build the size of pond that would be needed for Crawford County...."* – David Parker, Alma

**Response 13:** We acknowledge the comment. No change to Regulation 2 is required to use the creek as a drinking water supply. Currently, Appendix A of Regulation No.2, lists all Outstanding Resource Waters, including Lee Creek, as domestic water supply.

The construction of devices to use ORWs as drinking water supplies are not prohibited today under state law, if the proposed structure does not constitute a "significant physical alteration of the habitat." "Significant" is the operative term. To construct a weir on an ORW today, an applicant must: 1) demonstrate that the structure will not be a "significant" physical alteration of the habitat; and 2) if such a demonstration can be made then the applicant must obtain a short term activity authorization as set forth in Section 2.305 of Regulation No. 2. Under Section 2.305, a short term activity, such as construction, which may cause a violation of the water quality standards, can be authorized by the Director where the proposed activity is "essential to the protection or promotion of the public interest and that no long-term impairment of beneficial uses is likely to result from such activity." The construction of features such as a low-head weir or piping to offsite storage basins designed to provide drinking water would no doubt meet the requirement of an

activity essential to the promotion or protection of the public interest and, if designed properly, could be constructed in such a way to ensure that no long-term impairment of beneficial uses results from their construction.

**Comment 14:** The designation of Lee Creek as an ERW was done without adequate public input.

*"The placing of Lee Creek into the ERW program was done without any input from Crawford County residents. No records can be found indicating any public comments by Crawford County citizens in the ERW process in 1989."* – Harry Short, Missouri

*"In ADEQ's 'Statement' of opposition to River Valley's request, I bring attention to page 1, paragraph 5, it is stated: '...that a strong consensus was reached on the original listing of these water bodies...' My question is: **Who** reached this 'strong consensus' and how was this 'strong consensus' specifically authorized to create such a sea change in the Arkansas water quality regulatory standards that predated the 1987 adoption of the Ecoregion and ERW processes...Not the public, nor the local government entities were ever even made aware of the process of listing **specific** waters for the ERW process, nor were they given opportunity to approve or disapprove these listings on a stream by stream basis."* – Connie Burks, Harrison (emphasis in original)

**Response 14:** We disagree. These comments should have been raised in the 1987 Triennial Review when the ERW designations were originally developed and adopted. The history of the extraordinary resource waters has been well documented by ADEQ; however, in 1988, the Commission changed the name from "AA" streams to Extraordinary Resource Waters during the Triennial Review Process and added additional waterbodies to the list. At that time, the Commission adopted the definition of Extraordinary Resource Waters as: "This 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." The waterbodies that were candidates for designation as ERWs were nominated by staff from state and federal agencies such as Parks and Tourism, Game and Fish Commission, Natural Heritage Commission, Scenic Rivers Commission, and ADEQ. Using existing data at that time, including but not limit to, water quality data, threatened and endangered species data, recreational use data and other available information and input, the staff at ADEQ incorporated the list of candidate waterbodies into Regulation No.2.

40 CFR § 131.20 (a) State Review requires, "the State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards."

40 CRF § 131.20 (b)– State Review and Revision of Water Quality Standards Public Participation requires, "the state shall hold a public hearing for the purposes of reviewing water quality standards, in accordance with provisions of State law, EPA's water quality management regulation (40 CFR § 130.3(b)(6)) and public

participation regulation (40 CFR part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing." 40CFR § 131.20 (c) requires, "the state shall submit the results of the review, any supporting analysis for the use attainable analysis, the methodologies used for site-specific criteria development, and general policies applicable to water quality standards and any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final State action to adopt and certify the revised standard, or if no revisions are made as a result of the review, within 30 days of the completion of the review."

Then Director Paul Means published in a newspaper with general statewide circulation, a paid legal notice dated October 23, 1987. The legal notice announced a public hearing to be held in Little Rock, on December 8, 1987, to receive comments on the proposed revisions to the water quality standards. Many changes were proposed including, adding extraordinary resources waters, ecologically sensitive waters, and natural and scenic waterways as designated uses and expanding the antidegradation policy to include the specific designated uses of extraordinary resources waters, ecologically sensitive waters, and natural and scenic waterways as outstanding national resource waters. Also, Appendix A of Regulation No. 2 was revised into waterbodies including maps, designated uses and specific standards for waters of the state within each ecoregion.

Proposed revisions to the water quality standards, including the expanded list of designated ORW waterbodies, were published in Regulation No.2 and were made available for public inspection after November 6, 1987, at the Department's office, 8001 National Drive, Little Rock, Arkansas, or at Department informational depositories located at public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West Memphis. In addition, copies were available at campus libraries at UCA, UAPB, and in the Arkansas State Library on the State Capitol grounds. Copies were provided to any interested citizen on the Department's mailing list and copies were also made available to any other citizen that made such request.

Oral and written comments were accepted at the December 8, 1987, hearing, and written comments were accepted until 5:00pm on December 18, 1987. The Commission adopted the changes in 1988.

It is clear from the above, that the Department met the requirement of the public participation process. The Department cannot compel nor has any control over the degree to which the public, local governments, state and federal government agencies, and other interested groups participate in the Triennial Review process.

Comment 15: The ERW designations were never required by the Federal Clean Water Act and were invalid from inception.



*"Though I support the spirit of the River Valley request...I still contend that such a "technical adjustment" to an already flawed and/or warped ERW original foundation, will never solve the long range problems of balancing water quality/environmental regulation with social and economic needs....The fact remains that the ERW designations were never required and are not presently required by the federal Clean Water Act. Those agents, who in 1984-87, took it upon themselves to submit Arkansas waterbodies for this non-required, unnecessarily high level of "protection," did so in an allegedly unauthorized manner, and allegedly unlawfully included "watershed" in the ERW definition. A) They did not conduct federally required economic impact studies regarding the "costs" to attain or maintain these ERW designations. B) They did not adequately notify/consult the public. C) They did not adequately notify or involve the local county and municipal governments. D) Therefore, I contend that the ERW designations are invalid from inception." – Connie Burks, Harrison*

**Response 15: We disagree. States are required to develop water quality standards (40 CFR § 131.4), states must specify appropriate water uses to be achieved and protected (40 CFR § 131.10), states must adopt criteria to protect the designated uses (40 CFR § 131.11) and states must develop and adopt a statewide antidegradation policy (40 CFR § 131.12). According to EPA's Water Quality Standards Handbook –Second Edition, Chapter 4.1, "The first antidegradation policy statement was released on February 8, 1968, by the Secretary of the U.S. Department of the Interior. It was included in EPA's first water quality standards regulation (40 CFR § 130.17, 40 F.R. 55340-41, November 28, 1975)."**

**Antidegradation requirements and the methods for implementing those requirements are minimum conditions to be included in a State's water quality standards. Antidegradation was originally based on the spirit, intent, and goals of the Clean Water Act, especially the clause, "...restore and maintain the chemical, physical, and biological integrity of the Nation's waters". Chapter 4.3 of the Water Quality Standards Handbook states, "Each State must develop, adopt, and retain a statewide antidegradation policy regarding the water quality standards and establish procedures for implementation through the water quality management process. The State antidegradation policy and implementation procedures must be consistent with the components detailed in 40 CFR 131.12." Chapter 4.2 of the Water Quality Standards Handbook states, "Section 131.12(a)(1), or "Tier 1" requires protection of "existing uses". Section 131.12(a)(2), or "Tier 2" applies to waters whose quality exceeds that necessary to protect the section 101(a)(2) goals of the Clean Water Act. Section 131.12(a)(3), or "Tier 3" applies to outstanding national resource waters, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, where the ordinary use classifications and supporting criteria may not be sufficient or appropriate. As described in the preamble to the Water Quality Standards Regulation, when referring to "Tier 3" waters, "States may allow some limited activities which result in temporary and short-term changes in water quality," but such changes in water quality should not impact existing uses or alter the essential character or special uses that make the water an outstanding national resource water." It is clear from the federal antidegradation policy that "existing instream**

water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected”. Further, 40 CFR § 131.4 – State Authority (a), “As recognized by section 510 of the Clean Water Act, States may develop water quality standards more stringent than required by this regulation”. Finally, pursuant to the Arkansas Water and Air Pollution Control Act, Act 472, of 1949, as amended, the Arkansas Pollution Control and Ecology Commission is given and charged with, among other things, the power to adopt rules and regulations “including water quality standards and the classifications of the waters of this state.” A.C.A. § 8-4-210(b)(1)(A).

It is clear from the above that the Commission has the lawful authority to establish appropriate designated uses and adopt criteria to protect those designated uses. While the commenter states that, “ERW designations were never required and are not required by the Federal Clean Water Act,” the Commission chose in 1988, after receiving input during the Triennial Review process, to adopt ORW designations as part of the State’s antidegradation policy. ORWs are the state’s “Tier 3” waters and include Extraordinary Resource Waters, Ecologically Sensitive Waterbodies, and Natural and Scenic Waterways. These revisions to the water quality standards were fully approved by EPA Region 6 on May 6, 1988.

Response 15 (A): There are no federally required economic impact studies regarding the “costs” associated with establishing ORW designations. A thorough review of the water quality standards regulations found at 40 CFR § 131.1 – 131.22 failed to identify any specific requirement of performing an economic impact study or analysis when a state establishes designated uses.

EPA’s Interim Economic Guidance for Water Quality Standards is designed to assist States and applicants in understanding the economic factors that may be considered, and the types of tests that can be used in determining whether to downgrade a designated use that is not an existing use or grant a variance from water quality standards, or in determining whether degradation of Tier 2 waters is warranted to accommodate important social and economic development.

Act 1264 of 1993 (A.C.A. §§ 8-1-203(b)(1)(B) and 8-4-201(b)(1)(B)) requires the Commission to consider the economic impact and environmental benefit of a regulation when it is more stringent than federal requirements. The pertinent part of Act 1264 of 1993 reads as follows: “In promulgation of such rules and regulations prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than the federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.”

Regulation No. 8, 3.5.2(a) imposes a duty on the proponent of a more stringent regulation to prepare an economic impact and environmental analysis (“impact/benefit analysis”). This regulation state as follows: “Prior to submitting

for public notice a proposed regulation that is more stringent than federal requirements, the Commission shall cause to be prepared an analysis evidencing due consideration of the economic impact and environmental benefit of the regulation upon the state, including those entities that will be subject to the regulation. The analysis shall be prepared by the proponent of the more stringent regulation based upon information reasonably available at the time of public notice. The impact/benefit analysis shall be available for comment during the comment period.”

Act 1264 became law on April 20, 1993. The Commission adopted all the ORW designated waterbodies listed in Regulation No. 2 prior to the passage of Act 1264. Act 1264 contains no retroactive clause requiring ADEQ to conduct an impact/benefit analysis on ORWs that the Commission previously adopted. “It is presumed that all legislation is intended to act prospectively, and statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature is to give them a retroactive effect is expressly declared or necessarily implied from the language used.”...The law looks with disfavor on the retroactive application of the new law, absent an express retroactive rational and clause to the contrary.

It is our opinion that Act 1264 of 1993 does not apply retroactively to a waterbody the Commission previously designated as an ERW. Therefore, ADEQ is not required to conduct an impact/benefit analysis on the ERWs currently listed in Regulation No. 2.

**Response 15 (B & C):** The requirements found at 40 CFR § 131.20 (b) Public Participation were fully met. (See Response 14 above for the full details)

**Response 15 (D):** The ERW designation is valid. (See Response 15)

**Comment 16:** 317 commenters submitted the following written statement:

*“I would like to express my support of the proposed changes to Section 2.304 of the Regulation No. 2 that would establish a procedure to allow physical alteration of ERW’s.*

*The proposed language sets forth sufficient safeguards that will ensure a balance between the drinking water needs of the public at large and protection of ERW’s.*

*I fully support the proposed change to this regulation and believe that it is absolutely necessary that public water providers at least have an opportunity to “consider” all viable water sources to meet the demands of our rapidly growing population.*

*Please consider the needs of “all” of the residents of the Natural State.”*

**Response 16:** We acknowledge the comments.

### **III. COMMENTS REGARDING SPECIFIC LANGUAGE CHANGES IN THE PROPOSED RULE:**

**Comment 17: As written, the proposed rule change would require burdensome and expensive environmental reviews. Paragraph (iii) of the proposed rule change should be stricken.**

*"The AEF is concerned that the introduction for the requirement for a federally equivalent environmental impact statement to be prepared and submitted under an Arkansas regulation is unprecedented and has no basis in statute. Depending on its [breadth], the preparation of an environmental impact statement can take several years and be extremely expensive.*

*The basis of our concern is three-fold: First, the adoption of such a requirement in Regulation No. 2, when approved by the US Environmental Protection Agency, has the force of federal law; Secondly, establishing the precedent of an environmental impact statement in state law invites the broadening of the requirement into other aspects of Regulation No. 2 as well as other Arkansas environmental regulations; and Thirdly, the expansion of such a requirement would create a substantial impact on economic development by adding burdensome reviews and extended delays when adequate environmental safeguards are already in place....AEF request that subparagraph (iii) be stricken from the proposed regulation."* – Randy Thurman, Executive Director, Arkansas Environmental Federation

**Response 17: We acknowledge the comment.**

**Comment 18: The language of the proposed rule change may give too much authority to the Arkansas Natural Resources Commission.**

*"In the 'proposed new language' by River Valley, for expanding the 'Physical Alteration of Habitat' at Reg. 2.2.304, I oppose the sections delineated (i) and (ii) because: a) Based on an ANRC document I received recently, it appears to me that there is the possibility that water districts and all other related entities called 'Natural Resource Districts' under the umbrella of the Natural Resources Commission, which is even now posturing itself to be the lead/head entity....b) If that were to happen, it seems to me that, in essence, the same entity (ANRC) making potential 'requests' for alterations, would be the same entity (ANRC) granting or denying the 'requests' based on the 'certification of compliance with the State Water Plan' which is authored by that same entity (ANRC). Could not that then give rise to all sorts of abuses or inconsistent application of the process?"* – Connie Burks, Harrison

**Response 18: We acknowledge the comment.**

**Comment 19: The language of the proposed rule should be changed to give more authority to locally elected Conservation District Boards.**

*"[W]e must reeducate, reacquaint, and resupply our locally elected Conservation District Boards with the authority they have historically and statutorily possessed, making sure they utilize all the tools available to them to maintain sensible water quality....Therefore, I propose that the River Valley proposal part (ii) be amended and*

*extended as follows: "the alteration is part of a proposal that has been submitted for certification to the Natural Resources Commission regarding compliance with the State Water Plan; and at the same time submitted to the respective County Conservation District Board for ultimate approval or denial of 'compliance with the State Water Plan'...." – Connie Burks, Harrison*

**Response 19: We acknowledge the comment.**

**Comment 20: 26 commenters submitted written statements endorsing the specific comments of Ms. Connie Burks that were submitted at the Springdale public hearing, April 10, 2006.**

**Response 20: We acknowledge the comments.**

Prepared by:  
ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

# ATTACHMENT A

Note: Some comments were submitted without names or with illegible names, those commenters are not included on this list.

Adams	Ashley
Adams	Cassandra
Adams	Donnie
Adelman	Michael
Akins	Anna
Akins	Derald
Aldridge	Leigh
Alexes	Debbie
Allen	Jean
Allen	Corey
Alma Area Chamber of Commerce	
Alma City Council	
Alma School District, David Woolly, Deputy Superintendent	
Almollen	L.
Altes	Nicolette
Ambrose	April
Anderson	Lorene and Kevin
Anderson	Phyllis
Anderson	Calvin
Anderson	Gary
Andrus	Clif
Angel	Bart
Angel	Amy
Angell	Patsy
Angell	Robert
Araoz	Carlos
Arco Iris Earth Care Project	
Ardapple	Beth
Arkansas Canoe Club	
Arkansas Chapter Sierra Club -Ozark Headwaters Group	
Arkansas Conservation Partnership (Hank Bates, representing)	
Arkansas Department of Environmental Quality	
Arkansas Environmental Federation	
Arkansas Fly Fishers	
Arkansas Game and Fish Commission	
Arkansas Natural Heritage Commission	
Arkansas Natural Resources Commission	
Arkansas Water and Wastewater Managers' Assoc.	
Armstrong	Sandra
Armstrong	Ann
Arsaga	Cindy
Association for Beaver Lake Environment	
Audoire	Josette
Audubon Arkansas	
Audubon Society of Central Arkansas	

AufdereHeide	Mitch
Avenoso	Janet
Avenoso	Michael
B.	Wayne
B.	Paul
Bagley	Philip
Bailey	Dot
Bailey	Rose
Baird	Kenneth
Baker	Maury
Baker	Charles
Bambeck	Carol
Bangert	Marg
Barenberg	Merle
Barger	Steve
Barker	Angela
Barker	Robert
Barker	Andrea
Barnes	Butch
Barnett	Jim
Barr	Jesse
Barranger	Todd
Bartelt	Margaret
Bartle	Shirley
Bartlow	Phyllis
Bartos	Benjie
Basold	Robert
Basshaw	Terry
Batchelor, Jr.	Fines
Bates	Bill
Bauer	C.C.
Bauer	Ken
Bays	Robert
Beard	Lonzo
Beasley	Douglas
Beebe	Mike
Beland	L.E.
Beliles	Ronald
Bell	Betsy
Bell	Dale
Bell	Judy
Bell	J. Kevin
Belles	Leroy
Benham, Jr.	William
Benton	William
Benton/Washington Regional Public Water Authority	
Berry, U.S. Representative	Marion
Billingsley	Phyllis
Bindrich	Glen
Bing, Jr.	Estil
Birchfield	Douglas
Black, Judge	Gary

Blair  
Bland  
Blazer  
Blevins  
Blevins  
Blonsky  
Blough  
Bly  
Boles  
Bolton  
Bond  
Bond  
Boozman, U.S. Representative  
Boulden  
Bourne  
Bowie  
Boyett  
Boyett  
Bradshaw  
Branch  
Branderburg  
Branscum  
Branscum  
Branscum  
Branson  
Brasuell  
Brauer  
Brewer  
Brewer  
Brinegar  
Brink  
Brodie  
Brooks  
Broson  
Brown  
Brown  
Brown  
Bryant  
Buck  
Budy  
Burkett  
Burkhart  
Burkhart  
Burks  
Burks  
Burnett  
Burris  
Burroughs  
Bush  
Bush  
Butler  
Caldwell

Sam  
Frank  
Judith  
Novella  
Paul  
Gary  
Barbara  
Linda  
Michelle  
Robert and Rebecca  
Darla  
Jim  
John  
Zen  
David  
Arthur  
Kenneth  
Jean  
Don  
Kenneth  
Kim  
Patty  
Bill  
Scott  
Patricia  
Fracille  
Dave  
Robert  
Marvin  
Johnny  
Charles  
Diana  
Alma Lou  
Melissa  
Paul  
Carolyn  
Sally Ann  
Ralph  
James  
Todd  
Teresa  
Lita  
Billy  
Connie  
Melissa  
Beatrice  
Manford  
Tom  
Jim  
William  
Ann  
Carmen and Robert



Caldwell	Jeremy
Campbell	Ann
Campbell	Angela
Carney	Steve
Carpenter	Jack and Camille
Carpenter	Kenneth and Connie
Carroll	Maryetta
Carroll	Penny
Carson	Jenny
Carta	J.D.
Carter	Jeanette
Carter	Sharen
Caruthers	Reggie
Castleberry	Don
Cato	Charlisa
Caulk	Sara and Bob
Certain	Matthew
Chadbourn	Cowper
Chafin	Stephen
Chauncey Family	
Cheek	Margaret
Cheshier	Diane and Andy
Christie	Erica
Claney	Walter
Clark	Janie
Clark	Stanley
Clark	Becky
Clement	Kevin
Cliff	Peter
Clifton	Kevin
Clifton	Bryan
Cloar	Robert
Cochenoun	Martha
Cochran	Keith
Cockrell	Susan
Coffelt	Bill
Cohen	Robert
Colclasure	Theresa
Coleman	N.
Coleman	Randy
Collins	Clare
Collins	Lowell
Collins	Reba
Combes	Brandon
Compton	Ellen
Concord Waterworks Facilities Board	
Connole	Jeffery
Connole	Kathleen
Conway Corporation	
Coogan	Michael
Coombes	Hubert
Coon	Michelle

Corbitt  
Corse  
Coughran  
Courtney  
Courtway  
Cox  
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Coyle  
Crabtree  
Crabtree  
Crawford County Board of Realtors  
Crawford County Farm Bureau  
Crews  
Crook  
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Crouse  
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Crowley  
Cutrell  
D.  
D'Agrosa  
Dale  
Damet  
Darnell  
Darner  
Darr  
Daugherty  
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Davidson  
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Dean  
Deffenbaugh  
Deffenlaug  
DeLanois  
Dempsey  
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Dickens  
Dickey  
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Dinan  
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Dollar, Judge  
Dommor  
Dooley  
Doss  
Dowden  
Doyle  
Drazsnzak

Douglas  
Rice  
Paula  
Betty  
Jeff  
Molly  
Debbie  
Deb and Bill  
Wanda  
David  
  
Janie  
Carolyn  
Charles  
Jim  
Jim C.  
Connie  
B.J. and Gene  
Gary  
Francesca  
Tina  
Jimis  
Don  
Keith  
Charles Orvis and Jane  
Robert  
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Mary Ann  
Scott  
Okley  
Jamps  
Sharon  
Genevieve  
JoAnn  
Drew  
Laura  
Jeanne  
Jeff  
David  
Rodney  
Brenda  
Jenna  
David  
Lana  
Vernon  
Roy  
Timothy  
Kate  
Selina  
Larry  
Beth and Steve

Drecher  
DuBose  
DuBose, M.S.  
Dudley  
Dufeame  
Duggen  
Dunaway  
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Elias  
Elkins  
Ellison  
Emery  
Engstrom, Esq.  
Environmental Protection Agency, Region 6  
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Farar  
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J. R.  
Tracy  
Terry  
Jim  
Stephen  
Richard  
Beverly  
Ron  
Benjamin  
Sue  
Laban  
Scott  
Robbie  
Jim  
Sandra  
Steven  
Calvin  
Teresa  
Steven  
Victor  
Roland  
Cindy  
Michael  
Stephen  
  
Gene  
Tim  
Byron  
Jean  
Ryan  
Ken  
Michael  
Paulette  
Harriet  
Joan  
Dottie  
Gayle  
Kevin  
Lucy  
Richard  
David  
Sharon  
Richard  
Ed  
Michael  
Pam  
Bill  
Phyllis  
Joe  
Flynn  
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Folkers  
Forkner  
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Fowler, Judge  
Francis  
Franklin  
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Fredrick  
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French  
Friends of the North Fork and White Rivers  
Frierson  
Frye  
Furst  
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Garlington III  
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Gibbs  
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Gibson, Judge  
Gilbert  
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Glenn  
Glover  
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Steve  
Stephen  
Diane  
Wanda  
Joe  
Wes  
Ruth  
Brian  
Lillian  
Terry  
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Garrett  
  
Courtney  
Debra  
Lizabeth  
Linda  
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David  
Dale  
John  
Rosemary  
Lonnie  
Gordon  
Jenny  
Nancy  
Brandy  
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Jerol  
Anita  
Coleen  
James  
Aubra  
Denise  
Kathy  
Inez  
Chaia  
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Jim  
Paul  
Rodger  
Robert  
Ainslie  
Robert  
Mary  
Harold  
Dennis  
Morton  
David  
Julie  
George  
Missy

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Hart, Judge  
Harvel  
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Kim  
Eva  
Melvin  
Michael  
Gordon  
Gertraud  
Ann and Jay  
Billy  
Sally  
Clancy  
Justin  
Rebecca  
Grady  
Roger  
Tina  
Teresa  
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Rick  
William  
James  
Judith Ann  
Tonya  
Brian  
Gabe  
William  
Joyce and Jay  
Judy  
Marcus  
Y.  
Don  
Rick  
Gladys  
Renee  
Scott  
James  
Susan  
Lu  
Sarah  
Barbara  
Margaret  
Glenda  
Elizabeth  
Gerald  
Helen  
W.N. and Karen  
Jimmy  
Brenda  
Tonya  
John  
Jason  
Christy

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Houston, Judge  
Howard  
Hoyle  
Hubbard  
Hubbell

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Ginny  
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Andrea  
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Edgar  
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Marian  
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Sally  
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James Lillis  
James M. C.  
Jerry  
Jesler, Judge  
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Joyce  
Justus  
Kareus  
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Katlin  
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Camille  
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Sasha  
Steven  
Kent  
Deronda  
Gerald  
Deborah

Kendrick  
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Kennedy  
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Kestner  
Key  
Kimberly Clark  
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Lambert  
Lampkin, Judge  
Lamproe  
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Lantermann  
Lamed, Jr.  
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Lawson  
League of Women Voters of Arkansas  
Ledbetter, State Representative  
Lee  
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Leftwigs  
LeGrande  
LeRoy  
Lewis  
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Lightner

Lavona  
Roger  
Harvey  
Debra  
Keith  
James  
  
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Jacqueline  
Amanda  
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John  
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Fay and Dwayne  
Yraina  
Bill  
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Matie  
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Doelas  
Holly  
Jadawn  
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Leota  
Richard  
Lynn  
Ann  
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Shirley  
  
Sam  
Tom and William  
Angela  
Libby  
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Marianne  
Barbara  
Sarah  
Robert  
Barbara



Linn	Linn
Linn	Rachel
Linn	Stephen
Linn	Vicki
Lipton	Marlyn
Littell	Annee
Lloyd	Trecia
Locke	George
Lockie	Gene
Loridans	Maurice
Loridans	Valerie
Lovett	Justin
Loving	David
Ludwig	Jerry
LuLancaster	Bettie
Luonga	Albert
Luongo	Andrea
Lyles	Betty
Lynch	Carol
M.	Tammy
MacCluck	Pluma
Machan	Kelley
Mailto	Wayne
Mallette	Natasha
Mangold	Dorothy
Manus	Paul
Marks	Laura
Marley	Trey
Marley	
Marsh	Mina
Marshall	Tracy
Marshall	Nelda
Marshall	Donald
Martin	Robert
Martindale	June
Mason	R.D.
Mason	Sherri
Massengale	Cindy
Massey	Mark
Mathews	Becky
Matt	Don
May	Dean and Shirley
Mayer	Jerry
Maynard	William
Maynard	Ruth
Maynard	Karen
McAlister	Jared
McBrayer	Lee Ann
McChristian, Jr.	Jesse
McClanahan	David
McClelan	Richard
McClellan	Libby

McClellan, Sr.  
McClements IV  
McClure  
McClure  
McCord  
McCord Realtors  
McFadden  
McFarlan  
McGuire, Judge  
McHenry  
McShane  
Meadors  
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Medlock  
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Mid-South Fly Fishers  
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Minatra  
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Mitchell  
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Mock  
Moerman  
Montague  
Moon  
Moore  
Moore, Judge  
Moore, Mayor MH  
Morey  
Morfey  
Morgan  
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Morrison  
Mulhollan  
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Mullins  
Murawski  
Murphy  
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Mushrush  
Myal  
Myers

Richard  
James  
Lewis  
Jo  
Marc  
  
Richard  
Dwayne  
Steve  
Linda  
Joe and Ruth Weinstein  
Jack  
Steve  
Trish  
Alice  
Gene  
Joseph  
Darathy  
  
Tony  
Randy  
Billie  
Rebecca  
Debbie  
Ronnie  
Gaylor  
Sandra  
Carolyn  
Jim  
Gregory  
Harry  
Andrea  
Warren  
Jennifer  
Larry  
Mitch  
Stanley  
Josh  
Dale  
Al  
Scott  
Neal  
Paige  
Mary Bess  
Yolanda  
Jamie  
Dale  
Cheryl  
Sue  
Eldon  
Angie  
Kathy

Naland  
Nantze  
National Park Service - Buffalo National River  
Nations  
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Neuman  
Newman  
Newton  
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Newton, Jr.  
Nichason  
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Noland  
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Northwest Arkansas Progressive Coalition  
Nye  
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Obenshain  
Oglesby  
O'Kelley  
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O'Kelley  
O'Kelley, Mayor of Kibler  
Oklahoma Secretary of Environment  
O'Neal  
Osborne  
Osburn  
Ozark Society  
Paddock  
Painter  
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Parker Family  
Parriott  
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Parsons  
Patterson  
Patterson, Alderman, City of Elkins

Eunice  
Derrell  
  
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Joe  
Dorothy  
Misty  
Janis  
Lyle  
Carol  
Miles  
Frank  
Melinda  
Lauren  
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Dr. Joe  
Carol and Steven  
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Stewart  
  
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Janet  
John  
Lee Cowan and Mike  
Alana  
Pamela  
Conley  
Curtis  
Gary  
  
Roy  
Giles  
Diane  
  
Nancy  
Jeff  
Greg  
Judy  
Phillip  
David  
Neil  
Jeanne  
Frank  
Charis  
Landon  
  
Bonnie  
Janet  
Luke  
Kristen  
Michael  
George

Patton  
Payton  
Peacock  
Peevy  
Perkins  
Perlman, Ph.D.  
Perry  
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Pestel  
Phillips  
Phillips  
Phillips, Judge  
Pierce  
Pigg  
Pithford  
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Ponder  
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Portmann  
Powell, Judge  
Preston  
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Price  
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Pruitt  
Purdy  
Qualls  
Quick  
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Rabjohn  
Radomski  
Rakes  
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Redden  
Reddick  
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Richards

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Cecil  
Leslie  
Randall  
Robert and Jenn  
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Phil  
Gary  
Ann  
Glenda  
Maxine  
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Shelly  
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David  
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Bobby  
Shawn  
Dale  
Joe  
James  
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Scott  
Jerry  
Joe  
Jim  
Gina  
Carmen  
Dennis Crigger & Joan  
Kathy  
Paula  
Claire  
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Nancy  
Teresa  
Mary  
Deborah  
Adam  
Carrie  
Dennis  
Leesa  
David  
Ellen  
Joseph  
Ruth  
Virginia  
Lawrence  
Sheila

Richardson  
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Saunders  
Save Greers Ferry Lake, Inc.  
Schatz  
Scheiman  
Schilling  
Schoeder  
Schossow  
Scowden  
Scroggins, Judge  
Sellers  
Selph

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Amos  
Rex  
Teri and Ron  
Lynn  
David  
Steve  
Kelly  
Hollie  
Steve  
Bob  
Zach  
Fred  
Thomas  
Craig  
Shari  
Sheree  
Blake  
Joe, Louise, and Carly  
Janelle  
Marie  
Robert  
Michael  
Kenneth  
Danny  
Dana  
Donald  
Martha  
Angela  
Frances  
Phillip  
Larry  
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Cecily  
Patricia  
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Jonathan  
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Leon  
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Dan  
Melinda  
Charlie  
Kenneth  
Bonnie  
Frank  
Don  
Roberta

Semrau  
Sen. Whitaker  
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Simmons, Jr., Judge  
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Smith, Judge  
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Snyder, U.S. Representative  
Somerville  
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Ruth  
Debbie  
Frances  
William  
David  
Vicki  
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Jeffery  
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Marilyn  
Kirby  
Harry  
Shirley  
Allen  
Ed  
Renee  
Jim  
Michael  
William Burl  
Nichole  
Chally  
Sharon  
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Greg  
Whitney  
Virginia  
Misty  
Leonard  
John  
Richard  
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Jed  
Maria  
Oliw  
Tina  
Coleen  
Thelma  
Edward  
Tim  
Gary  
Joyce  
Sherry  
Eddie  
Kay  
Copley  
Tim  
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Vic  
Leon  
Rick

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Sundell, Professor  
Sutterfield  
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Tanabe  
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Jason  
Gail  
Bea  
Deborah  
Robert  
Nathan  
Ramona  
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Clyde  
Nancy  
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Thompson	Brent
Thornton	Eric
Thuman	Bill
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Timby	Laura
Timby	Gabriel
Timby	David
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Tucker	Debra
Tumer	Bryan
Tyson	John
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Underwood	Leta
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Wallman	Linda
Waltman	Angie
Walton	Jim
Ward	Jackie
Wasson	Kirk



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Wells  
Weniger  
West Fork Environmental Protection Association  
Westfall  
Weston  
Wheeler  
Wheeler  
White  
White  
White  
White River EPA Board of Directors  
Whiteside  
Whitlock  
Whitson  
Whitson  
Wight  
Wilcox  
Wilkerson  
Williams  
Williams  
Williams  
Williams, Judge  
Wilson  
Wilson  
Wilson  
Wilson  
Wilson  
Wilson  
Wimberly  
Wimberly  
Wimberly  
Windham  
Wise  
Wiseman  
Wittenberg  
Woltjen  
Wolverton  
Wood  
Woodard  
Woods  
Woods  
Woodsey

Larry  
Brenda  
J.  
Kathy  
Gerald  
Michelle  
Carole  
Tiffany  
Adam  
Gary  
Kathy  
Earl  
  
Wendell  
Scott  
Stephanie  
Carolyn  
Mel  
Mrs. Gay  
Russell  
  
Dennis  
Steve  
Charles  
Shannon  
Lynn  
Tina Marie  
Debbie  
Jerry  
Gayle  
Janis  
Jerry  
R. Sloan  
Jo  
Susie  
Matthew  
Doug  
Toni  
Susan  
Charles  
Linda  
Lana  
Robert and Twyla  
Fred  
Tom  
Duane and Judy  
Melissa  
Jim  
Gary  
Rex  
Jennifer  
Matthew

Woodward  
Wright  
Wright  
Wyant  
Yahnke  
Yancey  
Yaney  
Yarbrough  
Yates  
Yaw  
Yeager  
Young  
Zabecki  
Zawislak

Sue  
Orville  
Jack  
C.Lee  
Lora  
Douglas  
Steven  
Scott  
Alton  
Rhonda  
Ed  
Huey  
Melissa  
Robert  
Polly  
Ronald  
Gene  
Billy  
L.D.

## ATTACHMENT B

Note: Representatives of the  
Arkansas Department of  
Environmental Quality and River  
Valley Regional Water District  
presented statements at each public  
hearing.

### **Van Buren March 27th, 2006**

Casey	John
Crawford County Farm Bureau	
Crowley	Connie
Duncan	Ron
Horan	Patrick
Jenkins	Don
Keaty	Steven
Nally	Grant
O'Kelley	Gary
Pyle, State Representative	Beverly
Robertson	Dave
Stout	Ron
Tudor	Tim
Wellnitz	John
Williams, Judge	Jerry
Workman	Mike
Wright	Orville
Yardley	Mark

### **Mountain Home April 3rd, 2006**

Dunaway	Gene
Gillihan	Robert
Hall	John
Isbell	John Ed
Olan	Neil
Rivera	Mary
Satterfield	Clovis
Somerville, Jr.	Leon
Williams, Judge	Jerry
Yardley	Mark

### **Springdale April 10th, 2006**

Adelman	Michael
Audubon Arkansas Northwest Office	
Brown	Sallyann
Burks	Connie
Campbell	Anne
Cross	Robert

Crowley	Connie
Davison	Sharon
Dinan	David
Dinan	Lana
Duncan	Ron
Fendley	Kevin
Fredrick	Terry
Gateley	James
Green	Grady
Hale	Jay
Hale	Joyce
Hall	John
Herring	Bill
Johnson	Ryan
King	John
Littell	Annee
Marley	Trey
McKinney	Tom
Mock	Harry
Murphy	Cheryl
Noland	Ross
Parker	Clint
Purdy	Joe
Robertson	Steve
Short	Harry
Smith, State Representative	Lindsley
The Nature Conservancy	
The Nature Conservancy, Fayetteville	
Wright	Orville
Yardley	Mark

**Little Rock**  
**April 17th, 2006**

Arkansas Canoe Club (2)	
Arkansas Natural Resources Commission	
Arkansas Wildlife Federation	
Audubon Society of Central Arkansas	
Bartelt	Margaret
Coogan	Mike
Environmental Protection Agency, Region 6	
Faunk	Dottie
Hayes	Janet
Kopsky	Bill
Locke	George
Nix	Dr. Joe
Ozark Society	
Rooke	Robert
Satterfield	Clovis
Saunders	Bill
Timby	Laura
Whitaker, State Senator	Ruth
Williams, Judge	Jerry
Zawislak	Robert