

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

**IN RE: REQUEST BY BAYOU METO)
WATER MANAGEMENT DISTRICT)
TO INITIATE RULEMAKING TO)
AMEND REGULATION NO. 2)**

DOCKET NO. _____

**PETITION TO PROMULGATE AN EMERGENCY RULE AND INITIATE THIRD-
PARTY RULEMAKING TO AMEND REGULATION NO. 2**

Petitioner, Bayou Meto Water Management District (BMWMD), for its Petition to promulgate Emergency Rulemaking and to Initiate Standard Third-Party Rulemaking to Amend Regulation No. 2 (“Petition”) states:

1. This Petition is submitted pursuant to Section 2.306 of Arkansas Pollution Control and Ecology Commission (APCEC) Regulation No. 2, Section 3.4 of APCEC Regulation No. 8 and the Continuing Planning Process. As set forth more fully below in paragraph 7, BMWMD is requesting modifications to the chloride and sulfate criteria of the Arkansas Water Quality Standards (WQS) for the entirety of Long Pond Slough, Castor Bayou, Cross Bayou, Little Bayou Meto, Bakers Bayou, Wabbaseka Bayou, Indian Bayou, Flat Bayou, Shumaker Branch, Skinner Branch, White Oak Branch, Caney Creek, Salt Bayou, Snow Bayou, Fish Trap Slough, Rickey Branch, Blue Point Ditch, Big Ditch, Main Ditch, Plum Bayou, Crooked Creek Ditch, Indian Bayou Ditch, Caney Creek Ditch, Salt Bayou Ditch, Bradley Slough, Tupelo Bayou, Dennis Slough, Buffalo Slough, Flynn Slough, Boggy Bayou, Bear Bayou, Bubbling Slough, Five Forks Bayou, Government Cypress Slough, Brushy Slough, Tipton Ditch, Hurricane Slough, Newton Bayou, West Bayou, Brownsville Branch, and Eagle Branch. BMWMD is also requesting modifications to the chloride and sulfate criteria of the WQS for Bayou Meto and Bayou Two Prairie from the point where these streams cross the Pulaski/ Lonoke County line to their confluence with the Arkansas River.

2. BMWMD is a public, nonprofit regional water distribution district organized under the authority of Ark. Code Ann. § 14-16-101, et seq. BMWMD is the local sponsor for the Bayou Meto Basin Project.

3. The Bayou Meto Basin Project, a Corps of Engineers project that has been authorized by Congress in the Flood Control Act of 1950 (64 Stat. 174), deauthorized in the late 1980s in Section 1001(B) of the Water Resources Development Act of 1986 (33 U.S.C. 579A(B)) and then reauthorized in Section 363(a), of the Water Resources Development Act of 1996 and for which an environmental impact statement is currently being prepared. The project has multiple objectives: flood control, agricultural water supply and waterfowl management. Part of the agricultural water supply portion of the project (if selected and approved) will require importing and diverting water from the Arkansas River through the listed streams in Paragraph 1.

4. On February 28, 2007, Arkansas Department of Environmental Quality (ADEQ) issued a conditional water quality certification for the Bayou Meto Project setting forth that “[t]he mineral standards for chlorides and sulfates in the Delta Ecoregion Streams as identified in Regulation No. 2 must be revised prior to use of the water from the Arkansas River in the agricultural water supply portion of the project.” A supplemental letter accompanying the water quality certification set forth that “ADEQ has determined a change in the mineral standards in Regulation No. 2 to allow this activity should not impair the ‘designated uses’ of the Delta Ecoregion Streams.”

5. Imminent peril to the public welfare requires immediate rulemaking. The Arkansas Natural Resources Commission has designated the Bayou Meto basin area as a “critical groundwater depletion area.” Agricultural demand is depleting the Alluvial aquifer at

an average annual rate of more than one foot per year. The Alluvial aquifer can no longer support irrigation withdrawals at many locations. Arkansas farmers are being forced to shift to dryland farming, causing a loss of tax revenue to the state and bankruptcies to many small farms and businesses. Other farmers are drilling down into the Sparta aquifer, a major source of municipal and industrial water for the State of Arkansas. At current rates of withdrawal, the Alluvial aquifer is anticipated to fail in 2015 and the Sparta will be irreversibly damaged or depleted by 2027.

The Bayou Meto Basin Project will provide a sustainable and cost-effective alternative agricultural water supply to Arkansas farmers. It will protect the Alluvial and Sparta aquifers by reducing demand for these water resources. The Bayou Meto Basin project will take approximately seven years to build. A 2008 construction start will ensure the project can be fully brought on-line in 2015. The Bayou Meto Basin project requires federal funding to ensure a 2008 construction start. The United States Congress is unlikely to appropriate construction funding without project approval by the United States Secretary of the Army prior to the close of the FY 2008 budget cycle. The United States Secretary of the Army will not approve the Bayou Meto Basin Project until the conditions in ADEQ's conditional water quality certification described in paragraph 4, above have been met. Emergency rulemaking will ensure timely approval of the project and enable a 2008 construction start.

6. The applicable Arkansas WQS for the Delta Ecoregion Streams are:

Chloride - 48 mg/L
Sulfate - 37 mg/L

7. Throughout this Petition, BMWMD is requesting the following amendments to APCEC Regulation No. 2:

- a. modify the dissolved mineral standards for Long Pond Slough as follows:
sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- b. modify the dissolved mineral standards for Castor Bayou as follows: sulfates
from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- c. modify the dissolved mineral standards for Cross Bayou as follows: sulfates from
37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- d. modify the dissolved mineral standards for Bayou Meto (from the point where it
crosses the Pulaski/ Lonoke County line to its confluence with the Arkansas River) as
follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 64 mg/l to 95 mg/l;
- e. modify the dissolved mineral standards for Bayou Two Prairie (from the point
where it crosses the Pulaski/ Lonoke County line to its confluence with the Arkansas
River) as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95
mg/l;
- f. modify the dissolved mineral standards for Little Bayou Meto as follows:
sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- g. modify the dissolved mineral standards for Bakers Bayou as follows: sulfates
from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- h. modify the dissolved mineral standards for Wabbaseka Bayou as follows:
sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- i. modify the dissolved mineral standards for Indian Bayou as follows: sulfates
from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- j. modify the dissolved mineral standards for Flat Bayou as follows: sulfates from
37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;

- k. modify the dissolved mineral standards for Shumaker Branch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- l. modify the dissolved mineral standards for Skinner Branch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- m. modify the dissolved mineral standards for White Oak Branch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- n. modify the dissolved mineral standards for Caney Creek as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- o. modify the dissolved mineral standards for Salt Bayou as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- p. modify the dissolved mineral standards for Snow Bayou as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- q. modify the dissolved mineral standards for Fish Trap Slough as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- r. modify the dissolved mineral standards for Rickey Branch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- s. modify the dissolved mineral standards for Blue Point Ditch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- t. modify the dissolved mineral standards for Big Ditch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- u. modify the dissolved mineral standards for Main Ditch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;

- v. modify the dissolved mineral standards for Plum Bayou as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- w. modify the dissolved mineral standards for Crooked Creek Ditch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- x. modify the dissolved mineral standards for Indian Bayou Ditch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- y. modify the dissolved mineral standards for Caney Creek Ditch follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- z. modify the dissolved mineral standards for Salt Bayou Ditch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- aa. modify the dissolved mineral standards for Bradley Slough as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- bb. modify the dissolved mineral standards for Tupelo Bayou as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- cc. modify the dissolved mineral standards for Dennis Slough as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- dd. modify the dissolved mineral standards for Buffalo Slough as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- ee. modify the dissolved mineral standards for Flynn Slough as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- ff. modify the dissolved mineral standards for Boggy Bayou as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;

- gg. modify the dissolved mineral standards for Bear Bayou as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- hh. modify the dissolved mineral standards for Bubbling Slough as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- ii. modify the dissolved mineral standards for Five Forks Bayou as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- jj. modify the dissolved mineral standards for Government Cypress Slough as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- kk. modify the dissolved mineral standards for Brushy Slough as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- ll. modify the dissolved mineral standards for Tipton Ditch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- mm. modify the dissolved mineral standards for Hurricane Slough as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- nn. modify the dissolved mineral standards for Newton Bayou as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- oo. modify the dissolved mineral standards for West Bayou as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- pp. modify the dissolved mineral standards for Brownsville Branch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l;
- qq. modify the dissolved mineral standards for Eagle Branch as follows: sulfates from 37 mg/l to 45 mg/l and chlorides from 48 mg/l to 95 mg/l.

8. A black-lined version of the specific changes which are requested to Regulation No. 2 is attached hereto as Exhibit "A" and is incorporated herein.

9. The Questionnaire for Filing Proposed Rules and Regulations with the Arkansas Legislative Council and Joint Interim Committee is attached hereto as Exhibit "B" and is incorporated herein.

10. The Financial Impact Statement is attached hereto as Exhibit "C" and is incorporated herein.

11. BMWMD has determined that the request herein does not adversely affect small businesses. The Bayou Meto Economic Impact Statement is attached hereto as Exhibit "D" and is incorporated herein.

12. The *Assessment of Potential Environmental Effects of Modifying Water Quality Standards for Delta Ecoregion Streams within the Bayou Meto Basin Project* in support of this Petition is filed contemporaneously herewith as Exhibit "E". This document satisfies the information requirements of Section 2.306 of Regulation No. 2 for Site Specific Criteria for amending Regulation No. 2.

13. The Economic Impact/Environmental Benefit Analysis is attached hereto as Exhibit "F" and is incorporated herein.

14. Documentation supporting the changes requested by paragraph 7, above, have been reviewed by the Arkansas Department of Health and Human Services and the Arkansas Natural Resources Commission. The Arkansas Department of Health and Human Services has provided documentation that the affected water bodies are not currently nor are planned for use a public water

supply. The Arkansas Natural Resources Commission has provided documentation that the changes requested by paragraph 7 do not conflict with the "State Plan." Copies of this agency's documentation are attached hereto as Exhibit "G" and incorporated herein.

15. Therefore, BMWMD requests that the Arkansas Pollution Control & Ecology Commission: (a) adopt an Emergency Rule modifying chloride and sulfate standards for the entirety of Long Pond Slough, Castor Bayou, Cross Bayou, Little Bayou Meto, Bakers Bayou, Wabbaseka Bayou, Indian Bayou, Flat Bayou, Shumaker Branch, Skinner Branch, White Oak Branch, Caney Creek, Salt Bayou, Snow Bayou, Fish Trap Slough, Rickey Branch, Blue Point Ditch, Big Ditch, Main Ditch, Plum Bayou, Crooked Creek Ditch, Indian Bayou Ditch, Caney Creek Ditch, Salt Bayou Ditch, Bradley Slough, Tupelo Bayou, Dennis Slough, Buffalo Slough, Flynn Slough, Boggy Bayou, Bear Bayou, Bubbling Slough, Five Forks Bayou, Government Cypress Slough, Brushy Slough, Tipton Ditch, Hurricane Slough, Newton Bayou, West Bayou, Brownsville Branch, and Eagle Branch, as well as Bayou Meto and Bayou Two Prairie from the point where these streams cross the Pulaski/ Lonoke County line to their confluence with the Arkansas River; (b) initiate the standard rulemaking process for adopting as a permanent rule modified chloride and sulfate standards for the above listed streams. Proposed Minute Orders initiating the requests in this matter are attached as Exhibits "H" and "I".

WHEREFORE, Bayou Meto Water Management District, respectfully requests that the Commission initiate a rulemaking to amend Regulation No. 2 in the manner requested in Paragraph 7, above.

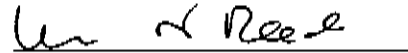
Respectfully submitted,

By William N. Reed

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Certificate of Service

I, William N. Reed, state that I have, on this 13 day of April, 2007, hand-delivered a copy of the foregoing Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 to The Honorable Michael O'Malley, Arkansas Department of Environmental Quality, 8001 National Drive, Little Rock, AR 72219.



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