

From: Ross Noland [mailto:Ross@mcmathlaw.com]
Sent: Monday, December 02, 2013 10:54 AM
To: Szenher, Doug
Subject: Public Comment-Proposed Change to Reg. 2

Mr. Szenher-

This email is a public comment on the proposed rule change found in APCEC Docket No. 13-006-R. My comment focuses on two issues.

First, the City of Huntsville improperly seeks to remove the drinking water designated use from Town Branch, Holman Creek, and War Eagle Creek. The City contends in its Petition to Initiate Rulemaking that the drinking water designated use for these streams is "designated, but not existing." Existing uses cannot be removed. Designated, but not existing, uses can only be removed in limited circumstances. The drinking water designated use on these stream portions cannot be removed for the following reasons:

1-The receiving streams meet the water quality criteria for drinking water and their ecoregion found in APCEC Reg. 2.511. Because the criteria are met, the use is existing, and cannot be removed.

2-The receiving streams flow into Beaver Lake, which is used for domestic water supply. Thus, the drinking water designated use is existing, and cannot be removed.

3-Designated uses can only be removed when one of six specific conditions are present. See 40 C.F.R. § 131.10(g)(1)-(6). The documents submitted by the City of Huntsville do not demonstrate that one of those conditions is met. Huntsville contends that 40 C.F.R. § 131.10 requires a UAA to remove a fishable/swimmable use. This ignores the plain language of 40 C.F.R. § 131.10, which requires a UAA to remove any "designated use which is not an existing use." This language is not limited to the fishable/swimmable uses. Thus, the drinking water designated use cannot be removed unless one of the 40 C.F.R. § 131.10(g)(1)-(6) conditions are met.

Second, the City of Huntsville utilizes four cubic feet per second for its median flow in calculating mineral loads. This number is not based in science or fact. This practice must end due to its arbitrary application and lack of scientific or rational basis.

Thank you,

Ross Noland