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January 16, 2020



113 W. Mountain Street, Suite 302
Fayetteville, AR 72701-6083

The Arkansas Pollution Control and Ecology Commission
3800 Richards Road
North Little Rock, AR 72117

Re: Docket No. 18-001-R
Request to Substitute Parties

Dear Commission,

On January 10, 2020, with no prior notice to the City of Fayetteville, Mr. Allan Gates identifying himself as Counsel for Springdale Water Utilities filed a Request to Substitute Parties in an attempt to remove his long-term client, Northwest Arkansas Nutrient Trading Research and Advisory Group (NANTRAG) from its years' long effort to initiate a third party rulemaking for administrative procedures and regulations for nutrient water quality generating credits.

NANTRAG agreed to allow its attorneys to withdraw as counsel around November 8, 2019, but never consented nor agreed to be removed from this action and its long effort to propose an effective, fair and comprehensive Nutrient Trading Regulation before the Arkansas Pollution Control and Ecology Commission. Such proposed involuntary removal of NANTRAG is certainly adverse to NANTRAG's interests as NANTRAG will be pushed aside and prevented from participating further in precisely what it was formed to do. Any "informed consent" by NANTRAG to allow this Substitution of Parties (removing NANTRAG) would also have to be "confirmed in writing" by NANTRAG. Rule 1.9 *Rules of Professional Responsibility*. The City of Fayetteville believes no such informed consent was given and no such written confirmation exists.

The Northwest Arkansas Nutrient Trading Research and Advisory Group was created by the written agreement of Fayetteville, Bentonville, Rogers and Springdale which clearly requires that no proposed Nutrient Trading Regulation may be recommended or formally proposed without unanimous approval of all four cities. Because of lack of specificity, undefined terms and the potential of creating abuses of nutrient taking which could impair rather than promote water quality, the City of Fayetteville could not support the proposal presented by NANTRAG's attorneys without clarifying amendments.

Now in violation of the agreed written contract, Springdale Water Utilities is seeking to replace the Northwest Arkansas Nutrient Trading Research and Advisory Group to propose the

identical regulation which was expressly and unanimously rejected by the Fayetteville City Council following its initial proposal for approval at the May 10, 2019 meeting of NANTRAG. Springdale Water Utilities has to admit this proposed regulation was not then in final form as the regulation was amended at least three times after the May meeting. That means that Springdale Water Utilities is planning to ignore the four city contract and submit an unapproved proposed nutrient trading regulation.

The City of Fayetteville believes that it is unfair not only to ignore the long-standing agreement among the cities requiring unanimous agreement before presenting a proposed Nutrient Trading Regulation, but it is also unfair to use the attorney work paid for with substantial revenue from the City of Fayetteville and then use the work done for those attorney fees in direct opposition to Fayetteville's expressed interests and desires.

The City of Fayetteville began its work to design "regulations establishing nutrient water quality trading programs" no later than November 3, 2015 as evidenced by the attached City Council Resolution No. 203-15. Although Fayetteville disagrees with the proposal submitted by Mr. Gates at the May, 2019 meeting of NANTRAG, we merely sought improvements to the proposal with definitions of important terms and other provisions to better ensure water quality as well as allowing cost savings through nutrient trading. Attached please find Fayetteville City Council Resolution No. 173-19 (August 6, 2019) requesting "NANTRAG consider amending portions of the proposed regulation..." "(P)rotecting drinking water in Arkansas should be the highest priority..." (Resolution No. 173-19) Without most of the City's proposed amendments, the proposed regulation presented in May appears to place cost savings for industries and wastewater plants ahead of water quality.

Once the Fayetteville City Council can conduct official business at its next meeting on January 21, 2020 and has authorized the Fayetteville City Attorney's office to oppose this Request to Substitute Parties, my office will submit a Response to Request to Substitute Parties, and I guess we will need to travel to Little Rock for the January 24 Arkansas Pollution Control and Ecology Commission meeting. Fayetteville will seek a continuance of this unusual and surprise Request in direct conflict with the four cities' contract establishing the Northwest Arkansas Nutrient Trading Research and Advisory Group.

The City of Fayetteville certainly needs more time to prepare its Response since Mr. Gates shows in his filing (paragraph 12) that he or his client worked with Springdale, Rogers and Bentonville while preparing this Request, keeping Fayetteville in the dark until the date this Request was filed. Other interested parties including the Beaver Water District should be allowed sufficient time to respond to the Springdale Water Utilities' surprise request to take control of NANTRAG's work and propose adoption of an unapproved and deficient regulation.

Sincerely,



KIT WILLIAMS

Fayetteville City Attorney

CC: Mayor Jordan
City Council
Allan Gates
Michael McAlister
Michael Bender
Jené Huffman-Gilreath



113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Resolution: 203-15

File Number: 2015-0489

NORTHWEST ARKANSAS MULTI-JURISDICTIONAL WATER QUALITY COMPLIANCE ASSOCIATION:

A RESOLUTION TO EXPRESS THE CITY COUNCIL'S INTENT TO PARTICIPATE IN COOPERATIVE REGIONAL EFFORTS TO EVALUATE THE POTENTIAL COST SAVINGS AND ENVIRONMENTAL BENEFITS THAT MAY BE AVAILABLE TO THE CITY OF FAYETTEVILLE THROUGH THE FORMATION OF A NORTHWEST ARKANSAS MULTI-JURISDICTIONAL WATER QUALITY COMPLIANCE ASSOCIATION

WHEREAS, Act 335 of 2015 authorizes the Arkansas Pollution Control & Ecology Commission to promulgate regulations establishing nutrient water quality trading programs, including the formation of water quality compliance associations; and

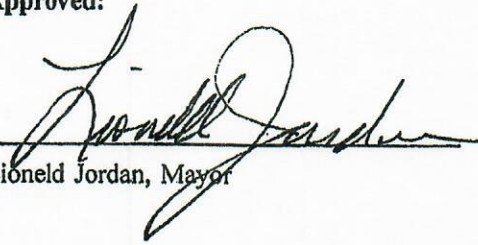
WHEREAS, the timely development and implementation of nutrient water quality trading programs may provide significant long term savings and environmental benefits for the communities in Northwest Arkansas including, but not limited to, the cities of Fayetteville, Springdale, Rogers, and Bentonville.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

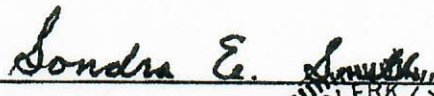
Section 1: That the City Council of the City of Fayetteville, Arkansas hereby expresses its intent to explore the potential cost savings and environmental benefits that may be available to the City of Fayetteville through the formation of a Northwest Arkansas multi- jurisdictional water quality compliance association and authorizes the Mayor to negotiate and present a proposed agreement for the City Council's consideration that defines the mission of such an association, the responsibilities of the parties to the agreement, and the anticipated costs.

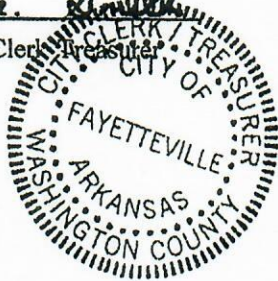
PASSED and APPROVED on 11/3/2015

Approved:


Lioneld Jordan, Mayor

Attest:


Sondra E. Smith, City Clerk / Treasurer





113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Resolution: 173-19

File Number: 2019-0473

A RESOLUTION TO REQUEST THAT THE NORTHWEST ARKANSAS NUTRIENT TRADING RESEARCH AND ADVISORY GROUP (NANTRAG) CONSIDER AMENDING THE PROPOSED REGULATION FOR NUTRIENT TRADING TO MORE CLOSELY CONFORM TO THE ATTACHED PROPOSED REVISION

WHEREAS, protecting drinking water in Arkansas should be the highest priority for our citizens; and

WHEREAS, tourism in Arkansas associated with outdoor activity including fishing, swimming, kayaking and canoeing is the second highest employer in the Arkansas and is increasing at 4-6% per year; and

WHEREAS, nutrient trading is a brand new statewide program that must improve and not degrade water quality and is untested in Arkansas; and

WHEREAS, the City of Fayetteville is one of the four Arkansas cities that is a member of NANTRAG and has paid for legal services to develop the proposed nutrient trading regulation; and

WHEREAS, the City Council agrees with the Arkansas Legislature that nutrient water quality trading can potentially achieve water quality goals with greater efficiency and cost savings; and

WHEREAS, experience in other states demonstrate that nutrient water quality trading programs, including the use of credits, off sets, and compliance associations, can result in quicker and more efficient achievement of water quality improvement goals; and

WHEREAS, nutrient water quality trading should be encouraged and facilitated by the development of stringent regulations and verifiable permit terms; and

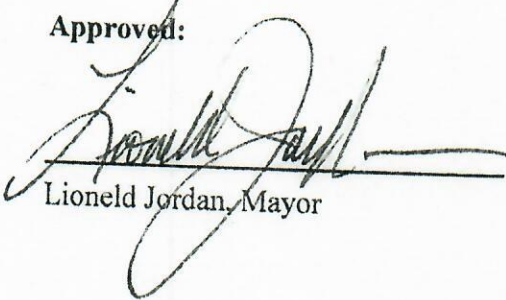
WHEREAS, the Fayetteville City Council supports the nutrient trading concept, has reviewed the currently proposed nutrient trading regulation and has determined that some changes would be advisable to better protect our reservoirs, environment, endangered species and waterways.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

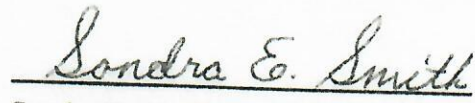
Section 1: That the City Council of the City of Fayetteville, Arkansas hereby requests that NANTRAG consider amending portions of the proposed regulation for Nutrient Water Quality Trading as shown on the attached proposed revisions by Council Member Teresa Turk and approved by the Water, Sewer and Solid Waste Committee.

PASSED and APPROVED on 8/6/2019

Approved:


Lioneld Jordan, Mayor

Attest:


Sondra E. Smith, City Clerk Treasurer

