

EXHIBIT I

**NANTRAG'S SEPTEMBER 5, 2019 VERSION
OF PROPOSED RULE**

ARKANSAS NUTRIENT WATER QUALITY TRADING RULE

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1 (2) two point sources that are owned by governmental entities each of which has a
2 National Pollutant Discharge Elimination System permit with water quality-based
3 permit limits for nutrients.

4 **Rule 37.105 Fees**

5 Pursuant to Ark. Code Ann. § 8-4-232(E):

6 (A) the Division has the responsibility to develop a schedule of user fees by calculating
7 the reasonable costs to the Division of evaluating, implementing and enforcing the
8 nutrient water quality trading, credit, and offset program; and

9 (B) the Commission may establish a schedule of user fees to be collected by the Division
10 from persons or entities applying for approval of, generating, or utilizing credits and
11 offsets from the Nutrient Credit Generating Projects in order to comply with the
12 National Pollutant Discharge Elimination System permit limits.

13 **Rule 37.106 Relationship with Other Laws**

14 Nothing in this rule shall be construed to limit or impinge any requirement of any other State or
15 Federal environmental law or rule.

1 CHAPTER 2: AUTHORITY TO APPROVE NUTRIENT CREDIT GENERATING

2 PROJECTS FOR USE AS OFFSETS

3 The Director of the Division of Environmental Quality shall have authority to approve Nutrient
4 Credit Generating Projects as sources of nutrient credits that may be used by National Pollutant
5 Discharge Elimination System permit holders to offset their nutrient discharges when
6 determining compliance with water quality-based permit limits.

1 **CHAPTER 3: APPLICATIONS FOR APPROVAL OF NUTRIENT CREDIT**

2 **GENERATING PROJECTS**

3 **Rule 37.301 Applications For Nutrient Credit Generating Project**

4 (A) Any person seeking approval of Nutrient Credit Generating Project shall submit an
5 application for approval to the Director. The application shall include:

- 6 (1) A description of the location, including the watershed, where the credit-generating
7 project will be implemented;
- 8 (2) A description of the watershed, including but not limited to a geographic boundary, in
9 which the credits are proposed for use as offsets;
- 10 (3) A list of the NPDES permitted point sources that may use the credits as offsets;
- 11 (4) The time period in which the credit-generating project may be used as an offset;
- 12 (5) Evidence that the credit-generating project will result in a reduction of nutrient
13 discharges below the existing baseline requirements;
- 14 (6) Evidence and calculations used to derive the credit quantity and credit ratios resulting
15 from the crediting-generating project, including an explanation of the methods used to
16 address uncertainty factors;
- 17 (7) A description of the methods by which the implementation, performance, and
18 operation and maintenance of the credit-generating project will be verified and
19 documented, and the identity of the person or entity responsible for documenting the
20 verification; and
- 21 (8) A certification, signed by the applicant, attesting that the application is true and
22 accurate to the best of the applicant's knowledge and belief.

1 (B) If an application involves non-point source nutrient credit-generating projects or activities,
2 the proposed Nutrient Credit Generating Project shall be submitted to the Arkansas Natural
3 Resources Commission for review prior to submitting the application to the Director of the
4 Division of Environmental Quality. In such cases, the application to the Director shall
5 include a written statement from the Arkansas Natural Resources Commission confirming
6 their review of the project and reporting any comments or recommendations resulting from
7 that review.

8 (C) Applications submitted to the Director of the Division of Environmental Quality shall
9 comply with the public notice procedures and requirements for an individual permit under
10 Rule No. 8. Applications shall also be publicly noticed through electronic notice and
11 publication on the Division of Environmental Quality website.

12 **Rule 37.302 Director's Decision**

13 (A) After review of the application the Director may approve the Nutrient Credit Generating
14 Project as a source of nutrient credits that may be used as offsets as requested, disapprove
15 the Nutrient Credit Generating Project as a source of nutrient credits, or approve the Nutrient
16 Credit Generating Project as a source of nutrient credits subject to specific conditions or
17 limitations.

18 (B) Unless expressly granted for a shorter or longer term, the approval of the Nutrient Credit
19 Generating Project as a source of nutrient credits shall be limited to a term of five years from
20 the date of the Director's decision, but may be renewed or extended upon application in
21 accordance with procedures in this section.

22 (C) In deciding whether to approve an application for approval of a Nutrient Credit Generating
23 Project, the Director shall consider, among all other relevant factors:

1 (1) The evidence provided in the application to support the factors identified in Chapter 3
2 Rule 37.101(A):

3 (2) The calculation used to derive the credit quantity and credit ratios resulting from the
4 credit-generating project, including an explanation of methods used to address
5 uncertainty factors:

6 (3) The methods for verifying the reliability of the implementation, performance, and
7 operation and maintenance of the credit-generating project; and

8 (4) The experience and capacity of the persons who will be responsible for
9 implementing and verifying the credit-generating project.

10 (D) The Director's decision approving a Nutrient Credit Generating Project shall include written
11 findings regarding the factors identified in Chapter 3 Rule 37.101(A) and specify the
12 conditions and limitations that will apply to any use of the nutrient credits generated. At a
13 minimum, the conditions applicable to an Nutrient Credit Generating Project shall specify:

14 (1) The watershed in which the credits generated by the Nutrient Credit Generating
15 Project may be used as an offset;

16 (2) The time period in which the credits generated by the Nutrient Credit Generating
17 Project may be used as an offset;

18 (3) The method by which implementation, performance, and operation and maintenance
19 of the credit-generating project will be verified, and the identity of the person or
20 entity responsible for documenting the verification; and

21 (4) For projects generating credits by non-point source activity, a minimum credit ratio
22 of 1.5:1 (projected nutrient reductions or savings to nutrient credits for the project)
23 shall be applied when calculating the credit quantity.

1 (E) Prior to taking final action on a request for approval of a Nutrient Credit Generating Project,
2 the Director shall cause public notice to be published within the watershed where the credit
3 will be generated and utilized in a newspaper of general circulation and on the Division of
4 Environmental Quality's website. The public shall be allowed a period of not less than thirty
5 (30) calendar days in which to submit written comments. The decision to grant or deny
6 approval of a Nutrient Credit Generating Project shall include a written response to all issues
7 raised in comments submitted during the public comment period. A copy of the final
8 decision granting or denying certification of a Nutrient Credit Generating Project shall be
9 sent to the applicant and each person who submitted written comments within the public
10 comment period. The Director's decision to grant or deny approval of a Nutrient Credit
11 Generating Project shall be subject to the same review and appeal provisions as a final
12 permitting decision under Rule No. 8.

13 **Rule 37.303 Baseline Requirements**

14 No Nutrient Credit Generating Project shall be approved by the Director unless the project,
15 activity, or discharge reduction involved in the project will reduce the nutrient load below the
16 applicable baseline requirements.

17 (A) For projects generating credits by point source pollution reduction, the baseline
18 requirements shall be the National Pollutant Discharge Elimination System water-
19 quality based permit limits for the point source in question or the wasteload allocation
20 in any applicable Total Maximum Daily Load, whichever is more stringent.

21 (B) For projects generating credits by non-point source activity, the baseline requirements
22 shall be the regulatory requirements applicable to the location where the project will
23 generate the credits.

1 (C) If the baseline requirements applicable to a Nutrient Credit Generating Project change
2 after the date the Project is approved, the amount of offset allowed from credits
3 generated by the Nutrient Credit Generating Project shall be reduced to conform to
4 the baseline requirements applicable at the time the nutrient credit is used. The
5 procedure for adjusting the amount or duration of credits allowed from an approved
6 Nutrient Credit Generating Project shall be the same as that used for reopening and
7 modifying National Pollutant Discharge Elimination System permits.

8 **Rule 37.304 Use of Public or Third-Party Funds**

9 The fact that a non-point source project or a point source pollution reduction may be supported in
10 part or entirely by government grants or other third-party financial funding shall not prevent the
11 project, activity, or pollution reduction from being eligible for approval as a Nutrient Credit
12 Generating Project, where such use is allowed by the granting agency or third-party entity.

13 **Rule 37.305 Inspections**

14 All inspections necessary to determine compliance with non-point source Nutrient Credit
15 Generating Projects that cannot otherwise be verified through the procedures outlined in the
16 approved Nutrient Credit Generating Project application will be performed by the Arkansas
17 Natural Resources Commission. Nothing in this section shall interfere with the Division's
18 authority to conduct compliance and complaint inspections as authorized by statute or rule.

1 **CHAPTER 4: USE OF CREDITS AND RESPONSIBILITY FOR PERMIT**

2 **COMPLIANCE**

3 **Rule 37.401 Application for Use of Credits**

4 (A) Credits generated by an approved Nutrient Credit Generating Project may be used as offsets
5 only when expressly authorized by the National Pollutant Discharge Elimination System
6 permit in question, or a modification of the permit. In addition to all other permit application
7 or permit modification requirements, the application must include:

8 (1) Evidence that the nutrient credits used under the permit modification are approved
9 for use in the watershed into which the National Pollutant Discharge Elimination
10 System permittee discharges;

11 (2) Evidence that use of the nutrient credits as an offset will not result in an
12 unacceptable localized adverse effect on water quality;

13 (3) Evidence that use of the nutrient credits as an offset will not result in a net
14 increase in pollutant loading in the relevant watershed; and

15 (4) Evidence that use of the nutrient credits as an offset will not have a significant
16 adverse impact upon a reservoir that is a drinking water supply source for an
17 existing public water supply system as designated by the Division of Health.

18 (B) A National Pollutant Discharge Elimination System permittee that discharges into a
19 watershed identified on Appendix A as an existing drinking water reservoir watershed
20 designated in the Arkansas Division of Health GIS Database shall not be allowed to use
21 credits that have been generated outside of the watershed of the reservoir as offsets against its
22 permit limits for nutrients.

1 **Rule 37.402 Permit Compliance**

2 A permittee relying on nutrient credits to demonstrate compliance with its National Pollutant
3 Discharge Elimination System permit limits retains full responsibility for achieving and
4 maintaining permit compliance. If a Nutrient Credit Generating Project fails to meet the terms
5 and conditions of its approval as a source of nutrient credits, National Pollutant Discharge
6 Elimination System permit holders may not rely on credits generated by the project regardless of
7 the fact that failure of the project may have been attributable to circumstances beyond the
8 reasonable control of the permit holder.

1 **CHAPTER 5: NO USE OF CREDITS OUTSIDE WATERSHED**

2 Nutrient credits generated by an approved Nutrient Credit Generating Project may be utilized as
3 offsets only in the watershed in which the credits are generated.

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CHAPTER 6: EFFECTIVE DATE

2 This rule is effective ten (10) days after filing with the Secretary of State, the State Library and
3 the Bureau of Legislative Research.