

BUFFALO RIVER WATERSHED ALLIANCE

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The following comments regarding Draft Regulation 37, Docket # 18-001-R, Proposed Water Quality Nutrient Trading Program, are submitted on behalf of the Buffalo River Watershed Alliance (BRWA).

While we believe that the concept of nutrient trading to protect and improve water quality in Arkansas is a good one, we believe this proposed regulation is flawed and we oppose its adoption as written due to the following concerns.

Arkansas does not have numeric water quality standards (Total Maximum Daily Load, Water Quality Based Effluent Limits, numeric nutrient criteria, etc.) in place to establish water quality based goals and create a market for trades.

Due to legal obligations and the interests of the NANTRAG in a nutrient trading program, a market could exist in Northwest Arkansas. Rather than passing vague statewide regulation, conducting a pilot nutrient trading program could satisfy NANTRAG's goals and lay the groundwork for a successful statewide program.

The Regulation as drafted lacks sufficient substance to ensure the trading is protective of water quality and will result in actual net improvement to water quality because:

1) It does not include an enforceable provision that the actual, in-stream nutrient concentrations and loads be reduced or even that they be maintained at current levels;

2) It lacks a defined process to evaluate non-point source nutrient credits and generators of those credits.

The standards for the decision of the ADEQ Director to approve or disapprove a Nutrient Credit Generating Project do not adequately protect our water resources because it:

1) Lacks a minimum trade ratio

2) Introduces an entirely new regulatory program and provides no consideration to the impact on ADEQ resources and staff and how those costs will be

covered

3) Limits ADEQ's enforcement authority in ways that are contrary to the delegation of the NPDES program to ADEQ by the US EPA

4) Does not address what penalties, if any, will be assessed if a trading entity fails to produce the results they claim will be achieved

5) Lacks a clear and quick mechanism to revoke a nutrient trading project that fails to meet its stated objectives

6) Fails to provide for an independent monitor from planning through implementation to confirm the project is meeting its stated goals

7) Does not provide consideration or protection for sensitive areas or watersheds

8) Does not establish a scientific baseline to ensure that trades are reducing nutrient loads

Until these weaknesses are adequately addressed, Buffalo River Watershed Alliance opposes Draft Regulation 37.

Thank you for the opportunity to submit these comments.

Sincerely,

Gordon Watkins, President
Buffalo River Watershed Alliance