

May 2, 2018

Kelly Robinson  
Arkansas Department of Environmental Quality  
101 East Capitol Ave, Suite 205  
North Little Rock, AR 72201

RE: Arkansas Pollution Control and Ecology Commission Docket No. 18-001-R

Dear Ms. Robinson,

Central Arkansas Water's (CAW) main concern with any activity is the water quality of both the Lake Maumelle and Lake Winona watersheds. These watersheds are the source of drinking water for approximately 450,000 people in central Arkansas. It is in our best interest to take every precaution to ensure a safe and reliable source of drinking water for these people.

CAW supports the Cities of Bentonville, Fayetteville, Rogers, and Springdale, which make up the Northwest Arkansas Nutrient Trading Research and Advisory Group (NANTRAG), to develop and successfully implement an Arkansas nutrient water quality trading program. Any such program, however, must be based on regulations that guarantee the protection of Arkansas reservoirs and their respective watersheds that serve as drinking water sources.

Of concern for drinking water utilities, increases in any pollutants in their sources can significantly increase the cost of treatment of drinking water for water utility customers. For example, nutrient enrichment can cause taste and odor issues as well as potential increases in algal toxins from harmful algal blooms (HABs). Many of which then in-turn can create increased disinfection by products (DBPs) that are regulated by the Environmental Protection Agency (EPA) as potential carcinogens. It is the goal of all water utilities to begin with the cleanest source of water available prior to implementing advanced treatment. This ensures that we can produce a safe and reliable source of drinking water for Arkansans.

It is with this in mind that the following comments are provided towards the proposed APC&E Regulation No 37.

### **1. Limited Protections for Drinking Water Sources**

Although drinking water sources in Arkansas have some general acknowledgement for protection in current regulations, in reality they only have limited scope with regards towards the level of protection required for production of drinking water. The regulations only vaguely mention drinking water as a designated use, but do not go so far as to provide the highest level of protection. Concerns about the vagueness of the current regulations, along with proposed language of Regulation No 37, could potentially weaken the protections necessary for drinking water quality and thus, protection of human health. First, it is recommended that nutrient trading not be allowed in drinking water watersheds that currently do not have any type of nutrient

limitations or inputs and/or have the need to prevent such trading in that specific watershed. Further, in watersheds that are currently impacted, preservation of or improvement of water quality for drinking water purposes must be considered during a planning/permitting phase and should include input from both the water utility(ies) and Arkansas Department of Health.

## **2. Definition of Watershed**

As I recall earlier, there were several terms being thrown about with respect to what a "watershed" is, and the size of watershed impacted. Any regulation should be very clear about the term watershed and its use, specifically the scale of the watershed. Collectively, an 8 digit Hydrologic Unit Code (HUC) is used by EPA for most planning purposes. However, rarely does a drinking water utilities watershed cover that broad of scale. They are most typically in the 10 and 12 digit HUC size. The proposed regulation should consider this when designating where credits are generated specifically in relation to drinking water watersheds.

It really doesn't make sense to allow nutrient trading in non-impacted watersheds that contain drinking water sources. Therefore, the exclusion of non-impacted drinking water watersheds for nutrient trading purposes is recommended.

## **3. Public Participation**

In order to be as open and transparent as possible, nutrient trading generated from this proposed regulation should not be allowed to progress without proper public participation in the process. From concept to allowance (through whatever mechanism selected) to be provide the greatest protection from degradation, this process needs to allow public participation in the decision making process. Easily, a concept for nutrient trading could be developed by interested parties, then begin the implementation process with public participation prior to implementation. As well, clear direction on how credits are to be developed and applied should be a part of this process.

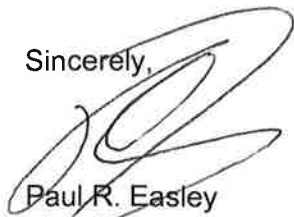
## **4. Limitation of ADEQ Enforcement Authority**

There should be no language included in the regulation that would potentially limit ADEQ's enforcement authority over this process.

In general, it would seem wise to begin the process on a piloted area (NANTRAG jurisdictions) in order to better refine the system prior to statewide implementation. There are significant differences between ecoregions of Arkansas that would lead to the need for differing conditions, as well as differing designated uses. This is part of the difficulty of writing such a regulation is too broad in an attempt to make it fit all conditions.

Thank you for the opportunity to comment on this proposed regulation change. If you have any questions, please don't hesitate to contact me.

Sincerely,



Paul R. Easley  
Director of Water Quality