

*“Protecting the public health and natural resources of the  
White River watershed through advocacy, education, and research”*

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2 May 2018

VIA EMAIL

Kelly Robinson

Arkansas Department of Environmental Quality

5301 Northshore Drive

North Little Rock, AR 72118

**RE: White River Waterkeeper Comments on Arkansas Pollution Control and Ecology Commission, Regulation No. 37, Arkansas Nutrient Water Quality Trading Regulation, Docket #18-001-R**

Dear Ms. Robinson:

On behalf of White River Waterkeeper and our 100 members located in Arkansas and within watersheds of interstate waters, these comments are hereby filed on the proposed nutrient credit trading regulation (“Reg. 37” or “Proposed Regulation”) proposed by The Northwest Arkansas Nutrient Trading Research and Advisory Group (“NANTRAG”). The Clean Water Act (“CWA” or “Act”) does not allow point sources to use pollution credits to exceed permit limitations. Trading is contrary to the goal of the Act, which calls for the elimination of pollution from our waterways. Trading stops progress in its tracks by sanctioning excess discharges of pollution under a market scheme of credit swapping.

Individual polluter accountability is the hallmark of success of the CWA and its implementing regulations, while water pollution trading is designed and implemented so that polluters can evade responsibility for their discharges to our waterways. A more responsible means of implementing trading in Arkansas would be only to allow trades as a temporary means of variance for expanding dischargers or as a temporary approach to meeting tightened permit limits.

Act 335 of 2015 authorized Arkansas Pollution Control and Ecology Commission (“Commission”) to “adopt regulations that specify requirements, standards, and procedures governing the establishment and implementation of nutrient water quality trading programs, including without limitation program scope, eligibility, and threshold treatment requirements.”<sup>1</sup> However, the Proposed Regulation falls short of outlining those specific details. Instead, Reg. 37 leaves all pertinent details up to the applicant to propose and Arkansas Department of Environmental Quality (“ADEQ”) to approve on a case-by-case basis. Not only is this a significant burden on ADEQ and make their job as regulators even more difficult, if not impossible, if left up to lawsuits to determine what is or is not allowed on a case-by-case basis.

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<sup>1</sup> AR Code § 8-4-232(b)(1)



The Commission should deny any trading regulation until sufficient detail and thought have been provided and included in the regulation to address specific requirements (e.g., baseline water quality targets, eligibility), standards, and procedures for how the program will be implemented.

For a regulation that has statewide implications when it comes to the protection of water quality, there has been limited information circulated to the public about this entirely new regulation. The rulemaking documents compiled on ADEQ's website<sup>2</sup> are lacking proof of publication for required public notices<sup>3</sup>, and notifications were not published to inform the public of the extended comment deadline. Surely, given the ongoing backlash regarding C&H Hog Farms, the Commission recognizes the dangers of inadequate public involvement for issues regarded as highly controversial. "Providing information to the public is a necessary prerequisite to meaningful, active public involvement."<sup>4</sup> The state must ensure it is adhering to its responsibilities regarding information, notification, and consultation.<sup>5</sup>

## **I. THE PROPOSED TRADING REGULATION IS INCONSISTENT WITH THE CLEAN WATER ACT**

### **a. Trading creates a disincentive to the technological innovation underlying the statute's goal of continually reducing point source pollution.**

The primary goal of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the nation's waters" by eventually eliminating all discharges of pollutants to waters of the United States.<sup>6</sup> The five-year limits on National Pollution Discharge Elimination System (NPDES) permit terms and requirements for EPA to periodically review and revise industry-wide effluent limitations further ensure that permits will become more stringent over time, and that point sources will be required to ratchet down their pollution and maintain the best available technology to reduce discharges.

### **b. There is little detail regarding verification and no required monitoring of credit-generating activities.**

No amount of verification that practices are installed or paperwork requirements can make up for the lack of pollution monitoring requirements to document whether pollution reductions are actually taking place. The Proposed Regulation contains no monitoring demands for determining whether the nonpoint source activity generating the credit is actually reducing discharges of pollutants into local waterways. This violates the CWA, which requires that NPDES permits contain conditions to "assure compliance" with NPDES permit effluent limitations, water quality standards, and other requirements of the Act.<sup>7</sup> The federal CWA regulations further specify that "each NPDES permit shall

<sup>2</sup> <https://www.adeq.state.ar.us/regs/drafts/3rdParty/reg37/18-001-R/>; accessed 2 May 2018.

<sup>3</sup> Arkansas Code § 8-4-202(d)

<sup>4</sup> 40 CFR 25.4(b)(1)

<sup>5</sup> Refer to 40 CFR 25, with special consideration given, but not limited, to 40 CFR 25.4.

<sup>6</sup> 33 U.S.C. § 1251.

<sup>7</sup> 33 U.S.C. § 1342



include” monitoring requirements “[t]o assure compliance with permit limitations,” including “[t]he mass (or other measurement specified in the permit) for each pollutant limited in the permit; [t]he volume of effluent discharged from each outfall; or [o]ther measurements as appropriate.”<sup>8</sup>

All NPDES permits must, therefore, require site-specific water quality monitoring designed to assure compliance with permit limits. The permitting requirements must specify the “type, intervals, and frequency [of sampling] sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring.”<sup>9</sup> Additionally, permits must specify “[r]equirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods.”<sup>10</sup> Permittees must report monitoring results “on a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.”<sup>11</sup> There are no general exceptions from this monitoring requirement, and as trading is not mentioned anywhere in the Act as an alternative to meeting permit limits at the point of discharge, there is no exception for credits generated by third parties and applied to “comply” with permit limits. When point sources use credits generated by other sources that are not properly monitoring their own discharges to “comply” with permit limitations, they are illegally evading these clear CWA monitoring and compliance mandates.

- c. **The Regulation limits ADEQ’s enforcement authority and only allows inspections by the Arkansas Natural Resources Commission (ANRC). This is contrary to the delegation of the NPDES program to ADEQ by the U.S. EPA.<sup>12</sup>**
- d. **For municipalities or regional sewage authorities implementing trading programs among industrial users, pretreatment regulatory requirements must be consistent with 40 CFR Part 403 and the municipality’s or authority’s NPDES permit.<sup>13</sup>**
- e. **The public participation requirements are legally deficient.**

Public participation should be required for every step of the trading program, including verification, certification of credits, and all proposed trades. Enforcement discretion<sup>14</sup> must only be permitted in cases of fraud. To do otherwise would violate the Clean Water Act.<sup>15</sup> Financial assurances and breach of contract remedies are sufficient to protect permittees.

<sup>8</sup> 40 C.F.R. § 122.44(i). Section 308 of the CWA provides additional authority for water quality monitoring in NPDES permits, stating that “whenever [it is] required to carry out the objective” of the CWA, a permitting agency “(A) shall require the owner or operator of any point source to . . . (iii) install, use, and maintain such monitoring equipment or methods . . . as may reasonably be require[d].” 33 U.S.C. § 1318(a)(1)(A)(iii)

<sup>9</sup> 40 C.F.R. §§ 122.48(b), 122.44(i)(1)

<sup>10</sup> Id. § 122.48.

<sup>11</sup> Id. § 122.44(i)(2).

<sup>12</sup> 33 U.S.C. § 1342

<sup>13</sup> This language should be added to *Draft Reg. 37.2* in its entirety.

<sup>14</sup> *Draft Reg. 37.3(B)*

<sup>15</sup> 33 U.S.C. § 1251(e)



In addition, given the lack of monitoring to clearly establish pollutant reductions from credit-generating agricultural operations, the public is effectively estopped from ever being able to hold point source credit purchasers accountable for their discharges. The Program trades truly monitored and verified point source discharges for modeled, unmonitored and unverified nonpoint source credits, essentially gutting the citizen suit provisions of the CWA and, therefore, violating the public participation mandate of the Act.

## II. THE PROPOSED REGULATION WILL FAIL TO PROTECT OR IMPROVE WATER QUALITY.

### a. The Proposed Regulation does not include an enforceable provision that the actual, instream nutrient concentrations and loads be reduced or that they even be maintained at current levels.

There is no required-minimum trade ratio and insufficient detail regarding how credits will be incorporated as offsets into NPDES permits<sup>16</sup> Offsets should be limited to increased discharges resulting from growth in order to maintain levels of water quality that support all designated uses.<sup>17 18 19</sup> All trading should occur within a watershed or boundary for which a total maximum daily load (TMDL) has been approved or where numeric nutrient criteria have been established<sup>20</sup> Otherwise, how will existing and designated uses be maintained?<sup>21</sup>

Not only are Antibacksliding provisions ignored, but no considerations are given as to whether Antidegradation provisions are upheld<sup>22</sup>. What are the recommendations for the antidegradation implementation plan for how applications should be reviewed to determine compliance with Reg. 2.201-03?<sup>23 24</sup> The Proposed Regulation should include details of how offsets will comply with federal “reasonable potential” analysis that specifically outlines how adherence to narrative nutrient criteria<sup>25</sup> will be achieved.<sup>26</sup>

<sup>16</sup> Draft Reg. 37.2(F)(1)

<sup>17</sup> U.S. EPA. Water Quality Trading Policy. [https://www.epa.gov/sites/production/files/2016-04/documents/wqtradingtoolkit\\_app\\_b\\_trading\\_policy.pdf](https://www.epa.gov/sites/production/files/2016-04/documents/wqtradingtoolkit_app_b_trading_policy.pdf)

<sup>18</sup> EPA Does not support trading to comply with existing technology-based effluent limitations. U.S. EPA Water Quality Trading Policy III(E)(4)

<sup>19</sup> Antibacksliding provisions of Sections 303(d)(4) of the Clean Water Act must be satisfied.

<sup>20</sup> U.S. EPA. Water Quality Trading Policy, III(B)

<sup>21</sup> U.S. EPA. Water Quality Trading Policy, III(F)(5)

<sup>22</sup> APC&EC Reg. 2, Chapter 2.

<sup>23</sup> “Provisions for water quality trading should be aligned with and incorporated into core water quality programs...including provisions for trading in...the continuing planning process.” U.S. EPA Water Quality Trading Policy, III(F)

<sup>24</sup> Draft Reg. 37.2(A)(9)

<sup>25</sup> APC&EC Reg. 2.509

<sup>26</sup> 40 CFR 122.44(d)



“Evidence that use of the nutrient credits as an offset will not have a *significant adverse impact*”<sup>27</sup> [emphasis added] is not the same as requiring water quality be improved or maintained. In order to provide assurances that water quality will be protected, let alone improved, pertinent questions must be answered and included in the proposed regulation, including:

- Will determinations of “unacceptable localized adverse effects,”<sup>28</sup> “significant adverse impact,”<sup>29</sup> and similar language, be based on Reg. 2.509? If so, how will “objectionable algal densities” or impairment of Tier III waters and designated uses accounting for aesthetic uses of a waterbody be determined?
- Will allowable levels of “localized adverse effects” be tiered based on designated use?<sup>30</sup>

**b. The Proposed Regulation lacks meaningful requirements for credit generators and lacks well-defined trade ratios.**

Required minimum trade ratio to account for the risks and uncertainties related to nutrient trading must be included. A credit ratio of at least 3:1 should be required.<sup>31 32</sup> In addition, Reg. 37 should specifically define hydrological units for determining relevant watershed<sup>33</sup> and eligibility requirements for those wishing to engage in trading (e.g., compliance history). Both point and nonpoint source applicants should provide a certification from a professional engineer with relevant training and experience in the subject.<sup>34</sup> Allowable methods of estimating soluble phosphorous and nitrogen loads and load reductions must be included, such as the use of Revised Universal Soil Loss Equation (RUSLE) with representative soil sampling to estimate load reductions.<sup>35 36</sup> Procedures for estimating nutrient or sediment load delivery to the stream segment, waterbody or watershed where trading occurs should be developed in consultation with United States Department of Agriculture where agriculture and forestry operations are involved.<sup>37 38</sup>

<sup>27</sup> Draft Reg. 37.2(A)(9)

<sup>28</sup> Draft Reg. 37.2(A)(5)

<sup>29</sup> Draft Reg. 37.2(A)(9)

<sup>30</sup> Draft Reg. 37.2(A)(5)

<sup>31</sup> Vogel, Jennifer and Leon Szeptycki. 2012. A survey of trading ratios used for generation of credits in water quality trading programs. Environmental Law and Conservation Clinic. University of Virginia School of Law.

[http://www.deq.virginia.gov/Portals/0/DEQ/Water/PollutionDischargeElimination/UVA\\_Trading\\_Ratios\\_Study.pdf](http://www.deq.virginia.gov/Portals/0/DEQ/Water/PollutionDischargeElimination/UVA_Trading_Ratios_Study.pdf). U.S. EPA. Water Quality Trading Policy, III(G)(4)

<sup>32</sup> Based on EPA input, Pennsylvania changed its uncertainty ratio involving nonpoint sources to 3:1. Government Accountability Office Report to the Honorable Sheldon Whitehouse, US Senate, Water Pollution: Some States Have Trading Programs to Help Address Nutrient Pollution, but Use Has Been Limited, October 2017, at 30.

<sup>33</sup> Draft Reg. 37.2(A)(6)

<sup>34</sup> Draft Reg. 37.2(A)(10)

<sup>35</sup> U.S. EPA. Water Quality Trading Policy, III(G)(4)

<sup>36</sup> Draft Reg. 37.3

<sup>37</sup> U.S. EPA. Water Quality Trading Policy, III(G)(4)

<sup>38</sup> Draft Reg. 37.3



The Proposed Regulation must contain rules for when nonpoint source credits will become available. Nonpoint source projects must be implemented, monitored, and nutrient reductions verified **before** credits can be released. The value of nonpoint source credits may increase as the nutrient reductive effects of the project take root. The methods for measuring and monitoring nonpoint source reductions and the entity responsible for verifying proper implementation must be made clear.<sup>39</sup> Additionally, allowing nonpoint sources to sell credits for existing practices will actually increase pollution, because the credits will allow a purchaser to avoid meeting its own permit limits.

As with the lack of specificity in the application process, it is unclear what baseline is applicable and where the measured reduction must occur. Moreover, there is no formula for converting nonpoint source reductions to the NPDES permit limit.<sup>40</sup>

The Proposed Regulation should make it clear that agricultural operations that are not in full compliance with Nutrient Management Plans may not take part in this pollution swapping scheme. Section 2 of the Proposed Regulation should be updated to so nonpoint source credit-generating projects relying on land application require mandatory and enforceable nutrient management plans, public comment opportunity for land application, and transparent monitoring and reporting requirements (e.g., reporting of all waste generated, stored, exported, and land applied). Land application above agronomic rates should not be eligible for credits. Confined animal feeding operations (CAFOs) should not be permitted to participate, as nutrient runoff should *already* be appropriately managed if an APC&EC Regulation 5 or Regulation 6 permit is required.

**c. Double-dipping with public conservation funding should not be allowed.**

Using taxpayer money to meet permit compliance should not be permitted. **The pool of publicly funded water conservation grants is small and should not be used to meet existing regulatory requirements.**<sup>41</sup> If for any reason this is considered, projects funded through grants should only be considered for credit generation upon receipt of a signed consent from the grantor.

**d. Trading across the entire state will fail to prevent hotspots of pollution and is contrary to EPA's guidance.**

Trades should only occur within “the same water body or stream segment.”<sup>42</sup> Any trades that do not involve credits generated directly upstream of the credit purchaser threaten to create pollution hotspots that will impair local water quality and disproportionately impact environmental justice communities.<sup>43</sup>

<sup>39</sup> Draft Reg. 37.2(A)(4)

<sup>40</sup> Draft Reg. 37.2(I)

<sup>41</sup> Draft Reg. 37.2(J)

<sup>42</sup> EPA, Water Quality Trading Policy at 4.

<sup>43</sup> See, e.g., Food & Water Watch, Paying to Pollute: The Environmental Injustice of Pollution Trading (Nov. 2017), [https://www.foodandwaterwatch.org/sites/default/files/fs\\_1711\\_compejpaytopollute-web.pdf](https://www.foodandwaterwatch.org/sites/default/files/fs_1711_compejpaytopollute-web.pdf).



- e. **There are no protections for sensitive waterbodies that should never allow discharges to exceed NPDES permit limits and inadequate detail provided to assure compliance with other existing state and federal regulations.**

All permitting decisions allowing offsets should require consultation with U.S. Fish and Wildlife Service to ensure compliance with the Endangered Species Act prior to applying. Applicants requiring a federal permit pursuant to Sections 402 or 404 of the CWA should provide necessary documentation before credits are issued.<sup>44</sup> In karst environments, point source dischargers should not be allowed to exceed their permit limits and non-point source generated through land applying waste in karst landscapes.

- f. **The Proposed Regulation lacks any baseline requirements for credit purchasers.**

At minimum, credit purchasers should not be eligible if they have demonstrated any kind of noncompliance regarding monitoring and reporting requirements in the last five years. New facilities should not be eligible to participate. Offsets should be limited to increased discharges resulting from growth, or as an alternative to temporary variances, in order to maintain levels of water quality that support all designated uses.<sup>454647</sup>

### III. **THE PROPOSED REGULATION FAILS TO RECOGNIZE THE BURDEN IT WOULD PUT ON THE STATE REGARDING RESOURCES AND TIME AND HOW THOSE COSTS WILL BE COVERED.**

Under the proposed regulation, the administrative burden on evaluating each potential project on a case-by-case basis is unreasonably high. It is equally unreasonable to place the burden on stakeholders and the general public to familiarize themselves with each project and submit comments on a case-by-case basis within thirty (30) days.<sup>48</sup> NANTRAG did not attempt to complete the financial impact statement required as part of their rulemaking documents and failed to explore the alternative of regulating nonpoint source nutrient runoff as a means of addressing water quality pollution.<sup>49</sup> It would not only be prudent for the Commission to delay approving the Proposed Regulation until a complete Economic Impact/Environmental Benefit Analysis has been submitted, but the public should also be able to provide meaningful comments in response to how public funding will be spent in carrying out this program<sup>50</sup>.

<sup>44</sup> Draft Reg. 37.3

<sup>45</sup> U.S. EPA. Water Quality Trading Policy. [https://www.epa.gov/sites/production/files/2016-04/documents/wqtradingtoolkit\\_app\\_b\\_trading\\_policy.pdf](https://www.epa.gov/sites/production/files/2016-04/documents/wqtradingtoolkit_app_b_trading_policy.pdf)

<sup>46</sup> EPA does not support trading to comply with existing technology-based effluent limitations. U.S. EPA Water Quality Trading Policy III(E)(4)

<sup>47</sup> Antibacksliding provisions of Sections 303(d)(4) of the Clean Water Act must be satisfied.

<sup>48</sup> Draft Reg. 37.2(H)

<sup>49</sup> <https://www.adeq.state.ar.us/regs/drafts/3rdParty/reg37/18-001-R/20180111-exhibit-d.pdf>

<sup>50</sup> See answers to #3 and #4 of the Economic Impact Analysis.

<https://www.adeq.state.ar.us/regs/drafts/3rdParty/reg37/18-001-R/20180111-exhibit-e.pdf>



#### IV. THE PROPOSED REGULATION DOES NOT ENSURE TRANSPARENCY AND ACCOUNTABILITY IN TRADES.

##### a. There are insufficient implementation procedures, including lack of detail regarding verification and monitoring of credit-generating projects.

The Proposed Regulation lacks a defined process to evaluate non-point source nutrient credits and generators of those credits. “Baseline” must be defined for both point and nonpoint sources. Will baseline for point sources be defined by permit requirements or water quality standards? To maintain existing water quality conditions, baseline should be defined from numeric nutrient criteria or site-specific water quality conditions. Regulation should define data quality and quantity requirements for developing site-specific conditions. Minimum in-stream water quality monitoring protocols and requirements are needed to demonstrate compliance and effectiveness of trades. Reliance on ADEQ’s existing monitoring network is insufficient.<sup>51</sup> There are no details provided on how net increase in pollutant loading in the watershed will be measured.<sup>52</sup>

The Directors of ADEQ and ANRC must first provide the standard by which they will review applications and timeframes for determining performance of credit-generating projects and the supporting evidence that must be included.<sup>53 54</sup> Decision must be based on clear defined rules that address public health, safety, and designated uses. Credits should only be released for permit integration **after** verification of nutrient reductions have been made by the Director and/or ANRC.<sup>55</sup> Inspection requirements should be drafted along with other nonpoint source project requirements and guidance and require inspections take place before and after project implementation.<sup>56</sup> A comprehensive Best Management Practice verification plan should be developed, as was adopted in Maryland.<sup>57</sup>

Furthermore, the application and approval process must require reasonable financial assurance; whether it be by surety bond, trust fund, or insurance, permits incorporating offsets must only be granted with assurances similar to those required of other risky permittees. Forfeited funds should be deposited with the Water Performance Bond Fund.<sup>58</sup>

##### b. The notice, comment, and hearing requirements under Regulation No. 8, Reg. 8.207-09 must be applied here as with any other NPDES permit application.<sup>59</sup>

<sup>51</sup> Draft Reg. 37.2(A)(7)

<sup>52</sup> Draft Reg. 37.2(A)(6)

<sup>53</sup> Draft Reg. 37.2(B)

<sup>54</sup> Draft Reg. 37.2(F)(2)

<sup>55</sup> Draft Reg. 37.3(A)

<sup>56</sup> Draft Reg. 37.3(C)

<sup>57</sup> Maryland’s Best Management Practice Verification Protocols, updated September 2016, available at [http://www.mde.state.md.us/programs/Water/TMDL/TMDLImplementation/Documents/BMP%20Verification/MD\\_Verification%20Protocols\\_Master\\_Doc.pdf](http://www.mde.state.md.us/programs/Water/TMDL/TMDLImplementation/Documents/BMP%20Verification/MD_Verification%20Protocols_Master_Doc.pdf).

<sup>58</sup> Draft Reg. 37.2(F)

<sup>59</sup> Draft Reg. 37.2(C)





- c. **The lack of detail regarding the verification process makes it practically impossible for the public to assess whether this program will result in adequate, ongoing oversight of practices that require regular and timely maintenance.**

**V. INFORMATION PROVIDED IN REQUIRED RULEMAKING DOCUMENTS IS LACKING AND COULD BE CONSIDERED NEGLIGENT AT BEST**

- a. **Comments on Questionnaire for Filing Proposed Rules and Regulations with the Arkansas Legislative Council and Joint Interim Committee** <sup>60</sup>

**#2** – The proposed rule DOES NOT establish standards, procedures, or implementation requirements for point source and nonpoint source generating projects. The proposed rule merely establishes an application and approval procedure based on vague language and no discernable standards.

**#3** – The rule MUST comply with the Clean Water Act and its implementing regulations.

**#7** – If the purpose of the proposed rule is to enhance the ability of permittees to achieve water quality standards, then those standards should at least be mentioned in the regulation, and the enforcement thereof should not be made subject to the Director’s “enforcement discretion.” If projects fail, permits are violated, leniency is granted, and ratepayers are stuck paying higher rates for clean drinking water—not to mention the other externalities borne by the general public.

- b. **Comments on Financial Impact Statement** <sup>61</sup>

**#1** – Claiming that this proposed rule will have no financial impact is either naïve or made in bad faith; in either case, it is a claim that should subject this proposed rule to the highest scrutiny.

**#2** – This rule is based on furthering the interests of one group of stakeholders to the detriment of all others. There are thousands of pages of federal and state guidance, academic reviews, and existing trading regulations that support the outright rejection of this proposal and the process used to arrive at this point.

- c. **Comments on Economic Impact/Environmental Benefit Analysis** <sup>62</sup>

**#1** – It is inconsistent, if not disingenuous, to claim that the purpose of this rule is to protect the economic interests of wastewater ratepayers in the “Questionnaire for Filing Proposed Rules and Regulations with the Arkansas Legislative Council and Joint Interim Committee” while claiming here that only the parties to the trading contract will be affected by its economic impact. As stated above, the economic impact is borne by both

<sup>60</sup> <https://www.adeq.state.ar.us/regs/drafts/3rdParty/reg37/18-001-R/20180111-exhibit-c.pdf>

<sup>61</sup> <https://www.adeq.state.ar.us/regs/drafts/3rdParty/reg37/18-001-R/20180111-exhibit-d.pdf>

<sup>62</sup> <https://www.adeq.state.ar.us/regs/drafts/3rdParty/reg37/18-001-R/20180111-exhibit-e.pdf>

water AND wastewater ratepayers. The risks of negative economic impacts can only be reduced by clear rules based on the best available scientific, technical, and economic information available.

### Remaining Questions Include:

- a. If the watershed does not include a reservoir that is the water supply source for an existing public water system could the offset be generated anywhere in the state or beyond?<sup>63 64</sup>
- b. How will credits be apportioned among multiple sources?<sup>65</sup>
- c. What localized adverse effects from increased point source discharges of nutrients would be “unacceptable?”
- d. What is the basis for establishing a five (5) year term for credits? Simply because NPDES permits are on a five (5) year cycle is not a sufficient reason to validate nutrient credits over the same standard term.<sup>66</sup>
- e. What are the minimum requirements for necessary experience and capacity? These must be defined in the regulation. Otherwise, what basis will ADEQ have for determining they are not sufficient?<sup>67</sup>

Respectfully submitted,



Jessie J. Green  
Executive Director & Waterkeeper

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<sup>63</sup> Draft Reg. 37.2(A)(2)

<sup>64</sup> Define hydrologic units for which generated credits must be sold.

<sup>65</sup> Draft Reg. 37.2(A)(3)

<sup>66</sup> Draft Reg. 37.2(E); Common credit generating project types (e.g. point source reduction, stream bank restoration, creation of sediment basins, animal waste removal) should be paired with allowable timeframes for use as offsets.

<sup>67</sup> <sup>67</sup> Draft Reg. 37.2(F)(3)

