

**QUESTIONNAIRE
FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND
THE JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY	<u>Arkansas Department of Environmental Quality</u>	
DIVISION	<u>Water Division</u>	
DIVISION DIRECTOR	<u>Martin Maner, Chief, Water Division</u>	
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INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Attention: Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. **What is the short title of this rule?** Regulation No. 2 of the Arkansas Pollution Control and Ecology Commission
- 2. **What is the subject of the proposed rule?** Arkansas Water Quality Standards
- 3. **Is this rule required to comply with federal statute or regulations?** Yes
If yes, please provide the federal regulation and/or statute citation.
- 4. **Was this rule filed under the emergency provisions of the Administrative Procedure Act?** No
If yes, what is the effective date of the emergency rule? N/A
When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? N/A

5. **Is this a new rule? No**

If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

6. **Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.** Ark. Code Ann. § 8-4-201(b)(1) authorizes the Arkansas Pollution Control and Ecology Commission to adopt water quality standards for the State of Arkansas.

7. **What is the purpose of this proposed rule? Why is it necessary?**

Arkansas Pollution Control and Ecology Commission No. 2, Section 2.304 currently prohibits significant physical alterations of extraordinary resource waters, natural and scenic waterways and ecologically sensitive waterbodies in the State of Arkansas. The Department recognizes the need to maintain these waters in their current conditions while allowing for the use of drinking water. This rulemaking is being proposed to balance these interests and will provide complete procedures for:

- a) Using extraordinary resource waters, natural and scenic waterways and ecologically sensitive waterbodies without impairing the water quality, natural flow regime or habitat of fish, shellfish or other forms of aquatic life;
- b) Removing the designated use of extraordinary resource waters, natural and scenic waterways and ecologically sensitive waterbodies for the purpose of creating a reservoir to provide a drinking water supply; and
- c) Adding extraordinary resource waters, natural and scenic waterways and ecologically sensitive waterbody designations to a waterbody or segment of a waterbody.

8. **Will a public hearing be held on this proposed rule? Yes**

If yes, please complete the following:

Please see attached schedule of dates and locations.

9. **When does the public comment period expire for permanent promulgation?**

January 31, 2007

10. **What is the proposed effective date of this proposed rule? On or about May 25, 2007**

EXHIBIT B

11. **Do you expect this rule to be controversial? Yes If yes, please explain.**
Significant changes to water quality standards are almost always controversial. Regional water distribution districts, public facilities boards, public water authorities, environmental groups and conservation groups are likely to have very diverse views on this rule.
12. **Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.**
Arkansas Canoe Club; River Valley Regional Water District; Arkansas Natural Resources Commission; Arkansas Parks, Recreation, and Travel Commission; Arkansas Game and Fish Commission; Ozark Society; Arkansas Association of Conservation Districts; Arkansas Farm Bureau; U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service

These changes to the water quality standards attempt to balance strong public interests. It is unknown what position each group will take with regards to each rule.

Summary of Proposed Rule

ADEQ proposes to amend Regulation No. 2 to establish procedures for:

- Using Extraordinary Resource Waters (“ERWs”), Ecologically Sensitive Waterbodies (“ESWs”), or Natural and Scenic Waterways (“NSWs”) without impairing the water quality, natural flow regime, or habitat of fish, shellfish or other forms of aquatic life;
- Removing the designated use of ERWs, ESWs, or NSWs for the purpose of creating a reservoir to provide a domestic drinking water supply; and
- Adding the designated use of ERW, ESW, or NSW to a waterbody or segment of a waterbody.

A. Using ERWs, ESWs, or NSWs without impairing the water quality, natural flow regime, or habitat of fish, shellfish or other forms of aquatic life

Reg. 2.304 has been amended to allow an Extraordinary Resource Water, Ecologically Sensitive Waterbody, or Natural and Scenic Waterway to be used as a domestic water supply without removing the designated use. In situations where a party would like to build a low-head weir or other structure to facilitate the use of the waterbody as drinking water supply, the proposed rulemaking provides a process where the party can request a determination that such structure is not a significant physical alteration of the habitat of the ERW, ESW, or NSW. In addition, this rulemaking will not only make a process available for developing drinking water supplies, but is applicable to all proposed projects on ERWs, ESWs, or NSWs.

The amended language of this rulemaking states that the Director may determine that a proposed physical alteration is not significant if: (1) the proposed physical alteration will not impair water quality, natural flow regime, or habitat of fish, shellfish or other forms of aquatic life, and (2) there is no feasible alternative to the proposed project. Appendix D sets forth the required contents for the request and outlines the Department’s procedures in reviewing the request.

B. Removing the designated use of ERWs, ESWs, or NSWs for the purpose of creating a reservoir to provide a domestic drinking water supply

Reg. 2.303(C) has been added to allow the removal of an ERW, ESW, or NSW designated use from a free flowing waterbody for the construction of a reservoir to provide a domestic water supply, if it can be demonstrated that (1) the reservoir to be constructed shall be used solely for the purpose of providing a domestic water supply; (2) no alternative water supply is available to meet the domestic water needs of the citizens of the State of Arkansas; and (3) the designated use is not an existing use. Appendix E has been added to outline the criteria for determining whether a designated use is an existing use. Reg. 2.310 has been added to establish a procedure by which a regional water distribution district, public facilities board, public water authority, or other public entity engaged in providing water to the public can petition the Commission to initiate

EXHIBIT B

rulemaking to remove an ERW, ESW, or NSW designated use from a free flowing waterbody for the construction of a reservoir to provide a domestic water supply.

C. Adding the designated use of ERW, ESW, or NSW to a waterbody or segment of a waterbody

Reg. 2.311 has been added to create a procedure for adding the designated use of ERW, ESW, or NSW to a waterbody or segment of a waterbody. A petition to initiate rulemaking may be submitted to the Commission to nominate any waters of the State for such designated uses. The petition must include statement of potential benefits and impacts of the proposed action, and evidence that the petitioner has requested resolutions by appropriate local governments regarding the nomination. Appendix F has been added to list the factors to be considered in determining whether to add the designated use of ERW, ESW, or NSW to a waterbody or segment of a waterbody.