

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 2, REGULATION)
ESTABLISHING WATER QUALITY)
STANDARDS FOR SURFACE WATERS)
OF THE STATE OF ARKANSAS)

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AR. POLLUTION CONTROL
& ECOLOGY COMMISSION
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ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO
COMMENTS RECEIVED DURING PUBLIC COMMENT PERIOD

I. Introduction

On September 22, 2006, the Arkansas Pollution Control and Ecology Commission ("Commission") granted the Arkansas Department of Environmental Quality's ("ADEQ") Second Amended Petition to Initiate Rulemaking to Amend Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. The proposed rulemaking would amend certain provisions of the water quality standards relating to Extraordinary Resource Waters ("ERWs"), Ecologically Sensitive Waterbodies ("ESWs"), and Natural and Scenic Waterways ("NSWs") (collectively, Outstanding Resource Waters or "ORWs").

To summarize, the proposed rulemaking:

- 1) Amends Reg. 2.304, Physical Alteration of Habitat, to clarify when a physical alteration of the habitat of an ERW, ESW, or NSW would be considered "significant" and provides a procedure for making that determination;
- 2) Adds new Reg. 2.310, Procedure for the Removal of the Designated Use of Extraordinary Resource Water or Ecologically Sensitive Waterbody or Natural and Scenic Waterway for the Purpose of Constructing a Reservoir on a Free Flowing Waterbody to Provide a Domestic Water Supply. This section governs the removal of a designated use in order to construct a reservoir to provide a drinking water supply; and
- 3) Adds new Reg. 2.311, Procedure for the Addition of the Designated Use of Extraordinary Resource Water or Ecologically Sensitive Waterbody or Natural and Scenic Waterway to a Waterbody or Segment of a Waterbody. This provision sets out the procedures for adding a designated use of ERW, ESW, or NSW to a waterbody.

A more thorough discussion of the proposed changes is found in ADEQ's Statement of Basis and Purpose filed with this Responsive Summary.

II. Summary of Public Participation

ADEQ drafted the proposed amendments to Regulation No. 2 after convening a series of five (5) citizen workgroup meetings in May-August, 2006. Approximately fifty (50) participants, including citizens, non-profit organizations, conservation district representatives, and representatives of state and federal agencies, attended these workgroup meetings. During these meetings, many competing interests and concerns were raised regarding ERWs, ESWs, and NSWs. The agenda for the workgroup meetings was based on from information gathered by ADEQ at seven (7) public meetings held in early 2006.

The subject of the proposed changes has engendered a great deal of public interest and an extraordinary amount of public input. A total of ten (10) public hearings were held in Mountain Home, Fayetteville, Van Buren, El Dorado, Harrison, Hot Springs, Mt. Ida, Russellville, Arkadelphia, and Little Rock. A total of over 45 persons submitted oral comments at the public hearings. Written comments were received through February 5, 2007. A total of 564 persons submitted written comments by letter, email, or petition.

The majority of the comments were critical of some portion of the proposed rulemaking. Based on the comments received, ADEQ will submit proposed revisions to the rulemaking. On June 4, 2007, ADEQ reconvened the citizen workgroup to discuss possible revisions based on the public comments. At this time, ADEQ is considering the specific revisions that will be submitted to the Commission for final adoption.

III. Comments

The following section groups the comments in categories, with excerpts of specific comments for illustration. An index is provided below. An alphabetical list of commenters is attached to this Responsive Summary as Appendix A.

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A. General Comments

Comment 1: The last minute changes to proposed Reg. 2.310 do not reflect positively on ADEQ or the Triennial Review process.

“Out of this extensive [Triennial Review] process, ADEQ developed a carefully crafted, proposed rulemaking that encompassed the spirit of the Triennial Review and deftly balanced protection of ERWs with legitimate drinking water needs within the legal framework of Arkansas’ anti-degradation policies and the Clean Water Act requirements....ADEQ’s [original] petition was to be considered by the [Arkansas Pollution Control and Ecology] Commission on September 22, 2006. However, on the eve of the Commission meeting – September 21, 2006 – ADEQ Director Marcus Devine met behind closed doors with RVRWD’s attorney Allen Gates and hastily drafted harmful changes to proposed 2.310. The results of this backroom meeting were not disclosed to the APC&E Commission until 4:00 p.m. that afternoon. The general public – including many who devoted long hours volunteering for the Triennial Review work group – learned about these changes only after the petition had been approved by the Commission the following day....

In short, ADEQ cynically catered to one special interest....With its backroom about-face, ADEQ has breached the public trust, shirked its duties to future generations to protect ERWs from degradation, and proposed a rulemaking that is poorly drafted, bad public policy and patently illegal.

To borrow a phrase from ADEQ itself – in its original criticism of the RVRWD approach to which Mr. Devine capitulated on Sept. 21st -- ADEQ’s ‘proposed amendment abolishes more than twenty years of protection that has been afforded to high-quality streams and rivers in Arkansas....

We support a return to ADEQ’s original petition (September 8, 2006).”

--Hank Bates, for the Arkansas Conservation Partnership, Arkansas Canoe Club, Arkansas Citizens First Congress, Arkansas Wildlife Federation, Audubon Arkansas, Audubon Society of Central Arkansas, Friends of the North Fork and White Rivers, the Ozark Society and Sierra Club (collectively, “Arkansas Conservation Partnership)

“The extent of the domination of this singular effort is demonstrated by the fact that after months of discussions, culminating with some proposed language that would appropriately make it possible for an ERW to be used if it was the only source for water supply, [t]he Director of ADEQ privately entertained and approved a modification in the proposal which was submitted to the PC&E Commission the day before the presentation. Not only did this process undercut the many hours of discussion which had taken place, it essentially destroyed the credibility of any public input process conducted by ADEQ.”

--Joe F. Nix (emphasis in original)

“Private citizens, staff from state and federal agencies, academics, and representatives of conservation organizations devoted many hours preparing for and attending these meetings. However, the language developed by participants in these meetings is not the language

contained in the final version presented for public review. Although it was understood that ADEQ had final responsibility for the language, the manner in which changes were made do not reflect positively on the review process.”

--Arkansas Natural Heritage Commission

“The Service recommends that that (sic) the ADEQ withdraw its proposed changes to Reg. 2; that the APCEC reject the proposed changes; and/or that EPA disapprove the proposed changes in favor of the original petition developed with the assistance of the volunteer Triennial Review Work Group. The work group consisted of about fifty participants, including representatives of the Service, ADEQ, EPA, Arkansas Game and Fish Commission, Arkansas Department of Health, Arkansas Natural Heritage Commission, Arkansas Natural Resources Commission, U.S. Forest Service, National Park Service, Natural Resource Conservation Service, U.S. Corps of Engineers, multiple conservation organizations, environmental consultants, attorneys, and the public, which addressed how to balance preservation of ERWs with the need for drinking water supplies. At the recommendation of the work group, a scientific subcommittee of water quality experts was formed to discuss specific scientific issues and develop protective criteria. The work group reviewed this criteria and proposed final revisions and recommendations to the ADEQ for the draft petition. In addition, the triennial review allowed for multiple stakeholder input from around the state through public meetings. The specific technical expertise and input from these meetings allowed the ADEQ to develop water quality standards, criteria, and a petition that was consensus based; balanced conservation with drinking water needs; and remained in compliance with all state and federal laws, regulations, and policies.”

--U.S. Fish and Wildlife Service

Response 1: The Arkansas Department of Environmental Quality (“ADEQ”) has revised the proposed rulemaking based on the comments received during the public comment period.

Comment 2: ADEQ’s current proposal is a reasonable compromise.

“River Valley believes that ADEQ’s current proposal, the second amended proposal submitted on September 21, 2006, is a reasonable compromise that resolves essentially all of the reconcilable competing interests that were articulated in the public meetings and work group sessions in Phase I of the Triennial Review.”

--River Valley Regional Water District

Response 2: As stated above, ADEQ has revised the proposed rulemaking based on the comments received during the public comment period. The majority of the comments received were critical of the second amended proposal. ADEQ believes that the proposed rulemaking, with revisions, continues to offer a resolution to many conflicting interests and strikes a fair balance between providing drinking water to communities and protecting existing Extraordinary Resource Waters (“ERWs”), Ecologically Sensitive Waterbodies (“ESWs”), and Natural and Scenic Waterways (“NSWs”) (collectively Outstanding Resource Waters or “ORWs”).

Comment 3: Several commenters stated that the proposed rulemaking would violate the antidegradation policies found in Regulation No. 2 and the Clean Water Act.

“Once...”designated uses” are established in a state’s water quality standards, they can only be changed or removed in accordance with the provisions set forth in the Clean Water Act regulations. Most significantly, a state *cannot* remove a designated uses (sic) if that use is an “existing use,” *i.e.*, if the designated use was “actually attained in the water body on or after November 28, 1975.” (emphasis in original)....

It is indisputable that these ERW designations are “existing uses” – *i.e.*, that the attributes that make these waterways ERWs have been attained on or after November 28, 1975. ADEQ has *expressly* stated that ERWs are existing uses. Indeed, ADEQ opposed RVRWD’s Petition because of the same fatal flaw....

ADEQ’s proposed Reg. 2.310 is inconsistent with Arkansas’ anti-degradation policy. “Obviously, existing uses – including ERW and stream fishery designations – would not be ‘maintained and protected’ if an ERW stream were de-listed for the purpose of building a dam. In addition, if an ERW stream were de-listed and dammed, the ‘natural flow regime’ would not be maintained.”

--Hank Bates, for the Arkansas Conservation Partnership

“...Arkansas has taken the rather unique approach of tying designated uses to Tier III/ONRW protection under its antidegradation policy. No degradation of Tier III/ONRW waters is allowed. 40 C.F.R. §131.12. If the regulations proposed by ADEQ are approved, Chapter 2 (Antidegradation Policy) and Reg. 2.302 (Designated Uses) of Regulation 2 will no longer meet the federal requirements of 40 C.F.R. §131.12 (antidegradation) or 40 C.F.R. §131.10 (designated uses)....

It is important to note that the proposed regulation changes do not alter the actual wording of any regulation of the Antidegradation Policy in Chapter 2 or Reg. 2.302, but rather impacts the enforcement and effect of these regulations to a point of rendering them powerless to serve the purpose they were intended to do, namely protect the most ecologically and recreationally valuable waters in Arkansas. Modifying Arkansas’ regulations in the proposed manner will lead to rejection of Regulation 2 by the EPA....

[A] Tier II stream can be altered if for important economic or social developments. Reg. 2.310 requires a feasible alternative analysis for the development of a social need, drinking water. The proposed change eliminates all Tier III caliber protection in Arkansas in favor of a Tier II level of protection for ERWs. This simply is not consistent with the federal regulations, and should not be allowed.”

-- Ross Noland

“States are required by law to authorize a Tier III category for the highest quality waters in the state. ERWs are Tier III streams. If they are not considered Tier III, our state regulations are not in compliance with federal law. Tier III designations that are existing uses, which these are, cannot be removed. If they are removed, once again, our state is not in compliance with federal law.”

--Arkansas Canoe Club

“The proposed new language changes to Reg. 2 are probably illegal. As written, they would violate the Clean Water Act, Arkansas’ anti-degradation policy and possibly lead to litigation. **Developing an unneeded law often results in unintended consequences. The Regulation is fine like it is and should not be changed.** It has protected our most pristine, scenic and recreational streams for more than 20 years.”

--The Ozark Society (emphasis in original)

“A state cannot remove a designated uses (sic) if that use is an ‘existing use,’ i.e. if the designated use was ‘actually attained in the water body on or after November 28, 1975.’ The State of Arkansas has included ERWs as ‘designated uses’ in its water quality standards...The Service believes that it is indisputable that these ERW designations are ‘existing uses’ and that Federal regulations prohibit the removal of designated uses which are existing uses which makes the proposed Reg. 2.310 inconsistent with both of these anti-degradation policies. Existing uses, including ERW and stream fishery designations, would not be ‘maintained and protected’ if an ERW stream were de-listed for the purpose of building a water supply dam or any dam of significance. If an ERW designation was removed from a stream to build a dam, the ‘natural flow regime’ would not be maintained...”

After reviewing Reg. 2, EPA Policy, and 40CFR131 it appears very clear that they are the state equivalent of ‘Outstanding National Resource Waters’ and that this language is appropriate. The APCEC Regulation 2.303 implements the federal requirement at 40 CFR Part 131.12(a)(3), requiring water quality to be maintained and protected in ONRWs. States may not, consistent with this requirement, affirmatively authorize activities that would result in long term water quality degradation in an ONRW; only ‘some limited activities which result in temporary and short-term changes in water quality’ may be allowed (citation omitted). Furthermore, the ADEQ acknowledged this during the workgroup meetings and in the original draft petition that, ‘In Arkansas Extraordinary Resource Waters are considered to be the State equivalent of the federal designation of Outstanding Natural Resource Water and are intended to be permanent designations. The intent of these designations is to maintain these examples of exceptional water quality in their current condition and to protect them from degradation so they will be preserved for future generations...

Furthermore, CWA regulations pertaining to antidegradation policy and water quality standards require States and Tribes to establish a three tiered antidegradation program. Tier 3 maintains and protects water quality in ONRWs, or in this case as described by Reg. 2, ERWs, ESWs, or NSWs (citations omitted). Thus, the proposed changes would render the State’s antidegradation policy inconsistent with the requirements of the Clean Water Act.”

--U.S. Fish and Wildlife Service

Response 3: In Regulation No. 2, “existing uses” are defined as “those uses listed in Section 303 (c)(2) of the Act (i.e., public water supplies, propagation of fish and wildlife, recreational uses, agricultural and industrial water supplies and navigation) which were actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the water quality standards.” (Reg. 2.106). Pursuant to 40 CFR § 131.3 (e) “existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are being attained”; and § 131.3(f) “designated uses are those specified in water quality standards for each

water body or segment whether or not they are being attained". Further, § 131.10(h) "states may not remove designated uses if: (1) they are existing uses as defined in § 131.3, unless a use requiring more stringent criteria is added."

ADEQ believes that the proposed changes to the rulemaking strike a fair balance of protecting existing ERWs, ESWs, and NSWs and potential public drinking water supplies, without compromising state and federal antidegradation policies.

Comment 4: ADEQ's current proposal does not violate antidegradation requirements.

"ADEQ's proposal does nothing that would alter the existing relationship between ERW status and the antidegradation policy. For two decades the State has maintained a careful balance. On the one hand, the State has designated a large number of ERWs and provided them with strong protection. On the other hand, the State has carefully avoided taking steps which could make the ERW designation permanent and irrevocable under federal antidegradation policy...As described in River Valley's Responsiveness Summary, EPA has never challenged the legality of the careful balance struck by the State, nor has the EPA disapproved the regulations that embody that balance. Indeed, if EPA ever took the position that Regulation No. 2 should be changed to make ERW status irrevocable, it is likely that a substantial debate would ensue regarding which streams and lakes should be given that additional level of irrevocable protection."

--River Valley Regional Water District

Response 4: In Regulation No. 2, "existing uses" are defined as "those uses listed in Section 303 (c)(2) of the Act (i.e., public water supplies, propagation of fish and wildlife, recreational uses, agricultural and industrial water supplies and navigation) which were actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the water quality standards." (Reg. 2.106). Pursuant to 40 CFR § 131.3 (e) "existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are being attained", and § 131.3(f) "designated uses are those specified in water quality standards for each water body or segment whether or not they are being attained". Further, § 131.10(h) "states may not remove designated uses if: (1) they are existing uses as defined in § 131.3, unless a use requiring more stringent criteria is added."

ADEQ believes that the proposed changes to the rulemaking strike a fair balance of protecting existing ERWs, ESWs, and NSWs and potential public drinking water supplies, without compromising state and federal antidegradation policies.

Comment 5: The proposed changes to Regulation No. 2 will provide a procedure for the use of ERWs, ESWs, and N&SWs.

"We agree with ADEQ that it is important to establish clearer and more specific procedures governing the addition, deletion and permissible use of ERWS. The absence of such procedures has resulted in a great deal of confusion, prompting some to expect that ERWs' (sic) may never be used or altered, others to believe that designation of an ERW triggers limitations on land use in the watershed, and still others to think that anything can be done that can get a majority vote in

the Commission or the Arkansas General Assembly. The adoption of the procedures proposed by ADEQ would go a long way in helping to resolve some of these doubts....”

--Arkansas Association of Conservation Districts

“River Valley believes very strongly that a set of procedures should be adopted that clearly specifies how a public agency should proceed if it wishes to use a water body that is designated as an ERW as a public drinking water source....When subjects as important as protection as ERWs and the provision of safe drinking water are at stake, it is very important to have a clear set of procedures so that differences regarding a given project can be resolved squarely on the merits and relevant facts, and not on the basis of political maneuvering or legal gamesmanship.”

--River Valley Regional Water District

“I believe that it is imperative that we develop means of obtaining water for domestic use. The needs of people are more important than nebulous considerations of ERW, ESW, and NSW.”

--Paul Schellenberg

Response 5: ADEQ acknowledges the comment. ADEQ believes that the procedures found in Reg. 2.304 and Reg. 2.310 offer two opportunities for providing drinking water to Arkansas communities, while continuing to protect ERWs, ESWs, and NSWs.

Comment 6: ADEQ’s previous proposals (filed on September 8 and September 19, 2006) would have abdicated the State’s authority over ERWs, ESWs, and NSWs to the EPA.

“We agree that a procedure of the sort contained in the proposal filed by ADEQ on September 21st should be adopted. We note, however, that earlier drafts considered by ADEQ (including drafts filed with the Commission on September 8, and September 19, 2006) would have had dramatically different results. As we understand it, those drafts would have stripped the State of its authority to retain control over the designation and use of ERWs, ESWs, and N&SWs, and transferred that authority to EPA. We strenuously oppose any abdication or transfer of the State’s authority to control decisions over Arkansas ERWs, ESWs, or N&SWs to the federal government. We support ADEQ’s decision to retract those proposals in favor of the proposal currently before the Commission and the public.

--Arkansas Association of Conservation Districts

“The prior versions of ADEQ’s proposal in this Triennial Review contained several fatal flaws. Most importantly, the prior versions would have radically altered the longstanding policy of the State regarding Extraordinary Resource Waters and abdicated all State authority to make any alterations to the status of any ERW.”

--River Valley Regional Water District

Response 6: ADEQ respectfully disagrees with the argument that the first proposal to amend Regulation No. 2 abdicates the state's authority to the federal government. The Arkansas Pollution Control and Ecology Commission (“Commission”) has been given the authority, through federal delegation and state law, to establish water quality standards for the State, including the designation of waterbodies as ERWs, ESWs, and NSWs. Presumably the

comments above are based upon the incorrect assumption that the earlier proposal explicitly specified that the designated uses of ERW, ESW, and NSW could not be removed if the designated use is an existing use. The prior proposal explicitly stating that these designated uses could not be removed if they are existing uses, was consistent with and did not propose to change what is in the Commission's existing Regulation No. 2. Under Regulation No. 2, as it currently exists, the Commission has clearly and repeatedly stated a designated use cannot be removed if it is an existing use (Reg. 2.201, 2.303, and 2.306). First, Reg. 2.201 states that "Existing uses...shall be maintained and protected." Second, if the use to be removed is a fishable/swimmable designated use, it may not be removed if it is an existing use (Reg. 2.303). (In fact, it may be removed if it is not an existing use, only if it is also not an attainable use for one of six specified reasons.) Under Reg. 2.306, to remove any use *other than fishable/swimmable*, a petitioner must, among other things, submit *documentation showing that the use to be removed is not an existing use*. Reg. 2.306 allows uses other than fishable/swimmable uses to be removed "to accommodate important economic or social development in a local area."

The first proposal for amending Reg. 2 and the proposed revisions based on the comments received during the public comment period, are intended to clarify the procedures for removing the designated use of ERW, ESW, and NSW and to clarify the documentation which must be submitted to and considered by the Commission before an ERW, ESW, or NSW designated use can be removed. The proposed amendments to Regulation No.2, as clarifications, are not intended to change the legal requirements for removing designated uses under existing state and federal law. No part of the proposed rulemaking from ADEQ's Initial Petition or the proposed revisions based on the public comments received abdicate authority given to the Commission to develop water quality standards for the State.

Comment 7: The Environmental Protection Agency, Region 6 requests a response to the following questions in order to address "difficult questions that have arisen during the Agency's review of the proposed amendments...."

1. Other than the bacteria criteria in Regulation 2.507, are there any other criteria specifically associated with the ERW, ESW, or NSW designated uses which are not also associated with the fishery or recreation designated uses?
2. Does the State consider the ERWs, ESWs, and NSWs categorical identifications for waters that receive protection under Regulation 2.203 ("Tier III") of the State's antidegradation policy, designated uses as defined in 40 CFR Part 131.3(f), or both?

Response 7:

1. No, Regulation No. 2 does not currently contain any other water quality criteria that are specifically associated with ERW, ESW, or NSW designated uses. In Regulation No. 6, National Pollution Discharge Elimination System, permit holders must meet specific effluent limits for discharges to an ERW, ESW, or NSW.
2. Reg. 2.203, as part of the antidegradation policy found in Arkansas' water quality standard, identifies ERWs, ESWs, and NSWs as "high quality waters [that] constitute an outstanding state or national resource" and provides that those designated uses are protected by "(1) water quality controls, (2) maintenance of natural flow regime, (3) protection of instream habitat, and (4) encouragement of land management practices

protective of the watershed.” ERWs, ESWs, and NSWs are also designated uses as defined in 40 C.F.R. Part 131.3(f).

Comment 8: The proposed changes have been driven by one water district’s desire to dam Lee Creek, not by a need to develop ERWs for drinking water supplies.

“It has been assumed that this process has been driven by the need to make some modification in existing ERW rules so that, should a real need for water supply exist, it might be possible to consider using an ERW to meet this need. Unfortunately this is not what has driven this process. It has been driven by the fact that one water district in the state wants its own water supply which it can control even though numerous alternatives for water supply exist, including the fact that they are currently supplied water from a system that can furnish their needs for many years into the future....

Although some of the language is appropriate and should be adopted, the part which allows purposes other than water supply to be used to justify such things as major dams on ERWs should be modified. If the modification is accepted by the Commission without some modification, the protection of ERWs will have been needlessly gutted. And all of this will have been done because one water district simply wants (does not need) its own water supply.”

-- Joe F. Nix (emphasis in original)

“I am well aware that ADEQ has repeatedly claimed that loosening ERW restrictions has nothing to do with Lee Creek, but the fact that someone has brought illustrations of a dammed Lee Creek to several of the informational meetings indicate that Lee Creek is involved.”

--Kim Little

“In this case, however, River Valley Regional Water District in Van Buren has good alternative choices for water from several sources and therefore should not be permitted to cause changes to Regulation 2 that can needlessly and permanently put all ERW streams at risk.”

--The Ozark Society (emphasis in original)

Response 8: ADEQ acknowledges the comments.

Comment 9: The State should create a comprehensive state water plan and encourage regional planning for water supply needs.

“I would like to point out that the State of Arkansas should be moving toward regional planning to insure sound water supplies for communities across the state. We simply cannot afford a dedicated water supply for every community which wants (not needs) one.”

--Joe F. Nix

“If these communities worked together to develop a truly regional water supply, everyone would benefit from having all the water needed, beyond the foreseeable future. Industry would be attracted to communities with abundant water, along the Arkansas River, with barge, railroad and interstate transportation infrastructure already in place.”

--The Ozark Society (emphasis in original)

Response 9: ADEQ concurs. ADEQ encourages regional cooperation for water supply systems, as well as wastewater treatment systems.

Comment 10: The Environmental Law and Policy Center and the Arkansas Chapter of the Sierra Club submitted a comment letter related to “Arkansas’ apparent lack of ‘implementation procedures’ for its Tier 2 antidegradation policy at Reg. 2.202” and other issues not related to proposed amendments to Regulation No. 2.

Response 10: ADEQ acknowledges this comment; however, neither Reg. 2.202 nor any other sections cited in the comment letter have been amended as part of this rulemaking. Pursuant to Regulation No. 8.3.9, Amendment of Regulations, the Commission’s deliberation regarding a proposed rulemaking is limited to those amendments that were included in the public notice, which reflects the proposed amendments contained in ADEQ’s Second Amended Petition to Initiate Rulemaking.

Comment 11: ERWs, ESWs, and NSWs provide habitat for wildlife, including rare and endangered species.

“[Data from ANHC databases] indicates 148 aquatic or semi-aquatic species of conservation concern are supported in ERW, ESW, and NSW streams. At least ten of these species are listed as endangered or threatened by the U.S. Fish and Wildlife Service. Many more rare species are supported in habitat adjacent to these streams. Eleven natural areas on which the ANHC holds legal interest are located within these stream corridors. The ERW, ESW, and NSW designations have proved to be a useful tool to aid in the conservation of rare species and protection of natural areas.”

--Arkansas Natural Heritage Commission

“If the proposed changes are approved by the Commission, the Service would request that EPA initiate Section 7 consultation under [the Endangered Species Act] for all ERWs, ESWs and NSWs in the state prior to approval under section 303(c) of the [Clean Water Act]. The Service believes these changes as they are currently proposed could significantly impact approximately 30 receiving streams and ‘may affect’ multiple listed species. Quantifying the potential direct, indirect, and cumulative effects of the proposed changes to all receiving streams in multiple watersheds, and their associated listed species, would result in a complex and lengthy consultation process.

In addition to these concerns the Service proposes that ADEQ, APCEC, and EPA cooperate to revise Regulation No. 2 through this triennial review process and designate all streams, stream segments, and lakes inhabited by threatened and endangered species as ESW streams to ensure adequate protection and propagation of these species and fish, shellfish, and wildlife in accordance with 66 Fed. Reg. 11202, VIII.(A)(2)&(B). The Service encourages EPA and the State to adopt these special protective designations where Federally-listed or proposed threatened and endangered species are present to provide the utmost protections against potential disturbance or take.”

--U.S. Fish and Wildlife Service

Response 11: ADEQ acknowledges that ERWs, ESWs, and NSWs provide habitat for rare, endangered, and threatened species. ADEQ believes that the proposed changes address this concern and provide a balanced approach that will protect the environment, as well as providing drinking water for citizens of Arkansas.

Comment 12: There are alternatives to creating large impoundments to create drinking water supplies.

“We respectfully request that the Arkansas Pollution Control and Ecology Commission not adopt the proposed changes to Regulation 2.310 because we believe the development of a new, large impoundment is not needed to deliver drinking water at this time to any Arkansas community. Arkansas has a tremendous amount of water and we should better utilize existing reservoirs and large rivers first....

We believe drinking water can be obtained from Arkansas’ Extraordinary Resource Waters (as is already the practice on several rivers) without building large and costly reservoirs that would significantly alter the important habitats and other values provided. Economically viable alternatives to new, large impoundments exist to provide safe, clean water for household use and industry. New technology for the treatment of water (such as membrane filtration and collector wells) is available for large rivers. Low head instream weirs that pipe water to storage basins during times of high flow can be used on Extraordinary Resource Waters without degrading their many other values.”

--The Nature Conservancy of Arkansas

“The outstanding water quality of ERWs, ESWs, and NSWs make some of these waterbodies ideal sources of drinking water, but only if water can be utilized without degrading the water quality and biological diversity of these aquatic ecosystems.”

--David Lyon

“[W]e believe that Arkansans have not yet begun to manage water well. We believe that should happen before consideration of damming Extraordinary Resource Waters (ERW). At present municipalities and citizens have been ignoring the real cost of water depletion and pollution as a consequence of our activities. By ignoring and postponing these issues we are ultimately increasing the cost of water by degrading and depleting our water. This undermines our health and economics. It seems we are trying to meet insatiable demands by continuously expanding supply instead of looking for ways to reduce the amount of water we use to meet household needs, grow food and produce material goods.”

--Al and Gay Vekovius

Response 12: ADEQ concurs. Currently, Appendix A of Regulation No.2, lists all Outstanding Resource Waters for use as a domestic water supply. In addition, Outstanding Resource Waters can and are currently being used as domestic water supplies without adversely impacting the natural flow regime or instream habitat of a free flowing stream. Regulation No. 2 currently allows Outstanding Resource Waters to be used as domestic water supply as long as the conditions of the following sections are met: Reg. 2.201 – Existing uses, “existing instream

water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected”, and Reg. 2.203 – Outstanding Resource Waters, “where high quality waters constitute an outstanding state or national resource, such as those waters designated as extraordinary resource waters, ecologically sensitive or natural and scenic waterways, those uses and water quality for which the outstanding waterbody was designated shall be protected by (1) water quality controls, (2) maintenance of the natural flow regime, (3) protection of instream habitat, and (4) encouragement of land management practices protective of the watershed.” Further, pursuant to Reg. 2.305 – Short Term Activity Authorizations, “the Director may authorize, with whatever conditions deemed necessary and without public notice, short term activities which might cause a violation of the Arkansas Water Quality Standards.” Finally, pursuant to § 401 and § 404 of the Federal Clean Water Act, the installation of a proposed structure that will utilize water from Outstanding Resource Waterbodies, could be permitted.

Example of the use of ERWs as drinking water supplies, is the Middle Fork of the Saline River, which currently serves as a drinking water supply for Hot Springs Village, and the Saline River, which currently serves as a drinking water supply for the City of Benton. In both instances, weirs and offsite storage basins allow access to the water as a drinking water supply. Although these weirs may pre-date the ERW designation, the construction of these devices are not prohibited today under state law, if the proposed structure does not constitute a “significant physical alteration of the habitat.” (*See* Reg. 2.304). If such a demonstration can be made, then the applicant must obtain a short term activity authorization as set forth in Section 2.305 of Regulation No. 2. Under Section 2.305, a short term activity, such as construction, which may cause a violation of the water quality standards, can be authorized by the Director where the proposed activity is “essential to the protection or promotion of the public interest and that no long-term impairment of beneficial uses is likely to result from such activity.” The construction of features such as a low-head weir or piping to offsite storage basins designed to provide drinking water would no doubt meet the requirement of an activity essential to the promotion or protection of the public interest and, if designed properly, could be constructed in such a way to ensure that no long-term impairment of beneficial uses results from this construction.

Comment 13: The construction of a reservoir on a free-flowing ERW, ESW, or NSW stream should be “solely” for drinking water purposes.

“The optimal way to ensure a low-cost supply of high-quality drinking water is to start with a pristine drinking water source and then protect and manage that source solely for drinking water purposes. Drinking water sources that have multiple uses, such as Beaver Lake, are more susceptible to water quality degradation from increased loadings of organics, sediment, nutrients and other pollutants, primarily from anthropogenic sources, and from the necessity to operate and manage the resource for competing and sometimes conflicting interests. These factors often lead to increased treatment costs.”

--Beaver Water District

“The amendment language calls for the removal of ERW status if the construction of a reservoir is used ‘primarily’ for domestic water supply. This language will certainly bring much litigation and weaken the protection of ERW status. Will a stream lose its ERW status based on an application requesting 40% domestic water supply; 20% foreign water supply; 20% irrigation;

and 20% recreation? How would these percentages be calculated anyway to determine ‘primary’ use?”

--Robert P. Gminski

Response 13: ADEQ has revised the proposed rulemaking based on the comments received during the public comment period to address the construction of a reservoir under Reg. 2.310 “solely” for drinking water purposes.

Comment 14: Several County Conservation Districts submitted similar restatements of the following comments.

- “1. The state should never relinquish their sovereignty to federal control governing water.
2. Water body use designations were never intended to be permanent, but subject to review.
3. Local governments such as the quorum court, county judge, and the soil and water district should have the final say in any change in water body designations. These decisions should be made after economic impact studies and input from local land owners with the understanding that any discussion concerning water body designation would have impact on land use, also.
4. The requirements for adding water bodies to a designation should be as strict as removing a water body from a designation.
5. More authority is being given to the director and department and less to the commission.”

--Boone County Conservation District

Response 14: The Department respectfully disagrees with the Districts’ interpretation of state law and the Clean Water Act concerning state sovereignty. The federal government has given the responsibility for developing water quality standards to the States (33 U.S.C. §1313). Arkansas has delegated that responsibility to the Arkansas Pollution Control and Ecology Commission (Ark. Code Ann. §8-4-202(b)(3)).

Amendment 55 of the Arkansas Constitution reorganized county government in Arkansas and revised the jurisdiction of county courts as originally found in Article 7, § 28 of the Arkansas Constitution. Section 1 of Amendment 55 lists the powers of quorum courts. A county, acting through the Quorum Court, may only exercise legislative authority that is not denied by the Constitution or by law. Ark. Code Ann. §14-14-805 specifically lists the powers that are denied to the county quorum courts. Ark. Code Ann. §14-14-805(13) denies the county the power to enact any ordinance contrary to the general laws of the state. Also, Ark. Code Ann. §14-14-408 requires that any legislative authority exercised by the county be consistent with state laws and administrative regulations.

Through the Clean Water Act, the State of Arkansas was granted legislative authority over the establishment of water quality standards for waters of the State. Any petition that is submitted to the Commission to adopt or amend the State’s water quality standards is subject to public notice and comment. Local governments and landowners are encouraged to participate and provide

input to ADEQ and the Commission, which is invaluable in the decision-making process. In addition, the procedure found in proposed Reg. 2.311, to add the designated uses of ERW, ESW, and NSW, seeks the input of local governments.

Federal and state law provides limited circumstances for the removal of designated uses. Under Regulation No. 2, as it currently exists, the Commission has clearly and repeatedly stated a designated use cannot be removed if it is an existing use (Reg. 2.201, 2.303, and 2.306). First, Reg. 2.201 states that “Existing uses...shall be maintained and protected.” Second, if the use to be removed is a fishable/swimmable designated use, it may not be removed if it is an existing use (Reg. 2.303). (In fact, it may be removed if it is not an existing use, only if it is also not an attainable use for one of six specified reasons.) Under Reg. 2.306, to remove any use *other than fishable/swimmable*, a petitioner must, among other things, submit *documentation showing that the use to be removed is not an existing use*. This section allows uses other than fishable/swimmable uses to be removed “to accommodate important economic or social development in a local area.”

ADEQ believes that the requirements for designating a waterbody as an ERW, ESW, or NSW are comparable and consistent with the requirements for removing a designated use of ERW, ESW, and NSW.

ADEQ respectfully disagrees that more authority has been given to the Director and the Department and less to the Commission. Pursuant to both Regulation No. 8 and the proposed changes to Regulation No. 2, any decision to designate a waterbody as an ERW, ESW, and NSW or to remove such a designation must be approved the Commission. In addition, the proposed revisions to Reg. 2.130 specifically give the Commission the authority to make decisions regarding the removal of a designated use of ERW, ESW, or NSW to construct a domestic water supply reservoir.

Comment 15: Several commenters supported the proposed changes to Reg. 2.304 as those changes provided a procedure for using ERWs, ESWs, and NSWs without any significant physical alteration of the waterbody.

“There are many environmentally-friendly technologies such as low-head weirs that can be used to extract drinking water from streams without significantly disrupting the natural flow regime, aquatic habitat, or biogeochemical dynamics. Therefore, I support Regulation 2.304, “Using ERWs, ESWs, or NSWs Without Impairing the Water Quality, Natural Flow Regime, or Habitat of Fish, Shellfish, or Other Forms of Aquatic Life”, and I believe the Technical Report Guidelines, Exhibit H, is satisfactory for determining if a proposed project will qualify under this regulation section. However, large impoundments are highly destructive to streams and often result in irreversible changes to water quality, flow regime, and aquatic habitat. If an ERW, ESW, or NSW was impounded, then it could lose the very qualities that made it an extraordinary waterbody.”

--David Lyon

“We have no serious objections to changes to Section 2.304 providing for the physical alteration of a water body habitat **if it does not impair water quality, the natural flow regime, or the**

habitat of fish, shellfish, or other forms of aquatic life, and if there is no feasible alternative to the proposed alteration project.”

--The Ozark Society (emphasis in original)

“We support language which outlines an ecologically sensitive method for obtaining necessary drinking water from existing ERWs without delisting them.”

--Arkansas Canoe Club

Response 15: ADEQ concurs.

Comment 16: The changes have been a waste of taxpayer’s money if the EPA cannot approve the changes.

“One has to wonder if the EPA will permit streams to be removed from the ERW list. If not, we may be wasting time and money to even talk about it.”

--Al and Gay Vekovious

Response 16: ADEQ acknowledges the comment.

Comment 17: ERW designations should be limited.

“ERW designations should be limited to wildlife refuges, state parks, national parks, publicly owned or managed lakes and national or state forests. Perpetual conservation easement areas and land trust areas could also be included. Rights of ways for roads and bridges should be exempted from protective ERW regulations. Water bodies bordered by private land, that has not been set aside in a perpetual easement or trust, should not receive ERW designation. All ERW designations that are presently bordered by private lands should be set aside immediately.”

--Jane Williams

Response 17: ADEQ respectfully disagrees. The history of the extraordinary resource waters has been well documented by ADEQ. In 1988, the Commission changed the name from “AA” streams to Extraordinary Resource Waters during the Triennial Review Process and added additional waterbodies to the list. At that time, the Commission adopted the definition of Extraordinary Resource Waters as: “This beneficial use is a combination of the chemical, physical, and biological characteristics of a waterbody and its watershed which is characterized by scenic beauty, aesthetics, scientific values, broad scope recreation potential and intangible social values.” The waterbodies that were candidates for designation as ERWs were nominated by staff from state and federal agencies, such as the Arkansas Department of Parks and Tourism, Arkansas Game and Fish Commission, Arkansas Natural Heritage Commission, Arkansas Scenic Rivers Commission, U.S. Fish and Wildlife Service, Environmental Protection Agency and ADEQ. Using existing data at that time, including but not limited to, water quality data, threatened and endangered species data, recreational use data and other available information and input, the staff at ADEQ incorporated the list of candidate waterbodies into Regulation No.2.

Comment 18: The term “watershed” should be deleted from Regulation No. 2.

“It would be best for the term “watershed” to be deleted from the document. If that is not possible, the term “watershed” should be defined more critically. The definition should limit the scope of a watershed to the surface areas within the boundaries of public land or a perpetual conservation easement or trust wherein the water body lies. As currently proposed the use of watershed would make ERW designation a land management tool in addition to a water quality tool. This is not acceptable and probably not lawful.”

--Jane Williams

“No proposed language revision for Reg. 2 can make it lawfully acceptable as long as the definition for ERW includes the ‘watershed.’ Tying land use **control** to blanket water quality standards is unacceptable and unworkable in a free country. Site-specific controls governed by the local county governments are the only workable solution.”

--Several commenters signed a petition that included this comment.

Response 18: The term “watershed” is a scientific term with an accepted technical definition.

Comment 19: The Commission needs to provide better public notice regarding Regulation No. 2.

“The Commission needs to do a better job of announcing meetings and gathering input from stakeholders. Holding ten meetings to hear comments and testimony is nice, but how many stakeholders know about the meetings? Every land owner who may be involved in changes to Regulation No. 2 should be informed by mail about their opportunity to voice their opinion.”

--Jane Williams

Response 19: ADEQ respectfully disagrees with the comment. ADEQ has met all federal and state requirements regarding public participation. 40 CFR § 131.20 (a) State Review requires, “the State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.” 40 CFR § 131.20 (b)– State Review and Revision of Water Quality Standards Public Participation requires, “the state shall hold a public hearing for the purposes of reviewing water quality standards, in accordance with provisions of State law, EPA’s water quality management regulation (40 CFR § 130.3(b)(6)) and public participation regulation (40 CFR part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.”

Likewise, Regulation 8.3.1, Public Notice, sets forth the administrative procedures ADEQ and the Commission must follow regarding a proposed rulemaking decision. Reg. 8.3.1 states, “Prior to the adoption, amendment or repeal of any regulation, the Commission shall give at least twenty (20) days notice of a public hearing on the proposed rulemaking decision.” Reg. 8.3.2 requires that the notice “shall be mailed to all persons requesting advanced notice of rulemaking and shall be published in appropriate industry, trade, professional or public interest publications chosen by the Commission and at least twice in a newspaper of statewide circulation.”

As described in Part II of this Responsive Summary, ADEQ offered ample notice and many opportunities for public participation in this rulemaking decision above and beyond the minimum

legal requirements. The Department cannot compel nor has any control over the degree to which the public, local governments, state and federal government agencies, and other interested groups participate in the Triennial Review process.

Comment 20: Decisions regarding ERWs should be made by local citizens.

“Those who live within the county of proposed ERWs should make the decisions regarding those bodies of water. County Conservation Districts, Land Use Policy Planning Advisory Committees, and Quorum Courts should have authority for determinations in water quality. A local board understands the local culture, customs, economy, heritage, and needs of a county far better than some bureaucratic agency in Little Rock or Washington, D.C. These local boards should have final determination on ERWs in their county.”

--Jane Williams

“The State Legislature, the local conservation districts’ board, or the local Quorum Courts are the appropriate governing bodies to determine any addition or removal of designated use surface water. The ADEQ or the PCE Commission do not, nor should they have, the authority to rule on the feasibility of alternate water supplies, reservoir construction, or drinking water....

The State Legislature or the voters of our state are the only ones that have the authority to change any water right or use. No group or individual has or should have the right to petition a change to any right or use. This most likely would be a constant, expensive, and unnecessary proceeding for the people of our state.”

--State Rep. James Norton, District 85

Response 20: ADEQ understands that local communities have a vested interest in decisions regarding water quality and is open to the concerns of any local community. The procedure proposed in Reg. 2.311 specifically seeks the input of local governments in determining whether or not a designated use of ERW, ESW, or NSW should be added to a waterbody.

However, ADEQ also realizes that maintaining good water quality is important to all Arkansans. Tourism and recreation in areas of pristine water quality supports the economy for the entire state. ADEQ is charged with protecting the environment for all Arkansans and must balance many interests. State law and the federal Clean Water Act give ADEQ final authority over setting water quality standards for the entire state.

The federal government has given the responsibility for developing water quality standards to the States (33 U.S.C. §1313). Arkansas has delegated that responsibility to the Arkansas Pollution Control and Ecology Commission (Ark. Code Ann. §8-4-202(b)(3)).

Amendment 55 of the Arkansas Constitution reorganized county government in Arkansas and revised the jurisdiction of county courts as originally found in Article 7, § 28 of the Arkansas Constitution. Section 1 of Amendment 55 lists the powers of quorum courts. A county, acting through the Quorum Court, may only exercise legislative authority that is not denied by the Constitution or by law. Ark. Code Ann. §14-14-805 specifically lists the powers that are denied to the county quorum courts. Ark. Code Ann. §14-14-805(13) denies the county the power to

enact any ordinance contrary to the general laws of the state. Also, Ark. Code Ann. §14-14-408 requires that any legislative authority exercised by the county be consistent with state laws and administrative regulations.

Through the Clean Water Act, the State of Arkansas was granted legislative authority over the establishment of water quality standards for waters of the State. Any petition that is submitted to the Commission to adopt or amend the State's water quality standards is subject to public notice and comment. Local governments and landowners are encouraged to participate and provide input to ADEQ and the Commission, which is invaluable in the decision-making process.

Comment 21: One commenter stated that regulations related to point source pollution from city waste water need to be studied.

Response 21: ADEQ acknowledges the comment. However, regulations regarding point source pollution are not amended by this rulemaking. Pursuant to Regulation No. 8, §3.9, Amendment of Regulations, the Commission's deliberation regarding a proposed rulemaking is limited to those amendments that were included in the public notice, which reflects the proposed amendments contained in ADEQ's Second Amended Petition to Initiate Rulemaking.

Comment 22: Several commenters expressed support for the addition of Reg. 2.311, which provides for a procedure to designate ERWs, ESWs, or NSWs.

"As we review water quality standards in Arkansas, I want to encourage you to provide more protection to our streams in general. I am concerned we have added 45 streams to our impaired list and yet no meaningful management of quality or quantity of ground water or surface water is taking place....I support the proposed changes that allow ERW streams to be added...."

--J.C. Crouse

"ASCA supports the proposed changes to Regulation 2 that would allow Extraordinary Resource Waters (ERWs) to be added to the list of existing ERWs. There are numerous waterbodies that would qualify as new ERWs, Crooked Creek and many more too numerous to name."

--Audubon Society of Central Arkansas

"We also support changes that make it easier to provide ERW designation for water bodies that do not yet carry this designation. We believe that ERW designation serves to PROTECT the rights of property owners on ERWs, by protecting and preserving the quality of the water resource."

--Arkansas Canoe Club

Response 22: ADEQ concurs.

Comment 23: Several commenters stated that ERWs provide many recreational opportunities and support the tourism industry in Arkansas. Several commenters, both from Arkansas and other states, wrote of their own personal recreation on ERW streams.

“Our economy depends on tourists who visit Arkansas from all across the country to enjoy many of the streams, rivers and lakes that enjoy ERW protections. These ecotourists are responsible for tens or hundreds of millions of dollars pumped into the Arkansas economy. Damming or otherwise impairing these incredible resources would severely damage the state’s economy. Consideration must be given to the economic consequences that de-listing, damming or otherwise impairing ERWs would be.”

--Audubon Society of Central Arkansas

“A majority of these designated streams serve as an important economic resource to the state by offering unique recreational opportunities that have been identified in multiple outdoor media sources. The unique recreational opportunity is related to the fact that streams having these qualities and values are relatively and increasingly rare in the state and the nation. In addition, the fact that these streams have been designated as such indicates that they have important economic, scientific, aesthetic and/or recreational values that are deserving of the highest standards, protections, and scrutiny prior to being significantly altered.”

--U.S. Fish and Wildlife Service

Response 23: ADEQ concurs with the comments. ADEQ has revised the proposed rulemaking based on the comments received in the public comment period. ADEQ believes that the proposed rulemaking, with the revisions, will strike a fair balance of protection of existing ERW, ESW, and NSW resources and providing potential domestic drinking water supplies.

Comment 24: Proposed changes to Regulation No. 2 may put ERWs at risk.

“ADEQ states at numbered paragraph 14 of its Second Amended Petition that this proposed change ‘will not only make a process available for developing drinking water supplies, but is applicable to all proposed projects on ERWs, ESWs or NSWs which will not impair these designations.’ Not only does the proposed change to Reg. 2.304 allow for physical alteration of habitats within ERW for **any** purpose, but it does so by establishing a procedure that does not require a demonstration that all of the defining characteristics of an ERW are not adversely impacted....Any changes to Reg. 2.304 should be narrowly drafted to allow ERWs to be physically altered without removing the designated use **only for drinking water supply purposes** (for example, by building a low-head weir) and should require a demonstration that the scenic beauty, aesthetics, recreational and social values will not be impaired in addition to showing that the water quality, natural flow regime, and the habitat of fish, shellfish or other forms of life will not be impaired.”

--Roger C. Montgomery (emphasis in original)

Response 24: ADEQ acknowledges the comment. Reg. 2.304 is not a new provision; it has always allowed the use of ERWs, ESWs, or NSWs provided that use did not result in a “significant physical alteration of habitat.” The proposed amendments to Reg. 2.304 provide further clarification of what activities are considered “significant” and procedures for making that determination are outlined in the proposed Appendix D. If a determination is made that the proposed activity is not “significant,” the applicant must obtain a short term activity authorization as set forth in Section 2.305 of Regulation No. 2. Under Section 2.305, a short term activity, such as construction, which may cause a violation of the water quality standards,

can be authorized by the Director where the proposed activity is “essential to the protection or promotion of the public interest and that no long-term impairment of beneficial uses is likely to result from such activity.”

Comment 25: Our waterways should not be subject to compromise.

“I understand that the amendments also allow a means to add ERW classification. All this verbiage appears to be language that was ‘settled’ on. Our waterways should not be subject to such ‘settlement’ or compromise between the concerned parties.”

--Robert P. Gminski

Response 25: As described in Part II above, ADEQ has encouraged significant public participation throughout the development of the proposed rulemaking. Many different, even conflicting interests were represented through the diverse workgroup members and the hundreds of comments received during the public comment period. ADEQ revised the proposed rulemaking based on the comments received during the public comment period. The proposed rulemaking, including revisions, is attached as Appendix A. ADEQ believes that, as revised, the proposed rulemaking strikes a fair balance between the competing interests.

Comment 26: Several commenters signed petitions requesting Commission members attend the Harrison public meeting.

“ADEQ’s Minute Order 06-39 reveals that you as a Commission will NOT receive the Public’s written comments until after your final adoption, THEREFORE WE have great desire that a sufficient number of the Commission be present at the Harrison Public Hearing to receive and convey a true sense of the Public’s input into your final decision to adopt or deny the currently proposed revisions to Regulation 2.” (emphasis in original)

Response 26: ADEQ acknowledges the comment. The commenters are incorrect in their interpretation of Minute Order 06-39. The Commission members have the opportunity to review each individual comment at the end of the public comment period (which ended February 5, 2007 in this rulemaking). This Responsive Summary is also provided to the Commission members prior to final adoption. Likewise, the proposed rule changes and the public comments are reviewed by legislative committees prior to final adoption.

Comment 27: Several commenters stated their opposition to proposed changes that would remove the ERW designation.

“We oppose those changes to Regulation 2 that make it easier to remove ERW designation from any water body or that make it easier to build a dam on, or otherwise impound an ERW.”

--Arkansas Canoe Club

Response 27: ADEQ acknowledges the comments.

Comment 28: Several commenters stated their belief that ERWs should be protected for future generations.

“Our belief and desire is that the children, grandchildren and succeeding generations of Arkansans should have the right to enjoy the unique beauty of free-flowing water in our most pristine streams. It is a quality of life issue.”

--The Ozark Society

Response 28: ADEQ concurs.

Comment 29: Several commenters signed a petition that stated that the proposed changes to Regulation No. 2 do not address “long-term activities.”

“Nowhere in the proposed Reg 2 revisions is the matter of ‘long-term activities’ addressed for the ERW watershed which carry the strictest of regulations. Since certain ‘short-term activities’ which might cause a violation of the Arkansas Water Quality Standards’ have to be ‘authorized’ by ADEQ, why is there no mention whatsoever of which ‘long-term activities’ are to be allowed or disallowed ?! ‘Long-term activities’ would include our homes, our travel, our industries, our timber and agricultural interests, our septic systems, our developments, our roads, etc. etc (sic). How long are these ‘activities’ to be allowed in the huge portions of ERW watersheds that cover our state? It is incomplete for Reg. 2 to address ‘short-term activities’ without also addressing ‘long-term activities’.” (emphasis in original)

Response 29: ADEQ acknowledges the comment. Several of the activities mentioned by the commenters (e.g. septic systems, developments, roads, and industries) are regulated by other statutes and regulations that are administered by ADEQ or other agencies.

Comment 30: Several commenters signed a petition that the proposed changes to Regulation No. 2 are too cumbersome and contradictory.

“The entire Reg. 2 proposal is entirely too cumbersome and contradictory for APC&E to risk assuming legal responsibility for in view of the above mentioned errors and inconsistencies and in consideration of the haste in which it was ‘revised’ in the final hours of September 21, before the September 22 submittal to the Commission.”

Response 30: ADEQ respectfully disagrees with the comment.

Comment 31: Several commenters signed a petition that stated, “Requirements for *adding* ERW’s are much less demanding than requirements for *removing* ERW’s. Such imbalance should not be allowed in a bureaucratic promulgation.” (emphasis in original)

Response 31: ADEQ acknowledges the comment and respectfully disagrees. There are many competing interests when addressing issues such as water quality and the use and designation of ERWs, ESWs, and NSWs. Based upon the input of the diverse workgroup members and a review of water quality standards across the United States, ADEQ believes that the proposed rulemaking balances all of these competing interests.

Comment 32: ERW streams serve a critical scientific purpose.

“Beyond the protection of endangered species these water bodies also have critical scientific importance in establishing and defining baseline conditions for water quality in Arkansas. These streams serve as benchmarks by which all other water bodies throughout the state are assessed and it is these streams the exemplify the stated objective of the Clean Water Act ‘to restore and maintain the chemical, physical, and biological integrity of the Nations’ waters.’”

--U.S. Fish and Wildlife Service

Response 32: ADEQ concurs. ERWs, ESWs, and NSWs provide numerous environmental benefits including scientific values. These waters serve as “reference streams” and water quality, macroinvertebrate, and other scientific data collected from these streams provide useful information for the assessment of other waters within the same ecoregions.

Comment 33: The proposed changes would substantially reduce protection for ERWs and could possibly set a precedent nationwide.

“The proposed changes would have far reaching implications and would substantially reduce protections for ERWs, ESWs, and NSWs throughout the state of Arkansas and potentially set a precedent for the entire nation.”

--U.S. Fish and Wildlife Service

Response 33: ADEQ acknowledges the comment. ADEQ has revised the proposed rulemaking based on the comments received during the public comment period. ADEQ believes that the proposed rulemaking, as revised, will clarify current regulations regarding the use of the ERWs, ESWs, and NSWs as domestic drinking water supplies. The proposed rulemaking is not intended to reduce protection for existing ERWs, ESWs, and NSWs.

Comment 34: Dams have many impacts to streams and their biota, including stream fisheries.

“Not only do impounded streams change from flowing water to deep water habitat throughout the zone of inundation, but streams are impacted for miles up and downstream of the impoundment. Fish and wildlife populations are fragmented and movement is prevented throughout the length of the stream by the impassable barrier. Upstream and downstream fluctuations in flow regime; scouring; seasonal dissolved oxygen depletion; sustained inundation; and water temperatures extremes cause species assemblages to change, with many sensitive species becoming extirpated. A substantial portion of the energy base in streams is from leaf litter and other woody debris in the headwaters. Dams disrupt the natural connections of both energy flow and population movement that strongly influence the continuity of stream ecosystems otherwise known as the River Continuum Concept. Additionally, hypolimnetic releases cause major faunal changes downstream of impoundments, with virtually no native species able to survive the coldwater conditions. The increased flow fluctuations that often occur below dams result in declines in aquatic plants, macroinvertebrates, and fishery productivity; decreased reproductive success of fish; and disruption of fish migrations.

The proposed changes would allow dams to be built on ONRWs. This proposal, if adopted, would allow dams to be built that would adversely impact the water quality necessary to maintain and protect ONRWs in Arkansas. Damming a free flowing ONRW to form a reservoir would destroy the stream fishery. Stream fisheries are both a designated and an existing use for all Arkansas streams. Once a dam alters the natural flow regime of an ONRW to form a reservoir, the natural flow regime of the stream is no longer maintained and the instream habitat is not protected. Without maintaining the natural flow regime and protecting the instream habitat and fisheries, the existing uses and water quality of the ONRW cannot be protected, which violates the requirements of both the state and federal anti-degradation policies.”

--U.S. Fish and Wildlife Service

Response 34: ADEQ concurs with the comments regarding the adverse impacts of dams on free-flowing streams.

B. Specific Recommendations for Changes to the Proposed Amendments

REG. 2.304 and APPENDIX D

Comment 35: The Arkansas Association of Conservation Districts submitted the following comments on the proposed amendments to Reg. 2.304.

“A. The procedure should be revised to make it clear that the procedure is optional, and that a party is not required to ask for such a determination before undertaking use of an ERW, ESW, or N&WR (sic) that does not significantly alter the stream’s habitat. If this point is not clarified, every time someone proposes to go fishing, water cattle, go canoeing, etc., they would have to file a request for a determination with the Director.

B. The amending language includes a provision, proposed subsection (A)(2), which would require the Director to disallow a proposed use of an ERW, ESW, or N&SW, if ‘there is any feasible alternative to the proposed use.’ We think this subparagraph should be deleted. The proposed new procedure calls for a rigorous examination of the impact that a proposed use would have on the habitat of the stream in question. If an applicant demonstrates that its proposed use will not significantly alter the habitat of the stream, the presence or absences of alternatives should be irrelevant.”

Response 35: ADEQ respectfully disagrees with the Association’s interpretation of this provision and declines to adopt the proposed changes. Reg. 2.304 is not a new provision; it has always provided for the use of ERWs, ESWs, or NSWs provided that use did not result in a “significant physical alteration of habitat.” The proposed amendments to Reg. 2.304 provide further clarification of what activities are considered “significant.”

If a determination is made that the proposed activity is not “significant,” the applicant must obtain a short term activity authorization as set forth in Section 2.305 of Regulation No. 2. Under Section 2.305, a short term activity, such as construction, which may cause a violation of the water quality standards, can be authorized by the Director where the proposed activity is “essential to the protection or promotion of the public interest and that no long-term impairment

of beneficial uses is likely to result from such activity.” This procedure has been used for many years with little confusion regarding the scope of activities covered by Reg. 2.304 and 2.305.

Comment 36: “Appendix D is needed in support of Section 2.304.” – The Ozark Society

Response 36: ADEQ concurs.

Comment 37: The Environmental Protection Agency, Region 6, submitted the following comment regarding the proposed changes to Reg. 2.304.

“Currently, the definition for ‘impairment’ in Regulation 2.106: ‘Impairment: Exceedences of the water quality standards by a frequency and/or magnitude which results in any designated use of a waterbody to fail to be met as a result of physical, chemical or biological conditions.’ However, the word ‘impair’ in proposed Regulation 2.304 appears to refer to the common usage of the word, meaning ‘to make worse.’ To avoid potential confusion, the Commission may want to substitute ‘adversely affect’ for ‘impair’ in Regulation 2.304

Response 37: At this time, ADEQ respectfully declines to adopt this proposed change.

REG. 2.310 and APPENDIX E

Comment 38: The Arkansas Conservation Partnership submitted the following proposed revisions to Reg. 2.310 (with accompanying explanations):

(A) An extraordinary resource water, ecologically sensitive waterbody, or natural and scenic waterway designated use may be removed from a free-flowing waterbody for the purpose of constructing a reservoir to provide a domestic water supply, if it can be demonstrated that:

- (1) the sole purpose for the funding and construction (including but not limited to its capacity) of the reservoir is to provide a domestic water supply;*
- (2) no feasible alternative is available to meet the domestic water needs of the citizens of the State of Arkansas; and*
- (3) the designated use should not be maintained based upon the criteria set forth in Appendix E.*

The limitation in Subsection A(1) does not prohibit uses of the reservoir that are consistent with the use of domestic water supply. (italics in original)

(A)(1): “The current language is flawed in that it focuses on the post-construction use of the reservoir rather than the purpose for constructing the reservoir in the first place. There appears to be a general consensus that, once constructed, a reservoir could be used for other purposes (boating, fishing, etc.) so long as those uses did not impair or interfere with the reservoir’s primary use as a domestic water supply....If the purpose of *constructing* the reservoir includes more than domestic water supply, then the impact on the water body most likely will be greater....

In short, if the sole purpose of the proposed regulation is to provide domestic water supply, then the sole purpose of the proposed reservoir should be to provide domestic water supply.”

(A)(2): “The current language is confusing in that it focuses on “alternative water supply.” To begin with, the feasible alternative may not be another water supply. Instead, it may be conservation measures to reduce water usage. Or, it may be developmental controls to direct development into less environmentally sensitive areas with existing, adequate water supplies. Also the feasible alternative may be the *same* water supply (i.e., the same ERW stream) but drawing water from the waterway by means other than a dam and a reservoir, including low-head weirs and other projects that would be consistent with the proposed revisions to Reg. 2.304.

(A)(3): “As proposed Reg. 2.310 is currently written, under subsection (B)(5), a petitioner seeking to delist an ERW must provide all of the information required in Appendix E to demonstrate that the ERW designation should not be maintained....However, despite the importance of this inquiry and the extensive time and effort required by the petitioner, ADEQ and the interested public, the issue is not even considered by the Commission as proposed Reg. 2.310 is currently drafted....

Without this revision, the proposed regulation makes no logical sense because (a) the fundamental issue of whether the ERW should be maintained is not considered by the Commission and (b) the Petitioner, ADEQ and the public expend significant time, money and effort on an issue that the Commission does not consider.”

-- Hank Bates for the Arkansas Conservation Partnership

Response 38: ADEQ has revised the proposed rulemaking based on this comment and other general comments received during the public comment period.

Comment 39: The Nature Conservancy of Arkansas suggests the following language “which more clearly ties the design and construction of a proposed reservoir to domestic water supply needs and requires a more specific exploration of the feasible alternatives.”

“(A) An extraordinary resource water, ecologically sensitive water-body, or natural and scenic waterway designated use may be removed from a free-flowing water-body for the purpose of constructing a reservoir to provide a domestic water supply, if it can be demonstrated that:

- (1) the controlling purpose for the design and construction of the reservoir is to provide a domestic water supply; however, this requirement does not prohibit any post-construction uses that are consistent with the use of providing a domestic water supply, such as recreation, fishing, sailing, electricity generation, or flood control, and
- (2) no other feasible alternative water supply is available to meet the domestic water needs of the citizens of the State of Arkansas, nor is a feasible alternative available for using this water-body as a water supply to produce a sufficient supply, that does not involve building a reservoir on the extraordinary resource water, ecologically sensitive water-body, or natural and scenic waterway.”

Response 39: ADEQ has revised the proposed rulemaking based on this comment and other general comments received during the public comment period.

Comment 40: “Appendix E should be eliminated.” – The Ozark Society

Response 40: ADEQ has revised the proposed rulemaking based on the comments received during the public comment period. The proposed rulemaking, with revisions, is attached as Appendix A. ADEQ believes that the proposed change to Reg. 2.310(E) addresses this concern and demonstrates the need to include Appendix E as guidance for the Commission in determining whether the designated use of ERW, ESW, or NSW should be maintained.

Comment 41: Several commenters signed petitions that stated the following:

“The proposed added language in the Reg. 2.310 Title appears to cancel out any possible removal of *any* designated uses as it is likely that NO modification can escape being ‘related’ to either the lowest use (fishable/swimmable), or the highest use (ERW). The word ‘related’ needs to be defined in this Title context, and determination needs to be made of the present and future scope of existing ‘relationships.’” (emphasis in original)

Response 41: ADEQ respectfully disagrees with this comment, as staff members responding to the public comments understand it. ADEQ staff members are confused by the reference to the terms “related” and “relationships” in the comment; neither term is included in the title to Reg. 2.310. Reg. 2.310 specifically addresses the removal of the designated uses of ERWs, ESWs, or NSWs for the purpose of constructing a reservoir on a free-flowing stream to provide for a domestic water supply. Each of the designated uses listed in the title of Reg. 2.310 are specifically defined in Reg. 2.302, Designated Uses.

Comment 42: The Environmental Protection Agency, Region 6, submitted the following comment regarding the proposed Reg. 2.310 and the related Appendix E.

“Comment 2. Because the purpose for removing the ERW, ESW, or NSW designated use is the *construct a reservoir*, we suggest revising proposed Regulation 2.310 (A)(2) to state: ‘(2) there are no feasible alternatives of constructing a reservoir in order to meet the domestic water needs of the citizen for the State of Arkansas.’

Comment 3. Proposed language at the Regulation 2.130(C) provides that the Commission, as part of its rulemaking, shall determine whether or not feasible alternative is available. The proposed rule provides no means, however, for the Commission to obtain information relevant to that determination. We thus recommended that two additional categories be added to the application requirements in proposed Regulation 2.310(B). The first is ‘a description of each alternative to reservoir construction the applicant has considered, but rejected as infeasible, together with a brief explanation of the reasons for rejection.’ Second is ‘a feasibility evaluation of any other alternative to reservoir construction as requested by the Director or Commission.’

Comment 4. The Department may wish to consider revising proposed Regulation 2.310 (B)(5) to state: ‘information and supporting documentation as set forth in Appendix E;’. Use the word

“criteria” to describe the type of supporting documentation listed in Appendix E might be confusing.

Comment 5. The Department may wish to consider revising the first sentence at proposed Regulation 2.31(B)(6) to state: “A recommendation to the Commission from the Director whether or not the designated use should be retained based upon a review of the...”

Comment 6. Consistent with comment #2 above, we suggest revising proposed Regulation 2.310(C) to state, ‘The Commission, as part of this rulemaking decision, shall determine whether or not feasible alternatives to constructing a reservoir is available to meet the domestic water needs of the citizens of the State of Arkansas.’

Comment 7. In order to better describe the contents of proposed appendix E, the Department may wish to consider revising the title of Proposed Appendix E to state: ‘Supporting Documentation to be Considered in Determining Whether the Designated Use of Extraordinary Resource Water, Ecologically Sensitive Waterbody, or Natural and Scenic Waterway Should be Retained.’

Comment 8. In a similar manner to Comment #7 above, the Department may wish to consider revising the first sentence of the introductory paragraph in proposed Appendix E to state: ‘The determination of whether a designated use of Extraordinary Resource Water, Ecologically Sensitive Waterbody or Natural and Scenic Waterway should be retained for a given waterbody....’

Comment 9. Proposed Regulation 2.31(B)(6) provides the Director 180 days in order to supply a recommendation on whether or not the ERW, ESW, or NSW designated use should be maintained. In the order to provide consistency with proposed Regulation 2.310(B)(6), we suggest revising the second sentence of the introductory paragraph in proposed Appendix E to state: ‘At least 180 days prior to filing any petition to ...’.

Response 42: ADEQ has revised the proposed rulemaking based on the comments received during the public comment period. The proposed rulemaking, with revisions, is attached as Appendix A. At this time, ADEQ concurs with the changes proposed in Comments 2, 3, 5, 6, and 9 as listed above in this comment. At this time, ADEQ respectfully declines to accept Comments 4, 7, and 8 as listed above in this comment.

REG. 2.311 and APPENDIX F

Comment 43: The Arkansas Association of Conservation Districts suggests the following modification to proposed Reg. 2.311.

“A....We believe [2.311(A)(7)] should be revised to specify which local governmental bodies are relevant, and to require approval of those affected local governments. More specifically, we proposed that 2.311(A)(7) be revised to read as follows:

‘(7) Evidence that the conservation districts and the county governments in each county where the waterbody and any portion of its watershed is located (sic) of requests for

resolution(s) by appropriate local government(s) regarding have approved the nomination of the waterbody as an Extraordinary Resource Water, Ecologically Sensitive Waterbody, or Natural and Scenic Waterway.”

Response 43: ADEQ respectfully declines to adopt the proposed changes. ADEQ understands that local communities have a vested interest in decisions regarding water quality and the Department is open to the concerns of any local community. However, ADEQ also realizes that maintaining good water quality is important to all Arkansans. Tourism and recreation in areas of pristine water quality supports the economy for the entire state. ADEQ is charged with protecting the environment for all Arkansans and must balance many interests.

Comment 44: The Arkansas Association of Conservation Districts suggests the following modifications to proposed Appendix F.

“B. ADEQ’s procedure calls for the proponent of a new ERW, ESW, or N&SW, to file a large amount of detailed information regarding the nominated waterbody’s special environmental attributes....The procedure purports to call for consideration of the economic and other impacts that the nomination may have on the area, but there is no information called for in Appendix F that would supply the Department or the Commission with information regarding those impacts. At a minimum, we believe Appendix F should be revised to require as follows:

A. Proposed Requirement (A) in Appendix F regarding location should require the proponent to file a map delineating not only the location of the waterbody in question, but also all of the watershed for that waterbody.

B. Proposed Requirement (J) in Appendix F calls for the Commission to consider “Impacts the designation may have on current uses, upstream users, downstream users, and potential uses of the waterbody or waterbody segment.” Subsection 2.311(A)(5) calls for the proponent to file a “Statement of potential benefits and impacts of the proposed action.” We believe that these provisions are not adequate to develop a meaningful record on the potential economic and social consequences of a designation[.] At a minimum, we believe these provisions should be revised to require the proponent to submit:

1. A statement detailing the current population of the affected watershed, and how that population is projected to change over the next 20 years;
2. A description of present and projected land use patterns in the affected watershed;
3. A description of riparian land use along and upstream of the nominated waterbody;
4. A description of any present and future uses of the waterbody that might be prohibited or subject to restriction if the nomination is approved;
5. A statement of how the proposed designation may affect, present and possible future uses of riparian land along and upstream of the nominated waterbody;
6. A statement of how the proposed designation may affect present and projected land use patterns and economic activity with the watershed of the nominated waterbody if the nomination is approved;

7. A statement of how the environmental and esthetic qualities of the nominated waterbody might be altered by changes in land use and economic activity along the waterbody and within its watershed if such changes are not prohibited or regulated by Regulation No. 2.”

Response 44: ADEQ respectfully declines to revise the proposed amendments based on this comment, at this time.

Comment 45: “Appendix F is so complex and difficult to follow that it should be rewritten in simple, clear language, even though it mentions important factors to consider before adding a designated use.” --The Ozark Society

Response 45: ADEQ respectfully disagrees and declines to revise the proposed amendments based on this comment. ADEQ believes that Appendix F is sufficiently clear to allow the Commission to receive accurate and appropriate information necessary to making the determination of whether to add the designated use of ERW, ESW, or NSW to a waterbody.

Comment 46: Several commenters signed petitions requesting changes to proposed Reg. 2.311.

- “5. At the proposed Reg. 2.311(A)(3) and (4), description of the *waterbody* and a map of the *waterbody* are required, but not the *watershed*. Such an incomplete requirement would fail to give a true picture of the full impact or nomination for additional ERW’s in our state.
6. At the proposed Reg. 2.311 (A)(7) ‘**requests** for resolution by ... local governments regarding the nomination of ...ERW’s’ is senseless. The Clean Water Act is definite in its **requirements** of local government **involvement** in such matters. The wording of this proposal would allow the gutting of the spirit and intent of that CWA law.
7. At the proposed Reg 2.311 (A)(10), the wording significantly fails to include the requirement of Reg. 8 concerning **the performance of economic impact studies for measures that are “more stringent than federal law requires”**. During the last Triennial Review ADEQ acknowledged that no more ERW’s could be added without the Reg. 8 economic impact study requirement being met. Would ADEQ’s currently proposed language have the effect of negative requirement? It seems so.”
(emphasis in original)

Response 46: ADEQ respectfully disagrees with the above comments. Appendix F, Part J of the proposed rulemaking requires that the party petitioning to add the designation of ERW, ESW, or NSW to a waterbody to submit documentation regarding the “[i]mpacts the designation may have on current uses, upstream users, downstream users, and potential future uses of the waterbody or waterbody segment.” This requirement would certainly give a clear picture of the proposed designation.

ADEQ respectfully disagrees with the commenters’ interpretation of the Clean Water Act regarding local government involvement in establishing water quality standards. Under federal law, local governments are granted every opportunity to participate in the public comment

process. 40 C.F.R. § 131.4 requires states to develop water quality standards and 40 C.F.R. §131.20(a) requires that, "the State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards." Regarding public participation in this review process, 40 C.F.R. §131.20(b) states, "[T]he state shall hold a public hearing for the purposes of reviewing water quality standards, in accordance with provisions of State law, EPA's water quality management regulation (40 C.F.R. 130.3(b)(6)) and public participation regulation (40 CFR part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing." ADEQ believes that the proposed rulemaking adequately provides for local governments to address proposals to add the designated use of ERW, ESW, and NSW to a waterbody or segment of a waterbody.

The proposed changes to Regulation No. 2 will operate in conjunction with the requirements of Regulation No. 8, Administrative Procedures, that are in effect at the time a petition is filed.

Comment 47: The Environmental Protection Agency, Region 6, submitted the following comment regarding the proposed Appendix F.

Comment 10. In a similar manner to [the comment] above, the Department may wish to consider revising the title of proposed Appendix F to state: 'Supporting Documentation to be considered in adding the Designated Use of Extraordinary Resource Water, Ecologically Sensitive Waterbody, or Natural and Scenic Waterway to a Waterbody or Water Segment.'

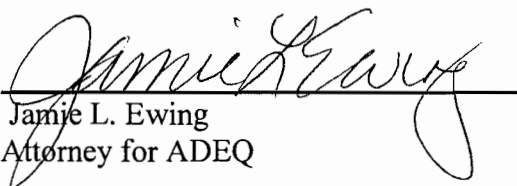
Comment 11. Use the word 'listing' in the introductory statement within proposed Appendix F may be confusing. In order to provide increased consistency with the rest of the proposed amendments to the water quality standards, the Department may wish to revise the introductory statement to provide: 'The Commission shall consider the following supporting documentation in determining whether a waterbody should be designated in Extraordinary Resource Water, Ecologically Sensitive Waterbody, or Natural and Scenic Waterway:.'

Response 47: ADEQ respectfully declines to accept these proposed changes at this time.

Respectfully submitted,

ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY
P.O. Box 8913
Little Rock, Arkansas 72219-8913
(501) 682-0918

By:


Jamie L. Ewing
Attorney for ADEQ

APPENDIX A. LIST OF COMMENTERS

Last Name	First Name
Adams	Linda
Adelman	Michael
Allred	Jo
Ambrose	April
American Fisheries Society	John Jackson
Andrus	Clif
Andrus	Debbie
Appley	Olivia
AR Association of Conservation Dist	James Mitchell
AR Natural Heritage Commission	Karen Smith
Arkansas Canoe Club	Debbie Doss
Arkansas Conservation Partnership	Hank Bates
Audubon Society fo Central AR	Barry Haas
AufderHeide	Mitch
Aune	Wayne
Bahrman III	Thor H.
Bailey	Dot
Balentine	Lucille
Balentine	Sonny
Banderploeg	Anthony
Bartelt	Margaret
Bates	Hank
Beaver Water District	Alan Fortenberry
Beebe	Martha
Beebe Jr.	J. G
Benton County Conservation District	Ronnie McGhee
Berry	William A.
Binns	James
Birge	Carroll
Block	Ashley
Boone County Conservation District	James Widner
Boulden	James
Boulden	Zen
Bowie	Arthur
Boyd	Jay
Brady	Ali
Branch	Rusty
Brasher	Bundy
Brasher	Keb
Brasher	Jennifer
Brenan	Samael
Brewer	John
Brook	Meredith
Brown	Joel
Brown	Gregory A.

APPENDIX A. LIST OF COMMENTERS

Last Name	First Name
Brownstein	Bettina
Bryan	Greg
Bumpers	Phillip
Burks	Karen
Burks	Travis
Burks	Connie
Burks	Lonny
Burns	Jodie
Burris	Bill
Burroughs	Tom
Burroughs	Justin
Busbee	Willie
Butler	Terry
Buys	Beverly
Byrum	Mike
Cain	Phillip
Caldwell	Liz
Caldwell	Leigh
Caldwell	Steve
Callico	Art
Callico	Millie
Campbell	Anne Katherine
Cannon	Patti
Canon	James
Cape	Darrel
Capek	Stella
Carlton	Scott
Carter	Nick
Carter	Kathy
Casey	John
Center	Rick
Center	Ryan
Chadbourn	H. C.
Chadwick	Diana
Chadwick	Travis
Chadwick	Jessica
Chamberlin	Johnnie
Chambers	Doris
Champagne	Brandon
Champagne	Cassie
Chanbers	Linda
Chance	Bobby
Cheshier	Diane & Andy
Chiolino	Mike
Clark	Roxanne

APPENDIX A. LIST OF COMMENTERS

Last Name

Clemens
Cochran
Colgrove
Collins
Coogan
Copenhaves
Coulson
Coulson
Cowan
Cowan
Cowan
Cowan
Cowan
Cowan
Cowan
Coyle
Crook
Cross
Crouse
Crowley
Cutter
Deacon
Devore
Devore
DeVries
Dinan
Dinan
Dixon
Dobbs
Dodson
Dodson
Dorothy
Doss
DuPont
DuPont
DuPont
Dyas
Dye
Dye
Dye
Edding
Edelen
Ellis
Emerson
England

First Name

Randy
Chelsea
James
Lowell
Michael
Justin
Florence
Ben
Jerry
Bonnie
Donald
Kevin
Rhonda
Alicia
Mark
Deb & Bill
Carolyn
Robert
J.C.
Connie
Christopher
J. Barrett
Larry
Joann
Nan
Lana
David
Melissa
Frances
Randy
Emily
Woods
Kate
Donald
Julie
Louise
John
Dianna
Aaron
Leo
Lonnie
Gianell
Mason
Jim
Sam

APPENDIX A. LIST OF COMMENTERS

Last Name	First Name
Eubanks	Tim
Farar	Michael
Farier	Chris
Farm Bureau Boone County	Matt Widner
Farmer	Tim
Farmer	Tina
Feldman	Zachary
Felton	Gayle Elizabeth
Felton	Walter
Fendley	Kevin
Fennell	Ellen
Fennell	Tom
Ferguson	Hubert & Mary
Fichtl	Judy
Findley	Suzanne
Fishel	Carol
Fishel	James
Foley	Theia
Foster	Noel
Foster	Lester
Foster	Brenda
Fowler	Brenda
Fowler	Walter
Fowler	Madge
Fowler	Walter
Fox	Pamela
Fox	Nathan
Frank	Kyle
Franklin County Conservation Dist.	Paul King
Franlis	Donna
Fredrick	Terry
Free	Fran
Freeman	Karen
Freeman	M`
Freeman	Denice
Fritz	John
Fulton County Conservaton District	Bruce Dietsche
Gagen	George
Garner	Nancy
Garner	Nancy
Garrison	Jerol
Garrison	Ronald
Garrison	Judy
Gilligan	Ainslie
Gitelman	Morton

APPENDIX A. LIST OF COMMENTERS

Last Name

Glasier
Glidden
Gminski
Gorman
Grable
Graham
Green
Green
Griffis
Grigg
Griggs
Griggs
Grinder
Grinder
Gryder
Hafs
Hamilton
Hancock
Hanshaw
Hanshaw
Hardin
Hardin
Harris
Harwood
Haverson
Head
Hector
Helms
Helms
Hemmer
Henderson
Henderson
Henderson
Henley
Henley
Henry
Henry
Hensley
Henson
Hess
Heuston
Heye
Hicks
Hicks

First Name

Charles
Joel
Robert
Chris
Sally
Grimsley
David
Judy
Blake
Joan
Bobby
Billy
Shirley
Katie
Bill
Connie
Andy
Don
Neil
Scott
Renee
Susan
Rebecca
Elizabeth
Don
Richard
Ruby
Thomas
John
Travis
Gerry
Nina
Dorothy
Gene
John
Vera M.
Caleb
Wilma
Jimmy
Earl
Jackie
John
Steven
David
David

APPENDIX A. LIST OF COMMENTERS

Last Name

Hillard
Hinton
Hirsch
Hogg
Holman
Holt
Holt
Horton
Houser
Houser
Howell
Hubbell
Huisman
Huisman
Hunter
Hutchinson
Hymel
Ireland
Jack
Jackson
Jackson
Jackson
Jackson
Jacobs
Johnson
Johnson
Johnson
Johnson
Johnston
Judkins
Keaton
Keesee
Kelley
Kelly
Kiss
Knox
Kopelman
Larry
LaRue
Lawson
Lawson
Lawson
Lawson
Ledbetter
Ledbetter

First Name

Earl
Grady
Wyn
Bob
Cheryl
Dale
Martha
Wilford
John
Brent
Shannon
Bryan
Keith
Ruth
Monica
Richard
Stephanie
Pete
Woods
Randy
Michele
Randy
C.B.
Mike
Caleb
Paulette
David
Eddie
John & James
Greg
Kent
Roger
Daniel
Gerald
Norma
Fay & Dwayne
Sami Long
Petersen
Sharma
Mark
Dorene
Lucy
Delphia
Sam
Dorothy

APPENDIX A. LIST OF COMMENTERS

Last Name	First Name
Leflar	Robert
Leflar Dr.	Charles
Leslie	Susan
Lewis	Steven
Lewis	Angela
Lichti	Annette
Lichti	Gene
Linda	Petersen
Lingle	Barbara
Lingle	James
Litsey	Wade
Little	Kim
Locke	Stevie
Locke	George
Loftin	Anna
Loggins	Carolyn
Lynch	Jim
Lynn	Robert
Lyon	David R.
Madison County Conservation Dist.	Roy Mahler
Mahan	Laura
Malone	Sally
Maly	Tom
Marroy	Wallace
Marsch	Jeremy
Martin	Matt
Martin	Bradley
Martin	Wesley
Martin	Matt
Martin	Colleen
Martin	Carl
Masterson	Michael
Matthews	Ed & Pat
Matz	Truman
Matz	Judy
Mays	Noel
McClanahan	David
McClure	Thomas
McClymont	Adam
McClymont	Adam
McCoy	Steve
McCullough	Patrick
McCune	Paul
McCune	Paul
McDaniel	Lance

APPENDIX A. LIST OF COMMENTERS

Last Name	First Name
McDaniel	Melissa
McDaniel	Ann
McFadden	Richard
McFadden	Richard
McFadden	Richard
McFarlen	Shannon
McKee	Sean
Merchant	Bob
Merchant	Bob
Meyer	Joseph
Meyer	Jeremy
Meyers	Cheryl
Minson	Carolyn
Miracle	Brett
Mock	Nell
Monaghan	Brendan
Montgomery County Conservation Dist	Bill Watkins
Montgomery	Roger
Moon	Sue
Mullens	James
Nally	Grant
Neal	Joseph
Nelson	T.J.
Newton County Conservation District	Shawn Porter
Newton County Wildlife Association	Frank Breedlove
Nickason	Melinda
Niebuhr	Mike
Nix	Joe
No Last Name	Bob
Noland	Stewart
Noland	Ross
Norton(State Representative Dist 85)	James
Nully	Yolanda
Oglesby	Michael
Olan	Neil
Orr	Rachel
Overstreet	Kim
Owen	Brooke
Ozark Society	Alice Andrews
Pagan	Glen
Parker	Angela
Parsch	Janet
Parsons	Kristen
Patton	Doug
Patton	Doug

APPENDIX A. LIST OF COMMENTERS

Last Name	First Name
Patton	Rhonda
Penson	Don
Perlman	Janine
Peters	Greg
Peterson	David
Pettit	Annette
Pettit	Bill
Phifer	Anna
Phifer	M
Phifer	Dustin
Pierson	Kevin
Pinnell	Bryan
Poole	Robert
Poole	Robert
Pope	Robby
Potter	Ramona
Potts, MD	Michael
Prentice	David
Price	Joey
Purdy	Joel
Purdy	Joe
Quinn	Carmen
Rassett	Bertha
Reagan	Dave
Reese	Leslie
Reid	David
Renfro	Bonita
Renfro	Roy
Reynolds	Ruth
Rhoades	Melissa
Rhoades	Cecil
Richardson	Thomas
Rickett	Lowell
Rickett	Clint
Rigsby	Jeremy
River Valley Regional Water Dist.	Allan Gates
Riveria	Mary
Riveria	J.G.
Roberts	Shawntill
Roberts	Dusty
Roberts	Barbara
Roberts	Wade
Robertson	Steven
Robertson	David
Robinson	Chester

APPENDIX A. LIST OF COMMENTERS

Last Name	First Name
Robinson	L.
Robinson	Bob
Robinson	Brittney
Rogers	Mindy
Rogers	Keith
Rogers	Lori
Rolles	Danelle
Ross	Cathy
Ross	Jennifer
Ross	Robert
Rost	Michelle
Rowe	Danny
Rushing	Louis
Rushing	Deanna
Russell	Carl
Ryel	Gary
Sailer	Harold
Sander	Melanie
Saunders	Budd & Nancy
Save Our Spring River	Ruth Reynolds
Save the Ouachita, Inc.	Kent Stegall
Sawny	Bill
Sawny	Nina
Scheiman	Dan
Schellenberg	Paul
Scott	Thomas
Scott	Drue
Shackelford	Ann Jennings
Shephard	James
Shields	Michael
Shrum	Julia
Sierra Club	Glen Hooks
Sierra Club (AR Chapter)	Brad Klein
Simmons	Jim
Sims	Chally
Skinner	Ray
Slusarek	Lois
Smethers	Ted
Smith	Stephen
Smith	Ken
Smith	Reese
Smith (State Rep. Dist 92)	Lindsley
Smith II	Harry E.
Smodee	Rip
Snider	Shaw

APPENDIX A. LIST OF COMMENTERS

Last Name	First Name
Snowden	Sue
Southeorvo	Saunders
Sparks	Danny
Sparks	Sabrina
Spurlock	Brian
Spurlock	Lee Ann
Stair	Patrick
Stanley	Mike
Starnes	Fred
Starnes	Gail
Starnes	Cortney
Starnes	Brett
Starr	Nancy
Stewart	Pam & Jack
Stewart	Jack
Stodola	Zabelle
Stout MAJ, USAF RET.	Bobby
Street	Nathanael
Summerville	Chris
Svendsen	John
Swim	Jason
Tanner	Polly
Tarver	Joe
Tate	Ellen
Tate	Pat
Tauzier	Debbie
Taylor	Sandra
Teale	Roy Mahler
The Nature Conservancy in AR	Scott Simon
Thomas	Frank
Thomas	Barbara
Thomas	Constance
Thompson	Gary
Thornton	Melanie
Timby	Angela
Timby	David
Townsley	Jane
Trulove	Jessica
Tucker	Kim/Dee
Tucker	Clarke
Tucker	Janet
Turner	William
Turney	John
Twyford	Matt
U.S. EPA Region 6 Dallas TX	Miguel Flores

APPENDIX A. LIST OF COMMENTERS

Last Name	First Name
US Dept. of the Interior / Fish & Wildlife Services	R. Mark Sattelberg
Valovich	Daniel
Vandergriff	David
Varnado	Bonnie
Varvill	Nancy
Vekovius	William
Walker	Jada
Walton	James
Ward	Fletcher
Ward	Michael
Ward	Sherrily
Ward	Danny
Warner	Gary
Waters	Pamela
Waters	Kirk
Webb	Kathy
Webb	Lora
Weber	Jerry
Weigt	Jonathan
Wells	Kathy
West	Elliott
Wheeler	Jim
White	Mel
White	Janis
Wigger	David
Wigger	Eugene
Wilberding	Matthew
Wilkerson	Renae
Wilkerson	Gerald
Wilkerson	David
Williams	Jane
Willis	Jerry D.
Willis	Bobby
Willis	Connie
Willis	Jaime
Willis	Glenda
Willis	James
Willis	Mary
Wills	Nathanael
Wilson	Crystal
Wilson	Joey
Wilson	Tammy
Wilson	Dearl
Wimberly	Susan
Wingard	Tommy

APPENDIX A. LIST OF COMMENTERS

Last Name

Wingerd
Wiseman
Witt
Witt
Witt
Wolfe
Wolfe
Wood
Wood
Woods
Woods
Wyatt
Wyatt
Wyatt
Yamashita
Yarbrough
Yarbrough
Yarbrough
Yockey
Young
Young
Young
Young
Zabecki, MA

First Name

Bowe
Fred
Christopher
Elizabeth
Faith
Melvin
Alice
Bobby
Billy
Natasha
Nadra
J.G.
Joanna
Chris
T.
Scott
Shirley
Jack
Teresa
Sharon
Cyrus
William R.
Amanda Gail
Melissa