



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

August 23, 2021

Richard Roper, Chair
Arkansas Pollution Control and Ecology Commission
3800 Richards Rd.
North Little Rock, AR 72117

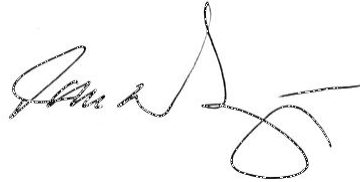
Dear Mr. Roper:

It is the Environmental Protection Agency's (EPA) understanding that the Arkansas Division of Environmental Quality (ADEQ) has filed a motion to adopt proposed changes to Regulation 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, with the Arkansas Pollution Control and Ecology Commission (Commission) to be heard during the pending August 27, 2021 hearing (Docket #20-004-R). I am writing in regard to the Clean Water Act (CWA) and its implementing regulation at 40 CFR 131, which require water quality standards to be established for all waters of the United States.

The Commission adopted CWA § 101(a)(2) uses for Coffee Creek, including Mossy Lake, in the 1970's, clearly identifying them as waters of the United States subject to the requirements of the CWA. EPA agrees with this assessment. Although the Commission revised its water quality standards in the 1980's to remove CWA § 101(a)(2) uses for these water bodies, 40 CFR 131.20(a) requires the State to re-examine any water body without these uses every 3 years, and if new information indicates that the uses specified in CWA § 101(a)(2) are attainable, to revise its standards accordingly. The EPA has previously discussed the need for appropriate designated uses to be applied to Coffee Creek and Mossy Lake with ADEQ staff and management and has provided comments on proposed revisions to Regulation 2 detailing both statutory and regulatory requirements in our letters of July 31, 2019, October 31, 2019 and September 3, 2020. The proposed revisions to Regulation 2 filed by ADEQ do not contain appropriate designated uses for Coffee Creek and Mossy Lake. The ADEQ's decision not to propose designated uses for Coffee Creek and Mossy Lake was detailed in its August 4, 2021, response to the EPA's comments on Coffee Creek and Mossy Lake, submitted to the EPA pursuant to the Informal Resolution Agreement resolving EPA Complaint No. 27-16-R6 under Title VI of the Civil Rights Act of 1964. The EPA disagrees with ADEQ's assessment that there is no need to apply appropriate designated uses to these water bodies as set out in that document. The EPA strongly recommends that the Commission designate appropriate uses for Coffee Creek from its headwaters through Mossy Lake to its confluence with the Ouachita River during its August 27th hearing.

If the Commission fails to adopt appropriate designated uses for Coffee Creek from its headwaters through Mossy Lake to its confluence with the Ouachita River, the EPA Region 6 will consider recommending that the EPA Administrator make a determination under section 303(c)(4)(B) of the Act that new water quality standards are needed to meet CWA requirements, as requested in the petition filed on September 10, 2015, by Tulane Environmental Law Clinic on behalf of Ouachita Riverkeeper under Section 553(a) of the Administrative Procedure Act (APA).

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Maguire", with a stylized flourish at the end.

Charles W. Maguire
Director
Water Division

cc: Becky Keogh, E&E Cabinet Secretary, DEQ Director