

EXHIBIT B – 1:
SUPPLEMENT TO
RESPONSIVE SUMMARY

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
RULE 2, RULE ESTABLISHING) DOCKET NO. 20-004-R
WATER QUALITY STANDARDS FOR SURFACE)
WATERS OF THE STATE OF ARKANSAS)

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY'S
SUPPLEMENT TO RESPONSIVE SUMMARY

Supplemental Response to EPA's Comments on Coffee Creek and Mossy Lake:

Pursuant to the federal Clean Water Act and in compliance with applicable federal regulations, DEQ regularly conducts a "triennial review" of Rule 2 and statewide water quality standards to determine whether modifications are appropriate and propose such changes to the APC&EC for adoption. The current rulemaking before the Commission is a result of the triennial review cycle begun in 2017 and the petition to initiate rulemaking filed in June 2020.

Before DEQ filed its petition to finalize the current rulemaking in August 2021, it provided EPA Region 6's Water Division with a copy of DEQ's response to comments filed by EPA Region 6 related to Coffee Creek and Mossy Lake. In response, EPA Region 6 Water Division Director Charles Maguire sent a letter dated August 23, 2021 to APC&EC Chair Richard Roper with concerns regarding the treatment of Coffee Creek and Mossy Lake in the proposed rulemaking.

On October 13, 2021, DEQ staff met with representatives from EPA Region 6 and EPA's External Civil Rights Compliance Office (ECRCO) and presented the reasoning and factual basis for DEQ's response to EPA's comment on Coffee Creek and Mossy Lake. ECRCO's participation was related to the Informal Resolution Agreement between DEQ and ECRCO that resolved EPA Complaint No. 27R-16-R6 9(IRA), executed in January of 2021, where DEQ committed (A) to provide its response to EPA's comments on Mossy Lake and Coffee Creek prior to filing the petition to adopt Rule 2 and (B) to include a representative from the Crossett Community and EPA Region 6 in the triennial review that is to be completed in 2023. Both DEQ and ECRCO agree that providing the Crossett Community with the opportunity for meaningful involvement in the 2023 triennial review comports with the letter and spirit of the IRA in addition to the Clean Water Act, Title VI, and Arkansas law.

On October 19, 2021, DEQ met with EPA Region 6 in Dallas to discuss EPA Region 6's concerns about DEQ response to EPA's comment on Coffee Creek and Mossy Lake. At that meeting, DEQ reiterated its reasoning and factual basis and explained that the changes that EPA Regions 6 requested in its letter to the Commission risk violating APC&EC Rules and potentially violating the due process rights of stakeholders including the Crossett community, the City of Crossett, and Georgia Pacific. The public comment period for the current rulemaking on Rule 2 had ended on September 8, 2020. At the time the IRA was executed in January 2021, the next step in the process was final approval of the pending rulemaking by the Commission. DEQ also explained that its response to EPA's comment on Coffee Creek and Mossy Lake was an attempt

to satisfy most of EPA's concerns within the confines of the almost completed rulemaking process. DEQ expressed its concern that a premature decision predicated on EPA Region 6's current request could also conflict with both the letter and the spirit of DEQ's agreement with ECRCO. DEQ reiterated this concern to ECRCO during an October 27, 2021 meeting on a related topic.

DEQ has a responsibility to stakeholders concerned with other issues in the current rulemaking that have no involvement with the issues related to Coffee Creek and Mossy Lake. Those stakeholders are waiting on DEQ to complete the rulemaking for Rule 2. Issues related to Coffee Creek and Mossy Lake should not prevent the changes important to the other stakeholders from moving forward.

At the October 19, 2021 meeting, EPA Region 6 expressed its concerns about DEQ's revisions to Rule 2 in response to EPA's comments on Coffee Creek and Mossy Lake. After considering EPA's concerns, DEQ now agrees with EPA that the proposed changes related to Mossy Lake and Coffee Creek should not move forward at this time.

DEQ is committed to ensuring full compliance with existing and applicable administrative processes and procedures to allow full and meaningful engagement and informed participation with all stakeholders including EPA, members of the Crossett community, the City of Crossett, Georgia Pacific, and DEQ before making any final decision on the Coffee Creek and Mossy Lake issues. These stakeholders have a vested interest in resolving the Mossy Lake and Coffee Creek issues, and DEQ believes that meaningful involvement for all of these parties must be provided in the process of addressing EPA's concerns via the upcoming triennial review process. Stakeholder meetings are set to begin in March of 2022. Addressing Mossy Lake and Coffee Creek directly through this process comports with both the letter and the spirit of the IRA signed by DEQ and ECRCO.

In response to EPA Region 6's request, DEQ has removed those changes to Rule 2. Specifically, DEQ removed the proposed footnote describing Mossy Lake and the proposed footnote that describes Coffee Creek. DEQ reiterates its commitment to ensuring full compliance with existing and applicable administrative processes and procedures to allow full and meaningful engagement and informed participation with all stakeholders.

DEQ is obliged to move forward with the current rulemaking's changes to Rule 2 that are not related to Coffee Creek and Mossy Lake to meet its commitment to the other stakeholders engaged in this rulemaking process. This discrete issue should not impair the rights of other stakeholders. If it did impair their rights, those stakeholders would have cause to question both DEQ's and EPA's commitment to the meaningful engagement required by Arkansas law and the Clean Water Act.

DEQ, by this supplemental response, commits to hold a public meeting with the Crossett community to discuss Mossy Lake and Coffee Creek and changes to APC&EC Rule 2 for the triennial review to be completed in 2023. This meeting is set to take place in conjunction with the other stakeholder meetings that will begin in March 2022 as part of the triennial review process to be completed in 2023.

DEQ acknowledges the necessity and importance of including the City of Crossett and Georgia Pacific in this conversation as the City's municipal wastewater is currently treated, in part, by Georgia Pacific's wastewater treatment system. DEQ believes that changes to Rule 2 that alter the current status of Coffee Creek and Mossy Lake could result in significant changes for the City of Crossett and for Georgia Pacific. Failing to include representatives of the Crossett community, the City of Crossett, and Georgia Pacific along with EPA and DEQ in these discussions prevents the meaningful involvement required by both federal and Arkansas law.

Respectfully Submitted,

By: 

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