



1495 Finger Road
Fayetteville AR 72701
October 7, 2013

Doug Szenher
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock AR 82118

Dear Mr. Szenher,

These are the comments of the Arkansas Chapter of the Sierra Club on APCEC Docket No. 13-007-R, which seeks to implement changes to APCEC Regulation 6 dictated by Act 954 of 2013. The Arkansas Chapter of the Sierra Club, with about 2,500 members statewide, is a part of the national Sierra Club, an environmental advocacy organization whose members use the state's and nation's water resources for recreation and livelihood.

The Arkansas Chapter of the Sierra Club joins the comments submitted by attorney Ross Noland on behalf of the Ozark Society, Audubon Arkansas, the Arkansas Canoe Club, the Arkansas Public Policy Panel, and individual citizens. In addition, the Sierra Club submits the following comments, to be brought to the personal attention of each Commissioner.

Judge Charles Moulton, a distinguished interpreter of the law, has advised the Commission that it is the Commission's responsibility to follow state law on this matter, even if state law may violate federal law. With all due respect, the Sierra Club disagrees. The Commissioners are oath-bound to follow the constitution of the United States of America. The United States Constitution includes the Supremacy Clause of article 6, clause 2, which states:

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

As the federal Environmental Protection Agency explained in its August 28, 2013 letters rejecting individual permits and the Commission's Minute Order in Docket No. 13-008-MISC, and as the Commission has previously been advised by Arkansas citizens during the July 26, 2013, public comment opposing initiation of this rulemaking, various provisions of Act 954 violate the

federal Clean Water Act. Act 954 would allow pollution of Arkansas streams in various circumstances in which federal law would prohibit it, as detailed in comments submitted today by Ross Noland on behalf of the Sierra Club and other organizations and individuals concerned with protecting Arkansas's environment. As the Commissioners are well aware, the Supremacy Clause (to which the state of Arkansas subscribed upon its admission to the Union in 1836) requires that federal law must displace state law when state law, enacted to benefit local interests (such as those of Tyson in polluting Arkansas streams), violates national standards (such as those protecting environmental integrity).

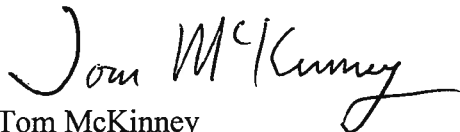
To illustrate this point in general terms, sixty years ago, Arkansas lawmakers attempted to enact state anti-civil rights laws violative of the laws of the nation. The United States Supreme Court struck down that attempt, disgracing this state for a generation. While the case of Cooper v. Aaron, 358 U.S. 1 (1958), had to do with civil rights rather than environmental justice, the principle is the same: local interests and prejudices cannot prevail over national policies enacted by the representatives of the American people to benefit the country as a whole.

The federal Clean Water Act was enacted in 1972 with the bipartisan support of the Arkansas congressional delegation, including Rep. John Paul Hammerschmidt, who voted to override President Nixon's veto. The Clean Water Act, enacted to protect America's environment, prevails over state laws enacted under the influence of local Arkansas polluters.

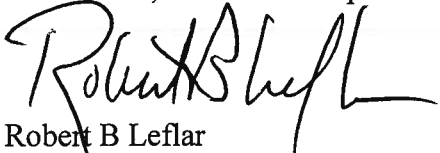
We respectfully suggest that Commissioners consider whether voting to uphold state over federal law in violation of the U.S. Constitution's Supremacy Clause would constitute a breach of their oaths of office. That oath, set out in Article 19, § 20 of the Arkansas Constitution, states:

"I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully discharge the duties of the office of Commissioner, upon which I am now about to enter."

Respectfully submitted,



Tom McKinney
Sierra Club, Arkansas Chapter Chair



Robert B Leflar
Sierra Club, Arkansas Chapter, Legal Co-Chair