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1308 West Second Street ♦ Little Rock, Arkansas 72201 ♦ 501.376.7913 (ph) ♦ 501.374.3935 (fax)
panel@arpanel.org (e-mail) ♦ www.ARPANEL.org

September 10, 2018

VIA EMAIL ONLY: waterbodycomments@adeq.state.ar.us

Water Quality Planning Branch
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118

RE: Arkansas’s Proposed 2018 List of Impaired Water Bodies

Dear Director Keogh, Mr. Osborne and Water Quality Planning Branch:

Thank you for the opportunity to submit comments in regard to the Arkansas Department of Environmental Quality (ADEQ) Proposed 2018 Impaired Waterbodies List prepared pursuant to Section 303(d) of the Clean Water Act (CWA) (hereinafter the “Proposed 2018 303(d) List”).

1. *Justification for delisting:* The Arkansas Public Policy Panel (Panel) request that ADEQ provide a justification for the proposed delisting of a stream segment or the removal of an individual water quality parameter along with the proposed 303(d) list. This has been requested during the 2014 and 2016 comment periods and documentation is required by the CWA.¹ Here is an example from Oklahoma:
http://www.deq.state.ok.us/wqdnew/305b_303d/2014/2014_appendix_d_delisting_justifications-final.pdf
2. *Public accessibility:* Thank you for the continued effort to improve the public’s access to information and ease to submit comments on the Proposed 2018 303(d) List. The addition of hyperlinks in the public notice and the interactive “Draft 2018 303(d) list StoryMap” are helpful additions. In addition it would be helpful to include the public notice for the Proposed 2018 303(d) List on the “[Public Notices](#)” page on ADEQ’s webpage and update the quick link on the [Water Quality Planning Branch webpage](#) to state 2018 rather than 2016 Draft List of Impaired Waterbodies.

¹ 40 C.F.R. § 130.7(b)(6) requires that “[e]ach State shall provide documentation to the Regional Administrator to support the State’s determination to list or not to list its waters as required by

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3. *Categories 4b, 5-medium, and 5-low fail to provide protection to impaired waters and instead allow them to continue to degrade indefinitely.*

- The Category 4(b) designation provides no description about the waiting (delay) period that is “acceptable” (months? years?) before actions will be required to improve the impaired waterbody. The Category 4b determination document is deficient and the purported alternative pollution controls are “required” as dictated under 40 CFR 130.7 (b)(1). Please see Ross Noland’s more detailed comments submitted on behalf of the Panel on September 10, 2018.
- ADEQ’s “Medium” subcategory within Category 5 is not protective of water quality because it allows no cleanup indefinitely, simply based on the premise that the state *may* revise the water quality standard(s) in violation at some vague future date.
- ADEQ’s “Low” subcategory within Category 5 lacks protections for surface waterbodies. Waters that are known to be in violation of one or more water quality standards are considered low priority for cleanup if ADEQ’s assesses all designated uses to be supported. However, the sampling upon which ADEQ’s assessment is based is inadequate to enable sound scientific evaluation, and it is biased against fining impairment.² Under Category 5 a waterbody can be classified as Category 5 “Low” priority if there is insufficient data to make a scientifically defensible decision regarding attainment of designated uses. Why would such waters be evaluated as impaired if the data are insufficient to assess attainment? Why would they not instead be designated as Category 3? One answer may be that such waterbodies are clearly, visually impaired but measurements have not been taken. It would seem important to the people of Arkansas to prioritize waters that are clearly, visually impaired as “High” rather than “Low” for data gathering and cleanup.
 - Fourche Creek , AR_11110207_024 is proposed to be listed as a low priority Category 5 waterbody and Fourche Creek AR_11110207_22 is proposed to be delisted from Category 5. Under 40 CFC 130.7(b)(4) the ADEQ should take into account “the severity of the pollution and the uses to be made of such waters.” Both sections are not attaining water quality standards and should be high priority for cleanup based on it being a high use waterbody for fish consumption and secondary contact.

4. *Additional comments:* On behalf of the Panel, Ross Noland has submitted additional comments in regards to lack of antidegradation review and Category 4(b) listings.

Thank you for your consideration.

Sincerely,

/s/ Anna Weeks Metrailer
Environmental Policy Associate

² See: JoAnn Burkholder’s comments submitted on behalf of Arkansas Public Policy, Proposed 2016 Impaired Waters List (303(d) List), March 16, 2016.