

Comment 1. Arkansas Congressional Delegation

From: [Wooster, Richard](#)
To: [REDACTED]
Subject: FW: Arkansas CODEL Comment re: Arkansas' 2020 Section 303(d) List
Date: Tuesday, August 27, 2024 7:30:26 AM
Attachments: [20240823 AR CODEL Comment EPA 303d List.pdf](#)

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Harris, Jimmy (Boozman) [REDACTED]
Sent: Monday, August 26, 2024 3:52 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>; [REDACTED]
Cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Subject: Arkansas CODEL Comment re: Arkansas' 2020 Section 303(d) List

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Mr. Wooster,

Per the instructions in the Federal Register, please accept the attached letter from the Arkansas congressional delegation as a public comment on the EPA's proposed inclusion of seven segments from Osage Creek, Spring Creek, and the Illinois River as impaired to Arkansas' 2020 Section 303(d) list.

<https://www.federalregister.gov/documents/2024/06/20/2024-13414/clean-water-act-section-303d-availability-of-list-decisions>

Thank you,
Jimmy

Jimmy Harris
Office of U.S. Senator John Boozman
[REDACTED]

Congress of the United States
Washington, DC 20510

August 23, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan,

We write to express our opposition to the overlisting of seven segments from Osage Creek, Spring Creek, and the Illinois River as impaired waters on Arkansas' 2020 Section 303(d) list.¹

The Arkansas Department of Energy & Environment, Division of Environmental Quality (DEQ) submitted its Section 303(d) list on June 2, 2022, to the Environmental Protection Agency (EPA) for approval as required by the Clean Water Act. On September 28, 2023, EPA did not fully approve DEQ's list, and instead proposed the addition of seven segments from Osage Creek, Spring Creek, and the Illinois River. EPA identified these segments by their failure to meet the numeric criterion for Oklahoma's designated Scenic Rivers.

It appears to us that EPA has unilaterally substituted Arkansas' EPA-approved narrative nutrient criteria for Oklahoma's numeric criterion for Oklahoma's designated Scenic Rivers. We concur with DEQ's disagreement with these proposed listings and consider them an overlisting and federal overreach. Additionally, we were disappointed to learn that despite DEQ's effort in February 2024 to address its concern with EPA – subsequently providing supplemental data and analysis using Arkansas' Assessment Methodology to rebut EPA's overlisting – that the agency declined to withdraw the overlistings, and instead doubled-down on June 20, 2024, with a public notice of its decision in the Federal Register.

Replacing Arkansas' narrative nutrient criteria denies impacted parties the opportunity for meaningful involvement in the rulemaking process as required by the Clean Water Act, the Arkansas Water and Air Pollution Control Act, and all relevant rules. Furthermore, the State of Arkansas – working with the State of Oklahoma – has made significant strides since 2000 to improve the Illinois River Watershed's water quality, spending hundreds of millions of dollars in that effort. EPA's overreach would overburden wastewater treatment facilities in Northwest Arkansas with excessive infrastructure costs to achieve unnecessarily low phosphorous discharge limits. We also understand that an estimated 139 permitted discharges in Arkansas would be saddled with additional costs to comply with Oklahoma's numeric criterion for Oklahoma's designated Scenic Rivers, including additional cost for phosphorous treatment and sampling if EPA's proposed action is implemented.

¹ Clean Water Act Section 303(d): Availability of List Decisions, 89 Fed. Reg. 51883—84 (June 20, 2024).

For these reasons, we appreciate EPA's consideration of our concerns as submitted during this public comment period. We understand that EPA will make any appropriate revisions following the public comment before transmitting the list of water quality-limited segments to the State. This is a matter of significant importance to us and our constituents.

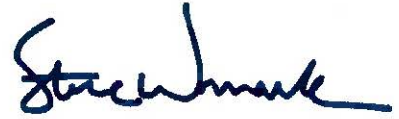
Sincerely,



John Boozman
U.S. Senator



Tom Cotton
U.S. Senator



Steve Womack
Member of Congress

CC: Bruno Pigott, EPA Acting Assistant Administrator for Water
Earthea Nance, Ph.D., PE, EPA Regional Administrator (Region 6)

Comment 2. Arkansas Division of Environmental Quality (ADEQ)

From: [Wooster, Richard](#)
To: [REDACTED]
Subject: FW: FRL-comment on FRL-11994-01-R6
Date: Monday, August 26, 2024 1:46:06 PM
Attachments: [Exhibit A - Osage and Spring Creek Water Quality and Ecological Assessme.pdf](#)
[Exhibit B - King - Joint Study Committee Final Report.pdf](#)
[Exhibit C - Fish - low level nutrients in ozark streams 2010 May.pdf](#)
[Exhibit D - Email to EPA 2024-02-21 RE DEQ assessemnt of Spring Creek.pdf](#)
[Exhibit D attachment - Spring Creek Fish Data.xlsx](#)
[Exhibit D attachment - Spring Creek short term continuous assessment.xlsx](#)
[303\(d\) Comment 2024-08-26 - Final.pdf](#)
[Letter RE DEQ comment on 303\(d\).pdf](#)

Thank you. Your comments and attached files have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Basil Hicks (adpce.ad) [REDACTED]
Sent: Monday, August 26, 2024 1:28 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Subject: RE: FRL-comment on FRL-11994-01-R6

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Richard Wooster:

A cover letter, the comment from Arkansas Energy and Environment and its Division of Environmental Quality, and the accompanying exhibits are attached.

Thank you,

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | Office of Chief Counsel

[REDACTED]
[REDACTED]



ARKANSAS
ENERGY & ENVIRONMENT

Sarah Huckabee Sanders
GOVERNOR

Shane E. Khoury
SECRETARY

August 26, 2024

Mr. Richard Wooster
Mail Code R6WDPQ
U.S. Environmental
Protection Agency Region 6
1201 Elm St.
Dallas, TX 75270
Via Email: wooster.richard@epa.gov

RE: FRL-comment on FRL-11994-01-R6

Dear Mr. Wooster:

Attached find Arkansas Department of Energy and Environment and its Division of Environmental Quality's objection to EPA's decision to "partially disapprove" Arkansas' 303(d) list and to overlist seven waterbody/parameter pairs in the Illinois River Watershed.

Sincerely,

A handwritten signature in black ink, appearing to read "S. E. Khoury", written over a horizontal line.

Shane E. Khoury
Secretary
Department of Energy and Environment

A handwritten signature in black ink, appearing to read "Bailey Taylor", written over a horizontal line.

Bailey Taylor
Chief Administrator, Environment
Division of Environmental Quality, Director

Encl: FRL-comment on FRL-11994-01-R6 with exhibits

RE: FRL-comment on FRL–11994–01–R6

Introduction:

Arkansas Energy and Environment and its Division of Environmental Quality (DEQ) object to EPA’s decision to “partially disapprove” Arkansas’ 303(d) list. On June 2, 2022, DEQ submitted the State of Arkansas’ 2020 Clean Water Act (CWA) Section 303(d) list of impaired waters (“2020 303(d) list”) to EPA Region 6. 483 days later, on September 28, 2023, EPA transmitted its partial disapproval of Arkansas’ 2020 303(d) list.¹ EPA’s partial disapproval purports to add to Arkansas’ 2020 303(d) list. Specifically, EPA claims “seven waterbody/parameter pairs are in the Illinois River Watershed and are not attaining the State’s narrative nutrient criteria.” Record of Decision (“ROD”), p. 7. On June 20, 2024, EPA published this action in the Federal Register initiating a public comment period on its decision. Arkansas Energy and Environment and DEQ provide this comment in response to EPA’s action to overlist these “seven waterbody/parameter pairs” in the Illinois River Watershed.

Arkansas Energy and Environment and DEQ’s objections to EPA’s partial disapproval fall under two categories. First, EPA’s decision fails to comply with components of the Clean Water Act that establish the “state-led” cooperative federalism framework. Second, EPA’s decision improperly relies on numeric nutrient criteria approved for use in Oklahoma, rather than the narrative nutrient criteria approved for use in Arkansas.

I. EPA’s asserted an improper basis for its decision to add waters to the Arkansas 2020 Section 303(d) list.

EPA’s decision replaces Arkansas’ EPA-approved narrative water quality standard for nutrients with an EPA-selected numeric standard based on a “magnitude concentration” for total phosphorus. EPA provided a Record of Decision that does not sufficiently connect the cited scientific studies and the facts presented (and omitted) to present a basis to support EPA’s decision. DEQ communicated many of these concerns to EPA in February 2024 and reiterates and expounds on those concerns in this comment.

A. EPA’s description of its process.

EPA asserts that “seven waterbody/parameter pairs are in the Illinois River Watershed and are not attaining the State’s narrative nutrient criteria.” ROD, p. 7. EPA claims that “EPA’s conclusion is based on an independent evaluation of available data and information submitted by the State and other reports.” ROD, p. 7. EPA states that its “evaluation focuses on multiple lines of evidence,

¹ Pursuant to 33 U.S.C.A. § 1313(d) and 40 C.F.R. § 130.7(d), EPA has thirty (30) days from submittal to approve, disapprove, or partially disapprove Arkansas’ Section 303(d) list of impaired waters. 33 U.S.C.A. § 1313(d); 40 C.F.R. § 130.7(d); *Ctr. For Biological Diversity v. U.S. E.P.A.*, No. C13-1866JLR, 2014 WL 636829, at *1 (W.D. Wash. Feb. 18, 2014).

consistent with the following language in [Arkansas' narrative standard]: 'Because nutrient water column concentrations do not always correlate directly with stream impairments, impairments will be assessed by a combination of factors such as...' ROD, p. 7. Finally, EPA claims that it used "multiple lines of evidence" that include "data about nutrient (total phosphorus) concentrations in the seven assessment units" and "information about periphyton growth and aquatic life community structure." ROD, p. 7.

B. EPA's Analysis.

First, EPA applied a numeric standard of 0.037 mg/L for total phosphorus instead of Arkansas' narrative water quality standard for nutrients because Arkansas' narrative standard was not numeric. ROD, p. 8. Then, EPA calculated the geometric mean for the entire date range of available data at each site and the six-month rolling averages (maxima and minima) of total phosphorus concentrations from 20 monitoring locations for comparison against the magnitude concentration of 0.037 mg/L. ROD, p. 8.² From this, EPA concluded that "[z]ero of the six-month rolling averages were below the 0.037 mg/L magnitude, indicating elevated TP concentrations in each of the seven segments (See Table 1)." ROD, p. 8.³

EPA evaluated periphyton results from the McGoodwin, Williams and Yates (MWY) study titled *Water Quality and Ecological Assessment of Osage and Spring Creeks in the Illinois River Basin* and noted that "[r]esults of that study suggest that nutrients were not limiting periphyton growth at any site (in other words, nutrient concentrations were relatively high)." ROD, p. 8–9. EPA then stated that "[t]he nutrient concentrations measured during the timeframe of the MWY study (2007 – 2009) were of similar magnitude to those measured in the EPA's analysis [of instream data in the seven segments]." ROD, p. 9.

Then, EPA relied on a U.S. Geological Survey (USGS) study of Wadeable Ozark Highlands ecoregion streams to link nutrients to aquatic life. ROD, p. 9. According to EPA, the USGS study reports that biotic metric scores (i.e., Index of Biotic Integrity) were inversely related to nutrients (e.g., total phosphorus). ROD, p. 9. EPA states that biotic metric scores in that study were generally lowest when total phosphorus concentrations were higher than 0.018 mg/L. ROD, p. 9. EPA's analysis is that the six-month rolling averages for total phosphorus captured in EPA's analysis for the Illinois River, Spring Creek, and Osage Creek was higher than the 0.018 mg/L value mentioned in the USGS study. ROD, p. 9.

² EPA states that it reviewed data from 2009 to 2018. Significantly, EPA did not provide this data as an attachment to its Record of Decision or provide a link to that data or its source. DEQ's period of record for this 303(d) list was April 1, 2014 – March 31, 2019. EPA provides no explanation or justification for its decision to ignore the period of record that DEQ used.

³ Again, significantly, EPA did not provide the data or the source for the data used to generate this Table 1 in EPA's Record of Decision. DEQ cannot independently verify EPA's claims about the results of EPA's analysis.

From this, EPA concludes that “the conditions in seven segments listed above are consistent with excess nutrients.” ROD, p. 9. On the basis of this conclusion that there are excess nutrients in the area, “EPA has determined that the narrative criterion for nutrients is not being met.” ROD, p. 9.

II. DEQ’s technical analysis found EPA’s Record of Decision lacking.

DEQ conducted a technical analysis of EPA’s Record of Decision and has determined that EPA did not correctly apply Arkansas’ narrative water quality standard.

First, Arkansas’ narrative water quality standard for nutrients is promulgated as Arkansas Pollution Control and Ecology Commission’s (APC&EC) Rule 2.509, and states, “[m]aterials stimulating algal growth shall not be present in concentrations sufficient to cause objectionable algal densities or other nuisance aquatic vegetation or otherwise impair any designated use of the waterbody.”⁴ EPA’s Record of Decision does not assert that nutrients in these seven segments are present in “concentrations sufficient to cause objectionable algal densities or other nuisance aquatic vegetation or otherwise impair any designated use of the waterbody.” EPA simply states that the conditions are “consistent with excess nutrients.” As explained above, Arkansas’ narrative water quality standard for nutrients explicitly states that the presence of excess nutrients alone is not sufficient to demonstrate that an impairment exists.

Second, under Arkansas’ narrative water quality standard for nutrients, “impairments will be assessed by a combination of factors.”⁵ EPA did not analyze a combination of factors. EPA simply compares a data set of in-stream nutrient concentrations for total phosphorus to (1) a magnitude concentration of 0.037 mg/L, (2) the in-stream concentration data in the MWY study, and (3) the total phosphorus concentration of 0.018 mg/L in the USGS study.

EPA has failed to correctly apply Arkansas’ narrative water quality standard for nutrients by failing to assess these streams based on a combination of factors.

Below, DEQ provides its technical analysis of the science EPA purports to rely on to support its decision.

A. The McGoodwin, Williams, and Yates Study (MWY) found no violation of Arkansas’ narrative standard.

EPA relied in part on the MWY study for its decision to “partially disapprove” DEQ’s 303(d) list. DEQ’s technical analysis shows that the MWY study does not support EPA’s position.

⁴ Arkansas Pollution Control and Ecology Commission’s (APC&EC) Rule 2.509.

⁵ Arkansas Pollution Control and Ecology Commission’s (APC&EC) Rule 2.509.

EPA's analysis compared the MWY study's in-stream nutrient concentration data to nutrient concentration data from 20 monitoring locations.⁶ EPA assumes that the in-stream nutrient concentrations must be high because the MWY study found that nutrients, i.e. nitrogen or phosphorus, were not limiting growth. EPA then concludes that the streams must be impaired and Arkansas' narrative criterion for nutrients is not being met.

The MWY study evaluated response of periphyton to nutrient enrichment. The MWY study found no statistically significant results suggesting nutrient limitation based on the data from the passive diffusion periphytometers. The MWY study pointed out that something other than nutrients such as light, temperature, or turbidity is limiting periphyton growth.⁷ In addition to this periphyton data, the MWY study also evaluated water quality data and data for macroinvertebrates and fish to reach its conclusion.

The conclusion of the MWY study does not support EPA's position. The MWY study states:

The conclusion is that there is ***no evidence*** that discharge of wastewater from the Rogers WWTP to Osage Creek or the Springdale WWTP to Spring Creek results in any violation of water quality standards according to the criteria of ADEQ Reg. 2. There appears to be ***no justification*** from this data for placing Spring and Osage Creeks on the 303(d) list of impaired waters for impairment by nutrients.⁸

The MWY study was clear that the data provided ***no justification*** for placing Spring and Osage Creeks on the 303(d) list of impaired waters for impairment by nutrients.

EPA cites the MWY study in support of EPA's decision but notably excluded that study's conclusion from EPA's Record of Decision. EPA provided no criticism of that study. And EPA provides no explanation as to how its decision to place Spring and Osage Creeks on the 303(d) list is supported by a study that concluded the opposite.

⁶ EPA states that it reviewed data from 2009 to 2018. As noted above, EPA did not provide this data as an attachment to its Record of Decision or provide a link to that data or its source. DEQ cannot independently verify EPA's data comparison.

⁷ Exhibit A, *Water Quality and Ecological Assessment of Osage and Spring creeks in the Illinois River Basin*. McGoodwin, Williams and Yates, p. 97-98.

⁸ Exhibit A, p. 102 (emphasis added).

B. The measured total phosphorus concentrations from the MWY study did not correlate to nuisance levels of algae.

EPA concludes that conditions in the relevant stream segments are “consistent with excess nutrients.”⁹ However, EPA never provides any actual data that links nutrient concentrations with nuisance levels of algae in these stream segments.

Although EPA relies on the MWY study for this proposition, the MWY study does not support EPA’s position. EPA claims that that in-stream nutrient concentrations are relatively high because the MWY study results suggested that some factor other than nutrients is limiting periphyton growth in the system. Then EPA stated that nutrient concentrations from the MWY study are similar in magnitude to the 2009 to 2018 data that EPA used for its Record of Decision. However, EPA failed to identify any periphyton results from the MWY study that showed nuisance levels of algae. For EPA’s chain of reasoning to be scientifically valid, the MWY study should have reported benthic chlorophyll *a* values corresponding to nuisance levels of algae and concluded that those levels of algae caused an impairment. The MWY study found the opposite.

The Osage Creek¹⁰ data from the MWY study does not demonstrate a direct correlation between the observed benthic chlorophyll *a* values and nuisance levels of algae—a correlation that EPA’s decision presupposes. The MWY study reported mean benthic chlorophyll *a* for all Osage Creek sites during three critical seasons:¹¹

Season	Mean benthic chlorophyll <i>a</i>	Notes
first critical season	never above 55 mg/m ²	
second critical season	never above 128 mg/m ²	four of five sites were below 100 mg/m ²
third critical season	never above 180 mg/m ²	four of the five sites were below 150 mg/m ²

For context, Dr. Ryan King identified values above 150–200 mg/m² as the literature values that could represent nuisance conditions.¹² However, Dr. King explained that these values [greater than 150–200 mg/m²] are subjective and need context.¹³ Dr. King stated that “some of our sites with low phosphorus consistently yielded benthic chlorophyll *a* levels that approached or exceeded literature values for ‘nuisance’ conditions (>150–200 mg/m²), yet virtually none of this algal

⁹ As explained above, Arkansas’ narrative water quality standard for nutrients explicitly states that the presence of excess nutrients alone is not sufficient to demonstrate that an impairment exists.

¹⁰ In the MWY study, Osage Creek sites 1, 2, and 3 correspond to AU AR_11110103_930, and Osage Creek sites 4 and 5 corresponding to AU AR_11110103_030.

¹¹ Exhibit A, Appendix F.

¹² Exhibit B, King, RS. 2016. Oklahoma-Arkansas Scenic Rivers Joint Phosphorus Study: Final Report, p. 45.

¹³ Exhibit B, p. 45.

biomass was *Cladophora* or other nuisance species of filamentous green algae.”¹⁴ Dr. King stated that “150–200 mg/m² *likely* represented the lower end of potential nuisance levels of algal biomass in the Designated Scenic Rivers during a wet year, whereas levels above 300 mg/m² should be considered nuisance levels under *most* conditions.”¹⁵

Significantly, EPA does not reference these data points for mean benthic chlorophyll *a* values from the MWY study in its Record of Decision. In fact, EPA doesn’t provide any of the chlorophyll *a* data for Osage Creek from the MWY study.¹⁶ EPA does not identify a range of benthic chlorophyll *a* values that could represent nuisance conditions. Only one data point from the MWY study’s data was within the literature values that might represent nuisance conditions, i.e. values above 150 to 200 mg/m². None of the Osage Creek sites sampled during the MWY study ever approached the 300 mg/m² nuisance condition that Dr. King described.

The data from the MWY study does not support EPA’s claim that total phosphorus concentrations indicate that the segment is impaired by nuisance levels of algae present in the streams. Rather, the MWY study concluded the opposite—relatively higher nutrient concentrations did not correlate to nuisance levels of algae present in the streams. The single location in Osage Creek that exceeded 150 mg/m² during the third critical season of this study does not, and cannot, demonstrate that the nutrient concentrations measured during the study caused algal growth in concentrations sufficient to cause objectionable algal densities or other nuisance aquatic vegetation or otherwise impair any designated use of the waterbody.

The MWY study supports the statement in Arkansas’ narrative water quality standard for nutrients that “*nutrient water column concentrations do not always correlate directly with stream impairments.*”¹⁷ The observed benthic chlorophyll *a* values from the MWY study did not correlate to nuisance conditions that violated Arkansas’ narrative standard.

EPA is required to offer a satisfactory explanation of a rational connection between the MWY study and its decision to “partially disapprove” DEQ’s 303(d) list.¹⁸ EPA failed to comply with this requirement. EPA did not accurately represent the findings and conclusion of the MWY study.

¹⁴ Exhibit B, p. 45.

¹⁵ Exhibit B, p. 45 (emphasis added).

¹⁶ EPA’s failure to include this data is telling because Chlorophyll *a* is a response parameter specifically identified in EPA memorandum: Information Concerning 2024 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, March 29, 2023, p. 16.

¹⁷ APC&EC Rule 2.509 (emphasis added).

¹⁸ “In reviewing an agency’s action under that standard, a court may not substitute its judgment for that of the agency. But it must ensure, among other things, that the agency has offered a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made. Accordingly, an agency cannot simply ignore an important aspect of the problem.” *Ohio v. Env’t Prot. Agency*, 144 S. Ct. 2040, 2053 (2024) (internal citations and quotation marks omitted).

EPA does not provide the analysis of the periphyton growth EPA claims it performed. EPA does not even discuss the chlorophyll *a* data for Osage Creek from the MWY study. EPA does not explain its reasons and scientific basis for any of these choices in its Record of Decision.

C. EPA failed to link aquatic life community structure to nutrients.

In its section titled “linking aquatic life community structure to nutrients,” EPA claims that the USGS paper establishes a link between the quality of the aquatic life community and the 0.018 mg/L total phosphorus concentration. The USGS paper does not prove that link.

EPA attempts to make a link between quality of the aquatic life community and the total phosphorus concentration by relying on the USGS paper’s statement that “[b]iotic metric scores were inversely related to nutrients and were generally highest when...TP concentrations were less than...about 0.018 mg/L.”¹⁹ However, the USGS paper acknowledges that the 0.018 mg/L total phosphorus concentration was not derived by developing thresholds for nutrient enrichment. EPA left out the first sentence of that paragraph from the USGS paper that states, “the small size of the data set limits our ability to identify thresholds for TN and TP...”²⁰ In other words, the data from the USGS paper is not sufficient to develop concentration thresholds for nutrient enrichment.

The USGS paper follows its caveat with the statement that “*some* literature indicates that TN and TP concentrations near median values for this study are near threshold concentrations that distinguish between reference streams and streams that are slightly enriched (i.e. near background, Table 3).”²¹ According to Table 3 from the USGS paper, the 0.018 mg/L total phosphorus concentration is the concentration equivalent to a nutrient index score of 0.75. Tables S5, S6, and S7 describe sites with a nutrient index score of 0.75 as sites that are “suspected of being moderately enriched.”²²

The USGS paper does not present data to show that a finding that a stream is “suspected of being moderately enriched” is equivalent to a violation of Arkansas’ narrative nutrient standard, i.e. that the stream has concentrations sufficient to cause objectionable algal densities or other nuisance aquatic vegetation or otherwise impair any designated use of the waterbody. The USGS paper states that “[r]elations between chlorophyll *a* and TN and TP were poor for [the USGS paper’s] data.”²³ Additionally, the streams in the USGS paper are not similar to the streams EPA claims are

¹⁹ Exhibit C, Justus, B.G. et al. 2010. A comparison of algal, macroinvertebrate, and fish assemblage indices for assessing low-level nutrient enrichment in wadeable Ozark streams. *Ecological Indicators*, May 2010, 627-638.

²⁰ Exhibit C.

²¹ Exhibit C (*emphasis added*).

²² Exhibit C.

²³ Exhibit C.

impaired. The sampling sites in the USGS paper had land use that was usually less than 5% urban—not the urban streams at issue in EPA’s current action.

It is unclear why EPA cited to this USGS paper to “[link] aquatic life community structure to nutrients,” or why EPA referenced the 0.018 mg/L total phosphorus concentration that only provides a *suspicion* that a stream is moderately enriched. In contrast, the MWY study from the same timeframe analyzed data and concluded that the Osage Creek sites were not impaired. Additionally, DEQ collected pH, dissolved oxygen, and fish community data for Spring Creek in 2023, and provided that data to EPA in February 2024. DEQ’s data from Spring Creek demonstrated that 43% of fish sampled were sensitive species and none of the criteria to protect the aquatic life use were in fact impaired. The USGS paper is not relevant to Arkansas’ narrative nutrient standard, does not speak to nuisance algae levels, had no reported amount of benthic algae per unit area (even though it was collected), and acknowledged that its data did not establish a relationship between chlorophyll *a* and nutrient concentrations.

D. DEQ’s assessment of Spring Creek refutes EPA’s assumptions about nutrient concentrations.

Arkansas Pollution Control and Ecology Commission’s (APC&EC) Rule 2 does not include a numeric nutrient criteria that establishes a threshold concentration for total phosphorus. Rather, APC&EC Rule 2.509 states that “materials stimulating algal growth shall not be present in concentrations sufficient to cause objectionable algal densities or other nuisance aquatic vegetation or otherwise impair any designated use of the waterbody.”

DEQ has a process for assessing waterbodies for compliance with Arkansas’ narrative nutrient standard.²⁴ DEQ’s assessment methodology is dictated by APC&EC Rule 2.509, and states “because nutrient water column concentrations do not always correlate directly with stream impairments, impairments will be assessed by a combination of factors such as water clarity, periphyton or phytoplankton production, dissolved oxygen (D.O.) values, D.O. saturation, diurnal D.O. fluctuations, pH values, aquatic-life community structure and possibly others.” DEQ’s process has been reviewed by EPA as part of Arkansas’ 305(b) report. However, EPA’s Record of Decision does not include any evaluation of evidence relating to periphyton biomass, diurnal D.O. fluctuations, pH values, or aquatic life community structure.

In the summer of 2023, DEQ sampled streams in the Illinois River basin as part of DEQ’s ecoregion project for the Ozark Highlands and collected sufficient data to assess Spring Creek for

²⁴ DEQ’s process for assessing waters is detailed in its assessment methodology and is published on DEQ’s website.

APC&EC Rule 2's narrative nutrient criterion. DEQ assembled water quality data for comparison with a period of record going back five years from September 2023.²⁵

DEQ assessed the collected data according to DEQ's assessment methodology.²⁶ The process is reflected in the table below.

Table 1 Assessment process for nutrients in Spring Creek

Nutrient Assessment	Spring Creek	Decision
Are mean TP and/or TN concentrations > 75% for the ecoregion?	Yes	Move to next step
Do continuous datasets for D.O. or pH exceed criteria?	No	Support
Are biological assemblages impaired?	No (fish only)	Support

The mean total phosphorus concentration was greater than the 75th percentile for the ecoregion, so the next step in the flow chart is required (see Table 1 above).

DEQ reviewed the 48-hour D.O. and pH datasets and found no exceedances of the applicable criteria. Based on DEQ's assessment methodology that result indicated that the stream is supporting the narrative nutrient standard for the stream.

Although not required by the assessment methodology, due to D.O. and pH having attained the water quality standard, DEQ further assessed Spring Creek using the data for biological assemblages that DEQ collected in 2023. Based on DEQ's assessment methodology, the fish assemblage further demonstrated that Spring Creek was supporting the aquatic life designated use. DEQ's biological sampling found that ten (10) of the twenty-three (23) species captured were sensitive species.

DEQ's use of its own EPA-approved narrative criterion and assessment methodology is the appropriate pairing of criterion and methodology for assessing waters in the state of Arkansas under the Clean Water Act. DEQ used multiple lines of evidence from empirical data collected on Spring Creek. DEQ evaluated total phosphorus concentrations, 48-hour D.O. and pH datasets, as

²⁵ Exhibit D, Email to EPA on February 21, 2024, providing DEQ's assessment of Springs Creek, associated data, and narrative explanation.

²⁶ DEQ's assessment methodology uses numeric targets for specific nutrients (i.e. the mean total phosphorus concentration was greater than the 75th percentile for the ecoregion) and specific targets for response parameters (i.e. comparing continuous datasets for D.O. or pH to the applicable criteria) and also includes assessing biological assemblages from the stream to confirm. This methodology is consistent with EPA memorandum: Information Concerning 2024 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, March 29, 2023, p. 16.

well as the fish assemblage using DEQ's assessment methodology. DEQ determined that there was no impairment of DEQ's EPA-approved narrative nutrient standard for Spring Creek.

Further, Spring Creek has the highest geometric mean total phosphorus of all the assessment units that EPA identifies in its partial disapproval. The fish assemblage data demonstrates that Spring Creek is in fact supporting the aquatic life designated use, including a high percentage of sensitive species. The 48-hour D.O. and pH datasets also demonstrates that Spring Creek is supporting the aquatic life designated use. The earlier MWY study also concluded that the observed conditions did not violate Arkansas' narrative standard.

DEQ's data and the MWY study conclusively demonstrate that mean total phosphorus concentrations alone are not sufficient to determine that an impairment of aquatic life exists.

E. EPA's Record of Decision fails to provide an adequate scientific analysis.

EPA fails to produce evidence that objectionable algal densities or other nuisance aquatic vegetation have impaired any designated use of these seven segments. EPA provides no evidence regarding water clarity, periphyton production, diurnal D.O. fluctuations, pH values, or aquatic life community structure—all factors mentioned in Arkansas' EPA-approved narrative standard.

In contrast, DEQ's assessment of Spring Creek using Arkansas' approved assessment methodology clearly demonstrates that there was no violation of Arkansas' narrative nutrient standard and that no designated uses were impaired. Further, the MWY study concluded that there appears to be no justification from that study's data for placing Spring and Osage Creeks on the 303(d) list of impaired waters for impairment by nutrients. Without explanation, EPA relies on that independent study to reach the opposite conclusion.

EPA's entire basis for its action is EPA's unsupported claim that a stream segment with total phosphorus concentrations that exceed EPA's inapplicable numeric concentration of 0.037 mg/L total phosphorus is not meeting Arkansas' narrative standard. EPA's conclusion that these streams are not meeting Arkansas' narrative standard is based on EPA's determination that "the conditions in seven segments listed above are consistent with excess nutrients."²⁷

EPA has presented no corroborating data to support EPA's assertion that a stream segment with total phosphorus concentrations that exceed the numeric concentration of 0.037 mg/L total phosphorus will have objectionable algal densities or other nuisance aquatic vegetation that will impair a designated use of that stream segment.

²⁷ ROD, p. 9.

In contrast to EPA's analysis, DEQ, applying its published, valid and approved assessment methodology, conclusively demonstrates that EPA's claim is false by showing that a stream segment in the Illinois River basin is not impaired despite the total phosphorus concentrations exceeding the numeric concentration of 0.037 mg/L total phosphorus in that stream.

III. EPA's review of Arkansas' 303(d) list did not comply with the Clean Water Act.

EPA's disapproval of Arkansas' 303(d) list fails to follow the Clean Water Act because EPA did not base its decision to add segments to Arkansas' Section 303(d) list on Arkansas' water quality standard. EPA's decision to replace Arkansas' narrative standard with Oklahoma's numeric standard for Oklahoma Scenic Rivers violates specific provisions of the Clean Water Act²⁸ as well as the fundamental structure of cooperative federalism, which is the cornerstone of the Clean Water Act.

Additionally, EPA's action avoids procedural requirements in the Clean Water Act that provides interested parties the opportunity for meaningful involvement. None of the interested parties, including the State of Arkansas, had notice that EPA would purport to review Arkansas' 303(d) list by using Oklahoma's numeric aesthetic standard for Oklahoma Scenic Rivers. Without notice, none of those interested parties had the opportunity for meaningful involvement guaranteed by the Clean Water Act.

A. EPA's action violates the state-led cooperative federalism framework in the Clean Water Act.

The Clean Water Act establishes a system of cooperative federalism, and EPA's decision here does not comply with it. Under the state-led cooperative federalism framework in the Clean Water Act, Arkansas has primary responsibility for determining both Arkansas' water quality standards and if a waterbody is not meeting Arkansas' water quality standards. EPA's role in reviewing Arkansas' 303(d) list is limited to its 30-day review period pursuant to 33 U.S.C.A. § 1313(d). Here, EPA waited 483 days to issue its partial disapproval of DEQ's 303(d) list.

DEQ's concerns about EPA's delayed action in this instance stems from EPA's history of actions that did not preserve that state-led framework. EPA has failed to act within its 30-day review period on six previous occasions. Prior to EPA's approval of Arkansas' 2018 303(d) list, EPA did not act on four of Arkansas' 303(d) lists until July 19, 2017:²⁹

- 2010: submitted 2666 days before EPA took action.

²⁸ 33 U.S.C. § 1313.

²⁹ EPA's July 19, 2017, action letter can be accessed at the following link:

<https://www.adeq.state.ar.us/water/planning/integrated/303d/pdfs/2017/epa-decision-7192017.pdf>

- 2012: submitted 1937 days before EPA took action.
- 2014: submitted 1205 days before EPA took action.
- 2016: submitted 474 days before EPA took action.

In contrast, EPA approved Arkansas' 2018 303(d) list on May 15, 2020, seventy-eight (78) days after DEQ submitted it.³⁰ While still not within the statutorily mandated timeframe, EPA more nearly preserved the spirit of the state-led framework mandated in the Clean Water Act.

When DEQ submitted its 2020 list on June 2, 2022, just over two years after EPA approved the previous list, DEQ did so with the expectation that EPA would again preserve that state-led framework through reasonably timely action. Timely action would allow DEQ to get on track with its submissions. While DEQ currently has Arkansas' 2022 303(d) list ready, EPA's unexpected partial disapproval of the 2020 list goes beyond the review authorized under the Clean Water Act. DEQ can no longer be certain what water quality standards EPA will decide to apply to Arkansas' waters when reviewing Arkansas' upcoming 2022 303(d) list. EPA's delayed action and partial disapproval of the 2020 list prevents Arkansas from exercising its primary responsibility for establishing Arkansas' water quality standards and determining when a waterbody is not meeting those standards.

B. EPA's decision to add waters to the Arkansas 2020 Section 303(d) list is not based on Arkansas' narrative standard.

EPA's Record of Decision violated 33 U.S.C. § 1313(d) and 40 C.F.R. § 130.7 because EPA did not use Arkansas' water quality standard when developing the basis for its decision to add segments to Arkansas' Section 303(d) list. EPA's Record of Decision states that EPA applied "a threshold magnitude concentration of 0.037 mg/L" because Arkansas' "narrative nutrient criteria do not specify concentrations that would impair designated uses."³¹ EPA has not previously communicated to Arkansas, through any rulemaking or otherwise, that Oklahoma's numeric aesthetic criteria is the applicable water quality standard in Arkansas.³² EPA's decision to replace Arkansas' narrative water quality standard for nutrients with a numeric standard disregards the Clean Water Act's framework giving states primary responsibility for determining their water quality standards.

³⁰ EPA's May 15, 2020, action letter can be accessed at the following link:

<https://www.adeq.state.ar.us/water/planning/integrated/303d/pdfs/2018/ar-epa-action-letter-20200515.pdf>

³¹ ROD, p. 8.

³² In settlement discussions related to DEQ's two pending federal lawsuits against EPA, EPA has not taken the position that Oklahoma's numeric aesthetic criteria is the applicable water quality standard in Arkansas, i.e. the standard that is effective for Clean Water Act purposes in Arkansas.

Congress gave states the primary responsibility to set water quality standards.³³ Those state standards are used to identify the waters to be included on the states' Section 303(d) lists.³⁴ The thirty-day limit on EPA's review of a state's 303(d) list indicates that Congress intended the EPA to have a very limited role.³⁵ EPA's limited role is evidenced by the wording of the regulations, the decisions of the courts, and the interpretation of the requirements by the EPA.³⁶ EPA's decision to overlist seven Arkansas waterbody/parameter pairs using Oklahoma's numeric water quality standard is not an appropriate exercise of EPA's limited role of oversight.

In accordance with 33 U.S.C. § 1313(d) and 40 C.F.R. § 130.7, the applicable water quality standard for nutrients is Arkansas' EPA-approved narrative standard. Arkansas' narrative standard, promulgated as APC&EC Rule 2.509, states that "materials stimulating algal growth shall not be present in concentrations sufficient to cause objectionable algal densities or other nuisance aquatic vegetation or otherwise impair any designated use of the waterbody." Arkansas' narrative standard does not include a numeric nutrient criteria that establishes a threshold concentration for total phosphorus. Arkansas' narrative standard rejects using threshold nutrient concentrations alone to determine an impairment.³⁷ Arkansas' narrative standard states, "*Because nutrient water column concentrations do not always correlate directly with stream impairments*, impairments will be assessed by a combination of factors[.]"³⁸ Likewise, Arkansas' assessment methodology relies on a combination of factors and does not establish a threshold magnitude concentration for total phosphorus. EPA applied "a threshold magnitude concentration of 0.037 mg/L" to make its determination. Arkansas would have to change Arkansas' water quality standard for nutrients before Arkansas itself could determine that these seven segments as impaired by applying "a threshold magnitude concentration of 0.037 mg/L."

On February 21, 2024, DEQ provided additional scientific data and analysis to EPA that demonstrated that Spring Creek was meeting Arkansas' narrative nutrient standard using DEQ's assessment methodology.³⁹ Arkansas' assessment methodology is consistent with Arkansas' narrative standard as well as EPA's memorandum titled "Information Concerning 2024 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions." According to EPA, states have flexibility in how numeric targets for nutrient-related parameters

³³ While the states and EPA share duties in achieving this goal, primary responsibility for establishing appropriate water quality standards is left to the states. *Nat. Res. Def. Council, Inc. v. U.S. E.P.A.*, 16 F.3d 1395, 1399 (4th Cir. 1993).

³⁴ 40 C.F.R. § 130.7.

³⁵ See *City of Albuquerque v. Browner*, 97 F.3d 415, 424-425 (10th Cir.1996).

³⁶ *Barnum Timber Co. v. U.S. E.P.A.*, 835 F. Supp. 2d 773, 781 (N.D. Cal. 2011).

³⁷ EPA disapproved proposed language in Arkansas' water quality standard that would have allowed Arkansas to determine a segment was impaired based on either a site-specific numeric standard or Arkansas' assessment methodology.

³⁸ APC&EC Rule 2.509 (*emphasis added*).

³⁹ Exhibit D.

are incorporated into a state's assessment methodology and can apply numeric targets for specific response parameters, such as dissolved oxygen, independently or in combination.⁴⁰ Thus, EPA's use of "a threshold magnitude concentration of 0.037 mg/L" is explicitly contrary to Arkansas' narrative standard for nutrients that EPA approved, and DEQ has provided scientific data and analysis that streams with higher concentrations of nutrients are meeting Arkansas' narrative nutrient standard. In addition, Arkansas' assessment methodology uses numeric targets for response parameters, specifically dissolved oxygen and pH, consistent with EPA's memorandum.

The data DEQ presented to EPA sufficiently demonstrates that EPA's action is not based on Arkansas' standards; that Arkansas' designated uses are being met; and that EPA exceeded its oversight role under the Clean Water Act by using a standard that is not applicable to waters in Arkansas or the designated uses of those waters.

C. The Clean Water Act requires EPA to review Arkansas' 303(d) list based on the applicable water quality standard.

EPA violated the Clean Water Act by replacing Arkansas' narrative standard for the seven segments in the Illinois River watershed with an EPA-selected numeric standard. Pursuant to 33 U.S.C. § 1313(d) and 40 C.F.R. § 130.7, Arkansas' 303(d) list must be based on the water quality standard applicable to such waters. "Water quality standards are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses."⁴¹ "Designated uses are those uses specified in water quality standards for each water body or segment whether or not they are being attained."⁴² The applicable water quality standards are those standards that are established pursuant to Section 303 of the Clean Water Act for that waterbody and specifically include narrative criteria.⁴³

In this instance, Arkansas' narrative standard *is* the applicable water quality standard established pursuant to Section 303 of the Clean Water Act that protects the designated uses for the seven segments in the Illinois River watershed. EPA's arbitrarily selected "threshold magnitude concentration of 0.037 mg/L" is not consistent with Arkansas' narrative nutrient standard, and therefore cannot be the standard established pursuant to Section 303 of the Clean Water Act for these seven segments. The designated uses for those seven segments in Arkansas do not include meeting the aesthetic standard for Oklahoma Scenic Rivers.

⁴⁰ "There is flexibility in how numeric targets for nutrient-related parameters can be incorporated into scientifically sound assessment approaches consistent with narrative criteria. For example, numeric targets may be appropriate for specific nutrients and/or response parameters (e.g., dissolved oxygen, chlorophyll a) and may be applied independently or in combination." EPA memorandum: Information Concerning 2024 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, March 29, 2023, p. 16.

⁴¹ 40 C.F.R. § 131.3.

⁴² 40 C.F.R. § 131.3.

⁴³ 40 C.F.R. § 130.7.

EPA fails to produce any legal authority for replacing a state's applicable water quality standard that has been promulgated and approved as described in 40 C.F.R. § 130.7 with a different water quality standard. As explained above, EPA's use of nutrient concentrations alone to determine whether an impairment exists directly conflicts with Arkansas' approved narrative standard. EPA cites no authority for its decision to apply a numeric standard because Arkansas' approved narrative standard does "not specify concentrations that would impair designated uses."⁴⁴ Narrative standards, which are by definition not numeric standards, cannot be replaced as a matter of convenience for EPA to conduct its 303(d) list review.

D. The Clean Water Act requires EPA take specific actions before EPA can act to replace Arkansas' narrative standard.

The Clean Water Act does not allow EPA to replace any state's water quality criterion unless and until EPA follows the process outlined in the Clean Water Act.⁴⁵ EPA's regulations also require EPA to follow the policies, procedures, analyses, and public participation requirements established for states when EPA decides to override a state's approved water quality standard.⁴⁶ EPA has taken none of the required procedural steps.

EPA has not taken the first required action to determine that a revised water quality standard for nutrients is necessary—an action that would reverse EPA's previous approval of Arkansas' narrative standard. Between DEQ's submission of its 2020 303(d) list and EPA's partial disapproval on September 28, 2023, EPA approved DEQ's most recent revision to Arkansas' water quality standards in APC&EC Rule 2 that includes Arkansas' narrative standard for nutrients.⁴⁷ At that time, EPA reminded Arkansas that EPA did not approve the sentence in Arkansas' narrative that would have allowed Arkansas to determine a nutrient impairment based on "any Arkansas established numeric water quality standard."⁴⁸

⁴⁴ ROD, p. 8.

⁴⁵ See 33 U.S.C. § 1313(c)(4) (stating the conditions under which the EPA must act to promulgate water quality standards); and *Fla. Wildlife Fed'n, Inc. v. Jackson*, 853 F. Supp. 2d 1138, 1156 (N.D. Fla. 2012) ("The Clean Water Act gives a state the primary role in setting its water-quality standards. But the Act gives the Administrator a role as well. The state must submit its standards to the Administrator for approval. And the Administrator's approval of a state standard does not end the Administrator's involvement. Under § 303(c)(4) of the Act, the Administrator must 'promptly' propose and adopt 'a revised or new' standard 'in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of' the Act. 33 U.S.C. § 1313(c)(4).").

⁴⁶ 40 C.F.R. §§ 131.21 and 131.22.

⁴⁷ DEQ submitted its 303(d) list on June 2, 2022, and EPA approved the most recent revisions to Arkansas' water quality standards in APC&EC Rule 2: Rule Establishing Water Quality Standards for Surface Waters of the State of Arkansas on November 9, 2022.

⁴⁸ EAP's November 9, 2022 approval of APC&EC Rule 2 can be accessed at the following link: <https://www.adeq.state.ar.us/water/planning/reg2/pdfs/record-of-decision/2022-epa-triennial-review-letter-and-record-of-decision.pdf>

EPA's current action in issuing its partial denial in effect substitutes Arkansas' existing and approved narrative standard with an EPA-selected numeric standard by making that numeric standard the applicable standard that is effective for Clean Water Act purposes. The Clean Water Act requires that each state develop its 303(d) list using the state's *applicable* water quality standards.⁴⁹ EPA's review of a state's 303(d) list is likewise limited by the Clean Water Act and must be based on the state's applicable water quality standards.⁵⁰

In this case, EPA cannot demonstrate an impairment without relying on a numeric standard that is not effective in Arkansas for Clean Water Act purposes. EPA's purported action in effect makes that numeric standard applicable for Clean Water Act purposes. EPA's action, if allowed to stand, essentially changes Arkansas' standard without following the Clean Water Act procedural requirements that EPA must complete to change a state's water quality standard.

E. EPA's partial disapproval attempts to impose a unilateral change to Arkansas' valid and approved water quality standard without providing a meaningful opportunity for public involvement.

EPA's review of Arkansas' impaired waters list applies a standard that is fundamentally different from the state's approved standard, i.e. numeric verses narrative, without any prior notice to the state or the public. Without notice and without providing a meaningful opportunity for public participation, EPA applies a numeric water quality criterion for Oklahoma Scenic Rivers while disregarding Arkansas' promulgated and approved narrative standard.

Both the Clean Water Act and Arkansas law require that changes to water quality standards include an opportunity for the public to comment on the revisions prior to those changes becoming effective. EPA's notice of its disapproval of Arkansas' 303(d) list presupposes that EPA's determination to use Oklahoma's numeric standard is effective for Clean Water Act purposes in Arkansas. EPA's after-the-fact notice is contrary to the requirements of the Clean Water Act.

EPA's partial disapproval rests on the EPA's presumption that its selection of Oklahoma's numeric standard is already effective for purposes of EPA's oversight of Arkansas' 303(d) list. If allowed to stand, EPA's action would fundamentally alter the Clean Water Act. EPA's review of a state's 303(d) list would essentially become the new vehicle for establishing the water quality standards that are effective for Clean Water Act purposes. The public participation requirements for EPA's review of a state's 303(d) list are less stringent than what EPA must do to change a state's water

⁴⁹ 33 U.S.C. § 1313(emphasis added).

⁵⁰ 33 U.S.C. § 1313(d) and 40 C.F.R. § 130.7

quality standard.⁵¹ The Clean Water Act does not allow EPA to implement a new or revised water quality standard for a state as part of its review of the 303(d) list. The Clean Water Act requires an opportunity for comment on a new or revised water quality standard before it can be effective for Clean Water Act purposes.

F. EPA's Record of Decision does not support EPA's assertion that Arkansas did not use certain water quality information or address public input.

In EPA's June 20, 2024, Federal Register publication of its decision, EPA claims that "Arkansas did not use certain water quality information and therefore did not identify certain water quality limited segments based upon existing data and public input." As noted above, EPA states that it analyzed nutrient concentration data from twenty monitoring locations. EPA failed to provide the 2009 to 2018 nutrient concentration data, failed to provide a link to that data, and failed to provide the source of that data. Again, as explained above, EPA used that 2009 to 2018 nutrient concentration data in a manner that is contrary to Arkansas' narrative nutrient standard. EPA also did not address data and conclusions from the MWY study that did not support EPA's decision. Thus, EPA used data in a manner that is contrary to Arkansas' narrative nutrient standard and ignored data that refuted the basis for its decision to overlist seven segments as impaired. Finally, DEQ responded to public comments on Arkansas' 303(d) list, and EPA did not identify any lack of public input or response in its Record of Decision.⁵²

G. EPA's partial disapproval looks suspiciously like a flanking maneuver to attack the two federal lawsuits that DEQ filed against EPA.

EPA objected to two NPDES permits, referred to here simply as the NACA and Springdale permits, issued by DEQ in northwest Arkansas. In those permit objections, EPA claimed the discharges from NACA and Springdale violate Arkansas' water quality standard for nutrients. In response, DEQ pointed out that EPA did not provide data and analysis to support EPA's conclusion that the effluent limits in the permits would violate Arkansas' water quality standard for nutrients. Ultimately, DEQ was forced to file two federal lawsuits challenging EPA's objections to the NACA and Springdale permits as untimely, as an attempted illegal rulemaking, and unsupported by the

⁵¹ For example, EPA must first make a determination that the state's currently approved water quality standard does not fulfil the requirements of the Clean Water Act. Then EPA must inform the state of the changes that are necessary to meet those requirements. The state then has an opportunity to fix its standard.

⁵² DEQ's Response to Public Comments on Arkansas' 303(d) list can be accessed at the following link: <https://view.officeapps.live.com/op/view.aspx?src=https://www.adeq.state.ar.us/water/planning/integrated/303d/pdfs/2020/deq-response-to-comments-for-the-2020-draft-list.docx>

data and science. In the Eighth Circuit, DEQ argued that EPA's claim to have established a water quality based effluent limit is an illegal rulemaking.⁵³

EPA and DEQ are currently in settlement discussions to resolve the pending litigation concerning the NPDES permits for NACA and Springdale. The main issues in those disputes are what permit effluent limits are necessary to protect water quality in northwest Arkansas streams, and EPA's failure to provide data and science to support EPA's proposed effluent limits. As presented above, Arkansas has actual, current data from Spring Creek that conclusively demonstrates that Arkansas' water quality is being maintained and all designated uses are being met. That data was collected downstream from Springdale's discharge, demonstrating that Springdale's discharge is not causing a violation of Arkansas' narrative standard.

EPA's partial disapproval of Arkansas' 303(d) list in light of EPA's lack of any valid supporting justification to contradict DEQ's Spring Creek data, appears like an attempt to bolster EPA's contested permit objections. Changing Arkansas' narrative standard to a numeric standard looks like an attempt to generate an after-the-fact justification for EPA's position in its permit objections.

In other words, if EPA can somehow successfully establish that 0.037 mg/L for total phosphorus is the new applicable water quality standard for these seven segments, then DEQ cannot rely on its Spring Creek data that demonstrates Arkansas' approved narrative standard is being maintained. EPA could then demand that DEQ demonstrate how DEQ's permits are protective of the new de facto standard of 0.037 mg/L for total phosphorus. Using that numeric standard, EPA could use nutrient concentrations alone to determine if those seven segment are impaired, despite DEQ's fish data and water quality data showing that nutrient concentrations alone do not equate to impairments.

Viewing EPA's partial disapproval as a post hoc justification for EPA's permit objections is one way to make sense of EPA's attempted application of Oklahoma's numeric standard for Oklahoma Scenic Rivers to determine that these seven Arkansas segments are impaired. By replacing Arkansas' narrative standard, EPA could force DEQ to use Oklahoma's numeric standard for Oklahoma Scenic Rivers as the applicable water quality standard for developing NPDES permits issued to dischargers in Arkansas.

⁵³ Coincidentally, replacing Arkansas' narrative water quality standard with an EPA-selected numeric standard and then using that standard as if it were the water quality standard applicable in Arkansas for purposes of EPA's review of Arkansas' 303(d) list would be another example of an attempted illegal rulemaking.

IV. Conclusion

EPA should reverse or withdraw its partial disapproval of Arkansas' 303(d) list. EPA did not apply the correct water quality standard. EPA did not provide sufficient scientific data to support its decision. EPA failed to disclose or address the findings of a scientific study EPA used that rejected EPA's position. DEQ's data supports DEQ's conclusion that Arkansas' narrative standard is being met, as does the MWY study that EPA cited. DEQ made EPA aware of these concerns regarding EPA's record of decision before EPA opened the public comment period on this action.

Comment 3. Ed Brocksmith

From: [Wooster, Richard](#)
To: [Ed Brocksmith](#)
Subject: RE: Illinois River
Date: Monday, August 12, 2024 7:08:00 AM

Thanks Ed. Your comments are appreciated.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Ed Brocksmith [REDACTED]
Sent: Thursday, August 8, 2024 10:39 AM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: Illinois River

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello Richard...

I just wanted you to know how grateful I am to EPA and you for the current proposed action on the Arkansas 303d list.

I support EPA on this action and believe it is vital to the water quality protection of the Illinois River watershed.

I will provide you with a formal comment soon.

Save the Illinois River, Inc. also will submit comments in support.

Ed Brocksmith
[REDACTED]

Comment 3. Ed Brocksmith. Attachment

From: [Wooster, Richard](#)
To: [Ed Brocksmith](#)
Subject: RE: FRL-comment
Date: Tuesday, August 13, 2024 7:39:00 AM

Thank you! Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Ed Brocksmith [REDACTED]
Sent: Monday, August 12, 2024 2:29 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Cc: Ed Brocksmith [REDACTED]
Subject: FRL-comment

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Regarding FRL-comment to U.S. EPA
Mr. Richard Wooster
Mail Code R6WDPQ
U.S. Environmental Protection Agency Region 6
1201 Elm St.
Dallas, Texas 75270.

Dear Mr. Wooster,

I wish to use the public comments made by Save the Illinois River, Inc., STIR, of Tahlequah, Oklahoma as my own comment. I am a member and a cofounder of STIR.

The Illinois River is obviously impaired by phosphorus and other sources including bacteria, and sediment.

The U.S. EPA is trying to do the correct thing for the Illinois River watershed and its tributaries by adding several water segments and streams to the Arkansas list of impaired waters required by the Clean Water Act.

Further, I believe that the U.S. EPA should require both Arkansas and Oklahoma to conduct a Total Maximum Daily Load study of the Illinois River and its tributaries. Voluntary efforts to lower phosphorus levels in the watershed, in leu of TMDLs, are not working in my opinion.

We must do more to control nonpoint sources of phosphorus in the Illinois River watershed.

Sincerely,
Ed Brocksmith



Comment 4. Buffalo River Watershed Alliance, The Ozarks Society, and Save the Illinois River, Inc.

From: [Wooster, Richard](#)
To: [Buffalo River](#)
Subject: RE: FRL - Comments
Date: Thursday, August 15, 2024 8:00:00 AM

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Buffalo River [REDACTED]
Sent: Thursday, August 15, 2024 7:07 AM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: FRL - Comments

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Mr. Richard Wooster
Mail Code R6WDPQ
U.S. Environmental Protection Agency Region 6
1201 Elm St.
Dallas, Texas 75270.

Re: FRL Comments to U.S. EPA

Dear Mr. Wooster,

These comments are submitted on behalf of the Buffalo River Watershed Alliance (BRWA), a non-profit organization located in NW Arkansas, and are in reference to recent finding by EPA regarding the addition of several impaired stream segments in the Illinois River watershed in NW Arkansas.

As more watersheds in Arkansas, Missouri, and Oklahoma have exceeded the capacity to accept the growing nonpoint source nutrient field applications, resulting

in overloading and polluting of the Illinois River watershed, the prospect of excessive applications of that waste looms over and potentially threatens the pristine waters of Arkansas' only National River, the Buffalo. The Buffalo National River watershed is not protected as a Nutrient Surplus Area (NSA) and is therefore subject to more unchecked and unmonitored nutrient waste applications from the NSA areas alongside it. The BNR watershed is the most "convenient" land application area for excess waste which must by law be transported out of the adjacent NSA. Instead of a piecemeal shuttling of the waste disposal problem down river (or in this case to nearby watersheds), we ask that a deeper look take place at the growing nonpoint waste issue, and that real solutions must take into account the root sources of the pollutants before too many Arkansas rivers are destroyed by unchecked disposal methods. We feel that designating these Illinois River stream segments as impaired raises their priority among state agencies and NGOs, requiring that steps be taken to address the sources of that impairment. We support EPA's efforts in that regard.

The *Buffalo River Watershed Alliance* further incorporates by reference the comments of the *Ozark Society* and the *Save the Illinois River, Inc.* copied below. BRWA's mission is focused on the protection of the Buffalo National River watershed which lies just outside the northwest Arkansas Nutrient Surplus Area.

Thank you for your work to protect the water quality of our rare, iconic and extraordinary waters.

Gordon Watkins, President
Buffalo River Watershed Alliance

[REDACTED]
[REDACTED]

Ozark Society Comments:

Mr. Richard Wooster
Water Quality Protection Section

Mr. Wooster:

I represent The Ozarks Society. We are a sixty year old regional conservation organization representing roughly 1,000 members in chapters across Arkansas, Louisiana, and Missouri. I am a resident of NW Arkansas and we have been following the issues surrounding the Illinois Scenic River for quite some time.

Illinois River water quality has improved on some segments, but has leveled off, and to some degree has reversed in recent years. A lot of the early success was the result of educating landowners and stakeholders. In addition, the regional poultry industry established a non-profit to coordinate the export of chicken litter north into Kansas where the addition of phosphorus has been beneficial. My point is that the community has made some efforts.

With sewer rates rising in the NW Arkansas *Nutrient Surplus Area*, last year we took issue with the Arkansas Department of Environmental Quality (ADEQ) for approving permits for the land application of industrial waste in and around the Illinois River and Beaver Lake. We challenged them on the fact that of the Water Division's 36 "rules," none of them addressed the surface application of industrial waste. The resulting addition of phosphorus to soils was in direct conflict with the efforts being made by local waste water treatment plants. Those ADEQ permits appear to have now been halted. We're not sure what ADEQ's future direction on those will be.

ADEQ is now working on a proposed "Rule 37" to allow for nutrient trading, with special focus on cleaning up the Illinois River Watershed. Nutrient trading might actually offer some real benefits. But, we are also well aware that nutrient trading is extremely complicated, both to implement and to monitor. Currently the political will seems to be to split technical responsibilities between ADEQ and the Arkansas Natural Resources Division (ANRC), a more farmer friendly agency. We think both agencies currently lack the economic and political support to handle the technical challenges of nutrient trading in any sort of serious manner. We also think that attempting to split responsibilities between agencies is not a sound long term direction.

In summary, while the NW Arkansas community is mostly doing their part, ADEQ has been constrained from providing scientific and proactive leadership. With their current state of funding, they can do little more than react to politically charged issues such as adding the Illinois Scenic River to the 303(d) list.

We think that ADEQ is languishing in regard to its oversight responsibilities. Any federal scrutiny that might encourage increased legislative support for an

independent, scientific ADEQ can only be beneficial to the state of Arkansas. All that being said, we support the long overdue decision to declare portions of the Illinois Scenic River to be impaired.

Sincerely,

Brian Thompson
President - The Ozark Society

[REDACTED]

Save the Illinois River Inc. Comments:

STIR
Save the Illinois River Inc.

[REDACTED]

Regarding FRL-comment to U.S. EPA

Mr. Richard Wooster
Mail Code R6WDPQ
U.S. Environmental Protection Agency Region 6
1201 Elm St.
Dallas, Texas 75270.

Dear Mr. Wooster,

Save the Illinois River, Inc., STIR, a Tahlequah, Oklahoma-based not for profit organization created to protect the Illinois River, its tributaries, aquifers, and Lake Tenkiller in Oklahoma, fully supports the United States EPA in seeking greater water quality protection for the Illinois River watershed in both Arkansas and in Oklahoma. Specifically, STIR supports the EPA's current findings that

additional waters and stream segments of the Illinois River in Arkansas be listed as impaired for phosphorus even though these areas are not listed as impaired by the State of Arkansas (303(d) Clean Water Act report).

Because the Illinois River is very obviously impaired by phosphorus and other sources including bacteria, STIR strongly believes that the U.S. EPA should require both Arkansas and Oklahoma to conduct a Total Maximum Daily Load study of the Illinois River and its tributaries.

Voluntary efforts to lower phosphorus levels in the watershed, in lieu of TMDLs, are not working satisfactorily in STIR's opinion.

I hope this statement sufficiently demonstrates STIR's desire for a cleaner, safer Illinois River watershed and appreciation for U.S. EPA's diligence in listing additional Illinois River stream segments as impaired by phosphorus.

Sincerely,
Denise Deason-Toyne
Save the Illinois River, Inc. President

Buffalo River Watershed Alliance

[REDACTED]
[REDACTED]
[REDACTED]

Comment 5. City of Bentonville

From: [Wooster, Richard](#)
To: [REDACTED]
Subject: FW: FRL-Comment
Date: Monday, August 26, 2024 2:40:56 PM

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Mike Bender [REDACTED]
Sent: Monday, August 26, 2024 2:34 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Cc: [REDACTED]
Subject: FRL-Comment

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Mr. Wooster:

Thank you for the opportunity to provide comments on the Environmental Protection Agency's (EPA) Decision Document regarding Arkansas' 2020 Section 303(d) list.

I am concerned that the EPA is arbitrarily applying a numeric standard for Oklahoma's designated scenic rivers to streams/stream segments in Arkansas, specifically the concentration of 0.037 mg/L for total phosphorus, and seeming to dismiss Arkansas' narrative standard. Even in its own review of the above referenced list, EPA states "This criterion magnitude is currently applicable to some Oklahoma waters that are in the same ecoregion as the AR segments." This clearly shows that the 0.037 mg/L criterion is not applicable to all streams/stream segments. I understand the stream segments in Osage Creek and Spring Creek are within the Illinois River Watershed, but that does not automatically make a downstream criteria applicable to all reaches. Data referenced in EPA's determination show that phosphorus concentrations decrease as you move downstream towards the Oklahoma state line where the referenced criteria is applicable in Oklahoma; however, there is no study provided to determine or document an applicable numeric criterion for these tributaries or the upper reaches of the Illinois River. While it includes data from Osage Creek and Spring Creek, the Oklahoma-Arkansas Scenic Rivers Joint Phosphorus Study: Final Report prepared by King in 2016 does not make any conclusions or recommendations for Osage Creek or Spring Creek. In addition, the EPA evaluated certain data from the McGoodwin Williams and Yates, Inc. 2009 study titled Water Quality and Ecological Assessment of Osage and Spring Creeks in the Illinois River Basin, but apparently ignored the report's conclusion that there was no justification for

including Osage Creek or Spring Creek on the 303(d) list for impairment by nutrients. The decision to add the 7 stream segments appears solely based on comparing available concentration data to the 0.037 mg/L criterion.

Establishing numeric criteria for nutrients in Arkansas without a detailed, public process also removes stakeholders from being involved in a rulemaking that replaces Arkansas' narrative nutrient criteria. This is an overreach by a federal agency forcing regulations and standards without stakeholder involvement which erodes trust and cooperation.

Decisions like this ultimately have financial implications for local economies and need to have sound basis that illustrates a true need. The EPA's decision to add the 7 stream segments to Arkansas' 2020 Section 303(d) list appears arbitrary and careless as it merely compares data to a set, numeric criteria for Oklahoma's designated scenic rivers without detailed, specific assessment.

Thank you for your consideration of these comments regarding the Environmental Protection Agency's (EPA) Decision Document regarding Arkansas' 2020 Section 303(d) list. Please feel free to contact me if you have any questions or wish to further discuss any comments.

Respectfully,

Mike Bender, PE
Water Utilities Director
City of Bentonville

[REDACTED]

Information in this message may be privileged or confidential. Information is intended for the sole use of the addressee. No consent is given for unauthorized viewing or distribution.

Comment 6. City of Springdale Mayor Doug Sprouse

From: [Wooster, Richard](#)
To: [Chris Herrera](#)
Subject: FW: City of Springdale - Public Comment for Arkansas 2020 Integrated Water Reports Action
Date: Monday, August 26, 2024 7:30:28 AM
Attachments: [EPA Public Comment-Mayor Sprouse.pdf](#)

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: [REDACTED]
Sent: Thursday, August 22, 2024 9:45 AM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: City of Springdale - Public Comment for Arkansas 2020 Integrated Water Reports Action

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Mr. Wooster,

Please see the attached letter from our Mayor, Doug Sprouse, in regards to the Public Notice: Arkansas 2020 Integrated Water Reports Action. Our City is committed to the health of our waterways and diligently work to maintain the water quality for a thriving ecosystem. I regularly inspect and monitor Spring Creek within city limits and disagree with the EPA's inclusion of this stream into the 303d for the same reasons listed in the attached letter.

Thank you for your continued commitment to Region 6.

Respectfully,

Chris Herrera, NPDES (*he/him*)
Stormwater and Floodplain Coordinator
Engineering, City of Springdale

[REDACTED]
[REDACTED]
[REDACTED]



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August 16, 2024

Mr. Richard Wooster, Supervisor

Water Quality Protection Section

United States Environmental Protection Agency

RE: Public Notice: Arkansas 2020 Integrated Water Reports Action

Mr. Wooster,

The City of Springdale (City) is directly affected by the Environmental Protection Agency's (EPA) proposal to designate additional impaired waters in Arkansas. Specifically, we are concerned about the inclusion of Spring Creek in the list of impaired waters. Based on our monitoring and recent studies, we firmly believe that this designation is not warranted.

The City has been actively involved in maintaining the health of our local waterways. Last year, we aided the Arkansas Department of Environmental Quality (ADEQ), with conducting a comprehensive fish count in Spring Creek. The preliminary results of this assessment yielded 36.7% of sensitive species, scoring highly on the biocriteria indicating good ecological health in the stream. Moreover, our observations during the assessment period indicated no presence of algae or cyanobacteria.

The findings align with the data that ADEQ has collected over recent years. The absence of significant algal growth and the positive indicators from the fish count suggest that Spring Creek is not impaired by the criteria typically used to determine water quality limitations. The proposal to list Spring Creek as impaired appears to be based on insufficient or possibly outdated data, not reflective of the current conditions observed through our diligent monitoring efforts; specifically, the U.S. Geological Survey study referenced in this determination was conducted in 2006, the periphyton was from a study conducted 2007-2009, and the total phosphorus data was collected in 2009.

It is imperative that any decisions regarding the designation of impaired waters are grounded in accurate, current, and comprehensive data including narrative data. Misclassifying Spring Creek as impaired could have unnecessary and adverse implications for our community, including potential restrictions on development, increased regulatory burdens, and unwarranted public concern about water quality.



We urge the EPA to reconsider the inclusion of Spring Creek in the list of impaired waters. We request that the agency review the latest data collected by both ADEQ and our municipality before making a final determination. We are confident that a thorough review of the evidence will demonstrate that Spring Creek does not meet the criteria for an impaired waterway designation.

Thank you for your attention to this matter. We are committed to working collaboratively with the EPA and ADEQ to ensure the accuracy and integrity of our water quality assessments and to protect the environmental health of our community.

Respectfully,

Doug Sprouse, Mayor
City of Springdale, Arkansas

Comment 7. Beth Cohenour

From: [Wooster, Richard](#)
To: [Beth Cohenour](#)
Subject: FW: FRL-comment
Date: Monday, August 26, 2024 7:24:55 AM

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: [REDACTED]
Sent: Thursday, August 22, 2024 3:34 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: FRL-comment

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Richard Wooster
Water Quality Protection Section
U.S Environmental Protection Agency, Region 6

Dear Mr. Wooster,

For over sixty years my family has lived on property adjoining the Illinois River near Tahlequah, Oklahoma. In 2015 I retired to live full time on that property. The water in the river is certainly not the clear, clean quality that it was during my childhood when we played and swam in it. Despite efforts to improve the quality of the water in the past much more work is needed. I support the EPA's inclusion of segments of the Illinois River watershed as impaired waters in Arkansas DEQ's 2020 Section 303(d) List.

Respectfully,

Beth Cohenour

[REDACTED]

[REDACTED]

[REDACTED]

Comment 8. Ed Fite

From: [Wooster, Richard](#)
To: [REDACTED]
Subject: FW: Comment Letter re Arkansas Integrated Report, 303(d) List and APDES Permits
Date: Monday, August 26, 2024 2:29:35 PM
Attachments: [EPA Letter 2024.pdf](#)

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Ed Fite [REDACTED]
Sent: Monday, August 26, 2024 1:56 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Cc: [REDACTED]
[REDACTED]
Subject: Comment Letter re Arkansas Integrated Report, 303(d) List and APDES Permits

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello Richard,
Good Monday afternoon... please add the attached letter to your file related to comments re Arkansas 2020 Integrated Water Reports Action, 303(d) List, and APDES Permitting.
Thank you,
Ed Fite
Tahlequah, OK

Sent from my iPhone



August 26, 2024

Richard Wooster
Supervisor, Water Quality Protection Section
Environmental Protection Agency - Region 6
1201 Elm Street
Dallas, TX 75270

Mailed via electronic mail

Re: Arkansas 2020 Integrated Water Reports Action, 303(d) List, APDES Permitting

Dear Richard,

Please allow me to submit this letter to place individual comments into the record related to pending consideration by EPA of the Arkansas 2020 Integrated Reports, 303(d) List, and APDES permitting of WWTPs within the Illinois River Watershed. The below comments are intended to support your agency's efforts to find harmony in the protection and preservation of the Illinois River and its tributaries and shouldn't come as a surprise to anyone as they are likened of those for which I am renowned openly espousing throughout the years when attending varied meetings, workshops, conferences, venues and serving in other capacities.

At the April 25, 2018, Joint AR-OK Illinois River Basin Water Quality Workgroup Meeting, it was scribed onto a Post-it Easel Pad (2.5 ft x 2.08 ft piece of paper) by EPA Officials and then posted on the wall at the front of the room for all to read "EPA is not developing a federal TMDL at this time. EPA has worked with Arkansas, Oklahoma, and Cherokee Nation on technically robust models, which the states can use in developing solutions."

There is no doubt that EPA has been an indispensable partner for more than four decades in providing welcomed guidance and funding as Arkansas, Oklahoma, Cherokee Nation, and others have staked out various positions, litigation, joint principal agreements, water quality studies, et cetera of what could be a potential solution(s) to protect, preserve, and improve the biological, chemical, and physical characteristics of this outstanding resource water and its tributaries. That cooperation has influenced Arkansas cities to make significant investments in stormwater management and building new or upgrading existing wastewater treatment plants. Arkansas agencies have also ramped up a focus on the reduction of non-point sources of pollutants, resulting in goals and funding deployed to standup

programs to assist stakeholders throughout those stream reaches located within that state's portion of the watershed. However, when I reflect on that meeting in 2018, from my vantage EPA's role is more important today than ever before. The watershed is experiencing an exponential growth in population and associated urbanization at a pace that threatens to soon outstrip all the gains made in recent years by Arkansas and Oklahoma to improve water quality.

In 1983, when I started my work, the population of the 1,069,530-acre Illinois River Watershed totaled approximately 179,000 people. Doing the math, which would equate to just shy of six acres per person. When the SCOTUS ruled in February 1992 on the *Oklahoma vs Fayetteville Case*, the population had grown to approximately 243,000 people reducing the number to 4.4 acres per person. At the present day, the overall population is just over 600,000 causing the average to plummet to approximately 1.8 acres per person. And what is more perplexing, there are demographers opining that both states must prepare to deal with an overall population projected to swell to 1.2–1.4 million by the period 2045-2050. If those numbers do come to fruition, that will require a 100% increase in overall infrastructure and housing within the watershed to accommodate a doubling of the population.

Then there are the challenges associated with ensuring a reliable clean potable water supply, stormwater runoff-flood water detention/management, solid waste management, abating impacts from production agriculture and food processing, and so much more. Yet there is a more daunting question we must address, planning physical works to collect, on occasion store, and treat the wastewater generated by an additional 600,000+ people calling the watershed their home. From my standpoint, treated effluent discharged from existing wastewater treatment plants already comprise a significant percentage of the flow in the river during low water/summer months. The base flow and water level is greater than it was in the 1980s given the copious treated effluent discharged into the river and its tributaries. As the flows grow from an increased population, the river will become more effluent dominated that will exacerbate nutrient loading which in turn fuels nuisance algae conditions and degradation of water quality. Simply put, meeting Oklahoma's water quality standard of 0.037 mg P/L will become more difficult with greater effluent releases if permitted effluent concentrations are also allowed to increase.

Going forward it is paramount that EPA continues its steady pace as an indispensable partner, one that is relied upon to provide guidance, funding and exercises leveraged influence upon Arkansas and Oklahoma to keep a focus on our agreed upon goals, helps deploy solutions, and ensures that we meet all requisites set out within Clean Water Act Programs. Additionally, it is extremely important that Arkansas' Integrated Reports and 303(d) lists (incorporate reference to nutrients, sediment, bacteria, and any other causation of impairments) should be like what your agency required from us to make our state be consistent with protocols, goals, and OWQS. Finally, I do not support any backsliding on existing permitting, or the issuance of renewal permits that allow an increased nutrient loading(s) derived from any wastewater treatment process/plant(s) located within the Illinois River Watershed. When ADEQ proposes changes to Arkansas' existing pollutant discharge elimination system permits (APDES), any changes should be focused on meeting the Oklahoma standard at the state line, which does not address whether Oklahoma should be allowed some assimilative capacity to meet the standard as well.

And specifically related to the Northwest Arkansas Conservation Authority WWTP, APDES permitting for that facility must continue to remain at 0.1mg P/L or less phosphorus threshold as was originally agreed to between Allan Gates and Bob Kellogg, respectively the attorneys who represented NWA Cities and Save the Illinois River, Inc., when resolving a potential lawsuit before that facility became operational. Both Dr. Riley Needham, Dr. Ryan King along with other scientists have published well-documented research that supports the tightening of the limits placed within APDES and OPDES permitting for those WWTPs located within the watershed.

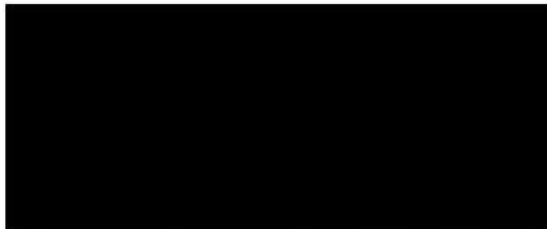
Simply, the protection and preservation of the Illinois River Watershed has no endpoint; there will never be a time when we can say our work is finished. We must continue striving to achieve the "win wins" that benefits all who reside, work and/or visit within the watershed.

Thank you for all you have provided over the decades in partnering with Arkansas, Oklahoma, Cherokee Nation, and others in the quest to protect and preserve the biological, chemical, and physical characteristics of our shared Illinois River and its tributaries.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ed Fite", with a stylized flourish at the end.

Ed Fite



Comment 9. Leif Kindberg

From: [Wooster, Richard](#)
To: [Leif Kindberg](#)
Cc: [REDACTED]
Subject: RE: Follow-up on Illinois River Watershed
Date: Wednesday, August 7, 2024 1:34:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Good afternoon Leif,

I, too, enjoyed our conversation this morning. As I mentioned, over the years of my EPA career I've encountered many advocates of some innovative environmental and/or public health protection strategy. Often, it is difficult to direct such energy where it might take root. In this case, I'm not sure if/how EPA resources could be used to further your interest in agricultural residuals biodigestion. On the technical/program side, my friend and colleague William Cooper (copied on this message) might be a good person to speak with. As for the funding side of the equation, I mentioned Claudia Hosch who manages the Water Division's Water Quality financial assistance programs. Claudia is assisted and supported by her leadership team which includes Nelly Smith, Karen McCormick, Denise Hamilton, and Salvador Gandara. Much better than I, these folks know about sources and limitations of available financial assistance (i.e., contracts, grants, cooperative agreements). I've also copied Claudia and her leadership team for their awareness of your interest.

I look forward to our next conversation.

richard

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Leif Kindberg [REDACTED]
Sent: Wednesday, August 7, 2024 12:33 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: Follow-up on Illinois River Watershed

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Richard,

I really enjoyed the conversation this morning. To follow-up, as mentioned the Governor Sanders has indicated she is waiting on the recommendations from the Illinois River watershed management plan to direct funding towards Act 89 (see attached). Funds that are

invested through Act 89 will go directly to the Arkansas Department of Agriculture – Natural Resources Division for them to then identify partners and projects that improve water quality in the Illinois River watershed.

20 letters of support for appropriating funds have been sent to Governor Huckabee Sanders from a broad cross-section of regional leaders and elected officials (see below list) due to the importance of this watershed to our region's economy and residents.

1. Walmart
2. Simmons Foods
3. Tysons Foods
4. Bentonville, Mayor Stephanie Orman
5. Fayetteville, Mayor Lioneld Jordan
6. Springdale, Mayor Doug Sprouse
7. Siloam Springs, Mayor Judy Nation
8. Benton County, Judge Barry Moehring
9. Northwest Arkansas Council, Mr. Nelson Peacock
10. House, Assistant Pro Temp, Sen. Jim Dotson
11. Rep. Delia Haak (Dist. 17) *(Joint letter from 10 Representatives in NWA)*
12. Rep. R. Scott Richardson (Dist. 13) *(Joint letter from 10 Representatives in NWA)*
13. Rep. Grant Hodges (Dist. 14) *(Joint letter from 10 Representatives in NWA)*
14. Rep. Hope Duke (Dist. 12) *(Joint letter from 10 Representatives in NWA)*
15. Rep. Austin McCollum (Dist. 8) *(Joint letter from 10 Representatives in NWA)*
16. Rep., Brit McKenzie (Dist. 7) *(Joint letter from 10 Representatives in NWA)*
17. Rep. Kendon Underwood (Dist. 16) *(Joint letter from 10 Representatives in NWA)*
18. Rep. Robin Lundstrum (Dist. 18) *(Joint letter from 10 Representatives in NWA)*
19. Rep. Mindy McAlindon (Dist. 10) *(Joint letter from 10 Representatives in NWA)*
20. Rep. Rebecca Burkes (Dist. 11) *(Joint letter from 10 Representatives in NWA)*

Let me know who the best points of contact are within Region 6 to discuss opportunities for funding to support “agricultural residual” biodigestion. I’m going to continue to explore partnerships to address this with the poultry and food processing industries here in Northwest Arkansas. Not sure if it will go anywhere but it is personal interest for me and something that can benefit this watershed as well as other surrounding watersheds.

Looking forward to our next conversation.

Leif

[Give Back to the Watershed](#)

Comment 9. Leif Kindberg. Attachment

From: [Wooster, Richard](#)
To: [Leif Kindberg](#)
Subject: RE: Follow-up on Illinois River Watershed
Date: Tuesday, August 13, 2024 11:51:00 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

G'Morning Leif –

Been thinking through our recent conversation. Is September a good month for an up close encounter of the river?

richard

From: Leif Kindberg [REDACTED]
Sent: Wednesday, August 7, 2024 12:33 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: Follow-up on Illinois River Watershed

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Richard,

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Let me know who the best points of contact are within Region 6 to discuss opportunities for funding to support “agricultural residual” biodigestion. I’m going to continue to explore partnerships to address this with the poultry and food processing industries here in Northwest Arkansas. Not sure if it will go anywhere but it is personal interes for me and something that can benefit this watershed as well as other surrounding watersheds.

Looking forward to our next conversation.

Leif



[Give Back to the Watershed](#)

Comment 10. Andy Krider

From: [Wooster, Richard](#)
To: [Andy Krider](#)
Subject: RE: FRL-comment to U.S. EPA
Date: Monday, August 19, 2024 7:15:25 AM

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Andy Krider [REDACTED]
Sent: Thursday, August 15, 2024 5:47 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: FRL-comment to U.S. EPA

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Mr. Richard Wooster,

My family and I enjoy spending time at our cabin on the Baron Fork in Cherokee County and I that support a cleaner Illinois River and Lake Tenkiller.

I stand by Save the Illinois River, STIR, and all they do to support the U.S. EPA's effort to improve the water quality of the Illinois River by giving additional protection under the Clean Water Act.

Best Regards,

Andy Krider

[REDACTED]



Comment 11. Mitchell Williams, P.L.L.C. on Behalf of Springdale Water Utilities (SWU)

From: [Wooster, Richard](#)
To: [REDACTED]
Subject: FW: FRL-comment on FRL-11994-01-R6: re Comments on EPA Record of Decision on Arkansas 2020 303(d) List
Date: Tuesday, August 27, 2024 7:39:07 AM
Attachments: [SWU Comment Cover Letter 8-26-24.pdf](#)
[SWU Comment 2020 303d Overlist.pdf](#)

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Jordan Wimpy [REDACTED]
Sent: Monday, August 26, 2024 5:00 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Cc: Grace Fletcher [REDACTED]
Subject: FRL-comment on FRL-11994-01-R6: re Comments on EPA Record of Decision on Arkansas 2020 303(d) List

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Mr. Wooster:

Attached please find a cover letter and comment submitted on behalf of Springdale Water Utilities.

Best regards,
Jordan



Jordan Wimpy

[REDACTED]

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MITCHELL WILLIAMS

Jordan Wimpy

August 26, 2024

VIA ELECTRONIC DELIVERY

Mr. Richard Wooster
Mail Code R6WDPQ
U.S. Environmental Protection Agency – Region 6
1201 Elm Street
Dallas, TX 75270
Email: wooster.richard@epa.gov

RE: Comments on EPA Review of Arkansas 2020 303(d) List FRL-comment on FRL-11994-01-R6

Dear Mr. Wooster:

This law firm represents Springdale Water Utilities (SWU). On behalf of SWU, please find attached comments on and objection to EPA's determination to partially disapprove Arkansas's 303(D) list and to overlist seven waterbody/parameter pair combinations in the Illinois River watershed, including overlisting portions of Spring Creek.

Sincerely,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

By



Jordan Wimpy

Attorney at Law

Springdale Water Utilities
FRL-comment on FRL-11994-01-R6

SPRINGDALE WATER UTILITIES: COMMENTS ON EPA’S REVIEW OF
ARKANSAS’S 2020 SECTION 303(D) WATERBODY LIST

Springdale Water Utilities (SWU) manages the wastewater treatment operations for the City of Springdale, Arkansas. SWU’s primary wastewater facility is located at 2910 Silent Grove Road. The facility operates pursuant to National Pollutant Discharge Elimination System Permit No. AR0022063. Treated effluent is discharged from Outfall 001 to Spring Creek, then Osage Creek, and ultimately the Illinois River. SWU maintains an interest in the regulatory and nonregulatory activities that could impact the Illinois River generally, and Spring Creek specifically. SWU has carefully reviewed the Environmental Protection Agency’s (EPA) Record of Decision for Arkansas’s 2020 303(d) submission, and the *Federal Register* publication giving notice of the same, and offers the following comments on EPA’s determination to overlist seven waterbody/parameter pairs in the Illinois River Watershed, including portions of Spring Creek:

I. Legal standard of review for EPA’s decision to overlist additional waterbody/parameter pair combinations.

Generally, EPA action on a state’s 303(d) list is set aside if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.¹ EPA’s explanation is reviewed to determine “whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.”²

Factors considered during review of EPA decisions include whether “the agency has relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”³ This is referred to as the “arbitrary and capricious” standard.

II. SWU supports in full the comments submitted by the Arkansas Department of Energy and Environment, Division of Environmental Quality.

SWU has reviewed comments submitted by the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) and supports in full the statements made by Arkansas’s environmental agency.

III. EPA’s conversion of Arkansas’s narrative nutrient standard into a numeric 0.037 mg/L total phosphorus criterion is illegal and improper.

EPA converted Arkansas’s narrative nutrient standard into a numeric 0.037 mg/L total phosphorus criterion for assessment purposes. The conversion for assessment purposes is also, for

¹ *Thomas v. Jackson*, 581 F.3d 658, 664, 69 ERC 1353 (8th Cir. 2009); *see also Friends of Boundary Waters Wilderness v. Dombeck*, 164 F.3d 1115, 1121 (8th Cir. 1999).

² *Bowman Transp. Inc. v. Arkansas-Best Freight System*, 419 U.S. 281, 285, 95 S.Ct. 438, 442, 42 L.Ed.2d 447 (1974).

³ *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2867, 77 L.Ed.2d 443 (1983); *see also Lion Oil Co. v. E.P.A.*, 792 F.3d 978, 982 (2015).

Springdale Water Utilities
FRL-comment on FRL-11994-01-R6

legal purposes, a revision to the State’s approved water quality standard. Revising an approved water quality standard requires a great deal more substance and lots of additional process in order to comply with Clean Water Act requirements. The three sentences – with zero analysis – in EPA’s Record of Decision for Arkansas’s 2020 303(d) submission will not suffice. EPA’s revision is not in accordance with the requirements of the Federal Clean Water Act (CWA) and is, otherwise, arbitrary and capricious.

A. EPA’s conversion of Arkansas’s narrative standard into a numeric total phosphorus criterion for assessment purposes is a revision to Arkansas’ approved WQS that requires compliance with the Clean Water Act.

Arkansas’s water quality standard for nutrients, as promulgated by the Arkansas Pollution Control and Ecology Commission (APCEC) and as approved by EPA, is narrative only and states:

Materials stimulating algal growth shall not be present in concentrations sufficient to cause objectionable algal densities or other nuisance aquatic vegetation or otherwise impair any designated use of the waterbody. Impairment of a waterbody from excess nutrients is dependent on the natural waterbody characteristics such as stream flow, residence time, stream slope, substrate type, canopy, riparian vegetation, primary use of waterbody, season of the year, and ecoregion water chemistry. Because nutrient water column concentrations do not always correlate directly with stream impairments, impairments will be assessed by a combination of factors such as water clarity, periphyton or phytoplankton production, dissolved oxygen values, dissolved oxygen saturation, diurnal dissolved oxygen fluctuations, pH values, aquatic-life community structure and possible others. However, when excess nutrients result in an impairment, based upon Division assessment methodology, by an Arkansas established numeric water quality criteria, the waterbody will be determined to be impaired by nutrients.⁴

EPA does not dispute the validity of the State’s narrative standard. The narrative standard was in 2020 and remains now fully approved and enforceable for CWA purposes. But EPA avers, for assessment purposes, that “[b]ecause the State’s narrative criteria do not specify concentrations that would impair designated uses, a threshold magnitude concentration of 0.037 mg/L was applied to be protective of the aquatic life designated use.”⁵

Unquestionably, any attempt by Arkansas to change the narrative standard into a threshold magnitude criterion – i.e. a numeric standard – would be considered a revision to the State’s currently approved water quality standard.⁶ The fact that EPA purports to translate the narrative standard to a threshold magnitude criterion *for assessment purposes* does not shelter EPA’s action from scrutiny. And it does not make EPA’s action any less unlawful. Reviewing EPA’s own set

⁴ APCEC Rule 2.509(A).

⁵ EPA “Review of Arkansas’s 2020 Section 303(d) Waterbody List” (referred to herein as the “Decision Document”) at p. 8.

⁶ See, e.g., *Nw. Env’t Advocs. v. U.S. Env’t Prot. Agency*, 549 F.Supp.3d 1218 (D. Idaho 2021) (holding “the Idaho legislature’s change from the prior numeric criteria for mercury to the narrative criteria was a ‘revision’ under [CWA] Section 303(c)(2)(A)”).

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of factors for analyzing whether a state provision or policy would constitute a new or revised water quality standard, it becomes readily apparent that EPA's translation is just such a revision.⁷

Does the provision address designated uses, water quality criteria (narrative or numeric) to protect designated uses, and/or antidegradation requirements for waters of the United States?

EPA's establishment of a threshold magnitude criterion for total phosphorus directly addresses the state's narrative nutrient water quality criteria and designated use. It does so simply and explicitly: EPA converts Arkansas's narrative standard to Oklahoma's numeric criterion (applicable for Oklahoma's aesthetic beneficial use) with the express intent to "be protective of [Arkansas's] aquatic life use."⁸

Does the provision express or establish the desired condition (e.g., uses, criteria) or instream level of protection (e.g., antidegradation requirements) for waters of the United States immediately or mandate how it will be expressed or established for such waters in the future?

EPA's conversion from Arkansas's narrative standard to Oklahoma's numeric criterion establishes the desired condition – the 0.037 mg/L threshold magnitude criterion for total phosphorus – that EPA believes appropriate to protect aquatic life use. It does so immediately.⁹

Does the provision establish a new WQS or revise an existing WQS?

EPA's adoption of the 0.037 mg/L total phosphorus criterion represents a clear change to Arkansas's approved water quality standard. Arkansas's narrative standard prohibits nutrient "concentrations sufficient to cause objectionable algal densities or other nuisance aquatic vegetation."¹⁰ The prohibition on "objectionable" algal densities or nuisance aquatic vegetation protects Arkansas's designated uses. EPA translated Arkansas's approved standard by borrowing the total phosphorus criterion applicable to Oklahoma scenic rivers. The Oklahoma criterion applies only in Oklahoma and applies only to scenic rivers designated with an "Aesthetics beneficial use."¹¹ EPA changed the criteria to its desired condition and, seemingly, imposed a new designated use. EPA thereby revised the Arkansas standard.

If and when EPA proposes to *legally* revise Arkansas's approved water quality standard for nutrients, it must chin a much higher bar. EPA must follow a number of policies, procedures,

⁷ See, generally, EPA, "What Is a New or Revised Water Quality Standard Under CWA 303(c)(3)? – Frequently Asked Questions," Publication No. 820F12017 at pp. 2–3 (Oct. 2012) (describing the four factors EPA considers when evaluating whether a specific provision constitutes a new or revised water quality standard) (FAQ Guidance).

⁸ Decision Document, at p. 8.

⁹ *Id.*

¹⁰ APCEC Rule 2.509(A).

¹¹ See OAC 785.45-5-19. Oklahoma's 0.037 mg/L total phosphorous criterion protects Oklahoma's aesthetic beneficial use applicable to the state's designated Scenic Rivers.

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analyses, and public participation requirements when it proposes to replace Arkansas’s approved water quality standard for nutrients.¹² Here, EPA has not complied with these requirements.

B. EPA’s conversion of Arkansas’s narrative nutrient standard into the 0.037 mg/L total phosphorus criterion is arbitrary and capricious.

EPA cribbed the 0.037 mg/L total phosphorus criterion from Oklahoma. It does not deny it. In fact, the federal agency states it directly. EPA states that the *Oklahoma-Arkansas Scenic Rivers Joint Phosphorus Study: Final Report* (Joint Study) confirmed the threshold magnitude criterion “based on empirical stressor-response relationships related to nuisance levels of algal related to attainment of Oklahoma’s Scenic River designated use.”¹³ This properly restate the magnitude threshold appropriate to maintain Oklahoma’s Scenic River designated use but is inappropriate to support EPA’s translation of Arkansas’s approved narrative criteria supporting Arkansas’s designated uses. EPA’s action is arbitrary and capricious for the following reasons:

- i. There is no legal requirement for states to utilize numeric nutrient criteria. In fact, applicable federal rules are quite explicit that state water quality criteria may be expressed numerically or narratively.¹⁴ There is also no statutory or regulatory requirement that Arkansas utilize numeric targets when assessing stream attainment against Arkansas’s narrative nutrient criterion. Arkansas developed and implemented a robust assessment methodology for nutrients.¹⁵

EPA appears, in part, to lean into recent guidance for the 2024 integrated reports from the states.¹⁶ The guidance announces that “EPA ‘expects that states will either adopt numeric nutrient criteria into their [WQS] or commit to us[ing] numeric targets to implement applicable narrative criteria statements.’”¹⁷ EPA’s expectation “is not regulation and does not impose legally binding requirements on EPA, states, territories, or authorized tribes.”¹⁸ Imposing that *expectation* on Arkansas after the fact, particularly when Arkansas relied on its own properly developed methodology, is arbitrary and capricious.¹⁹

- ii. EPA’s reliance on the Joint Study to set a numeric criterion for Arkansas waters is misplaced and beyond what the Clean Water Act intends for setting, revising,

¹² See 40 C.F.R. §§ 131.21 and 131.22.

¹³ Decision Document at 8 (emphasis added).

¹⁴ 40 C.F.R. 131.11(b)(1) and (2).

¹⁵ See, *infra*, Section IV.A.

¹⁶ Memorandum from Brian Frazer, Director (Acting), Office of Wetlands, Oceans, and Watersheds, to Water Division Directors, Regions 1–10, *Information Concerning 2024 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions* (Mar. 29, 2023) (the “2024 Assessment Guidance”) (citing Memorandum from Radhika Fox, Asst. Administrator, Office of Water Quality, Env’tl. Prot. Agency, to State Environmental Secretaries, Commissioners and Directors, State Agriculture Secretaries, Commissioners, and Directors, and Tribal Environmental Tribal Environmental and Natural Resource Directors, *Accelerating Nutrient Reductions in the Nation’s Waters* (Apr. 5, 2022)).

¹⁷ 2024 Assessment Guidance at 16.

¹⁸ *Id.* at 1.

¹⁹ Notably, Arkansas’s assessment methodology is entirely consistent with the flexible approaches for “assessment/listing of nutrient-related impairments” that are described in the 2024 Assessment Guidance.

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and assessing Arkansas's water quality criteria. The Joint Study's primary purpose was to identify "the total phosphorus threshold response level at which *any statistically significant shift occurs* in algal species composition or algal biomass production resulting in undesirable aesthetic or water quality conditions *in the Designated Scenic Rivers*."²⁰ The purpose and objectives of the Joint Study were focused on any shift that may impact aesthetic conditions in Oklahoma's designated Scenic Rivers. This is the wrong target for Arkansas's criteria and use.²¹ Arkansas has not designated any scenic rivers, and Arkansas's narrative nutrient standard is not concerned with an aesthetic use.

- iii. EPA's justification for the desired numeric criterion for Spring Creek diverges from the agency's previous rationale, as articulated in an EPA objection letter issued during the renewal of Springdale's NPDES Permit in 2021–22. In correspondence dated February 10, 2022, EPA demanded Springdale's permit be revised to include an 0.1 mg/L total phosphorus limit. Attempting to rationalize its demand, EPA stated the following:

The 0.1 mg/L TP limit is a water quality-based limit established under 40 C.F.R. 122.44(d) as a translation of Arkansas' narrative nutrient water quality criterion. *It is based on EPA's 304(a) Gold Book recommended criterion* and has been determined sufficient to meet Oklahoma's 0.037 mg/L water quality criterion for TP.²²

EPA's reliance on the Gold Book was and is inappropriate for a number of reasons that need not be restated here; and EPA's objection and demand for the lower total phosphorus limit remain the subject of pending litigation.²³ For present purposes, it is sufficient to state that EPA's quest to force Arkansas away from its narrative nutrient standard continues without any effort to do the work necessary to establish a numeric nutrient criterion and continues, instead, with stumbling references to extraneous texts.

IV. EPA's assessment and designation of seven additional waterbody/parameter pairs is arbitrary and capricious.

- A. *EPA offers no explanation for ignoring Arkansas's assessment methodology.*

Arkansas's 2020 integrated report included a robust assessment methodology for DEQ's evaluation of nutrients. DEQ utilized an assessment methodology that relied on empirical data

²⁰ Joint Study at 18 (emphasis added).

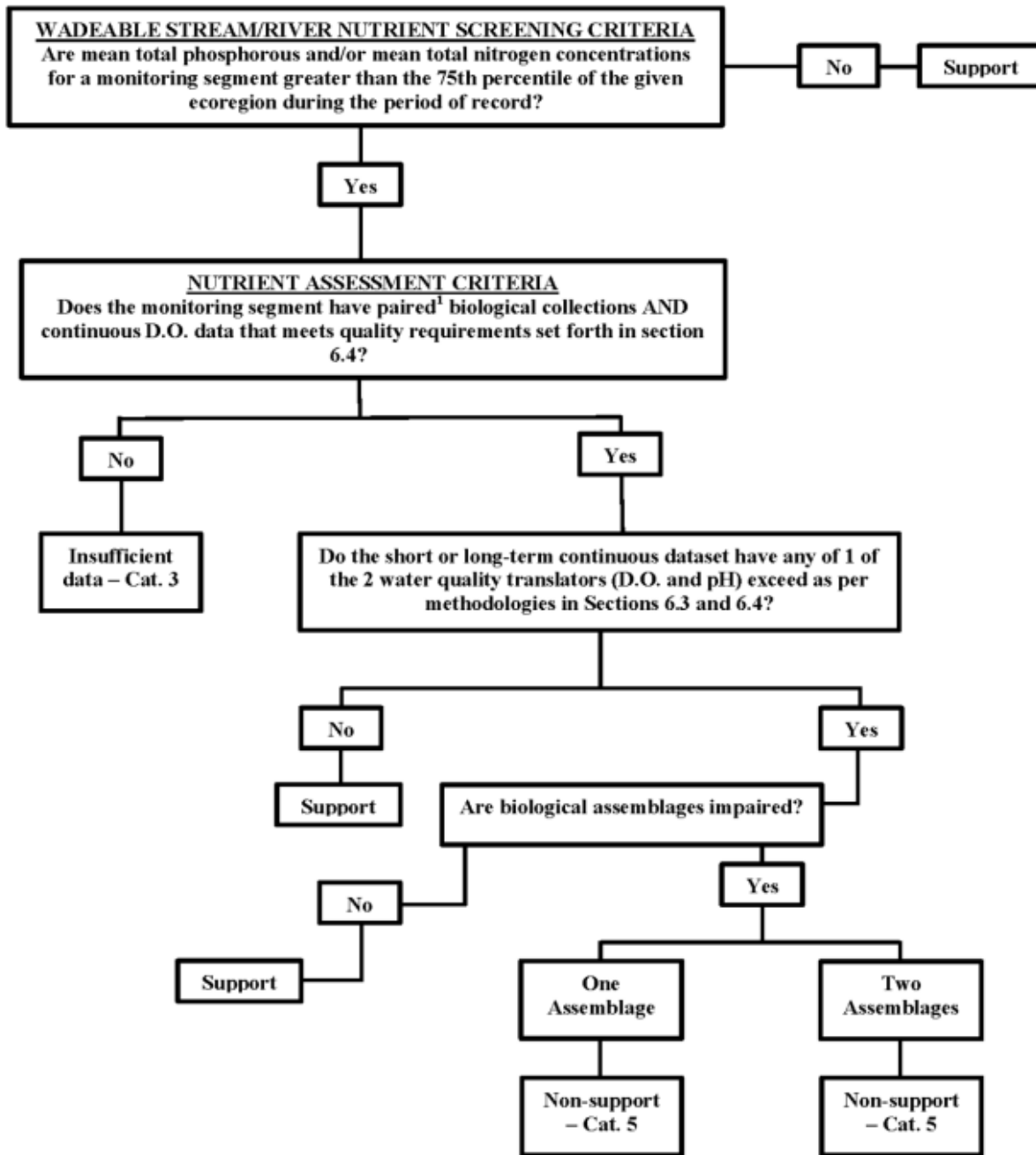
²¹ See *Fla. Wildlife Fed'n, Inc. v. Jackson*, F.Supp.2d 1138, 1167–68 (N.D. Fla. 2012) (holding EPA's adoption of numeric nutrient criteria for Florida streams was arbitrary and capricious because the standard sought to identify "any" increase in nutrient level instead of a "harmful" increase in nutrient level).

²² Letter from Charles W. Maguire, Director Water Division, Environmental Protection Agency Region 6, to Alan York, Associate Director Office of Water Quality, Arkansas Division of Environmental Quality (Feb. 10, 2022) (emphasis added).

²³ *Arkansas Dep't of Energy and Env't., Div. of Env'tl. Quality v. U.S. Env'tl. Prot. Agency, et al.*, Case No. 4:22-cv-359 (BSM) (E.D.Ark.).

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collected in the streams during the period of record and then pulled together multiple lines of evidence to determine attainment of use.²⁴ A flowchart from DEQ's methodology is provided here:



EPA acknowledges in the Decision Document that it received and reviewed Arkansas's assessment methodology. Presumably, it did not skip over the pages enumerating the state's method for assessing attainment of the approved nutrient standard. EPA certainly did not take issue

²⁴ See 2020 Assessment Methodology for the Preparation of: The 2020 Integrated Water Quality Monitoring and Assessment Report at pp. 58-62.

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with Arkansas’s methodology when EPA reviewed Arkansas’s integrated assessment report or approved the state’s list of 396 waterbody/parameter combinations. But EPA disregarded the methodology when it set out to overlist the seven waterbody/parameter combinations onto Arkansas’s 2020 303(d) list. EPA did so without offering any explanation. EPA’s replacement of the Arkansas methodology is arbitrary and capricious.

B. EPA’s overlisting rationale relies primarily on data and information well outside the designated “period of record” for the 2020 assessment report.

EPA’s Section 303(d) overlisting decision is based on data well outside the designated period of record. Arkansas’s combined integrated report, which includes the assessment and listing of impaired waters under Section 303(d), “describes the quality of all surface waters of the state that were evaluated *for a specified period of record*.”²⁵ The specified period of record from DEQ’s assessment methodology was stated in a call-out box:

Period of record for the 2020 305(b) Report:

Metals and ammonia toxicity analysis: *April 1, 2016 through March 31, 2019*

Beaver Lake site specific nutrient criteria: *January 1, 2014 through December 31, 2018*

All other analyses: *April 1, 2014 through March 31, 2019*

The period of record is vital to the state’s process because it ensures the data, and thereby the stream assessments, are representative of then current conditions. Arkansas may outright exclude data that is not temporally representative of conditions in the streams.²⁶ Exclusion of data to support and assess the most current conditions is true for data inside the period of record. And it is most assuredly proper for data falling outside the five-year period of record.

EPA’s data, as summarized in Table 1 of the Decision Document, is plainly outdated and irrelevant. EPA also relied on data from the McGoodwin, Williams and Yates study, entitled *Water Quality and Ecological Assessment of Osage and Spring Creeks in the Illinois River Basin, Arkansas* (MWY Report). This data helped lead EPA to the conclusion that Osage and Spring Creeks should be listed as impaired on the 2020 Section 303(d) list. However, the MWY Report measured nutrient concentrations from 2007-2009; again, well outside the period of record.

²⁵ *Id.*, Section 1.0.

²⁶ *Thomas v. Jackson*, 581 F.3d at 658 (upholding the rationale for excluding aged data for several waters); *see also* Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds, 2004 Integrated Reporting at 24–25 (“a State may determine that certain data are no longer representative of current conditions (e.g., land use has changed significantly, point source discharges have changed significantly, the hydrology of the water has been modified . . .)”); *and* Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds, 2006 Integrated Reporting at 35 (“older data should be evaluated with care”).

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C. EPA fails to provide or make available the data it reviewed to assess the seven additional waterbody/parameter pairs.

EPA tabulated the results of its independent evaluation of the total phosphorus data from the Illinois River, Osage Creek, and Spring Creek from 2009-2018.²⁷ As noted repeatedly in these comments, SWU objects to EPA's use of total phosphorus data outside – often well outside – the designated period of record for the 2020 water quality assessment. Just as alarming, however, EPA failed to provide the public with access to the actual data. No monitoring station information. No monitoring entity identification. No location information. No explanation of the quality assurance/quality control procedures. No validation protocols. Nothing.²⁸

D. EPA's reliance on the MWY Report is awkward and misplaced and runs counter to EPA's decision.

EPA's reliance on the MWY Report is awkward. The report found “no justification from this data for placing Spring Creek and Osage Creeks on the 303(d) list of impaired waters for impairment of nutrients.”²⁹ The data and information gathered for the ecological assessment measured the nutrient concentrations in stream from 2007-2009. As noted, this dated information is inapplicable to the conditions evaluated for the 2020 assessment period. DEQ has documented the “flawed logic” of EPA relying on the MWY Report to suggest that a lack of nutrient limitation in the streams is tantamount to impairment. And DEQ noted that the MWY Report documented the absence of nuisance levels of algae in the streams despite total phosphorus concentrations nearing or exceeding the Oklahoma criterion.³⁰ Taken separately or taken together, these issues demonstrate the error of EPA relying on the MWY Report.

E. EPA's reliance on a report titled A Comparison of Algal, Macroinvertebrate, and Fish Assemblage Indices for Assessing Low-Level Nutrient Enrichment in Wadeable Ozark Streams is arbitrary and capricious.

EPA's reliance on a nearly 15-year-old study from the United States Geologic Survey (USGS)³¹ is no more supportive of EPA's reasoning. There is little need for SWU to systematically point out the flaws in EPA's reasoning when DEQ summed it up so concisely:

The streams in the USGS study are not similar to the streams on which EPA proposes to promulgate nutrient impairments, have nothing to do with [APCEC] Rule 2's narrative nutrient criteria, do not speak to nuisance algae levels, had no reported amount of benthic algae per unit area (even though it was collected), and had poor relationships between nutrients and chlorophyll *a*. EPA's title for this comment was “linking aquatic life community structure to nutrients.” When DEQ

²⁷ See Decision Document a.p.8 Table 1.

²⁸ SWU, through its legal counsel, submitted a Freedom of Information Act request to EPA on August 15, 2024, requesting the information.

²⁹ McGoodwin, Williams, and Yates, “Water Quality and Ecological Assessment of Osage and Spring Creeks in the Illinois River Basin, Arkansas: Final Report” at 102 (Dec. 2009) (emphasis added).

³⁰ See *infra* Section III.F note 27.

³¹ United States Geological Survey, “A Comparison of Algal, Macroinvertebrate, and Fish Assemblage Indices for Assessing Low-Level Nutrient Enrichment in Wadeable Ozark Streams” (May 2010)

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sampled Spring Creek’s aquatic life, the sample demonstrated that 43% of fish sampled were sensitive species and none of the criteria to protect the aquatic life use were impaired.³²

The USGS report provides no comfort and aid to EPA’s decision.

F. EPA’s proposed listing of Spring Creek runs directly counter to more recent supplemental data and information provided to EPA by Arkansas DEQ.

On February 21, 2024, in response to EPA’s September 28, 2023 *draft* record of decision, DEQ submitted to EPA supplemental information on the assessment of Spring Creek. The supplemental data included: Ozark Highlands Fish Biocriteria, 303(d) Supplemental Data Narrative, Spring Creek Short Term Continuous Assessment, and Spring Creek Fish Data. As explained fully in the supplemental data narrative:

DEQ collected data for Spring Creek throughout 2023 and assessed the data according to DEQ’s Assessment Methodology. Due to the data being collected in the summer of 2023, an equivalent period of record was developed for comparison starting in September 2023 and going back five years. The mean total phosphorus concentration was greater than the 75th percentile for the ecoregion so the next step in [DEQ’s assessment] flow chart is required []. The 48-hour D.O. and pH datasets do not exceed applicable criteria and, therefore, the stream is supporting the narrative nutrient criteria for the stream. Although not required by the assessment methodology due to D.O. and pH attain[ment], the fish assemblage was also assessed and was also supporting the aquatic life use. In addition to supporting the use, 10 of the 23 species captured were sensitive species. DEQ used multiple lines of evidence from empirical data collected on Spring Creek and determined that there was no impairment of DEQ’s EPA-approved narrative nutrient criterion using DEQ’s Assessment Methodology.³³

The data and information show conclusively that Spring Creek is not impaired and is, in fact, attaining and strongly supporting aquatic life use. EPA’s decision to proceed with overlisting the Spring Creek assessment unit runs counter to the conclusive information made available to it. EPA’s decision is unquestionably arbitrary and capricious.

³² See *infra* Section III.F note 29.

³³ Division of Environmental Quality, “303(d) Supplemental Data Narrative” *included with* Email from Stacie R. Wassell, Associate Director Office of Water, Division of Environmental Quality, to Curry Jones, Branch Manager NPDES Permits and Water Quality, Environmental Protection Agency – Region 6 (Feb. 21, 2024, 9:48 CST).

V. EPA's proposed action violates several important principles of administrative law and agency decision-making.

A. EPA exceeded its limited oversight role by imposing on Arkansas an outcome-oriented assessment and overlisting decision for the seven waterbody/parameter pairs.

EPA overstepped its limited role of review and took on the state's responsibility in the Section 303(d) listing process by overlisting the seven waterbody/parameter pair combinations. Under the Clean Water Act, the states have primary responsibility to identify the waters to be included on the Section 303(d) lists. EPA's role in the 303(d) listing process is one of limited oversight and review.³⁴ EPA has a thirty-day period to review the state's listing, indicating Congress's intention for EPA to have a limited role in the 303(d) process.³⁵ In its review of the state-implemented standards, EPA's power is to approve or reject. When EPA made the decision to overlist the seven additional waterbody/parameter pairs in Arkansas and relied on Oklahoma's water quality standard in that decision, it deviated from its limited role.

B. EPA failed to consider an important aspect of the problem when designating the seven additional waterbody/parameter pair combinations, namely the Memorandum of Agreement By and Between Oklahoma and Arkansas.

Oklahoma and Arkansas (the "States") have a long history of joint efforts to improve the water quality of certain designated scenic rivers in Oklahoma, beginning in 2003, when the states entered into a Statement of Joint Principles and Action (the "First Statement"). At the time, EPA emphasized that the First Statement was a very positive step by the States toward improving the Oklahoma Scenic River Watersheds, consistent with achieving compliance with Oklahoma's 0.037 mg/l criterion for total phosphorus *at the state line*. In 2013, the States entered into a Second Statement of Joint Principles and Action (the "Second Statement"). This extended the First Statement commitments, such as development of a Joint Phosphorus Index, coordination of monitoring, re-evaluation of the 0.037 mg/L total phosphorus criterion, and a schedule for controls on major municipal utilities. The Second Statement also required the States engage in a Joint Phosphorus Study. This study was a three-year water quality study of the Illinois River and watershed to determine the total phosphorus threshold response level at which any statistically significant shift occurs in algal species composition or algal biomass production, resulting in undesirable aesthetic or water quality conditions *in Oklahoma's scenic rivers*. Part of the study included the appointment of a Joint Study Committee. The Joint Study Committee, in 2016, approved and issued a Final Report to Governors of the States, including recommendations from the Joint Study. The recommendations suggested both states develop monitoring and assessment programs informed by the Joint Study Committee recommendations and other scientific information to determine attainment of the phosphorus criterion *at the state line*. By November 2018, the States entered into a Memorandum of Agreement to accept Oklahoma's numeric standard of 0.037 mg/L as the total phosphorus criterion magnitude *at the state line*.

Based on this history, it is clear Oklahoma and Arkansas have developed a working relationship to move closer to the goal of meeting Oklahoma's standard *at the state line*. Since

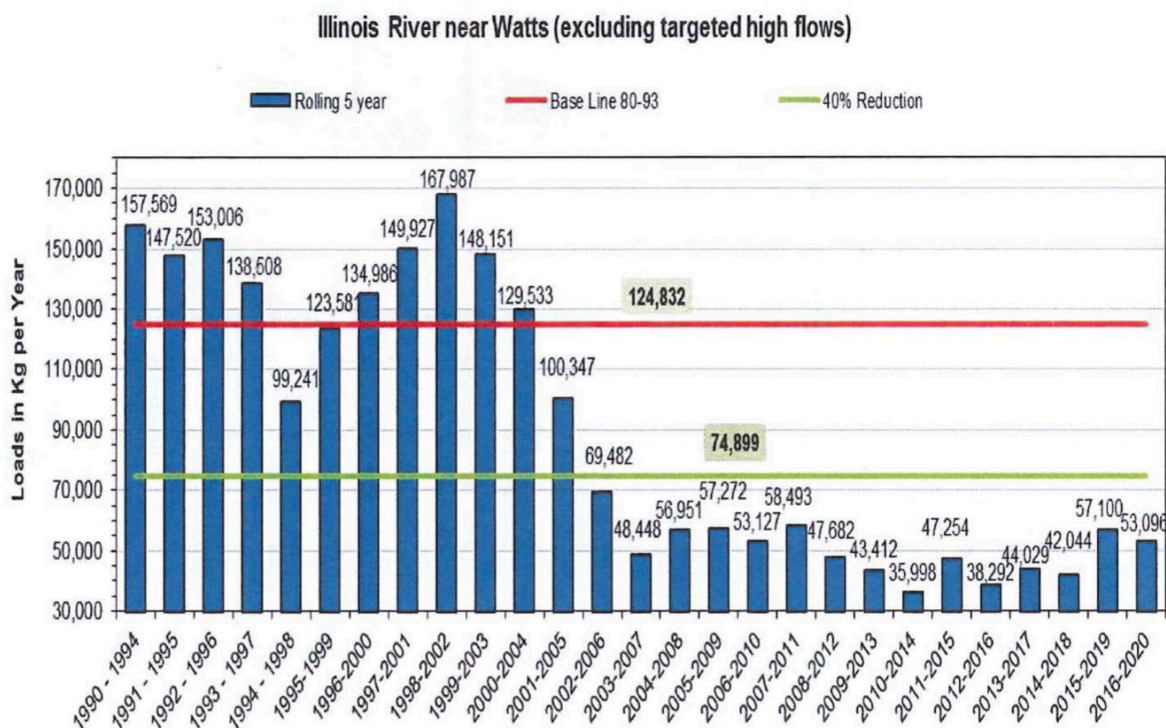
³⁴ *Barnum Timber Co. v. U.S. E.P.A.*, 835 F.Supp. 2d 773 (2011).

³⁵ *Id.* at 780.

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2003-2004, when northwest Arkansas's major wastewater utilities agreed to accept a 1.0 mg/L phosphorus permit limit, the phosphorus load in the Illinois River at the Oklahoma state line has decreased to less than 50% of the 1980-1993 Base Line. And, as shown below, the phosphorus load has been consistently below the 40% reduction target set by the Arkansas Oklahoma Arkansas River Compact Commission³⁶ for more than 15 years:



Throughout all of this cooperation, effort, and success, it remains that Arkansas's narrative nutrient standard remains the water quality standard at all points before the Oklahoma state line. EPA's overlisting decision and the application of Oklahoma's numeric standard to Arkansas's streams, is not only a misapplication of Arkansas's water quality standard, but also a dangerous decision that risks decades of collaboration between Oklahoma and Arkansas. EPA has full knowledge of the cooperation between the States to work in the Illinois River Watershed and is now inserting itself unnecessarily. EPA should have considered the States' work to this point, specifically recognizing the intents and objectives of the Joint Study, the Memorandum of Agreement between the States, and the focus on the 0.037 mg/L criterion at the state line.

C. EPA failed to consider the multiple federal courts currently hearing disputes and formulating remedies for the Illinois River watershed.

EPA also failed to consider the multiple federal court cases currently pending, each of which address total phosphorus in the Illinois River and some of which involve DEQ's

³⁶ Arkansas Oklahoma Arkansas River Compact Commission, Water Quality Monitoring Report for the Illinois River Basin, Calendar Year 2020.

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administration of the Clean Water Act programs, and one of which directly involves Springdale's receiving stream – Spring Creek. These cases include:

- *State of Oklahoma, et al. v. Tyson Foods, Inc., et al.*, Case No. 05-329-GKF-SH (N.D. Okla)
- *Arkansas Dep't of Energy and Env't., Div. of Env'tl. Quality v. U.S. Env'tl. Prot. Agency, et al.*, Case No. 4:22-cv-359 (BSM) (E.D.Ark.).
- *Arkansas Dep't of Energy and Env't., Div. of Env'tl. Quality v. U.S. Env'tl. Prot. Agency, et al.*, Case No. 22-1831 (8th Cir.)

Inconsistent interpretations of Arkansas's approved narrative nutrient standard? Differing methodologies for assessing streams for nutrient impairment? Conflicting regulatory requirements? Competing regulatory objectives? Remedial goals? And limited resources? All of this leaves SWU concerned that EPA's overlisting decision may present DEQ, SWU, and other impacted entities, with a revolving door of competing, if not conflicting, obligations. EPA's decision to list the seven waterbody/parameter combinations as impaired seems to ignore the courts' continued scrutiny of the watershed.

VI. Conclusion

EPA should reverse course and withdraw its partial disapproval of Arkansas's 2020 303(d) list. EPA's decision to overlist the seven waterbody/parameter pair combinations is arbitrary and capricious and not in accordance with law.

Comment 12. Susan Moorman

From: [Wooster, Richard](#)
To: [Susan Moorman](#)
Subject: RE: EPA -- Please Help the Illinois River in Oklahoma!
Date: Monday, August 12, 2024 7:15:00 AM

Thank you Ms. Moorman,

Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Susan Moorman [REDACTED]
Sent: Sunday, August 11, 2024 1:27 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: EPA -- Please Help the Illinois River in Oklahoma!

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Mr. Wooster,

I am a member of Save the Illinois River, Inc., STIR, a Tahlequah, Oklahoma-based not for profit organization created to protect the Illinois River, its tributaries, aquifers, and Lake Tenkiller in Oklahoma, fully supports the United States EPA in seeking greater water quality protection for the Illinois River watershed in both Arkansas and in Oklahoma. **I own a house overlooking the Illinois River just south of the Tahlequah Illinois River Bridge. I've grown up there since the 1950s. It is now severely polluted. Please help us get our river clean!** Specifically, STIR supports the EPA's current findings that additional waters and stream segments of the Illinois River in Arkansas be listed as impaired for phosphorus even though these areas are not listed as impaired by the State of Arkansas (303(d) Clean Water Act report). Because the Illinois River is very obviously impaired by phosphorus and other sources including bacteria, STIR strongly believes that the U.S. EPA should require both Arkansas and Oklahoma to conduct a Total Maximum Daily Load study of the Illinois River and its tributaries. Voluntary efforts to lower phosphorus levels in the watershed, in leu of TMDLs, are not working satisfactorily in STIR's opinion. I hope this statement sufficiently demonstrates STIR's desire for a cleaner, safer Illinois River watershed and appreciation for U.S. EPA's diligence in listing additional Illinois River stream segments as impaired by phosphorus.

Susan Moorman
.....As for me and my house, we will serve the Lord!

Comment 13. Oklahoma Conservation Commission

From: [Wooster, Richard](#)
To: [REDACTED]
Subject: FW: Second attempt
Date: Monday, August 26, 2024 7:19:50 AM
Attachments: [2024.8.20 AR 2020 Integrated Report comments to EPA.pdf](#)

Thank you. Your original and amended comments have been received.

rich

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Shanon Phillips [REDACTED]
Sent: Friday, August 23, 2024 3:19 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: Second attempt

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Rich-

Actually, could you supplant my previous comment letter with this one? I needed to make one more point.

Thank you and hope you have a great weekend!

Shanon

J. KEVIN STITT
GOVERNOR

MATT PINNELL
LIEUTENANT GOVERNOR



Our Land • Our Heritage • Our Future

TREY LAM
EXECUTIVE DIRECTOR

LISA KNAUF OWEN
ASSISTANT DIRECTOR

August 20, 2024

Mr. Richard Wooster
Supervisor, Water Quality Protection Section
EPA Region 6
1201 Elm Street
Dallas, TX 75270

Re: Arkansas 2020 Integrated Water Reports Action

Dear Mr. Wooster,

EPA, particularly your program at EPA, has been a strong partner in efforts between Oklahoma and Arkansas to find common ground while working towards solutions that protect valuable water resources like the Illinois River. That role means that EPA provides funding, technical assistance, guidance, and sometimes requirements that assist states in both working towards goals and meeting regulations related to Clean Water Act Programs.

While states have and should have autonomy in collecting and assessing data for their Integrated Reports, it is important also that those reports reflect, support, and even direct the State's intended Clean Water Act Programs. When Arkansas commits to work with Oklahoma to protect the Illinois River and agrees that the streams in the watershed are challenged by nutrients, sediment, and bacteria but yet at the same time, makes no effort to recognize those impacts in their Integrated Report, they limit their own opportunities to protect the watershed. When you couple that with proposed permits that seek to increase permitted nutrient loading to a watershed that they have agreed is impaired, their claims that they want to protect the resource seem less ingenious.

Arkansas is investing significant dollars in programs that will benefit citizens and users of the watershed both upstream and downstream of the state line. But a failure to limit permitted (or unpermitted) increases in loading to the watershed will likely limit the recognized water quality benefits of those investments. As the stream becomes increasingly effluent dominated, the capacity to achieve water quality standards attainment decreases unless the concentrations limits in permits for those discharges fall closer to, rather than further from the water quality standard. Attainment of a concentration-based, grab-sample assessed water quality standard is generally driven by the capacity of a stream to maintain concentrations near the standard at base flow.

The questions both states are wrestling with related to protection of the watershed are difficult questions. Oklahoma has also not always taken steps that are protective of the resource and may also have to make

significant investments to reduce permitted loadings to the watershed from our own sources, although that loading is relatively much reduced compared to Arkansas loading. Historically, EPA significantly delayed and required meaningful, significant changes to Oklahoma's Integrated Reports and 303(d) lists to make them more consistent with protocols, goals, and standards that Oklahoma adopted and committed to. At the time, those delays and changes were a challenge to accept, but once adopted, have improved the report and its capacity to be an effective tool for water management. I feel fairly confident Oklahoma would not have made those changes on our own without the requirement from EPA that in essence, was just that we formulate our reports to follow through with what we said we were going to do. Perhaps an over simplification, but the action on the Arkansas 2020 Integrated Report seems to be doing the same thing.

Simply put, Oklahoma is requesting that Arkansas work diligently to help Oklahoma meet our water quality standards at the state line rather than exceeding all the assimilative capacity of the river. Arkansas has not met this goal since the two states agreed to work together on reducing phosphorus loading to the stream and there are some indicators that trends in phosphorus reduction are reversing.

Thank you for your commitment to helping the States work towards their shared goal of protection of the Oklahoma Scenic River water resources.

Sincerely,

Shanon Phillips
Water Quality Division Director

Comment 14. Ken Purdy

From: [Wooster, Richard](#)
To: [Ken Purdy](#)
Subject: FW: FRL-Comment - Illinois River 303(d) List
Date: Monday, August 26, 2024 7:32:42 AM

Thanks you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Ken Purdy [REDACTED]
Sent: Thursday, August 22, 2024 9:14 AM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: FRL-Comment - Illinois River 303(d) List

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Mr. Wooster,

I am a resident of Northeastern Oklahoma and my family has had a residence on the banks of the Illinois River since the early 1960's. Over my lifetime, I have witnessed the degradation of the Illinois River and I have closely followed efforts to improve the water quality of the river, its tributaries and Lake Tenkiller. I write to support the EPA Final Action on Arkansas DEQ's 2020 Section 303(d) List, in particular supporting the addition of segments of the Illinois River in Arkansas to the list of impaired Dear waters.

Ken Purdy
[REDACTED]
[REDACTED]
[REDACTED]

Comment 15. Mary Blenkarn Purdy

From: [Wooster, Richard](#)
To: [Margot Purdy](#)
Subject: RE: FRL-comment
Date: Wednesday, August 21, 2024 2:31:16 PM

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Margot Purdy [REDACTED]
Sent: Wednesday, August 21, 2024 2:22 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: FRL-comment

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Richard Wooster
Water Quality Protection Section
U. S. Environmental Protection Agency, Region 6

Dear Mr. Wooster,

I have lived along or recreated in the Illinois River in Northeastern Oklahoma for over forty years. It saddens me to think that my children have never known these waters to be the quality waters I first encountered so many years ago. I fully support the EPA's inclusion of segments of the Illinois River watershed as impaired in the Arkansas 2020 Section 303(d) List. Greater Illinois River water quality protection efforts are needed in both Arkansas and Oklahoma

Thank you for your attention to my comments,

Respectfully,

Mary Blenkarn Purdy
[REDACTED]

Comment 16. City of Rogers Water Utilities (RWU)

From: [Wooster, Richard](#)
To: [Todd Beaver](#)
Cc: [REDACTED]
Subject: RE: FRL-comment
Date: Monday, August 5, 2024 11:06:00 AM
Importance: High

We have received your comments dated August 5, 2024. Thank you for your interest in the Illinois River Watershed.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: [REDACTED]
Sent: Monday, August 5, 2024 10:43 AM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Cc: [REDACTED]
Subject: FRL-comment

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

August 5, 2024

Rogers Water Utilities
Public comment response

RWU supports Arkansas DEQ's Clean Water Act section 303(d) list of impaired waters issued on June 2, 2022 without the EPA's revision.

The rationale used for EPA's decisions in adding the 7 waterbody/parameter pairs associated with the Illinois river watershed does not follow EPA's own rules on response time. There is also no defined criteria to establish a 0.037 mg/l TP limit at the state line within EPA's water quality standards. These criteria are established through the rulemaking process and require public input. The establishment of the suggested TP limit is outside of the current criteria in that it relies on another state's water use designation to establish a limit in Arkansas. This is a significant departure from established methods and must be established through the correct process.

Although RWU is very concerned and engaged when discussions arise about the Illinois river and its tributaries, we feel strongly that there have been great improvements on the removal of TP from this watershed as the data has proven. The data also shows that the vast majority of this improvement has come from point sources. Point source contributors are only a small

portion of the overall total. EPAs own model would indicate that the removal of all phosphorus from point sources would have negligible effect on the TP targeted with this action.

Furthermore, RWU continues to meet the approved limits for TP spelled out in the designated use section of the rule establishing water quality standards for surface waters of the state of Arkansas that is approved by the EPA. RWU operates an advanced biological treatment system that is designed to target phosphorus and continually produces results that are a fraction of what is allowed according to Water Quality Standards. RWU made this investment in good faith that phosphorus improvements in the receiving water body would be fairly targeted. Any additional treatment for the removal of phosphorus will come at a great cost to the communities of northwest Arkansas and provide minimal impact to the downstream user along the Illinois river basin.

The combination of uncertainty in the rule making, tremendous costs to negligible benefits, unfair application of water quality standards to all users of the watershed, and local needs will cause Rogers and others to consider larger projects that offer more certainty for planning and allow the people paying to treat the water to such standards the opportunity to benefit from it. The larger treatment costs become; the larger the engineering options become. Unintended consequences are likely to cause greater problems for the Illinois River as we know it.

Sincerely,

Todd Beaver, P.E.
Plant Manager

[REDACTED]

[REDACTED]

small logo for email signature



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Comment 17. Beth Rooney

From: [Wooster, Richard](#)
To: [REDACTED]
Subject: FW: FRL-comment
Date: Monday, August 26, 2024 10:13:53 AM

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Beth Rooney [REDACTED]
Sent: Monday, August 26, 2024 9:15 AM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: FRL-comment

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Mr. Wooster,

I am a member of two not-for-profit organizations created to protect our valued waters in Northeast Oklahoma: Save the Illinois River (STIR) and Spring Creek Coalition (SCC). I am also immediate past president and current treasurer of SCC.

SCC fully supports the United States EPA in seeking greater water quality protection for the Illinois river watershed in both Arkansas and in Oklahoma. Specifically, SCC supports the EPA's current findings that additional waters and stream segments of the Illinois river in Arkansas be listed as impaired for phosphorous even though these areas are not listed as impaired by the State of Arkansas 303(d) Clean Water Act report.

We are having the same issues in the Spring Creek Watershed which borders the Illinois Watershed: impairment by excess phosphorous and bacteria. We at SCC fully understand the importance of having these impairments recognized and acted upon.

Sincerely,

Beth Rooney, immediate past President, Treasurer, Spring Creek Coalition

Comment 18. Save the Illinois River Watershed, Inc.

From: [Wooster, Richard](#)
To: [Scott Hood](#)
Subject: RE: ILLINOIS RIVER PHOSPHORUS LEVELS
Date: Monday, August 12, 2024 7:07:00 AM

Thank you. You're comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Scott Hood [REDACTED]
Sent: Sunday, August 11, 2024 9:41 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: ILLINOIS RIVER PHOSPHORUS LEVELS

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Mr. Wooster,

Save the Illinois River, Inc., STIR, a Tahlequah, Oklahoma-based not for profit organization created to protect the Illinois River, its tributaries, aquifers, and Lake Tenkiller in Oklahoma, fully supports the United States EPA in seeking greater water quality protection for the Illinois River watershed in both Arkansas and in Oklahoma.

Specifically, STIR supports the EPA's current findings that additional waters and stream segments of the Illinois River in Arkansas be listed as impaired for phosphorus even though these areas

are not listed as impaired by the State of Arkansas (303(d) Clean Water Act report).

Because the Illinois River is very obviously impaired by phosphorus

and other sources including bacteria, STIR strongly believes that the U.S. EPA should require both Arkansas and Oklahoma to conduct a Total

Maximum Daily Load study of the Illinois River and its tributaries.

Voluntary efforts to lower phosphorus levels in the watershed, in leu of TMDLs, are not working satisfactorily in STIR's opinion.

I hope this statement sufficiently demonstrates STIR's desire for a cleaner, safer Illinois River watershed and appreciation for U.S.

EPA's diligence in listing additional Illinois River stream segments as impaired by phosphorus.

SINCERELY,

JAMES S. HOOD

NATIONAL LEADERSHIP COUNCIL

OKLAHOMA COUNCIL

TROUT UNLIMITED

“Clean Water is Northeastern Oklahoma’s Future”

Comment 19. The Ozarks Society

From: [Wooster, Richard](#)
To: [Brian Thompson COM](#)
Subject: RE: FRL-comment - Regarding impairment stats of the Illinois Scenic River
Date: Wednesday, August 7, 2024 12:21:00 PM

We have received your comments dated August 7, 2024. Thank you for your interest in the Illinois River Watershed.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section
(214) 665-6473
(817) 223-1924 (cell)

From: Brian Thompson COM [REDACTED]
Sent: Wednesday, August 7, 2024 11:54 AM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: FRL-comment - Regarding impairment stats of the Illinois Scenic River

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Mr. Richard Wooster
Water Quality Protection Section

Mr. Wooster:

I represent The Ozarks Society. We are a sixty year old regional conservation organization representing roughly 1,000 members in chapters across Arkansas, Louisiana, and Missouri. I am a resident of NW Arkansas and we have been following the issues surrounding the Illinois Scenic River for quite some time.

Illinois River water quality has improved on some segments, but has leveled off, and to some degree has reversed in recent years. A lot of the early success was the result of educating landowners and stakeholders. In addition, the regional poultry industry established a non-profit to coordinate the export of chicken litter north into Kansas where the addition of phosphorus has been beneficial. My point is that the community has made some efforts.

With sewer rates rising in the NW Arkansas *Nutrient Surplus Area*, last year we took issue with the Arkansas Department of Environmental Quality (ADEQ) for approving permits for the land application of industrial waste in and around the Illinois River and Beaver Lake. We challenged them on the fact that of the Water Division's 36 "rules," none of them addressed the surface application of industrial waste. The resulting addition of phosphorus to soils was in direct conflict with the efforts being made by local waste water treatment plants. Those ADEQ permits appear to have now been halted. We're not sure what ADEQ's future direction on those will be.

ADEQ is now working on a proposed "Rule 37" to allow for nutrient trading, with special focus on cleaning up the Illinois River Watershed. Nutrient trading might actually offer some real benefits. But, we are also well aware that nutrient trading is extremely complicated, both to implement and to monitor. Currently the political will seems to be to split technical responsibilities between ADEQ and the Arkansas Natural Resources Division (ANRC), a more farmer friendly agency. We think both agencies currently lack the economic and political support to handle the technical challenges of nutrient trading in any sort of serious manner. We also think that attempting to split responsibilities between agencies is not a sound long term direction.

In summary, while the NW Arkansas community is mostly doing their part, ADEQ has been constrained from providing scientific and proactive leadership. With their current state of funding, they can do little more than react to politically charged issues such as adding the Illinois Scenic River to the 303(d) list.

We think that ADEQ is languishing in regard to its oversight responsibilities. Any federal scrutiny that might encourage increased legislative support for an independent, scientific ADEQ can only be beneficial to the state of Arkansas. All that being said, we support the long overdue decision to declare portions of the Illinois Scenic River to be impaired.

Sincerely,

Brian Thompson
President - The Ozark Society



Comment 20. Steve Unger

From: [Wooster, Richard](#)
To: [Hill, Troy](#); [Rush, Randall](#)
Cc: [Jones, Curry](#)
Subject: FW: PRL-comment
Date: Monday, August 5, 2024 7:11:00 AM
Importance: High

I already forwarded this to XA and forgot to cc: you for awareness.

richard

From: Wooster, Richard
Sent: Monday, August 5, 2024 7:03 AM
To: [REDACTED]
Subject: FW: PRL-comment
Importance: High

Forwarding to your attention for your management direction. The topic concerns our addition of seven waterbody-parameter pairs to Arkansas' CWA Section 303(d) list of impaired waters for 2020.

richard

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Steve Unger [REDACTED]
Sent: Sunday, August 4, 2024 5:51 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Subject: PRL-comment

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Mr. Wooster,

I have concerns about the Illinois River Watershed. May I speak to you on the phone soon?

Rep Steve Unger D19
[REDACTED]

Comment 21. Cara Cowan Watts

From: [Wooster, Richard](#)
To: [Cara Cowan Watts](#)
Subject: RE: FRL-comment to U.S. EPA concerning the Illinois River Watershed AR & OK
Date: Monday, August 19, 2024 11:38:43 AM

Thank you. Your comments have been received.

Richard A. Wooster, MADR
Supervisor
Water Quality Protection Section

From: Cara Cowan Watts [REDACTED]
Sent: Thursday, August 15, 2024 12:46 PM
To: Wooster, Richard <Wooster.Richard@epa.gov>
Cc: Cara Cowan Watts [REDACTED]
Subject: FRL-comment to U.S. EPA concerning the Illinois River Watershed AR & OK

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Re: FRL-comment to U.S. EPA concerning the Illinois River Watershed AR & OK

ATTN: Mr. Richard Wooster
Mail Code R6WDPQ
U.S. Environmental Protection Agency Region 6
1201 Elm Street
Dallas, TX 75270

Dear Mr. Wooster,

I am a Cherokee Nation citizen and former Cherokee Nation Tribal Councilwoman from 2003 to 2015. I regularly go to the water for ceremonies in Spring Creek, which is part of the Illinois

River watershed, and I know first-hand the cultural significance of our running waters throughout the Cherokee Nation. In addition, my family and I gig, fish, gather plants and recreate on or near Spring Creek and the Illinois River.

I have read the proposed changes available to the public online at <https://www.epa.gov/ar/arkansas-2020-integrated-water-reports-action>.

I fully support the United States EPA's efforts to seek greater water quality protection for the Illinois River watershed in Arkansas and Oklahoma.

The EPA's current findings that additional waters and stream segments of the Illinois River in Arkansas are to be listed as impaired for phosphorus in the 303(d) Clean Water Act report is critical to the long-term success and health of our Cherokee Nation and Oklahoma's waters. Given the fishing and recreational dollars being pumped into the State, Arkansas should want the same for its waters.

The U.S. EPA should require Arkansas and Oklahoma to conduct a Total Maximum Daily Load (TMDL) study of the Illinois River and its tributaries. Voluntary efforts to lower phosphorus levels in the watershed, in lieu of TMDLs, have not worked satisfactorily, in my opinion. I appreciate the U.S. EPA's diligence in listing additional Illinois River stream segments impaired by phosphorus.

This past summer we experienced excessive amounts of algae both benthic as well as blue-green algae mats or scum. This past

month, our waters have turned to red algae on lower Spring Creek as it enters Neosho River and Ft. Gibson Lake in Oklahoma.

My dissertation provides some baseline data to possibly compare current rates of Total Phosphorus and what I believe will likely show a serious decline in water quality. If the States or the Tribes are not willing or able to address the water quality issues, I pray the U.S. EPA steps in to protect our shared waters.

Critical review of US Environmental Protection Agency numerical nutrient criteria with respect to Culturally Significant Waters as a designated use

<http://hdl.handle.net/20.500.14446/48897>

Wado! Thank you in Cherokee!

--

Cara Cowan Watts

