

## BUFFALO RIVER WATERSHED ALLIANCE

PO Box 101, Jasper, AR 72641  
(870) 446-5783 [buffalowatershed@gmail.com](mailto:buffalowatershed@gmail.com)

Secretary Becky Keogh  
Arkansas Department of Energy and Environment  
5301 Northshore Drive  
North Little Rock, AR 72118-5317

September 8, 2020

Dear Secretary Keogh:

Thank you for the opportunity to provide comments on the proposed 2019 triennial revisions to Regulation 2: *Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas* and to include a representative from the Buffalo River Watershed Alliance to participate in the stakeholder review meeting in 2019.

Our enclosed comments and recommendations identify and follow the numbering sequence throughout the document. We note that water quality standards should be greatly strengthened throughout Regulation 2 to protect Arkansas' streams and lakes to ensure the health of our ecosystem and tourism industry that depends upon clean pristine waters for drinking water and recreation into the future.

General Comments: BRWA advocates for greater public transparency and accessibility by providing links and references between Regulation 2, the CPP (Continual Planning Process), the AIM (Anti-degradation Implementation Methodology), and all other DEQ water quality regulatory and guidance documents.

Chapter 1: Authority, General Principles and Coverage

Regs. 2.106:

All Flows: BRWA agrees with striking the "All Flows" definition from text.

Storm Flow: BRWA disagrees with the proposed definition due to its lack of specificity to an event and the lack of distinction from Base Flow events. The ambiguity of this term likely has enforcement and permitting implications that would prevent violations of the Clean Water Act (CWA) from being enforced. Our recommendation is "Storm Flow" should be quantified and understood to mean water flow above base flow levels.

Harmful Algal Blooms (HAB): BRWA recommends insertion of this term in the Definitions section especially given the increased frequency and presence in Arkansas lakes and streams.

Harmful Algal Blooms (HABs) are the rapid growth of algae accompanied often by cyanobacteria that can cause harm to animals, people, or the local ecology.

Primary Contact Season: BRWA recommends inserting the dates of the primary contact season for clarity. The “Primary Season” noted in definitions is confusing and does not have the same dates as “Primary Contact Season” mentioned later in Section 2.507.

Secondary Contact Season: BRWA recommends inserting the dates of the secondary contact season for clarity.

## Chapter 2: Antidegradation Policy

BRWA advocates the inclusion of the anti-degradation implementation assessment methodology by reference and regulation. As discussed in the stakeholder meetings, DEQ does not plan on the anti-degradation policy and its associated implementation methodology to be codified in regulation, but as guidance or best practices. Without regulatory requirements in statute, the anti-degradation policy will not be enforceable and will not be protective of Arkansas waters.

## Chapter 3: Waterbody Uses

BRWA recommends insertion of text or by reference specifying how designated uses are determined, evaluated, and maintained.

### 2.302 Designated Uses:

BRWA strongly advocates for all streams that flow in or contribute to an Extraordinary Resource Water, Ecologically Sensitive Waterbody, Natural and Scenic Waterways, or Tier III stream be categorized as the same designation of the receiving main stream. This designation would provide additional protection to the highest water quality stream designation and reduce potential disturbance and degradation upstream of the designated waterway.

### Regs 2.305: Short Term Activity Authorization:

“The Director may authorize, with whatever conditions deemed necessary and without public notice, short term activities which might cause a violation of the Arkansas Water Quality Standards.”

BRWA disagrees that the Director should be allowed to circumvent the public process by not holding public review of short-term activities which could potentially represent very serious degradation of water quality standards. The elimination of requirements of Regulation 8 represents a lack of transparency to the public which is concerning. The recent experience with the Bethel Heights WWTP is an example of potential abuse which could arise from non-disclosure of information if the Director

had enacted Reg. 2.305. BRWA advocates the removal of the exemptions from the public process and oversight.

Reg. 2.408 Solids, Floating Material and Deposits:

Waters shall have no distinctly visible solids, scum, algae, or foam of a persistent nature, nor shall there be any formation of slime, bottom deposits, algae, or sludge banks.

BRWA supports DEQ's revision but requests that "persistent nature" be defined by number of days or another temporal unit. We also request the inclusion of "algae" in the definition for clarification and recognition of the increased frequency and extent of the algal occurrence throughout Arkansas.

Reg 2.409 Toxic Substances:

"Toxic substances, including HABS, that may cause toxicity to human, animal, plant, or aquatic biota or interfere with normal propagation, growth, and survival of aquatic biota shall not be allowed into any waterbody."

BRWA supports DEQ's revision but requests that Harmful Algal Blooms (HABs) be inserted into the text for clarification and recognition of the increased frequency and extent of the HAB occurrence throughout Arkansas.

Reg 2.505 Dissolved Oxygen:

BRWA supports the deletion of the "For purposes of determining effluent discharge limits, the following conditions shall apply:" section. These provisions were misplaced and should be removed or relocated to provide clarity and comprehension.

Reg. 2.507 Bacteria:

BRWA strongly advocates for DEQ to revise its bacteria standard to be consistent with EPA's Recreational Water Quality Criteria. <https://www.epa.gov/sites/production/files/2015-10/documents/rec-factsheet-2012.pdf>. EPA's standards are much more protective of human health and should be incorporated into Regulation 2. By implementing EPA's Recreational Water Quality Criteria, DEQ is protecting the health of Arkansans and those who recreate in our state.

BRWA strongly advocates for the extending the length of Primary Contact Season from March 15-October 31 due to increased tourism or local use in the early Spring (Spring Break) and well into the Fall season that has been made available by increased rainfall in September and October. Primary Contact Season should reflect the changing use patterns of human interaction with water and require increased safety standards for bacteria.

Reg. 2.509 Nutrients:

“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.”

BRWA strongly advocates for the immediate implementation of numeric nutrient criteria for phosphorous and nitrogen. The current language is ambiguous, insufficient, not protective to Arkansas’ water quality and allows for degradation of Extraordinary Resource Waters and other Tier III waters. In 2018, the Buffalo National River experienced a 90-mile long algal bloom. In previous years, the bloom was estimated to be 30 and 50 miles long respectively. Clearly these regulations are not providing water quality protection for the nation’s first national river and are wholly inadequate. Both Oklahoma and Missouri, bordering states, have numeric nutrient criteria for phosphorous and nitrogen. DEQ should follow their lead and implement similar standards.

Thank you for your time and consideration of our recommendations. Our goal is to protect Arkansas’ streams and lakes for the future use of our citizens and visitors.

Sincerely,

Gordon Watkins, President  
Buffalo River Watershed Alliance