

## ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY

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**SUBJECT:** APC&EC Rule No. 5: Liquid Animal Waste Management Systems

**DESCRIPTION:** Revisions are being proposed to the Arkansas Pollution Control and Ecology Commission's Rule No. 5: Liquid Animal Waste Management Systems in order to implement the Governor's directive to make permanent the current moratorium on confined animal operations of a certain size in the Buffalo National River Watershed. The Commission's authority for amending Rule No. 5 is found in Arkansas Code Annotated § 8-1-203(b)(1)(A).

The proposed changes to the rule include making the moratorium on large confined animal operations in the Buffalo National River Watershed permanent in accordance with the Governor's request; incorporating statutory changes passed by the General Assembly that amended the name of ADEQ and references to rules, particularly Acts 910 and 315 of 2019; and making minor stylistic revisions.

**PUBLIC COMMENT:** A public hearing was held on August 23, 2019. The public comment period expired on September 3, 2019. The APC&EC voted to reopen the public comment period, and that comment period expired on January 23, 2020. The Division provided a summary of the public comments received and its responses thereto, which due to its length, is attached separately.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rule has no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 8-1-203(b)(1)(A), the Arkansas Pollution Control and Ecology Commission has the power and duty to promulgate rules implementing the substantive statutes charged to the Division of Environmental Quality. The Commission is further given and charged with the power and duty to promulgate rules, including water quality standards and the classification of the waters of the state and moratoriums or suspensions of the processing of types or categories of permits, implementing the substantive statutes charged to the Division for administration. *See* Ark. Code Ann. § 8-4-201(b)(1)(A). The Commission is likewise given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division and the Commission under the Arkansas Water and Air Pollution Control Act ("Act"), codified at Ark. Code Ann. §§ 8-4-101 through 8-4-318. *See* Ark. Code Ann. § 8-4-202(a). Under this Act, the Division is given and charged with the power and duty to issue, continue in effect, revoke, modify, or deny permits under such conditions as it may prescribe "[t]o prevent, control, or abate pollution" and "[f]or the discharge of sewage, industrial waste, or other wastes into the waters of the state, including the disposal of pollutants into wells." Ark. Code Ann. § 8-4-203(a)(1), (2).

**BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**

**IN THE MATTER OF AMENDMENTS TO )  
REGULATION NO. 5: LIQUID ANIMAL ) DOCKET NO. 19-002-R  
WASTE MANAGEMENT SYSTEMS )**

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**RESPONSIVE SUMMARY**

BUREAU OF  
LEGISLATIVE RESEARCH  
DIVISION OF

Comes now the Arkansas Department of Energy and Environment, Division of Environmental Quality, by and through, Robert Blanz, Associate Director of the Office of Water Quality, and provides this Responsive Summary as required under Arkansas Pollution Control and Ecology Commission Regulation No. 8.812.

**I. INTRODUCTION**

The public comment record for Docket No. 19-002-R contains over 1719 comments pertaining to changes to Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 5, Liquid Animal Waste Management Systems.

The notice of proposed Regulation No. 5 changes and public hearing was published on August 3 and 4, 2019, in the Arkansas Democrat-Gazette. APC&EC held a public hearing on August 23, 2019, to receive comments on the proposed rule change to APC&EC Regulation No. 5. The public comment period closed on September 22, 2019. APC&EC reopened the public comment period on October 24, 2019, with an end date of January 22, 2020.

**II. RESPONSES TO WRITTEN AND VERBAL COMMENTS**

The following people or organizations sent comments during the public comment period and public hearing.

The following submitted comments in favor of the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed:

Steven & Joan Miller; Cindy Rimkus; Millie Nelms; Sue Mabry; Cindy Thornton; Sarah Jane Polk; Josh Cross; Linda Vanblaricom; Rene Diaz; Court Mathey; Kathryn Searcy; Michael Boyd; Ruth Weinstein McShane; Joe McShane; Kathy Downs; Kathy Sutterfield; Mark Smith; Butch Anselm; Janet Brown; Harriett & Dennis Sisson; Faith McLaughlin; Jan VanSchuyver; Shirely and Robert Bowen; Sheena Pettit; Aletha Tetterton; Jane Spellman; Edie Stahl; Lynn Parker; Jason Wakefield; Geniece Yates; Holly Hanson; Debbie Alexy; Katie Schneider; Elva Kelly; Cay Miller; Bonnie Smith; Caleb Reed; Barbara Moorman; Becky McCain; Ruth Colquitt; Gregory Merlino; James Ollerenshaw; Ted Barnette; Hilda Booth; Kathleen and Larry Stanley; Laura Timby; Joe Golden; Pat Costner; James Binns; Rachel Henriques; Bryce Huff; Dave Smith; John Shelton; Lolly Tindol; Mary Floyd; Corey Brady; Trudi and Jeff Rust; Nancy Deisch; Mary Ann Guinn; Frank Reuter; Ryan Cloud; Robert van Rossum; Rebecca Holden; Leigh Barham; Hank van Rossum; Ann Lasater; Karen Bartle; Cathy Bayne; Carolyn Quick; Annie Langston; Vern Berry; Annee Littell; David Saugey; Shane Jetton; Carroll Fletcher; Susan Hardin; Chuck Maize; John Kelsey; Mary Ryan; Nancy Harris; Dan Stockman; Carolyn Cloud; Scott Davis; David Montague; Joan Murphy; Ginger Milan; Jeff Carfagno; James Gately; Linda Lewis; Mike Tipton; Sally Wood; Sally Jones; Nancy Pierson; Barbara Metzger; Nancy & Harrison Miner; Gail Leftwich; Lloyd & Linda Siith; Karen Baris; Kevin Ehemann; Dean Wilson; Mary Weeks; Carol Storthz; Gerald & Karen Gordy; Robert Cagle; Walter Fenton; Patricia Roe; Bill Thorne; Monty Keel; Joe Wavery Newman, III; Diane Mitchell; Susan Heaney; Nancy Hartney; Wendy Johnson; Mary Fitzgerald; Rose Wallace; Cathy Ross; Keith Faulkner; Bishop Bower; Shelley Buonaiuto; Greg Watkins; Tammy Narramore; Pam Chrisco; Barbara Turney; Allen Powell; Brad Lindsey; Rose Alisandre; S. J. Tucker; Helen Pounds; Janette Groves; Janet Bachmann; Brad Green; Pati Mitchell; DavidEdsall; Jennifer McMahon; Gwyn Pope; Tim Hicks; Dan Turney; Ann Mesrobian; Kimberly Brasher; Terry Sutterfield; Jay Stanley; James Mott; Robert Bowker; James, Grace, Jimmy, Amy, Rean, Rachel, Brandon, Eva, Madison, Jake, and Josh McPherson; Dee Plunkett; Patricia Peterson; John Buchan; Ellie Stalker; Kay Abney; Dara Yeager; Carole Schuster; Peggy Moody; Heather Hudgens; Krista Garrett; Helen McElree; Steve Owen; Ginger Alexander; Robert and Nancy Lewis; Robert Magness; Russ Wright; Matthew Pekar; Stephen Ballard; Joyce Hale; William Wimberly; J. LaBrie; Carol Kennedy; Jerry Weber; Duane and Judith Woltjen; Cory Betts; Scott Stanley; Darla Newman; Kennet and Tracie Pape; Tracy Fortuny; Marsha Gibson; Danny Barker; Ed Brocksmith; Beth Rooney; Laura Newth; Steve Parsons; Fay Knox; Dotty Phillips; George and Vee Ann Miller; Ron Schneider; Mike Risk; Dan Scheiman; Steve and Kim Hesse; Patrick and Kristine Hall; Ray Quick; Michelle Davis; Beth Buckley; Deborah Byron; Patty Doyal; Todd Parnell; Susan Leahy; Bill Farrell; Beth Barham; Susan Bolding; Sarah Rausch; Lynda Janos; Ralph Doty; Pam Phillips; John Outler; Mike Fagan; Camille Carpenter; Michele Hughes; Reba Potee; Ammen Jordan; Stephanie Jordan; Michael Crane; Dave Kuhnc; John Ray; Georgia Lengyel; Jerrell Dillaha; Stuart Reaves; Patricia McDonald; Patti Kent; Phyllis Head; Barabara

Jaquish; Jan Wilson; Holly Felix; Deb Campbell; Maire Caverly; James and Ashley Fletcher; Richard Isaacs; Jeff Montgomery; John Baker; Miranda Jacky; Lesha Shaver; Jerome and Harriet Jansma; Carol Wineland; Marilyn Wheeler; Pam Bryan; Stevan Vowell; Pat Hagge; Susan Fields and Jeff Scott; Liston Barber; Donald Alexander; Lynn Holmes; Dana Phillips; Sheila Richards; Robert Brewer; Thomas Maly; Martha Ragar; Susan Hubbard; Francie Bolter; Jim Warnock; Kay Ewart; Susan Parker; John Barton; John Slater; Jim Wimberly; Jo Johnson; Jim Compton; Tom Perry; Ann & Rick Owen; Christopher Fischer; Shawn Porter; Judi Nail; Fran Alexander; David Hughey; Bettie Lu Lancaster; Dorothy Mangold; Dina Nash; Maryann Getz; Paul Getz; Lynn Risser; Bryan Signorelli; Charles Mullins; Charles Williams; Mike Adelman; John Ferguson; Betsy Murdoch; Linda Arnold; Jeff Burgess; Virginia Booth; Wanda Stephens; Keaton Smith; Rick Jones; Ruth Vacin; Jeff Nash; Jenny Wiedower; Fred Henry; Susan Flourwoy; Lynn Berry; Ken Leonard; Marti and Larry Olesen; Chuck Rutherford; Tom Burroughs; John Courtway; Tom Griffith; Jan Baker; Susan Hautz; Mark & Ann Segura; Michael Wheeler; Rex and Nan Enoch; Glenda Allison; Denise Dore; Lesley Kline; Nan Johnson and Dave Spencer; Janie Lindquist; Christeen Kline; Z.D. Zbinden; Marquette Bruce and Nancy Talburt; Rachel O'Carroll; Quinn Montana; Sunnie Ruple; Kirk Rhoads; Molly Saxon; Susan Murray; Ellen Compton; Spencer Goertz-Giffen; Margaret Britain; Cindy Jetton; Gene Sparling; Annee Littell; Corey Duncan; Lucas Parsch; Donna Mulhollan; Gladys Tiffany; Annette Pettit; Pam Stewart; Ginny Masullo; Janet Nye; Katie Deakins; Nancy Paddock; Elizabeth Cantwell; Ethel Simpson; Erin Hostetter; Sherrie McIntyre; Teresa Turk; David Martinson; Tyler Chafin; Elizabeth Hale; Dana Bassi; Edward Vollman; Dana Ward; Fred Goldthorpe; Michael Douglas; Radine Nehring; Sondra Gordy; Martha Goldthorpe; Pattie Heitzman; Jeffrey Ingram; S. Beth Lowrey; Denise Nemeec; Patricia McKeown; Jean Nayga; Brian and Sarah Thompson; Deb Bartholomew; Calvin Doody; Charles Leflar; Dina and Jeff Nash; Mary Schlatterer; Jeanie Calhoun; Janet Parsch; Karen Seller; Lisa Orton; Grant Scarsdale; Sharon Gattis; Michael Rapp; Bill Pettit; Kim Traw; Laura Villegas; Ellen Corley; Karen Geiger; James Seawel; Beth Ardapple; Louise Mann; Sarah Myers; Marian Johnson; Thomas Calhoun; Ellen Mitchell; Nancy Pierson; Will Larkin; Lowell Collins; Friends of the North Fork and White Rivers; National Parks Conservation Association; John Murdoch; Alice Andrews; Steve Blumreich; John Van Brahana; Bill Lord and Linda Bryant; National Park Service; Carol Bitting; David Peterson; Charles Bitting; Richard Mays; Buffalo River Watershed Alliance; Arkansas Canoe Club; Ozark Society; Caroline Shearman; Kathy Morris; 3rd Planet Peace; [elgilpin1@gmail.com](mailto:elgilpin1@gmail.com); [marshman17@aol.com](mailto:marshman17@aol.com); [nuffer.hughes.net](http://nuffer.hughes.net); [bombax41@gmail.com](mailto:bombax41@gmail.com); [rox.rose439@gmail.com](mailto:rox.rose439@gmail.com); [arhiker.davis871@gmail.com](mailto:arhiker.davis871@gmail.com); [powervale@gmail.com](mailto:powervale@gmail.com); [gary@garycawood.com](mailto:gary@garycawood.com); [serenity.papa@gmail.com](mailto:serenity.papa@gmail.com)

**Response:** The Division acknowledges the comments submitted in favor of the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed.

**Commenter: Arkansas Pork Producers Association**

**Comment:** Arkansas Pork Producers Association opposes any changes to Rule 5 as proposed in the Third Party Rulemaking.

**Response:** The rulemaking for Rule 5, initiated on July 26, 2019, is not a Third Party Rulemaking.

**Comment:** Arkansas Pork Producers Association requests that no decision on this Third Party Rulemaking be made until the Big Creek Research and Extension Team has been given the opportunity to publish its final report.

**Response:** The rulemaking for Rule 5, initiated on July 26, 2019, by DEQ, is not a Third Party Rulemaking. The Big Creek Research and Extension Team published its Final Report on or about October 22, 2019, and published a revision on December 31, 2019. The Commission reopened the public comment period for Rule 5 and Rule 6 for an additional ninety (90) days, with January 22, 2019, as the end of the public comment period.

**Commenter: American Fisheries Society Arkansas Chapter**

**Comment:** Rule 5.901 – Remove “National” from references to Buffalo River watershed. “Buffalo National River” denotes the National Park Service geographic entity. “Buffalo River watershed” is more appropriate.

**Response:** Removed “National” from each reference to “Buffalo National River watershed.”

**Comment:** Rule 5.901(A) - “United States Geological Survey” is the appropriate name.

**Response:** Corrected the spelling by adding “al” to “Geologic.”

**Comment:** Rule 5.901(B) – Why is this limited to swine? From a nutrient standpoint, wouldn't other types of medium and large CAFOs (e.g., turkey, chicken, cattle) also contribute significant pollutants of concern?

**Response:** The proposed change to the rule makes permanent the current moratorium on liquid animal waste management systems for confined animal operations of a certain size in the Buffalo River watershed.

**Commenter: Don McCaskill**

**Comment:** Future regulations must be in the form of permanent prohibitions instead of moratoriums that are inherently subject to renewal and potential weakening: the prohibition must not be limited just to swine CAFOs, but must also include concentrated “factory” farming of cattle and other domesticated livestock that, for purposes of efficient operations, generate liquid waste with associated handling

facilities; no exceptions should be made that would allow permitting small CAFO's (based on number or size of animals) in the watershed since multiple small operations would likely be equally damaging and even more difficult to monitor and control; Technologically-sound restrictions on the importation of animal manure from outside the watershed and its application as fertilizer should be considered.

Response: Commenter may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

Comment: While concentrated poultry production does not typically produce liquid manure, scientifically-based restrictions on generation and/or distribution of poultry litter in the watershed should also be administered.

Response: The proposed change to the rule makes permanent the current moratorium on confined animal operations of a certain size in the Buffalo River watershed. Rule 5 is specific to liquid animal waste management systems. Comments regarding dry poultry litter are more appropriately directed to the Arkansas Department of Agriculture, Division of Natural Resources.

**Commenter: Jessie Green**

Comment: Why is the proposed permanent moratorium in the Buffalo River watershed limited to swine? (Rule 5.901)

Response: The proposed change to the rule makes permanent the current moratorium on confined animal operations of a certain size in the Buffalo River watershed.

Comment: A facility meeting the size threshold of a medium swine CAFO could still be permitted under Rule 5.901(B) and Rule 6.602(B).

Response: The proposed Rule 5.901(B) and Rule 6.602(B) prohibit issuance of a permit to any facility with (1) 750 or more swine weighing 55 pounds or more; or (2) 3000 swine weighing less than 55 pounds.

Comment: There are major discrepancies between the moratorium as outlined in Rule 5 and Rule 6. Will an AFO meeting the size threshold, but not regulatory definition of a medium CAFO be able to obtain coverage under Rule 6 in the Buffalo River watershed?

Response: No.

Comment: Including language stating "all operations meeting the size threshold will be assumed to be significant contributors of pollutants, and therefore designated as a CAFO" to Rule 5.901(B) and Rule 6.602(B) would address concerns outlined in section A. II. in comments above. However, size thresholds outlined in Rule

5.901(B) and Rule 6.602(B) do not provide sufficient clarity to which operations are subject to the moratorium.

Response: The size thresholds are clearly stated. Rule 5 does not require that an operation be designated as a CAFO. The Rule prohibits any swine Confined Animal Operations of a certain size.

Comment: For each combination of swine listed above from 2013-2018 C&H annual reports, please respond in comments as to whether the department would have classified a new facility with the proposed corresponding numbers as: a) Large-CAFO; b) Medium-CAFO; c) Medium-sized facility (not CAFO). Please provide detailed response as to the factors underlying all determinations for hypothetically proposed operations to help clarify the scope of the moratorium.

Response: Hypothetical applications are outside the scope of this rulemaking.

Comment: Technical requirements, facility construction certification, and permitting provisions for CAFOs seeking NPDES permit coverage under Rule 6 should be (at minimum) as stringent as required by Rule 5.

Response: This comment is outside the scope of this rulemaking.

Comment: Land application requirements should be outlined for all outstanding natural resource waters as defined by the Arkansas Pollution Control and Ecology Commission Rule No. 2. (Rule 5.406(D))

Response: This comment is outside the scope of this rulemaking.

Comment: Annual reporting requirements for animal operations subject to Rule 5 and Rule 5 should be revised to adequately evaluate runoff potential.

Response: This comment is outside the scope of this rulemaking.

Comment: Please provide adequate information regarding the site-specific characteristics of the Buffalo River watershed (e.g., karst terrain) that result in waters of the state being more vulnerable to land use applications (e.g., CAFO operations) and thereby warranting a permanent moratorium on select swine CAFOs.

Response: Congress designated the Buffalo River as the first National River in 1972 "for the purposes of conserving and interpreting an area containing unique scenic and scientific features, and preserving [it] as a free-flowing stream." 16 U.S.C. § 460m-8. APC&EC Rule 2 affords the Buffalo National River its highest category of designated use, "Extraordinary Resource Water." The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.

**Commenter: Arkansas Farm Bureau Federation**

**Comment:** The Arkansas Farm Bureau Federation would like to offer the following comments opposing the permanent moratorium on the Buffalo River watershed as initiated in Arkansas Pollution Control & Ecology Commission (APC&EC) Regulation's 5 and 6. The ADEQ and APC&EC initiated rulemaking to prohibit landowners within the Buffalo River watershed their right to farm without a single shred of scientific evidence that animal agriculture, and in this case C&H Hog Farms, had caused an environmental impact. C&H Hog Farms was, and still to this day, the most heavily scrutinized and monitored farm in the state. The Big Creek Research and Extension Team was originally created by then Governor Mike Beebe to evaluate the potential impact and sustainable management of the C&H Farms operation on the water quality of Big Creek. Several years later, the ADEQ funded a drilling study to evaluate the lithology/geology below the waste storage ponds at C&H Hog Farms and to assess potential subsurface impact from the waste storage ponds. Upon completion of the drilling study, Governor Asa Hutchinson created the Beautiful Buffalo River Action Committee and authorized the development of a Watershed Management Plan for the Buffalo River Watershed that would evaluate its tributaries to determine which would need the most attention. The United States Geologic Survey (USGS) studied algal growth on the Buffalo River, as well as, nutrient concentrations upstream and downstream of Big Creek on the Buffalo River. All of these studies identified above determined either Big Creek continues to maintain pristine water quality and C&H was having no environmental impact.

**Response:** The Division does not concur with Commenter's conclusion regarding studies undertaken in the Buffalo River Watershed. In the Buffalo River Watershed, four Assessment Units (two sections of Big Creek and two sections of the Buffalo National River) have been identified as impaired: three for bacteria and one for dissolved oxygen.

**Comment:** Environmental groups state the moratorium is based on sound science and the justification used is to merely regurgitate the definition of karst. The mere presence of karst does not constitute scientific justification for a permanent moratorium. All of Northwest Arkansas and Northcentral from the Black River to the Oklahoma Border and North of the Arkansas River to Missouri as well as portion of Southwest Arkansas are underlain by karst. Using this logic, these areas should also be included in the moratorium.

**Response:** The purpose of this rulemaking is to make permanent the current moratorium on swine operations of a certain size in the Buffalo River watershed.

Congress designated the Buffalo River as the first National River in 1972 "for the purposes of conserving and interpreting an area containing unique scenic and scientific features, and preserving [it] as a free-flowing stream." 16 U.S.C. § 460m-8. APC&EC Rule 2 affords the Buffalo National River its highest category of designated use, "Extraordinary Resource Water."



**Comment:** The temporary moratorium was put in place until such time as the Big Creek and Research & Extension Team (BCRET) could study the impacts of the C&H Hog Farms operation. However, ADEQ has decided to initiate rulemaking despite the fact the BCRET final report has not been issued. In addition, at the July 26th commission meeting APC&EC commissioner Dr. Delia Haak requested the ADEQ postpone the comment period until the BCRET final report could be released and the public given an opportunity to review it so as to provide more meaningful feedback. the APC&EC commission implemented a temporary moratorium that required the following for Regulation 5: "Five years from the effective date of this regulation the Director shall initiate rulemaking to either delete this paragraph, Reg. 5.901(E), or delete the entirety of Reg. 5.901." And the following for Regulation 6: "Five years from the effective date of this regulation the Director shall initiate rulemaking to either delete this paragraph, Reg. 6.602(E), or delete the entirety of Reg. 6.602." Both Regulations have an effective date of August 28, 2015. Despite the fact that ADEQ is initiating rulemaking one year prior to regulatory requirements, which would allow sufficient time for the BCRET's final report to be issued, the ADEQ is proposing to delete additional sections under Regulations 5.901 and 6.602 which will have an impact to currently permitted facilities within the watershed.

**Response:** Changes to Rule 5 and Rule 6 will not impact any currently permitted facilities. The Big Creek Research and Extension Team published its Final Report on or about October 22, 2019, and published a revision on December 31, 2019. The Commission reopened the public comment period for Rule 5 and Rule 6 for an additional ninety (90) days, with January 22, 2019, as the end of the public comment period.

**Commenter: Ross Noland**

**Comment:** My primary concern with the revisions, as proposed, is how ADEQ will respond to a facility seeking to house swine in numbers at the limit for both weight classes. Specifically, the draft rule could be interpreted to allow a facility housing 749 swine weighing 55 pound or more and 2,999 swine weighing 55 pounds or less. This would comprise a major facility with more swine waste present than that which C & H produced.

I suggest a rule adopting a simple conversion of counting every four animals which are less than 55 pounds as one which is over 55 pounds ( $3000/750=4$ ). Thus, if a facility proposes a mixed weight-class operation, it will be clear what the maximum permitted number in each weight class is. For example, a facility proposing to keep 100 swine over 55 pounds could also house 2,600 swine under 55 pounds, but no more.

**Response:** DEQ acknowledges that the numbers determining the size of the facility are derived from the federal rules. The federal rules are based on animal units. DEQ takes this into consideration when reviewing permit applications.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

The following submitted comments in favor of the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed:

James Seawel; Dennis Dinkel; Judy White; Cassandra Fox; Cindy Baker; Tonia Spurlock; Ted Porter; Kimberly Rabon; Allyce Capps; Genia Bennett; Karen Seller; Adam Schaffer; Kathy Madding; Kerry Kraus; Sharon Holladay; Jack Land; Robert Merritt; Lajuana Oswald; Lisa Orton; David Pope; Ashley Money; Thomas Baldridge; Elizabeth Mazzone; Mary Ellen Hill; David Jones; Pat Ford; Julie Lanshe; Andrew Blann; Jerry Hale; Brenda Barnhill; Debbie Galbraith; Cameron Peck; Anice Tedford; Denise Lanuti; Karen Hicks; Tim Crouch; Eric Torgerson; Helen Pounds; Nancy Harris; Susan Smith; Chris Dillon; Dixie Rhyne; Sonja Williams; Lynn Risser; Patricia McKeown; Karen Huber; Sherrie McIntyre; Shawn Porter; David Kuhne; Susan Hantz; Nancy Johnson; Katie Deakins; Mike Fick; Steven Barger; Frank Kelly; Charles Eubanks; Cynthia Jetton; David Orr; Beth Ardapple; Kent Landrum; Ellen Mitchell; Burnetta Hinterthuer; Margot Lavoie; Annie Holmes; William Jeter; Mary Susan Seawel; Deanne Mayer; Sharon Gattis; Carole Cimarron; Carolyn Shearman; Ginger Milan; Cathey Morris; Jana Brady; Beth Goodwin; Virginia Booth; Sue Mabry; Victoria McClendon; Lowell Collins; David Martinson; Barbara Fell; Jerry Dorman; Karen Crocker; Joel Emerson; Don McCaskill; Annee Littell; Mary Gocio; David Hughey; Erin Rowe; Cathy Ross; Janice Muetzel; Candice Kozark; William Thomas; Schuyler Schwarting; Karen Beneke; George Wise; Jann Bell; Yolanda Dreher; Linda Vanblaricom; Kenneth Leonard; John Slater; Marvin Schwartz; Randall Hollenbeck; Bryan Signorelli; Susan Moore; Ann Owen; Cay Miller; Diana Angelo; Steve Kopp; John Fritz; John Courtway; John Ray; Ginny Masullo; Susie Parker; Laura Villegas; Karen Bartle; Susan Fields; Nancy Harris; Robert Pikel; Frederick Paillet; Michele Jackson; Randy Jackson; Albefria Wells; Melissa White; Susan Benton; Heather Hudgens; Steve Singleton; Dorothy Bailey; Katherine Weaver; Ryan Duncan; Dave and Nan Johnson-Spencer; Dee Elkins; Grant Scarsdale; Debbie Galbraith; Eileen Neukranz; Gail King; Robert van Rossum; Karen Crocker; Paul Vickers; Louise Mann; Beth Goodwin; Judi Nail; Scott Stanley; Roger Burke; Dean Castle; Vanessa Tomczak; Marshall Dickey; Gene Sparling; Michael Stoecker; Margaret Sands; Kim Smith; Cary Roth; Kenneth Carle; Roger Jones; Edd French; Jan VanSchuyver; Glenn Benson; Cheryl Rutledge; Tsunemi Yamashita; Jeff Hood; Fay Knox; Judith Duguid and Elmer Gall; Michael Rapp; Karen Harris; Richard Gray; Elaine Appel; Richard Barnes; Brad Green; Camille Carpenter; Autumn Gillmore; Joe Golden; Genia Bennett; Dara Yeager; Sylvia Scott; Maria Smith; Ronald Stark; Martha Ragar; Marty Mignard; Michael Adelman; Debbie Alexy; Terry Karnes; Raymond Herschend; Blake Stone; Will Larkin; Harvey Pierce; Ray Hall; Jackie Lamar; Donnie Hutchens; Richard Olson; Kathryn Searcy; Roxanne Thompson; Ted Porter; Robert Merritt; Don Hamilton; Linda Schuck; Karen Bartle; Robert Smith; Paula Breid; Mike McMullin; Lorraine Heartfield; Julian Clark; Mary Adams; Tom Parsons; Kathleen Trotter; Glenda Allison; John Shelton; Steven Singleton; JP Willis; Mike Kelly; Katy Hinegardner; Magell Candelaria; Shelley Buonaiuto; Robert Dunn; Carol Storthz; Cassie Gill; Nonah Olesen; William Wellner; John Layson; James Hicks; Suzie Bell; Shirley Bailey; William Etges; Marian Johnson; Christine Perry; Gregory Flower; Peggy Volland; Mike

## **RULE 5 Response to Comments Received During the Comment Period Extension**

Swanner; Joseph Hewgley; Jack Stewart; Terry Dailey; Carolyn Watts; Michael Sprunger; Jo Johnson; Jean Smith; Carol Patterson; Gail King; Kara Beach; Ed Laster; Judith Griffith; Karen Garrett; Sandy Pianalto; Beverly Glass; Brent Boughn; Deborah Meldahl; Teresa Crawford; Charles Lowrey; Sidney Graham; Susan Jenkins; Cynthia Patton; Elisabeth Olsson; Laura Hutzel; Natalie Mannering; D. Dunagin; Shirley Pharis; Larry Hedrick; Don Castleberry; Joe Murphy; Danny Jenkins; Lisa Schoult; Bill Beall; Karen Keith; James Haguewood; Julia Tucker; Lynell Withers; Scott Luchesi; Jerome Jansma; Gregory Floyd; Wendy Luna; Tammy Alexander; Pat Yates; Brenda Tirey; David Harju; Susan Leslie; Chris Daniels; Barry Bennett; John Andrews; Pamela Westerman; Lynn Christie; Caitlin Cassidy; Bruce Petray; Diane Mikrut; Larry Olesen; Ray Stahl; Marc McCord; Geniece Yates; Joseph Long; Samantha Blanchard; Bennie Scott; Christine Carlson; Paula Pope; Dennis W Wright; Dave Stahle; Nancy Pierson; Frank Meeks; Claudia Carberry; Elizabeth Bradford; Rebecca Evans; James E Wimberly; Joseph D. LaFace; Steve Heye; Glenn Pearson; Dorothy Bailey; Abel Tomlinson; Cody Wyatt; Francie Bolter; Lucy Rhodes; Winifred Hirsch; Ken Duncan; Jim Pfeifer; Charles Mullins; Eugene Milus; Joe Neal; Scott Yaich; Klaus Kupfersberger; James Krieger; Kelsey Mayans; Adam Schaffer; Michelle Trost; Jack Land; Phillip Taylor; Crystal Rust; Sara Wittenberg; Dwan Garrison; Paul McCune; Jess VanderStek; Joan Meeks; Heather Smith; Frits Druff; Lora Dail; Kirk Rhoads; Robert Duncan; Dana Steward; Bill Steward; Francis Millett; Cornelia Beck; Kathleen Beattie; William Beattie; Diane Newcomb; Steve Davis; Amy Strickland; Chris Hankins; Doug Holmes; Bert Kell; Corey Pettett; Karen Walls; Sharon Boatright; Duane Woltjen; Lee Cowan; Zane Colvin; Darla Wroblski; Bonnie Jaeckle; Carol Percifull; Michael Berry; Emma Hickey; Johnny Furness; Carolyn Wilkins; Mark Smith; Zach Turner; Laurie Fisher; Cindy Jetton; Cathy Shingledecker; Faith Shah; Michael Frank Shah; Donna Peterson; Mary Heller; Jon Bonney; Thomas Emerick; Lisa Kessler; Sarah Cumnock; John Shultz; Ashley Miner; Joe Rath; Mike OConnell; Thomas Keel; Brian Thompson; Cliff Barnes; Carol Ann Lasater; Bill Farrell; Karen Bartle; Charles Phillips; Teri Patrick; Jerry Cagle; Steve Hesse; Claiborne Morton; Barry Haas; Roger Reep; Gene Dunaway; Laura Timby; Trudi Rust; Nancy Miner; William Eaton; Joe Massey; Ruth Weinstein-McShane; Joseph McShane; Peg McCoy; Janette Groves; John Ray; Steven Foster; Richard Stauffacher; Jerome and Harriet Jansma; Carmen Quinn; Willem DeBruijn; Barry Martindale; Lolly Tindol; Jon Hackler; Sherri Ramseyer; Keaton Smith; Al Agnew; Karen Spence; Mary Agnew; Betty L Scott; Yolanda Dreher; James McPherson; Alisa Dixon; Richard P. Osborne; Debora Carpenter; Jamie White; Jill Acree; Charles Johnson; Pamela Ellwood; Tammy Tennyson; Robert Shingledecker; Kevin Ehemann; Rebecca Holden; Cathy Ross; Daniela Tamayo; Michael Armstrong; Andrew Proctor; Mary E. Fitzgerald; William Threet; Gladys Tiffany; Lauri Patterson; Nancy Hartney; Stephen Bailey; Fred Goldthorpe; Kathrine Jones; Kay Ewart; Janet Nye; Pamela Phillips; Janet Parsch; Debbie Howorka; Tim Eubanks; Laura Fleetwood; Joy Henning; William Dailey; Dara Yeager; Tim Yeager; Brenda Miller; Jill Valenti; Jim Bush; James Frederick; Bryan Manirc; Mark Richards; Gerald Toler; David Peterson; Sarah Thompson; Grimsley Graham; Timothy Dean; Harrie Farrow; Lynn Phillips; Mark Alderman; Ralph Rexroad; Eva Coffee; James Cohca; Derek

## **RULE 5 Response to Comments Received During the Comment Period Extension**

Linn; Kay Abney; Margaret Fortuny; John Sutherland; Glenn Jones; Ann Mesrobian; Gary Bivens; Sam McClea; Mary Schlatterer; Jolynn Loftus; Emily Linn; Eunice Millett; Philip Waters; Danny Coleman; Ellen Tutt; Andrea Ross; Marin Miller; Sue Lupien; Valerie Dunn; Stuart Reaves; Miles Riley; Rebecca Corley; Dale Heath; Clay Parton; Stephen Ballard; Howard Aleshire; Kevin Christian; Angela Head; LA Tann; Christopher Walters; James Jones; James Strack; Dennis W Wright; Hamilton Bell; Evelyn Sammons; Lynn R; lyn Caveness; James Brandenburg; Roxana Wallace; Patricia Mitchell; Gail Leftwich; Edith Stahl; Beth Keck; David Malm; Anastasia Hunter; Ann Segura; Roger Pyzocha; Gail Eastlack; Kim Hamilton; Gail Lee; Bendex Stevenson; Jessie Cave; Kelsey Dixson; Sami Saati; William Pickel; Syama Barden; Patrick Thom; Emily Spillers; Christopher Zapf; Laura Allcon; Mayleena Benham; Jarret Bain; Kevvin Brown; Cassidy Rolle; Shawna Woodside; Alec Severe; Laura Newth; Jordon Henley; Ginger Milan; Kevin Nawa; Josh Robinson; Imani Doyle; Cynthia Peterson; Lizabeth Lottmann; Arkansas Canoe Club; Ray Jones; Friends of the North Fork and White Rivers; Saline River Watershed Alliance; Audubon Arkansas; Daniel Cohee; Gerald Weber; Janice LaBrie; Katie Deakins; Alan Nye; Jacob Bradow; Leslie Coston; Karen Ramsey; Megan Johnson; Donna Bouzi; Dustin Brown; Dale Steffens; Kirk Rhoads; James Ollerenshaw; Terry Sutterfield; Mike Risk; William Smith; Jimmy McCain; Jan Scheel; Rodney Lewis; Willow Stratton; Kim Hesse; Notm Windt; Mary Green; Randal Camp; Deborah Graham; Nick McDaniel; Frank Sospenzi; Nancy Bumgardner; Marcia Zamora; Lucas Parsch; Emily Roberts; David Gruenewald; Tim Mason; Byron East; Rachel Henriques; Brittney Russell; Gordon King; Scott Barstow; Lauric Schuler; Mary Morris; Geniece Yates; Terri Huber; Susan Howe; Bonnie Nickol; Peter Pulay; Matt Foster; William Spaine; Tom Perry; Christopher Pryor; Harmon Chadbourn; Marsha Havens; Debbie Doss; David Parker; Gary Speed; C F Christian; Jesse Phillips; Robert Walker; Michael Butler; Beth Forbes; Norma Senyard; Ozark Society Peterson; Jan Wilson; Bonnie Smith; Kathy Sutterfield; Johnny Sain; William Stephenson; Kenneth Pape; Tom Simmons; Lynn Berry; Vicki Jett; Cathy Joyce; James Britt; Michael Tipton; Susanna Brinnon; William Kumpuris; Betty Pitts; Elizabeth VanderStek; Bill Pettit; Amber Manney; Tom Krohn; Bettie Lu Lancaster; Rhonda Reid; Jeff Ingram; Julianne Bitely; Robert D Architect; Bob Tyler; Christopher Fischer; Mary Simonson; Marianne Lombardi-Nelle; Phyllis Ridgway; Cheryl Marcum; Carole Degginger; Teresa Turk; Bob Billig; Linda Nichols; Mark Degginger; Fran Alexander; Ed McEowen; Garland Goodwin; Susan Holt; Marti Olesen; Annette Pettit; Billie Walker; George Campbell; Beverly Wright; Bill Pitts; Bruce Darr; Jennifer Conner; Susan Jenkins; Christy Lavelly; Susan Watkins; Eric Fraser; John Murdoch; William Spittler; Betsy Murdoch; Thomas Johnson; David Schisler; Alice Andrews; Carol Bitting; Robin Rumph; Mary Kunkle; Terry Fredrick; Charles Finch; Hamsa Karth; Judith Mchoff; Mona Vica; Lynn Cunningham; Mary Brizzi; Darci Kent; Dan Kelley; Sandra Tedder; John Ray; Jennifer Hartzill; Patricia Mikkelson; Carolyn Swaney; Lisa Milligan; Jody Miskell; E. Jane Scroggs; Juliette Minkel; Larry Lindly; Rya Wheeler; Rick Henterthuer; Gordon Bradford; Janet Bachmann; Jan Townsley; Janet Titus; John LaBrie; Deborah Bartholomew; Emilie Lasiter; Doug Shields; Mary Littrell; Holly Childs; Susan McBay; Sharon Schmidt; Julie Ironside; Stephen Ironside; Sharon

## **RULE 5 Response to Comments Received During the Comment Period Extension**

Morgan; Stephen Smith; Jim Lukens; Nan Yarnelle; Vicki Bergman; Ben Pollock Jr.; Robert Morgan; Jim Dudley; Barabara Jaquish; Trenton Morrow; Christy Pollock; Aaron Hinterthuer; Noelia Cerna; Walter Schmidt; Dawn Fisher; Kimberly Smith; Susan Shore; Mary Brencl; Drearna Phoenix; Rachel O'Carroll; Patricia McDonald; James Alexander; Michael Cockram; Elizabeth Gambert; Denise Nemece; Patricia Doyal; Frank Sharp; Helen Kwiatkowski; Sara Parnell; Sara Sharp; Joyce Hale; Charles Watson; Phyllis Rengier; Barbara Willett; Margaret Konert; Tristen Wylde; Hoyor Clave Benefield; Charley Reese; Amy Wilson; Steve Holst; Kristina Palmer; Hannah Lee; Scott Mashburn; Miller Nance; Nan Smith-Blair; Jacob Risliy; Shannon Ball; Marian Kunetka; Gary Weidner; Baileigh Payne; Susan Puckett; Karen Chotkowski; Michele James; Patti Kent; Patricia Wyatt; Susan Raymond; Deborah Robinson; Aurora Zisner; Mimi Burke; Milton Burke; Rena Jean Schmiege; Austin Bailly; G. Grimsley Graham; Jonna Hussey; Becky McCain; Aaron Smith; Rick Spicer; Joan Miller; Judi Hart; Vic Trolio; Amy Groth; Anna Koch; Paula Matthews; Millie Nelms; Joshua Bassarear; Jessica DeChant; Amy Bassarear; Barbara DeChant; Theresa Miller; Jennifer Clayborn Baldassari; Carole Lane; Jenna Lebleavsley; Torrey Travy; Paige Drummond; Carl Vevi; Ella May Powell; Jill Marshall; Douglas Forrester; Sophie Nolan; Julia Montgomery; Sharon Berman; Hooria Tariq; Corinne Spicer; Michael deBays; Sarah Spangler; Darla Newman; Ashley Erickson; Elizabeth Rademacher; Michelle Hendren; Dave Kuhre; Carole Lane; Jeff Kearnen; Carla Weeks; Mary Olson; Andrea Goehl; Jacqueline Gray; Janna Peters; Denise Dore; Eleana Hale; Eleanor Edana Hale; David Hale; Terry Donohue; Cindy Dollard; Timothy Permenter; Ellen Mitchell; V.B. McClendon; John Hagberg; Bobby Allen Jr.; Jessica McClendon; Lisa Skiles; Brian Jorgensen; Brent Jorgensen; Barbara Haas; Mark Bieliiecki; Skipp Cluff; Aletha Tetterton; Robert Hudson; Cathey Cluff; Jake Weeden; Kristin Olesen-Jorgensen; Nancy Harris; Sean McGinnis; Jessica Van; CG Apt; Lyna Van; Brett Sparkman; Ashley Darig; Sidney Grutz; Leighanna Rickman; Rania Trulley; Julia Chowdhury; Michael de Buys; Kathleen Conway; Victoria Linn; Shawna Miller; Richard Waggoner; Pattie Heitzman; Dianne Williams; Ben Strawn; Geoffrey Oelsner; Joey Head; Heather Chowdhury; Catherine Wallack; Michael Heffernan; Chaua Nesson Bayett; Barbara Dillon; Nancy Ann Heffernan; Andrew Head; N. Alan Hull; Paras Chowdhury; Rich King; Sherman Storchio; Frank Travis Head; Carly Overboy; Marthanne Squires; Gina Berquist; Rachel Hill; Stephen Cooper; Del Heck; Nichole Head; Dawn Newman; Chris James; Linda James; Sequoyah Chowdhury; Pranati Chowdhury; Prizam Chowdhury; Perry Chowdhury; Ana Garces-Wood; Joith Squires; Leslie Oelsner; Nancy Harris; Patricia Studer; Sara Long; Nichole Rowan; Celine Simpson; Danielle Lower; J. Manning; Ashan Kennedy; Jane Mercedes Bolsterli; RA Rowan; Dylan Wieties; Frank Livingston; Alisha Johnson; Richard Sloan; Mary Paal; Sylvia Turner; Candy Turner; Carolyn DuCharme; Dennis Schlegelmilch; Briana Brockmann; Danny Jenkins; Stephen Atwood; Jamie Thoryn; John Edwards; Sydney Krevanl; Erica Nadeau; Madison Martin; E. Cunningham; Renee Teague; Andrew; Doug Pardu; Cele Greece; Zaehel Talraanee; illegible name; Shannon Mitchell; Julie Long; Ronald Weets; Maggie Weeden; Cristie Donohue; Mary Sivensa; Roxanne Thompson; Kara Kearney; Kathy Downs; Alexandra Sparkman; Kelly Weinberg; Chava Nesson Bayett;

## **RULE 5 Response to Comments Received During the Comment Period Extension**

August Baumgartner; Caroline Martin; Stacey Wieties; Heather Cook; Lindsay Scott; Sarah Spangler; Iris Scarborough; Deac Lancaster; Emily Lane; John Calhoun; Damen Long; Faybran Whittle; Adam Moore; Paul Moore; Diane Vanhook; Kelly White; Wendy Hannah; Susan Murray; DeMarius Davis; Richard Bench; Landra Bench; Andrew Sparks; L. Leilani Lau; Maria Grace; Hayden Weaver; Anna Wolff; Foel Wagner; Chase Bilon; April Lane; Patricia Poulter; Annabella Singley; Christian Singley; Kathleen Marleneanu; Megan Kyles; Dakota Ashley; Addison Black; Allyson Walsh; Chase McDonnough; Junier Morales; Kolin Amerson; Hunter Little; Jueli Nail; John King; Nancy Garner; Marites Sales; Mort Gitelman; Jeff Montgomery; Karen Kakemoto; Don Bridges; Brenda Brown; Michele Gibson; Michael McKinnon; Jeannie Philpott; Helen Davis; Isabel Rodriguez; Sonie Toori; Susan Fredrick; Barbara Fell; Patrick Freyer; Erin Ford; Gracie Garrett; Ryan Hicks; Lamon Wade; Logan Wolfe; Marle Cavender; Cain Farnam; Joshua Chamberlain; Zavier Grant; Jason Tiller; Nathaniel Hernandez-Juarez; Hope Smith; Alan Beudel; Dustin Davis; Suzanne Webre; Kathren Green; Cody Brown; Ryan Clark; Cy Sheffeld; Drew Hawthorn; Jackson Rouse; Debbie Chalfant; Nancy Martino; Charles Lowe III; Peter Pulay; M Corley; David Weeks; Hank van Rossum; Jahaira Sanchez Garay; Jerry Brown; Joe Nix; Joel Nunneley; Kathy Martone; Leslie Kline; Darlene Carvin; Linda Padgett; Gray Norton; Keith Runion; Deborah Doerr; James Haguewood; Barbara Waymire; Janet Bartos; Johanna Oswald; Lynn Spiva; John Sarna; Gordon Messling; Caro Anderson; Allen Myers; Kirk Rhoads; Inez Lewis; Paula Bongo; Terry Dailey; Martha Stobaugh; Thomas Anthony; Karen Sage; Don Hamilton; Katie Becker; Ann Burnett; Sally Benson; Patti Criner; T Mullarkey; Easha Sawyer; Robert Brewer; Maryanne Morrow; Maria Gomez; David Parker; Karen Tablish; Timothy Dean; Catherine Reynolds; Eileen Joyce; Beth Seward; Jane Krone; Grace Christie; Daniel Bertram; Theanna Benefield; Lisa Schoultz; Darlene Carvin; Bob Bowker; Ruth Billingsley

**Response:** The Division acknowledges the comments submitted in favor of the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

The following submitted comments through the Arkansas Farm Bureau Federation opposing the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed:

Jordan Winkler; Tim Burcham; Ronald G; Divella, Derik, and Miranda Gray; Richie Gray; Shawn Ragland; Greg Ragland; Shane McElroy; Derik Gray; Jerry Whitten; Stewart Warner; Joy West; Roberta Golmon; Elliott Golmon; Tommy Sorrells; Jay Sorrells; Alex Dykes; Melvin Danici; Melba Wren; W.A. Wren; Sherry Felts; Benton Felts; Kay Moseley; Terry Moseley; William Groce; Shaun Pazn; Melissa Goodson; Leslie Turner; M.H. Bitely III; Robery Goodson; James Baber; Halle Cummings; Sheena Slate; Richard Pierce; Savanna Behning; Shea Gregory; Brenda Patton; James and Brenda Patton; Sue Billiet; Ken Billiet; Bruce Jackson; Jeb Welelld; Julia McLelland; Bennup Trevlen; Randy Arnold Bill Dodgen; Virginia Dodgen; Joel Pace; Bob Schaefers; Rudry Vers; Diane Thompson; Jim Cunningham; Danna Cofer; Daniel Cofer; Rusty Smith; Janice and Bob Shofner; Nicholas Simon; Jon Carroll; Johnny Gravett; Steve Eddington; Hellen Wayown; Carey Robertson; Danny Wood; Tommy Thompson; Becky Wood; Flora Harrington; Linda Parish; Morgan Harrington; Erin and Kalleem Hill; Jason Cofer; Bobby Cofer; David Hodges; Angie Hodges; Charles Denver; Chris Schaefers; Glynn Guenther; Joe Stroub; JennaMrtin; Tony Bradley; Valerie Turner; Jack Parish; Dwight Kirkpatrick; C and Bill Nicholson; Jeanice Hess; Tom Hess; Darren Eubanks; Brittany Leek; Kerry Hartmesh; Beverly Quillin; Terry Rushing; Vanna Eddington; Lorie Henley; Stephen Boyd; Brad Henley; Sarah Burns; Molly Taylor; Deana Taylor; Angela Morrison; Dennis Taylor; Kendall Morrison; Mel Crawford; Regina Chaney; Sandra Jackson; Raymond Staggs; Angie Pierer; Robert Benedict; Betty Garner; Clifton Gifford Jr; Stanley Rhodes; Jason Smedley; Carol Fields; Ronney Fields; Bobby Ballinger; Steven Harrington; Harlie Treat; Janet Clark; Kenny Clark; Meagan Ballinger; Libbie Dogan; Allan Beuerman; Randall Quillin; Brad and Tara Peacock; Deborah Brennan; Robert Stobaugh; Cheryl Phipps; Tammy Thompson; Roger Thompson; Regina Oliver; Brian Jones; Jerry Shannon; Dustin Cowell; Cindy and Gene Pharr; Jackie Hatcher; Norma Robinson; Maurice Robinson; Gary Proctor; Jewell Proctor; Barbara Horn; Lonnie Horn; Jeff Pitchford; Belinda Wright; Everett Mason; Katie Mason; Todd Johnston; Tedd Phipps; Bill Sodon; Keith Shepherd; Amy Shepherd; Curtis Shepherd; Helen Williams; Casey Wooten; Jana Carroll; John Horton; Donna Horton; Elaina Martin; Keith Martin; Terry Duboise; Victoria West; Shyane Ferguson; Barbara Sutton; Nedra Turney; Larry Williams; Kerry Stiles; Randal Colemon; Keith Woolverton; Robert Strobel; Jonathan Roberts; Zach Tidwell; Stanley Taylor; Kevin Cochran; Amanda Mathio; Janet Mathio; Allen Stewart; David Walt; Joe Haller; Kimic Head; David Head; Larry Smith; Dan Stewart; Magen Allen; Mark Keaton; Jason Murray; Cindy Wilson; Leon Wilson; James Rhein; Danny Naegle; Dana Stewart; Rocky Harrell; Diana Alston; Luke Alston; Jeremy Wiedeman; John Mitchell; Keith Futrell; Shelly Futrell; Terry Norwood; Shelia Brown; Stacy Wilson; Jimmy Brown; Pauline Pronia; Gail Sewell; Judy Branscum; Ivan Wilson; Morgan Taylor; Rachel Bearden; John Bend; Steve Barne; Judy Brown; ; Robert Brown; Kevin Flippin; Larry Blosdell Jr; Cheryl Blasdel; Brian Weesenfels; Judith Warmstrong; Pat Bocksnick; Jim Bocksmith; Tom and Jan Leslie; Jennifer Martin; Mark and Mindy Lockhart;

## **RULE 5 Response to Comments Received During the Comment Period Extension**

Clay Antley; Doreen Anty; Beth and Don Ullrich; Steve Toney; Nicole Moore; Curtis Moore; Ralph Moore; Allen Moore; Jack Kildow; Cindy Moore; Reba Moore; Richard Armstrong; Barb Hillman; Hal Hillman;

**Response:** The Division acknowledges the comments submitted in opposition of the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed.



## **RULE 5 Response to Comments Received During the Comment Period Extension**

### **Commenter: Brian Pruitt**

**Comment:** Tyson is allowed to have egg farms in the buffalo river water shed alliance shed and I. Feel like it's unfair because they can spread dry litter and be in the area and the. The fact is that liquid slurry litter is absorbed by the plant and grass it's applied to and rarely reaches the soil this is a 70 year old practice that has been tested and dry litter causes more pollution than wet litter does in California chicken houses run wet litter operations and Europe wet litter is a widely accepted method for animal waste disposal and the ozark mountain region is not true karst topography as the propaganda mill describes it as I'm against this practice because agriculture was in the buffalo river valley long before tourism was and it wasn't pollution until the national park service took over this is a picture of the vault toilet at mt Hersey flooded in 2017 can you regulate them and get them out of the flood plane the mill creek pump failure is the only reason they permitted C&h farms in the first place and your agency needs a scapegoat for your mistakes and ignorance

**Response:** Rule 5 is specific to liquid animal waste management systems. Comments regarding dry poultry litter are more appropriately directed to Arkansas Department of Agriculture, Division of Natural Resources. C&H Hog Farm, Inc. is outside the scope of this rulemaking.

**Comment:** I will definitely not stand for this action because the national park service is putting raw untreated human waste in the water every flood with the vault toilets in the flood plan

**Response:** The Division acknowledges the comment.

### **Commenter: Andy McCutcheon**

**Comment:** I oppose a moratorium on farms in the Buffalo River watershed. There is NO evidence that C&H or any other agricultural operation in the watershed is causing or has caused any degradation of water quality in the Buffalo River. This is blatant government overreach and an attempt to deprive private land owners in the watershed of their right to farm.

**Response:** The Division acknowledges the comment. C&H Hog Farm, Inc. is outside the scope of this rulemaking.

### **Commenter: Shaylee Wallace**

**Comment:** Agriculture has been a long standing and important factor to environmental sustainability. Science has shown time and time again that agriculture is not causing harm to our natural forests and rivers. Fear mongering from the opposition should not be tolerated, they are driven by their own agenda. This is

## **RULE 5 Response to Comments Received During the Comment Period Extension**

dissolves any rights that farmers have and gives dangerous power to anti-agriculturalists to fuel their desire to end all animal agriculture (which plays a vital role in maintaining a sound, balanced environment). We aim to raise safe sustainable food, yet fear mongers who have no knowledge or authority on the subject are pushing us around. We cannot stand for it any longer!

Response: The Division acknowledges the comment.

### **Commenter: Tatum Tarvin**

Comment: Please be careful as you consider this regulation. Arkansas farmers deserve the respect of our state. They work tirelessly to feed the people of the great states of America. Federal law already requires so much of our farmers, and they respect the reasons for rules and regulations, however I do not believe there is enough unbiased proof to make this ruling on regulations 5 & 6! Thank you for your time.

Response: The Division acknowledges the comment.

### **Commenter: Michael Brotherton**

Comment: NO to your ridiculous "Ban". I have no reason to believe ADEQ, The Buffalo River Watershed Alliance (BRWA), or the State of Arkansas have the best intentions for the Buffalo National River or especially Newton/Searcy counties with this action. Certain people want to keep the area "poor" and promote "tourism" in ways that serve only their own business interests. C&H Farms demonstrated the best intentions and operated in a manner exceeding the requirements set by law, and were harassed and punished for it. Meanwhile the REAL cause of damage to the river (overcrowding by humans) is buried under falsified misleading propaganda & biased pseudo-science to the extent that it ought to be considered criminal. There is not a shred of decency or moral character at ADEQ & BRWA and THEY should be held accountable for promoting the degradation of the Buffalo National River in the interest of Greed.

Response: The Division acknowledges the comment. C&H Hog Farm, Inc. is outside the scope of this rulemaking.

### **Commenter: Nathan Pennington**

Comment: This regulation would set a DANGEROUS standard. If farms cannot be in a watershed then there will not be any farms. We must work together to educate people about the truth and not knee jerk regulate farms away. Farms can operate in a responsible manner. C & H never caused any issue yet they were ran off. This is a very bad idea.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

**Response:** The proposed rule does not ban all farms from the watershed, only swine facilities larger than a certain size. C&H Hog Farm, Inc. is outside the scope of this rulemaking.

**Commenter: Joann Saraydarian**

**Comment:** I'm an Arkansas Master Naturalist and am very aware of the dangers animal waste has on our environment. The proposed moratorium under Regulation No. 6 will make it impossible to keep the Buffalo River, our National Treasure, clean! Listen to the scientific facts. What will it take to make it clear that many species depend on the purity of this river. It is a crime against the entire planet. Naturalists and tourists around the globe are attracted to our state to experience the beauty of this river. Our state is cutting off its own arm. Once it is polluted, the damage can not be reversed!

**Response:** The Division acknowledges the comment.

**Commenter: Fay Knox**

**Comment:** It is my understanding that the comment that was previously closed was reopened to include the results of the Big Creek Research Extension Team's (BCRET) final report. The report states in the following quotes the fact of increased phosphorous present downstream from C&H and that the complex karst hydrologic system is vulnerable to contamination. The following quotes from the limited BCRET report illustrate need for moratorium:

- In Chapter 7 of the BCRET report increased phosphorous is seen downstream from the one existing CAFO in the watershed. BCRET states that : 'Future additions of any nutrients ( i.e. as mineral fertilizer, swine slurry, or poultry litter) should be carefully managed so as not to lead to further increases in soil test P. ( BCRET Final Report, October 24,2019 , Chapter 7, pp 30-31).

- "The Big Creek Watershed below the C&H Farm and application field locations, lie within a karst hydrologic system of great complexity exhibiting intimate connection of surface-water and groundwater regimes. These characteristics endow the hydrologic system as an important recreational resource locally and regionally, but also render the system vulnerable to contamination." (BCRET Final Report, Oct. 24, 2019 Chapter 2, p.2).

**Response:** The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study

## **RULE 5 Response to Comments Received During the Comment Period Extension**

and the final report should be more appropriately directed to the University of Arkansas.

### **Commenter: Michael Rapp**

**Comment:** I submitted a critique of the draft Environmental Impact statement in August, 2015, and that critique is attached.

**Response:** This comment is outside the scope of this Rulemaking.

### **Commenter: Duane Woltjen**

**Comment:** Presumably the comment period is extended to January 22, 2020 to accommodate the preparation of BCRET Final Report. The version of that report presently available to the public is so full of incorrect determinations it must not be allowed to stand as representing the "facts" of the C&H fiasco. ADEQ owes the public and future generations of Arkansas an accurate report of facts and accurate interpretation of them, lest the tragedy of C&H be repeated in decades to come because someone accepts that there is no meaningful effect from this operation. I question is why ADEQ takes the word of the incompetent "professionals (?!!!)" of BCRET? ADEQ is responsible for the truth, completeness, and accuracy of any final report in this matter.

"Future additions of any nutrients to fields, which received slurry from C&H Farms, should be carefully managed, so as to not lead to further increases in soil test P. This can be achieved by application of nitrogen (N) fertilizer or slurry and poultry litter a P-based rates, where P applied is equivalent to expected forage uptake of P.", so says BCRET from their Final Report. BCRET continues, even in their Final Report, to advocate what C&H was required to do when the doors opened until the doors finally closed in December of 2019. And there is no doubt that C&H faithfully applied slurry in accordance with their permit as verified by the inspection reports of their compliance. This BCRET advocated practice is how we ended up with Nitrate levels that more than double in Big Creek as it passes by the C&H Farm; P downstream that is double the upstream level; increasing levels of nitrates in the ground water found in the well by the two barns; ground water downstream of the barns that is 4 x the nitrate level of groundwater upstream of the barns; very high Big Creek E. coli levels such that Big Creek is declared "Impaired" by the State. Isn't the above remarkable? The Final BCRET Report recommendations have been followed for at least 6 years, and the results are a disaster! That tells us the Arkansas P Index (equivalent to the Final edict) does not work. Why not? The basic reason why it does not work is the application field geology is karst. Karst soils are extremely variable in permeability, with virtually impermeable soil lying next to conduits to the water table in unpredictable locations of greatly variable extent. If P soil samples are taken in what turns out to

## **RULE 5 Response to Comments Received During the Comment Period Extension**

be a conduit or highly permeable location, P readings will be low (because the previously applied P when to the water table below). The P applied was not used by plants, it went to the groundwater. I resent BCRET's Final Report appearing as a recommendation by BCRET. This more of the BS they have foisted on C&H and the public. This is academic fraud, pure and simple. Logically, the only thing that works on karst is Not Applying Animal or Manufactured Fertilizers. (Try crop rotation to restore nutrients—old Chinese saying?). Permanent prohibition of CAFOs is necessary to protect the Buffalo River and must happen. Now

**Response:** The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.

**Commenter: Ann Bendy**

**Comment:** I kindly ask that the permanent moratorium for swine operations in the watershed area be voted against. As long as farms are following proper procedures and regulations there should be no reason for this moratorium. Find a better way to do it, don't just ban it all together. The moratorium would also have an economic impact by causing a loss of products, loss of jobs, and loss of economic diversity, which would have a negative impact on the area. Vote no to the moratorium on swine operations in the watershed area.

**Response:** The Division acknowledges the comment.

**Commenters: Masen McCutcheon, Cheryl McCutcheon, Andy McCutcheon**

**Comment:** I OPPOSE any moratorium of any type for the Buffalo River Watershed.

**Response:** The Division acknowledges the comment.

**Commenter: Melissa Klipp**

**Comment:** We as land owners and homesteaders should have the right to raise what ever animals that we need to feed our families. We worked hard for our land and we should have the opportunity to freely have our land support our families. Our children also raise pigs for 4h and compete in county fairs. Our rights should not so easily be taken away.

**Response:** This rulemaking does not apply to small family farms.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

### **Commenter: Randy McCutcheon**

**Comment:** As a life long resident of Searcy County Arkansas and resident of the Richland Vally just a few miles from the Woolum crossing of the Buffalo river. I am against these regulations which will not solve the problems with the river. I don't believe the Government should have this much power over a free people. The US constitution does not grant such powers to the government. This just erodes the rights of the people.

**Response:** The Division acknowledges the comment.

### **Commenter: Ryan Crow**

**Comment:** I don't agree with any of this. Quit over reaching.

**Response:** The Division acknowledges the comment.

### **Commenter: Arkansas Cattlemen's Association**

**Comment:** As currently written, the Arkansas Cattlemen's Association (ACA) opposes the changes to Regulation 5 specifically concerning the "hog moratorium" component under Rule 5.901 subparagraph (B). It is the opinion of the ACA, and its members, that this rule directly violates Arkansas Code Ann. § A.C.A. Tit. 2, Subtit. 1, Ch. 4, known as the "Arkansas Right-to-Farm" law. It is the stated purpose of A.C.A. § 2-4-101, "to reduce the loss to the state of its agriculture resources by limiting the circumstances under which agriculture operations may be deemed to be a nuisance." The Arkansas Cattlemen's Association believes that by placing a moratorium on swine confined animal feeding operations (CAFO) located on the Buffalo National River Watershed, the APC&EC is publicly stating production agriculture is a nuisance. This unwelcome mindset will set a dangerous precedent in future legal proceedings as well as place a "not welcome" sign at the state line to all potential livestock feeding operations. The Arkansas Cattlemen's Association finds that a swine CAFO moratorium on the Buffalo National River Watershed (BNRW) by the APC&EC and the State of Arkansas is unconstitutional or, at the very least, an encroachment on the rights of the people of Arkansas, including cattle producers. Under Arkansas's Constitution, Article 2 sub-article 22, "Property rights- Taking without just compensation prohibited" states, "The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor." Should the state government and the APC&EC continue to move forward with the proposed rule, they will essentially be taking private property, and the ability of private land holders to generate income from their land, away. Moreover, there is justifiable concern among cattle producers in the BNR W, and statewide, that should the proposed rule take effect.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

it will soon be expanded to other agricultural sectors, such as cattle production, both inside and outside the BNRW. Once again, this proposed rule sets a dangerous precedent for the future of production animal agriculture in Arkansas. With 57 separate, eight-digit watersheds located in Arkansas, the proposed rule could serve as the beginning of multiple regulations aimed at cattle operations and agriculture in watersheds throughout the state. In conclusion, the Arkansas Cattlemen's Association opposes the proposed Changes to Regulation 5. As presented, it is a violation of Arkansas law, unconstitutional when viewed against the Arkansas Constitution, and capable of setting egregiously harmful precedent. The Arkansas Cattlemen's Association believes the proposed rule should be withdrawn and other aspects on how to preserve the Buffalo National River should be examined. Such examination should include the effects of gravel roads, municipalities, feral hogs and how millions of tourist annually disturb the BNRW.

**Response:** The Division acknowledges the comment. Neither APC&EC nor the Division has stated that production agriculture is a nuisance.

**Commenter: Cindy Majoros**

**Comment:** Any future farms of this source really needs to be reviewed and locations considered before making a crucial decision as they didn't on this one.

**Response:** The permitting process is outside the scope of this rulemaking.

**Commenter: Katie Deakins**

**Comment:** Reg. 5.105 Exemption Any confined animal operation using a liquid waste disposal system shall be exempt from the requirements of this regulation if the owner or operator obtains and maintains active coverage under either an National Pollutant Discharge Elimination System individual or general permit for discharges from a concentrated animal feeding operation. I am not comfortable with the proposed Reg. 5.105 Exemption. This is not strict enough to protect watershed areas in our state that are dominated by karst topography. Please do everything possible to ensure a PERMANENT moratorium on such CAFO's in the Buffalo River watershed as well as others in our beautiful Natural State. I appreciate the work Gov. Hutchison has done so far, and it is my hope he can make this a lasting legacy forever.

**Response:** The content of Rule 5.105 has not changed and therefore is outside the scope of this rulemaking.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

### **Commenter: Alan Nye**

**Comment:** I have attached my technical criticism of the Big Creek Research Extension Team report. To the extent that the Big Creek Research Extension Team report is used as a decision-making tool in whether or not to make the moratorium permanent, I request that my comments be thoughtfully considered. One result of the BCRET report is very clear. During the operation of C&H Farm, the nitrate concentrations downstream of the farm were approximately double those of the upstream sampling station. These results are the "smoking gun" strongly implying C&H Farm is a source of nitrate pollution to Big Creek and the Buffalo National River watershed. I would urge the ADEQ to make the conditions of the moratorium permanent, thereby avoiding future nutrient loading to Buffalo National River watershed and the high costs incurred to undo the mistake of allowing C&H Farm and its like to be sited and operated in the watershed.

**Response:** C&H Hog Farms, Inc. is outside the scope of this rulemaking. The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.

### **Commenter: Philip Gibson**

**Comment:** Although my address is out of state, I own land bordering the Buffalo National River and come there often. I have been coming for 20 years. I may retire on that land and become a full-time resident of Arkansas. All because of that river.

**Response:** The Division acknowledges the comment.

### **Commenter: Natalie Dettmann**

**Comment:** The Buffalo River is a place that many travelers and campers enjoy; myself included. It breaks my heart to see what has happened to it over the past years. Please consider donating in any way you can! Give your money and time to help save the river!

**Response:** The Division acknowledges the comment.

### **Commenter: Vicente Vasquez**

**Comment:** Everyone should report the amount of waste they are dumping in to the river and everyone should be able to access this information. By everyone I refer to the companies that dump waste into the river.



## **RULE 5 Response to Comments Received During the Comment Period Extension**

Response: The Division acknowledges the comment.

### **Commenter: Katic Watson**

Comment: In many of my environmental classes for the past two years have addressed the many issues in the Buffalo River. I believe that corporations and other businesses should understand the many values the river offers to many disciplines

Response: The Division acknowledges the comment.

### **Commenter: Robert Agosti**

Comment: Please keep all commercial (especially hog farms) animal enterprises out of the White River water shed basin.

Response: The Division acknowledges the comment.

### **Commenter: William Smith**

Comment: Although I do question the integrity of ADEQ to do so as the agency has already failed in its initial promise to monitor and protect homeowners in the Cartney Arkansas area and the White River, The result being an unrestricted over extension of the original mining on Cartney Mountain which over the years has created a gigantic red pit and surface mining swallowing up homes and threatening local streams, remaining homeowners wells, property values, and the White River.

Response: This comment is outside the scope of this rulemaking.

### **Commenter: Ozark Society Peterson**

Comment: The Final Big Creek Research Extension Team (BCRET) Report deserves critical comment in order to put its conclusions and many pages of data interpretation into proper perspective. The Final BCRET report is highly technical and our response is also highly technical. A major problem is that the report makes few error estimates on the data input and therefore can't quantify the accuracy of its conclusions. Due to its lack of investigatory breadth, limited and flawed field sampling and data collection of swine waste-associated contaminants in surface water, inadequate characterization of the magnitude and timing of Big Creek surface water and stormwater runoff flows, most of the BCRET report results and conclusions cannot be confidently relied upon as a decision-making tool for assessing the impact of medium and large CAFOs on the Buffalo River

## **RULE 5 Response to Comments Received During the Comment Period Extension**

watershed. Unfortunately, the authors provide no information or perspective regarding the uncertainty or variability of the study results, perhaps leading the uncritical reader to blithely accept the authors' conclusions. A good example is the chapter on surface runoff. Final Report inferences follow from column 6, table 7, page 15, the ratio of total phosphorus (TP) output and input (column 4 and 5) – neither of which is reliably estimated.

Another example of the inadequacy of the BCRET report is found in the recently re-drafted chapter 7 on nutrient loads. The apparent goal is to obtain estimates for yearly loads at BC6 and BC7 and thereby deduce the load generated in the farm stretch – a worthy goal of the investigation. But the model as presented is inscrutable (e.g. parameter values in the model are not given) and has the weakness of all models: it does not really represent the BCRET data set. As such, the results of the model are of unknown certainty. The OS presents a different method which gives similar but somewhat different estimates but includes an additional analysis of loading effects in the farm stretch of Big Creek. Our modeling of this same nutrient release is more transparent, but there can be no certainty or reliance on model results without a meaningful error analysis.

**Response:** The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.

### **Commenter: Searcy County Cattlemen's Association**

**Comment:** On behalf of the 82 members of the Searcy County Cattlemen's Association, we OPPOSE any moratorium of any type agricultural operations for the Buffalo River Watershed.

**Response:** The Division acknowledges the comment.

### **Commenter: Kirk Wasson**

**Comment:** All concentrated animal growing farms of any size should not be allowed on watersheds of National Rivers and Wild and Scenic Rivers. More scientific data and research should be mandatory for approving any hog, bovine or poultry operations of any size. Major plans on monitoring and waste management should be place with monetary guarantees and criminal penalties before approving even small farms in other watersheds. Cows should be limited to one animal per acre. Hogs should be limited to the number of acres of land that the waste can be spread on. X? number of hogs per acre. All potential spread fields should be evaluated for potential runoff rates, absorption, karst and vegetation to be grown before approving concentrated animal businesses. I have winter time concentrated cattle

## **RULE 5 Response to Comments Received During the Comment Period Extension**

feeding operations close to where I live that should be monitored and stopped if violating environmental laws. Some days the smell is strong and who knows what the runoff does to Bridge Creek and on downstream. While I believe in property rights, activities on my land should not affect neighbors and public lands Please ban all concentrated animal factories in drainages for all public water systems and any waterbody my grandchildren may swim in.

Response: The Division acknowledges the comment.

### **Commenter: Grant Scarsdale**

Comment: The proposed Regulations No. 5 and No. 6 rulemaking changes for the Buffalo River watershed moratorium should encompass ALL medium and large animal feeding operations. The language of the proposed moratorium only applies to swine; however, medium and large poultry and dairy animal feeding operations pose an equivalent threat to our first national river.

Response: Rule 5 is specific to liquid animal waste management systems. Comments regarding dry poultry litter are more appropriately directed to the Arkansas Department of Agriculture, Division of Natural Resources.

### **Commenter: Nancy Deisch**

Comment: The loopholes in Regulations 5 and 6 need to be closed to make sure that medium and large-scale animal (swine, poultry, and livestock) feeding operations are covered in the moratorium on the Buffalo River watershed. If all the Arkansas watersheds were covered, wouldn't that be something? Arkansas--a cutting-edge example of pollutants control? It is beyond belief that this could STILL be a matter of public concern after all this time. We need to get it right before too much damage is done. Please fix the regulations--once and for all, for the good of everyone in the state!

Response: The size thresholds in Rule 5 are clearly stated.

### **Commenter: Ray Quick**

Comment: The citizens of the State of Arkansas have spoken with respect to not allowing the C&H concentrated animal feeding operation (CAFO) to continue operating in the watershed of the Buffalo National River. ADEQ does not want to make another "mistake" by permitting any animal CAFO in the watershed of the Buffalo National River. Therefore, the proposed Regulations No. 5 and No. 6 rulemaking changes for the Buffalo River watershed moratorium should encompass ALL medium and large animal feeding operations. The language of the proposed

**RULE 5 Response to Comments Received During the Comment Period Extension**

moratorium only applies to swine; however, medium and large poultry and dairy animal feeding operations pose an equivalent threat to our first national river. In particular, given the fact that the the geology is primarily limestone/karst.

Response: C&H Hog Farms, Inc. is outside the scope of this rulemaking. Commenter may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

**Commenters: Ammen Jordan; Pat Robinette; Kai Coggin; Lanie Carlson; McKendra Adams; Dixie Keyes; Terrie Martindale**

Comment: The proposed Regulations No. 5 and No. 6 rulemaking changes for the Buffalo River watershed moratorium should encompass ALL medium and large animal feeding operations. The language of the proposed moratorium only applies to swine; however, medium and large poultry and dairy animal feeding operations pose an equivalent threat to our first national river.

Response: Commenters may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

**Commenters: Bennie Scott; Carol Christoffel**

Comment: I am in favor of establishing a permanent moratorium on medium and large swine, chicken, and cattle CAFOs in the Buffalo and other Arkansas watersheds.

Response: Commenters may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8. Rule 5 is specific to liquid animal waste management systems. Comments regarding dry poultry litter are more appropriately directed to the Arkansas Department of Agriculture, Division of Natural Resources.

**Commenter: Jan Wilson**

Comment: Please continue the good /Godly movement you started by permanently placing a moratorium on CAFOs for medium/large swine not only in the Buffalo National River watershed, but in ALL of our precious Arkansas. I am grateful for your attention to this matter and hope you will have the wisdom needed to protect God's precious waterways for Arkansas.

Response: Commenters may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

### **Commenter: Dina and Jeff Nash**

**Comment:** Our family is opposed to any future permits for CAFOs in the Buffalo River and Big Creek Watersheds. For that matter, we don't want CAFOs or polluting industries anywhere in the Extraordinary Resource Waters of the state, either; for example, the Mulberry, the Caddo, Illinois Bayou, the Little Red, etc. The data contained in the BCRET final report should be enough for the ADEQ's rule change to create a permanent moratorium on polluting CAFOs or other businesses in these sensitive karst-based soil formations, which eventually pollutes our rivers, streams, and lakes.

**Response:** Commenters may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

### **Commenter: Virginia Hartnett**

**Comment:** Arkansas is a land of wonder and beauty, and the Buffalo River highlights this Natural State. As our National River, it deserves our respect and protection. We Arkansans are duty bound. Its waters are still being adversely affected as a result of the CAFO hog farm that has been shut down. It will take time and care to recover. It is critical that further damage be avoided. Changes to Regulations 5 & 6 should expand the moratorium to include ALL (not only swine) medium and large scale animal feeding operations in the Buffalo River Watershed.

**Response:** Commenter may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

### **Commenter: Shawn Porter**

**Comment:** Furthermore support a complete ban on CAFOS statewide. I am a small farmer.

**Response:** Commenter may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

### **Commenter: David Jones**

**Comment:** I have commented previously about the importance of the moratorium being made permanent. Now I'm wondering about the delay. There has been more than ample time for public comments.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

**Response:** The Commission reopened the public comment period for Rule 5 and Rule 6 for an additional ninety (90) days, with January 22, 2019, as the end of the public comment period.

### **Commenter: Johon Fritz**

**Comment:** Keep the title as "regulations", meaning, do not change "regulations" to "rules". Maintain the moratorium on CAFOs in the Buffalo River watershed, in keeping with The American Public Health Association's (APHA) new policy statement advising federal, state, and local governments and public health agencies to impose a moratorium on all new and expanding concentrated feeding animal operations (CAFOs).

**Response:** Act 315 of the 2019 requires DEQ to use "rule" in place of "regulation."

### **Commenter: M K Elkins**

**Comment:** This doesn't not include the air pollution. We have gone to Sam's Throne and it smell almost be unbearable

**Response:** This comment is outside the scope of this rulemaking.

### **Commenter: Richard Spiker**

**Comment:** This just proves that the citizens of the states that allow CAFO's like Missouri, end up with the bill and the meat packers and ag. corporations get off "scott free". The citizens of Missouri must wake up to the CAFO's being allowed and supported by our governor and "bought off" legislature.

**Response:** This comment is outside the scope of this rulemaking.

### **Commenter: Marti Olesen**

**Comment:** As I read the BCRET final report, one part especially made me think twice about the conclusions it drew. The report included a comparison of the local Big Creek watershed with the Upper Illinois and Upper White River watershed in order to submit its opinion that Big Creek was in good shape. Anyone who is familiar with the northwest Arkansas water situation is aware of the long-term battle between

## **RULE 5 Response to Comments Received During the Comment Period Extension**

Oklahoma and Arkansas about impaired water quality due to excess nitrates that Arkansas has released into the waters of Oklahoma. A Nutrient Surplus Area was designated to relieve the input of nutrients to remediate that situation. If the BCRET had proposed a similar Nutrient Surplus Area restriction on the Buffalo River Watershed in their report, then this comparison might have had a purpose. Instead they used it to say that the Big Creek area is just fine because it is not worse than the other. Since the other has a large and growing urban base and innumerable poultry operations, it can only truly be useful as a warning of what can develop in a watershed through uncontrolled growth. ADEQ has prudently proposed a moratorium to limit such proliferation of waste in the Buffalo River watershed, but perhaps a Nutrient Surplus Area designation would be beneficial here as well, since waste from such designated areas can be hauled and dumped here.

**Response:** The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.

**Commenter: Diane Goodwin**

**Comment:** I am strongly against this.

**Response:** The Division acknowledges the comment.

**Commenter: Elliott Golmon**

**Comment:** We need to continue to support our Farmers who are on the front lines in the battle to preserve our nations ecosystems through sound farming practices based on research which utilizes science. We are against the moratorium on farms of any type that threaten private property rights, especially those that are following the rules set forth by our governmental agencies.

**Response:** The Division acknowledges the comment.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

### **Commenter: Arkansas Farm Bureau Federation**

**Comment:** The Arkansas Farm Bureau Federation would like to offer the following comments opposing the permanent moratorium on the Buffalo River watershed as initiated in Arkansas Pollution Control & Ecology Commission (APC&EC) Regulation's 5 and 6. The ADEQ and APC&EC initiated rulemaking to prohibit landowners within the Buffalo River watershed their right to farm without a single shred of scientific evidence that animal agriculture, and in this case C&H Hog Farms, had caused an environmental impact. C&H Hog Farms was, and still to this day, the most heavily scrutinized and monitored farm in the state. The Big Creek Research and Extension Team was originally created by then Governor Mike Beebe to evaluate the potential impact and sustainable management of the C&H Farms operation on the water quality of Big Creek. Several years later, the ADEQ funded a drilling study to evaluate the lithology/geology below the waste storage ponds at C&H Hog Farms and to assess potential subsurface impact from the waste storage ponds. Upon completion of the drilling study, Governor Asa Hutchinson created the Beautiful Buffalo River Action Committee and authorized the development of a Watershed Management Plan for the Buffalo River Watershed that would evaluate its tributaries to determine which would need the most attention. The United States Geologic Survey (USGS) studied algal growth on the Buffalo River, as well as, nutrient concentrations upstream and downstream of Big Creek on the Buffalo River. All of these studies identified above determined either Big Creek continues to maintain pristine water quality and C&H was having no environmental impact.

**Response:** The Division does not concur with Commenter's conclusion regarding studies undertaken in the Buffalo River Watershed. In the Buffalo River Watershed, four Assessment Units (two sections of Big Creek and two sections of the Buffalo National River) have been identified as impaired: three for bacteria and one for dissolved oxygen.

**Comment:** Environmental groups state the moratorium is based on sound science and the justification used is to merely regurgitate the definition of karst. The mere presence of karst does not constitute scientific justification for a permanent moratorium. All of Northwest Arkansas and Northcentral from the Black River to the Oklahoma Border and North of the Arkansas River to Missouri as well as portion of Southwest Arkansas are underlain by karst. Using this logic, these areas should also be included in the moratorium.

**Response:** The purpose of this rulemaking is to make permanent the current moratorium on swine operations of a certain size in the Buffalo River watershed.

Congress designated the Buffalo River as the first National River in 1972 "for the purposes of conserving and interpreting an area containing unique scenic and scientific features, and preserving [it] as a free-flowing stream." 16 U.S.C. § 460m-8. APC&EC Rule 2 affords the Buffalo National River its highest category of designated use, "Extraordinary Resource Water."



**RULE 5 Response to Comments Received During the Comment Period Extension**

**Commenter: Joel Nunneley**

**Comment:** There is a new mining operation near the Kings River that is right above Keel's Creek, a major tributary to the Kings River. ADEQ needs to be vigilant in protecting the beautiful Kong's River.

**Response:** This comment is outside the scope of this rulemaking.



**BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**

**IN THE MATTER OF AMENDMENTS TO )  
REGULATION NO. 5: LIQUID ANIMAL ) DOCKET NO. 19-002-R  
WASTE MANAGEMENT SYSTEMS )**

**RECEIVED**

FEB 13 2020

**RESPONSIVE SUMMARY**

BUREAU OF  
LEGISLATIVE RESEARCH  
DIVISION OF

Comes now the Arkansas Department of Energy and Environment, Division of Environmental Quality, by and through, Robert Blanz, Associate Director of the Office of Water Quality, and provides this Responsive Summary as required under Arkansas Pollution Control and Ecology Commission Regulation No. 8.812.

**I. INTRODUCTION**

The public comment record for Docket No. 19-002-R contains over 1719 comments pertaining to changes to Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 5, Liquid Animal Waste Management Systems.

The notice of proposed Regulation No. 5 changes and public hearing was published on August 3 and 4, 2019, in the Arkansas Democrat-Gazette. APC&EC held a public hearing on August 23, 2019, to receive comments on the proposed rule change to APC&EC Regulation No. 5. The public comment period closed on September 22, 2019. APC&EC reopened the public comment period on October 24, 2019, with an end date of January 22, 2020.

**II. RESPONSES TO WRITTEN AND VERBAL COMMENTS**

The following people or organizations sent comments during the public comment period and public hearing.

The following submitted comments in favor of the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed:

Steven & Joan Miller; Cindy Rimkus; Millie Nelms; Sue Mabry; Cindy Thornton; Sarah Jane Polk; Josh Cross; Linda Vanblaricom; Rene Diaz; Court Mathey; Kathryn Searcy; Michael Boyd; Ruth Weinstein McShane; Joe McShane; Kathy Downs; Kathy Sutterfield; Mark Smith; Butch Anselm; Janet Brown; Harriett & Dennis Sisson; Faith McLaughlin; Jan VanSchuyver; Shirely and Robert Bowen; Sheena Pettit; Aletha Tetterton; Jane Spellman; Edie Stahl; Lynn Parker; Jason Wakefield; Geniece Yates; Holly Hanson; Debbie Alexy; Katie Schneider; Elva Kelly; Cay Miller; Bonnie Smith; Caleb Reed; Barbara Moorman; Becky McCain; Ruth Colquitt; Gregory Merlino; James Ollerenshaw; Ted Barnette; Hilda Booth; Kathleen and Larry Stanley; Laura Timby; Joe Golden; Pat Costner; James Binns; Rachel Henriques; Bryce Huff; Dave Smith; John Shelton; Lolly Tindol; Mary Floyd; Corey Brady; Trudi and Jeff Rust; Nancy Deisch; Mary Ann Guinn; Frank Reuter; Ryan Cloud; Robert van Rossum; Rebecca Holden; Leigh Barham; Hank van Rossum; Ann Lasater; Karen Bartle; Cathy Bayne; Carolyn Quick; Annie Langston; Vern Berry; Annee Littell; David Saugey; Shane Jetton; Carroll Fletcher; Susan Hardin; Chuck Maize; John Kelsey; Mary Ryan; Nancy Harris; Dan Stockman; Carolyn Cloud; Scott Davis; David Montague; Joan Murphy; Ginger Milan; Jeff Carfagno; James Gately; Linda Lewis; Mike Tipton; Sally Wood; Sally Jones; Nancy Pierson; Barbara Metzger; Nancy & Harrison Miner; Gail Leftwich; Lloyd & Linda Stith; Karen Baris; Kevin Ehemann; Dean Wilson; Mary Weeks; Carol Storthz; Gerald & Karen Gordy; Robert Cagle; Walter Fenton; Patricia Roe; Bill Thorne; Monty Keel; Joe Wavery Newman, III; Diane Mitchell; Susan Heaney; Nancy Hartney; Wendy Johnson; Mary Fitzgerald; Rose Wallace; Cathy Ross; Keith Faulkner; Bishop Bower; Shelley Buonaiuto; Greg Watkins; Tammy Narramore; Pam Chrisco; Barbara Turney; Allen Powell; Brad Lindsey; Rose Alisandre; S. J. Tucker; Helen Pounds; Janette Groves; Janet Bachmann; Brad Green; Pati Mitchell; DavidEdsall; Jennifer McMahon; Gwyn Pope; Tim Hicks; Dan Turney; Ann Mesrobian; Kimberly Brasher; Terry Sutterfield; Jay Stanley; James Mott; Robert Bowker; James, Grace, Jimmy, Amy, Rean, Rachel, Brandon, Eva, Madison, Jake, and Josh McPherson; Dee Plunkett; Patricia Peterson; John Buchan; Ellie Stalker; Kay Abney; Dara Yeager; Carole Schuster; Peggy Moody; Heather Hudgens; Krista Garrett; Helen McElree; Steve Owen; Ginger Alexander; Robert and Nancy Lewis; Robert Magness; Russ Wright; Matthew Pekar; Stephen Ballard; Joyce Hale; William Wimberly; J. LaBrie; Carol Kennedy; Jerry Weber; Duane and Judith Woltjen; Cory Betts; Scott Stanley; Darla Newman; Kennet and Tracie Pape; Tracy Fortuny; Marsha Gibson; Danny Barker; Ed Brocksmith; Beth Rooney; Laura Newth; Steve Parsons; Fay Knox; Dotty Phillips; George and Vee Ann Miller; Ron Schneider; Mike Risk; Dan Scheiman; Steve and Kim Hesse; Patrick and Kristine Hall; Ray Quick; Michelle Davis; Beth Buckley; Deborah Byron; Patty Doyal; Todd Parnell; Susan Leahy; Bill Farrell; Beth Barham; Susan Bolding; Sarah Rausch; Lynda Janos; Ralph Doty; Pam Phillips; John Outler; Mike Fagan; Camille Carpenter; Michele Hughes; Reba Potee; Ammen Jordan; Stephanie Jordan; Michael Crane; Dave Kuhne; John Ray; Georgia Lengyel; Jerrell Dillaha; Stuart Reaves; Patricia McDonald; Patti Kent; Phyllis Head; Barabara

Jaquish; Jan Wilson; Holly Felix; Deb Campbell; Maire Caverly; James and Ashley Fletcher; Richard Isaacs; Jeff Montgomery; John Baker; Miranda Jacky; Lesha Shaver; Jerome and Harriet Jansma; Carol Wineland; Marilyn Wheeler; Pam Bryan; Stevan Vowell; Pat Hagge; Susan Fields and Jeff Scott; Liston Barber; Donald Alexander; Lynn Holmes; Dana Phillips; Sheila Richards; Robert Brewer; Thomas Maly; Martha Ragar; Susan Hubbard; Francie Bolter; Jim Warnock; Kay Ewart; Susan Parker; John Barton; John Slater; Jim Wimberly; Jo Johnson; Jim Compton; Tom Perry; Ann & Rick Owen; Christopher Fischer; Shawn Porter; Judi Nail; Fran Alexander; David Hughey; Bettie Lu Lancaster; Dorothy Mangold; Dina Nash; Maryann Getz; Paul Getz; Lynn Risser; Bryan Signorelli; Charles Mullins; Charles Williams; Mike Adelman; John Ferguson; Betsy Murdoch; Linda Arnold; Jeff Burgess; Virginia Booth; Wanda Stephens; Keaton Smith; Rick Jones; Ruth Vacin; Jeff Nash; Jenny Wiedower; Fred Henry; Susan Flourwoy; Lynn Berry; Ken Leonard; Marti and Larry Olesen; Chuck Rutherford; Tom Burroughs; John Courtway; Tom Griffith; Jan Baker; Susan Hautz; Mark & Ann Segura; Michael Wheeler; Rex and Nan Enoch; Glenda Allison; Denise Dore; Lesley Kline; Nan Johnson and Dave Spencer; Janie Lindquist; Christeen Kline; Z.D. Zbinden; Marquette Bruce and Nancy Talburt; Rachel O'Carroll; Quinn Montana; Sunnie Ruple; Kirk Rhoads; Molly Saxon; Susan Murray; Ellen Compton; Spencer Goertz-Giffen; Margaret Britain; Cindy Jetton; Gene Sparling; Annee Littell; Corey Duncan; Lucas Parsch; Donna Mulhollan; Gladys Tiffany; Annette Pettit; Pam Stewart; Ginny Masullo; Janet Nye; Katie Deakins; Nancy Paddock; Elizabeth Cantwell; Ethel Simpson; Erin Hostetler; Sherrie McIntyre; Teresa Turk; David Martinson; Tyler Chafin; Elizabeth Hale; Dana Bassi; Edward Vollman; Dana Ward; Fred Goldthorpe; Michael Douglas; Radine Nehring; Sondra Gordy; Martha Goldthorpe; Pattie Heitzman; Jeffrey Ingram; S. Beth Lowrey; Denise Nemeec; Patricia McKeown; Jean Nayga; Brian and Sarah Thompson; Deb Bartholomew; Calvin Doody; Charles Leflar; Dina and Jeff Nash; Mary Schlatterer; Jeanie Calhoun; Janet Parsch; Karen Seller; Lisa Orton; Grant Scarsdale; Sharon Gattis; Michael Rapp; Bill Pettit; Kim Traw; Laura Villegas; Ellen Corley; Karen Geiger; James Seawel; Beth Ardapple; Louise Mann; Sarah Myers; Marian Johnson; Thomas Calhoun; Ellen Mitchell; Nancy Pierson; Will Larkin; Lowell Collins; Friends of the North Fork and White Rivers; National Parks Conservation Association; John Murdoch; Alice Andrews; Steve Blumreich; John Van Brahana; Bill Lord and Linda Bryant; National Park Service; Carol Bitting; David Peterson; Charles Bitting; Richard Mays; Buffalo River Watershed Alliance; Arkansas Canoe Club; Ozark Society; Caroline Shearman; Kathy Morris; 3rd Planet Peace; [clgilpin1@gmail.com](mailto:clgilpin1@gmail.com); [marshman17@aol.com](mailto:marshman17@aol.com); [nuffer@hughes.net](http://nuffer@hughes.net); [bombba41@gmail.com](mailto:bombba41@gmail.com); [roxrose439@gmail.com](mailto:roxrose439@gmail.com); [arhiker.davis871@gmail.com](mailto:arhiker.davis871@gmail.com); [poweryale@gmail.com](mailto:poweryale@gmail.com); [gary@garycawood.com](mailto:gary@garycawood.com); [serenity.papa@gmail.com](mailto:serenity.papa@gmail.com)

**Response:** The Division acknowledges the comments submitted in favor of the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed.

**Commenter: Arkansas Pork Producers Association**

Comment: Arkansas Pork Producers Association opposes any changes to Rule 5 as proposed in the Third Party Rulemaking.

Response: The rulemaking for Rule 5, initiated on July 26, 2019, is not a Third Party Rulemaking.

Comment: Arkansas Pork Producers Association requests that no decision on this Third Party Rulemaking be made until the Big Creek Research and Extension Team has been given the opportunity to publish its final report.

Response: The rulemaking for Rule 5, initiated on July 26, 2019, by DEQ, is not a Third Party Rulemaking. The Big Creek Research and Extension Team published its Final Report on or about October 22, 2019, and published a revision on December 31, 2019. The Commission reopened the public comment period for Rule 5 and Rule 6 for an additional ninety (90) days, with January 22, 2019, as the end of the public comment period.

**Commenter: American Fisheries Society Arkansas Chapter**

Comment: Rule 5.901 – Remove “National” from references to Buffalo River watershed. “Buffalo National River” denotes the National Park Service geographic entity. “Buffalo River watershed” is more appropriate.

Response: Removed “National” from each reference to “Buffalo National River watershed.”

Comment: Rule 5.901(A) - “United States Geological Survey” is the appropriate name.

Response: Corrected the spelling by adding “al” to “Geologic.”

Comment: Rule 5.901(B) – Why is this limited to swine? From a nutrient standpoint, wouldn’t other types of medium and large CAFOs (e.g., turkey, chicken, cattle) also contribute significant pollutants of concern?

Response: The proposed change to the rule makes permanent the current moratorium on liquid animal waste management systems for confined animal operations of a certain size in the Buffalo River watershed.

**Commenter: Don McCaskill**

Comment: Future regulations must be in the form of permanent prohibitions instead of moratoriums that are inherently subject to renewal and potential weakening; the prohibition must not be limited just to swine CAFOs, but must also include concentrated “factory” farming of cattle and other domesticated livestock that, for purposes of efficient operations, generate liquid waste with associated handling

facilities; no exceptions should be made that would allow permitting small CAFO's (based on number or size of animals) in the watershed since multiple small operations would likely be equally damaging and even more difficult to monitor and control; Technologically-sound restrictions on the importation of animal manure from outside the watershed and its application as fertilizer should be considered.

Response: Commenter may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

Comment: While concentrated poultry production does not typically produce liquid manure, scientifically-based restrictions on generation and/or distribution of poultry litter in the watershed should also be administered.

Response: The proposed change to the rule makes permanent the current moratorium on confined animal operations of a certain size in the Buffalo River watershed. Rule 5 is specific to liquid animal waste management systems. Comments regarding dry poultry litter are more appropriately directed to the Arkansas Department of Agriculture, Division of Natural Resources.

**Commenter: Jessie Green**

Comment: Why is the proposed permanent moratorium in the Buffalo River watershed limited to swine? (Rule 5.901)

Response: The proposed change to the rule makes permanent the current moratorium on confined animal operations of a certain size in the Buffalo River watershed.

Comment: A facility meeting the size threshold of a medium swine CAFO could still be permitted under Rule 5.901(B) and Rule 6.602(B).

Response: The proposed Rule 5.901(B) and Rule 6.602(B) prohibit issuance of a permit to any facility with (1) 750 or more swine weighing 55 pounds or more; or (2) 3000 swine weighing less than 55 pounds.

Comment: There are major discrepancies between the moratorium as outlined in Rule 5 and Rule 6. Will an AFO meeting the size threshold, but not regulatory definition of a medium CAFO be able to obtain coverage under Rule 6 in the Buffalo River watershed?

Response: No.

Comment: Including language stating "all operations meeting the size threshold will be assumed to be significant contributors of pollutants, and therefore designated as a CAFO" to Rule 5.901(B) and Rule 6.602(B) would address concerns outlined in section A. II. in comments above. However, size thresholds outlined in Rule

5.901(B) and Rule 6.602(B) do not provide sufficient clarity to which operations are subject to the moratorium.

Response: The size thresholds are clearly stated. Rule 5 does not require that an operation be designated as a CAFO. The Rule prohibits any swine Confined Animal Operations of a certain size.

Comment: For each combination of swine listed above from 2013-2018 C&H annual reports, please respond in comments as to whether the department would have classified a new facility with the proposed corresponding numbers as: a) Large-CAFO; b) Medium-CAFO; c) Medium-sized facility (not CAFO). Please provide detailed response as to the factors underlying all determinations for hypothetically proposed operations to help clarify the scope of the moratorium.

Response: Hypothetical applications are outside the scope of this rulemaking.

Comment: Technical requirements, facility construction certification, and permitting provisions for CAFOs seeking NPDES permit coverage under Rule 6 should be (at minimum) as stringent as required by Rule 5.

Response: This comment is outside the scope of this rulemaking.

Comment: Land application requirements should be outlined for all outstanding natural resource waters as defined by the Arkansas Pollution Control and Ecology Commission Rule No. 2. (Rule 5.406(D))

Response: This comment is outside the scope of this rulemaking.

Comment: Annual reporting requirements for animal operations subject to Rule 5 and Rule 5 should be revised to adequately evaluate runoff potential.

Response: This comment is outside the scope of this rulemaking.

Comment: Please provide adequate information regarding the site-specific characteristics of the Buffalo River watershed (e.g., karst terrain) that result in waters of the state being more vulnerable to land use applications (e.g., CAFO operations) and thereby warranting a permanent moratorium on select swine CAFOs.

Response: Congress designated the Buffalo River as the first National River in 1972 “for the purposes of conserving and interpreting an area containing unique scenic and scientific features, and preserving [it] as a free-flowing stream.” 16 U.S.C. § 460m-8. APC&EC Rule 2 affords the Buffalo National River its highest category of designated use, “Extraordinary Resource Water.” The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.



**Commenter: Arkansas Farm Bureau Federation**

**Comment:** The Arkansas Farm Bureau Federation would like to offer the following comments opposing the permanent moratorium on the Buffalo River watershed as initiated in Arkansas Pollution Control & Ecology Commission (APC&EC) Regulation's 5 and 6. The ADEQ and APC&EC initiated rulemaking to prohibit landowners within the Buffalo River watershed their right to farm without a single shred of scientific evidence that animal agriculture, and in this case C&H Hog Farms, had caused an environmental impact. C&H Hog Farms was, and still to this day, the most heavily scrutinized and monitored farm in the state. The Big Creek Research and Extension Team was originally created by then Governor Mike Beebe to evaluate the potential impact and sustainable management of the C&H Farms operation on the water quality of Big Creek. Several years later, the ADEQ funded a drilling study to evaluate the lithology/geology below the waste storage ponds at C&H Hog Farms and to assess potential subsurface impact from the waste storage ponds. Upon completion of the drilling study, Governor Asa Hutchinson created the Beautiful Buffalo River Action Committee and authorized the development of a Watershed Management Plan for the Buffalo River Watershed that would evaluate its tributaries to determine which would need the most attention. The United States Geologic Survey (USGS) studied algal growth on the Buffalo River, as well as, nutrient concentrations upstream and downstream of Big Creek on the Buffalo River. All of these studies identified above determined either Big Creek continues to maintain pristine water quality and C&H was having no environmental impact.

**Response:** The Division does not concur with Commenter's conclusion regarding studies undertaken in the Buffalo River Watershed. In the Buffalo River Watershed, four Assessment Units (two sections of Big Creek and two sections of the Buffalo National River) have been identified as impaired: three for bacteria and one for dissolved oxygen.

**Comment:** Environmental groups state the moratorium is based on sound science and the justification used is to merely regurgitate the definition of karst. The mere presence of karst does not constitute scientific justification for a permanent moratorium. All of Northwest Arkansas and Northcentral from the Black River to the Oklahoma Border and North of the Arkansas River to Missouri as well as portion of Southwest Arkansas are underlain by karst. Using this logic, these areas should also be included in the moratorium.

**Response:** The purpose of this rulemaking is to make permanent the current moratorium on swine operations of a certain size in the Buffalo River watershed.

Congress designated the Buffalo River as the first National River in 1972 "for the purposes of conserving and interpreting an area containing unique scenic and scientific features, and preserving [it] as a free-flowing stream." 16 U.S.C. § 460m-8. APC&EC Rule 2 affords the Buffalo National River its highest category of designated use, "Extraordinary Resource Water."

**Comment:** The temporary moratorium was put in place until such time as the Big Creek and Research & Extension Team (BCRET) could study the impacts of the C&H Hog Farms operation. However, ADEQ has decided to initiate rulemaking despite the fact the BCRET final report has not been issued. In addition, at the July 26th commission meeting APC&EC commissioner Dr. Delia Haak requested the ADEQ postpone the comment period until the BCRET final report could be released and the public given an opportunity to review it so as to provide more meaningful feedback. the APC&EC commission implemented a temporary moratorium that required the following for Regulation 5: "Five years from the effective date of this regulation the Director shall initiate rulemaking to either delete this paragraph, Reg. 5.901(E), or delete the entirety of Reg. 5.901." And the following for Regulation 6: "Five years from the effective date of this regulation the Director shall initiate rulemaking to either delete this paragraph, Reg. 6.602(E), or delete the entirety of Reg. 6.602." Both Regulations have an effective date of August 28, 2015. Despite the fact that ADEQ is initiating rulemaking one year prior to regulatory requirements, which would allow sufficient time for the BCRET's final report to be issued, the ADEQ is proposing to delete additional sections under Regulations 5.901 and 6.602 which will have an impact to currently permitted facilities within the watershed.

**Response:** Changes to Rule 5 and Rule 6 will not impact any currently permitted facilities. The Big Creek Research and Extension Team published its Final Report on or about October 22, 2019, and published a revision on December 31, 2019. The Commission reopened the public comment period for Rule 5 and Rule 6 for an additional ninety (90) days, with January 22, 2019, as the end of the public comment period.

**Commenter: Ross Noland**

**Comment:** My primary concern with the revisions, as proposed, is how ADEQ will respond to a facility seeking to house swine in numbers at the limit for both weight classes. Specifically, the draft rule could be interpreted to allow a facility housing 749 swine weighing 55 pound or more and 2,999 swine weighing 55 pounds or less. This would comprise a major facility with more swine waste present than that which C & H produced.

I suggest a rule adopting a simple conversion of counting every four animals which are less than 55 pounds as one which is over 55 pounds ( $3000/750=4$ ). Thus, if a facility proposes a mixed weight-class operation, it will be clear what the maximum permitted number in each weight class is. For example, a facility proposing to keep 100 swine over 55 pounds could also house 2,600 swine under 55 pounds, but no more.

**Response:** DEQ acknowledges that the numbers determining the size of the facility are derived from the federal rules. The federal rules are based on animal units. DEQ takes this into consideration when reviewing permit applications.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

The following submitted comments in favor of the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed:

James Seawel; Dennis Dinkel; Judy White; Cassandra Fox; Cindy Baker; Tonia Spurlock; Ted Porter; Kimberly Rabon; Allyce Capps; Genia Bennett; Karen Seller; Adam Schaffer; Kathy Madding; Kerry Kraus; Sharon Holladay; Jack Land; Robert Merritt; LaJuana Oswald; Lisa Orton; David Pope; Ashley Money; Thomas Baldridge; Elizabeth Mazzone; Mary Ellen Hill; David Jones; Pat Ford; Julie Lanshe; Andrew Blann; Jerry Hale; Brenda Barnhill; Debbie Galbraith; Cameron Peck; Anice Tedford; Denise Lanuti; Karen Hicks; Tim Crouch; Eric Torgerson; Helen Pounds; Nancy Harris; Susan Smith; Chris Dillon; Dixie Rhyne; Sonja Williams; Lynn Risser; Patricia McKeown; Karen Huber; Sherrie McIntyre; Shawn Porter; David Kuhne; Susan Hantz; Nancy Johnson; Katie Deakins; Mike Fick; Steven Barger; Frank Kelly; Charles Eubanks; Cynthia Jetton; David Orr; Beth Ardapple; Kent Landrum; Ellen Mitchell; Burnetta Hinterthuer; Margot Lavoie; Annie Holmes; William Jeter; Mary Susan Seawel; Deanne Mayer; Sharon Gattis; Carole Cimarron; Carolyn Shearman; Ginger Milan; Cathey Morris; Jana Brady; Beth Goodwin; Virginia Booth; Sue Mabry; Victoria McClendon; Lowell Collins; David Martinson; Barbara Fell; Jerry Dorman; Karen Crocker; Joel Emerson; Don McCaskill; Annee Littell; Mary Gocio; David Hughey; Erin Rowe; Cathy Ross; Janice Muetzel; Candice Kozark; William Thomas; Schuyler Schwarting; Karen Beneke; George Wise; Jann Bell; Yolanda Dreher; Linda Vanblaricom; Kenneth Leonard; John Slater; Marvin Schwartz; Randall Hollenbeck; Bryan Signorelli; Susan Moore; Ann Owen; Cay Miller; Diana Angelo; Steve Kopp; John Fritz; John Courtway; John Ray; Ginny Masullo; Susie Parker; Laura Villegas; Karen Bartle; Susan Fields; Nancy Harris; Robert Pekel; Frederick Paillet; Michele Jackson; Randy Jackson; Albefrta Wells; Melissa White; Susan Benton; Heather Hudgens; Steve Singleton; Dorothy Bailey; Katherine Weaver; Ryan Duncan; Dave and Nan Johnson-Spencer; Dee Elkins; Grant Scarsdale; Debbie Galbraith; Eileen Neukranz; Gail King; Robert van Rossum; Karen Crocker; Paul Vickers; Louise Mann; Beth Goodwin; Judi Nail; Scott Stanley; Roger Burke; Dean Castle; Vanessa Tomczak; Marshall Dickey; Gene Sparling; Michael Stoecker; Margaret Sands; Kim Smith; Cary Roth; Kenneth Carle; Roger Jones; Edd French; Jan VanSchuyver; Glenn Benson; Cheryl Rutledge; Tsunemi Yamashita; Jeff Hood; Fay Knox; Judith Duguid and Elmer Gall; Michael Rapp; Karen Harris; Richard Gray; Elaine Appel; Richard Barnes; Brad Green; Camille Carpenter; Autumn Gillmore; Joe Golden; Genia Bennett; Dara Yeager; Sylvia Scott; Maria Smith; Ronald Stark; Martha Ragar; Marty Mignard; Michael Adelman; Debbie Alexy; Terry Karnes; Raymond Herschend; Blake Stone; Will Larkin; Harvey Pierce; Ray Hall; Jackie Lamar; Donnie Hutchens; Richard Olson; Kathryn Searcy; Roxanne Thompson; Ted Porter; Robert Merritt; Don Hamilton; Linda Schuck; Karen Bartle; Robert Smith; Paula Breid; Mike McMullin; Lorraine Heartfield; Julian Clark; Mary Adams; Tom Parsons; Kathleen Trotter; Glenda Allison; John Shelton; Steven Singleton; JP Willis; Mike Kelly; Katy Hinegardner; Magell Candelaria; Shelley Buonaiuto; Robert Dunn; Carol Storthz; Cassie Gill; Nonah Olesen; William Wellner; John Layson; James Hicks; Suzie Bell; Shirley Bailey; William Etges; Marian Johnson; Christine Perry; Gregory Flower; Peggy Volland; Mike

## **RULE 5 Response to Comments Received During the Comment Period Extension**

Swanner; Joseph Hewgley; Jack Stewart; Terry Dailey; Carolyn Watts; Michael Sprunger; Jo Johnson; Jean Smith; Carol Patterson; Gail King; Kara Beach; Ed Laster; Judith Griffith; Karen Garrett; Sandy Pionalto; Beverly Glass; Brent Boughn; Deborah Meldahl; Teresa Crawford; Charles Lowrey; Sidney Graham; Susan Jenkins; Cynthia Patton; Elisabeth Olsson; Laura Hutzel; Natalie Mannering; D. Dunagin; Shirley Pharis; Larry Hedrick; Don Castleberry; Joe Murphy; Danny Jenkins; Lisa Schoult; Bill Beall; Karen Keith; James Haguewood; Julia Tucker; Lynell Withers; Scott Luchesi; Jerome Jansma; Gregory Floyd; Wendy Luna; Tammy Alexander; Pat Yates; Brenda Tirey; David Harju; Susan Leslie; Chris Daniels; Barry Bennett; John Andrews; Pamela Westerman; Lynn Christie; Caitlin Cassidy; Bruce Petray; Diane Mikrut; Larry Olesen; Ray Stahl; Marc McCord; Geniece Yates; Joseph Long; Samantha Blanchard; Bennie Scott; Christine Carlson; Paula Pope; Dennis W Wright; Dave Stahle; Nancy Pierson; Frank Meeks; Claudia Carberry; Elizabeth Bradford; Rebecca Evans; James E Wimberly; Joseph D. LaFace; Steve Heye; Glenn Pearson; Dorothy Bailey; Abel Tomlinson; Cody Wyatt; Francie Bolter; Lucy Rhodes; Winifred Hirsch; Ken Duncan; Jim Pfeifer; Charles Mullins; Eugene Milus; Joe Neal; Scott Yaich; Klaus Kupfersberger; James Krieger; Kelsey Mayans; Adam Schaffer; Michelle Trost; Jack Land; Phillip Taylor; Crystal Rust; Sara Wittenberg; Dwan Garrison; Paul McCune; Jess VanderStek; Joan Meeks; Heather Smith; Frits Druff; Lora Dail; Kirk Rhoads; Robert Duncan; Dana Steward; Bill Steward; Francis Millett; Cornelia Beck; Kathleen Beattie; William Beattie; Diane Newcomb; Steve Davis; Amy Strickland; Chris Hankins; Doug Holmes; Bert Kell; Corey Pettett; Karen Walls; Sharon Boatright; Duane Woltjen; Lee Cowan; Zane Colvin; Darla Wroblski; Bonnie Jaeckle; Carol Percifull; Michael Berry; Emma Hickey; Johnny Furness; Carolyn Wilkins; Mark Smith; Zach Turner; Laurie Fisher; Cindy Jetton; Cathy Shingledecker; Faith Shah; Michael Frank Shah; Donna Peterson; Mary Heller; Jon Bonney; Thomas Emerick; Lisa Kessler; Sarah Cumnock; John Shultz; Ashley Miner; Joe Rath; Mike OConnell; Thomas Keel; Brian Thompson; Cliff Barnes; Carol Ann Lasater; Bill Farrell; Karen Bartle; Charles Phillips; Teri Patrick; Jerry Cagle; Steve Hesse; Claiborne Morton; Barry Haas; Roger Reep; Gene Dunaway; Laura Timby; Trudi Rust; Nancy Miner; William Eaton; Joe Massey; Ruth Weinstein-McShane; Joseph McShane; Peg McCoy; Janette Groves; John Ray; Steven Foster; Richard Stauffacher; Jerome and Harriet Jansma; Carmen Quinn; Willem DeBruijn; Barry Martindale; Lolly Tindol; Jon Hackler; Sherri Ramseyer; Keaton Smith; Al Agnew; Karen Spence; Mary Agnew; Betty L Scott; Yolanda Dreher; James McPherson; Alisa Dixon; Richard P. Osborne; Debora Carpenter; Jamie White; Jill Acree; Charles Johnson; Pamela Ellwood; Tammy Tennyson; Robert Shingledecker; Kevin Ehemann; Rebecca Holden; Cathy Ross; Daniela Tamayo; Michael Armstrong; Andrew Proctor; Mary E. Fitzgerald; William Threet; Gladys Tiffany; Lauri Patterson; Nancy Hartney; Stephen Bailey; Fred Goldthorpe; Kathrine Jones; Kay Ewart; Janet Nye; Pamela Phillips; Janet Parsch; Debbie Howorka; Tim Eubanks; Laura Fleetwood; Joy Henning; William Dailey; Dara Yeager; Tim Yeager; Brenda Miller; Jill Valenti; Jim Bush; James Frederick; Bryan Manire; Mark Richards; Gerald Toler; David Peterson; Sarah Thompson; Grimsley Graham; Timothy Dean; Harrie Farrow; Lynn Phillips; Mark Alderman; Ralph Rexroad; Eva Coffee; James Cohea; Derek

## **RULE 5 Response to Comments Received During the Comment Period Extension**

Linn; Kay Abney; Margaret Fortuny; John Sutherland; Glenn Jones; Ann Mesrobian; Gary Bivens; Sam McClea; Mary Schlatterer; Jolynn Loftus; Emily Linn; Eunice Millett; Philip Waters; Danny Coleman; Ellen Tutt; Andrea Ross; Marin Miller; Sue Lupien; Valerie Dunn; Stuart Reaves; Miles Riley; Rebecca Corley; Dale Heath; Clay Parton; Stephen Ballard; Howard Aleshire; Kevin Christian; Angela Head; LA Tann; Christopher Walters; James Jones; James Strack; Dennis W Wright; Hamilton Bell; Evelyn Sammons; Lynn R; lyn Caveness; James Brandenburg; Roxana Wallace; Patricia Mitchell; Gail Leftwich; Edith Stahl; Beth Keck; David Malm; Anastasia Hunter; Ann Segura; Roger Pyzocha; Gail Eastlack; Kim Hamilton; Gail Lee; Bendex Stevenson; Jessie Cave; Kelsey Dixson; Sami Saati; William Pickel; Syama Barden; Patrick Thom; Emily Spillers; Christopher Zapf; Laura Allcon; Mayleena Benham; Jarret Bain; Kevvin Brown; Cassidy Rolle; Shawna Woodside; Alec Severe; Laura Newth; Jordon Henley; Ginger Milan; Kevin Nawa; Josh Robinson; Imani Doyle; Cynthia Peterson; Lizabeth Lottmann; Arkansas Canoe Club; Ray Jones; Friends of the North Fork and White Rivers; Saline River Watershed Alliance; Audubon Arkansas; Daniel Cohee; Gerald Weber; Janice LaBrie; Katie Deakins; Alan Nye; Jacob Bradow; Leslie Coston; Karen Ramsey; Megan Johnson; Donna Bouzi; Dustin Brown; Dale Steffens; Kirk Rhoads; James Ollerenshaw; Terry Sutterfield; Mike Risk; William Smith; Jimmy McCain; Jan Scheel; Rodney Lewis; Willow Stratton; Kim Hesse; Notm Windt; Mary Green; Randal Camp; Deborah Graham; Nick McDaniel; Frank Sospenzi; Nancy Bumgardner; Marcia Zamora; Lucas Parsch; Emily Roberts; David Gruenewald; Tim Mason; Byron East; Rachel Henriques; Brittney Russell; Gordon King; Scott Barstow; Laurie Schuler; Mary Morris; Geniece Yates; Terri Huber; Susan Howe; Bonnie Nickol; Peter Pulay; Matt Foster; William Spaine; Tom Perry; Christopher Pryor; Harmon Chadbourn; Marsha Havens; Debbie Doss; David Parker; Gary Speed; C F Christian; Jesse Phillips; Robert Walker; Michael Butler; Beth Forbes; Norma Senyard; Ozark Society Peterson; Jan Wilson; Bonnie Smith; Kathy Sutterfield; Johnny Sain; William Stephenson; Kenneth Pape; Tom Simmons; Lynn Berry; Vicki Jett; Cathy Joyce; James Britt; Michael Tipton; Susanna Brinnon; William Kumpuris; Betty Pitts; Elizabeth VanderStek; Bill Pettit; Amber Manney; Tom Krohn; Bettie Lu Lancaster; Rhonda Reid; Jeff Ingram; Julianne Bitely; Robert D Architect; Bob Tyler; Christopher Fischer; Mary Simonson; Marianne Lombardi-Nelle; Phyllis Ridgway; Cheryl Marcum; Carole Degginger; Teresa Turk; Bob Billig; Linda Nichols; Mark Degginger; Fran Alexander; Ed McEowen; Garland Goodwin; Susan Holt; Marti Olesen; Annette Pettit; Billie Walker; George Campbell; Beverly Wright; Bill Pitts; Bruce Darr; Jennifer Conner; Susan Jenkins; Christy Lavelly; Susan Watkins; Eric Fraser; John Murdoch; William Spitler; Betsy Murdoch; Thomas Johnson; David Schisler; Alice Andrews; Carol Bitting; Robin Rumph; Mary Kunkle; Terry Fredrick; Charles Finch; Hamsa Karth; Judith Mchoff; Mona Vica; Lynn Cunningham; Mary Brizzi; Darci Kent; Dan Kelley; Sandra Tedder; John Ray; Jennifer Hartzill; Patricia Mikkelson; Carolyn Swaney; Lisa Milligan; Jody Miskell; E. Jane Scroggs; Juliette Minkel; Larry Lindly; Rya Wheeler; Rick Henterthuer; Gordon Bradford; Janet Bachmann; Jan Townsley; Janet Titus; John LaBrie; Deborah Bartholomew; Emilie Lasiter; Doug Shields; Mary Littrell; Holly Childs; Susan McBay; Sharon Schmidt; Julie Ironside; Stephen Ironside; Sharon

## **RULE 5 Response to Comments Received During the Comment Period Extension**

Morgan; Stephen Smith; Jim Lukens; Nan Yarnelle; Vicki Bergman; Ben Pollock Jr.; Robert Morgan; Jim Dudley; Barabara Jaquish; Trenton Morrow; Christy Pollock; Aaron Hinterthuer; Noelia Cerna; Walter Schmidt; Dawn Fisher; Kimberly Smith; Susan Shore; Mary Brenel; Drearna Phoenix; Rachel O'Carroll; Patricia McDonald; James Alexander; Michael Cockram; Elizabeth Gambert; Denise Nemece; Patricia Doyal; Frank Sharp; Helen Kwiatkowski; Sara Parnell; Sara Sharp; Joyce Hale; Charles Watson; Phyllis Rengier; Barbara Willett; Margaret Konert; Tristen Wylde; Hoyor Clave Benefield; Charley Reese; Amy Wilson; Steve Holst; Kristina Palmer; Hannah Lee; Scott Mashburn; Miller Nance; Nan Smith-Blair; Jacob Risliy; Shannon Ball; Marian Kunetka; Gary Weidner; Baileigh Payne; Susan Puckett; Karen Chotkowski; Michele James; Patti Kent; Patricia Wyatt; Susan Raymond; Deborah Robinson; Aurora Zisner; Mimi Burke; Milton Burke; Rena Jean Schmieg; Austin Bailly; G. Grimsley Graham; Jonna Hussey; Becky McCain; Aaron Smith; Rick Spicer; Joan Miller; Judi Hart; Vic Trolio; Amy Groth; Anna Koch; Paula Matthews; Millie Nelms; Joshua Bassarear; Jessica DeChant; Amy Bassarear; Barbara DeChant; Theresa Miller; Jennifer Clayborn Baldassari; Carole Lane; Jenna Lebleavsley; Torrey Travy; Paige Drummond; Carl Vevi; Ella May Powell; Jill Marshall; Douglas Forrester; Sophie Nolan; Julia Montgomery; Sharon Berman; Hooria Tariq; Corinne Spicer; Michael deBays; Sarah Spangler; Darla Newman; Ashley Erickson; Elizabeth Rademacher; Michelle Hendren; Dave Kuhre; Carole Lane; Jeff Kearnen; Carla Weeks; Mary Olson; Andrea Goehl; Jacqueline Gray; Janna Peters; Denise Dore; Eleana Hale; Eleanor Edana Hale; David Hale; Terry Donohue; Cindy Dollard; Timothy Permenter; Ellen Mitchell; V.B. McClendon; John Hagberg; Bobby Allen Jr.; Jessica McClendon; Lisa Skiles; Brian Jorgensen; Brent Jorgensen; Barbara Haas; Mark Bieliecki; Skipp Cluff; Aletha Tetterton; Robert Hudson; Cathey Cluff; Jake Weeden; Kristin Olesen-Jorgensen; Nancy Harris; Sean McGinnis; Jessica Van; CG Apt; Lyna Van; Brett Sparkman; Ashley Darig; Sidney Grutz; Leighanna Rickman; Rania Trulley; Julia Chowdhury; Michael de Buys; Kathleen Conway; Victoria Linn; Shawna Miller; Richard Waggoner; Pattie Heitzman; Dianne Williams; Ben Strawn; Geoffrey Oelsner; Joey Head; Heather Chowdhury; Catherine Wallack; Michael Heffernan; Chaua Nesson Bayett; Barbara Dillon; Nancy Ann Heffernan; Andrew Head; N. Alan Hull; Paras Chowdhury; Rich King; Sherman Storchio; Frank Travis Head; Carly Overbey; Marthanne Squires; Gina Berquist; Rachel Hill; Stephen Cooper; Del Heck; Nichole Head; Dawn Newman; Chris James; Linda James; Sequoyah Chowdhury; Pranati Chowdhury; Prizam Chowdhury; Perry Chowdhury; Ana Garces-Wood; Joith Squires; Leslie Oelsner; Nancy Harris; Patricai Studer; Sara Long; Nichole Rowan; Celine Simpson; Danielle Lower; J. Manning; Ashan Kennedy; Jane Mercedes Bolsterli; RA Rowan; Dylan Wieties; Frank Livingston; Alisha Johnson; Richard Sloan; Mary Paal; Sylvia Turner; Candy Turner; Carolyn DuCharme; Dennis Schlegelmilch; Briana Brockmann; Danny Jenkins; Stephen Atwood; Jamie Thoryn; John Edwards; Sydney Krevanl; Erica Nadeau; Madison Martin; E. Cunningham; Renee Teague; Andrew; Doug Pardu; Cele Greece; Zaehel Talranee; illegible name; Shannon Mitchell; Julie Long; Ronald Weets; Maggie Weeden; Cristie Donohue; Mary Sivensa; Roxanne Thompson; Kara Kearney; Kathy Downs; Alexandra Sparkman; Kelly Weinberg; Chava Nesson Bayett;

## **RULE 5 Response to Comments Received During the Comment Period Extension**

August Baumgartner; Caroline Martin; Stacey Wieties; Heather Cook; Lindsay Scott; Sarah Spangler; Iris Scarborough; Deac Lancaster; Emily Lane; John Calhoun; Damen Long; Faybran Whittle; Adam Moore; Paul Moore; Diane Vanhook; Kelly White; Wendy Hannah; Susan Murray; DeMarius Davis; Richard Bench; Landra Bench; Andrew Sparks; L. Leilani Lau; Maria Grace; Hayden Weaver; Anna Wolff; Foel Wagner; Chase Bilon; April Lane; Patricia Poulter; Annabella Singley; Christian Singley; Kathleen Marleneanu; Megan Kyles; Dakota Ashley; Addison Black; Allyson Walsh; Chase McDonnough; Junier Morales; Kolin Amerson; Hunter Little; Jueli Nail; John King; Nancy Garner; Marites Sales; Mort Gitelman; Jeff Montgomery; Karen Kakemoto; Don Bridges; Brenda Brown; Michele Gibson; Michael McKinnon; Jeannie Philpott; Helen Davis; Isabel Rodriguez; Sonie Toori; Susan Fredrick; Barbara Fell; Patrick Freyer; Erin Ford; Gracie Garrett; Ryan Hicks; Lamon Wade; Logan Wolfe; Marle Cavender; Cain Farnam; Joshua Chamberlain; Zavier Grant; Jason Tiller; Nathaniel Hernandez-Juarez; Hope Smith; Alan Beudel; Dustin Davis; Suzanne Webre; Kathren Green; Cody Brown; Ryan Clark; Cy Sheffield; Drew Hawthorn; Jackson Rouse; Debbie Chalfant; Nancy Martino; Charles Lowe III; Peter Pulay; M Corley; David Weeks; Hank van Rossum; Jahaira Sanchez Garay; Jerry Brown; Joe Nix; Joel Nunneley; Kathy Martone; Leslie Kline; Darlene Carvin; Linda Padgett; Gray Norton; Keith Runion; Deborah Doerr; James Haguewood; Barbara Waymire; Janet Bartos; Johanna Oswald; Lynn Spiva; John Sarna; Gordon Messling; Caro Anderson; Allen Myers; Kirk Rhoads; Inez Lewis; Paula Bongo; Terry Dailey; Martha Stobaugh; Thomas Anthony; Karen Sage; Don Hamilton; Katie Becker; Ann Burnett; Sally Benson; Patti Criner; T Mullarkey; Easha Sawyer; Robert Brewer; Maryanne Morrow; Maria Gomez; David Parker; Karen Tablish; Timothy Dean; Catherine Reynolds; Eileen Joyce; Beth Seward; Jane Krone; Grace Christie; Daniel Bertram; Theanna Benefiel; Lisa Schoultz; Darlene Carvin; Bob Bowker; Ruth Billingsley

**Response:** The Division acknowledges the comments submitted in favor of the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

The following submitted comments through the Arkansas Farm Bureau Federation opposing the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed:

Jordan Winkler; Tim Burcham; Ronald G; Divella, Derik, and Miranda Gray; Richie Gray; Shawn Ragland; Greg Ragland; Shane McElroy; Derik Gray; Jerry Whitten; Stewart Warner; Joy West; Roberta Golmon; Elliott Golmon; Tommy Sorrells; Jay Sorrells; Alex Dykes; Melvin Daniel; Melba Wren; W.A. Wren; Sherry Felts; Benton Felts; Kay Moseley; Terry Moseley; William Groce; Shaun Pazn; Melissa Goodson; Leslie Turner; M.H. Bitely III; Robery Goodson; James Baber; Halle Cummings; Sheena Slate; Richard Pierce; Savanna Behning; Shea Gregory; Brenda Patton; James and Brenda Patton; Sue Billiet; Ken Billiet; Bruce Jackson; Jeb Welelld; Julia McLelland; Bennup Trevlen; Randy Arnold Bill Dodgen; Virginia Dodgen; Joel Pace; Bob Schaefers; Rudry Vers; Diane Thompson; Jim Cunningham; Danna Cofer; Daniel Cofer; Rusty Smith; Janice and Bob Shofner; Nicholas Simon; Jon Carroll; Johnny Gravett; Steve Eddington; Hellen Wayown; Carey Robertson; Danny Wood; Tommy Thompson; Becky Wood; Flora Harrington; Linda Parish; Morgan Harrington; Erin and Kallem Hill; Jason Cofer; Bobby Cofer; David Hodges; Angie Hodges; Charles Denver; Chris Schaefers; Glynn Guenther; Joe Stroub; JennaMrtin; Tony Bradley; Valerie Turner; Jack Parish; Dwight Kirkpatrick; C and Bill Nicholson; Jeanice Hess; Tom Hess; Darren Eubanks; Brittany Leek; Kerry Hartmesh; Beverly Quillin; Terry Rushing; Vanna Eddignton; Lorie Henley; Stephen Boyd; Brad Henley; Sarah Burns; Molly Taylor; Deana Taylor; Angela Morrison; Dennis Taylor; Kendall Morrison; Mel Crawford; Regina Chaney; Sandra Jackson; Raymond Staggs; Angie Pierer; Robert Benedict; Betty Garner; Clifton Gifford Jr; Staneley Rhodes; Jason Smedley; Carol Fields; Ronney Fields; Bobby Ballinger; Steven Harrington; Harlie Treat; Janet Clark; Kenny Clark; Meagan Ballinger; Libbie Dogan; Allan Beuerman; Randall Quillin; Brad and Tara Peacock; Deborah Brennan; Robert Stobaugh; Cheryl Phipps; Tammy Thompson; Roger Thompson; Regina Oliver; Brian Jones; Jerry Shannon; Dustin Cowell; Cindy and Gene Pharr; Jackie Hatcher; Norma Robinson; Maurice Robinson; Gary Procton; Jewell Proctor; Barbara Horn; Lonnie Horn; Jeff Pitchford; Belinda Wright; Everett Mason; Katie Mason; Todd Johnston; Tedd Phipps; Bill Sodon; Keith Shepherd; Amy Shepherd; Curtis Shepherd; Helen Williams; Casey Wooten; Jana Carroll; John Horton; Donna Horton; Elaina Martin; Keith Martin; Terry Duboise; Victoria West; Shyane Ferguson; Barbara Sutton; Nedra Turney; Larry Williams; Kerry Stiles; Randal Coleman; Keith Woolverton; Robert Strobel; Jonathan Roberts; Zach Tidwell; Stanley Taylor; Kevin Cochran; Amanda Mathio; Janet Mathio; Allen Stewart; David Walt; Joe Haller; Kimie Head; David Head; Larry Smith; Dan Stewart; Magen Allen; Mark Keaton; Jason Murray; Cindy Wilson; Leon Wilson; James Rhein; Danny Naegle; Dana Stewart; Rocky Harrell; Diana Alston; Luke Alston; Jeremy Wiedeman; John Mitchell; Keith Futrell; Shelly Futrell; Terry Norwood; Shelia Brown; Stacy Wilson; Jimmy Brown; Pauline Pronia; Gail Sewell; Judy Branscum; Ivan Wilson; Morgan Taylor; Rachel Bearden; John Bend; Steve Barne; Judy Brown; ; Robert Brown; Kevin Flippin; Larry Blodell Jr; Cheryl Blasdel; Brian Weesenfels; Judith Warmstrong; Pat Bocksnick; Jim Bocksmith; Tom and Jan Leslie; Jennifer Martin; Mark and Mindy Lockhart;



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Clay Antley; Doreen Anty; Beth and Don Ullrich; Steve Toney; Nicole Moore; Curtis Moore; Ralph Moore; Allen Moore; Jack Kildow; Cindy Moore; Reba Moore; Richard Armstrong; Barb Hillman; Hal Hillman;

**Response:** The Division acknowledges the comments submitted in opposition of the rulemaking for Rule 5 to make permanent the moratorium on medium and large CAFOs in the Buffalo River Watershed.

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### **Commenter: Brian Pruitt**

**Comment:** Tyson is allowed to have egg farms in the buffalo river water shed alliance shed and I. Feel like it's unfair because they can spread dry litter and be in the area and the. The fact is that liquid slurry litter is absorbed by the plant and grass it's applied to and rarely reaches the soil this is a 70 year old practice that has been tested and dry litter causes more pollution than wet litter does in California chicken houses run wet litter operations and Europe wet litter is a widely accepted method for animal waste disposal and the ozark mountain region is not true karst topography as the propaganda mill describes it as I'm against this practice because agriculture was in the buffalo river valley long before tourism was and it wasn't pollution until the national park service took over this is a picture of the vault toilet at mt Hersey flooded in 2017 can you regulate them and get them out of the flood plane the mill creek pump failure is the only reason they permitted C&h farms in the first place and your agency needs a scapegoat for your mistakes and ignorance

**Response:** Rule 5 is specific to liquid animal waste management systems. Comments regarding dry poultry litter are more appropriately directed to Arkansas Department of Agriculture, Division of Natural Resources. C&H Hog Farm, Inc. is outside the scope of this rulemaking.

**Comment:** I will definitely not stand for this action because the national park service is putting raw untreated human waste in the water every flood with the vault toilets in the flood plan

**Response:** The Division acknowledges the comment.

### **Commenter: Andy McCutcheon**

**Comment:** I oppose a moratorium on farms in the Buffalo River watershed. There is NO evidence that C&H or any other agricultural operation in the watershed is causing or has caused any degradation of water quality in the Buffalo River. This is blatant government overreach and an attempt to deprive private land owners in the watershed of their right to farm.

**Response:** The Division acknowledges the comment. C&H Hog Farm, Inc. is outside the scope of this rulemaking.

### **Commenter: Shaylee Wallace**

**Comment:** Agriculture has been a long standing and important factor to environmental sustainability. Science has shown time and time again that agriculture is not causing harm to our natural forests and rivers. Fear mongering from the opposition should not be tolerated, they are driven by their own agenda. This is

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dissolves any rights that farmers have and gives dangerous power to anti-agriculturalists to fuel their desire to end all animal agriculture (which plays a vital role in maintaining a sound, balanced environment). We aim to raise safe sustainable food, yet fear mongers who have no knowledge or authority on the subject are pushing us around. We cannot stand for it any longer!

Response: The Division acknowledges the comment.

### **Commenter: Tatum Tarvin**

Comment: Please be careful as you consider this regulation, Arkansas farmers deserve the respect of our state. They work tirelessly to feed the people of the great states of America. Federal law already requires so much of our farmers, and they respect the reasons for rules and regulations, however I do not believe there is enough unbiased proof to make this ruling on regulations 5 & 6! Thank you for your time.

Response: The Division acknowledges the comment.

### **Commenter: Michael Brotherton**

Comment: NO to your ridiculous "Ban". I have no reason to believe ADEQ, The Buffalo River Watershed Alliance (BRWA), or the State of Arkansas have the best intentions for the Buffalo National River or especially Newton/Searcy counties with this action. Certain people want to keep the area "poor" and promote "tourism" in ways that serve only their own business interests. C&H Farms demonstrated the best intentions and operated in a manner exceeding the requirements set by law, and were harassed and punished for it. Meanwhile the REAL cause of damage to the river (overcrowding by humans) is buried under falsified misleading propaganda & biased pseudo-science to the extent that it ought to be considered criminal. There is not a shred of decency or moral character at ADEQ & BRWA and THEY should be held accountable for promoting the degradation of the Buffalo National River in the interest of Greed.

Response: The Division acknowledges the comment. C&H Hog Farm, Inc. is outside the scope of this rulemaking.

### **Commenter: Nathan Pennington**

Comment: This regulation would set a DANGEROUS standard. If farms cannot be in a watershed then there will not be any farms. We must work together to educate people about the truth and not knee jerk regulate farms away. Farms can operate in a responsible manner. C & H never caused any issue yet they were ran off. This is a very bad idea.

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**Response:** The proposed rule does not ban all farms from the watershed, only swine facilities larger than a certain size. C&H Hog Farm, Inc. is outside the scope of this rulemaking.

**Commenter: Joann Saraydarian**

**Comment:** I'm an Arkansas Master Naturalist and am very aware of the dangers animal waste has on our environment. The proposed moratorium under Regulation No. 6 will make it impossible to keep the Buffalo River, our National Treasure, clean! Listen to the scientific facts. What will it take to make it clear that many species depend on the purity of this river. It is a crime against the entire planet. Naturalists and tourists around the globe are attracted to our state to experience the beauty of this river. Our state is cutting off its own arm. Once it is polluted, the damage can not be reversed!

**Response:** The Division acknowledges the comment.

**Commenter: Fay Knox**

**Comment:** It is my understanding that the comment that was previously closed was reopened to include the results of the Big Creek Research Extension Team's (BCRET) final report. The report states in the following quotes the fact of increased phosphorous present downstream from C&H and that the complex karst hydrologic system is vulnerable to contamination. The following quotes from the limited BCRET report illustrate need for moratorium:

- In Chapter 7 of the BCRET report increased phosphorous is seen downstream from the one existing CAFO in the watershed. BCRET states that : 'Future additions of any nutrients ( i.e. as mineral fertilizer, swine slurry, or poultry litter) should be carefully managed so as not to lead to further increases in soil test P. ( BCRET Final Report, October 24,2019 , Chapter 7, pp 30-31).

- "The Big Creek Watershed below the C&H Farm and application field locations, lie within a karst hydrologic system of great complexity exhibiting intimate connection of surface-water and groundwater regimes. These characteristics endow the hydrologic system as an important recreational resource locally and regionally, but also render the system vulnerable to contamination." (BCRET Final Report, Oct. 24, 2019 Chapter 2, p.2).

**Response:** The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas. questions regarding the study

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and the final report should be more appropriately directed to the University of Arkansas.

### **Commenter: Michael Rapp**

**Comment:** I submitted a critique of the draft Environmental Impact statement in August, 2015, and that critique is attached.

**Response:** This comment is outside the scope of this Rulemaking.

### **Commenter: Duane Woltjen**

**Comment:** Presumably the comment period is extended to January 22, 2020 to accommodate the preparation of BCRET Final Report. The version of that report presently available to the public is so full of incorrect determinations it must not be allowed to stand as representing the "facts" of the C&H fiasco. ADEQ owes the public and future generations of Arkansas an accurate report of facts and accurate interpretation of them, lest the tragedy of C&H be repeated in decades to come because someone accepts that there is no meaningful effect from this operation. I question is why ADEQ takes the word of the incompetent "professionals (?!!!)" of BCRET? ADEQ is responsible for the truth, completeness, and accuracy of any final report in this matter.

"Future additions of any nutrients to fields, which received slurry from C&H Farms, should be carefully managed, so as to not lead to further increases in soil test P. This can be achieved by application of nitrogen (N) fertilizer or slurry and poultry litter a P-based rates, where P applied is equivalent to expected forage uptake of P.", so says BCRET from their Final Report. BCRET continues, even in their Final Report, to advocate what C&H was required to do when the doors opened until the doors finally closed in December of 2019. And there is no doubt that C&H faithfully applied slurry in accordance with their permit as verified by the inspection reports of their compliance. This BCRET advocated practice is how we ended up with Nitrate levels that more than double in Big Creek as it passes by the C&H Farm; P downstream that is double the upstream level; increasing levels of nitrates in the ground water found in the well by the two barns; ground water downstream of the barns that is 4 x the nitrate level of groundwater upstream of the barns; very high Big Creek E. coli levels such that Big Creek is declared "Impaired" by the State. Isn't the above remarkable? The Final BCRET Report recommendations have been followed for at least 6 years, and the results are a disaster! That tells us the Arkansas P Index (equivalent to the Final edict) does not work. Why not? The basic reason why it does not work is the application field geology is karst. Karst soils are extremely variable in permeability, with virtually impermeable soil lying next to conduits to the water table in unpredictable locations of greatly variable extent. If P soil samples are taken in what turns out to

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be a conduit or highly permeable location, P readings will be low (because the previously applied P when to the water table below). The P applied was not used by plants, it went to the groundwater. I resent BCRET's Final Report appearing as a recommendation by BCRET. This more of the BS they have foisted on C&H and the public. This is academic fraud, pure and simple. Logically, the only thing that works on karst is Not Applying Animal or Manufactured Fertilizers. (Try crop rotation to restore nutrients—old Chinese saying?). Permanent prohibition of CAFOs is necessary to protect the Buffalo River and must happen. Now

**Response:** The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.

### **Commenter: Ann Bendy**

**Comment:** I kindly ask that the permanent moratorium for swine operations in the watershed area be voted against. As long as farms are following proper procedures and regulations there should be no reason for this moratorium. Find a better way to do it, don't just ban it all together. The moratorium would also have an economic impact by causing a loss of products, loss of jobs, and loss of economic diversity, which would have a negative impact on the area. Vote no to the moratorium on swine operations in the watershed area.

**Response:** The Division acknowledges the comment.

### **Commenters: Masen McCutcheon, Cheryl McCutcheon, Andy McCutcheon**

**Comment:** I OPPOSE any moratorium of any type for the Buffalo River Watershed.

**Response:** The Division acknowledges the comment.

### **Commenter: Melissa Klipp**

**Comment:** We as land owners and homesteaders should have the right to raise what ever animals that we need to feed our families. We worked hard for our land and we should have the opportunity to freely have our land support our families. Our children also raise pigs for 4h and compete in county fairs. Our rights should not so easily be taken away.

**Response:** This rulemaking does not apply to small family farms.

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### **Commenter: Randy McCutcheon**

**Comment:** As a life long resident of Searcy County Arkansas and resident of the Richland Vally just a few miles from the Woolum crossing of the Buffalo river. I am against these regulations which will not solve the problems with the river. I don't believe the Government should have this much power over a free people. The US constitution does not grant such powers to the government. This just erodes the rights of the people.

**Response:** The Division acknowledges the comment.

### **Commenter: Ryan Crow**

**Comment:** I don't agree with any of this. Quit over reaching.

**Response:** The Division acknowledges the comment.

### **Commenter: Arkansas Cattlemen's Association**

**Comment:** As currently written, the Arkansas Cattlemen's Association (ACA) opposes the changes to Regulation 5 specifically concerning the "hog moratorium" component under Rule 5.901 subparagraph (B). It is the opinion of the ACA, and its members, that this rule directly violates Arkansas Code Ann. § A.C.A. Tit. 2, Subtit. 1, Ch. 4, known as the "Arkansas Right-to-Farm" law. It is the stated purpose of A.C.A. § 2-4-101, "to reduce the loss to the state of its agriculture resources by limiting the circumstances under which agriculture operations may be deemed to be a nuisance." The Arkansas Cattlemen's Association believes that by placing a moratorium on swine confined animal feeding operations (CAFO) located on the Buffalo National River Watershed, the APC&EC is publicly stating production agriculture is a nuisance. This unwelcome mindset will set a dangerous precedent in future legal proceedings as well as place a "not welcome" sign at the state line to all potential livestock feeding operations. The Arkansas Cattlemen's Association finds that a swine CAFO moratorium on the Buffalo National River Watershed (BNRW) by the APC&EC and the State of Arkansas is unconstitutional or, at the very least, an encroachment on the rights of the people of Arkansas, including cattle producers. Under Arkansas's Constitution, Article 2 sub-article 22, "Property rights- Taking without just compensation prohibited" states, "The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor." Should the state government and the APC&EC continue to move forward with the proposed rule, they will essentially be taking private property, and the ability of private land holders to generate income from their land, away. Moreover, there is justifiable concern among cattle producers in the BNR W, and statewide, that should the proposed rule take effect,

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it will soon be expanded to other agricultural sectors, such as cattle production, both inside and outside the BNRW. Once again, this proposed rule sets a dangerous precedent for the future of production animal agriculture in Arkansas. With 57 separate, eight-digit watersheds located in Arkansas, the proposed rule could serve as the beginning of multiple regulations aimed at cattle operations and agriculture in watersheds throughout the state. In conclusion, the Arkansas Cattlemen's Association opposes the proposed Changes to Regulation 5. As presented, it is a violation of Arkansas law, unconstitutional when viewed against the Arkansas Constitution, and capable of setting egregiously harmful precedent. The Arkansas Cattlemen's Association believes the proposed rule should be withdrawn and other aspects on how to preserve the Buffalo National River should be examined. Such examination should include the effects of gravel roads, municipalities, feral hogs and how millions of tourist annually disturb the BNRW.

**Response:** The Division acknowledges the comment. Neither APC&EC nor the Division has stated that production agriculture is a nuisance.

### **Commenter: Cindy Majoros**

**Comment:** Any future farms of this source really needs to be reviewed and locations considered before making a crucial decision as they didn't on this one.

**Response:** The permitting process is outside the scope of this rulemaking.

### **Commenter: Katie Deakins**

**Comment:** Reg. 5.105 Exemption Any confined animal operation using a liquid waste disposal system shall be exempt from the requirements of this regulation if the owner or operator obtains and maintains active coverage under either an National Pollutant Discharge Elimination System individual or general permit for discharges from a concentrated animal feeding operation. I am not comfortable with the proposed Reg. 5.105 Exemption. This is not strict enough to protect watershed areas in our state that are dominated by karst topography. Please do everything possible to ensure a PERMANENT moratorium on such CAFO's in the Buffalo River watershed as well as others in our beautiful Natural State. I appreciate the work Gov. Hutchison has done so far, and it is my hope he can make this a lasting legacy forever.

**Response:** The content of Rule 5.105 has not changed and therefore is outside the scope of this rulemaking.



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**Commenter: Alan Nye**

**Comment:** I have attached my technical criticism of the Big Creek Research Extension Team report. To the extent that the Big Creek Research Extension Team report is used as a decision-making tool in whether or not to make the moratorium permanent, I request that my comments be thoughtfully considered. One result of the BCRET report is very clear. During the operation of C&H Farm, the nitrate concentrations downstream of the farm were approximately double those of the upstream sampling station. These results are the "smoking gun" strongly implying C&H Farm is a source of nitrate pollution to Big Creek and the Buffalo National River watershed. I would urge the ADEQ to make the conditions of the moratorium permanent, thereby avoiding future nutrient loading to Buffalo National River watershed and the high costs incurred to undo the mistake of allowing C&H Farm and its like to be sited and operated in the watershed.

**Response:** C&H Hog Farms, Inc. is outside the scope of this rulemaking. The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.

**Commenter: Philip Gibson**

**Comment:** Although my address is out of state, I own land boarding the Buffalo National River and come there often. I have been coming for 20years. I may retire on that land and become a full-time resident of Arkansas. All because of that river.

**Response:** The Division acknowledges the comment.

**Commenter: Natalie Dettmann**

**Comment:** The Buffalo River is a place that many traveler and campers enjoy; Myself included. It breaks my heart to see what has happened to it over the past years. Please consider donating in any way you can! Give your money and time to help save the river!

**Response:** The Division acknowledges the comment.

**Commenter: Vicente Vasquez**

**Comment:** Everyone should report the amount of waste they are dumping in to the river and everyone should be able to access this information. By everyone I refer to the companies that dump waste into the river.

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**Response:** The Division acknowledges the comment.

**Commenter:** **Katie Watson**

**Comment:** In many of my environmental classes for the past two years have addressed the many issues in the Buffalo River. I believe that corporations and other businesses should understand the many values the river offers to many disciplines

**Response:** The Division acknowledges the comment.

**Commenter:** **Robert Agosti**

**Comment:** Please keep all commercial (especially hog farms) animal enterprises out of the White River water shed basin.

**Response:** The Division acknowledges the comment.

**Commenter:** **William Smith**

**Comment:** Although I do question the integrity of ADEQ to do so as the agency has already failed in its initial promise to monitor and protect homeowners in the Cartney Arkansas area and the White River, The result being an unrestricted over extension of the original mining on Cartney Mountain which over the years has created a gigantic red pit and surface mining swallowing up homes and threatening local streams, remaining homeowners wells, property values, and the White River.

**Response:** This comment is outside the scope of this rulemaking.

**Commenter:** **Ozark Society Peterson**

**Comment:** The Final Big Creek Research Extension Team (BCRET) Report deserves critical comment in order to put its conclusions and many pages of data interpretation into proper perspective. The Final BCRET report is highly technical and our response is also highly technical. A major problem is that the report makes few error estimates on the data input and therefore can't quantify the accuracy of its conclusions. Due to its lack of investigatory breadth, limited and flawed field sampling and data collection of swine waste-associated contaminants in surface water, inadequate characterization of the magnitude and timing of Big Creek surface water and stormwater runoff flows, most of the BCRET report results and conclusions cannot be confidently relied upon as a decision-making tool for assessing the impact of medium and large CAFOs on the Buffalo River

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watershed. Unfortunately, the authors provide no information or perspective regarding the uncertainty or variability of the study results, perhaps leading the uncritical reader to blithely accept the authors' conclusions. A good example is the chapter on surface runoff. Final Report inferences follow from column 6, table 7, page 15, the ratio of total phosphorus (TP) output and input (column 4 and 5) – neither of which is reliably estimated.

Another example of the inadequacy of the BCRET report is found in the recently re-drafted chapter 7 on nutrient loads. The apparent goal is to obtain estimates for yearly loads at BC6 and BC7 and thereby deduce the load generated in the farm stretch – a worthy goal of the investigation. But the model as presented is inscrutable (e.g. parameter values in the model are not given) and has the weakness of all models: it does not really represent the BCRET data set. As such, the results of the model are of unknown certainty. The OS presents a different method which gives similar but somewhat different estimates but includes an additional analysis of loading effects in the farm stretch of Big Creek. Our modeling of this same nutrient release is more transparent, but there can be no certainty or reliance on model results without a meaningful error analysis.

**Response:** The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.

### **Commenter: Searcy County Cattlemen's Association**

**Comment:** On behalf of the 82 members of the Searcy County Cattlemen's Association, we OPPOSE any moratorium of any type agricultural operations for the Buffalo River Watershed.

**Response:** The Division acknowledges the comment.

### **Commenter: Kirk Wasson**

**Comment:** All concentrated animal growing farms of any size should not be allowed on watersheds of National Rivers and Wild and Scenic Rivers. More scientific data and research should be mandatory for approving any hog, bovine or poultry operations of any size. Major plans on monitoring and waste management should be place with monetary guarantees and criminal penalties before approving even small farms in other watersheds. Cows should be limited to one animal per acre. Hogs should be limited to the number of acres of land that the waste can be spread on. X? number of hogs per acre. All potential spread fields should be evaluated for potential runoff rates, absorption, karst and vegetation to be grown before approving concentrated animal businesses. I have winter time concentrated cattle

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feeding operations close to where I live that should be monitored and stopped if violating environmental laws. Some days the smell is strong and who knows what the runoff does to Bridge Creek and on downstream. While I believe in property rights, activities on my land should not affect neighbors and public lands Please ban all concentrated animal factories in drainages for all public water systems and any waterbody my grandchildren may swim in.

**Response:** The Division acknowledges the comment.

### **Commenter: Grant Scarsdale**

**Comment:** The proposed Regulations No. 5 and No. 6 rulemaking changes for the Buffalo River watershed moratorium should encompass ALL medium and large animal feeding operations. The language of the proposed moratorium only applies to swine; however, medium and large poultry and dairy animal feeding operations pose an equivalent threat to our first national river.

**Response:** Rule 5 is specific to liquid animal waste management systems. Comments regarding dry poultry litter are more appropriately directed to the Arkansas Department of Agriculture, Division of Natural Resources.

### **Commenter: Nancy Deisch**

**Comment:** The loopholes in Regulations 5 and 6 need to be closed to make sure that medium and large-scale animal (swine, poultry, and livestock) feeding operations are covered in the moratorium on the Buffalo River watershed. If all the Arkansas watersheds were covered, wouldn't that be something? Arkansas--a cutting-edge example of pollutants control? It is beyond belief that this could STILL be a matter of public concern after all this time. We need to get it right before too much damage is done. Please fix the regulations--once and for all, for the good of everyone in the state!

**Response:** The size thresholds in Rule 5 are clearly stated.

### **Commenter: Ray Quick**

**Comment:** The citizens of the State of Arkansas have spoken with respect to not allowing the C&H concentrated animal feeding operation (CAFO) to continue operating in the watershed of the Buffalo National River. ADEQ does not want to make another "mistake" by permitting any animal CAFO in the watershed of the Buffalo National River. Therefore, the proposed Regulations No. 5 and No. 6 rulemaking changes for the Buffalo River watershed moratorium should encompass ALL medium and large animal feeding operations. The language of the proposed

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moratorium only applies to swine; however, medium and large poultry and dairy animal feeding operations pose an equivalent threat to our first national river. In particular, given the fact that the the geology is primarily limestone/karst.

**Response:** C&H Hog Farms, Inc. is outside the scope of this rulemaking. Commenter may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

**Commenters:** Ammen Jordan; Pat Robinette; Kai Coggin; Lanie Carlson; McKendra Adams; Dixie Keyes; Terrie Martindale

**Comment:** The proposed Regulations No. 5 and No. 6 rulemaking changes for the Buffalo River watershed moratorium should encompass ALL medium and large animal feeding operations. The language of the proposed moratorium only applies to swine; however, medium and large poultry and dairy animal feeding operations pose an equivalent threat to our first national river.

**Response:** Commenters may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

**Commenters:** Bennie Scott; Carol Christoffel

**Comment:** I am in favor of establishing a permanent moratorium on medium and large swine, chicken, and cattle CAFOs in the Buffalo and other Arkansas watersheds.

**Response:** Commenters may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8. Rule 5 is specific to liquid animal waste management systems. Comments regarding dry poultry litter are more appropriately directed to the Arkansas Department of Agriculture, Division of Natural Resources.

**Commenter:** Jan Wilson

**Comment:** Please continue the good /Godly movement you started by permanently placing a moratorium on CAFOs for medium/large swine not only in the Buffalo National River watershed, but in ALL of our precious Arkansas. I am grateful for your attention to this matter and hope you will have the wisdom needed to protect God's precious waterways for Arkansas.

**Response:** Commenters may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

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### **Commenter: Dina and Jeff Nash**

**Comment:** Our family is opposed to any future permits for CAFOs in the Buffalo River and Big Creek Watersheds. For that matter, we don't want CAFOs or polluting industries anywhere in the Extraordinary Resource Waters of the state, either; for example, the Mulberry, the Caddo, Illinois Bayou, the Little Red, etc. The data contained in the BCRET final report should be enough for the ADEQ's rule change to create a permanent moratorium on polluting CAFOs or other businesses in these sensitive karst-based soil formations, which eventually pollutes our rivers, streams, and lakes.

**Response:** Commenters may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

### **Commenter: Virginia Hartnett**

**Comment:** Arkansas is a land of wonder and beauty, and the Buffalo River highlights this Natural State. As our National River, it deserves our respect and protection. We Arkansans are duty bound. Its waters are still being adversely affected as a result of the CAFO hog farm that has been shut down. It will take time and care to recover. It is critical that further damage be avoided. Changes to Regulations 5 & 6 should expand the moratorium to include ALL (not only swine) medium and large scale animal feeding operations in the Buffalo River Watershed.

**Response:** Commenter may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

### **Commenter: Shawn Porter**

**Comment:** Furthermore support a complete ban on CAFOS statewide. I am a small farmer.

**Response:** Commenter may propose such changes through the Third Party Rulemaking process outlined in APC&EC Rule 8.

### **Commenter: David Jones**

**Comment:** I have commented previously about the importance of the moratorium being made permanent. Now I'm wondering about the delay. There has been more than ample time for public comments.

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**Response:** The Commission reopened the public comment period for Rule 5 and Rule 6 for an additional ninety (90) days, with January 22, 2019, as the end of the public comment period.

**Commenter: Johon Fritz**

**Comment:** Keep the title as "regulations", meaning, do not change "regulations" to "rules". Maintain the moratorium on CAFOs in the Buffalo River watershed, in keeping with The American Public Health Association's (APHA) new policy statement advising federal, state, and local governments and public health agencies to impose a moratorium on all new and expanding concentrated feeding animal operations (CAFOs).

**Response:** Act 315 of the 2019 requires DEQ to use "rule" in place of "regulation."

**Commenter: M K Elkins**

**Comment:** This doesn't not include the air pollution. We have gone to Sam's Throne and it smell almost be unbearable

**Response:** This comment is outside the scope of this rulemaking.

**Commenter: Richard Spiker**

**Comment:** This just proves that the citizens of the states that allow CAFO's,like Missouri, end up with the bill and the meat packers and ag. corporations get off "scott free". The citizens of Missouri must wake up to the CAFO's being allowed and supported by our governor and "bought off" legislature.

**Response:** This comment is outside the scope of this rulemaking.

**Commenter: Marti Olesen**

**Comment:** As I read the BCRET final report, one part especially made me think twice about the conclusions it drew. The report included a comparison of the local Big Creek watershed with the Upper Illinois and Upper White River watershed in order to submit its opinion that Big Creek was in good shape. Anyone who is familiar with the northwest Arkansas water situation is aware of the long-term battle between

## **RULE 5 Response to Comments Received During the Comment Period Extension**

Oklahoma and Arkansas about impaired water quality due to excess nitrates that Arkansas has released into the waters of Oklahoma. A Nutrient Surplus Area was designated to relieve the input of nutrients to remediate that situation. If the BCRET had proposed a similar Nutrient Surplus Area restriction on the Buffalo River Watershed in their report, then this comparison might have had a purpose. Instead they used it to say that the Big Creek area is just fine because it is not worse than the other. Since the other has a large and growing urban base and innumerable poultry operations, it can only truly be useful as a warning of what can develop in a watershed through uncontrolled growth. ADEQ has prudently proposed a moratorium to limit such proliferation of waste in the Buffalo River watershed, but perhaps a Nutrient Surplus Area designation would be beneficial here as well, since waste from such designated areas can be hauled and dumped here.

**Response:** The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.

**Commenter: Diane Goodwin**

**Comment:** I am strongly against this.

**Response:** The Division acknowledges the comment.

**Commenter: Elliott Golmon**

**Comment:** We need to continue to support our Farmers who are on the front lines in the battle to preserve our nations ecosystems through sound farming practices based on research which utilizes science. We are against the moratorium on farms of any type that threaten private property rights, especially those that are following the rules set forth by our governmental agencies.

**Response:** The Division acknowledges the comment.



## **RULE 5 Response to Comments Received During the Comment Period Extension**

### **Commenter: Buffalo River Watershed Alliance**

**Comment:** Summary: The Big Creek Research Extension Team's (BCRET) final report ([https://bigcreekresearch.org/project\\_reports/](https://bigcreekresearch.org/project_reports/)) in spite of numerous errors and apparent obfuscation, nevertheless clearly documents, after only 5 years of operation, water quality impacts from a single hog concentrated animal feeding operation (CAFO) in the Buffalo National River Watershed. Such facilities are 2 designed for a much longer operational life. In this case, C&H Hog Farm had an initial 12-year contract and likely would have remained operational for a much longer period if not for the closure of the facility. The documented impacts as detailed below would have grown exponentially if, 1) C&H had been allowed to operate until the end of its design life, and/or, 2) additional medium or large swine CAFOs were permitted in the watershed. Statements and data from the BCRET report, and the conclusions of the expert panel review of the BCRET report, along with the two expert reports attached to these comments, all reveal impacts and advise caution regarding management of swine waste from C&H and warn of the potential impact of other such facilities in the watershed, thus supporting the need for a permanent moratorium on swine CAFOs in the Buffalo National River watershed in order to protect this extraordinary resource water and state and national icon. It must be noted that this 90-day comment period was opened ostensibly to allow for comments on the BCRET final report, released after the previous 30-day comment period had closed. While our comments here reference the BCRET report, we contend that the BCRET final report is so rife with errors that the accuracy and reliability of its entire contents and conclusions are called into serious question. Even the expert review team did not identify numerous errors which only came to light due to careful review by concerned citizens who brought errors to the notice of the BCRET team. Some of these errors are noted below. Some have been corrected in the revised report but others persist. Below in Part 1 are examples of impact to soil and surface and groundwater from operation of the C&H Hog Farm, quoting from the BCRET final report. There follows in Part 2, excerpts from two reports prepared by Mike Smolen, Ph.D, an acknowledged expert in water quality and agricultural waste management. Both reports are attached to these comments in their entirety as part of our comments.

**Response:** C&H Hog Farms, Inc. is outside the scope of this rulemaking. The Division did not review or approve the study design and has no authority over the data analysis performed by BCRET. While the Division may consider the research conducted by the University of Arkansas, questions regarding the study and the final report should be more appropriately directed to the University of Arkansas.

## **RULE 5 Response to Comments Received During the Comment Period Extension**

### **Commenter: Arkansas Farm Bureau Federation**

**Comment:** The Arkansas Farm Bureau Federation would like to offer the following comments opposing the permanent moratorium on the Buffalo River watershed as initiated in Arkansas Pollution Control & Ecology Commission (APC&EC) Regulation's 5 and 6. The ADEQ and APC&EC initiated rulemaking to prohibit landowners within the Buffalo River watershed their right to farm without a single shred of scientific evidence that animal agriculture, and in this case C&H Hog Farms, had caused an environmental impact. C&H Hog Farms was, and still to this day, the most heavily scrutinized and monitored farm in the state. The Big Creek Research and Extension Team was originally created by then Governor Mike Beebe to evaluate the potential impact and sustainable management of the C&H Farms operation on the water quality of Big Creek. Several years later, the ADEQ funded a drilling study to evaluate the lithology/geology below the waste storage ponds at C&H Hog Farms and to assess potential subsurface impact from the waste storage ponds. Upon completion of the drilling study, Governor Asa Hutchinson created the Beautiful Buffalo River Action Committee and authorized the development of a Watershed Management Plan for the Buffalo River Watershed that would evaluate its tributaries to determine which would need the most attention. The United States Geologic Survey (USGS) studied algal growth on the Buffalo River, as well as, nutrient concentrations upstream and downstream of Big Creek on the Buffalo River. All of these studies identified above determined either Big Creek continues to maintain pristine water quality and C&H was having no environmental impact.

**Response:** The Division does not concur with Commenter's conclusion regarding studies undertaken in the Buffalo River Watershed. In the Buffalo River Watershed, four Assessment Units (two sections of Big Creek and two sections of the Buffalo National River) have been identified as impaired: three for bacteria and one for dissolved oxygen.

**Comment:** Environmental groups state the moratorium is based on sound science and the justification used is to merely regurgitate the definition of karst. The mere presence of karst does not constitute scientific justification for a permanent moratorium. All of Northwest Arkansas and Northcentral from the Black River to the Oklahoma Border and North of the Arkansas River to Missouri as well as portion of Southwest Arkansas are underlain by karst. Using this logic, these areas should also be included in the moratorium.

**Response:** The purpose of this rulemaking is to make permanent the current moratorium on swine operations of a certain size in the Buffalo River watershed.

Congress designated the Buffalo River as the first National River in 1972 "for the purposes of conserving and interpreting an area containing unique scenic and scientific features, and preserving [it] as a free-flowing stream." 16 U.S.C. § 460m-8. APC&EC Rule 2 affords the Buffalo National River its highest category of designated use, "Extraordinary Resource Water."

## **RULE 5 Response to Comments Received During the Comment Period Extension**

**Commenter: Joel Nunneley**

**Comment:** There is a new mining operation near the Kings River that is right above Keel's Creek, a major tributary to the Kings River. ADEQ needs to be vigilant in protecting the beautiful Kong's River.

**Response:** This comment is outside the scope of this rulemaking.

