

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

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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 if 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 acces 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

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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.

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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."

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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.