

Mr. Mark C. Bowles
Arkansas Environmental Support
425 West Capitol Ave.
A- TCBY-22D
Little Rock, AR 72201

Re: Ark. Code Ann. § 25-15-204 (a)(2)(D) Statement of Principal Reasons for and
Against Adopting Proposed Revisions to Title III, Rules for Utilization of Surface
Water: White River Minimum Streamflow Rules

Dear Mr. Bowles:

On July 15, 2009, the Arkansas Natural Resources Commission (ANRC) adopted the White River Minimum Streamflow rules. Entergy requested “a concise statement of principal reasons for and against adopting these rules,” incorporating the Commission’s reasons for overruling considerations not to adopt these rules.

PART ONE: REASONS FOR AND AGAINST ADOPTION.

A. REASONS FOR ADOPTION.

1. Arkansas Code Annotated § 15-22-222 directs the Commission to set minimum streamflow levels for streams.
2. Proposed shutoffs are a significant step in protecting White River resources while balancing demands of water users.

B. REASONS AGAINST ADOPTION.

1. The Commission should have held more public hearings in river basin.
2. Levels at which withdrawal should cease should have been set higher to protect fish, wildlife, aquifer recharge, and recreation.
3. Levels at which withdrawal should cease should have been set lower to protect industrial use and prevent increased utility cost.
4. Utilities and other users will have to develop alternative groundwater supplies to accommodate shutoff. Usage of groundwater is counterproductive to Commission goals.
5. Production of electricity should be a reserved water right and considered necessary for sustaining public health and welfare.

PART TWO: REASONS FOR OVERRULING CONSIDERATIONS AGAINST
ADOPTION.

The Commission held a hearing on February 24, 2009, regarding these rules and extended public comment upon request of White River users to allow additional time for public review and response.

The minimum streamflow levels established in these rules were based on years of review and study by Commission staff and interested persons. Commission staff has compiled data and generated recommendations on these rules since 1994. In 2001, ANRC established workgroups to gather data and information related to water needs in the basin. This work involved persons representing fish and wildlife, navigation, water quality, municipal and industrial, recreational, and other interests. In making its recommendations, Commission staff has compiled historical flow data, simulated alternative minimum flow scenarios, analyzed flow duration and frequency, evaluated water use impacts, and incorporated public input and comment.

The potential harm to the environment through utilization of groundwater in a time of surface water shortage would be negligible compared with the net benefit of using surface water rather than groundwater when adequate surface water is available.

Under current Title III Rules and Ark. Code Ann. § 15-22-217(e), reserved water rights include domestic and municipal domestic, minimum streamflow, and federal water rights. Electrical power generation is not listed as a reserved water right. To include power generation as a reserved water right would require legislative changes.

This statement was adopted by the Commission at its special meeting called on the _____ of August, 2009.

Sincerely,

Robert White, Chair
Arkansas Natural Resources Commission

cc: Al Eckert