Oral Comments to ADEQ Re: 2018 Draft 303d List, August 17, 2018

Thank you for the opportunity to present comments today. I am speaking today on behalf of the Buffalo River Watershed Alliance and we will be submitting more extensive comments in writing at a later date.

While we commend ADEQ for using sound science to determine that Big Creek and adjacent segments of the Buffalo National River are in trouble, we believe that placing these troubled waters into Category 4b falls short of the mark and is a flawed decision. Category 5 is the only appropriate choice to adequately identify and correct the sources of impairment through the development of Total Maximum Daily Loads (or TMDLs) or other corrective actions.

Category 4 means that, “*Water quality standards are not attained … but the development of a TMDL is not required because other management alternatives are expected to result in the attainment of the water quality standard”*

Various documents on ADEQ’s 303d website point to the recently developed Buffalo River Watershed Management Plan, or WMP, as the “Other management alternative”. This reasoning is faulty for several reasons but today I will comment on only one: C&H Hog Farms.

The WMP is completely voluntary and cannot address permitted facilities. C&H is a permitted facility and is the most likely source of impairment but it is expressly excluded from consideration under the WMP. As Governor Hutchinson stated when announcing the Beautiful Buffalo River Action Committee, BBRAC, and has also been made abundantly clear in numerous WMP meetings, all actions undertaken by the BBRAC are completely voluntary, non-regulatory and non-enforceable.

Some will no doubt take issue with my statement that C&H is the most likely source of impairment of Big Creek and the Buffalo. Please look at this poster which shows the impaired segments of Big Creek and the Buffalo in purple, as well as the results of dye trace studies done by Dr Van Brahana and his team. Dye was injected here in Mt Judea, in an area surrounded by C&H spray fields, and was then recovered at the sites shown by these dots, including both upstream and downstream of the mouth of Big Creek. This shows the rapid and unpredictable flow of groundwater in this sensitive karst area. As you can see, the dye outlet sites correlate very closely with the impaired segments. This clearly shows the possibility that a single waste source of a large size in a karst location, such as C&H Hog Farms, could very well impair waters throughout the impacted area.

Dr. Andrew Sharpley, head of the Big Creek Research and Extension Team (BCRET) which is monitoring C&H Hog Farms has stated under oath that he considers Dr. Brahana an expert to whom he would defer in dye tracing and whose studies provide an indication of groundwater flow from the area of the hog farm. [*Sharpley Deposition, May 25, 2018, pg. 87*] He has further stated, again under oath, that he would collaborate with Dr. Brahana to use his findings in the BCRET program, relieving BCRET of the need to duplicate dye traces themselves. [*Sharpley Deposition, pg 84-85*]

So, we have the only officially impaired waters within the entire Buffalo River watershed, waters which correlate closely with dye trace results which numerous experts agree are an indication of groundwater flow, and the injection point of those dye studies is in the immediate vicinity of the single largest source of nutrients and pathogens in the watershed, yet we are supposed to ignore the 800 lb hog in the valley and instead rely on voluntary, non-regulatory, non-enforcable “Best Management Practices” to correct the problem? Give me a break!

Category 4b is wholly inadequate to confirm, disprove, or even explore the possibility that C&H is contributing to this impairment because 4b relies on the WMP which, by definition, cannot address a permitted facility such as C&H.

Placing these impaired segments in Category 4b is a calculated move to not only avoid Category 5 requirements for the development of TMDLs, but worse, it absolves ADEQ of responsibility for directly addressing threats to our state’s most treasured stream, relying instead on private citizens and non-profit organizations to shoulder the burden. No such 4b measures can remedy these impairments in a reasonable amount of time. In fact, they would allow legacy phosphorus to accumulate, and result in impairments that last for decades. This is unacceptable. The time to act is now

For these reasons, placing the impaired segments of the Buffalo National River and Big Creek in Category 4b does not meet the requirements of the Federal Clean Water Act, particularly when considering the Extraordinary Resource Waters being impacted. These segments must be placed in Category 5 so that TMDLs or other timely and stringent corrective actions will be taken.

Now that ADEQ acknowledges that Big Creek is a significant threat to the Buffalo, please take the proper next step and move them to Category 5 so that the impairment is corrected before the problem gets worse.