Tulane Environmental Law Clinic

September 10, 2015

By Certified Mail No. 7015 1730 0001 8727 0175
Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

By Certified Mail No. 7015 1730 0001 8727 0151
Nancy Stoner, Acting Assistant Administrator
U.S. Environmental Protection Agency
Office of Water
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy and Ms. Stoner,

The Ouachita Riverkeeper respectfully submits the enclosed Petition for Rulemaking pursuant to 5 U.S.C. § 553(e) and 33 U.S.C. § 1313(c)(4)(B). This Petition asks EPA to determine that revised water quality standards are necessary for Coffee Creek and Mossy Lake in Ashley County, Arkansas, to meet the Clean Water Act's requirements. A copy of this letter and the Petition, together with exhibits, is also on the enclosed compact disc.

If you have any questions or need additional information, please call me at 504-862-8819.

Sincerely,

Elizabeth Livingston de Calderón
Counsel for the Ouachita Riverkeeper

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Before the United States
Environmental Protection Agency
Office of Water

Petition for Rulemaking	)
Under the Administrative Procedure Act,	)
Regarding the Clean Water Act § 303(c)(4)(B)	)
	)
Water Quality Standards for	)
Coffee Creek and Mossy Lake	)

I. Summary

The Ouachita Riverkeeper, Inc.,[1] respectfully petitions EPA to determine that revised or new water quality standards are necessary for Coffee Creek and Mossy Lake, in Ashley County, Arkansas to meet the Clean Water Act's requirements. The Administrative Procedure Act, 5 U.S.C. § 553(e) allows an interested person to petition the EPA for rulemaking. The Clean Water Act § 303(c)(4)(B) provides, "in any case where the Administrator determines that a revised or new standard is necessary" to meet the requirements of the Clean Water Act, EPA "shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard." 33 U.S.C. § 1313(c)(4)(B).

Coffee Creek and Mossy Lake are waters of the United States. Existing current water quality standards, however, exempt Coffee Creek and Mossy Lake from aquatic life uses. *See* Arkansas Pollution Control and Ecology Commission Regulation No. 2, Ark. Admin. Code 014.04.2–3 Reg. 2.301, App. A (Designated Uses: Gulf Coastal Ecoregion) at A-30-31.[2] These uses, however, are existing and attainable. Affidavit of Barry W. Sulkin, M.S. ¶¶ 11, 15-19, 26, 28.[3] Current water quality standards also exempt these water bodies from primary contact

[1] Ouachita Riverkeeper is a non-profit organization that seeks to restore and monitor the Ouachita River watershed to ensure that the people who use this resource enjoy a clean and safe environment and to protect that environment for future generations. The organization includes members who live, work, and recreate in and around the Ouachita River, Coffee Creek, and Mossy Lake. *See* http://www.ouachitariverkeeper.org.

[2] https://www.adeq.state.ar.us/regs/files/reg02_final_140324.pdf. Arkansas' Regulation 2 establishes water quality standards but exempts Coffee Creek and Mossy Lake from "fishable/swimmable or domestic water supply uses" at Appendix A-30. Regulation No. 2 at Appendix A-31 exempts Coffee Creek and Mossy Lake from Reg. 2.406 and Chapter Five" of the state's protective water regulations.

[3] Petitioner attaches Mr. Sulkin's affidavit as Exhibit 1, and incorporates it fully into this Petition. In addition to hardcopies of exhibits, a complete set of exhibits is included with this Petition on compact disc.

recreation uses. Ark. Admin. Code 014.04.2–3 Reg. 2.301, App. A at A-30-31.[4] Those uses, however, are attainable. Ex. 1, Sulkin Aff. ¶¶ 11-14, 18, 19, 28.

Evidence of existing aquatic life uses in Coffee Creek and Mossy Lake includes the 2007 EPA Use Attainability Analysis (UAA)[5] and a 2013 Georgia Pacific Draft Use Attainability Analysis[6]. The 2007 EPA UAA compels a conclusion that aquatic life uses are attainable in Coffee Creek and Mossy Lake. Ex. 1, Sulkin Aff. ¶ 15. Indeed, the 2007 EPA UAA found that "an aquatic life use is potentially attainable." Ex. 2, 2007 EPA UAA, at 4-1 - 4-2. On this basis, when EPA published its findings on its website, it recommended "that Coffee Creek and Mossy Lake warrant an aquatic life use designation." *Use Attainability Analysis and Water Quality Assessment of Coffee Creek, Mossy Lake, and the Ouachita River, available at* http://www.epa.gov/region6/water/ecopro/watershd/monitrng/studies/ouachita/fact-sheet_ouachita-river.pdf, attached at Exhibit 4 (the "EPA 2007 Findings"), at 1-2. The purported basis for exempting Coffee Creek and Mossy Lake from existing and attainable uses is a 1984 Arkansas UAA.[7] That document, however, is outdated and no complete copy is known to exist. *See* Exhibit 5, Email from Jamie L. Ewing, J.D., Staff Attorney, ADEQ, to Dante M. Dipasquale, Student Attorney, Tulane Environmental Law Clinic (Mar. 27, 2009, 13:08 EST) ("2009 ADEQ Email"); Exhibit 6, *Coffee Creek – Mossy Lake Use Attainability Analysis* (the "1984 UAA").[8]

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[4] The current water quality standards also expressly exempt Coffee Creek and Mossy Lake from ***1)*** domestic water supply uses, ***2)*** the water quality protections in Chapter 5 of Regulation 2 ("Specific Standards"), and ***3)*** the "color" quality protection in Reg. 2.406 of Chapter 4 ("General Standards"). Ark. Admin. Code 014.04.2–3 Reg. 2.301, App. A at A-29-31. These exemptions from specific and general standards essentially remove the protection of other applicable designated uses, such as the secondary contact recreation uses.

[5] Parsons and the University of Arkansas Ecological Engineering Group, EPA No. 68-C-02-111, Use Attainability Analysis and Water Quality Assessment of Coffee Creek, Mossy Lake, and the Ouachita River, EPA Region 6, (December 2007), at 3-4 – 3-13, *available at* http://www.epa.gov/region6/water/ecopro/watershd/monitrng/studies/ouachita/final-report_ouachita_dec07.pdf, and attached at Exhibit 2, (the "2007 EPA UAA"); Ex. 1, Sulkin Aff. ¶ 16.

[6] AquAeTer, Inc., Data Collection and Factual Analysis Use Attainability Analysis of Coffee Creek and Mossy Lake, Georgia-Pacific LLC, at 59, 92, 93, 106, 122 (Nov. 2013), attached (in relevant part in hardcopy and in full on accompanying compact disc) at Exhibit 3 (the "2013 Georgia Pacific Draft UAA"); Ex. 1, Sulkin Aff. ¶ 27.

[7] Federal regulations require a state to "conduct a use attainability analysis … whenever … [it] wishes to remove a designated use that is specified in section 101(a)(2) of the Act," including primary contact recreation uses. 40 C.F.R. § 131.10(j).

[8] Although Regulation 2 simply states that designated uses for Coffee Creek and Mossy Lake are based on UAA findings, *see* Regulation No. 2, at A-30, ADEQ presented the 1984 UAA (in its incomplete form) as "the UAA for Coffee Creek." 2009 ADEQ Email, Ex. 5. Key sections are missing, such as "Analyses Conducted" of "biological factors" for both Coffee Creek and Mossy Lake, the entire "Findings" section, and the entire "Summary and Conclusion" section. Other missing information includes who commissioned the 1984 UAA, who performed

As noted above, Georgia Pacific Company (GP) is preparing a different UAA. But the 2013 Georgia Pacific Draft UAA omits a significant section of Coffee Creek and fails to consider the water body as a whole, two flaws among several that invalidate the study. Ex. 1, Sulkin Aff. ¶ 21, 22. Nothing in the 2013 Georgia Pacific Draft UAA undermines the 2007 EPA UAA's findings that aquatic life uses are attainable. Ex. 1, Sulkin Aff. ¶¶ 20, 28.

Because there is no legitimate question about the 2007 EPA UAA's conclusions, a new UAA is not necessary.

II. Background: Factual History of Coffee Creek and Mossy Lake Regulation and Use.

Coffee Creek and Mossy Lake are water bodies located in Arkansas' Gulf Coastal Ecoregion near Crossett, Arkansas. Coffee Creek has a watershed area of greater than twenty-five square miles. Ex. 2, 2007 EPA UAA, at 1-3. Mossy Lake has an area of approximately 550 acres. *Id*. The main channel of Coffee Creek originates in Crossett, Arkansas, on the property of GP. Ex. 1, Sulkin Aff. ¶¶ 21 - 23. Coffee Creek then flows under Hancock Road and Highway 82 before merging with a tributary from the east and flowing through Mill Pond, a dammed, aerated portion of Coffee Creek. *Id*. After exiting Mill Pond, Coffee Creek flows through Mossy Lake and ultimately joins the Ouachita River approximately one mile upstream of the Arkansas-Louisiana border. *Id.* at ¶ 21.

Currently, Coffee Creek receives GP's wastewater discharges under a permit that allows pollutant from, among other things: process waste water from a paper mill, plywood plant, and studmill operations; sanitary wastewater; landfill leachate; facility site stormwater; chemical plant; building products; treated effluent from the City of Crossett; truck backwash; backwash wastewater; and product stewardship waters. ADEQ, Permit No. AR0001210 (2011), attached in relevant part in hardcopy and in full on accompanying compact disc at Exhibit 7. Georgia Pacific's permit designates a point downstream of Mill Pond as the external outfall for GP's wastewater discharges and assigns additional monitoring at Mossy Lake. *Id*. However, GP's wastewater enters Coffee Creek one or more points between the Highway 82 overpass (where Coffee Creek flows under Highway 82) and Mill Pond. Ex. 1, Sulkin Aff. ¶¶ 21 - 23.

Although Coffee Creek and Mossy Lake qualify under Arkansas' water quality standards for aquatic life and primary contact recreation uses, existing standards currently exempts these waters from those uses and essentially all other designated use water quality protections. *See supra* notes 2 & 4, and accompanying text.

In 2007, EPA Region VI published a use attainability analysis for Coffee Creek and Mossy Lake. *See* Ex. 2, 2007 EPA UAA. The 2007 EPA UAA identified existing aquatic life and found the "potential to support aquatic life indicative of streams in the ecoregion." *Id.* at ES-2; Ex. 4, EPA 2007 Findings at 2. Consequently, EPA recommended that "that Coffee Creek and Mossy Lake warrant an aquatic life use designation." Ex. 4, EPA 2007 Findings at 2. EPA also

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the 1984 UAA, and exhibits. The 1984 UAA cannot support Regulation 2's continuing removal of aquatic life uses because there is no information explaining why such removal is acceptable or attainment is not feasible.

noted in its response to Arkansas' proposed permit reissuance for GP in November 2009 that "[t]he results of that UAA and assessment indicate that an aquatic life use designation may be appropriate." Exhibit 8, Letter from Claudia V. Hosch, Associate Director, Water Quality Protection Division, NPDES Permits and TMDL Branch, EPA, to Morteza Shafi, Assistant Chief, Water Division, Arkansas Department of Environmental Quality (December 16, 2009).

Georgia Pacific, the primary discharger and sole permit holder for pollutant discharges into Coffee Creek and Mossy Lake, presented a draft UAA, the 2013 Georgia Pacific Draft UAA, to EPA in December, 2013. Like the 2007 EPA UAA, the 2013 Georgia Pacific Draft UAA also found existing aquatic life in Coffee Creek and Mossy Lake.[9]

III. Law and Argument

The Clean Water Act provides, "in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements" of the Act, "[t]he Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard." 33 U.S.C. § 1313(c)(4).

The Clean Water Act requires restoration and protection of water quality through standards that include "designated uses" and "water quality criteria" to protect those uses. *See id*. § 1313(c)(2)(A). "The objective of [the Act] is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C § 1251(a). To "achieve this objective," section 101(a) of the Act provides: "it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved." *Id*. § 1251(a)(2).

Here, revised standards are necessary for Coffee Creek and Mossy Lake to meet the requirements of the Act because aquatic life uses are existing and attainable for those waters and because no use attainability analysis purports to remove these waters' recreational uses and, in fact, Arkansas has no use attainability analysis purporting to remove any uses at all.

A. The Clean Water Act Requires Designation of Aquatic Life Uses for Coffee Creek and Mossy Lake.

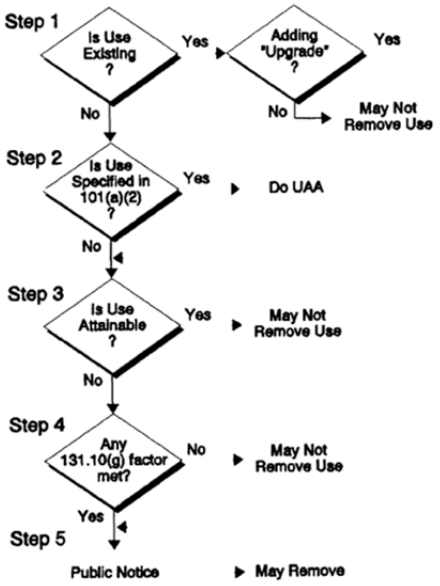
Water quality standards must "reflect the uses actually being attained." 40 C.F.R. §131.10(i). "Existing uses are those uses actually attained … in the water body … whether or not they are included in the water quality standards." *Id.* § 131.3(e). "Existing instream water uses … shall be maintained and protected." *Id*. § 131.12(a)(1). As EPA Guidance explains, "protecting 'existing uses,' provides the absolute floor of water quality in all waters of the United States."[10]

Exemption of waters of the United States from attainable uses should not be maintained if "[t]hey are existing uses" or if the "uses will be attained by implementing effluent limits" such as

[9] *See*, *e.g.*, Ex. 3, 2013 Georgia Pacific Draft UAA, at 43, 59, 63, 75, 92, 93, 106, 110, 121-2.

[10] EPA Water Quality Standards Handbook, Ch. 4.2, (2014) *available at* http://water.epa.gov/scitech/swguidance/standards/handbook/ (the "WQS Handbook").

those enforceable under a Clean Water Act § 402 permit. *See* 40 C.F.R § 131.10(h). For example, a state may only remove "a designated use which is not an existing use … if the State can demonstrate that attaining the designated use is not feasible" for a limited set of reasons. *Id*. § 131.10 (g). Infeasibility does not include "human caused" pollution that can be "remedied" and would not "cause more environmental damage to correct than to leave in place." *See id*. § 131.10(g)(3). To make such a determination, the state must perform a Use Attainability Analysis. *Id.* § 131.10(j).[11] A Use Attainability Analysis is "a structured scientific assessment of the factors affecting the attainment of the use." 40 C.F.R. § 131.3(g). "The evaluations conducted in a UAA will determine the attainable uses for a water body."[12] EPA's Guidance shows the regulatory scheme as a flow chart: [13]



Notably, when there is an existing use, no additional inquiry or analysis is necessary or even allowed – the existing use must be designated. 40 C.F.R. § 131.10(h)(1).[14]

i. Coffee Creek and Mossy Lake Have Existing Aquatic Life Uses.

The 2007 EPA UAA, the 2013 Georgia Pacific Draft UAA, and independent testing by Mr. Sulkin all show that fish and other aquatic life are present in Coffee Creek and Mossy Lake. Ex. 1, Sulkin Aff. ¶¶ 15, 16, 23, 26, 28. The 2007 EPA UAA establishes that fish and aquatic life were found at every sampled site in Coffee Creek and Mossy Lake. Ex. 2, 2007 EPA UAA, at 3-4, 3-7, 3-9, and 3-13, Table 3.1. Species of fish in Coffee Creek above Mossy Lake included spotted gar, bullhead catfish, mosquito fish, and bluegill sunfish; species of fish in Coffee Creek below Mossy Lake included blue catfish, gar, bowfin, mosquito fish, alligator gar, white

[11] *See also* WQS Handbook, Ch. 2.9.

[12] WQS Handbook, Ch. 2.9.

[13] *Id*. at Ch. 2.7.2., fig. 2-1. Uses specified in the Clean Water Act §101(a)(2) include "fish, shellfish, and wildlife … recreation in and on the water." 33 U.S.C. § 1251(a)(2).

[14] *See also*, WQS Handbook, at Ch. 2.7.

crappies, gizzard shad, black crappie, flier, slough darter, silvery minnow, common carp, and spotted gar. *Id*. at 3-4, 3-9, 3-25. Species of fish found in Mossy Lake included spotted gar, bluegill sunfish, warmouth, dollar sunfish, swamp darter, mosquito fish, and common carp. *Id*. at 3-7. Benthic macroinvertebrates were dominated by Diptera and Annelids above Mossy Lake, and chironomids below Mossy Lake. *Id*. at 3-24, 3-25. Turtles were also found in Coffee Creek and Mossy Lake. *Id*. at 3-4, 3-7.

Fish in Coffee Creek and Mossy Lake qualify as "aquatic life" under Arkansas regulations. Arkansas' Regulation 2 defines "Aquatic Life" as "[t]he designated use of a waterbody determined by the fish community and other associated aquatic biota." Regulation No. 2, 2.106. Arkansas recognizes three "subcategories" of the aquatic life use, including "lakes and reservoirs", "streams", and "trout." *Id*., 2.302(F). For lakes, like Mossy Lake, aquatic life use is "[g]enerally characterized by a dominance of sunfishes such as bluegill or similar species, black basses and crappie. May include substantial populations of catfishes … and commercial fishes including carp, buffalo and suckers." *Id*., 2.302(F)(2). Here, the 2007 EPA UAA found the presence of bluegill sunfish, catfish, and carp in Mossy Lake. Ex. 2, 2007 EPA UAA, at 3-7.

For streams, the aquatic life use is designated for "[w]ater which is suitable for the protection and propagation of fish and other forms of aquatic biota adapted to flowing water systems whether or not the flow is perennial." Regulation No. 2, 2.302(F)(3). Arkansas lists the fish communities in each ecoregion that qualify a specific stream as aquatic life use, including key species and indicator species. *Id*. Key species "are normally the dominant species … within the important groups such as fish families or trophic feeding levels." *Id.*, 2.106. Indicator species "may not be dominant within a species group and may not be limited to one area of the state, but … because of their presence, are readily associated with a specific ecoregion." *Id*. Importantly, "[a]ll specified key species" and "all indicator species need not be present to establish a normal or representative fishery." *Id*.

Typical Gulf Coastal Ecoregion streams, including Coffee Creek, qualify for the aquatic life use when "supporting diverse communities of indigenous or adapted species of fish and other forms of aquatic biota. Fish communities are characterized by a limited proportion of sensitive species; sunfishes are distinctly dominant followed by darters and minnows." *Id.*, 2.302(F)(3)(e). A Typical Gulf Coast Ecoregion stream "community may be generally characterized" by the following fishes:

Key Species	**Indicator Species**
Redfin shiner	Pirate perch
Spotted sucker	Flier
Yellow bullhead	Spotted sunfish
Warmouth	Dusky darter
Slough darter	Creek chubsucker
Redfin pickerel	Banded pygmy sunfish. *Id.*[15]

[15] Regulation 2.302 lists each ecoregion and describes the key and indicator species for each ecoregion. Although, section 2.302 lists a "Typical" and a "Springwater-influenced" Gulf

Here, the 2007 EPA UAA found slough darter (a key species) and flier (an indicator species). Ex. 2, 2007 EPA UAA, 3-9. Therefore, the 2007 EPA UAA identified an existing aquatic life use under Arkansas' definition of the use.

The 2013 Georgia Pacific Draft UAA adds additional (if redundant) confirmation of existing aquatic life uses in Coffee Creek and Mossy Lake, finding additional diversity in the kinds of characteristic fish species present.[16]

For example, species found in Coffee Creek above Mossy Lake included Mississippi silvery minnow, bluegill sunfish, mosquito fish, black bullhead, warmouth, green sunfish, creek chubsucker, largemouth bass, emerald shiner, and shortnose gar. Ex. 3, 2013 Georgia Pacific Draft, at 59, 92, 93, 106. The species of fish found in Coffee Creek below Mossy Lake included longnose gar, freshwater drum, blue catfish, yellow bullhead, channel catfish, shortnose gar, gizzard shad, and mosquito fish. *Id*. at 121-22. The species of fish found in Mossy Lake included spotted gar, shortnose gar, and yellow bullhead catfish. *Id*. at 110. Benthic macroinvertebrates were found at every site sampled in areas identified as Coffee Creek and Mossy Lake. *Id*. at 44, 48, 56, 60, 64, 76, 94-5, 97-8, 103-4,107-8, 111-12, 123. Also, an alligator and two turtles were found. *See, e.g.*, *id*. at 59. Several of these species are key or indicator species for the aquatic life use designation under Arkansas' regulations. For example, in Coffee Creek, the 2013 Georgia Pacific Draft UAA found the presence of yellow bullhead catfish and warmouth (key species) and creek chubsucker (indicator species). *Id*. at 75, 93, 110, 122.

The 2013 Georgia Pacific Draft UAA argues that, "[w]ithout [GP's] treated effluent, flowing water would not be present year round in Mossy Lake." *See id.* at xiii, 79. But nothing in the law relieves the mandate that existing uses "shall be maintained and protected" simply because a facility adds flow. *See* 40 C.F.R. § 131.12(a)(1). Moreover, the 2007 EPA UAA finds "that in the absence of GP effluent there would likely be water and subsequently aquatic life present throughout most of the year." Ex. 2, 2007 EPA UAA, at 3-12. Similarly, Mr. Sulkin observed water flowing in Coffee Creek above the GP effluent discharge site Ex. 1, Sulkin Aff. ¶¶ 22, 23.

Coastal Ecoregion, the "Typical" Gulf Coastal Ecoregion is listed here because the 2007 EPA UAA notes that Coffee Creek "was a typical small watershed stream." Ex. 2, 2007 EPA UAA, at 1-3.

[16] Generally, Petitioner does not endorse the 2013 Georgia Pacific Draft UAA because, among other things, it uses flawed methodology and inaccurate factual bases that invalidate any conclusions on attainability. *See* Ex. 1, Sulkin Aff. ¶¶ 13, 21-28. Nevertheless, to the extent that study records the presence of fish in Mossy Lake, Coffee Creek, and Coffee Creek's unnamed eastern tributary, it confirms the existing aquatic life use. To avoid confusion, in this discussion of the 2013 Georgia Pacific Draft UAA, Petitioners use the 2013 Georgia Pacific Draft UAA sample site descriptions when describing that study's findings, even where the study misidentifies those sample sites. *See infra* § III.D.

In sum, because Coffee Creek and Mossy Lake have existing aquatic life uses, those uses must be protected. Because Arkansas' water quality standards continue to remove an existing use, existing water quality standards do not meet the requirements of the Clean Water Act. Accordingly, EPA must make a determination "that a revised … standard is necessary to meet the requirements of" the Act and promulgate revised standards. 33 U.S.C. §1313(c)(4)(B).

ii. Aquatic Life Uses Are Attainable in Coffee Creek and Mossy Lake.

Exemption of aquatic life uses from Coffee Creek and Mossy Lake also fails to meet Clean Water Act requirements because the 2007 EPA UAA indicated that aquatic life uses are likely attainable.

The 2007 EPA UAA concludes that "an aquatic life use is potentially attainable in Coffee Creek and Mossy Lake downstream of the Georgia Pacific discharge …." Ex. 2, 2007 EPA UAA, at ES-2, 4-1- 4-2. Indeed, the facts are clear that aquatic life uses are attainable in Coffee Creek and Mossy Lake. Ex. 1, Sulkin Aff. ¶¶ 15, 18, 19, 28. "Human caused" pollution does not make attaining a use infeasible. *See* 40 C.F.R. 131.10(g)(3). The cause of the current impairment to aquatic life in Coffee Creek and Mossy Lake is Georgia Pacific's effluent, and "[w]ithout the Georgia Pacific's discharge, Coffee Creek and Mossy Lake may be able to sustain a diverse aquatic community." Ex. 2, 2007 EPA UAA, at 4-2. Mr. Sulkin explains that "[b]ased on available information, the unhealthy state of the fish and aquatic life existing in Coffee Creek and Mossy Lake is only attributable to GP's use of the natural and modified waterways of Coffee Creek for waste transport, treatment, and dilution." Ex. 1, Sulkin Aff. ¶ 19.

B. The Clean Water Act Requires Designation of Primary Contact Recreation Uses for Coffee Creek and Mossy Lake.

The Clean Water Act also requires new or revised standards for Coffee Creek and Mossy Lake, designating the waters for primary contact recreation uses. For the Gulf Coastal Ecoregion, Arkansas designates for primary contact recreation use "all streams with watersheds greater than 10 mi^2 and all lakes/reservoirs." Regulation No. 2, at A-29. Mossy Lake qualifies on its face. Coffee Creek also qualifies because its watershed is greater than 10 square miles. *See* Ex.1, Sulkin Aff. ¶¶ 12-13. The Clean Water Act requires a UAA for any designation that does not include a section 101(a)(2) use such as the primary contact recreation use. *See* 40 C.F.R. § 131.10(j). Although current water quality standards exempt Coffee Creek and Mossy Lake from primary contact recreation uses, no final UAA addresses the attainability of the primary contact recreation use in these waters.[17] *See* Ex. 2, EPA 2007 UAA; Ex. 6, 1984 UAA. Therefore, new or revised standards are necessary because primary contact recreation uses must be designated uses for Coffee Creek and Mossy Lake.

[17] Likewise, no UAA for Coffee Creek and Mossy Lake addresses attainability of the secondary contact recreation use. The secondary contact recreation use is also a Clean Water Act § 101(a)(2) use, but with less restrictive water quality standards than the primary contact recreation use. *See, e.g.*, Regulation 2, 2.507.

C. Current Water Quality Standards for Coffee Creek and Mossy Lake Do Not Meet Clean Water Act Requirements because They Effectively Designate these Waters for Use as Waste Transport.

New or revised water quality standards are necessary to meet the Act's requirements because existing standards effectively designate Coffee Creek and Mossy Lake for "waste transport." *See* 40 C.F.R. § 131.10(a). Water quality standards however, should never "adopt waste transport or waste assimilation as a designated use for any waters of the United States." *Id*. By removing essentially all protective designated uses and water quality standards from Coffee Creek and Mossy Lake and allowing GP to use the water bodies to receive, dilute, and partially treat its discharges in stream, current standards, in effect, create a waste transport or waste assimilation use.

D. The 2013 Georgia Pacific Draft UAA is Not Reliable.

The 2013 Georgia Pacific Draft UAA factual and methodological flaws invalidate any negative conclusion about the attainability of aquatic life and primary contact recreation uses. *See* Ex. 1, Sulkin Aff. ¶¶ 21 - 28. The most striking example is that the study excludes relevant portions of Coffee Creek from its research, including the main branch (headwaters) of Coffee Creek that runs upstream to the north from the wastewater aeration pond (*i.e.* Mill Pond). *See* Ex. 1, Sulkin Aff. ¶¶ 21 - 25. The official USGS topographic maps identify this northern branch as Coffee Creek, as does the map the 2013 draft study relies on. *See id.* ¶¶ 19, 21, 22; Ex. 3, 2013 Georgia Pacific Draft UAA at 145. But the 2013 study appears to characterize this main branch as part of Georgia Pacific's effluent channel. *See, e.g.*, Ex. 3, 2013 Georgia Pacific Draft UAA at ix, 17. Instead of identifying the officially recognized branch of Coffee Creek as the main branch, the 2013 draft study incorrectly identifies a tributary that is unnamed on the USGS topographic maps as Coffee Creek's main branch. *See* Ex. 1, Sulkin Aff. ¶ 21, 22, 24, 25; Ex. 3, 2013 Georgia Pacific Draft UAA. at 219 ("Coffee Creek begins at Lucas Lake which drains stormwater from parts of the City of Crossett."); *id.* at 244 (map). Similar inaccuraciesGiven these inaccuracies, any use attainment determination based on the 2013 Georgia Pacific Draft UAA would be invalid for failure to consider the actual water body at issue. *See* Ex. 1, Sulkin Aff. ¶¶ 21-27.

IV. Conclusion: EPA Should Determine that New or Revised Quality Standards for Coffee Creek and Mossy Lake Are Necessary To Meet the Clean Water Act's Requirements.

For the reasons above, the Ouachita Riverkeeper petitions EPA to determine that revised water quality standards are necessary for Coffee Creek and Mossy Lake to meet the Clean Water Act's requirements.

Respectfully submitted on September 10, 2015

Prepared in substantial part by Andrea Storer, Tulane Law School, Class of 2015

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