



Arkansas Cattlemen's Association

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January 21, 2020

Mr. Jake Harper
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118

Mr. Harper:

The Arkansas Cattlemen's Association, representing over 8,700 cattle producers located across the state, welcomes the opportunity to submit comments regarding the Arkansas Pollution Control and Ecology Commission (APC&EC) Proposed Changes to Regulation 5 Docket #19-002-R.

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 BNRW, and statewide, that should the proposed rule take effect, 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.

Thank you for your close consideration of these comments. The Arkansas Cattlemen's Association welcomes the opportunity to discuss these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Cody Burkhams", followed by a horizontal line extending to the right.

Cody Burkhams

Executive Vice President

Arkansas Cattlemen's Association