Congress of the United States
Washington, DC 20515

May 9, 2013

Regional Administrator Ron Curry
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dear Administrator Curry:

We are writing to request that EPA allow the States of Arkansas and Oklahoma to complete a Joint Study of phosphorus concentrations in the Illinois River Watershed, as agreed to in the Second Statement of Joint Principles and Actions (Second Statement) signed on February 20, 2013, prior to the development of any total maximum daily loads (TMDLs) requirements. We acknowledge your efforts in Region 6 to pursue a transparent and scientifically sound approach to the Illinois River Watershed Modeling Project, and we encourage EPA to pursue non-regulatory actions in the short term, while working cooperatively with the States of Arkansas and Oklahoma to allow the complete execution of the Second Statement.

As you know, over many years, the taxpayers and citizens of Arkansas and Oklahoma have expended considerable resources to improve water quality in the Illinois River Watershed in northeast Oklahoma and northwest Arkansas. Furthermore, despite rapid population growth in the watershed, "flow-adjusted monthly phosphorous loads have been significantly decreasing over time at the Illinois River, based upon data from 2002 through 2008."[1] This has been possible because, in addition to significant community and citizen-driven efforts, over a quarter of a billion dollars have been invested over a decade to improve water quality. On top of enormous point-source reductions, Arkansas has reduced non-point source runoff through the implementation of nutrient management plans, volunteer efforts through non-profit groups like the Illinois River Watershed Partnership, municipal initiatives and ordinances, and further efforts to put poultry litter and other potential nutrient sources to beneficial uses in other watersheds.

The Second Statement allows for a three-year extension of existing commitments – which, as previously noted, have led to significant decreases in flow-adjusted monthly phosphorous loads over time – while the states jointly perform a stressor-response study, funded by the State of Arkansas and managed by a committee appointed, in equal numbers, by each state. The States of Arkansas and Oklahoma agree to be bound by the findings of the Joint Study. Specifically, Arkansas agrees to fully comply with the Numeric Phosphorous Criterion at the Arkansas-Oklahoma State line, whether the existing 0.037 mg/L standard is confirmed or a new Numeric Phosphorous Criterion is promulgated.

[1] Haggard, B.E. 2010. Phosphorus Concentrations, Loads and Sources at the Illinois River, Arkansas, 1997-2008. Journal of Environmental Quality 39:2113-2120.

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We concur with a principle point of agreement expressed in the Second Statement, which reads: "the two States believe it is in their best interest to continue to work cooperatively to protect and improve water quality in the designated Scenic Rivers and to avoid costly and protracted litigation and administrative proceedings which would further strain relationships between the two States and distract from those cooperative efforts." We ask that the EPA continue to share in this spirit of cooperation.

We understand that the EPA has certain responsibilities in overseeing how Oklahoma's water quality standard may affect upstream sources in Arkansas, once the standard has been reviewed and becomes fully effective. Accordingly, the EPA is working to develop a model of the Illinois River Watershed that is intended to "provide a technically sound basis upon which regulatory and non-regulatory decisions can be confidently based – decisions which will lead to reductions of nutrients from both point and non-point sources of nutrients in the watershed."[2] However, regulatory decisions should remain on hold pending the review of the aforementioned standard by the Joint Study.

We further understand that as a part of the Illinois River Watershed Modeling Project, EPA Region 6 has already begun working with a technical workgroup to design realistic phosphorous load reduction model scenarios to meet water quality goals. As the EPA develops these scenarios, we request information regarding whether the scenarios will be developed to meet only the current 0.037 mg/L standard from the Arkansas-Oklahoma State line downstream, or whether other potential scenarios – as anticipated by the Second Statement – will also be developed. We also request your comments on whether the model scenarios under development anticipate any changes to Arkansas's nutrient criteria, upstream from the State line.

In a previous letter, the EPA stated that it "will continue to ensure states, tribes, and stakeholders are a part of the process and will make future deliverables and the model available for review at key points in the project before the model is finalized."[3] Although not the focus of this letter, we are aware of stakeholder concerns with aspects of EPA's modeling approach that have been publicly shared. As such, EPA's continued commitment to an open and collaborative process is critical. Fortunately, in our view the Second Statement and Joint Study provide EPA with ample time to ensure that it has the necessary data, stakeholder input and analysis to develop a truly accurate model.

In conclusion, the EPA has clearly stated that the model under development will be useful as a basis for "regulatory and non-regulatory decisions" that "will lead to reductions of nutrients from both point and non-point sources of nutrients in the watershed." Again, we firmly believe that the prudent course of action is for the EPA to continue developing its model, with transparency and accountability, through a systematic and scientifically sound process, and to focus on non-regulatory priorities at least until the expiration of the Second Statement on February 20, 2016 – with the possibility of TMDL-development postponed until the results of the Joint Study are available and the states have taken requisite action under the Second Statement.

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[2] Miguel I. Flores, Acting Deputy Regional Administrator of EPA Region 6, Letter to Teresa Marks, Director of Arkansas Dept. of Environmental Quality and J.D. Strong, Oklahoma Sec. of the Environment, October 1, 2009.
[3] Al Armendariz, Regional Administrator of EPA Region 6, Letters to U.S. Senator John Boozman, U.S. Senator Mark Pryor, and Congressman Steve Womack, February 16, 2012.

We eagerly await your response to this letter. Please do not hesitate to contact us with any questions or concerns you may have.

Sincerely,

Mark Pryor,
U.S. Senator

John Boozman,
U.S. Senator

Steve Womack,
Member of Congress