



# WATERSHED NEWS

F O U N D A T I O N

SEPTEMBER 22, 2006

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## UPCOMING EVENTS

Annual Beaver Lake Clean-up is scheduled for **Saturday, September 30, 2006**. Call Alan for more information at 479-636-1210 ext. # 313, or send e-mail to [alan.p.bland@usace.army.mil](mailto:alan.p.bland@usace.army.mil).

Volunteers needed for Clean Water National Tour coming to Wonders of Wildlife **October 13-22, 2006** – interactive exhibits for children & adults. If interested in volunteering, please contact [tfrey@missouristate.edu](mailto:tfrey@missouristate.edu) or phone 417-836-6183.

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BULL SHOALS  
LAKES THE FOUR  
CLEANEST  
MANMADE LAKES IN  
NORTH AMERICA.

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## ELKINS ALDERMAN QUESTIONS PROPOSED LAW CONCERNING EROSION CONTROL, STORMWATER

By SUSANNAH PATTON Northwest Arkansas Times  
Posted on September 22, 2006  
URL: <http://www.nwanews.com/nwat/news/45135/>

A proposed ordinance to enact provisions governing erosion control and stormwater pollution prevention failed to pass Thursday through the Elkins City Council.

The council voted 2-2 on the measure. Aldermen Brian Gray and George Patterson were absent from the meeting.

Elkins Mayor Jack Ladyman said the city needs an ordinance to execute the erosion control and prevention plan as mandated by the Environmental Protection Agency.

“ Each city is required to adopt an ordinance administering the requirements, ” he said.

Ladyman said the city’s draft ordinance is based on a law adopted by Bethel Heights.

According to Elkins Planning Director Jackie Baker, the city signed a letter of intent to have an ordinance in effect by 2005.

“ We’re mandated by ADEQ (Arkansas Department of Environmental Quality ) and EPA to have an ordinance in effect, ” she said. “ It should have been done last year. ”

Alderman Tim Martens said he believes the city does need to have a policy in place.

“ I’m disturbed, however, by some of the definitions, particularly for wetlands, ” said Martens, who opposed the measure.

The proposed ordinance would define a wetland as any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions.

“ Wetlands generally include swamps, marshes, bogs and similar areas, ” the proposal stated.

Martens said he also is concerned with the criminal penalties imposed for violating the provisions.

A violation of any of the provisions of the ordinance would be deemed a municipal offense and punishable with a fine of \$ 1, 000 for a first offense, \$ 2, 000 for a second offense, \$ 4, 000 for a third offense, and \$ 8, 000 for a fourth and subsequent offenses.

“ I think we should all be able to read through this and digest it so we understand what we are going to make a criminal act, ” Martens said. “ We need to have a thorough understanding of this because we do live in an area where there could be questions as to what is a wetland and what’s not.

“ I’m very uncomfortable considering this without more time and without a full council. ”

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## POULTRY INDUSTRY SUIT TO PROCEED WITHOUT THIRD PARTIES

By CURTIS KILLMAN TulsaWorld.com

Posted on September 22, 2006

URL: [http://www.tulsaworld.com/NewsStory.asp?ID=060922\\_Ne\\_A1\\_Poult33267](http://www.tulsaworld.com/NewsStory.asp?ID=060922_Ne_A1_Poult33267)

The poultry industry was blocked Thursday from bringing dozens and perhaps hundreds of other parties into a lawsuit filed by the state of Oklahoma.

The ruling means Attorney General Drew Edmondson will be able to go one-on-one against the poultry industry with his allegations of Illinois River watershed pollution.

U.S. Magistrate Sam Joyner ruled in favor of the state's request to remove the so-called third party defendants -- including cattle farms, resorts with septic systems, parties using commercial fertilizer and cities with sewage systems.

Joyner allowed the poultry industry to pursue claims against the third-party defendants in a separate lawsuit that was put off until the state's case is finished.

Representatives from all three sides involved in the case -- the attorney general, the poultry industry and third-party defendants -- said they were pleased with aspects of the ruling.

"We're tickled about what the judge has done," said Jack Freeman, an attorney representing about 50 third-party defendants.

Edmondson said the ruling streamlines and simplifies the case.

He questioned the poultry industry's reason for wanting the third-party defendants added to the case.

"We said at the outset that the motives of the poultry industry were political and strategic," Edmondson said.

"One, they were trying to create enemies in Oklahoma and hoping they would get mad at me," Edmondson said. "Well, that didn't work. They got mad at the poultry companies instead.

"And the second was it would simply make the case cumbersome and burdensome and complicated, and we eliminated that in this order today."

He said he doubts the poultry industry will ever proceed against the third-party defendants.

A spokeswoman for the poultry industry also claimed a victory.

"We are very pleased that the court denied the state's motion to dismiss the poultry companies' third-party claims against other landowners and operators in the watershed," Janet Wilkerson of Peterson Farms said in a written statement.

"Mr. Edmondson was trying to distort this case by preventing the court from considering claims that other operators within the watershed may be affecting the environment."

Freeman said assuming the poultry company's theory of shared responsibility was correct, any problems caused by the third parties would be small.

"You take any one of these individual defendants, proportionately any one of their proportionate contributions is so infinitesimally small, (the poultry industry) cannot economically litigate these claims against these little people," Freeman said.

Wilkerson held open the possibility of pursuing their claims against the other parties.

She also pointed out that Joyner allowed the poultry industry to look for evidence that the third-party defendants contribute to the alleged pollution problem.

"This will allow the poultry companies not only to defend themselves against Mr. Edmondson's claims by providing the court with evidence of how these other entities may be responsible for some of the environmental harm alleged by Mr. Edmondson, but it leaves open the possibility of a second lawsuit against these third parties, depending on the outcome of the first."

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## JUDGE PARES POULTRY SUIT OF 3<sup>RD</sup> PARTIES

BY ROBERT J. SMITH Arkansas Democrat Gazette

Posted on September 22, 2006

URL: <http://www.nwanews.com/adg/News/167387/>

Canoe outfitters, campground operators and 160 other Oklahoma businesses were culled Thursday from a federal lawsuit filed against Arkansas poultry companies related to pollution in the Illinois River.

Federal Magistrate Sam Joyner ruled that leaving the third-party defendants in the lawsuit would "unduly complicate" the case.

Joyner severed the case, meaning the third-party defendants are now considered defendants to a separate lawsuit filed against them by poultry companies.

That separate case can be pursued at the conclusion of the lawsuit filed by Oklahoma Attorney General Drew Edmondson against the poultry companies, Joyner ruled.

Edmondson sued eight poultry companies in U. S. District Court in Tulsa in June 2005, claiming the companies damaged the 99-mile Illinois River that rises in Arkansas before flowing into Oklahoma. The river holds the highest environmental protection in Oklahoma, where it's deemed "scenic."

After Thursday's ruling, the poultry companies, Edmondson and an attorney for some of the third-party defendants presented Joyner's decision as good news for their interests.

"These companies have spent all of their energy on legal and public relations tricks," Edmondson said. "Once again, their scheme to delay, confuse and complicate this case has failed."

Janet Wilkerson, a vice president for Decatur-based Peterson Farms who has served as a spokesman for the poultry companies, was pleased to see Joyner keep the third-party defendants involved in the separate lawsuit. Edmondson had asked that the third parties be dismissed as defendants.

"Mr. Edmondson was trying to distort this case by preventing the court from considering claims that other operators within the watershed may be affecting the environment," Wilkerson said.

Jack Freeman, whose Tulsa law firm represents more than 50 third-party defendants, said his clients got caught in the middle.

“We represent a bunch of little people,” Freeman said. “Getting out of the middle of these two huge parties, that’s good. It would have been prohibitive to be in there.

“ We’ve still been sued, but there’s the potential that it goes away entirely if the poultry companies win.”

The eight poultry company defendants sued by Edmondson are Cargill Inc. of Minneapolis; Cobb-Vantress Inc. of Siloam Springs; George’s Inc. of Springdale; Peterson Farms Inc.; Simmons Foods of Siloam Springs; Tyson Foods of Springdale; Willow Brook Foods of Springfield, Mo.; and Cal-Maine Foods Inc. of Jackson, Miss.

Ed Fite, director of the Oklahoma Scenic Rivers Commission, said small business owners who operate along the river disliked their involvement so far.

“This will relieve a lot of folks,” said Fite, whose state agency tries to promote tourism in the area along the river. “I’ve had a couple of folks along the river say they’ve invested \$ 5, 000 or maybe \$ 6, 000 to defend themselves. They were upset with the poultry companies.”

After Edmondson sued the poultry companies last year, the companies brought in the thirdparty defendants. The companies argued that such things as golf courses, plant nurseries, motels, septic tanks, marinas and city sewer plants serving Tahlequah, Watts and Westville in Oklahoma are partly responsible for pollution in the Illinois River watershed.

Joyner’s ruling will help the poultry companies in collecting evidence in the case, said John Elrod, a Fayetteville attorney who represents Simmons Foods.

The poultry companies will be able to collect evidence more easily from businesses such as Greenleaf Nursery Co., a business covering 600 acres that operates on the north end of Lake Tenkiller. The Illinois River empties into the lake south of Tahlequah.

“Our ability to take a hard look at what they contribute and how long they’ve done it is going to be a lot easier,” Elrod said.

Joyner on Thursday gave the poultry companies permission to add new third-party defendants. The “most significant” of those will be the Oklahoma counties of Adair, Cherokee, Delaware, and Sequoyah and public works authorities in Tahlequah and Westville, Wilkerson said.

None of the third-party defendants listed by the poultry companies was in Arkansas, a point Joyner noted twice during an Aug. 10 hearing in Tulsa on the thirdparty defendant issue.

Edmondson also noted the absence of Arkansas third parties on Thursday.

“This alone is an obvious signal as to the intent of this plan,” Edmondson said. “This was nothing more than political pressure, and it failed.”

Elrod laughed when he heard some of what Edmondson said about Thursday’s ruling.

“One of my personal goals is to restore some degree of civil discussion [to the case ],” Elrod said in a telephone interview. “It may be impossible, but I’m going to try.”

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## MOARK, RESIDENTS CAN'T STRIKE DEAL

By Jeff Lehr The Joplin Globe

Posted on September 22, 2006

URL: [http://www.joplinglobe.com/local/local\\_story\\_265013224](http://www.joplinglobe.com/local/local_story_265013224)

NEOSHO, Mo. - A group of Newton County residents opposed to an expansion of Moark Productions Inc.'s egg operation near Neosho were unable to settle their differences with the company during a closed-door meeting on Thursday.

"They really haven't given us anything," one of the residents, Richard Betz, said after more than four hours of talks with representatives from Moark, the Missouri Department of Natural Resources and the state attorney general's office on the Crowder College campus.

The meeting was called to see if an agreement could be reached between the company and Southwest Missouri Citizens Against Local Moark Expansion regarding the poultry operation at Moark Seven Farms just outside the city limits of Neosho on its southeast side.

The residents' group has appealed the state's issuance last year of two permits to Moark for expansion of operations there.

The company obtained construction and operating permits to expand its operation with 1.3 million chickens to 3.9 million chickens. Five of 13 new houses, with a capacity of 200,000 layer chickens each, have already been built.

Residents in the area are concerned with odors produced by the operation and other impacts the manure produced there may have on the local environment. They say the operation already emits strongly offensive odors that impact the quality of life in the area and property values.

There were 38 odor complaints registered with DNR in August alone.

The group's appeal is set to be heard Sept. 28 by the Missouri Administrative Hearing Commission in Springfield. Thursday's meeting was intended as a last-minute effort to settle differences and avoid the administrative hearing.

After four hours of talks, Moark offered four concessions to the group, according to the six members of the residents' group who are considered petitioners for the purposes of the appeal and were present inside the closed-door meeting. Those residents are Betz, Rick Bussey, Dave Boyt, Peter Boyt, Lee Van Otterloo and Robert Carter.

The company reportedly offered:

To limit the number of chickens at the operation to 3 million layers and 218,000 pullets.

To compost at the operation no more than 10 percent of the amount of manure produced there.

To put in writing for the first time what its plans are for phasing out older chicken houses at Moark Seven Farms as the new houses are built.

To allow the Newton County Health Department to inspect records of operations.

The six petitioners caucused with other members outside the meeting before making a counteroffer.

The residents' group asked that the size of the operation be capped at 2.6 million layers and 140,000 pullets and that the company halt composting of manure there. The company declined to make such concessions.

"I think everybody made a good-faith effort to sit down and talk," said Kurt Schaefer, general counsel for DNR.

He termed Moark's offer "pretty reasonable" but acknowledged it fell short of the minimum of assurances the residents group is seeking.

Dan Hudgens, regional manager for Moark, said the two sides were not that far apart on numbers of chickens at the operation. He said some of the requests of petitioners, though, concern legal issues the company cannot address. Hudgens also expressed confidence that the operating permit Moark obtained is within state laws and rules.

Moark's composting of manure at Seven Farms is a primary issue because it is the source of most of the odor pollution, according to the petitioners.

The new houses are designed to cut down on the generation of odors, according to Hudgens.

Betz said the suspicion is that the company wants to keep the composter in operation so it can transport manure from its poultry operation at Anderson in McDonald County there for composting.

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## OUR VIEW: EYES OF NATION ON THE OZARKS

Springfield News-Leader

Posted on September 22, 2006

URL: [http://www.news-](http://www.news-leader.com/apps/pbcs.dll/article?AID=/20060922/OPINIONS01/609220327/1006/OPINIONS)

[leader.com/apps/pbcs.dll/article?AID=/20060922/OPINIONS01/609220327/1006/OPINIONS](http://www.news-leader.com/apps/pbcs.dll/article?AID=/20060922/OPINIONS01/609220327/1006/OPINIONS)

*Wonders of Wildlife is the perfect host for National Hunting and Fishing Day.*

There's no better place than the Ozarks to celebrate our nation's love affair with hunting and fishing.

Thanks to the efforts of the folks at Wonders of Wildlife, the country's eyes will be upon us on Saturday during National Hunting and Fishing Day. In an effort to bring more attention back to the day first declared by President Richard Nixon in 1972, Wonders of Wildlife this year became the national home to the day that celebrates America's outdoors heritage.

It's a good fit. The museum is the perfect place to tell the story of the incredible importance outdoors enthusiasts play in funding conservation efforts throughout the nation. Its exhibits combine to tell us about our nation's history, the indigenous wildlife around us and the effect of man on the natural habitat that animals depend upon for life.

The Ozarks is a perfect place to tell that story. Whether its our beautiful streams, our rolling farmland or our plentiful forests, we have the sorts of natural habitat that just draw people outdoors to experience all of our earth's natural beauty. Whether you're a hunter is immaterial to the celebration slated for Saturday. The fact is, hunters and anglers contribute millions of dollars every year to the cause of conservation that allows all of us to take a hike and get back to nature. Conservation efforts in our country benefit to the tune of \$1.7 billion a year from fees collected by hunters and anglers paying for licenses, according to the U.S. Fish and Wildlife Service.

They don't just preserve land to create more hunting opportunities, they also pay for trails and open spaces and other beautification efforts that non-hunters can enjoy.

The event will focus on education and safety, with opportunities for children to learn about shooting and fishing the right way. And the increased traffic and focus on Wonders of Wildlife will be a positive experience for Springfield. The museum's attendance rose last year, and national attention will help it continue to bring tourists to town.

Celebrate an important element of the heritage of the Ozarks on Saturday by celebrating hunting and fishing. Go to the museum. Take a nice walk outdoors. Breathe in the fresh air, and thank God we live in such a beautiful place.

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## RIPPLE EFFECT

By MARSHA L. MELNICHAK Northwest Arkansas Times

Posted on September 22, 2006

URL: <http://www.nwanews.com/nwat/News/45136/>

Final decisions by the Fayetteville City Council about a new compensation plan could mean changes in any, all or none of the rates residents pay for water, sewer and solid waste services.

However, the committee looking at the plan is not ready to pass any recommendation to the full council until they know better what the impact could be on those enterprise fund rates.

Consultants have recommended changes in Fayetteville's compensation plan that would cost the city about \$ 2. 1 million. That figure reflects salary adjustments only and does not include benefit costs.

The three council members on the compensation committee, Bobby Ferrell, Robert "Swifty" Reynolds and Lioneld Jordan, all made it clear at a meeting on Thursday that they want more information about funding and they do not want to raise rates.

The committee members will meet again with Gary Dumas, Fayetteville director of operations, before they bring any plan recommendation to the council.

Dumas said he will bring them information about specific fund impact, "with most likely a multiple year implementation."

That meeting will be at 4: 30 p. m. Oct. 9. The following day, finance and internal services Director Paul Becker will meet with the full council at an agenda session with the initial 2007 budget discussion, including the possible impact of changes in the compensation plan.

Management Advisory Group Inc. recommended to the committee that the city adopt a range penetration implementation strategy for employees who receive merit pay. With that plan, new pay ranges for merit employees would be based on a formula related to where they are in their current pay range.

Michele Bechhold, the city's human resources director, said the strategy "strives to keep them in a position to the market and not let them lose ground."

The advisory group recommends a new step plan based on time in rank for fire and police employees. They are currently on a step plan rather than a merit plan.

Ferrell, chairman of the compensation committee, said he wanted to know how staff would recommend implementing the program.

“ I think it just stands to reason to get an idea of what it is and how we’re going to get it, ” he said. “ I want to see what the numbers are. ”

“ I’ve gotta know where we’re going with this thing, ” said Jordan.

Dumas said there will be some impact on rates but “ not that great. ”

Becker said he thought there would be some impact, but it would be “ very, very small. ”

The finance director said he believes the \$ 2. 1 million can be funded. He said he would recommend implementing the consultant’s recommendation over two or three years.

“ I can assure you that the general fund at this point cannot absorb its share of that \$ 2. 1 million in one year, ” Dumas said.

As to possible rate increases, Reynolds said the committee needed an answer from Mayor Dan Coody, Becker and Dumas to the question, “ Where are we going to get 2. 1 million without raising fees ?”

For Jordan, it was no question at all.

“ I’m telling you, we told them (voters in the sales tax election ) we’d raise it (sewer rates ) 20 percent or whatever it was, and that’s all I’m doing. ”

The 20-percent sewer rate increase to which Jordan referred would be by 2009, and it would not go into effect immediately, Dumas said.

“ I don’t favor any raises in anything, but I want to see the numbers, ” Ferrell said after the meeting.

The \$ 2. 1 million in the final draft of the Management Advisory Group report is higher than the \$ 1. 8 million expected after the last compensation meeting. Dumas said the large amount reflects changes in the step plan and possibly some minor adjustments in the strategy for the merit pay employees.

“ It’s going to hurt, ” Reynolds said softly as the merit plan was explained.

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## **WATER**

By John Hacker The Carthage Press

Posted on September 22, 2006

URL: <http://www.carthagepress.com/articles/2006/09/21/news/03%20lake.txt>

Ground water sources will not be sufficient to supply the growing populations of southwest Missouri, southeast Kansas and northeast Oklahoma for the next 50 years, so governments should start finding new sources of water now, while encouraging conservation of the water supplies we have now.

The Tri-State Water Resources Coalition, a not-for-profit committee of area cities and water providers, met on Wednesday at Missouri Southern State University to hear the results of a study into potential sources of water and how much it will cost to get that water to the customers who need it.

Coalition Chairman Bob Nichols said the study's results sent a clear message to water suppliers and the public.

“The next water we get is going to be very expensive and we'd be well advised to save some of this cheap water and use it wisely,” Nichols said. “The fact remains we're going to have to learn what that word (conservation) means, and I don't know how to get that message out. There is no question we need to develop a program to sell water conservation. There is information available and we need to get it out.”

Larry Chappelle, with Black and Veatch, the firm hired by the Coalition and the U.S. Army Corps of Engineers to study the water needs of this region, said the study found that ground water sources will not be sufficient to supply the expected population through 2050. The study cost \$200,000, half of which was provided by the Army Corps of Engineers and half by Coalition members.

\_\_Chappelle said the study estimated that the population of the region covered by the Coalition will rise to more than 500,000 by 2050, and that population will need an addition 66 million gallons of water more per day than the current population uses.\_\_The Coalition's coverage area includes all of Jasper, Newton and McDonald counties, and parts of Barry, Lawrence and Barton counties in Missouri; parts of Cherokee and Crawford counties in Kansas and most of Ottawa County in Oklahoma.

Members of the coalition are Missouri American Water Company, which serves Joplin; the cities of Carthage, Carl Junction, Webb City, Noel, Pittsburg, Kan., Miami, Okla.; rural water districts in Jasper County and Cherokee County, Kan., and others.\_\_Chappelle said the Coalition's technical committee identified six options for getting more water, Grand Lake O' the Cherokees in Oklahoma; Truman Lake, Stockton Lake and Table Rock Lake in Missouri; using a combination of Grand Lake, Stockton Lake and Table Rock Lake; or building a new reservoir.\_\_Raw water would be piped from one of those sources to a treatment system, then distributed to the member cities and water providers.

The initial costs of the different options range from \$1.2 billion for piping water from Grand Lake, to \$1.6 billion for piping water from Truman Lake.\_\_Chappelle said each option has its own stumbling blocks which would delay implimentation. He said Oklahoma state law currently prohibits pumping water from Oklahoma sources to receivers outside the state. He said the distance is prohibitive for piping water from Truman Lake, while water piped from Table Rock Lake will have to be pumped over a high ridge.\_\_Another challenge is that only Grand Lake has enough water to meet the estimated needs of the area by itself. None of the Missouri reservoirs have the required excess storage to meet the estimated 66 million gallons of water people will consume each day on top of the water they consume today.

Chappelle said the study showed that three of the six alternatives will best meet the needs of the area; alternative one, which is to take the water from the Grand Lake; alternative four, which is a combination of Grand Lake, Stockton Lake and Table Rock Lake; and alternative six, which is to build one or more new reservoirs.\_\_Chappelle said the Coalition should pay for a more detailed study of the water problem to revise and review the projected water demands.

\_\_”The big hurdle now for the organization is to figure out how we are going to fund these studies,” Nichols said. “The study that you just heard this evening was a \$200,000 study with the federal government putting up half the funds, and the coalition putting up the other half.

“I’m satisfied these additional studies will cost at least that much if not even more. So if anybody’s got any suggestions as to how we can come up with the money, we’d love to hear from you.” \_\_Nichols said the new studies should look at which of the potential sources, identified in Chappelle’s report is the most feasible\_\_”Subject to our finding the financial resources to do it, we need to make a more detailed study of seeking more water out of Table Rock, and investigate a new reservoir or reservoirs, it could take more than one to meet our needs,” Nichols said. “We plan to proceed on that basis, in addition we’re going to explore Grand Lake. As Larry noted, there is a state moratorium that prohibits transporting water across the state line. Thanks to Jerry Rush, of Miami, we have an appointment with Oklahoma officials on Friday to explore whether there is some way to get a waiver for taking water to Missouri and Kansas. We don’t have any idea how those discussions will come out.

“We have met with the Grand River Dam Authority, they have expressed an interest in making water available, subject to getting over this state law hurdle. If we get some indication that they will permit us to transport water out of the state, then we certainly will explore it.” \_\_The Coalition is a not-for-profit organization that was founded in 2002. The goal of the Coalition is to develop a good quality water resource to provide for the area communities and facilitate economic growth of the geographic area. Membership is comprised of private and public water suppliers, municipalities, businesses and various interested groups.

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