



December 14, 2020

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Submitted via e-mail: ecomment@pa.gov

Re: DEP Draft Report – Middle Lehigh River Tributaries (Carbon County) and Beaver Creek Petition (Delaware County); Noticed in November 14, PA Bulletin

Dear Mr. Brickner,

On behalf of the Delaware Riverkeeper Network (DRN) and our 23,000 members and volunteers, we are writing with comments regarding the November 12, 2020 PA Bulletin notice alerting a 30-day comment period on DEP draft stream evaluation reports for Beaver Creek in Delaware County and Middle Lehigh River Tributaries located in Carbon County (Bear Creek, Nesquehoning Creek, Mahoning Creek basins). DRN appreciates the opportunity to comment and review DEP's draft reports and in advance we note our review was cut short due to only having 30 day windows. DRN has already requested and submitted a letter to the DEP (dated Dec 9, 2020 – echoing a 60-day extension request that was submitted by the petitioner, Beaver Valley Conservancy to the Beaver Creek Draft report). This original community led petition was submitted by the Beaver Valley Conservancy in June 2014. Delaware Riverkeeper Network submitted support for the Conservancy's petition at that time and commented on the use of "softer qualifiers" beyond DEP benthic metrics for that petition. We are hopeful the DEP will provide the conservancy at least 60 days to submit important data that has been generated since the Conservancy's petition so that the DEP has current information before finalizing its report. We understand that the petitioner had not been aware of the draft report until we reached out and that was several weeks into the open comment period. With COVID and other constraints it would only be fair, in our opinion to allow more petitioner comments for the Beaver Creek Conservancy as they are requesting, especially in light of the successful land preservation goals and efforts they have accomplished since 2014 that would match perfectly with the watershed protection goals DEP has proposed under consideration in the draft report.

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Ensuring our water policies meet up and match with land protection goals is critical, especially at a time when it is quite clear crowded populations are yearning for and seeking outdoor recreation during a pandemic. In the southeast of the state and beyond our existing Pennsylvania state parks, river and tributary access areas, launch put ins, and protected private conservation lands have been overwhelmed with visitors seeking outdoor activity and places of nature to enjoy during the pandemic. When comparing visitors to 2019, Pennsylvania state parks saw a 29 percent increase in visitors compared to March 2019, a 13.3 percent increase in visitors over April 2019, and a 36 percent increase in visitors over May 2019.¹ Due to limited land for development and/or open space, land values in the County remain high. Delaware County is highly urbanized and losing open land to development at an increasing rate. According to data presented in the County comprehensive plan, Delaware County 2035, only 4% of the County's land area, or 4,721 acres, is not otherwise developed or already protected.² This is a perfect opportunity for DEP to complement the efforts of the conservation community and its sister organizations (DCNR and PFBC) to ensure more conservation through the regulatory mechanisms that exist and are available – in this case water protections that help enhance and strengthen the land protections underway. We do hope for the Beaver Creek petitioner you allow more time.

The majority of Delaware Riverkeeper Network comments in this correspondence lay out comments for the draft stream redesignation reports for the Carbon County Middle Lehigh stream bundle. As a review, DRN provided comment and support for the November 17, 2018 PA Bulletin announcement that investigations were underway for these important Lehigh tributaries and supplied information on additional softer qualifiers to be considered as the DEP worked through its scientific and regulatory process. We will attach that comment here for reference.

It is not clear from the report when DEP submitted these streams to the existing use table and DRN did not have time to go back and check the table. Bear Creek (04123) basin and the Nesquehoning Creek tributaries (Jeans Run, Broad Run, Dennison Run, Bear Creek (04115), and Grassy Meadow Run are designated HQ-CWF, MF. The Mahoning Creek tributaries (Stewart Creek, UNT 04055, and UNT 04060) are designated CWF, MF. All of these streams were surveyed for benthics by PADEP back in 2005. UNT 04055 was further prioritized by DEP in response to a permit application within the basin. DRN is delighted to see DEP utilizing a variety of available qualifiers beyond just the aquatic life **qualifier to propose redesignation in total for 44.8 miles of these waterways to EV waters and 2.0 miles of these waters to HQ-CWF waters to Chapter 93.**

Broken out, DEP found that 37.2 miles (of the total 44.8 miles proposed) qualify as EV due to the aquatic life use qualifier and excellent benthic diversity that scored at least 92%. DEP notes it used Wild Creek as the reference stream located in Carbon County and that scored well above the top 25th percentile of Pennsylvania EV reference streams. Regarding this top 25% criterion, DRN shares again that we believe that a larger percentage of existing EV streams should be allowed to serve as EV rather than just the top 25% that DEP has been using in practice as not to “dilute the EV

¹ <https://www.dcnr.pa.gov/GoodNatured/Pages/Article.aspx?post=134>

² https://www.delcopa.gov/planning/pubs/OSRGP/Vol-I_OpenSpaceAndRecreationPlan.pdf

designation". DRN did not have the time during the 30-day comment to examine the reference stream and the data more closely to provide additional input on this aquatic life use criterion. It is not clear to DRN on quick review if after the 2005 data was collected, were the 37.2 miles of streams with EV put on the EU table shortly after the sampling or were they submitted on the EU table in 2017?

It would be interesting to include in the report the permit type and some details on that potential discharger that was being considered that expedited review of a certain stretch of this package. DRN is grateful DEP underwent that EU determination when a threat was being considered.

DEP also reviewed PAFBC data and its request for Class A of Stewart Creek submitted July 18, 2015 to meet Class A designation – adding the 2.0 stream miles to qualify as HQ waters due to Class A designation. DRN would note, as we have in the past, that the interim step of reviewing PFBC data may not be required in the regulations as it adds a lag time from when PFBC finds Class A to when the DEP grants this designation. We would urge the DEP to consider its sister agency FBC data at face value as we believe the regulations intended, especially in light of the strapped budgets and staffing constraints that are unfortunately on the DEP. PFBC share their raw data and information with the DEP and that seems should expedite the Class A/HQ Designation Process. It is not clear from the draft report that in 2015 when PFBC recommended HQ due to Class A (based on 2013 fish surveys of biomass) that that automatically put Stewart Creek onto the protected existing use list or if that happened several years later. Again DRN would urge prompt EU listings to best protect the stream.

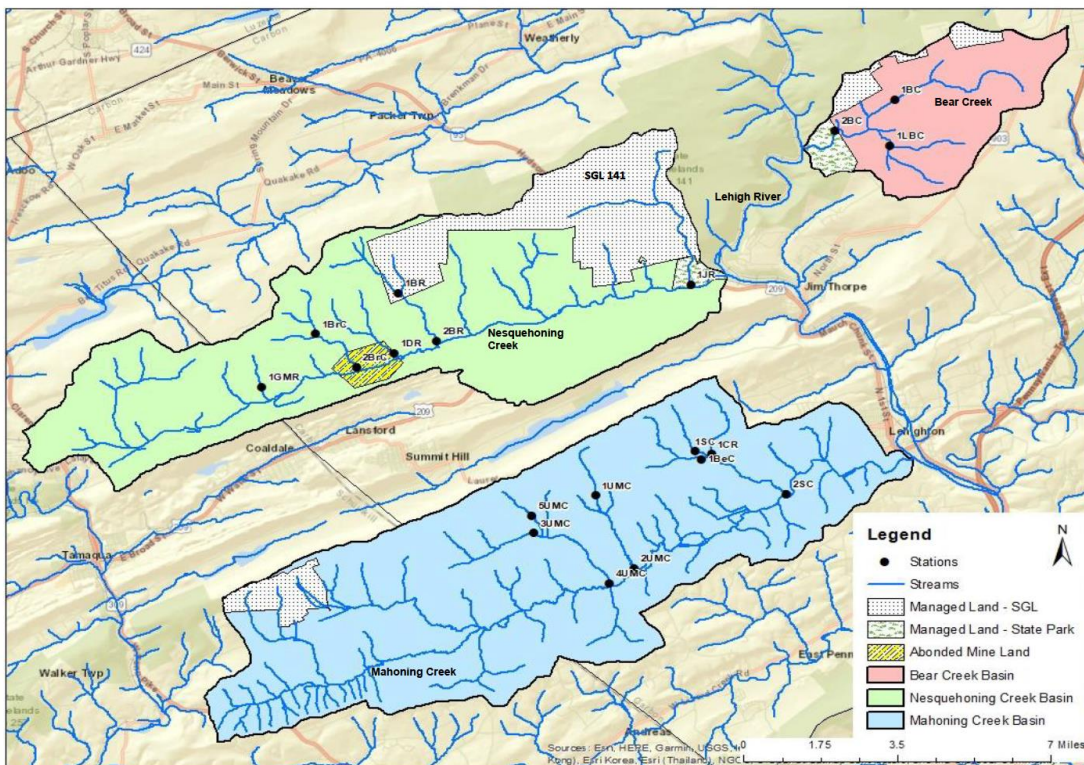


Figure 1. Middle Lehigh Tributaries Survey – Watersheds and Stations Map. Refer to Table 1 for station location descriptions.

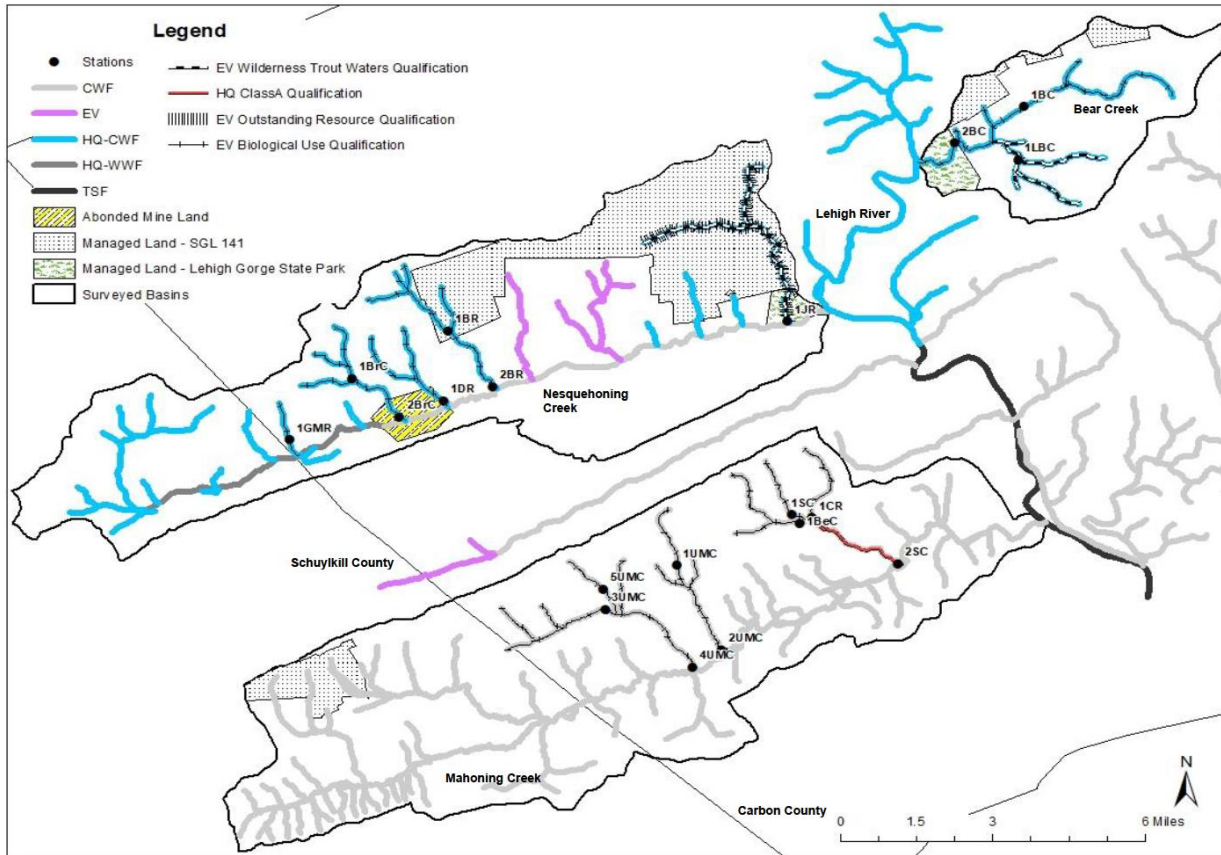


Figure 2. Middle Lehigh Tributaries Survey – Redesignation Recommendations. Refer to Tables 1 - 4 for station location descriptions.

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Based on the map above – it is unclear why in the Nesquehoning Creek - proposed HQ-CWF segments that do not have a sample station are proposed just for HQ and not for EV (we are referring to the very headwaters area and the small tribs near 1GMR and then the tribs between the purple EV tribs and the ORW trib. It appears at least one of those tribs is largely in SGL 141 and it's also noted in the report that most of these tributaries are 94% to 99% forested and with no permitted discharges which would seem to reflect although they did not have sample stations directly on the reaches (which is understood not every segment could be completely sampled) perhaps EV designation would be more appropriate for those feeder tributaries?

With DEP's newer GIS and mapping systems it would be really helpful for reviewers to be able to see land use and forested coverages as part of the analysis with these maps and stream segments if available to help dive deeper into the segmentation. DEP has done a great job with its interactive benthic maps perhaps those maps could be incorporated into these reports in the future with links if they are readily available?

It was positive to see that all stations with the exception of 2SC and 3UMC scored as having optimal habitat scores greater than 192 for the 12 habitat parameters.

Regarding other unique softer qualifiers:

Outstanding Resource Waters – DEP proposes a total of 5.0 stream miles qualify as EV waters under this ORW criterion.

For SGL 141 it is positive to see DEP noting how the gamelands with their protective buffer zones qualify some of Jeans Run for EV designation under ORW. We are unclear why DEP does not further provide Broad Run tribs in SGL 141 with the same ORW as wouldn't those streams also have the same buffer requirements in the SGL – DEP notes these tribs are not substantial? Further explanation would be helpful.

It seems a back step for DEP to suggest that DCNR in the Lehigh Gorge State Park Resource Management Plan (RMP) does not qualify as DEP states the RMP does not “address watershed corridor protection.” But then DEP also says “the RMP describes objectives to protect, maintain and conserve fisheries, aquatic life and water uses; however, none address the protection of specific watershed corridors within the surveyed portions of Jeans Run and Bear Creek.” Several years ago DEP stated that an RMP is needed for DCNR protect lands to count; as parks develop these RMPs now it seems that DEP is getting fussier as to which RMP's are qualifiers and which are not? This rationale is not clear especially in light of DCNR's general goals to protect the waters where state lands are present. We recommend DEP considers this RMP and all RMPs by DCNR as an ORW in spirit of DCNRs protection goals and mission.

The DEP does state that Jeans Run Management Unit describes that “vegetation shall be left undisturbed to allow natural succession. The use of the natural succession would provide water quality protective measures for watershed corridors of Jeans Run and would qualify the basin for EV designation under this criterion.” Again, in general doesn't DCNR usually follow this guidance? Even if lands are routinely logged, doesn't DCNR require protections to protect the waterbodies in those regions and also allow natural succession to occur? DRN would suggest being more generous with these RMP plans.

Outstanding Local Resource Waters --- DEP proposed Zero waters Meet this Criterion

DRN would echo as in the past that conservation easements that are held by private trusts should be given the same consideration as that of easements held by government entities. Conservancies and DRN have laid out that argument in the last triennial review in detail in regard to the legally binding easement process. DCNR monies and government monies donated to these land trusts for land conservation also have stringent requirements that go along with the deeds.

It appears and DEP states “it was unable to identify such protective measures within the basins surveyed.” DRN is wondering if land trusts were in touch or what review was done to ensure indeed there were no coordinated water quality protective measures for this criterion. There was a note in the narrative about groundwater protection wells in a certain area of this bundle. Wouldn't that help qualify these waters under this criterion?

As indicated in our past comment to this bundle we had noted: *DRN briefly investigated Natural Lands Trust (NLT) mapping through the DRWI to determine if any easements may be held by NLT in these watersheds. We were not able to see all updated information but we would encourage that with all of the DRWI land trusts working collaboratively and also with DCNR's easement assistance through grants and PALTA and the interest of the land conservation community in protecting water, there may be more information on coordinated land trust protections to add to the SGL and Lehigh Gorge park areas noted above that too have strong water protection goals as part of the conservation easement agreements <https://conservationtools.org/>. DCNR has also launched an interactive mapping tool to show where grants were provided that may be good source of information and consultation with DCNR could assist in ensuring all sections are considered for these watersheds. DCNR has confirmed that through their grant program that is used to preserve land, water protection measures are required and part of the agreements. Therefore these easements along with other privately held conservation easements DRN believes should be considered by the PADEP when predesignating streams using other qualifiers beyond the benthics <https://www.dcnr.pa.gov/Communities/Grants/LandAcquisitionGrants/Pages/default.aspx> (See DRN public comment from water quality standards review re: easements, December 2017).*

The water is a surface water of exceptional recreational significance – DEP Proposes No Waters qualify under this criterion

DRN believes the nature of Lehigh Gorge State Park and the unique properties of this region should be considered an adequate qualifier for this criterion. DEP states “While Lehigh Gorge State Park and SGL 141 offer recreational opps of whitewater rafting, waterfall hikes, scenic overlooks and fishing and hunting opps within managed boundaries, these activities are not concentrated in areas of those basins surveyed.” This seems confusing and is not clear especially based on the maps showing the Gorge and the SGL overlays and how tributaries and segments flow through these areas.

Bear Creek (04123) and Jeans Run flow through Lehigh Gorge State Park. Lehigh Gorge State Park encompasses 6,107 acres spread along the length of the gorge and features sights like Buttermilk Falls, Glen Onoko Falls, Lehigh Gorge Trail, and the Turn Hole Tunnel. These watersheds are popular recreational areas because of their scenic and high diversity value. Other popular recreational activities include fishing, whitewater rafting, and hiking. In addition, Broad Run and Jeans Run flow through State Game Land 141. State Game Land (SGL) 141 is comprised of 17,047.91 acres and is a popular hunting area. Black bear, gray squirrel, whitetail deer, ruffed grouse, wild turkey, coyote, bobcat, and gray fox can be found in the forested areas, while raccoon, mink, waterfowl, and muskrat reside in and around streams and the Lehigh River.

Wilderness Trout Stream by FBC – DEP proposes 8.7 stream miles qualify as EV under this criterion

DRN is pleased to see these designations for excellent and wild experiences in this region.

Thank you for your time and consideration of these comments to secure EV protections to these deserving tributaries of Bear Creek and the tributaries to Nesquehoning Creek and Mahoning Creek promptly. We appreciate your work to promptly finalize these upgrades and we wish we had had more time to dig deeper into the reports. If you would like to discuss these points or need any clarifications please do not hesitate to reach out to Faith Zerbe, DRN's Director of Monitoring at

faith@delawariverkeeper.org, 215-369-1188 ext. 110 or to me at
keepermaya@delawariverkeeper.org or at 215-369-1188 ext. 102.

Sincerely,

A handwritten signature in blue ink that reads "Maya K. van Rossum" followed by a horizontal line.

Maya K. van Rossum
the Delaware Riverkeeper

cc: PFBC
DCNR
EPA