

BEFORE THE DELAWARE RIVER BASIN COMMISSION

Re: Amendment to the DRBC Comprehensive Plan to designate
Outstanding National Resource Waters and to provide for
protection of water quality in the Upper Delaware Basin

The Delaware Riverkeeper
The Watershed Association of the Delaware River

Petitioners

PETITION FOR CLASSIFYING DELAWARE RIVER MILES 330.7 to 209.5 AS
OUTSTANDING NATIONAL RESOURCE WATERS AND PROVIDING FOR IMMEDIATE AND
PERMANENT PROTECTION THEREOF.

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Pursuant to the Clean Water Act [40 CFR Ch. 1 (7-1-88) 131.12], the Delaware Riverkeeper and the Watershed Association of the Delaware River, affiliates of the American Littoral Society, hereby petition the Delaware River Basin Commission (DRBC) to commence proceedings under the Delaware River Basin Compact [PL 87-328], Sections 1.3(e), 3.1, 3.6(b), 3.8, 5.1-3, 7.1 and 13.1 and under the DRBC Rules of Practice and Procedure, Section 2-1.4 to amend the Delaware River Basin Comprehensive Plan:

- (1) to designate certain high quality Delaware River waters, in New York, New Jersey, and Pennsylvania as Outstanding National Resource Waters;
- (2) to secure permanent protection of these Outstanding National Resource Waters by establishing an anti-degradation policy and water quality standards equal to or above existing water quality;
- (3) to undertake a regional management program to protect these Outstanding Resource Waters from point source pollution and from stormwater and other non-point sources of pollution and to require best stormwater management practices;
- (4) to provide immediate interim protection against degradation of these outstanding national resource waters until revised water quality standards and a water quality management program are adopted.

I. LOCATION OF WATERS

Petitioners request that the DRBC designate as Outstanding National Resource Waters:

1. Delaware River mainstem, beginning with the upper border of the Upper Delaware Scenic and Recreational River (UDSRR) and ending with the lower border of the Middle Delaware Scenic and Recreational River (MDSRR), approximately river miles 330.7 through 209.5, and located in Delaware, Sullivan, and Orange Counties in New York state; Wayne, Pike, and Monroe Counties in the Commonwealth of Pennsylvania; and Sussex and Warren Counties in New Jersey state;

2. All the waters of each tributary flowing within the boundaries of the UDSRR, the Delaware Water Gap National Recreation Area (DWGNRA), and state lands adjacent to these boundaries, including but not limited to Stockport Creek, Blue Mill Stream, Nabbys Brook, Factory Creek, Equinunk Creek, Lordville Road, Abe Lord Creek, Bouchoux Creek, Snow Creek, Pea Brook, Houlihan Brook, Basket Creek, Little Equinunk Creek, Copley Creek, Hankins Creek, Hollister Creek, Callicoon Creek, Schoolhouse Run, Beaverdam Creek, Mitchell Pond Creek, Calkins Creek, Hills Brooks, Peggy Runway, Tenmile River, Masthope Creek, Grassy Swamp Brook, Lackawaxen River, Beaver Brook, Shohola Creek, Walker Lake Creek, Pond Eddy Creek, Mill Brook, Fish Cabin Creek, Mongaup River, Cummins Creek, Crawford Branch, Deep Brook, Vandermark Creek, Shimer's Brook, Sawkill Creek, Raymond Kill Creek, Conashaugh Creek, Dry Brook, Adams Creek, Dingman's Creek, Hornbeck's Creek, Tom's Creek, Randall Creek, Flat Brook, Bushkill Creek, Vancampen's Brook, Brodhead Creek, Cherry Creek, Dunnfield Creek, and Caledonia Creek.

II. AUTHORITY

1. Federal regulations provide for the classification of certain waters as Outstanding National Resource Waters. The Federal Clean Water Act's Antidegradation Policy states that "Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected," and "Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected" [40 CFR Ch. 1 (7-1-88) 131.12].

2. When a water is classified an outstanding resource water, standards must be adopted which clearly maintain and protect the outstanding resource values. "...the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and

reasonable best management practices for non-point source control" [40 CFR 131.12(2)]. When the DRBC adopts the water quality standards and management practices appropriate to outstanding resource waters, the States of New York, New Jersey, and Pennsylvania will be required to adopt corollary standards and practices as signatory parties under Section 5.3 of the Compact.

3. Section 3.8 of the Compact authorizes the Commission to protect the integrity of the comprehensive plan, "whenever it finds and determines that the project would substantially impair or conflict with such plan." Under DRBC Resolution 62-4, March 28, 1962, and Dockets D-78-51-CP, July 26, 1978; D-87,65-CP Revised, March 23, 1988; D-87-65-CP, October 28, 1987, the DRBC has incorporated the UDSRR, the DWGNRA and their Management Plans into the DRB Comprehensive Plan. One of the objectives of Upper Delaware Management Plan is to "maintain or improve the existing quality of the water in the Upper Delaware River and to ensure that water resources development on tributaries of the Upper Delaware River do not invade the area or unreasonably diminish the resource values for which the river was designated." [page 65]. The Middle Delaware General Management Plan states: "The National Park Service (NPS) will consult with the Delaware River Basin Commission and other appropriate federal, state, and local agencies within the river basin to maintain or improve existing water quality and to eliminate or diminish water pollution." [page 25].

4. The State of Pennsylvania pledged additional support to planning efforts to improve and coordinate land use policies which would protect water quality in the tributaries and mainstem in the UDSRR. [Governor Casey's Executive Order 1989-2].

5. The Delaware River Basin Commission is authorized "to control future pollution and abate existing pollution in the waters of the basin whenever it determines that the effectuation of the Comprehensive Plan so requires," and "may classify the waters of the basin, and establish standards of treatment of sewage, industrial or other waste, according to such classes including allowance for the variable factors of surface and ground waters, such as size of the stream, flow, movement, location, character, self-purification, and

usage of the waters affected" [DRB Compact 5.2]. The DRBC may "establish standards of planning, design, and operation of all projects and facilities in the basin which affect its water resources" [DRB Compact 3.6(b)]. The DRBC Water Resources Program states, "...as part of its responsibilities for total water resource management within the framework of its Comprehensive Plan, the Commission will review and, as necessary, modify its water quality standards for both surface and underground waters." [Program, DRBC, 1983, III-15].

6. A purpose of the Compact is "to encourage and provide for the planning, conservation, utilization, development, management, and control of the water resources of the basin; to provide for cooperative planning and action by the signatory parties with respect to such water resources..." [DRB Compact 1.3(e)]. New York, New Jersey, Pennsylvania, Delaware, and the United States of America are the signatory parties. The waters of the river which are the subject of this petition are included in the water resources of the basin under the jurisdiction of the DRBC.

7. "It is the policy of the Commission to maintain the quality of interstate waters, where existing water quality is better than the established stream quality objectives" [DRBC Water Code, 3.1.1]. "Polluting matter discharging into any intrastate tributary shall be treated to that degree, if any, necessary to maintain the waters...in a condition at least equal to the clean and sanitary condition of the waters of the Delaware River immediately above the confluence of such tributary" [DRBC Water Code 3.10.3(c)].

8. Any interested party may petition the DRBC to amend the Comprehensive Plan so as to effect any activity, including the adoption of water quality classifications and standards and developing a management program. [DRBC Rules of Practice and Procedure 2-1.4 and DRB Compact Section 1.2(g)].

III. VALUES OF THESE WATERS

The identified high quality waters are of exceptional recreational, scenic, and ecological significance, as evidenced by Congress naming 93% of the mainstem from Hancock to the Gap as a

National Scenic and Recreational River. Located near two of the nation's largest population centers, New York City and Philadelphia, these waters are one of the few National Wild and Scenic Rivers accessible to so many people with such diverse socio-economic profiles. Up to three million visitors visit the scenic and recreational segments and that figure is predicted to increase to as high as eight million over the next decade.

The outstanding resources here are irreplaceable. Much of the watershed that drains into the USDRR, and the mainstem south to Callicoon, is a coldwater fishery. Some of the finest trout fishing in the northeast is found in this segment, which supports an abundant self-sustaining population of rainbow trout and brown trout. Many of the tributaries support spawning and nursery areas for brook trout as well.

Commercial eel fishing in the Upper Delaware consists of five eel weirs and/or pots in the river and more on the tributaries in New York and Pennsylvania.

South of Callicoon, a mainstem warm water fishery supports smallmouth bass, brown trout, some rainbow trout, as well as many other species of fish and is well known as a sport fishery. Flat Brook, known as the best trout stream in New Jersey, drains into the river at Wallpack Bend.

The American shad uses the entire stretch as a key spawning and nursery habitat, which is rare since most northeastern rivers are dammed or have significant barriers, such as industrial pollution, which do not allow shad to migrate upstream [FEIS, UDSRR, 1987].

The river corridor supports important threatened and endangered plant and animal species. For the American bald eagle, the valley is a critical river-dependent wintering habitat.

There is a high level of water-based and water related recreation in this stretch, including swimming, boating and fishing. There are resorts, campgrounds, picnic areas and numerous canoe liveries. Adventure rafting in the rapids of the river (such as Skinner's Falls), especially after reservoir releases upstream, kayaking, and canoeing are well-established activities. Scuba and skin diving are popular in the Narrowsburg Pool, the deepest pool in

the entire Delaware Basin. There are public beaches at Port Jervis, Milford and Smithfield.

These waters touch state and federal lands. Just above Port Jervis the State of Pennsylvania owns 4,391 acres adjacent to the river which are state game lands and state forest. New York owns state forest lands along the river at the southern end of Delaware County. The National Park Service owns and manages 70,000 acres comprising the DWGNRA surrounding the MDSRR. New Jersey maintains Worthington State Forest and Dunnfield Creek Natural Area at the southern end of the MDSRR. PA, NJ and NY each own more land within the watershed which are maintained as state forests, parks, nature areas or game lands. There is a section of the Appalachian Trail within the DWGNRA.

High scenic values pertain throughout this stretch. Particularly well known are the the Roebling Bridge, Hawks Nest, Dingman's Ferry Bridge and Dingman's Falls, Wallpack Bend, Sunfish Pond and the Delaware Water Gap.

Nature study and education centers are located along the river and the tributaries to take advantage of the protected habitat for river valley flora and fauna.

IV. PROTECTING THESE WATERS

A classification of outstanding national resource waters for river miles 330.7-209.5, and higher water quality standards for these waters and tributary segments draining into these waters are necessary in order to prevent irretrievable man-made impacts upon the excellent water quality found in this 121.2 mile stretch.

Interim protection is also necessary to prevent irretrievable loss of the excellent water quality found in this stretch, particularly in the MDSRR segment. Such interim protection, authorized under Section 3.8 of the Compact, could take the form of a hold-over on application approvals until higher standards and a management plan are in place. With the cooperation of signatory states, the interim measure would be of short duration.

Certain tributary watersheds are now being intensively developed and the cumulative impact of proposed and projected discharges

present an immediate threat. To adequately protect the proposed outstanding national resource waters, the hold-over must be extended to discharge permit applications pending for tributary segments outside the boundaries of the UDSRR and the DWGRNA that are under strong development pressure. For tributaries currently being impacted by intense land use activity, the interim protection should be extended to the headwaters. In particular, the interim protection should apply to the Bushkill, the Brodhead and mainstem river miles 258.4 to 250.

The impact on scenic and recreational waters from discharges into tributaries is clearly recognized in the Comprehensive Plan: "The headwaters of most of the streams that flow into the Delaware lie outside the national recreation area's boundary, and land use activities along those streams, including sewage and wastewater disposal, could affect water quality within the recreation area." [DWGNRA General Management Plan, p. 25].

The Commission is justified in upgrading present standards and taking temporary measures to protect the integrity of the Comprehensive Plan until a Management Plan is in place because:

- 1) Overall, existing water quality is generally higher than the water quality called for in adopted water quality standards.
- 2) Existing classifications, standards and management practices are not sufficient to protect these waters from increased degradation resulting from point source discharges of effluents and from stormwater and other non-point run-off.
- 3) Rapid residential and commercial development occurring in the Upper and Middle Delaware region poses a clear and present danger to water quality in the Delaware's National Scenic and Recreational segments.

These reasons are inter-related and taken together indicate that the integrity of the comprehensive plan is in jeopardy.

1. Existing Water Quality

As reported in the DRBC/NPS water quality monitoring program Report No. 11 (April, 1989), water quality in the entire stretch of meets federal "fishable and swimmable" water quality goals.

Macroinvertebrate data indicate that stream health is "excellent" in the UDSRR. Groundwater quality is also quite good, "and well within the drinking water standards established by EPA," assuring high quality base flow to the tributaries of the mainstem here [FEIS, UDSRR, NPS 1987].

The DRBC has identified the water uses to be protected in this segment to include maintenance and propagation of resident game, fish, and other aquatic life; maintenance and propagation of trout above river mile 289.9; passage, spawning, and nursery habitat for anadromous fish; wildlife and recreation. [DRBC Water Code 3.20.2 (B) and 3.20.3(B)].

There is an eight mile stretch of the river (miles 258.4-250), between the lower boundary of the UDSRR and the upper boundary of the MDSRR which is not designated scenic and recreational. Water quality in this segment is generally good. Efforts to decrease fecal coliform counts and industrial and commercial pollution have had success over the years since the DRBC Compact was signed. Since this area has the highest population concentration of the upper Delaware River, it also has the impacts of urbanization. Wastewater and industrial effluent discharges and non-point source pollution and stormwater flows threaten the river. Evidence of the direct impact of this short segment upon the MDSRR and the DWGNRA is the high bacteria count at Milford Beach during this and recent past summers. In this regard, it is imperative to recognize that these waters become scenic and recreational waters in a matter of minutes when they enter the MDSRR.

Except for problems stemming from the eight mile stretch, there are currently no significant impacts from pollution to the MDSRR (river miles 250-210). Water quality is rated from good to excellent as reported in the 1988 DRBC/NPS water quality monitoring program Report No. 11 (April, 1989).

2. Existing Protection

DRBC Water Code Sections 3.10, 320.2-5 are not sufficient to clearly maintain and protect the outstanding values of these waters. There is, however, high protective potential from the Scenic and

Recreational River designations of the two mainstem segments the management plans of the UDSRR and the DWGNRA, the incorporation of these plans into the DRB Comprehensive Plan, Governor Casey's Executive Order 1989-2, and the April 1988 Memorandum of Understanding between the DRBC and the NPS.

DRBC/NPS studies have documented both the high quality waters of the region and the threat development poses to this high water quality. As a result, both agencies are engaged in planning activities aimed at higher protection of the UDSRR and MDSRR segments. This petition acknowledges and supports the DRBC/NPS initiatives and requests that in addition to these ongoing planning activities, immediate steps be taken. Several factors indicate that strong, immediate action is needed:

- 1) Existing management policies and standards have permitted discharges immediately adjacent to and upstream of scenic and recreational waters which endanger these waters.
- 2) Violations of current discharge permits are on record and there is little indication that this situation will improve.
- 3) DRBC regulations require only wastewater treatment plants discharging over 50,000 gallons per day to undergo review under Section 3.8 of the Compact. For instance, in the last 12-month period twice as many permits for sewage treatment projects were reviewed and processed by PA Department of Environmental Resources than were referred to the DRBC for review. Those that are reviewed by the DRBC and signatory states are not now subject to special standards and review procedures that sufficiently protect the resource values of these waters.
- 4) There is no effective management program for assessing and mitigating cumulative impact of all effluent discharges into the two scenic segments and/or its tributaries.

3. Threats from unprecedented and rapid development

There are currently 21 active development projects that will impact the UDSRR. While the primary threat from these and future developments is from non-point source pollution, discharges could become a threat in the future. Putting stringent discharge and

stormwater management standards in place now will prevent this from happening and eliminate the expensive and not always effective step of correction after the fact.

Development pressure in the eight mile stretch and the DWGNRA is of a much greater magnitude. There are 190 active development projects slated for this region. These already locally approved expansions will seek to discharge unprecedented volumes of effluent into streams that impact the mainstem. The potential effluent discharge in the near future will increase by a total of four to eight million gallons a day if proposed projects are completed, posing a threat of irreparable and irretrievable damage from primary and, possibly more serious, secondary impacts. According to an NPS study:

"Rapid residential, commercial, and resort development on lands adjacent to the DWGNRA is threatening water quality in the Middle Delaware Scenic and Recreational River and its tributaries within the DWGNRA.

"Lands adjacent to DWGNRA are experiencing a phenomenal level of growth that is rapidly changing the area's rural character and threatening water quality in the Middle Delaware Scenic and Recreational River and its tributaries. The Recreation Area, encompassing some 70,000 acres along a 35-mile stretch of the Delaware River, is located within the region's fastest-growing counties. Pike and Monroe lead growth in Pennsylvania with population increases of 33% and 26% since 1980, and Sussex is one of New Jersey's fastest growing commuter counties. Close proximity to metropolitan New York, more affordable housing, lower taxes, and a clean, safe environment, are drawing ever-growing numbers of commuters and retirees to the area. Many vacation homes are being converted to year-round residences, residential and commercial development is rapidly expanding, and land is changing hands at record levels." [NPS, 1989]

V. STATEMENT OF INTEREST

Petitioners are organizations established to promote the conservation and wise use of the natural resources of the Delaware

River and to maintain and enhance environmental quality throughout the watershed.

1. Petitioner Watershed Association of the Delaware River, an affiliate of the American Littoral Society, is a non-profit membership organization formed to protect and preserve the Delaware River watershed's natural and cultural resources from depletion, pollution, and degradation; to actively promote the optimum aquatic health of the river and its watershed. The organization has 1400 members in the Delaware watershed, many of whom reside along this stretch of the river. Members use and enjoy the resources of the river and its tributaries including fishing, boating, hunting, swimming, and nature study. Some members study and support water-related cultural and historic preservation. Some members are engaged in scientific study and research of riverine waters.

2. Petitioner Delaware Riverkeeper is employed full time by the American Littoral Society to help protect the river and its habitat from threats of pollution and encroachment, to help improve water quality and preserve the river's ecosystem. The Delaware Riverkeeper represents a network of river protectors who monitor the health of the river and report incidents and occurrences which may endanger the ecology of the river and its watershed. The Riverkeeper takes action to improve and protect the Delaware River to insure the enforcement of the Clean Water Act and other environmental laws.

VI CONCLUSION

We submit this petition for immediate interim and permanent protection of the Upper and Middle Delaware waters at a time when existing, cost-effective technologies for meeting anti-degradation standards make it possible to effect these strategies without causing economic hardship. The introduction of innovative and alternate technologies which permit recycling of otherwise lost resources will bring to the Upper and Middle Delaware fulfillment of the original intent of the Clean Water Act. The actions herein requested will also fulfil the protective intent of the Scenic and Recreational River designations to preserve the outstanding resource values of these waters.

Respectfully submitted this 27th day of September, 1989,

Delaware Riverkeeper

Director, Watershed Association of the
Delaware River