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### **Exceptional Value stream status protected in Poconos**

**Philadelphia, PA** - On May 6, 2019, the Commonwealth Court of Pennsylvania ruled in favor of stream protection in the *Pocono Manor Investors, LP v. DEP, et al* case, dismissing the case against the Pennsylvania Department of Environmental Protection (DEP). Delaware Riverkeeper Network (DRN) had filed to Intervene in the case to support and protect Pennsylvania streams.

In the case, Pocono Manor Investors filed a Petition for Review against the Department of Environmental Protection and the Environmental Quality Board regarding the February 10, 2018 re-designation of a portion of the Swiftwater Creek basin as Exceptional Value (EV), worthy of the highest water quality protection in Pennsylvania. Pocono Manor asserted in its Petition for Review that the re-designation of Swiftwater Creek was contrary to various technical procedures and that its due process rights were violated. It also asserted it would be harmed by a designation upgrade to EV because it desired to discharge treated wastewater from a newly planned development project into Swiftwater Creek.

The Delaware Riverkeeper Network filed to Intervene in the case in support of the DEP's position that the case should be dismissed. DRN filed to intervene to protect water quality and to protect DRN's efforts -- including a December 2011 Regional Petition that would include several creeks in the region -- to seek upgrade of Swiftwater Creek to the EV designation. DRN had agreed to stay its Application to Intervene to see whether the Court would agree to the early dismissal of Pocono Manor's case.

“DEP’s strong stance in this case in defense of the quality of the Swiftwater Creek as well as the rights of impacted communities to secure strong stream protection standards is to be applauded. DEP’s legal defense coupled with the Court’s clear ruling protected Swiftwater Creek’s purity, cleanliness and diversity of aquatic life,” **said Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.** “The Court appropriately took decisive action in dismissing the developer’s challenge before the case became an unnecessary drain on the state’s legal resources.”

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The Commonwealth Court was critical of Pocono Manor's decision to engage in redevelopment plans while it knew of the stream redesignation and the speculative nature of its alleged harms. The Court stated:

“Thus, it is Petitioner's decision to initiate development of its property while Swiftwater Creek's redesignation was still under formal consideration, rather than the redesignation itself, which stands to cause potential harm to Petitioner. **Petitioner's choice to move forward with the Pocono Springs Entertainment Village project under the circumstances is not dissimilar to a pedestrian leaving the safety of the sidewalk, deliberately jumping into the rush of oncoming traffic, and then faulting the affected drivers for their inability to avoid the resultant collision.** In addition, Petitioner also avers that the value of its property "was immediately diminished upon publication of the redesignation of Swiftwater Creek in the Pennsylvania Bulletin on February 10, 2018." Amended Petition, ¶86. This, however, is far too conclusory and speculative a statement to establish the existence of actual, direct harm to Petitioner as a result of Swiftwater Creek's redesignation.”

"We are pleased to see the court decision upholding the DEP process. Our Exceptional Value streams are special places, designated under an established and rigorous process, which has been proven to be fair and equitable to all," **said Bob Heil, Executive Director of Brodhead Watershed Association.**

DRN's members live within 1.5 miles of Swiftwater Creek and/or recreate on it or immediately downstream of it. DRN has been working as part of the Our Pocono Waters campaign, highlighting the many recreational, environmental, and economic benefits these EV streams provide.

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*Delaware Riverkeeper Network (DRN) is a nonprofit membership organization working throughout the four states of the Delaware River Watershed including Pennsylvania, New Jersey, Delaware and New York. DRN provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects, public education, and legal enforcement of environmental protection laws.*