



August 9, 2018

Mr. Mark Brickner
PADEP Division of Water Quality Bureau
of Clean Water
P.O. Box 8774
Harrisburg, PA 17105-8774

**Re: Support of the UNT to Whetstone Run Redesignation to HQ Status;
Community Needs More Time to Review**

Dear Mr. Brickner,

On December 8, 2017, the Delaware Riverkeeper Network (DRN) submitted a letter supporting the redesignation of the UNT to Whetstone Run in Delaware County from Warm Water Fishery (WWF)/Migratory Fishery (MF) to High Quality (HQ)/Migratory Fishery (MF). This was in response to a petition submitted by the Darby Creek Valley Association (DCVA) on August 5, 2016 that provided compelling evidence that a redesignation to HQ-WWF status was justified. DRN has reviewed the Pennsylvania Department of Environmental Protection's (PADEP) *Draft Water Quality Standards Review Stream Evaluation Report (2018) for UNT to Whetstone Run* and respectfully disagrees with the Department's recommendation that the UNT Whetstone Run maintain its current designated use in Chapter 93 as Warm Water Fishery, Migratory Fishery (WWF, MF).

DRN requests that the DEP consider the points below to provide this important tributary of the Darby Creek stronger protections and the HQ designation; and at minimum, provide the petitioner and the community more time to evaluate and respond to PADEP's draft. With the amount of time it takes to re-designate streams in general through this multi-year and sometimes decade long process, providing more time now beyond 30 days if the upgrade is not recommended for the petitioner and community, is vital and fair and we believe in spirit with the anti-degradation requirements. Ideally re-sampling could occur in the spring of 2019 and in the meantime the stream would remain under study rather than rejected for the upgrade.

Reference Streams Used Are Not Appropriate

The reference streams sampled by the PADEP were UNT Sixpenny Creek and Pine Creek, both over 50 miles away in Berks County. The November 2017 UNT Whetstone Run sample when compared to reference samples on UNT Sixpenny Creek and Pine Creek had Biological Condition Scores of 60% and 50%, respectively. This is below the 83% HQ qualifying criterion and therefore had a significant influence on the Department's final recommendation. However, the chosen reference streams are not comparable to the UNT to Whetstone Run. The streams are not of similar drainage areas. The drainage basin for the UNT to Whetstone Run is approximately 166 acres. The drainage basin for Sixpenny Creek is approximately 576 acres and the Pine Creek drainage basin is approximately 2,470 acres. The substantially larger sizes of the reference stream basins provide more available habitat and therefore more diverse macroinvertebrate assemblages when compared to the much smaller UNT to Whetstone Run, making it impossible to match the 83% Biological Condition Score.

The streams do not have similar gradients. Elevations in the headwaters of the UNT to Whetstone Run are approximately 300 feet dropping to approximately 150 feet at the mouth. Elevations in the headwaters of the UNT to the Sixpenny Creek exceed 720 feet, dropping to approximately 330 feet at the sampling station to approximately 280 feet at the confluence with the mainstem Sixpenny.

The streams are not of similar order. The number of mayflies, stoneflies, and caddisflies in a headwater tributary such as the candidate stream are always likely to be less than those much larger and more distant EV reference streams such as the UNT to Sixpenny which is nearly 2 mile in length, almost twice as long as the watershed for the UNT to the Whetstone. Species like mayflies, stoneflies, and caddisflies are almost completely absent from every other water body in the Darby Creek watershed, making the southern UNT to Whetstone Run a rare high quality stronghold in the watershed. DEP should consider these broader watershed dynamics of the Darby Creek.

The rationale that PADEP has used in the past when selecting what DRN believes inappropriate reference streams revolves around a concept of “diluting the standards” of EV. PADEP states that by only using the top percentages of EV streams that remain in the Commonwealth as reference streams, the standards for EV are kept high (i.e., not diluted) and will only allow really outstanding streams this HQ or EV designation. PADEP has stated in the past that this means for example, most of the streams feeding the Delaware River in the southeast region will likely never score high enough to receive higher designations. DRN believes this justification is contrary to the spirit of the anti-degradation Clean Water Act rules and we again, as in the past, believe this 25% top EV reference selection practice in fact inappropriately disqualifies important streams that deserve this special protection. We would encourage PADEP, with its discretion and best professional judgement, to expand the reference streams that can be considered beyond the top 25% of rankings and when possible, using nearby and similarly sized watersheds for comparison.

In the case of UNT to Whetstone, a more comparable reference stream would be Hotland Run, an EV stream located in Marple Township only a few miles away from the UNT to Whetstone Run. In its petition, the DCVA found that the UNT to Whetstone Run functions within 83% of the same functions as Hotland Run and therefore would meet the HQ criterion. Both the UNT and Hotland Run contain diverse, well-balanced benthic communities of the same or similar species, yet Hotland Run is designated EV while the UNT is designated WWF. At the very least, the Department should sample Hotland Run in the spring of 2019 to see if the 83% score calculated by DCVA can be replicated.

Outside Data and Weighting Private Interests over Community and Watershed Interests

PADEP’s draft report mentions the Kleinschmidt Report submitted on behalf of the Sproul Road Developers. Sproul Road Developers have signed an Option to Purchase Agreement on November 18, 2017 with the Archdiocese of Philadelphia who has owned this land consisting of approximately 213 acres of which most is mature forest for the past several decades. The tract is known as the Don Guanella property. However, there is no mention in DEP’s draft report of the three years’ worth of data collected and analyzed by the DCVA, the community group and the petitioner. If third party reports, especially those conducted by development interests, are going to be accepted, and potentially influence the final recommendation, there should be equal representation on both sides and not just on the side of the developer. The Kleinschmidt report also is not available on line for the public to review and comment. If the Kleinschmidt report is to be considered in the DEP’s decision, we believe more time must be provided to allow the community to review the report and respond to claims made therein. We also ask that DEP post the report online to facilitate community review.

UNT Whetstone Deserves Science Review, Logic and Watershed Perspective

As PADEP knows, headwater streams and their conditions can jeopardize or protect communities farther downstream in the Darby Creek Watershed. This subwatershed, with a 200+ acre mature wooded forest, does not exist in a vacuum, but it flows into the larger Darby Creek Watershed which is inflicted by historic development and high stormwater runoff that causes grave flooding and consequences to downstream neighbors and communities. These watershed concepts, current future projected flooding conditions, climate change exacerbation of storms and increased large rain events that are and will continue to occur, should all be considered and weighted by the PADEP watershed scientists to better protect communities from a watershed risk approach. It should not be lost on the PADEP or elected officials, that preserving vital areas like the

Whetstone in a highly developed and urbanized watershed will ultimately save taxpayer dollars in the long run (reduced flooding costs) while also helping vulnerable communities downstream. Articulated in Article I, Section 27 of the Pennsylvania Constitution, the Environmental Rights Amendment, *“the people of Pennsylvania have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people now and in the future.”* DRN and the Pennsylvania Supreme Court agrees it is the duty and mission of the PADEP to critically examine the full picture and watershed approach and look beyond just the benthics and use best professional judgement to make logical and wise protective decisions that align with the spirit of Pennsylvania’s Environmental Rights Amendment and the spirit of the Clean Water Act anti-degradation guidance.

High Quality Designation Would Not Limit Development, Just Require Smarter & Wiser Development

Too often, the developer community and even Pennsylvania’s elected representatives falsely state that EV or HQ designation will mean no development, no trail building, no “progress”, etc. This is far from the truth and a disservice to the watershed community and residents of the Commonwealth. We can grow, but we must grow smarter, not allowing development interests to undermine protections and build using old technology that puts us in jeopardy. Today and frankly decades ago there have been better methods for stormwater management – it is critical that these methods are used and HQ would help ensure these methods are employed for the public good for whatever fate has in store for this 200 acre woods. Specifically, for the Whetstone, the UNT’s current designation of WWF only requires the management of stormwater volume for storms of frequent recurrence, up to and including the 2-year, 24-hour storm event. There are currently no stormwater runoff volume management requirements for larger, less frequent storms, with the exception of the rate-of- release from new impervious surfaces. A change to HQ status would require the management of the volume from all stormwater runoff from all new impervious surfaces, therefore offering greater runoff protection for the stream and decreased flooding downstream in a vulnerable area that already suffers from flooding and poor historic floodplain management practices.

In closing, its current designation of WWF does not accurately reflect the current water quality conditions of this UNT to Whetstone Run. Designating this UNT as HQ would be more scientifically accurate within PADEP’s biological criteria and would give this stream the protection it deserves because its quality is rare in Delaware County and its larger watershed traits behoove such protections. Clearly the local community and nearby residents volunteering to preserve this woods, Save Marple Greenspace, the Darby Creek Valley Association, and the members of the Delaware Riverkeeper Network believe strongly in working to protect it. If HQ is not granted for the UNT Whetstone, DRN again reiterates that the petitioner and the public require more time to review and respond to DEP’s draft report – ideally re-sampling by DEP could occur in the Spring of 2019 with a more appropriate and neighboring Hotland Run EV reference stream.

Thank you for your time and consideration.

Sincerely,



Maya K. van Rossum
the Delaware Riverkeeper



Faith Zerbe
Director of Monitoring

cc. Laura Edinger
Sect. Patrick McDonnell
Jaclyn Rhoads, DCVA