Regulatory Analysis Form

(Completed by Promulgating Agency)

IRRC

Independent Regulatory Review Commission

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INDEPENDENT REGULATORY REVIEW COMMISSION

IRRC Number: 2771

SECTION I: PROFILE

(1) Agency:
Department of Environmental Protection

(2) Agency Number:

Identification Number: # 7 - 436

(3) Short Title:
Stream Redesignations, Blue Eye Run, et al. (Water Quality Network (WQN) Package)

(4) PA Code Cite:
25 Pa. Code, Chapter 93

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Michele Tate; 717-783-8727; RCSOB, 400 Market Street, Harrisburg, PA 17105; *mtate@state.pa.us*

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(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105
Express Mail: Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301
Email: RegComments@state.pa.us

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
- ☑ **Final Regulation**
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
  - ☐ Certification by the Governor
  - ☐ Certification by the Attorney General

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This rulemaking modifies Chapter 93 to reflect the recommended redesignation of streams shown on the attached list. The changes include streams being recommended for redesignation as Exceptional Value (EV) Waters. The changes provide the appropriate designated use for these streams to protect existing uses. These changes may, upon implementation, result in more stringent treatment requirements for new and/or expanded wastewater discharges to the streams in order to protect the existing and designated water uses.

(9) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments: The public comment period opened with the publication of the proposed rulemaking in the Pennsylvania Bulletin on June 20, 2009 (39 PaB 3043). The public comment period was open for 45 days and closed on August 4, 2009.

B. The date or dates on which public meetings or hearings will be held: If sufficient interest is generated, a public hearing will be scheduled at an appropriate time and location.

C. The expected date of promulgation of the proposed regulation as a final-form regulation: It is anticipated that the final-form regulation will be promulgated in the spring of 2010. The publication date for the final rulemaking in the Pennsylvania Bulletin will be the effective date for the regulation and compliance with the final-form regulation will be required at that time.

D. The expected effective date of the final-form regulation: Spring of 2010 (see question #9C.)

E. The date by which compliance with the final-form regulation will be required: Spring of 2010 (see Question #9C.)

F. The date by which required permits, licenses or other approvals must be obtained: Permits or approvals that are issued or renewed after the effective date of the final-form regulation will comply with the final-form regulation.

(10) Provide the schedule for continual review of the regulation.

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

These amendments are made under authority of the following acts:
The Pennsylvania Clean Streams Law, Act of June 22, 1937 (P.L. 1987, No. 394) as amended,

35 P.S. § 691.1 et seq.
Section 1920-A of The Administrative Code of 1929, as amended, 71 P.S. § 510-20.
40 CFR §131.32
Section 303 of the Federal Clean Water Act, 33 U.S.C. §1313.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Although this regulation is not specifically mandated by Federal or state law or regulations, Section 303 (c) of the federal Clean Water Act requires that states review their water quality standards and modify them, as appropriate, at least once every three years. This regulation is undertaken as part of the Department's ongoing review of Pennsylvania's water quality standards. There are no specific deadlines for action associated with the regulation. Until this regulation is adopted, however, it will be difficult to ensure that the Department is providing the appropriate designated uses of these streams.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

These regulations are needed to provide the appropriate designated use protection for the streams being revised to mirror the existing use. These amendments will minimize the potential for unwarranted additional treatment costs, or the risk of being under-protective, which could lead to jeopardizing the uses and continued availability of these aquatic resources.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

Please see attached report: *Water Quality Network Reference Candidate Streams – Water Quality Standards Review, Stream Redesignation Evaluation.*

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The streams that are recommended for redesignation are already protected at their existing use, and therefore the designated use changes will have no impact on existing wastewater discharges. Persons proposing new or expanded activities or projects which result in discharges to these and/or other waters of the Commonwealth are required to provide effluent treatment according to the water quality criteria and designated and existing uses. This regulation will be implemented through the Department's permit and approval actions.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

See Question #15. Persons proposing new or expanded activities or projects which result in impacts to these

waters of the Commonwealth must comply with this regulation by providing the appropriate level of wastewater treatment for discharges or best management practices in these waters.

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The streams recommended for redesignation are already protected at their existing use, and therefore the designated use revision will have no impact on existing waste discharges. This regulation may, upon implementation, affect new and expanded activities associated with these streams. For example, dischargers planning to add new, or expand existing, discharges to streams upgraded may experience higher treatment costs. The increased costs may take the form of higher engineering, construction, or operating costs for wastewater treatment facilities. It is not possible to precisely predict the actual change in costs since these are site-specific and depend upon the size of the receiving stream and many other factors.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

See Question 17.

No costs will be imposed directly upon local government by this regulation. However, there may, upon implementation, be additional indirect costs incurred by local governments that may take the form of engineering and consulting fees needed to review and possibly revise existing Act 537 sewage Facilities Plans and local ordinances.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

See Questions 17 and 18.

This rulemaking is based on and will be implemented through existing Department programs, procedures, and policies. There are no additional implementation costs associated with this regulation.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 2009-2010	FY +1 2010-11	FY +2 2011-12	FY +3 2012-13	FY +4 2013-14	FY +5 2014-2015
SAVINGS:	$	$	$	$	$	$
Regulated Community	Not Measurable					
Local Government	"					
State Government	"					
Total Savings	"					
COSTS:						
Regulated Community	Not Measurable					
Local Government	"					
State Government	"					
Total Costs	"					
REVENUE LOSSES:						
Regulated Community	Not Measurable					
Local Government	"					
State Government	"					
Total Revenue Losses	"					

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 2006-2007	FY-2 2007-2008	FY-1 2008-2009	Current FY 2009-2010
Environmental Protection Operations (160-10381)	$89,847,000	$98,574,000	$98,544,000	$85,069,000
Environmental Program Management (161-10382)	$36,868,000	$39,685,000	$37,664,000	$32,694,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Although it is not possible to approximate the change in costs, the Department believes that the benefits of providing the appropriate level of designated use protection and continued maintenance and availability of the Commonwealth's aquatic resources outweigh the potential costs or adverse effects of this regulation.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Potentially affected municipalities were notified by letter of the stream evaluations and asked to provide any readily available data. In addition, data was requested from the public through a notice in the *Pennsylvania Bulletin* and newspaper notices. Pennsylvania Fish and Boat Commission (PFBC) and DEP staff reviewed the draft evaluation reports and concurred with the recommendations. The affected municipalities were notified of the availability of a draft evaluation report for their review and comment. The draft reports were posted on the Division of Water Quality Standards web page. There was a 45 day public comment period to receive comments, suggestions, or objections. The only commentator was the U.S. Environmental Protection Agency (EPA) Region 3 who commended DEP on its efforts, but otherwise had no comments. Public meetings and/or hearings will be scheduled if needed to receive additional comments or suggestions on specific recommendations in this proposal.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There were no alternative regulatory schemes to consider in order to apply the appropriate designated use in 25 Pa.Code, Chapter 93, Water Quality Standards, to mirror the existing uses of these aquatic resources.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No. The recommended redesignations are not more stringent than the companion federal standards allow.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Other states are also required to maintain water quality standards that include similar minimum antidegradation requirements, and to provide additional protection for surface waters that are considered ecologically significant and/or outstanding local resource waters.

These regulations should not put Pennsylvania at a competitive disadvantage with other states. These amendments are intended to provide the appropriate level of designated use protection for the streams listed.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No other regulations or State Agencies are affected by this rulemaking.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional reporting, record keeping, or other paperwork will be required.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There are no such provisions in this regulation.

Blue Eye Run, et al. Stream Redesignations / Corrections

Stream **	County	Reach **	List	Current Designation*	Recommended Designation*
East Branch Dyberry Creek	Wayne	Basin	B	HQ-CWF, MF	EV, MF
Unnamed Tributary (UNT) 29200 to Tunkhannock Creek	Susquehanna	Basin	I	CWF, MF	EV, MF
Young Womans Creek	Clinton	Basin, Source to Left Branch Young Womans Creek	L	HQ-CWF, MF	EV, MF
Muncy Creek	Sullivan	Mainstem, Source to second SR2002 Bridge upstream of Sonestown at RM 26.4	L	CWF, MF	EV, MF
Unnamed Tributaries to Muncy Creek	Sullivan	Basins, Source to second SR2002 Bridge upstream of Sonestown at RM 26.4	L	HQ-CWF, MF	EV, MF
Lopez Pond Brook	Sullivan	Basin	L	HQ-CWF, MF	EV, MF
South Brook	Sullivan	Basin	L	HQ-CWF, MF	EV, MF
Rock Run	Sullivan	Basin	L	HQ-CWF, MF	EV, MF
Tublick Run	Sullivan	Basin	L	HQ-CWF, MF	EV, MF
Peters Creek	Sullivan	Basin	L	HQ-CWF, MF	EV, MF
Big Run	Sullivan	Basin	L	HQ-CWF, MF	EV, MF
Cherry Run	Sullivan	Basin	L	HQ-CWF, MF	EV, MF
Long Brook	Sullivan	Basin	L	HQ-CWF, MF	EV, MF
Spruce Run	Union	Basin, Source to eastern boundary of Bald Eagle State Forest at RM 5.09	L	HQ-CWF, MF	EV, MF
Blue Eye Run	Warren	Basin, Source to SR0027 Bridge	Q	CWF	EV
Middle Hickory Creek	Warren	Basin	Q	HQ-CWF	EV
East Hickory Creek	Warren	Basin, Middle Hickory Creek to Forest Hwy 119	Q	HQ-CWF	EV

STREAM NAME CORRECTIONS THAT DO NOT AFFECT THE CURRENT DESIGNATED USE

Stream	County	List	Proposed Correction
Tadyuskung Creek	Pike	B	Teedyuskung Creek
Upper Tunkhanna Creek	Monroe	D	Upper Tunkhannock Creek
Hokendagua Creek	Northampton	D	Hokendauqua Creek
Mahanhon Creek	Schuylkill	F	Mahannon Creek
UNT to East Branch Chester Creek at RM 0.4 ("Goose Creek")	Chester	G	Westtown Run
Woodley Hollow	Clinton	L	Woodley Draft
Harrington Hollow	Tioga	L	Herrington Hollow
Burdie Run	Tioga	L	Burdic Run
Bayer Brook	McKean	P	Boyer Brook

* HQ = High Quality * EV = Exceptional Value * CWF= Cold Water Fishes * MF = Migratory Fishes
** RM = River Mile ** UNT = Unnamed Tributary

Editor's Note: A basin-wide migratory fishes (MF) designation was added to the Atlantic slope basin (drainage lists A through O and Z) on May 16, 2009 (39 PaB 2523). The MF designation applies to all waters within the respective basins unless there were specific exceptions previously noted for certain waterbodies or stream segments within one of these drainage lists. The MF designated use has been added to those waters which appear in Annex A to be consistent with the action in the Triennial Review final rulemaking at 39 Pa.B. 2523.

WATER QUALITY NETWORK
REFERENCE CANDIDATE STREAMS

WATER QUALITY STANDARDS REVIEW
STREAM REDESIGNATION EVALUATION

Study Basins:

East Branch Dyberry Creek	(06016)	B	UNT Tunkhannock Creek	(29200)	I
Muncy Creek	(19402)	L	Young Womans Ck	(23509)	L
Spruce Run	(18964)	L	Blue Eye Run	(56058)	Q
East Hickory Creek	(55629)	Q			

WATER QUALITY MONITORING SECTION (DSB)
DIVISION OF WATER QUALITY STANDARDS
BUREAU OF WATER STANDARDS AND FACILITY REGULATION
DEPARTMENT OF ENVIRONMENTAL PROTECTION

May 2006

INTRODUCTION

The Department operates the Surface Water Quality Monitoring Network (WQN) - a long-term, fixed station network of monitoring stations on rivers and streams throughout the state. This network was initially designed to monitor water quality conditions on a broad scale. Most stations are located on major streams with large drainage areas. However, recent water quality monitoring trends emphasize the importance of identifying and defining biological reference conditions characteristic of no or minimal disturbance. As part of the process to establish biological reference conditions, smaller watersheds with minimal land disturbance were added to the water quality network to collect data representative of reference water quality conditions and support biological metric protocol development. WQN reference streams are selected from various areas across the state and monitored for five years. Following the close of the 5-year inventory period, the studied sites are replaced with a new set of reference stations.

After reviewing the WQN reference monitoring data, several of the stations displayed existing use stream conditions indicative of Exceptional Value (EV) waters. Based on these data, the Department put together this package of stream redesignation evaluations from a list of streams that were part of the WQN Reference Network. The streams included in this report are listed below with more detailed station information presented in Table 1.

Stream	Stream Code	WQN Number	County	Township	Ch 93 Designated Use
Muncy Creek	19402	446	Sullivan	Davidson, Laporte	CWF (main stem) HQ-CWF (tribs)
Blue Eye Run	56058	862	Warren	Spring Creek, Columbus, Pittsfield	CWF
East Hickory Creek	55629	877	Warren	Limestone, Watson	HQ-CWF
Young Womans Creek	23509	443	Clinton	Chapman	HQ-CWF
			Potter	Stewardson	
			Lycoming	Brown	
East Branch Dyberry Creek	06016	183	Wayne	Dyberry, Lebanon	HQ-CWF, MF
Spruce Run	18964	447	Union	Buffalo, West Buffalo, Hartley, Lewis, White Deer	HQ-CWF
UNT Tunkhannock Creek	29200	340	Susquehanna	Ararat, Gibson, Jackson, Thompson	CWF

GENERAL WATERSHED DESCRIPTIONS

The upper portion of Muncy Creek is located in SGL 13. This basin is also mostly forested except for a narrow corridor that runs along the main stem. This area contains a paved road and low-density residential development. All the tributaries to Muncy Creek within the study area are designated HQ-CWF except for ElkLick Run (19753) which is designated EV. The main stem has a CWF designation. Most of the Blue Eye Run watershed is located in State Game Land (SGL) 143. East Hickory Creek is located in the Allegheny National Forest. East Hickory Creek basin from the source to Middle Hickory Creek has a designated use of EV. The section from and including Middle Hickory Creek to the mouth is HQ-CWF as reflected in the above table.

Both of these basins are mostly forested with very little human disturbance except for hiking trails. All but the lower 0.8 miles of the Young Womans Creek watershed is located within the Sproul State Forest and nearly the entire watershed of Spruce Run is located in Bald Eagle State Forest. Land use in both of these basins is almost entirely forested with several roads and seasonal camps. The majority of the East Branch Dyberry Creek basin is located in SGL 159. Land use in the floodplain is mostly deciduous forest with a dirt road. There is some agriculture and low-density residential development on the surrounding hillsides. Land use in the UNT Tunkhannock Creek basin is a mixture of deciduous forest along with agriculture, low-density residential development, and several roads. A small portion of the headwaters of one of the tributaries is located in SGL 236.

WATER QUALITY AND USES

Surface Water

The candidate streams are cold-water, freestone streams with a moderate gradient. Since all of these streams have had or currently do have WQN stations, there is chemical data available to help characterize ambient water quality conditions. Table 2 is a compilation of a recent set of 24 monthly samples collected as part of the Water Quality Network, including the range of dates of these samples. The maximum and minimum concentrations of 12 different parameters are listed for each station. Unnamed Tributary to Tunkhannock Creek, Young Womans Creek, Muncy Creek, Spruce Run, and East Hickory Creek, which contain WQN Stations 340, 443, 446, 447, and 877 respectively, all displayed excellent water quality conditions over these 24 month periods except for brief periods when the pH dropped below the minimum criterion of 6.0 at stations 447 and 877. These lower pH observations may have been the result of acid precipitation as these streams are naturally poorly buffered with alkalinity concentrations that rarely exceeded 10 mg/l. East Branch Dyberry Creek (WQN 183) and Blue Eye Run (WQN 862) exceeded the criteria for dissolved copper twice and three times respectively, during the two-year period. This is probably the result of natural conditions as there are no known discharge sources of copper in either watershed. Blue Eye Run exceeded the criteria for dissolved cadmium twice during the two-year period, also probably the result of natural conditions.

There are no surface water withdrawals for a public water supply or NPDES permitted discharges located in any of the candidate basins.

Aquatic Biota

Depending on the size of the watershed, one to three stations were sampled in each candidate basin along with a reference station of comparable drainage area. An assessment of the physical habitat was conducted at each station (Table 3). Total habitat scores ranged from a low of 198 to a high of 218. All of the candidate stations, along with the reference stations, scored in the Optimal range (186-240) for instream and riparian habitat. Benthic macroinvertebrate samples were also collected at all stations. These samples consisted of six 0.3 square meter D-net samples collected in riffle habitat over a 100-meter reach of stream. All candidate stations showed a high diversity of macroinvertebrates with the presence of many taxa that are intolerant of organic pollution, such as Ephemeroptera, Plecoptera, and Trichoptera (Table 4). Survey dates are listed in Tables 3 - 5.

The UNT Tunkhannock Creek mainstem from its source to the mouth is classified by the Pennsylvania Fish and Boat Commission (PFBC) as Class A wild trout waters.

BIOLOGICAL USE QUALIFICATIONS

The biological use qualifying criteria applied to the candidate streams were the integrated benthic macroinvertebrate score tests described at Title 25, §93.4b(a)(2)(i)(A) and §93.4b(b)(1)(v) of the Pennsylvania Code. Selected benthic macroinvertebrate community metrics were calculated from 200-count subsamples that were randomly selected from the total samples and enumerated following the Department's Pa RBP III protocol modified from Plafkin et. al. (1989) and Barbour et. al. (1999)(Table 4). Biological Condition Scores (BCS) generated from the subsamples were compared to reference stations with comparable drainage areas (Table 5). These BCS comparisons were done using the following metrics which were selected as being indicative of community health: taxa richness; modified EPT index (total number of intolerant Ephemeroptera, Plecoptera, and Trichoptera taxa); modified Hilsenhoff Biotic Index; percent dominant taxon; and percent modified mayflies. All reference streams were selected because they were representative of excellent EV conditions based on the macroinvertebrate community and were of similar stream types, comparable geologic settings, and reasonable proximity with respect to their compared candidate stream. Both the candidate streams and the reference streams were sampled within a similar time frame to minimize the effects of seasonal variation.

Muncy Creek (Station MC) was compared to Little Fishing Creek (R1) and scored 100% of the reference station. Blue Eye Run (BER) and East Hickory Creek (3MH and 4EH) were compared to West Branch Caldwell Creek (R2 and R3). Both of these reference samples were collected at the same location but on different dates that corresponded to the timing of the candidate station samples. Blue Eye Run scored 95%, and the two stations in the East Hickory Creek basin scored 95 and 100% of the reference station score. Young Womans Creek (1YW and 2YW) was compared to Cross Fork Kettle Creek (R4) and scored 93 and 100% of the reference station. East Branch Dyberry Creek (1EB, 2EB, and 3EB) was compared to Little Bush Kill (R5) and all three stations scored 100% of the reference station. Spruce Run (SR) and UNT Tunkhannock Creek (UTC) were compared to Wild Creek (R6). Spruce Run and UNT Tunkhannock Creek scored 100 and 93% respectively of the reference station score.

According to the Department's regulatory criteria, a BCS greater than or equal to 92% of the reference station score support an EV designation (Title 25, § 93.4b(b)(1)(v)), scores greater than or equal to 83% but less than 92% qualify for High Quality (HQ), and scores less than 83% do not meet the threshold for an HQ designation (Title 25, § 93.4b(a)(2)(i)(A)). Based on these regulations Muncy Creek, Blue Eye Run, East Hickory Creek, Young Womans Creek, East Branch Dyberry Creek, Spruce Run, and UNT Tunkhannock Creek all qualify for an EV use designation.

PUBLIC RESPONSE AND PARTICIPATION SUMMARY

The Department provided public notice of these evaluations and requested any technical data from the general public through publication in the Pennsylvania Bulletin on April 27, 2002 (32 Pa.B 2162). A similar notice was published on April 26, 2002 in the following newspapers: the Scranton Times, Times Observer, Towanda Daily Review, The Daily Item, and the Lock Haven Express. In addition, Pittsfield, Spring Creek, Columbus, and Watson Townships, Warren

County; Dyberry and Lebanon Townships, Wayne County; Davidson and Laporte Townships and Laporte Borough, Sullivan County; Hartley, Lewis, and West Buffalo Townships, Union County; Ararat, Gibson, Jackson, and Thompson Townships, Susquehanna County; Chapman Township, Clinton County; Stewardson Township, Potter County; and Brown Township, Lycoming County were notified of the evaluations in a letter dated March 12, 2002. No data were received in response to these notices.

RECOMMENDATION

The Department recommends the designated use of the following streams be changed based on Title 25, § 93.4b(a)(2)(i)(A) and § 93.4b(b)(1)(v) of the Pennsylvania Code:

Muncy Creek: Drainage List (DL) L; Basin, Source to second SR2002 Bridge upstream of Sonestown at RMI 26.4. Change current HQ-CWF and CWF to EV. Affects 29.6 stream miles.

Blue Eye Run: DL Q; Basin, Source to SR0027 Bridge. Change CWF to EV. Affects 19.6 stream miles.

Middle Hickory Creek: DL Q; Basin. Change HQ-CWF to EV
East Hickory Creek: DL Q; Basin, Middle Hickory Creek to Forest Highway 119. Change HQ-CWF to EV. Affects 20.4 stream miles.

Young Womans Creek: DL L; Basin, Source to and including Left Branch Young Womans Creek. Change HQ-CWF to EV. Affects 122.9 stream miles

East Branch Dyberry Creek: DL B; Basin. Change HQ-CWF, MF to EV, MF. Affects 27.2 stream miles

Spruce Run: DL L; Basin, Source to eastern boundary of Bald Eagle State Forest at RMI 5.09. Change HQ-CWF to EV. Affects 18.3 stream miles.

UNT Tunkhannock Creek: DL I; Basin. Change CWF to EV. Affects 17.5 stream miles.

The above recommendation affects a total of 264.2 stream miles.

REFERENCES

Plafkin, JL, MT Barbour, KD Porter, SK Gross, & RM Hughes. 1989. Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish. United States Environmental Protection Agency. EPA/444/4-89-001

Barbour, MT, J. Gerritsen, BT Snyder, and JB Stribling. 1999. Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers: Periphyton, Benthic Macroinvertebrates, and Fish, Second Edition. United States Environmental Protection Agency. EPA/841/B-99-002.

TABLE 1
STATION LOCATIONS
WQN REFERENCE CANDIDATE STREAMS

STATION	LOCATION
MC	Muncy Creek (19402) approximately 50 meters downstream of the third bridge upstream of Sonestown on SR2002. Davidson Township, Sullivan County. WQN 446 Lat: 41 22 00 Long: 76 30 51 RMI: 27.3
BER	Blue Eye Run (56058) approximately 15 meters upstream of the SR0027 Bridge. Pittsfield Township, Warren County. WQN 862 Lat: 41 49 07 Long: 79 25 45 RMI: 0.50
3MH	Middle Hickory Creek (55695) approximately 30 meters upstream of the mouth. Limestone Township, Warren County. Lat: 41 39 39 Long: 79 18 51 RMI: 0.10
4EH	East Hickory Creek (55629) approximately 15 meters upstream of the crossing of Forest Road 119. Limestone Township, Warren County. WQN 877 Lat: 41 38 31 Long: 79 20 16 RMI: 6.91
1YW	Young Womans Creek (23509) approximately 0.7 miles upstream from Bull Run. Chapman Township, Clinton County. WQN 443 Lat: 41 26 28 Long: 77 39 10 RMI: 8.76
2YW	Left Branch Young Womans Creek (23513) approximately 150 meters upstream of the T320 Bridge. Chapman Township, Clinton County. Lat: 41 22 23 Long: 77 42 01 RMI: 0.16
1EB	East Branch Dyberry Creek (06016) approximately 0.21 miles downstream of SR371. Dyberry Township, Wayne County. Lat: 41 43 26 Long: 75 15 56 RMI: 5.32
2EB	Rose Pond Branch (06019) approximately 0.20 miles downstream of the SR371 bridge. Dyberry Township, Wayne County. Lat: 41 43 25 Long: 75 15 52 RMI: 0.05
3EB	East Branch Dyberry Creek approximately 0.15 stream miles downstream of the Lebanon/Dyberry Township line Dyberry Township, Wayne County. WQN 183 Lat: 41 40 19 Long: 75 17 28 RMI: 0.94
SR	Spruce Run (18964) approximately 15 meters downstream of the SR1001 bridge.

West Union Township, Union County. WQN 447
Lat: 41 01 26 Long: 77 03 55 RMI: 8.4

UTC UNT Tunkhannock Creek (29200) approximately 5 meters upstream of SR2046 bridge.
Gibson Township, Susquehanna County. WQN 340
Lat: 41 48 30 Long: 75 34 52 RMI: 0.26

R1 Little Fishing Creek (27657) approximately 5 meters downstream of road SR4033.
Pine Township, Columbia County. WQN 339
Lat: 41 09 52 Long: 76 30 13 RMI: 13.2

R2 West Branch Caldwell Creek (54257) approximately 10 meters upstream of road T304.
Southwest Township, Warren County. WQN 873
Lat: 41 41 44 Long: 79 34 18 RMI: 0.16

R3 West Branch Caldwell Creek approximately 10 meters upstream of road T304.
Southwest Township, Warren County.
Lat: 41 41 44 Long: 79 34 18 RMI: 0.16

R4 Cross Fork (23765) approximately 1.18 km kilometers upstream of the mouth.
Stewardson Township, Potter County.
Lat: 41 29 42 Long: 77 49 14 RMI: 0.72

R5 Little Bush Kill (05056) approximately 15 meters upstream of road SR2003.
Lehman Township, Pike County. WQN 181
Lat: 41 05 51 Long: 75 00 15 RMI: 0.6

R6 Wild Creek (03959) approximately 15 meters upstream of the SR27 bridge.
Penn Forest Township, Carbon County. WQN 191
Lat: 41 56 24 Long: 75 35 11 RMI: 5.8

FIGURE 1
WQN REFERENCE CANDIDATE STREAMS

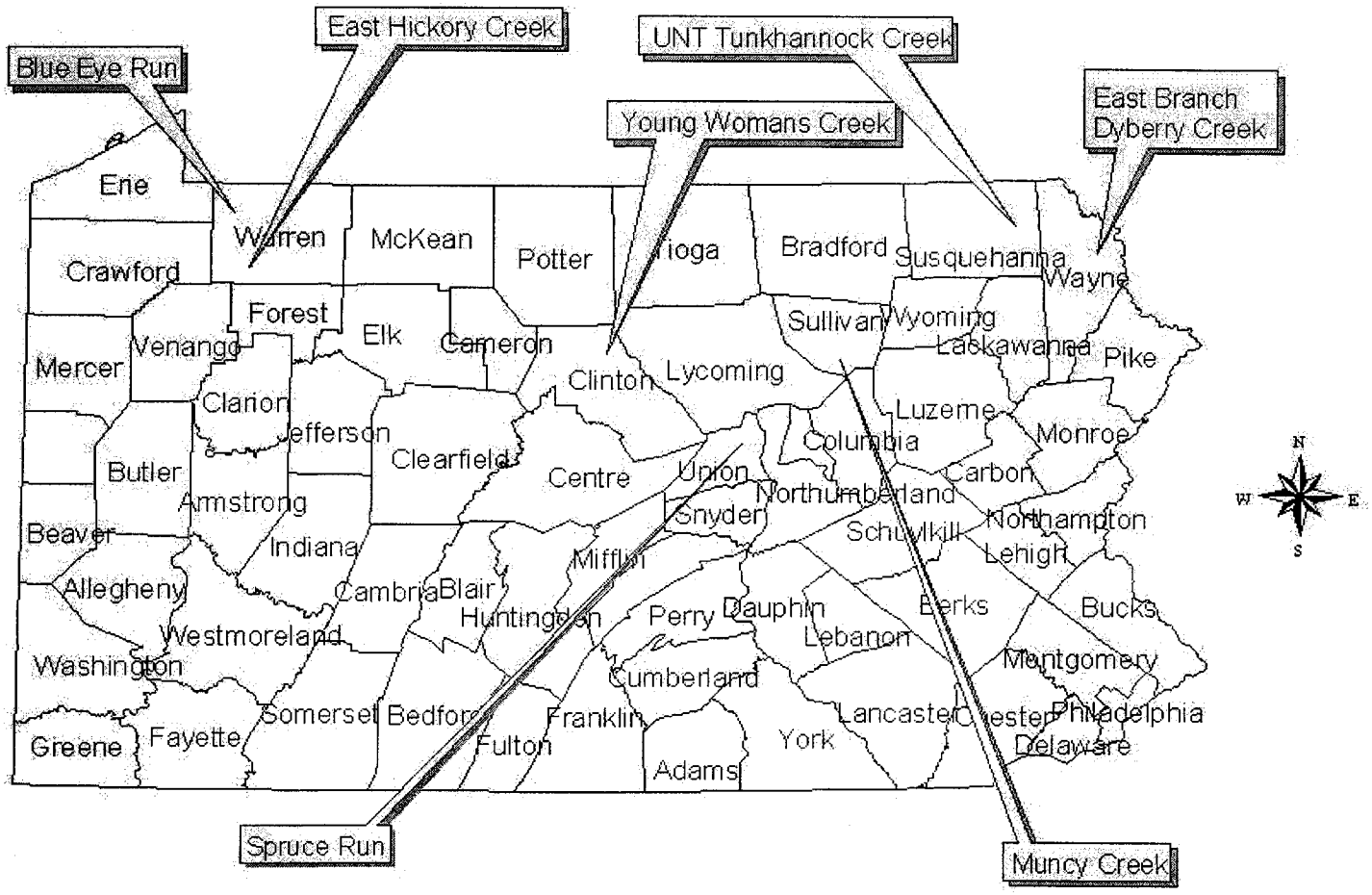


TABLE 2
WATER CHEMISTRY[1]
WQN REFERENCE CANDIDATE STREAMS

STATIONS	WQN183		WQN340		WQN443		WQN446		WQN447		WQN862		WQN877	
STREAMS	E. BR. Dyberry Ck		UNT Tunkhannock		Young Womans Ck		Muncy Creek		Spruce Run		Blue Eye Run		East Hickory Ck	
DATE RANGE	8/96 - 7/98		10/02 - 1/05		9/96 - 8/98		9/02 - 1/05		2/03 - 1/05		8/96 - 7/98		2/05 - 10/06[3]	
	Max	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max	Min
Field Parameters														
pH	7.7	6.5	8.3	6.5	9.0	6.0	7.8	6.9	6.9	5.0	7.7	5.9	7.0	5.6
Diss. O_2 (mg/l)	14.4	9.2	14.5	8.9	13.4	8.0	15.0	9.5	12.5	8.8	14.8	8.4	14.4	8.0
Lab Parameters														
Alkalinity (mg/l)	26	11	34	15	12	5.4	23	8.2	10	3.0	46	13	24	2.8
Hardness (mg/l)	44	10	41	23	19	10	26	16	9	6	45	15	19	10
NH_3-N (mg/l)	0.03	<.02[2]	0.03	<.02	<.02	<.02	0.04	<.02	<.02	<.02	0.03	<.02	0.03	<.02
diss As (ug/l)	<4.0*	<4.0*	<4.0	<4.0	<4.0*	<4.0*	<4.0	<4.0	<4.0	<4.0	<4.0*	<4.0*	<4.0	<4.0
diss Cd (ug/l)	<0.2*	<0.2*	<0.2	<0.2	<0.2*	<0.2*	<0.2	<0.2	<0.2	<0.2	0.66*	<0.2*	<0.2	<0.2
diss Cu (ug/l)	8.5	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	9.0	<4.0	<4.0	<4.0
total Fe (ug/l)	135	39	430	<20	148	23	<20	81	99	<20	729	120	1390	93
diss Pb (ug/l)	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	1.4	<1.0	<1.0	<1.0
diss Ni (ug/l)	9.7	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0	<4.0
diss Zn (ug/l)	11.4	<5.0	<5.0	<5.0	<5.0	<5.0	5.16	<5.0	6.9	<5.0	25	<5.0	7.5	<5.0
total Al (ug/l)	78	16	204	<10	54	14	76	<10	147	<10	210	33	470	49

[1] - Based on the 24 most recent monthly samples.

[2] - < indicates a concentration below the detection limit

[3] - Recently added to WQN Reference Network

* - Total concentrations not dissolved

TABLE 3
HABITAT ASSESSMENT SUMMARY
WQN REFERENCE CANDIDATE STREAMS

HABITAT PARAMETER	STATIONS[1]																
	MC	R1	BER	R2	3MH	4EH	R3	1YW	2YW	R4	1EB	2EB	3EB	R5	SR	UTC	R6
DATE OF SURVEY	12/01	12/01	6/01	6/01	12/01	12/01	12/01	12/01	12/01	12/01	4/02	4/02	4/02	4/02	11/03	12/03	11/03
1. instream cover	16	17	17	17	16	18	17	18	18	16	18	18	17	18	17	18	19
2. epifaunal substrate	19	18	16	18	17	17	18	19	19	19	18	18	19	17	14	17	18
3. embeddedness	16	18	14	16	16	17	16	17	17	17	17	16	17	16	16	17	19
4. velocity/depth	13	14	16	16	18	18	16	13	14	13	16	18	16	18	18	16	17
5. channel alterations	16	17	17	19	20	19	19	16	17	18	18	19	17	19	18	17	15
6. sediment deposition	18	19	15	18	18	18	18	19	18	18	18	18	18	18	19	18	18
7. riffle frequency	19	16	18	15	14	15	15	19	19	16	19	18	17	19	19	19	19
8. channel flow status	16	16	17	13	16	14	13	17	17	18	12	18	13	18	18	12	19
9. bank condition	16	17	15	16	16	16	16	16	16	12	16	17	17	17	19	18	17
10. bank vegetation protection	17	18	18	17	18	17	17	17	17	14	17	16	18	18	19	19	19
11. grazing/disruptive pressures	18	19	19	19	19	19	19	19	19	18	19	18	18	19	19	18	19
12. riparian vegetation zone width	14	15	18	20	20	20	20	14	18	19	14	16	17	19	19	18	19
Total Score	198	204	200	204	208	208	204	204	209	198	202	210	204	216	215	207	218
Rating[2]	OPT	OPT	OPT	OPT	OPT	OPT	OPT	OPT	OPT	OPT	OPT	OPT	OPT	OPT	OPT	OPT	OPT

[1] Refer to Figure 1 and Table 1 for stations locations.

[2] OPT - Optimal; SUB - Suboptimal

R1=Little Fishing Creek; R2=West Branch Caldwell Creek;R3=West Branch Caldwell Creek;R4=Cross Fork;R5=Little Bush Kill;R6=Wild Cree

TABLE 4
SEMI-QUANTITATIVE BENTHIC MACROINVERTEBRATE DATA
WQN REFERENCE CANDIDATE STREAMS

TAXA	STATION																
	MC	R1	BER	R2	3MH	4EH	R3	1YW	2YW	R4	1EB	2EB	3EB	R5	SR	UTC	R6.
DATE OF SURVEY	12/01	12/01	6/01	6/01	12/01	12/01	12/01	12/01	12/01	12/01	4/02	4/02	4/02	4/02	11/03	12/03	11/03
Ephemeroptera (mayflies)																	
Baetiscidae; *Baetisca*								1									
Baetidae; *Acentrella*			15	15							5	3	2				
Baetis			2						1		3		1		11	31	2
Caenidae; *Caenis*					4												
Ephemerellidae; *Drunella*			59	18							21	38	29	10		1	
Ephemerella	19	12	3	10		6	42	30	86	61	5	12	42	68	21	31	14
Eurylophella		1			2			2	3	1					1		
Serratella				29		1					16	4	11	7	1	4	3
Ephemeridae; *Ephemera*		2			5	2	1	3		4		1	1				
Heptageniidae; *Cinygmula*													1				
Epeorus	28	4	2	12		17	8	8	18	9	23	22	21	2	12	68	5
Leucrocuta									1				1	1			
Rhithrogena	14							1								4	
Stenacron					3	1	3		5	1							
Stenonema	10	11	2	3	69	27	12	4	11	9	17	14	4	4	7		5
Isonychiidae; *Isonychia*	4	13		2		10		25	13	14	7	3	3	3			
Leptophlebiidae; *Paraleptophlebia*	25	38	13	11	5	9	9	11	16	16	2	2	6		9	10	6
Habrophlebiodes			2				3										
Plecoptera (stoneflies)																	
Capniidae; *Paracapnia*					4	3	1	1		2					2	6	1
Chloroperlidae; *Alloperla*																3	
Sweltsa	2											1			1		2
Leuctridae; *Leuctra*	1	2	33	11	1	3	2	1			13	6	3	2	1	1	3
Nemouridae; *Amphinemura*			2								5				4	2	1
Prostoia							1									3	
Peltoperlidae; *Tallaperla*															2	1	8
Perlidae; *Acroneuria*	3	10	2		5	10	4	3	5	5	4	5	2	9	3	1	
Agnetina	3			1		2	3		1				5				
Paragnetina	1			1				1			3	3					
Perlodidae; *Diploperla*					2			1									
Isogenoides					1			3	1								
Isoperla	21				1		3	8	10	6		5	1		1	10	9
Malirekus															1		1
Pteronarcyidae; *Pteronarcys*		1												1	2		
Taeniopterygidae; *Taeniopteryx*	2	3			3	2	19	9		4							1
Taenionema	16					2									5	11	2

TAXA	STATION																
	MC	R1	BER	R2	3MH	4EH	R3	1YW	2YW	R4	1EB	2EB	3EB	R5	SR	UTC	R6
Strophopteryx							4	4	4	3							
Tricoptera (caddisflies)																	
Apatanidae; *Apatania*		7							1						3		
Glossosomatidae; *Agapetus*			4	2								2		1	8		1
Glossosoma			1				1		2								
Hydropsychidae; *Cheumatopsyche*	5	10	3	32	3	35	25	9	11	3		7	16	3			
Diplectrona											11	6		5	24	1	3
Hydropsyche	10	6		2	1	3	22	12	5		1	3	3	7	2	2	2
Lepidostomatidae; *Lepidostoma*	11	14				4		9	1	5				1	7	1	4
Limnephilidae; *Hydatophylax*																1	
Pycnopsyche	1										1	1		1			
Odontoceridae; *Psilotreta*	2				1	3			5	24			3				1
Philopotamidae; *Chimarra*		24	6		11						2						
Dolophilodes	4	3	5	24		8	9	6	1			3		9	4		17
Polycentropodidae; *Polycentropus*		2	1			1		2			2		1				
Psychomyiidae; *Psychomyia*							1										
Lype														1			
Rhyacophilidae; *Rhyacophila*	5	1	1	2		15	2				5	2	5	1	11	1	12
Uenoidae; *Neophylax*	1	3			4	3	6	20	1		1		5	1	1	2	
Diptera (true flies)																	
Athericidae; *Atherix*		4			4		4				3	1	1				
Ceratopogonidae; *Probezzia*					1							1					
Empididae; *Chelifera*															1		1
Clinocera											1						
Hemerodromia															1		1
Muscidae						1											
Simuliidae; *Prosimulium*		8			10			1							7	19	17
Simulium			1	10													2
Tipulidae; *Antocha*				2	1		1				1	1	3		1		
Dicranota	3	3			1	11	6				8			1			
Hexatoma	7	2		3	8	2	6		3	2		5	7		1	1	
Tipula					1	1			1		1						1
Chironomidae	2	11	18	17	14	10	5	3	4	1	28	35	18	21	45	8	55
Megaloptera (dobson-, fishflies)																	
Corydalidae; *Nigronia*	1	7	3	2	3	8	5	4		2	5	6	1	3			
Sialidae; *Sialis*		1			3	3				1				1	1		
Odonata (dragon-, damselflies)																	
Aeshnidae; *Boyeria*					1												
Gomphidae; *Lanthus*					3						1				2		1
Gomphus					1												
Stylogomphus		1			6		3	4				4		6			
Coleoptera (aquatic beetles)																	
Dryopidae; *Helichus*		1															

TAXA	STATION																
	MC	R1	BER	R2	3MH	4EH	R3	1YW	2YW	R4	1EB	2EB	3EB	R5	SR	UTC	R6
Elmidae; *Optioservus*		2	3	2	15	7	6	17	6	9	3	1	16			2	2
Oulimnius					1			1							15		3
Promoresia						2						2		4	7		22
Stenelmis					6						2						
Psephenidae; *Psephenus*	1	5	15		3		2	1	4	13	3	9	4	15			
Ectopria					2			3			1						
Ptilodactylidae; *Anchytarsus*					1												
Non-Insect Taxa																	
Collembola															2		
Hydracarina															3		2
Oligochaeta	1		4					3	3	11	1			1	8		6
Nematoda															1		
Decapoda (crayfish)																	
Cambaridae												1					
Gastropoda (univalves, snails)																	
Ancylidae; *Ferrissia*							2	9			3	1					
Valvatidae														1			
Pelecypoda (bivalve clams)																	
Sphaeriidae											1			27	1		2
Total Number in Subsample	203	212	200	211	210	212	221	220	223	206	209	210	216	217	240	225	218

TABLE 5
RBP BIOLOGICAL CONDITION SCORE COMPARISON
WQN REFERENCE CANDIDATE STREAMS

METRIC	STATIONS																
	MC	R1	BER	R2	3MH	4EH	R3	1YW	2YW	R4	1EB	2EB	3EB	R5	SR	UTC	R6
DATE OF SURVEY	12/01	12/01	6/01	6/01	12/01	12/01	12/01	12/01	12/01	12/01	4/02	4/02	4/02	4/02	11/03	12/03	11/03
1. TAXA RICHNESS	28	31	24	22	38	31	32	34	28	23	35	33	29	31	40	26	35
Cand/Ref (%)	90		109		119	97		148	122		113	106	94		114	74	
Biol. Cond. Score	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	5	8
2. MOD. EPT INDEX	20	17	14	14	15	19	20	21	19	15	17	19	18	17	23	20	20
Cand/Ref (%)	118		100		75	95		140	127		100	112	106		115	100	
Biol. Cond. Score	8	8	8	8	6	8	8	8	8	8	8	8	8	8	8	8	8
3. MOD. HBI	1.68	2.54	2.26	2.71	3.34	2.76	2.70	2.82	2.01	2.11	2.53	2.46	2.32	2.54	3.08	1.88	3.05
Cand-Ref	-0.86		-0.45		0.64	0.06		0.71	-0.10		-0.01	-0.08	-0.22		0.03	-1.17	
Biol. Cond. Score	8	8	8	8	8	8	8	7	8	8	8	8	8	8	8	8	8
4. % DOMINANT TAXON	14	18	29	16	33	16	19	14	37	30	13	18	19	18	19	30	25
Cand-Ref	-4		13		14	-3		-16	7		-5	0	1		-6	5	
Biol. Cond. Score	8	8	6	8	8	8	8	8	8	8	8	8	8	8	8	8	8
5. % MOD. MAYFLIES	49	38	47	45	40	34	35	37	69	56	46	47	56	38	21	52	15
Ref-Cand	-11		-2		-5	1		19	-13		-8	-9	-18		-6	-37	
Biol. Cond. Score	8	8	8	8	8	8	8	6	8	8	8	8	8	8	8	8	8
TOTAL BIOLOGICAL CONDITION SCORE	40	40	38	40	38	40	40	37	40	40	40	40	40	40	40	37	40
% COMPARABILITY TO REFERENCE	100		95		95	100		93	100		100	100	100		100	93	

R1=Little Fishing Creek
R2=West Branch Caldwell Creek
R3=West Branch Caldwell Creek
R4=Cross Fork
R5=Little Bush Kill
R6=Wild Creek

FIGURE 2
MUNCY CREEK

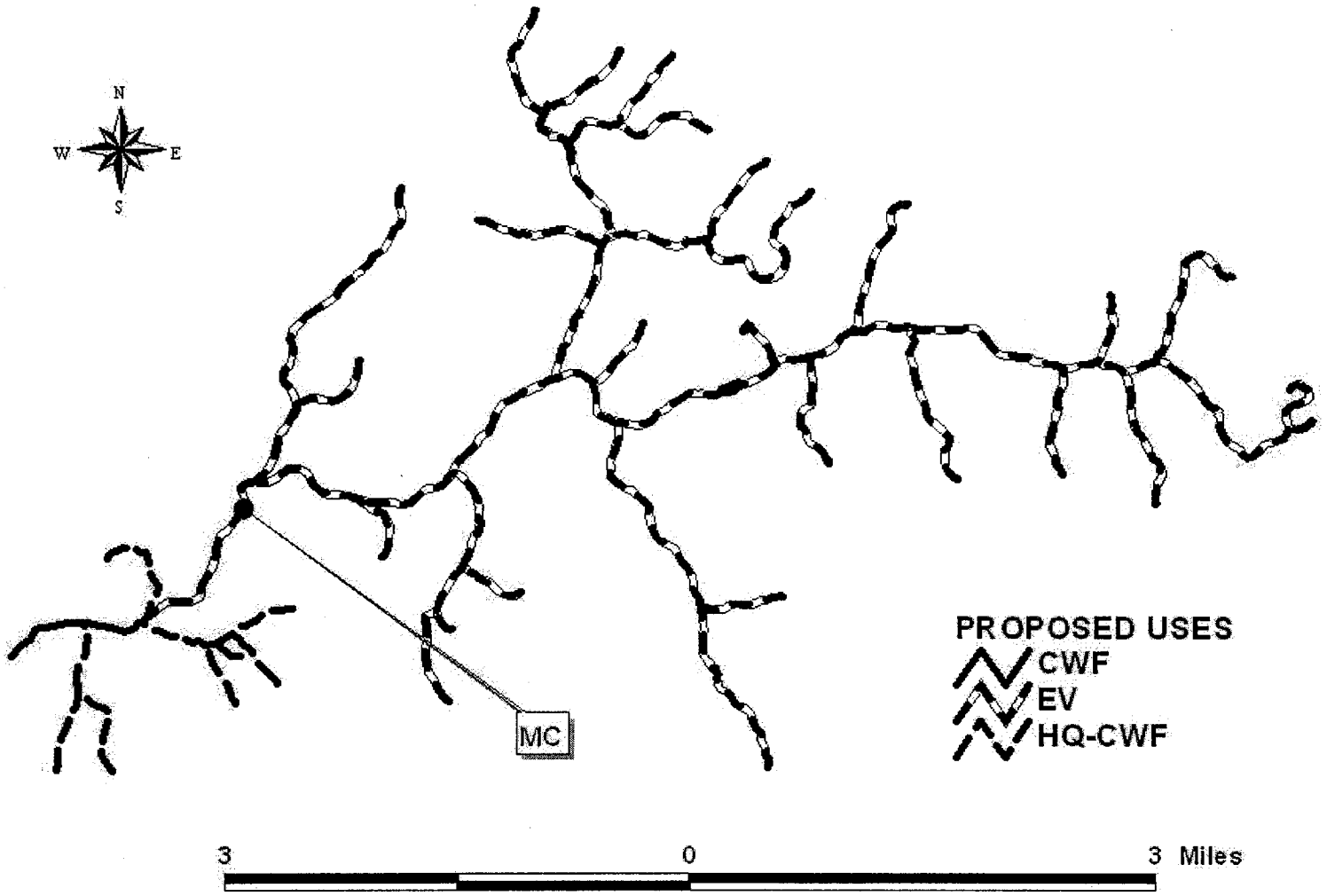


FIGURE 3
BLUE EYE RUN

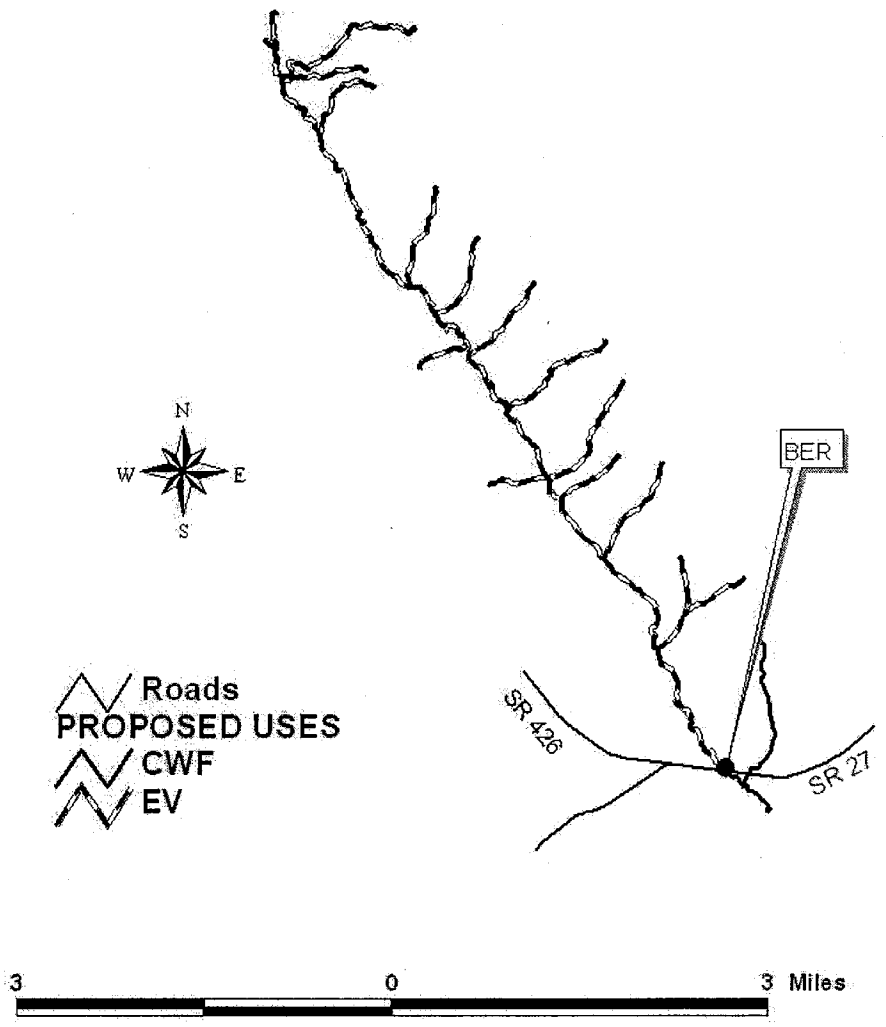


FIGURE 4
EAST HICKORY CREEK

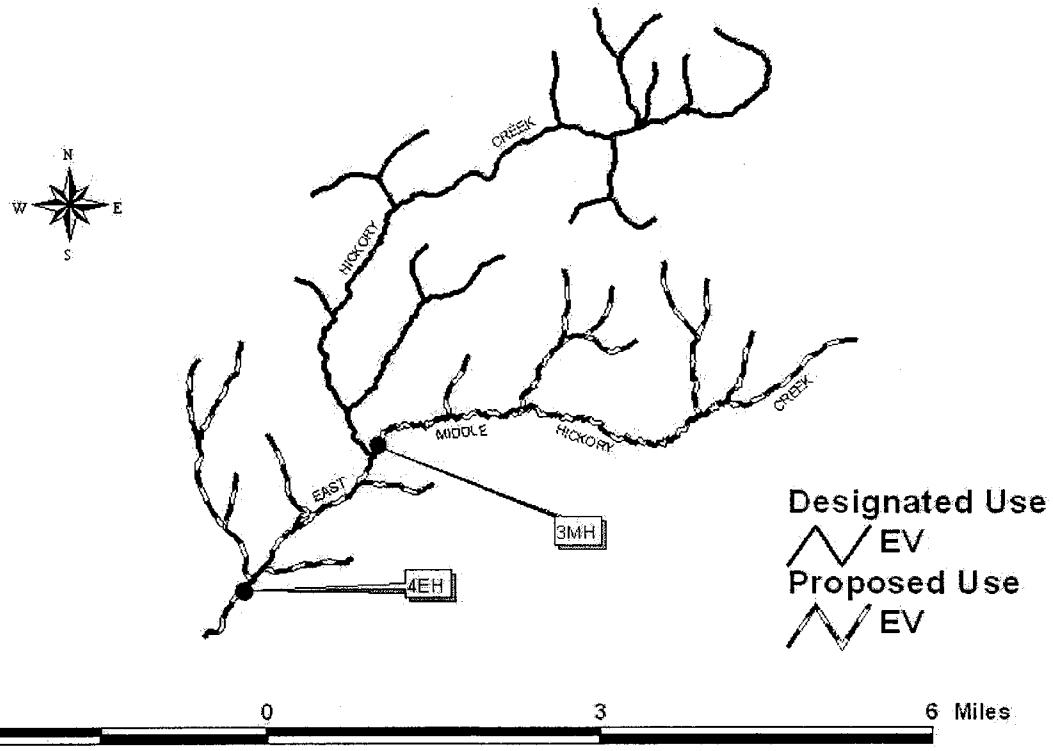


FIGURE 5
YOUNG WOMANS CREEK

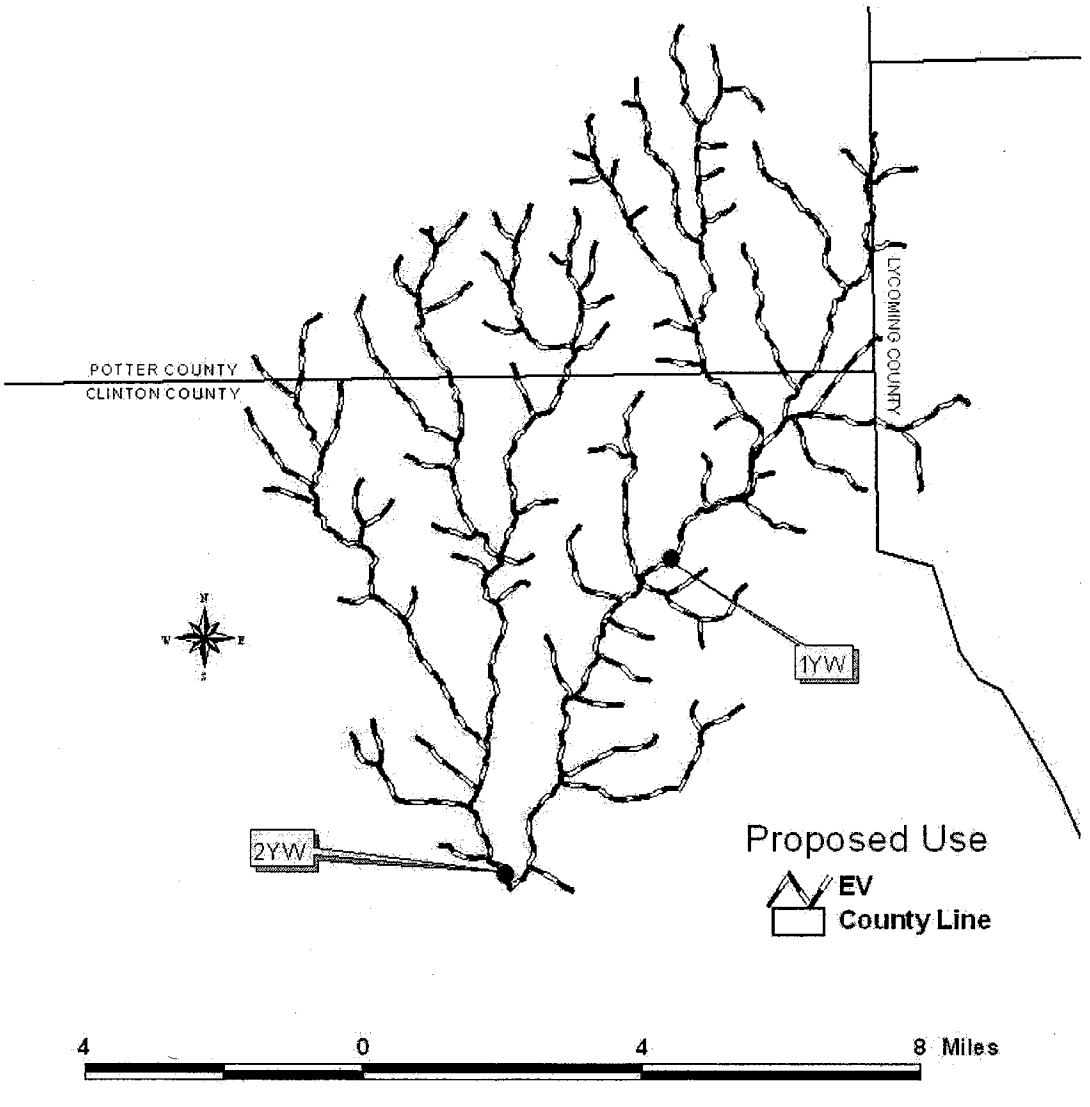


FIGURE 6
EAST BRANCH DYBERRY CREEK

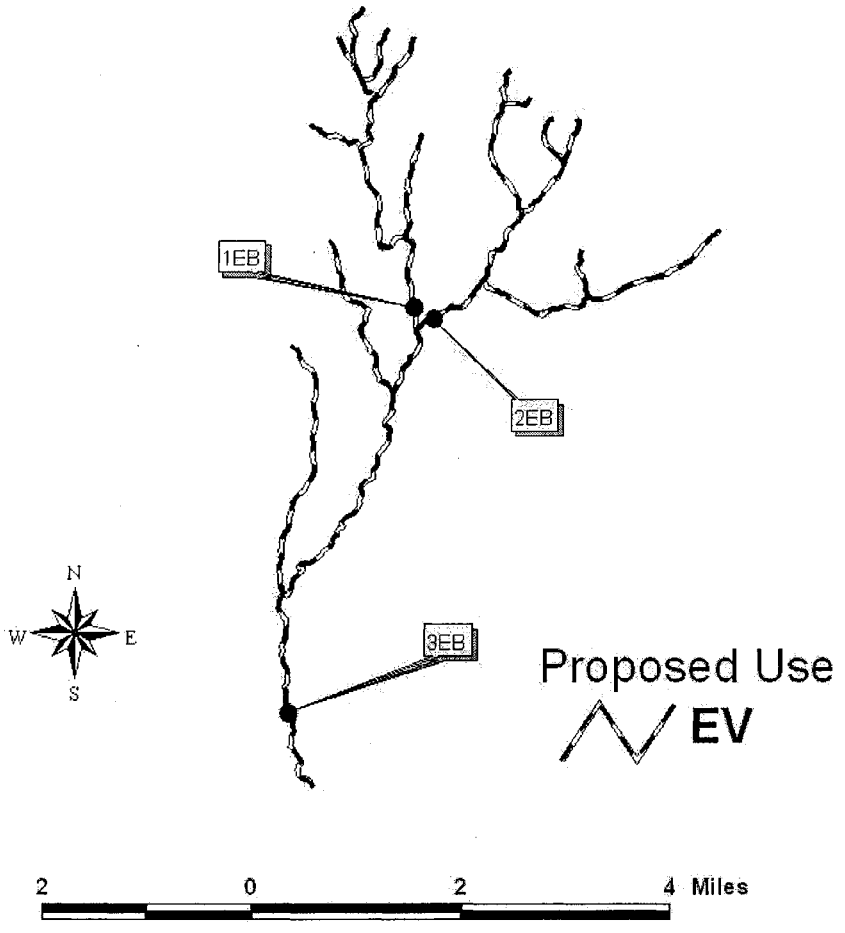


FIGURE 7
SPRUCE RUN

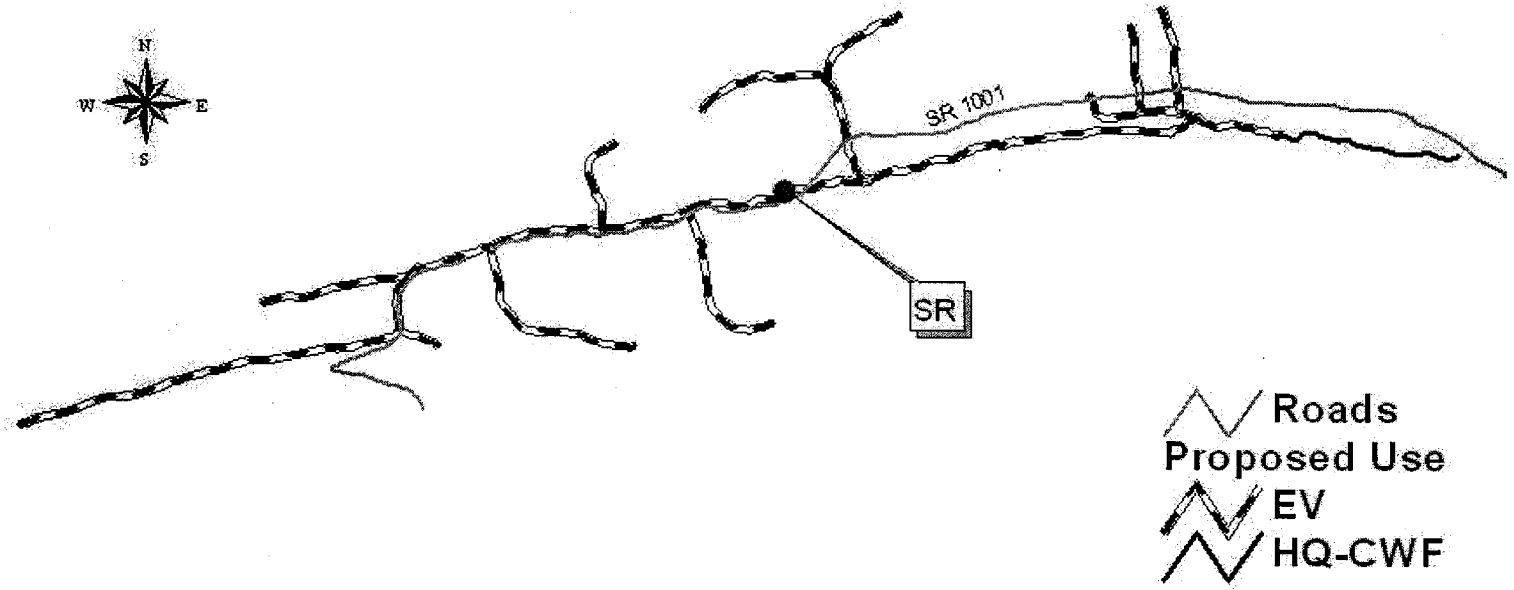
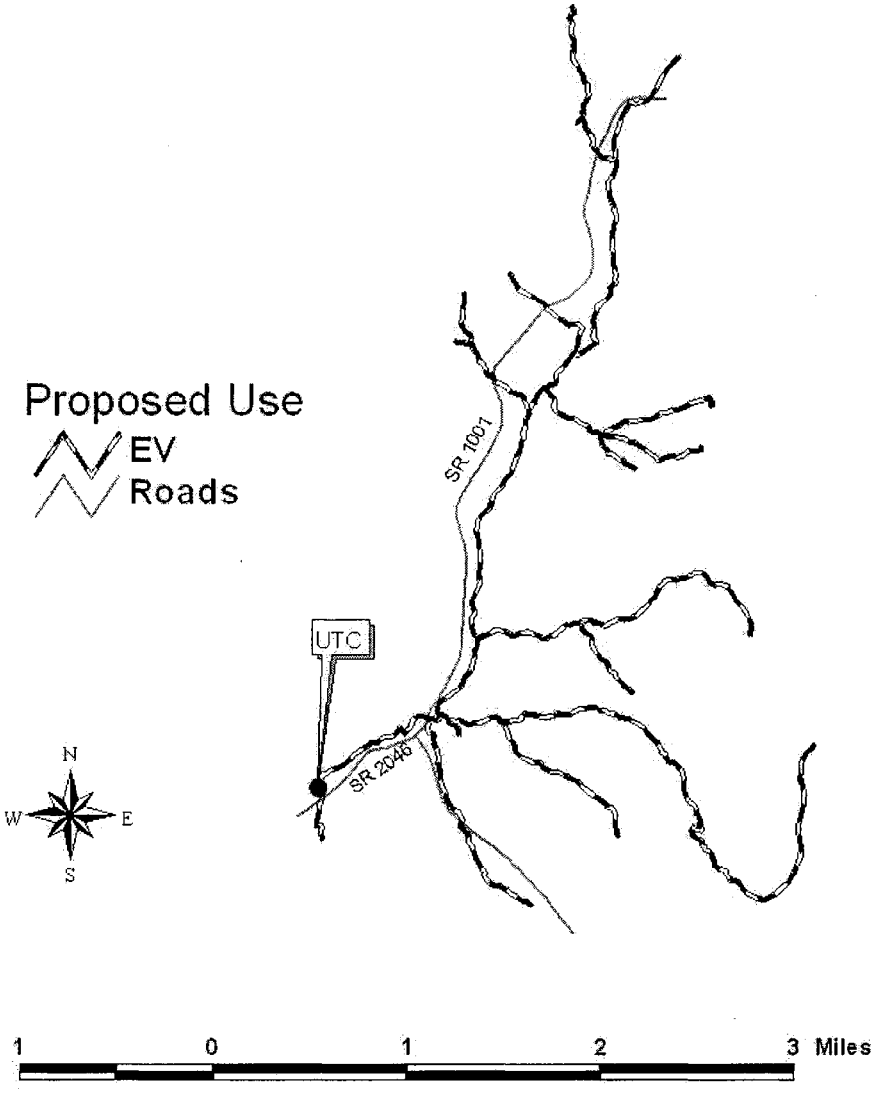


FIGURE 8
UNT TUNKHANNOCK CREEK



CDL-1

FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU

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By:
(Deputy Attorney General)

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-436

DATE OF ADOPTION December 15, 2009

BY John Hanger

TITLE JOHN HANGER
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality Executive or Independent Agencies

BY Andrew C. Clark

DATE OF APPROVAL

(Deputy General Counsel)
~~(Chief Counsel - Independent Agency)~~ JAN 20 2010
(Strike inapplicable title)

☐ Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

BLUE EYE RUN, ET AL. (WATER QUALITY NETWORK (WQN) PACKAGE)

25 *Pa. Code,* Chapter 93

NOTICE OF FINAL RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
25 Pa. Code, Chapter 93
Stream Redesignations

Blue Eye Run, et al. (Water Quality Network (WQN) Package)

Order

The Environmental Quality Board (Board) by this order amends 25 Pa. Code §§93.9b, 93.9d, 93.9f, 93.9g, 93.9i, 93.9l, 93.9p and 93.9q to read as set forth in Annex A.

This proposal was adopted by the Board at its meeting of December 15, 2009.

A. Effective Date

These amendments are effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. Contact Persons

For further information, contact Richard H. Shertzer, Chief, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, 11th Floor, Rachel Carson State Office Building, P.O. Box 8467, 400 Market Street, Harrisburg, PA 17105-8467, 717-787-9637 or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, 717-787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD-users) or 1-800-654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection (Department) Web site (http://www.depweb.state.pa.us).

C. Statutory and Regulatory Authority

This final-form rulemaking is being made under the authority of Sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5 (b)(1) and 691.402), which authorizes the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law, and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grants to the Board the power and duty to formulate, adopt, and promulgate rules and regulations for the proper performance of the work of the Department. In addition, Section 303 of the Federal Clean Water Act (33 U.S.C. § 1313) sets forth requirements for water quality standards and the federal regulation at 40 CFR § 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. Background of the Proposed Amendments

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits and best management practices) on individual sources of pollution.

The Department may identify candidates for redesignation during routine waterbody investigations. Requests for consideration may also be initiated by other agencies. Organizations, businesses, or individuals may submit a rulemaking petition to the Board.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other designations in its ongoing review of water quality standards. In general, HQ and EV waters must be maintained at their existing quality and permitted activities shall ensure the protection of designated and existing uses.

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in regulations at 25 *Pa. Code* sections 93.3 and 93.4. Examples of water uses protected include the following: Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water quality or uses. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be "redesignated" through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF, prior to a rulemaking. Once the Department determines the water uses attained by a surface water, the Department will recommend to the Board that the existing uses be made "designated" uses, through rulemaking, and be added to the list of uses identified in the regulation at § 93.9.

The Department operates the Surface Water Quality Network (WQN) – a long-term, fixed station network of monitoring stations on rivers and streams throughout the state. This network was initially designed to monitor water quality conditions on a broad scale. Most stations are located on major streams with large drainage areas. However, recent water quality monitoring trends emphasize the importance of identifying and defining biological reference conditions characteristic of no or minimal disturbance. As part of the process to establish biological reference conditions, smaller watersheds with minimal land disturbance were added to the water quality network to collect data representative of reference water quality conditions and to support biological metric protocol development. WQN streams are selected from various areas across the state and monitored for five years. Following the close of the 5-year inventory period, the studied sites are replaced with a new set of stations.

After reviewing the WQN monitoring data, several of the stations displayed existing use stream conditions indicative of EV waters. Physical, chemical, and biological characteristics along with other information on these waterbodies were considered to determine the appropriateness of the

current and recommended designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as HQ or EV waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality or Exceptional Value Waters). According to the Department's regulatory criteria, a Biological Condition Score (BCS) greater than or equal to 92% of the reference station score supports an EV designation (§ 93.4(b)(1)(v)).

All reference streams were selected because they were representative of excellent EV conditions based on the macroinvertebrate community and were of similar stream types, comparable geologic settings, and reasonable proximity with respect to their compared candidate stream. Both the candidate stream and the reference streams were sampled within a similar time frame to minimize the effects of seasonal variation.

All of the recommended redesignations in this final-form regulation for the WQN stations are candidates for EV, based upon data and appropriate regulatory criteria. All of the waterbodies in this regulatory package which are being recommended for EV qualify based on their BCS being greater than or equal to 92% of the reference station score. Copies of the Department's stream evaluation report for these waterbodies is available on the Department's website or from the contacts whose addresses and telephone numbers are listed in Section B. Based upon the data and information collected on these waterbodies, the Board has made the designations in Annex A.

A basin-wide migratory fishes (MF) designation was added to the Atlantic slope basin (drainage lists A--O and Z) as part of the Triennial Review of Water Quality Standards which was effective upon publication as a final rulemaking in the *Pennsylvania Bulletin* on May 16, 2009 (39 Pa.B. 2523). The MF designation applies to all waters within the respective basins unless there were specific exceptions previously noted for certain waterbodies or stream segments within one of these drainage lists. Drainage lists A--G are located within the Delaware River Basin. Drainage lists H--O are located within the Susquehanna River Basin. Drainage list Z is located within the Potomac River Basin. The MF designated use has been added to those waters which appear in Annex A to be consistent with the action in the Triennial Review final rulemaking at 39 Pa.B. 2523.

E. Summary of Comments and Responses on the Proposed Rulemaking

The EQB approved the proposed rulemaking for the Blue Eye Run, et al. (WQN) package at its April 21, 2009 meeting. The proposed rulemaking was published in the *Pennsylvania Bulletin* on June 20, 2009 (39 Pa.B. 3043) with provision for a 45-day public comment period that closed on August 4, 2009. The only commentator was the U.S. Environmental Protection Agency (EPA) Region 3 who commended DEP on its continuing effort to upgrade streams into its highest level of the Special Protection Waters Program, but otherwise had no comments.

On June 5, 2009, the Department submitted a copy of the proposed rulemaking published at 39 Pa.B. 3043 on June 20, 2009 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment in accordance with Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). Neither IRRC nor the Committees raised any comments, recommendations, or

objections to any portion of the proposed rulemaking, and no changes were made from the proposed rulemaking to this final-form regulation; therefore under Section 5(g) of Regulatory Review Act, the final rulemaking will be deemed approved by IRRC.

F. Summary of Changes to the Proposed Rulemaking

No changes were made to the proposed rulemaking.

G. Benefits, Costs and Compliance

1. **Benefits** – Overall, the Commonwealth, its citizens and natural resources will benefit from these changes because they provide the appropriate level of protection in order to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of clean water for drinking, recreational opportunities, and aquatic life protection. It is important to realize these benefits to ensure opportunity and development continue in a manner that is environmentally, socially and economically sound. Maintenance of water quality ensures its future availability for all uses.

2. **Compliance Costs** – The amendments to Chapter 93 may impose additional compliance costs on the regulated community. These regulatory changes are necessary to improve total pollution control. The expenditures necessary to meet new compliance requirements may exceed that which is required under existing regulations.

   Persons conducting or proposing activities or projects must comply with the regulatory requirements relating to designated and existing uses. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment or best management practices to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating cost for point source discharges. Treatment costs and best management practices are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated. The initial costs resulting from the installation of technologically advanced wastewater treatment processes and best management practices may be offset by potential savings from and increased value of improved water quality through more cost-effective and efficient treatment over time.

3. **Compliance Assistance Plan** - The regulatory revisions have been developed as part of an established program that has been implemented by the Department since the early 1980s. The revisions are consistent with and based on existing Department regulations. The revisions extend additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act and Pennsylvania Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection

through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The redesignations will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing uses and revised designated water uses.

4. **Paperwork Requirements** - The regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions, or the private sector. These regulatory revisions are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification (SEJ) may be required for new or expanded discharges to certain HQ Waters, and consideration of nondischarge alternatives is required for all new or expanded discharges to EV and HQ Waters.

H. Pollution Prevention

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged, and required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

I. Sunset Review

These amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 5, 2009, the Department submitted a copy of the proposed rulemaking published at 39 Pa.B. 3043 on June 20,

2009 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under Section 5(c) of the Regulatory Review Act, the Department provided IRRC and the Committees with copies of the comments received, as well as other documentation. The Department has considered all public comments in preparing this final-form regulation. No comments were received on the proposed rulemaking from IRRC or the Committees.

Under Section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form regulation was deemed approved by the House and Senate Committees on _____. Under Section 5.1(e) of the Regulatory Review Act, IRRC met on _____ and approved the final-form regulation.

K. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under Sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and regulations promulgated thereunder, 1 *Pa. Code* §§7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) This final-form regulation does not enlarge the purpose of the proposal published at 39 Pa.B. 3043 (June 20, 2009).

(4) This final-form regulation is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Order.

(5) This final-form regulation does not contain standards or requirements that exceed requirements of the companion federal regulations.

L. Order

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 *Pa. Code* Chapter 93, are amended by amending §§93.9b, 93.9d, 93.9f, 93.9g, 93.9i, 93.9l, 93.9p and 93.9q to read as set forth in Annex A..

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees, as required by the Regulatory Review Act.

(d) The Chairperson shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JOHN HANGER,
Chairperson

Editor's note: *A basin-wide migratory fishes (MF) designation was added to the Atlantic slope basin (drainage lists A--O and Z) as part of the Triennial Review of Water Quality Standards which was effective upon publication as a final rulemaking in the Pennsylvania Bulletin on May 16, 2009 (39 Pa.B. 2523). The MF designation applies to all waters within the respective basins unless there were specific exceptions previously noted for certain waterbodies or stream segments within one of these drainage lists. Drainage lists A--G are located within the Delaware River Basin. Drainage lists H--O are located within the Susquehanna River Basin. Drainage list Z is located within the Potomac River Basin. The MF designated use has been added to those waters which appear in Annex A to be consistent with the action in the Triennial Review final rulemaking at 39 Pa.B. 2523.*

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

* * * * *

§93.9b. Drainage List B

Delaware River Basin in Pennsylvania
Lackawaxen River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
	* * * * *			
4—Van Auken Creek	Basin	Wayne	HQ-TSF, MF	None
3—Dyberry Creek	**[Basin, Source to Big Brook**	**Wayne**	**HQ-CWF, MF**	**None]**
4—West Branch Dyberry Creek	**Basin**	**Wayne**	**HQ-CWF, MF**	**None**
4—East Branch Dyberry Creek	**Basin**	**Wayne**	**EV, MF**	**None**
3—Dyberry Creek	**Basin, Confluence of West Branch Dyberry Creek and East Branch Dyberry Creek to Big Brook**	**Wayne**	**HQ-CWF, MF**	**None**
4—Big Brook	Basin	Wayne	EV, MF	None
3—Dyberry Creek	Basin, Big Brook to **[Confluence with West Branch Lackawaxen River]** **Mouth**	Wayne	HQ-CWF, MF	None
	* * * * *			
3—**[Tadyuskung]** **Teedyuskung** Creek	Basin	Pike	HQ-CWF, MF	None

* * * * *

§93.9d. Drainage List D

Delaware River Basin in Pennsylvania
Lehigh River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
	* * * * *			
4—Upper **[Tunkhanna]** **Tunkhannock** Creek	Basin	Monroe	HQ-CWF, MF	None
	* * * * *			
3—**[Hokendagua]** **Hokendauqua** Creek	Basin	Northampton	CWF, MF	None
	* * * * *			

§93.9f. Drainage List F

Delaware River Basin in Pennsylvania
Schuylkill River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
	* * * * *			
3—**[Mahanhon]** **Mahannon** Creek	Basin	Schuylkill	CWF, MF	None
	* * * * *			

§93.9g. Drainage List G

Delaware River Basin in Pennsylvania
Delaware River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
	* * * * *			
2—Chester Creek	Basin, Source to East Branch Chester Creek	Chester	TSF, MF	None
3—East Branch Chester Creek	Basin, **Source to [UNT at RM 0.4 ("Goose Creek")]** **Westtown Run**	Chester	TSF, MF	None
4—**[UNT to East Branch Chester Creek at RM 0.4 ("Goose Creek")]** **Westtown Run**	Basin	Chester	WWF, MF	None
3—East Branch Chester Creek	Basin, **[UNT at RM 0.4]** **Westtown Run** to Mouth	Chester	TSF, MF	None
2—Chester Creek	Basin, East Branch Chester Creek to Rocky Run	Delaware	TSF, MF	None
	* * * * *			

§93.9i. Drainage List I

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
	* * * * *			
2—Taques Creek	Basin	Wyoming	CWF, MF	None
2—Tunkhannock Creek	**[Main Stem, Source to Susquehanna-Wyoming County Border]** **Basin, Source to UNT 29200 at RM 36.08**	Susquehanna**[-Wyoming]**	CWF, MF	None
[3—Unnamed Tributaries to Tunkhannock Creek	**Basins, Source to Susquehanna-Wyoming County Border**	**Susquehanna**	**CWF, MF**	**None**
3—Bear Swamp Creek	**Basin**	**Susquehanna**	**CWF, MF**	**None**
3—Bell Creek	**Basin**	**Susquehanna**	**CWF, MF**	**None**
3—Leslie Creek	**Basin**	**Susquehanna**	**CWF, MF**	**None**
3—Partners Creek	**Basin**	**Susquehanna**	**CWF, MF**	**None**
3—Tower Branch	**Basin**	**Susquehanna**	**CWF, MF**	**None**
3—Millard Creek	**Basin**	**Susquehanna**	**CWF, MF**	**None]**
3—UNT 29200 to Tunkhannock Creek at RM 36.08	**Basin**	**Susquehanna**	**EV, MF**	**None**
2—Tunkhannock Creek	**Basin, UNT 29200 to East Branch Tunkhannock Creek**	**Susquehanna**	**CWF, MF**	**None**
3—East Branch Tunkhannock Creek	Basin, Source to Dundaff Creek	Susquehanna	CWF, MF	None
	* * * * *			
3—East Branch Tunkhannock Creek	Basin, Dundaff Creek to Mouth	Susquehanna	CWF, MF	None
2—Tunkhannock Creek	**Basin, East Branch Tunkhannock Creek to Susquehanna-Wyoming County Border**	**Susquehanna-Wyoming**	**CWF, MF**	**None**
2—Tunkhannock Creek	Main Stem, Susquehanna- Wyoming County Border to Mouth	Wyoming	TSF, MF	None
	* * * * *			

§93.9l. Drainage List L

Susquehanna River Basin in Pennsylvania
West Branch Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
	* * * * *			
4—Sandy Run	Basin	Clinton	HQ-CWF, MF	None
3—Drury Run	Basin, Sandy Run to Woodley **[Hollow]** **Draft**	Clinton	HQ-CWF, MF	None
4—Woodley **[Hollow]** **Draft**	Basin	Clinton	CWF, MF	None
3—Drury Run	Basin, Woodley **[Hollow]** **Draft** to Mouth	Clinton	CWF, MF	None
	* * * * *			
3—Boggs Hollow	Basin	Clinton	EV, MF	None
3—Young Womans Creek	**Basin, Source to Left Branch Young Womans Creek**	**Clinton**	**EV, MF**	**None**
3—Young Womans Creek	Basin, **Left Branch Young Womans Creek to Mouth**	Clinton	HQ-CWF, MF	None
3—Caldwell Run	Basin	Clinton	HQ-CWF, MF	None
	* * * * *			
4—**[Harrington]** **Herrington** Hollow	Basin	Tioga	HQ-CWF, MF	None
	* * * * *			
4—**[Burdie]** **Burdic** Run	Basin	Tioga	HQ-CWF, MF	None
	* * * * *			
3—Carpenters Run	Basin	Lycoming	WWF, MF	None
[3—Muncy Creek	**Main Stem, Source to US 220 Bridge at Muncy Valley**	**Sullivan**	**CWF, MF**	**None**
4—Unnamed Tributaries to Muncy Creek	**Basins, Source to US 220 Bridge at Muncy Valley**	**Sullivan**	**HQ-CWF, MF**	**None**
4—Lopez Pond Brook	**Basin**	**Sullivan**	**HQ-CWF, MF**	**None**
4—South Brook	**Basin**	**Sullivan**	**HQ-CWF, MF**	**None**
4—Rock Run	**Basin**	**Sullivan**	**HQ-CWF, MF**	**None**
4—Tublick Run	**Basin**	**Sullivan**	**HQ-CWF, MF**	**None**
4—Peters Creek	**Basin**	**Sullivan**	**HQ-CWF, MF**	**None**
4—Big Run	**Basin**	**Sullivan**	**HQ-CWF, MF**	**None**
4—Cherry Run	**Basin**	**Sullivan**	**HQ-CWF, MF**	**None**
4—Elklick Run	**Basin**	**Sullivan**	**EV, MF**	**None**
4—Long Brook	**Basin**	**Sullivan**	**HQ-CWF, MF**	**None]**
3—Muncy Creek	**Basin, Source to second SR2002 Bridge upstream of Sonestown at RM 26.4**	**Sullivan**	**EV, MF**	**None**

3—Muncy Creek	**Main Stem, Second SR2002 Bridge upstream of Sonestown at RM 26.4 to US 220 Bridge at Muncy Valley**	**Sullivan**	**CWF, MF**	**None**
4—UNTs to Muncy Creek	**Basins, Second SR2002 Bridge upstream of Sonestown at RM 26.4 to US 220 Bridge at Muncy Valley**	**Sullivan**	**HQ-CWF, MF**	**None**
4—Slip Run	Basin	Sullivan	HQ-CWF, MF	None
* * * * *				
4—Beaver Run	Basin	Union	CWF, MF	None
4—Spruce Run	**Basin, Source to eastern boundary of Bald Eagle State Forest at RM 5.09**	**Union**	**EV, MF**	**None**
4—Spruce Run	Basin, **Eastern boundary of Bald Eagle State Forest at RM 5.09 to Mouth**	Union	HQ-CWF, MF	None
4—Little Buffalo Creek	Basin	Union	CWF, MF	None
* * * * *				

§93.9p. Drainage List P

Ohio River Basin in Pennsylvania
Allegheny River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
* * * * *				
4—Walcott Brook	Basin	McKean	CWF	None
4—**[Bayer] Boyer** Brook	Basin	McKean	HQ-CWF	None
4—Daly Brook	Basin	McKean	HQ-CWF	None
* * * * *				

§93.9q. Drainage List Q

Ohio River Basin in Pennsylvania
Allegheny River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
* * * * *				
4—Gar Run	Basin	Warren	CWF	None
4—Blue Eye Run	**Basin, Source to SR0027 Bridge**	**Warren**	**EV**	**None**
4—Blue Eye Run	Basin, **SR0027 Bridge to mouth**	Warren	CWF	None

4—Little Brokenstraw Creek	Basin (all sections in PA)	Warren	CWF	None
	* * * * *			
3—Jones Run	Basin	Forest	CWF	None
3—East Hickory Creek	Basin, Source to **[Middle Hickory Creek]** **Forest Highway 119**	**[Forest]** **Warren**	EV	None
[4—Middle Hickory Creek	**Basin**	**Warren**	**HQ-CWF**	**None]**
3—East Hickory Creek	Basin, **[Middle Hickory Creek]** **Forest Highway 119** to Mouth	Forest	HQ-CWF	None
3—Siggens Run	Basin	Forest	CWF	None
	* * * * *			

REPORT TO THE ENVIRONMENTAL QUALITY BOARD
RESPONSE TO COMMENTS
PROPOSED STREAM REDESIGNATIONS

Blue Eye Run (WQN), et al.

The Environmental Quality Board approved the proposed rulemaking for the Blue Eye Run (WQN), et al. package at its April 21, 2009 meeting. The proposed rulemaking was published in the *Pennsylvania Bulletin* on June 20, 2009 (39 Pa.B 3043) with provision for a 45-day public comment period that closed on August 4, 2009. Comments were received from 1 commentator.

On June 5, 2009, the Department submitted a copy of the proposed rulemaking published at 39 Pa.B 3043 on June 20, 2009 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment in accordance with Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). Neither IRRC nor the Committees raised any comments, recommendations, or objections to any portion of the proposed rulemaking, and no changes were made from the proposed rulemaking to this final-form regulation; therefore under Section 5(g) of Regulatory Review Act, the final rulemaking will be deemed approved by IRRC.

Supportive Comment – Entire Package

Comment: U.S. EPA Region 3 has no comments on the proposed redesignations, but does offer its commendation to DEP in its continuing effort to upgrade streams into its highest level of the Special Protection Waters Program. (1)

Response: The Department appreciates this supportive comment on the proposed redesignations.

This is a list of corporations, organizations and interested individuals from whom the Environmental Quality Board has received comments regarding the above referenced regulation.

ID	Name/Address	Submitted one page Summary for distribution to EQB	Provided Testimony	Requested Final Rulemaking following EQB Action
1.	U.S. Environmental Protection Agency Region III Larry Merrill, Acting Associate Director Office of Standards, Assessment and TMDLs Water Protection Division 1650 Arch Street Philadelphia, PA 19103-2029	NO	N/A	NO

2771

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
January 25, 2010

Policy Office 717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Blue Eye Run, et al (Water Quality Network Package) (#7-436);
Final-Form Rulemaking – Environmental Laboratory Accreditation (#7-434)

Dear Mr. Kaufman:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed copies of two final-form rulemakings for review and comment by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB) approved these is final-form rulemakings at its December 15, 2009, meeting.

The Blue Eye Run, et al (Water Quality Network Package) final rulemaking includes revisions to the Designated Uses and Water Quality Criteria to all or part of the following waterbodies as included in 25 *Pa Code*, Sections 93.9b, 93.9i, 93.9l, 93.9q,: East Branch Dyberry Creek (Wayne County), UNT 29200 to Tunkhannock Creek (Susquehanna County), Young Womans Creek (Clinton County), Muncy Creek (Sullivan County), Spruce Run (Union County), Blue Eye Run (Warren County), and East Hickory Creek (Warren County). The data that substantiates the regulatory revisions in this final rulemaking was obtained from the Department of Environmental Protection's (Department) Surface Water Quality Network (WQN) – a long-term, fixed station network of monitoring stations on rivers and streams throughout the state. WQN reference sites are selected from various areas across the state and are monitored in five year rotations for chemical and biological quality to describe best-attainable conditions. After reviewing the results of this monitoring, the Department found that several of the reference stations displayed Existing Use stream conditions indicative of Exceptional Value (EV) waters. Based on this data and appropriate regulatory criteria, the Department developed revisions to the Designated Uses and Water Quality Criteria to the above listed waterbodies contained in the Blue Eye Run, et al final rulemaking package. The amendments affect approximately 264.2 stream miles in the Commonwealth, which will be redesignated to Exceptional Value, if approved. The rulemaking also includes spelling corrections to designations in Sections 93.9b, 93.9d, 93.9f, 93.9g, 93.9l, and 93.9p. These corrections will not affect the current stream designations.

The EQB approved the proposed rulemaking at its April 21, 2009, meeting. The proposed rulemaking was published in the *PA Bulletin* on June 20, 2009 at 39 *Pa.B.* 3043, with provision for a 45-day public comment period that closed on August 4, 2009. The only commentator on the proposal was the U.S. Environmental Protection Agency (EPA) Region 3 who commended the Department on its continuing effort to upgrade streams into its highest level of the Special Protection Waters Program.

IRRC reviewed the proposal as well, but did not issue any comments, recommendations, or objections to the proposed rulemaking. The Department did not make any changes to the rulemaking from its proposed form.

The Environmental Laboratory Accreditation final-form rulemaking includes amendments to 25 *Pa. Code* Chapter 252 concerning requirements for environmental laboratory accreditation. The rulemaking affects any person, facility or group that performs testing or analysis on drinking water, non-potable water, and/or solid and chemical material environmental samples required by Department statutes or regulations. The majority of amendments in the final rulemaking include modifications that clarify existing requirements in order to facilitate greater understanding and compliance among the regulated community with the Department's regulations. The rulemaking also includes amendments that eliminate unnecessary or cost prohibitive requirements and amendments to include several necessary standards for accreditation. Lastly, the rulemaking includes adjustments to the current accreditation fees, as they do not adequately fund the Laboratory Accreditation Program as mandated by the Environmental Laboratory Accreditation Act (Act 90 of 2002). Specific changes to the fees attempt to not only simplify the fee structure, but to equally distribute the costs of the program over the regulated community.

The EQB adopted the proposed rulemaking on April 21, 2009. The proposal was published in the *PA Bulletin* on June 20, 2009, at 39 *Pa.B.* 3051, with a 30-day public comment period. Two commentators provided comments on the proposal, including the Delaware County Regional Water Quality Control Authority and the Independent Regulatory Review Commission (IRRC), who requested greater clarification from the Department on several elements of the rulemaking, including recordkeeping and documentation requirements, the qualifications of a laboratory supervisor and training requirements. At final rulemaking, amendments were made concerning Federal Safe Drinking Water Act Proficiency Testing (PT) study requirements for laboratories, as well as amendments pertaining to recordkeeping procedure requirements for demonstrations of capability.

The Department worked with the Laboratory Accreditation Advisory Committee (LAAC) to amend Chapter 252 in a manner that ensures appropriate requirements for environmental laboratory accreditation. On September 10, 2009, the LAAC unanimously voted to recommend the Chapter 252 final rulemaking for presentation to the Board.

The Department will provide assistance as necessary to facilitate the Commission's review of these final-form rulemakings under Section 5.1(e) of the Regulatory Review Act. Please contact me at the number above if you have any questions or need additional information.

Sincerely,

Michele L. Tate

Michele L. Tate
Regulatory Coordinator

Enclosures

0120-FM-PY0011 8/2006

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF POLICY

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 7- 436

SUBJECT: Blue Eye Run, et al (Water Quality Network (WQN) Package)

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Regulation with Notice of Proposed Rulemaking Omitted
- ☐ 120-day Emergency Certification of the Attorney General
- ☐ 120-day Emergency Certification of the Governor
- ☐ Delivery of Tolled Regulation
  a. ☐ With Revisions b. ☐ Without Revisions

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INDEPENDENT REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1/25/10		Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Rep. Camille George
1-25-10		Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
1-25-10		Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Mary Jo White
1-25-10		Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
1/25/10	Kathy Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)