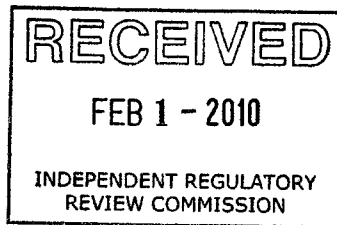


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ENVIRONMENTAL QUALITY BOARD

January 21, 2010

John Hanger, Chairman
Environmental Quality Board
15th Floor, RCSOB
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Tohickon Creek Upgrade Petition

Dear Secretary Hanger:

Much history, time, and work has been conducted on behalf of the Tincum Conservancy and the citizens living and working in the Tohickon Watershed. They have spent over fourteen years gathering information, passing protective ordinances, and collecting stream data to support the stream upgrade petition package that was submitted to the Department and accepted by the EQB for further study on September 19, 1995. Meanwhile, important regional protection measures have also been put in place after much work and advocacy from the Delaware Riverkeeper Network, the river community, and the Delaware River Basin Commission, who recognize the significance of this region and watershed.

We understand Department staff are working hard to finalize their recommendations for the Lower Tohickon petition for an upcoming EQB meeting early this year and are writing to express our continued organizational support and resources to request the Department recommend Exceptional Value status of the Lower Tohickon Creek.

With recent victories for the Delaware River basin and the unique designations placed on the main stem and its surrounding waterbodies, including the Tohickon, we believe that anti-degradation guidance and the unique features of the Lower Tohickon provides the Department with strong justification to recommend an upgrade of the Lower Tohickon to Exceptional Value Status. We believe the Lower Tohickon qualifies as: surface water of exceptional ecological significance and outstanding national, state, regional, or local resource due to these regional protections. Furthermore, an upgrade would be in line with the requirements of the new regional protections and would assist with ensuring these regional protections are followed and implemented correctly. In fact, NJDEP, has provided similar C-1 protections for tributaries on the New Jersey side that feed into the main stem SPW region.

Many of the important and significant features for the Tohickon have been provided by the petitioners

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in past documentation to the Department but briefly, we highlight below key designations, current protections, and history that provides the Department with a strong case to recommend Exceptional Value status of the Lower Tohickon Creek in their revised 2010 special protection evaluation report.

Tohickon Creek is a named tributary to the Federal Lower Delaware Wild and Scenic River. Portions of the Lower Delaware River were designated as a component of the National Wild and Scenic Rivers System on November 1, 2000 by an Act of the 106th Congress. As per 16 USC 1274(a), the designated river segments are to be managed in accordance with the Lower Delaware River Management Plan "...which establishes goals and actions that will ensure long-term protection of the river's outstanding values and compatible management of land and water resources associated with the river". PADEP is specifically named as one of the entities that will cooperate with carrying out the goals of the Plan.

Goal 1 of the Plan is to "maintain existing water quality in the Delaware River and its tributaries from measurably degrading and improve it where practical" (Lower Delaware River Management Plan, intro. p. 3). Among the policies set forth in the Plan, the first is to "Achieve the highest practical state and federal water quality designation for the river and its tributaries" (Lower Delaware River Management Plan, Sect II, p. 27). The Plan applies to the entire main stem as defined in the Plan, which includes all waters from the Delaware Water Gap to the town of Washington Crossing and also includes the Lower Delaware River Wild and Scenic Study Area, which extends from Washington Crossing, PA to the Rancocas Creek, NJ.

Tohickon Creek is a named tributary to the Lower Delaware Special Protection Waters DRN filed a Petition with the Delaware River Basin Commission (DRBC) on April 26, 2001 to designate all the waters named in the Lower Delaware Wild and Scenic designation as Special Protection Waters, the DRBC's mechanism for designating Outstanding National Resource Waters pursuant to 40 CFR Ch.1 (7-1-88), 131.12, the Federal Clean Water Act. The DRBC permanently designated the Lower Delaware as Significant Resource Waters, one of the two available SPW classifications, by unanimous vote on July 16, 2008. The entire 197-mile non-tidal Delaware River is now protected by SPW anti-degradation regulations (see enclosed DRBC map).

The Lower Tohickon Creek is included as part of the Pennsylvania Highlands region, which is part of the larger federally recognized Highlands Region of the United States. The Highlands Conservation Act recognizes the entire region as a "landscape of national significance." The watershed is considered a "critical treasure" in the Pennsylvania Highlands Region (see enclosed map).

The Tohickon Creek is a surface water of exceptional recreational significance. The creek provides a variety of unique water-based recreational opportunities and is included within the Delaware and Lehigh National Heritage Corridor and crosses beneath the Delaware and Lehigh Canal, a National Historic Landmark. The watershed includes two state parks, and a county park plus a variety of municipal and private conserved open space areas. Kayakers also enjoy white-water kayaking below the lake during spring high flows. Warm-water species found in Tohickon Creek include smallmouth bass, sunfish, carp and catfish. The Pennsylvania Fish and Boat Commission currently stocks trout, a cold-water fish.

These points and the relatively new protections put in place for the Tohickon and its surrounding waterbodies, should be used by the Department to qualify the lower Tohickon as EV as they show national or state government agency has adopted water quality protective measures in a resource management plan; and regional governments have adopted coordinated water quality protective measures along a watershed corridor (25 Pa. Code § 93.1). These protection measures were not in place at the time of the drafting of the February, 1997 DEP Special Protection Evaluation Report and we are

pleased that the Department is now able to incorporate these new protections and considerations to amend the initial study.

Additional water chemistry data collected and reported more recently for the Tinicum Conservancy reflects healthy water quality levels for the Tohickon Creek and even goes so far as comparing temperature studies of the reference streams selected by the Department to show their similarities to Tohickon Creek. The study also indicates how there is a daily temperature cycling of the Tohickon and the two other EV streams affected by the ambient dew point temperature.

Furthermore, if water temperature is an issue for the Lower Tohickon, these levels are likely due to the effects of Lake Nockamixon. This 1,450-acre man-made impoundment built in 1970 should not essentially penalize the Lower Tohickon Creek or eliminate it from receiving special protections status. It is understood that below impoundments, increased temperatures will be artificially raised. If for example, the Department recommended an essential downgrade of the Tohickon based on the effects of this man-made impoundment, this would not be in the spirit of the Clean Water Act and would require an extensive UAA.

We look forward to reviewing the DEP draft report and if we can help provide additional information or support, please do not hesitate to contact us. Thank you for your time and consideration.

Sincerely,



Maya K. van Rossum
the Delaware Riverkeeper

cc. Elizabeth Koniers Brown, Delaware Riverkeeper Network
Jim Engel, Tinicum Conservancy
Gary Walters, PA DEP
Robert Stanfield
Brian Glass, Penn Future
Gretchen Schatschneider, Bucks County Conservation District
Marty Kyde
Anne Misak, Campaign for Clean Water