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CHESTER COUNTY

Schuylkill Township

ENVIRONMENTAL ADVISORY COUNCIL

February 2, 2018

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

By electronic mail
RegComments@pa.gov

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In re: Comments on Triennial Review of Chapter 93 Water Quality Standards

To Whom It May Concern,

On behalf of Schuylkill Township and its Environmental Advisory Council (EAC), I submit these comments in response to the October 21, 2017 notice in the *Pennsylvania Bulletin* that the Environmental Quality Board (EQB) proposes to amend Pa. Code Chapter 93, Pennsylvania's water quality standards. The rulemaking was proposed by the Department of Environmental Protection (Department) and adopted by the EQB at its meeting on April 18, 2017. As noted in the *Pennsylvania Bulletin* on December 30, 2017, the public comment period on this proposal was extended to February 16, 2018.

One issue of particular interest to Schuylkill Township involves the consideration of conservation easements as part of a formal evaluation for a proposed stream redesignation. The Department and the EQB are seeking comments on whether the definition of "outstanding National, State, regional or local resource water" in §93.1 should be amended in the next water quality standards review. On a related matter, comments also are sought on a suggested new definition of "conservation easements" to describe which types of easements may be considered in stream redesignation evaluations.

Taking the second matter first, the Department has proposed a new definition for the term "*Conservation easements*", which would read:

Easements held in perpetuity, where a governmental unit with taxation powers, a national government agency, or a state government agency is the holder, long-term steward, or responsible beneficiary related to repair and perpetual maintenance of the easement. Such easements must be recorded, provide for the maintenance and enhancement of water quality through water quality protective measures and cannot be revised, rescinded, or amended by any party.

We have several issues with the proposed language. First, it requires that a "governmental unit" have an ownership interest in the conservation easement, either as a holder or a beneficiary of the easement. This presumes that government has a greater capacity or willingness to uphold an easement's purpose than a private charitable land trust. We believe that presumption is unfounded. We have worked

with many land trusts over the years, and in our experience they faithfully adhere to the highest standards and diligently monitor and enforce the terms of easements which they have created or which have been entrusted to them.

Also, the proposed language requires that to qualify, a conservation easement must be set up so that it can never be amended. This is simply impractical. We agree that it would be undesirable to weaken the water protection objectives of a conservation easement, or in any way change the easement so as to hamper the holder's ability to uphold the water protection objectives. However, circumstances change and as the understanding and administration of conservation protections develop and improve over time, it may (and often is) desirable to be able to modify the terms of an easement document to strengthen its administration. Amendments that strengthen or enhance conservation protections over time are important and need to be permitted. We believe that the key consideration in making any revision to an easement document is to ensure that nothing is done that would weaken the underlying water protection objectives or the means to uphold them.

Furthermore, many existing conservation easements do not have a governmental unit either as a holder or a beneficiary of the easement. In order to qualify under the proposed definition, such easements would need to be renegotiated and amended in order to create an interest in a governmental entity, but that then would disqualify them under the last section of the proposed definition.

Thus, the Schuylkill Township EAC proposes that the suggested language for "conservation easement" be modified as follows:

A legal agreement between a landowner and a conservation trust or governmental unit which imposes limitations or affirmative obligations regarding a specific parcel of land for purposes that include, but are not necessarily limited to, water quality maintenance and enhancement; which is recorded and held in perpetuity; and which cannot be amended by any party in a manner that would weaken the underlying water quality protection objectives.

The Department and EQB also have suggested amending the existing definition of "Outstanding National, State, regional or local resource water" in §93.1 by the addition of a new sentence, which would read:

The term includes a surface water protected by one or more conservation easements situated along a watershed corridor, in a manner that provides protection to significant reaches of the corridor.

The Schuylkill Township EAC recommends that the final phrase of the proposed sentence "*in a manner that provides protection to significant reaches of the corridor*" be deleted. This phrase is much too vague: how much land qualifies as "significant reaches of the corridor"? Where along the corridor must the land be positioned? What specific "manner" of "protection" is to be provided? This ambiguous language only

serves to create new uncertainty in an effort otherwise meant to bring greater clarity to the role of conservation easements in evaluations for stream redesignations.

We believe it is important for the Commonwealth and municipalities to work together to achieve our common goals for water quality protection. On behalf of the EAC, thank you for your consideration of our comments.

Yours truly,

A handwritten signature in black ink, appearing to read "Stephen P. Kunz". The signature is fluid and cursive, with the first name being the most prominent.

Stephen P. Kunz
Vice-Chair, Schuylkill Township EAC

cc: Schuylkill Township Board of Supervisors
Green Valleys Watershed Association
Natural Lands
French & Pickering Creeks Conservation Trust