



**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

## **Comment and Response Document**

# **Water Quality Standards Dunbar Creek et al. Stream Redesignations**

25 Pa. Code Chapter 93

51 Pa.B. 4062 (July 31, 2021)

Environmental Quality Board Regulation #7-557

(Independent Regulatory Review Commission #3309)

## **Water Quality Standards – Dunbar Creek et al. Stream Redesignations**

The Environmental Quality Board (Board) adopted the proposed rulemaking for the Dunbar Creek et al. Stream Redesignation Package at its April 20, 2021 meeting. On June 24, 2021, the Department of Environmental Protection (Department) submitted a copy of the proposed rulemaking 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)).

The proposed rulemaking was published in the *Pennsylvania Bulletin* on July 31, 2021 (51 Pa.B. 4062) with a 45-day public comment period that closed on September 14, 2021. The Board held one virtual public hearing on August 30, 2021 for the purpose of accepting comments on the proposed rulemaking. Comments were received from 228 commentators including testimony from three witnesses at the public hearing.

This document includes the testimony received at the public hearing and the written comments received during the public comment period. All 228 of the commentators expressed support for the rulemaking. No commentators indicated opposition to the rulemaking, but provided additional comment on the recommendations for Cranberry Creek, Dunbar Creek, and unnamed tributary (UNT) 28168 to Oley Creek. IRRC also submitted a letter to the Board indicating that the Commission had no objections, comments, or recommendations to offer on the regulation. A list of the commentators including name, affiliation (if any), and location can be found in Appendix A.

### **Copies of Comments**

Copies of all comments received by the Board are posted on the Department's e-Comment website at <https://www.ahs.dep.pa.gov/eComment/>. Additionally, copies of all comments are available on IRRC's website at <http://www.irrc.state.pa.us> by searching for Regulation # 7-557 or IRRC # 3309.

## **Comments supporting the proposed stream redesignations**

- 1. Comment:** The United States Environmental Protection Agency (EPA) commends the Department in its continuing effort to update the designated uses of Pennsylvania's streams to ensure that water quality standards are protective of surface waters. **(2)**

**Response:** The Department acknowledges and appreciates the support for the final-form rulemaking.

- 2. Comment:** The commentator encourages the Board to support the Department's recommendation and to vote in favor of granting these streams the special protections they deserve. Thank you for your consideration of these comments. **(5)**

**Response:** The Department acknowledges and appreciates the support for the final-form rulemaking.

- 3. Comment:** Just like the Sawkill Creek and Sloat Brook have benefited from the Exceptional Value Waters (EV) status in Pike County, these proposed creeks will also benefit. The Delaware River can die by a "thousand cuts." Each of these streams and tributaries represent one of those cuts. The more we can protect these crucial streams the more the health of the Delaware can be preserved. Thank you. **(7)**

**Response:** The Department acknowledges and appreciates the support for the final-form rulemaking.

- 4. Comment:** Water resources are essential to Pennsylvanians' health and economic well-being, and it is particularly important to identify and provide heightened protection for waters that meet the criteria for the Commonwealth's highest classification of EV. The commentator asks that the Board promptly finalize the water quality standards bundle in order to provide these special waters with the protection they so richly deserve. Providing proper water quality designations for surface waters is one important way to help ensure Pennsylvanians' constitutional right to "pure water" is protected. Pa. Const. art. I, § 27. **(8)**

**Response:** The Department acknowledges and appreciates the support for the final-form rulemaking.

- 5. Comment:** The commentator is writing to express its support of the Department's redesignation stream bundle to upgrade a subset of deserving Pennsylvania streams to EV status. The commentator believes the EV protection for these streams are long overdue and are in keeping with the protections afforded under Article 1 Section 27 of Pennsylvania's Environmental Rights Amendment of the Pennsylvania Constitution, articulated "the people of Pennsylvania have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people now and in the future." The

commentator is eager to see the lengthy regulatory process through for these important streams and stream segments and appreciate the time and attention put into this review. At the same time, the commentator encourages the movement and upgrade of other deserving streams that have yet to be put forth in a regulatory bundle before their water quality decreases and urge the Department to prioritize its important upgrade work over other permitting responsibilities to ensure streams are granted the higher existing uses they deserve and that is required under the Clean Water Act and antidegradation requirements. (10)

**Response:** The Department acknowledges and appreciates the support for the final-form rulemaking. The Department works to balance all of its responsibilities with its available resources. Department staff will continue to prioritize the workload as needed to meet statutory obligations and continue to work on existing use stream assessments.

6. **Comment:** Almost exactly 50 years back, the commentator published their first cover feature on the Delaware River watershed. In the subsequent years, the commentator has covered wine and food cultivation around the world, which are completely dependent on potable water. A grape is 85% water not petroleum, frack run off or sewage, etc. The Delaware Aquifer is maybe the best in the entire world. Clean, flowing water (no not floods from hyper warming in the gulf ... give us a break) is the number one resource. Not fracking, not Grade A crude, but water.

Every opportunity for preservation and protection must be taken in the smaller steps on tributaries and the larger master plans to preserve (not hold & wreck). Even Nestle will tell you that ... except they want to sell it back to us. This letter is in support of both. (11)

**Response:** The Department acknowledges and appreciates the support for the final-form rulemaking.

7. **Comment:** The commentator, representing over 25,000 members in 22,000 households, is writing in support of finalizing the stream upgrade bundle being considered as part of the Dunbar et. al. package. When we protect our clean streams, we protect a vital economy, our health and our wellbeing. During COVID this has come abundantly clear with many people flocking to the Delaware River Valley's EV and High Quality Waters (HQ) streams and forests to enjoy healthy recreation. The commentator's 2010 River Values Report highlighted many of the benefits Pennsylvanian's receive when the rivers, the floodplains, riparian forests and the communities who live there are protected. The Dunbar public notice further outlines various reports and research showing the tremendous economic benefits and recreational value to communities where clean streams still exist. At the same time, the commentator is well aware that EV and HQ designation does not stop development. It just puts the brakes on speculating developers who want to come in and run rough shod over our protections at the local, state, and regional level where communities are working hard to protect the very cleanest streams that remain. EV adds some specific restrictions to benefit the broader community while pushing developers to do better with their proposals and be more innovative. Antidegradation policy grounded in the Clean Water Act, and in Pennsylvania, EV and HQ designations are one way citizens

and communities who call Pennsylvania home are able to have just a little more leverage and a few more tools to insist on better projects that are more sustainable, more wise, and more conservation oriented. It's critical that the Department and the Board move this stream bundle package and all languishing petitions forward for the benefit of clean streams and clean water. There are still many pending petitions and streams that are deserving of EV and HQ designation. Every year and month that passes to put these protections into place, the more of Penn's woods and streams that deserve protection are sacrificed. (12, 229)

**Response:** The Department acknowledges and appreciates the support for the final-form rulemaking. The Department works to balance all of its responsibilities with its available resources. Department staff will continue to prioritize the workload as needed to meet statutory obligations and continue to work on stream redesignation petitions.

8. **Comment:** The commentator supports these stream upgrades to better protect the cleanest streams that flow through Pennsylvania. (14)

**Response:** The Department acknowledges and appreciates the support for the final-form rulemaking.

9. **Comment:** The commentator is writing to share support for the stream upgrades, including Cranberry Creek, being proposed for the Dunbar et al. stream bundle out for public comment and proposed rulemaking. The commentator urges moving forward with the process so that these streams can receive the EV regulatory designations they deserve. As a Pennsylvania resident, the commentator knows that clean water and clean streams are a bonanza for Pennsylvania's economy, health, communities and long term well-being. The commentator also believes more must be done to give attention to languishing petitions and to streams in need of special protection and EV designations. By giving EV designation to these streams, the Commonwealth is protecting its health and communities. (15-71)

**Response:** The Department acknowledges and appreciates the support for the final-form rulemaking.

10. **Comment:** The commentator commends the Department in its continued effort to update the designated uses of Pennsylvania streams to ensure the protection of clean and abundant surface waters for all and future generations. (230)

**Response:** The Department acknowledges and appreciates the support for the final-form rulemaking.

### **Comments on the Economic Benefits of Clean Water**

11. **Comment:** According to an Outdoor Industry Association 2017 report, Pennsylvania's outdoor recreation generates 251,000 direct in-State jobs, \$8.6 billion in wages and

salaries and \$1.9 billion in State and local tax revenue. The association reports that 56% of Commonwealth residents participate in outdoor recreation each year and many flock to these pristine Pennsylvania waters for rest, reflection and exercise. The findings of a 2014 Lehigh Valley Planning Commission report entitled "Lehigh Valley Return on Environment" demonstrates the benefits when clean water and natural areas are protected. The report finds that current green infrastructure along streams in the Lehigh Valley alone "reduces tax dollars by avoiding more than \$110.3 million annually in expenditures for water supply (\$45.0 million), flood mitigation (\$50.6 million) and water quality (\$14.7 million)."

For these and many more reasons, it is clear that the Commonwealth and the taxpayers benefit when clean rivers and streams are protected before they are lost to pollution. Thank you for moving this stream bundle forward at the April 2021 Meeting and please continue to urge the Department to process and upgrade other deserving streams that are in the long awaited queue for upgrades before it is too late. Thank you for your time and attention. (15-71)

**Response:** The Department agrees that there are many benefits to be gained by maintaining clean water and that maintenance of clean water is less costly than treatment and remediation associated with the environmental degradation and pollution. The Department acknowledges and appreciates the support for the final-form rulemaking.

### **Comments on Cranberry Creek**

**12. Comment:** The commentator urges the Board to support upgrading the 10.25 miles of the Cranberry Creek basin, from and including UNT 04948 to its mouth, to the proposed EV, Migratory Fishes (MF) designation. The Department's integrated benthic macroinvertebrate tests in these streams yielded Biological Condition Scores (BCS) that exceeded the 92% criterion required to qualify for EV designation. Cranberry Creek supports a healthy wild trout fishery and these enhanced protections will greatly benefit aquatic life in these streams as well as in downstream areas of the Brodhead Watershed. This redesignation of Cranberry Creek will also help protect a valuable drinking water source since these waters eventually flow into the stretch of the Brodhead Creek where the Brodhead Creek Water Authority draws its public water supply for the region. (5)

**Response:** The Department acknowledges and appreciates the support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

**13. Comment:** This packet would redesignate Cranberry Creek in Monroe County to EV. Much of Cranberry Creek watershed has recently been preserved through open space and land trust purchases of critical watershed acreage. The commentator feels that the finest quality waters, such as Cranberry Creek, should be preserved at their current quality with no further degradation allowed. The petitioners anticipate minimal to no negative economic impact resulting from this redesignation to EV. And many individuals and organizations would reap positive benefits from an EV designation for Cranberry

Creek. The brown trout population of Cranberry Creek - Creek is particularly well-balanced with - with abundant fingerlings, and that's evidence of very successful reproduction. Wild Brook Trout were also present in addition to Slimy sculpin, which are only found in colder, silt-free, unpolluted streams. Public trout fisheries and private clubs and - and other organizations rely very heavily on the recruitment of young trout from these exceptional value tributaries such as Cranberry Creek. (230)

**Response:** The Department acknowledges and appreciates the support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

- 14. Comment:** The commentator asks that the Department conduct an additional field survey in the portion of the Cranberry Creek basin from its source to UNT 04948, where station ICC is located, to determine whether this tributary also meets the biological criteria necessary for obtaining EV designation. In its draft report, the Department found that the Biological Condition Scores from tests at this eastern tributary did not meet the criteria necessary to qualify for EV redesignation and recommended the tributary retain its HQ-Cold Water Fishes, MF (HQ-CWF, MF) designation. However, the results of these tests were on the cusp of meeting necessary criteria and indicate that this tributary has a rich biological diversity and may actually qualify for EV status. Specifically, Station ICC's taxa richness score of 27 fell just barely below the reference stream's score of 28 while the number of individual stonefly larva identified at Station ICC exceeded the number of those documented at the reference stream. Since a stream's macroinvertebrate diversity varies temporally and the Department's previous tests were based on only a single field survey, the Council encourages the Department to conduct at least one additional field survey to determine whether this stream actually meets the biological criteria necessary for EV status. Redesignating the portion of Cranberry Creek basin from its source to UNT 04948 to EV, MF would protect the headwaters of the basin and support the health of all downstream waterways, especially the portion of the basin from and including UNT 04948 to its mouth. (5)

**Response:** The Department disagrees that Station ICC was near qualifying as EV and warrants reevaluation under its current regulations and protocols. Aquatic macroinvertebrate community data provides excellent information on long-term aquatic conditions and is used as measure of water quality. When evaluating waters for special protection designation, the Department only collects macroinvertebrate samples during specific calendar months to optimize the capture of sensitive Ephemeroptera, Plecoptera, and Trichoptera (EPT) taxa present in the waterbody, which ensures adequate characterization of the aquatic community. Since macroinvertebrate communities are a measure of long-term conditions in a waterbody, single samples are sufficient to characterize the aquatic community and water quality. The Department collected samples in Cranberry Creek during March, which falls within the Department's acceptable macroinvertebrate sampling period (that is, November to April). For more information on the Department's monitoring protocols, reference the Department's *Water Quality Monitoring Protocols for Streams and Rivers* (Lookenbill and Whiteash 2021).

The Department's benthic macroinvertebrate scoring test utilizes a set of five metrics and compares the scores of the candidate stream to the scores of a reference stream. In order to qualify as EV, a candidate stream must have a total biological condition score of at least 92% of that of a reference stream. While the taxa richness metric for Station 1CC did fall just below the reference station (1DMB) score for that metric, three of the five metric scores evaluated for the candidate stream were well below the reference station scores, including the modified Hilsenhoff Biotic Index (HBI), the percent dominant taxa, and the percent modified mayflies. As such, Station 1CC had a total biological condition score of 25 compared to the reference stream score of 40. At 63%, this comparability score falls well below the minimum required score of 92%. In contrast, Stations 2UNTCC, 3CC, and 4CC had percent comparability scores of 100%, 95% and 100%, respectively.

Furthermore, this headwater section of Cranberry Creek already has a special protection designated use of HQ-CWF, MF, and it will continue to receive this protection.

- 15. Comment:** The commentator submitted comments on August 13, 2018, supporting the Department's draft stream redesignation evaluation report. In 2012, Brodhead Watershed Association submitted to the Board a petition to amend the Chapter 93 water quality standards regulations to change the designated use of the Cranberry Creek basin to EV from its current designation of HQ-CWF ("Cranberry Creek Redesignation Petition"). Those comments noted while we were disappointed that the entirety of the Cranberry Creek Basin was not recommended for EV status as was petitioned for, we are nevertheless in support of the Department's analysis and its recommendation that 10.25 stream miles, or about 77% of the overall 13.32 miles of streams in the Cranberry Creek Basin, would be upgraded to EV. The Department's independent and objective scientific data and analysis reveals that the majority of the Cranberry Creek basin is among the best of Pennsylvania's natural waters. As the Cranberry Creek Redesignation Petition points out, Cranberry Creek supports a healthy wild trout fishery, which may be critical for sustaining trout populations in downstream waters through recruitment. The numerous privately and publicly-owned protected lands, hunting and fishing clubs, and private residences along Cranberry Creek will also benefit from the EV protections. Cranberry Creek is also an indirect tributary to the Brodhead Creek, on which the Brodhead Regional Water Authority operates the largest public drinking water supply in the region. Affording the majority of the Cranberry Creek basin with the highest water quality protections will positively impact the water quality downstream upon which the community relies for its drinking water. Thus, the increased protection of these waters as EV is critical not only to the health of the Cranberry, but also to water quality in the downstream waters, including the Paradise and Brodhead Creeks. Designating the proposed 10.25 miles of the Cranberry Creek basin as EV will provide these waters with an additional layer of protection to ensure that they continue to serve as a viable habitat for aquatic life and as a bastion for some of the best wild trout fishing in the Commonwealth. **(8)**

**Response:** The Department acknowledges and appreciates the support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.



**16. Comment:** In 2011, the commentator and over 20 co-petitioners and 300 supporters, businesses, and landowners petitioned the Department to upgrade all tributaries flowing into the Upper and Middle Delaware River to EV which included the Cranberry Creek in Monroe County. In 2014 the Brodhead Watershed Association submitted a petition with extensive data for Cranberry Creek to push for action and upgrade to EV of this important Pocono tributary. Community support for EV designation has only grown stronger in the Delaware River since this petition was filed but other interests are also at work to undermine the protections and stewardship provided by the community to date that has kept these Upper and Middle Delaware tributaries clean and healthy. It's critical that this upgrade for the Cranberry Creek and the other streams being considered for upgrades be finalized now. **(12, 229)**

**Response:** The Department acknowledges and appreciates the support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

**17. Comment:** Cranberry Creek is a relatively small, cold and shallow third-order tributary to Paradise Creek at River Mile Index (RMI) 3.16 located in Barrett and Paradise Townships, Monroe County and drains 6.85 square miles with a total of 13.32 stream miles. GIS analysis by the Department determined land use to be 90% forested, 8.8 % developed land, and 0.2% wetlands. In the case of Cranberry Creek, the Department is proposing all of Cranberry Creek receive EV designation with the exception of the upper east tributary that has Department station 1CC near the confluence. This current change in designation the Department proposed would add 10.25 miles of EV streams to Chapter 93 and partially reflects the EV designation sought in the petitions submitted by Brodhead Watershed Association in 2014 and the Upper Regional Upgrade Delaware petition submitted in 2011. If the Department were to expand to include all of Cranberry Creek, it would add an additional 3.07 miles of EV. The commentator requests that the Department re-examine that excluded section of Cranberry in the future after this specific bundle is fully approved. The commentator's reasons for further review of the excluded headwater are outlined in our 2018 comment on the Department's Cranberry stream report. **(12, 229)**

**Response:** As stated in the response to Comment 12, the Department disagrees that Station 1CC warrants reevaluation under its current regulations and protocols. Aquatic macroinvertebrate community data provides excellent information on long-term aquatic conditions and is used as measure of water quality. When evaluating waters for special protection designation, the Department only collects macroinvertebrate samples during specific calendar months to optimize the capture of sensitive EPT taxa present in the waterbody, which ensures adequate characterization of the aquatic community. Since macroinvertebrate communities are a measure of long-term conditions in a waterbody, single samples are sufficient to characterize the aquatic community and water quality. The Department collected samples in Cranberry Creek during March, which falls within the Department's acceptable macroinvertebrate sampling period (that is, November to April). For more information on the Department's monitoring protocols, reference the Department's *Water Quality Monitoring Protocols for Streams and Rivers* (Lookenbill and Whiteash 2021). See also the response to Comment 12.

**18. Comment:** The commentator supports the EV designation for Cranberry Creek and other deserving streams of Pennsylvania. (14)

**Response:** The Department acknowledges and appreciates this support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

**19. Comment:** The commentator strongly urges the Board to vote to approve the Department's recommendation to upgrade 10.25 miles of the Cranberry Creek basin, from and including UNT 04948 to its mouth, from its current designation of HQ-CWF, MF to the proposed EV, MF designation. Cranberry Creek supports a healthy wild trout fishery and these enhanced protections will greatly benefit aquatic life in these streams as well as in downstream areas of the Broadhead Watershed. This redesignation of Cranberry Creek will also help protect a valuable drinking water source since these waters eventually flow into the stretch of the Broadhead Creek where the Broadhead Creek Water Authority draws its public water supply for the region. (72-228)

**Response:** The Department acknowledges and appreciates this support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

**20. Comment:** The commentator urges the Board to recommend that the Department do additional water monitoring at the stretch of Cranberry Creek from its source to UNT 04948. This could provide the Department with the data it needs to redesignate this portion of the stream to EV, MF as well. This would protect the headwaters of the basin and support the health of all downstream waterways, especially the portion of the basin from and including UNT 04948 to its mouth. (72-228)

**Response:** The Department does not agree that additional monitoring in Cranberry Creek is warranted at this time. See the response to Comment 12. As previously noted, this headwater section of Cranberry Creek already has a special protection designated use of HQ-CWF, MF, and it will continue to receive this protection.

### **Comments on Dunbar Creek**

**21. Comment:** The commentator strongly supports the redesignation of the Dunbar Creek Watershed as EV. This gem of a stream deserves the protection that this redesignation provides. The fishing opportunities on the stream has always brought fishermen from out of town to the area. The scenery of the head waters rivals none. (1)

**Response:** The Department acknowledges and appreciates this support for the redesignation of portions of the Dunbar Creek basin to EV, MF in the final-form rulemaking.

**22. Comment:** The commentator is writing to express its enthusiastic support of the proposed re-designation of 47.5 stream-miles in the Dunbar Creek basin, including Dunbar Creek

main stem and tributaries Limestone Run, Irishtown Run, and those parts of Glade Run within State Game Lands 51, Fayette County, as EV.

The Dunbar Creek basin's improving water quality, wild character, scenic appeal, and the fact that two-thirds of the basin is protected within State Game Land 51, make the basin an irreplaceable environmental, recreational, and economic asset to Fayette County and southwestern Pennsylvania. The commentator knows of anglers who travel from long distances for the experience of fishing for Dunbar Creek basin's wild native trout. These visits contribute to the vitality of an otherwise challenged local economy, and the angler's reports back elevate the image of the Dunbar community and Fayette County.

The commentator has worked to improve the water chemistry, trout habitat, and the aesthetic appeal of the Dunbar Creek basin since 1998. Since that date the commentator has invested nearly a half-million dollars and an immense contribution of volunteer time and effort of its members to construct an anoxic limestone treatment system to moderate acid mine drainage degradation of Glade Run tributary. The commentator has also carried on a regular program of alkaline limestone sand treatment of Glade Run and two of its tributaries to boost alkalinity in the basin and helped remove obstructions to aquatic organism passage. The commentator annually cleans up litter along Dunbar Creek main stem. (3, 4, 231)

**Response:** The Department acknowledges and appreciates this support for the redesignation of portions of the Dunbar Creek basin to EV, MF in the final-form rulemaking.

- 23. Comment:** As a fisherman and nature lover who enjoys activities in the Dunbar Creek watershed, the commentator strongly urges the redesignation to EV. The commentator and many others travel to fish in that beautiful and pristine area. To have such a place protected to ensure it stays that way is beneficial to the economy of the area as well as the recreation of our grandchildren. Thank you for your consideration in this matter. (6)

**Response:** The Department acknowledges and appreciates this support for the redesignation of portions of the Dunbar Creek basin to EV, MF in the final-form rulemaking.

- 24. Comment:** The commentator is writing today with comments related to proposed changes to stream designations for waters in the Dunbar Creek Watershed (Fayette County). These stream designations propose the upgrade of 47.5 miles of stream to EV use status and the delisting of 1.2 miles of streams from the Section 303(d) list of impaired waters, including several waters in State Game Lands 51. The commentator supports these proposed changes in use designations throughout the watershed. Conservation groups like the commentator know from experience that protecting water quality is far easier and cheaper than trying to clean up the damage later. In short, these designations would provide critical resources protections for some of the highest quality waters in the Commonwealth, many of which provide recreational opportunities for anglers (9)

**Response:** The Department acknowledges and appreciates this support for the redesignation of portions of the Dunbar Creek basin to EV, MF in the final-form rulemaking.

- 25. Comment:** The commentator observes that the biological data used to support the listing of 4.7 miles of stream in the UNT 38212 Glade Run Basin on the Section 303(d) list of impaired waters were collected in 2006, 15 years ago. Additional water quality data were collected in 2016 but benthic macroinvertebrate samples were not collected at this time. The Chestnut Ridge Chapter of Trout Unlimited and partners have been active in the watershed in abandoned mine drainage treatment. It is disheartening to see that one of the results of this report is a net increase in miles considered impaired in the watershed despite these reclamation activities. Basing management decisions on water chemistry data alone without collecting synchronous benthic macroinvertebrate data in a watershed where active reclamation is ongoing does not allow for accurate characterization of impairment status. There are examples of streams (Swatara Creek in Schuylkill County) where biological conditions are being attained, especially those related to fish communities, in spite of water quality parameter exceedances. Impairment decisions should be made based on multiple factor analysis, rather than one at the exclusion of others, to correctly characterize impairment/attainment status. **(9)**

**Response:** The assessment of surface waters of the Commonwealth and the listing of such surface waters on the impaired waters list are outside of the scope of this final-form rulemaking. Assessment activities are separate from existing use determinations and designated use recommendations, and they do not require a rulemaking. Assessment data is collected and evaluated in accordance with the Department's *Assessment Methodology for Streams and Rivers* (Shull and Whiteash 2021). While data that supports a status of attainment or impairment of designated uses may be collected during an existing use evaluation of a waterbody, assessment determinations are not part of the Department's existing use evaluations and stream designation recommendations. As such, while data may have been collected to support a determination of impairment for UNT 38212, this rulemaking does not address whether a stream segment is being listed on the impaired waters list. The scope of this final-form rulemaking is the proper designation of water uses that apply to UNT 38212. Furthermore, UNT 38212 is not currently listed as impaired for its aquatic life use on the impaired waters list.

- 26. Comment:** The commentator, home of the Youghiogheny Riverkeeper is submitting these comments in support of the redesignation of portions of Dunbar Creek. The commentator submits these comments on behalf of its organization and its membership of over 2,000 members. The Dunbar Creek watershed is a picturesque area of Fayette County. The large amount of forested area and the relatively low levels of historic agricultural, commercial, and industrial development have combined to allow the uses and quality of the watershed to become truly exceptional. Because the law would require the protection and maintenance of existing water quality, the commentator supports the redesignation of Dunbar Creek to an EV status. Benefits of this redesignation would include benefits to anglers, locals, downstream users, and the commonwealth of PA. The commentator urges the Board to redesignate Dunbar Creek as an EV waterway. **(13)**

**Response:** The Department acknowledges and appreciates this support for the redesignation of portions of the Dunbar Creek basin to EV, MF in the final-form rulemaking.

### **Comments on UNT 28168 to Oley Creek**

**27. Comment:** EPA has only one comment on these proposed revisions. In drainage list K at 25 PA Code § 93.9k, the Department proposes to revise the designated use of UNT 28168 to Oley Creek from HQ-CWF, MF, to CWF, MF. As the Department notes in the proposed rulemaking such a revision to the designated use would require a use attainability analysis (UAA). EPA expects that a UAA which has been subject to public review will be included as part of the Department's water quality standards submission package. (2)

**Response:** As noted in the proposed rulemaking, the Department recognizes that the redesignation of a stream to a less restrictive use requires a UAA. This UAA evaluation was completed and made available for public review and comment. It is included in the stream report for UNT 28168 to Oley Creek, which is part of the proposed and final-form rulemaking.

**28. Comment:** The commentator echoes August 16, 2021 comments on the record that downgrades would require a UAA. (10, 12)

**Response:** See response to Comment 25.

## **References**

- Lookenbill, M. J. and R. Whiteash (editors). 2021. Water quality monitoring protocols for streams and rivers. Pennsylvania Department of Environmental Protection, Harrisburg, Pennsylvania.
- Shull, D. R., and R. Whiteash (editors). 2021. Assessment methodology for streams and rivers. Pennsylvania Department of Environmental Protection, Harrisburg, Pennsylvania.