



United States Department of the Interior

NATIONAL PARK SERVICE

Northeast Region Office

15 State Street

Boston, Massachusetts 02109-3572

IN REPLY REFER TO:

June 28, 2019

ATTN: Mark Brickner
Pennsylvania Department of Environmental Protection Policy Office
Rachel Carson State Office Building,
P.O. Box 2063,
Harrisburg, PA 17105-2063

Re: Draft Stream Evaluation Report, Tohickon Creek, Bucks County

Dear Mr. Brickner:

The National Park Service (NPS) wishes to comment on the Draft Stream Evaluation Report for Tohickon Creek in relation to Tohickon Creek's status as a congressionally designated component of the National Wild and Scenic Rivers System, and in recognition of the Commonwealth of Pennsylvania's status as a valued partner in that designation.

Wild and Scenic Rivers Background and Context

Tohickon Creek is one three Pennsylvania tributaries designated along with segments of the Lower Delaware mainstem as a component of the National Wild and Scenic Rivers System in 2000. There are several aspects to this designation that bear significantly upon the water quality classification of Tohickon Creek.

First, protection of water quality is one of the most important goals of the National Wild and Scenic Rivers System. In establishing the purposes of the System, the Act states: *"It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes."*

In addition, Section 10 of the Act establishes a "protect and enhance" standard for managing all Wild and Scenic Rivers, and, specific to water quality, Section 12 of the Act states that, *"The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the*

Administrator, Environmental Protection Agency and with appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river.”

In addition, the Lower Delaware River Management Plan (August 1997) developed as a part of the Wild and Scenic River Study, and referenced by Congress as the Plan by which the Wild and Scenic River would be managed, identifies Tohickon Creek as an “Exceptional Value Water” as defined by the PA Department of Environmental Protection (Plan, Pg 27): “*Exceptional Value Waters – A stream or watershed which constitutes an outstanding national, State, regional, or local resource, such as: waters on national, state or county parks or forests; waters which are used as a source of unfiltered potable water supply; waters of wildlife refuges or state game lands; waters which have been characterized by the Fish Commission as “Wilderness Trout Streams;” and other waters of substantial recreational or ecological significance.*” (followed by the listing of Bushkill Creek, Cooks Creek, Tinicum Creek and Tohickon Creek)

The number one policy listed in the Plan under this section is thus articulated, “*Achieve the highest practical state and federal water quality designation for the river and its tributaries.*”

The intent of the Wild and Scenic Rivers Act, as well as the Lower Delaware River Management Plan, as cited above, are further reinforced by the “Memorandum of Understanding Implementing the Designation of the Lower Delaware River and Selected Tributaries as a Component of the National Wild and Scenic Rivers System” to which the Commonwealth of Pennsylvania is a party and signatory. Among other provisions of the MOU, the agreement commits the Commonwealth of Pennsylvania:

- 6) Agree to enforce all applicable land use, water use, or zoning regulations in such a manner to ensure that the Lower Delaware River and its tributaries are protected and that actions are consistent with the goals, objectives, and recommendations of the Plan.
- 7) Agree to work with the Committee as appropriate to identify and address issues related to the management of the Lower Delaware River and its tributaries as a national wild and scenic river, as detailed in the Plan.
- 8) Agree to control land and waters under their jurisdiction within the Lower Delaware River in a manner consistent with the goals, objectives, and recommendations within the Plan.
- 10) The States and the Delaware River Basin Commission agree to carry out a water quality monitoring program to implement the water quality goal of the Plan

National Park Service Concerns Related to the Draft Stream Evaluation Report, Tohickon Creek, Bucks County

Based upon the context of the Wild and Scenic Rivers Act, the Lower Delaware River Management Plan, and the MOU, the NPS believes that Tohickon Creek should be managed and protected as an EV resource.

Tohickon Creek has in fact been recognized by the United States Congress as possessing “outstandingly remarkable” natural, cultural, and recreational resource values, which, on the face of it, appears to qualify the Tohickon Creek as an Exceptional Value resource. These values have been detailed in the original Wild and Scenic River Study and in subsequent documentation of the 2012 Delaware River Basin Wild and Scenic River Values Workshop Report, but appear to be dismissed as not relevant in the Draft Evaluation. Given the context of the Wild and Scenic River designation, and its specific treatment of Tohickon Creek as described above, the NPS strongly disagrees.

The Draft Evaluation cites Section 93.4b(b)(iii) under the discussion of additional EV criteria, but fails to cite 93.4b(b)(ii) which states: “*The water is located in a designated State park natural area or State forest natural area, National natural landmark, Federal or state wild river, Federal wilderness area or National recreation area.*”

The NPS is also concerned that many of the specific water quality violations documented in the Draft Evaluation Report appear to stem from water temperature issues. At the same time, the Draft Report acknowledges that a different operation of the Nockamixon Dam (owned and operated by the Commonwealth) has the potential to alleviate water temperature issues via bottom releases of cold water, as was the original intent when the dam was constructed. Issues with low dissolved oxygen, cited as the reason that such cold water releases have not been implemented, are routinely addressed through a variety of means on countless dams nationwide, yet no mention of this is made in the Draft Evaluation Report.

The Draft Evaluation Report also states that, “there is no indication that any potential for a cold water aquatic community exists or has existed within the Tohickon Creek basin downstream of Nockamixon Dam.” This appears to directly contradict other statements in the Draft Evaluation Report, including documentation that the Tohickon Creek below Nockamixon Dam was specifically designated a Cold Water Fishes stream in 1979. It would be reasonable to assume that the Commonwealth adopted the CWF standard in 1979, and has maintained it since, based upon some evidence that it warranted such a classification, yet the Draft Evaluation provides no discussion in this regard.

It is evident from a preliminary review of the USGS gage data for Tohickon Creek (station 014459500 near Pipersville, PA) that Tohickon Creek has been routinely and annually subject to extreme low summer flows (mid-low single digits), presumably the result of restricted dam releases, for decades and perhaps all the way back to the time of dam construction. As noted in the DEP Draft Evaluation, required minimum conservation flows of 11cfs from the Dam have not been adhered to. Such low flows would be compounded by a failure to utilize bottom release capability, instead spilling warmed waters from the top of the reservoir. Decades of such operation would certainly compromise benthic macroinvertebrate communities of Tohickon Creek, essentially guaranteeing that biological comparison to a reference stream such as French Creek would fail to meet EV or CWF standards.

NPS is also concerned about the choice of a reference reach for such a biological comparison. French Creek is located in a distant region of the state with a very different geology, hydrology and resultant water chemistry. On the face of it, an existing EV designated stream within the Lower Delaware watershed would make a far more appropriate choice for a reference comparison, and there would be several to choose from among. The primary rationale stated in the Draft Evaluation for the choice of reference streams is watershed size, which does not seem to be very convincing.

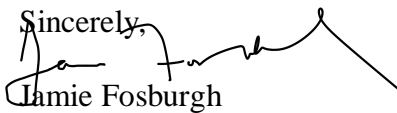
In sum, the NPS believes that the relevant segment of Tohickon Creek below Nockamixon Dam has been amply demonstrated to meet criteria consistent with the proposed EV classification. It would be inconsistent with the intent of the Wild and Scenic Rivers Act to downgrade the water quality classification of a designated river segment such as Tohickon Creek. Instead, the partners to the Wild and Scenic River designation, Management Plan, and MOU, including the Commonwealth of Pennsylvania, should be working together to make sure that segments under the Wild and Scenic Rivers Act attain the highest standards. The NPS would welcome the opportunity to work closely with PA DEP and other agencies of the Commonwealth on strategies to ensure this future for Tohickon Creek.

Specifically, NPS would like the opportunity to partner with the Commonwealth to:

- Assess the ongoing operation of the Nockamixon Dam as relates to the reliable attainment of minimum conservation flows
- Consider opportunities to utilize and optimize the full release capabilities of the Nockamixon Dam to “protect and enhance” the documented “outstandingly remarkable” values and exceptional water quality of Tohickon Creek
- Monitor the recovery and response of Tohickon Creek once improved flow regimes have been implemented over a sustained period of time.

Thank you for this opportunity to comment. The NPS looks forward to working with the Commonwealth of Pennsylvania for the future of Tohickon Creek.

Sincerely,



Jamie Fosburgh

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Lower Delaware Wild and Scenic River Management Council
US Environmental Protection Agency
Delaware River Basin Commission