

EXECUTIVE SUMMARY
DESIGNATED WATER USES AND WATER QUALITY CRITERIA
Fishing Creek, et al., Final Rulemaking

As part of its continuing water quality management program and ongoing review of water quality standards, the Department of Environmental Protection (Department) recommends that the Environmental Quality Board (Board) adopt the following amendments to 25 Pa. Code Chapter 93, §§93.9c, 93.9d, 93.9f, 93.9l and 93.9o as set forth in Annex A of this final rulemaking and summarized in the text and table below.

These streams were all evaluated in response to petitions as follows:

Stream	County	Petitioner
Buck Hill Creek	Monroe	Buck Hill Conservation Foundation
Lehigh River (upper)	Lackawanna, Monroe, Wayne, Luzerne	North Pocono Citizens Alert Regarding the Environment (CARE)
Little Lehigh Creek	Lehigh, Berks	Mid-Atlantic Environmental Law Center
Gallows Run	Bucks	Gallows Run Watershed Association
French Creek & Beaver Run	Chester	Green Valleys Association
Tannery Hollow Run	Cameron	Cameron County Conservation District
Fishing Creek	Lancaster	Patrick McClure
Deer Creek & Little Falls	York	Shrewsbury Township

These regulatory changes were developed as a result of aquatic studies conducted by the Bureau of Water Standards and Facility Regulation. The physical, chemical, and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as High Quality (HQ) or Exceptional Value (EV) waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality or Exceptional Value waters). Based on these data and appropriate regulatory criteria, the Department has developed this package of stream redesignation evaluations.

The EQB approved the proposed rulemaking for the Fishing Creek, et al. package at its July 13, 2010 meeting. The proposed rulemaking was published in the *Pennsylvania Bulletin* on September 18, 2010 (40 Pa.B. 5337) with provision for a 45-day public comment period that closed on November 2, 2010. Supportive comments were received from one hundred sixty-two commentators who favored the redesignation of portions of the French Creek basin to exceptional value. Commentators listed many reasons for their support of the redesignation of the French Creek basin including the natural beauty of the basin, the recreational opportunities it provides, the importance of protecting aquatic life and wildlife, the importance to the spiritual and emotional well-being of people, flood control and clean water for people, the health of local communities, and the importance to preserve the basin for future generations. Additionally, the U.S. Environmental Protection Agency (EPA) Region 3 commended DEP on its continuing effort to upgrade streams into its highest level of the Special Protection Waters Program. EPA also noted that, if finalized, this package will redesignate 251.35 stream miles in the Commonwealth to Exceptional Value status. EPA otherwise had no comments. No opposing comments were received during the comment period. Additional remarks were received from the Chester County Water Resources Authority and the Chester County Board of Commissioners. Both indicated strong support of the redesignation of French Creek and Beaver

Run to EV, MF and urged the Independent Regulatory Review Commission to approve the upgrade of French Creek and Beaver Run as recommended by the EQB and the Department. This redesignation is consistent with and will help implement “*Watersheds – An Integrated Water Resources Management Plan for Chester County and its Watersheds*” and “*Landscapes2*”. “*Watersheds*” is the water resources component of Chester County’s comprehensive plan “*Landscapes2*”.

On August 31, 2010, the 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)). IRRC did not raise 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.

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. This final-form regulation is not more stringent than the federal requirements found in the companion federal regulations.

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. Dischargers are required to provide effluent treatment and implement best management practices to meet the water quality criteria associated with existing uses and revised designated water uses.

The streams recommended for redesignation in this rulemaking are already protected at their existing use and, therefore, the designated use changes will have no additional impact on treatment requirements. Treatment of existing discharges are unaffected by changes to the designated use of the water body. Some new or expanding discharges may be subject to more stringent treatment requirements to meet designated and existing stream uses.

The Department recommends that these revisions be adopted by the Board and published in the *Pennsylvania Bulletin* as final-form rulemaking.

**Summary Table: Final Rulemaking
Fishing Creek, et al. Stream Redesignations Package**

Stream	County	Reach[†]	List	Present Designation*	Requested Designation*	Recommended Designation*
Buck Hill Creek	Monroe	Basin, from and including UNT 05028 to and including UNT 05026	C	HQ-CWF, MF	EV	EV
Lehigh River (upper)	Lackawanna, Monroe, Wayne, Luzerne	Basin, source to (but not including) Tobyhanna Creek.	D	HQ-CWF, MF	EV, MF	EV, MF
Little Lehigh Creek	Lehigh, Berks	Mainstem	D	HQ-CWF, MF	EV, MF	HQ-CWF, MF (no change)
Gallows Run	Bucks	Basin	E	CWF, MF	HQ-CWF, MF	CWF, MF (no change)
Beaver Run	Chester	Basin	F	HQ-TSF, MF	EV, MF	EV, MF
French Creek	Chester	Basin, from Beaver Run to junction of West Vincent, East Vincent, and East Pikeland Townships (except Birch Run basin)	F	HQ-TSF, MF	EV, MF	Mainstem, from Beaver Run to junction of West Vincent, East Vincent, and East Pikeland Townships: EV, MF
French Creek	Chester	Mainstem, from junction of West Vincent, East Vincent, and East Pikeland Townships to T522 Bridge	F	TSF, MF	---	EV, MF
Tannery Hollow Run	Cameron	Basin	L	CWF, MF	EV, MF	EV, MF
Fishing Creek	Lancaster	Basin, from and including UNT 07256 (near T434 bridge) to mouth	O	Entire basin: HQ-CWF, MF	Entire basin: EV, MF	Basin, from and including UNT 07256 to mouth: EV, MF
Deer Creek	York	Basin (all sections in PA)	O	CWF, MF	HQ-CWF	CWF, MF (no change)
Little Falls	York	Basin (all sections in PA)	O	WWF, MF	HQ-CWF	CWF, MF

*WWF = warm water fishes	*HQ = high quality
*CWF = cold water fishes	*EV = exceptional value
*TSF = trout stocking	*MF = migratory fishes
†UNT = unnamed tributary	