



CENTER FOR COALFIELD JUSTICE

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Jessica Shirley,
Interim Acting Secretary
Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

Thank you for the opportunity to provide input on the redesignation of Fletcher Run Creek in the Grays Fork Tributary. The Center for Coalfield Justice (“CCJ”) respectfully submits the following comments.

CCJ is a Pennsylvania-incorporated not-for-profit organization with federal Internal Revenue Service §501(c)(3)-status recognition located in Washington, PA. Our mission is to “improve policy and regulations for the oversight of fossil fuel extraction and use; to educate, empower and organize coalfield citizens; and to protect public and environmental health.” CCJ has over three thousand members and supporters and is governed by a volunteer Board of Directors. As such, and on behalf of our members, we are very interested in matters that impact the health of the waters of the Commonwealth, particularly those located in southwestern Pennsylvania, and the health of those who live, work, and recreate in the communities we serve.

CCJ has read through the redesignation petition submitted by Consol Pennsylvania Coal Company LLC and has several comments and corrections to their report. These suggestions should be considered to make the best decision possible for the Commonwealth, the communities, and the ecosystems downstream of Fletcher Run Creek.

Comparing Limestone Creek to Fletcher Run as a control variable does not allow the Department of Environmental Protection (“Department”) to make a fully dedicated decision on how to truly classify Fletcher Run. That is because Limestone Creek is a designated HQ cold-water fishery, whereas Fletcher Run is an HQ warm-water fishery. It is disadvantageous to use a control for evaluating Fletcher Run when the control’s designated use is so dissimilar. Again, the fisheries are two different categories: Limestone is a cold-water fishery and has 95% forest cover in its drainage area, while Fletcher Run is an HQ warm-water fishery with 45% forest cover in its drainage area. The Department should look for a control/comparative example, which is WWF.

Macroinvertebrate sampling:

The riffle site where macroinvertebrate sampling was conducted in this study is a poor sample site. This section was used in the past when the stream was sampled in 2015, but now it represents a poor section of the stream with minimal resiliency in several categories and lacks the resources for high macroinvertebrate diversity. The

biggest issue with this sampling site was the lack of riparian buffer on both sides of the stream. There was little detritus to build up to create forage for macroinvertebrates. There was little shade to protect that section of the stream from spikes in temperature on sunnier days. The lack of a buffer also allowed runoff from the cow pasture next to the stream to cause nutrient and bacterial pollution. An alternative macroinvertebrate sampling was conducted fifty yards upstream. This sampling site benefited from full riparian cover, a more dense sampling of stonefly species, and increased pollutant-intolerant taxa. This macroinvertebrate sampling site benefits from more cover, a similar sampling area, and more detritus/ instream flora to create a more diverse benthic community sampling group and an overall better look into the stream's health. Therefore, it can be concluded that choosing one sampling site along Fletcher Run instead of another will produce different results. The petitioner could then choose which sites best suit their needs and report on those sites rather than on the entire water body. CCJ recommends that the Department reject the re-designation of Fletcher Run until a more comprehensive study of the macroinvertebrate population can be conducted.

Water Sampling (Aluminum):

The sample collected in the study did contain high levels of aluminum. However, as stated in the Department's *Assessment Methodology for Streams and Rivers 2021* section 6.2: Atmospheric Deposition Source and Cause Determination Method, "When a stream survey documents pH depression and dissolved aluminum levels above 150µg/L (after 0.1 µm filtration), it is appropriate to consider the stream to be biologically impaired due to atmospheric deposition." While there was an instance of high flow and possibly impairing levels of aluminum, the stream pH buffer capacity was not compromised. The pH value at the time of sampling was 8.5 and would not be considered a dip in pH by any definition. Despite what was reported in the study, this is not enough evidence of chronic or episodic acidification and does not designate impairment of the fishery/ stream.

Water Sampling (Coliforms):

Water chemistry sampling indicated high levels of coliforms in the water during 4 of the 12 water sampling events conducted in the study. The study incorrectly identified that as a source of impairment; however, based on the Department's guidance documents and procedure, that is incorrect¹. That assessment standard would be used to determine Water Contact Sports (WC) Recreational Use (RU) designations, which Fletcher Run is not designated as such. Additionally, had the study wanted to assess fecal coliform colonies for WC RU designation, they would have had to sample 5 times in a 30-day period, each sampling being above the limit, which was not done in this study. Yet, it was still listed incorrectly as an impairment to the stream, and the Department should not re-designate any stream based on this argument.

While this study is thorough and follows most guidelines designated by the Department for stream assessment and monitoring, there are glaring red flags throughout the report that cannot be overlooked. The obvious bias in labeling the stream as impaired at almost every form of assessment, especially when the study was not conducted to a level that could make that assessment or where the data simply did not show those results, is very questionable. The labeling of impairment based on coliform testing despite the stream not being a WC RU and not following protocol for assessment implies a lot of bias. Labeling the stream impaired based on one sample of high levels of aluminum despite pH resiliency and good water chemistry results, as explained in the monitoring guide, also suggests bias in this study. Good science is conducted for the sake of understanding; the data will always speak for itself. Stretching sampling and synthesizing correlations/designations without proper procedure or clear data is not good science. The very nature of it discredits most of the work done in this study.

The initiation of the redesignation of an order 1 stream by a mining company with vested interests is alarming. There is a bias already associated with the act itself. It would be disastrous for the health and ecology of the

¹ "This assessment method is designed to make assessment determinations on the Water Contact Sports (WC) Recreational Use (RU) using bacteriological data from Pennsylvania's surface waters.... maximum fecal coliform level shall be a geometric mean of 2,000 CFU/100 ml, based on a minimum of 5 consecutive samples collected on different days during a 30-day period."

entire watershed to remove protections for a specific section of headwaters to a watershed that is HQ throughout. These protections are necessary and well deserved. Downgrading the stream designation would allow interested parties to burden the stream further and pollute the rest of the tributary. This decision is far greater than the outcome of a simple order 1 stream; it is the impairment or protection of a long stretch of streams, all with HQ status.

In conclusion, CCJ requests that the Department either deny this petition to re-classify Fletcher Run or require the petitioner to follow all the protocols set out by the Department to provide a more complete and well-rounded report. Until then, the Department will not be able to make a well-informed decision on this petition.

Thank you for your consideration. If you have any questions, please contact me anytime.

Respectfully,

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Community Advocate

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