Comment Response Document for Maryland's Proposed Existing Use Determination Documents (2024)

The Maryland Department of the Environment (MDE) has reviewed the comments received during the public review period for seven (7) proposed existing use determination documents.

Timeline of the Public Comment Period

- Notice of public comment period published in the September 6th, 2024 edition of the Maryland Register
    - Original public comment period open from September 6, 2024 – October 7, 2024
    - Public comment period extended to December 9, 2024
- Public hearing - held virtually and in-person on Monday December 2, 2024.

Below is a list of commenters, their affiliation, the date comments were submitted, and the numbered reference to the comments submitted. In the pages that follow, comments are provided and listed with MDE's response. The Department has also summarized the final decisions on the existing use determinations in the section titled "Summary of Decisions".

List of Commenters

Author	Affiliation	Date	Comment Number
Robert Portanova	Green Coalition MV	September 10, 2024	1
Mark Southerland	Patapsco Heritage Greenway	September 10, 2024	2
Jason "JP" Andrick	Mid Atlantic Trout Unlimited Council	September 12, 2024	3 - 4
William "Randy" Dwyer	Mid Atlantic Trout Unlimited Council	September 18, 2024, December 2, 2024, December 4, 2024	5-6
Arthur "Art" Senkel	Trout Unlimited	September 6, 2024, September 27, 2024, September 30, 2024, December 5, 2024	7- 17
Jim Kennedy	Brotherhood of the Jungle Cock Maryland	September 24, 2024	18
Scott Shoemaker	Upper Potomac River Commission	September 27, 2024, December 2, 2024	19 - 27
Craig A. VanderKolk	Trout Unlimited Potomac Patuxent Chapter	September 30, 2024	28
Kevin Haney	Potomac Valley Fly Fishers	October 1, 2024	29
Adelina Welch, Deborah Fagan, Denise A Swensen, Katherine Farley, Kristine M Sweeney, Latanya Bispham - Robinson, Laurie Goss, William Goss, Maureen D'Angelo, Melissa "Missy" Grace, Sarah E Alexander, Vanessa	Chesapeake Women Anglers (multiple members)*	October 2, 2024, October 3, 2024, October 6, 2024, October 8, 2024	30

Author	Affiliation	Date	Comment Number
Avanzini			
Norma Kawecki	Chesapeake Women Anglers	October 2, 2024	31
Virginia Maloney	Chesapeake Women Anglers	October 5, 2024	32
Denise A Swensen	Chesapeake Women Anglers	October 6, 2024	33
Al DeFusco, Alan Burrows, Chris Newkumet, Danny Teets, Douglas Johncox, Franklin W Draper, Gregory Sholly, James R Irons, Joe Tayler, Joukin Cheng, Kenneth Pavol, Larry Teets, Louis Reichel, N Lee Canby, Nicholas E Weber, Ray Miller, Robert Bokvlic, Robert Dietz, Robert Kaiser, Robert O'Donnell, Ronald Kerrick, Russ Yoder, Scott M. Cernich, Stephen McIntyre, Steve Moser, Thomas Vogtman, Tim Schuler, Tom Brosnan, William Vogtman	Trout Unlimited, multiple chapters (Potomac Patuxent Chapter, Seneca Valley Chapter, Youghiogheny Chapter)*	September 18, 2024, September 20, 2024, September 25, 2024, September 26, 2024, September 27, 2024, September 29, 2024, September 30, 2024, October 1, 2024, October 2, 2024, October 7, 2024	34
Sull McCartney, John Farmer, Oren D Yoder, Ethan Miller, Philip Bailey, Christopher Young	N/A*	September 25, 2024, September 26, 2024, September 30, 2024, October 2, 2024, October 3, 2024	35
Nick Dilks	Ecosystem	September 26, 2024	35

Author	Affiliation	Date	Comment Number
	Investment Partners*		
Timothy M Gunning	Wyatt & Gunning LLC*	September 30, 2024	35
Keith A Kluwe	N/A	October 2, 2024	36
Paula B Reeder	Trout Unlimited Seneca Valley Chapter	October 2, 2024	37
Noel Gollehon	Trout Unlimited Seneca Valley Chapter	October 3, 2024	38
Craig Caupp	Trout Unlimited	October 7, 2024	39-40
Laurel D Glenn	Interstate Commission on the Potomac River Basin	October 7, 2024	41-44
Theaux M. Le Gardeur	Gunpowder Riverkeeper	October 7, 2024	45
Julia Fritz	U.S. Army Corps of Engineers	October 7, 2024	46-49
Duber Winters	Free State Fly Fishers	October 8, 2024	50
Mike McKay	Maryland State Senator (District 1)	December 2, 2024	51
Jeffrey Barclay	Director of Economic and Community Development of Allegany County	December 2, 2024	52
Wendell Beitzel	Upper Potomac River Commission	December 2, 2024	53
Stephen Young	Allegany County Director of Public Works	December 2, 2024 December 5, 2024	54
Kevin Clark	Mineral County (WV) Economic Development	December 2, 2024	55

Author	Affiliation	Date	Comment Number
	Authority		
Kenneth Pavol	Trout Unlimited (Youghiogheny River)	December 2, 2024	56
James Walsh	Upper Potomac River Commission (attorney)	December 2, 2024	57-61
David Urbas		December 5, 2024	62
Judy Hamilton	Mayor of Westernport	December 2, 2024 December 6, 2024	63
Paula Boggs	Mayor of Piedmont	December 6, 2024	64-65
Tim Schuler	Trout Unlimited (Seneca Valley)	December 8, 2024	66
Jeff Broadwater	City of Keyser	December 9, 2024	67
Jennie Smith, Nathaniel “Than” Hitt	West Virginia Rivers Coalition	December 9, 2024	68

*Multiple commenters’ comments were combined and addressed together due to their similarity.

Summary of Decisions

This document responds to the public comments received regarding the Department's proposed existing use determinations described within the proposal documents. While these existing use determinations refer to potential related redesignations, changes to designated uses must be made by amending Maryland's water quality standards regulations (found in Code of Maryland Regulations (COMAR) 26.08.02) and would therefore occur in a separate regulatory action not encompassed by these proposed existing use determinations and this public comment period. Any such proposed stream redesignations will be subject to additional public review and comment and will consider the scientific information reported in any finalized existing use determination documents.

In evaluating and determining the existing uses of these seven (7) stream segments, the Department must determine whether the proposed determinations are consistent with the requirements of the Clean Water Act and the Code of Maryland Regulation (COMAR), and accurately represent existing conditions observed within the stream according to the data and information collected.

The seven stream segments are:

- Unnamed tributary to Jacks Hole (Harford County)
- Unnamed tributary to Michaels Run (Harford County)
- Unnamed tributary to Broad Creek (Harford County)
- Dog Creek (Washington County)
- North Branch Potomac River (Allegany County)
- North Branch Potomac River (Garrett) (Garrett County)
- North Branch Potomac River near Kempton (Garrett County)

After evaluating the data for these waters and considering the public comments received, the Department will be approving the following proposed existing use determinations:

- Unnamed tributary to Jacks Hole (Harford County)
- Unnamed tributary to Michaels Run (Harford County)
- Unnamed tributary to Broad Creek (Harford County)
- Dog Creek (Washington County)

As explained in the responses below, the data and information reviewed by the Department supports the proposed determinations, which are consistent with federal and Maryland regulations for existing uses, including the 2021 document "Cold Water Existing Uses: Policy &

Procedures"[1] incorporated by reference into COMAR 26.08.02.04-1[2]. These four (4) proposed existing use determinations will be finalized following the publication of this comment response document. Final existing use determination documents will be posted on the Department's Existing Use Determinations webpage[3]. Those existing use determinations that were identified as synonymous with Class III(-P) designated uses will be considered separately for redesignation with Maryland's 2025 Triennial Review of Water Quality Standards.

For the remaining three proposed determinations:

- North Branch Potomac River (Allegany County),
- North Branch Potomac River (Garrett) (Garrett County), and
- North Branch Potomac River near Kempton (Garrett County),

The Department has determined that West Virginia needs the opportunity for review and comment on these proposed determinations due to the shared use and interstate nature of the North Branch Potomac River segments. In addition, after the public comment period closed, the Department received newer temperature and biological information for the North Branch Potomac River in Allegany County.

The Department will not be making a determination on these proposed existing uses at this time. The Department will take into consideration the new data and then reopen the notice and comment period for the new determination to allow West Virginia and all other stakeholders to comment on these proposed existing use determinations.

Comments received in the public comment period specifically pertaining to the existing use section of the North Branch Potomac River in Allegany County are answered to the best of the Department's ability, recognizing that the Department is not making a determination on those existing use proposals at this time. Comments pertaining to the North Branch Potomac River will receive full responses once a determination is made in later action.

[1] Cold Water Existing Uses: Policy and Procedures - https://mde.maryland.gov/programs/water/TMDL/WaterQualityStandards/Documents/Cold%20Water%20Existing%20Use%20Determinations%20Policy%20and%20Procedures.pdf

[2] COMAR 26.08.02.04-1 Antidegradation Policy Implementation Procedures: Tier I Level of Protection — Existing Uses and Designated Uses - https://dsd.maryland.gov/regulations/Pages/26.08.02.04-1.aspx

[3] MDE Existing Use Determinations webpage - https://mde.maryland.gov/programs/water/TMDL/WaterQualityStandards/Pages/Existing-Use-Determinations.aspx

Comments and Response

1. (Paraphrased): Municipal, County & State sponsored storm water management projects run contrary to the Cold Water Existing Use Determinations: Policy and Procedures paper. The emphasis of the paper is to ensure integrity and protection of cool and cold water existing uses during the time of redesignation of Use Classes. Storm water management projects, like Stream Restoration Projects, reek enormous harm on the environment and permanently change water temperatures to much higher levels by the clear cutting of forests within stream valley corridors, opening them up to direct sun. Some of these waters may have been designated as a cold or cool water. By stripping every tree out from the site plan, permanent micro climate change results in enormously higher water temperatures thereby not protecting what may have been a cold or cool water body. We recommend permanently eliminating stream restoration projects from the menu of TMDL options for sediment reduction.

   MDE Response: The policy paper referenced, the Cold Water Existing Use Determinations: Policy & Procedures, is not open for public comment at this time. The concerns brought up by the commenter on stream restoration impacts are beyond the scope of the current public comment period. Please direct questions or comments concerning Maryland's TMDL Program to mde.tmdlcoordinator@maryland.gov.

2. Thanks to MDE for moving forward with this important effort. I strongly support the protection of all existing uses, especially cold and cool waters that support important segments of Maryland's biodiversity. I also encourage MDE to use all the latest techniques for discovery of these existing uses, such as widening the set of indicator species. While it does not appear that any of the existing use segments occur within the formal Patapsco Valley Heritage Area (https://www.patapsco.org/maps/), some do occur within the larger Patapsco River watershed, the protection, restoration, and sustainably stewardship of which is a mandate of the Patapsco Heritage Greenway."

   MDE Response: Thank you for your comment of support. MDE may explore the use of additional "cool-water" indicator species. As part of future planned tasks of the Cold Water Advisory Committee (CWAC), additional biological indicators for cool-water may be considered to assist in defining a potential "cool-water" use class.

3. I want to express my support to accept and approve the recent data which would allow for the proper existing use classification to be reclassified to use Class III (or III-P). These Proposed Existing Use Determinations are not only valid, they are critical to the protection of expanded self-sustaining trout populations and habitat in tributaries/waters in Hartford and Washington Counties, North Branch of the Potomac River in Allegany County. The data (water temperature, benthic studies and electro-shocking support the proposed reclassifications) all support the need for this change.

   Apart from my support for these reclassifications, I want to express my excitement that the DNR continues to support the identification, protection and preservation of promising and thriving cold/colder water habitats that Maryland's population growth and residential/commercial development spread have damaged, depleted and destroyed in much of our beautiful state. Indeed the data is demonstrating that there are still habitats throughout our state worth promoting and protecting so they can thrive for years to come.

   MDE Response: Thank you for your comment of support. Please see the Department's Summary of Decisions section regarding the North Branch Potomac River segments.

4. (Paraphrased): Regarding the North Branch Potomac River (Allegany County), the data DNR has submitted for the existing use determination report, especially data available from when the Luke Paper Mill was in existence, such as 2015 in some spots, demonstrates conditions that have continued on. We support the changes that are proposed and from listening to some of the folks here [public hearing] from the Tritowns community, I think its valuable to recognize that it sounds like there has been a lot of hard work done by Allegany County, Garrett County and different groups and communities here to get us in the position we are in right now in the North Branch Potomac River. I should hope that on the economic side that we can attract an economic partner that is going to want to support all that good effort that has been done to get us to where we are. So that is why I speak in support of this.

   MDE Response: Thank you for your comment. Regarding the proposed existing uses for the North Branch Potomac River segments, please see the Department's Summary of Decisions section.

5. (Condensed): On behalf of the Mid-Atlantic Council of Trout Unlimited, we strongly support the Maryland Department of the Environment's proposed seven (7) cold water existing use determinations as published in the September 6, 2024, edition of the Maryland Register. The associated rationale documents provide data that show without a doubt that the proposed existing use determinations are necessary. The Mid-Atlantic Council of Trout Unlimited supports the State of Maryland's responsibility to protect its natural resources. We support its resource management effort and the evidence-based existing use determinations being properly applied to identified cold waters as found in these existing use determination documents. We look forward to these "Use Classifications" being included in the Triennial Review of Water Quality Standards of 2025."

   MDE Response: Thank you for your comment of support.

6. (Condensed): The state of Maryland has an excellent track record of properly managing its natural resources and uses science-based evidence to make its determinations. The cold waters of the North Potomac now hold a strong, naturally reproducing trout population and supporting insect life. The data submitted by the DNR to MDE for this proposed existing use determination is clear and we appreciate the science-based approach and overwhelming findings of DNR. The North Branch of the Potomac is literally trying to bounce back to life. Today, some refer to it as the 'Madison River of the east'. But this has not always been the case. Collectively we should recognize that the cold water from Jennings Randolph dam, the Savage River along with the recent removal of the VERSO paper mill in Luke, is allowing life to come back into the North Branch much farther downstream than previously thought. I do not see this as a zero-sum situation. Meaning environmental protections versus economic vitality to the communities along the North Branch. The goals of one should not succeed in spite of the other. But rather, stakeholders must work together to have the proper and necessary cold-water classifications as well as strong local communities. In closing, the Mid-Atlantic Council of Trout Unlimited supports the proposed Existing Use Classifications and we urge DNR and MDE to use its science-based approach to continue to monitor all sections of the North Branch, and to apply the appropriate existing use determinations with consistency to all segments of the North Branch, as outlined in the Maryland Triennial Review of Water Quality Standards.

   MDE Response: Please refer to the Department's discussion on the North Branch Potomac River segments in the Summary of Decisions section.

7. (Condensed): PVTU and MD DNR recently surveyed the West Branch North, East Branch North Branch and North Branch and identified viable brown trout populations at all locations including fish in the 18 inch class. There are two stream segments within the North Branch Patapsco watershed that contain naturally reproducing trout which were not provided an existing-use determination as part of the 2019 TR. Can you let me know whether there is a process for revisiting these streams for a possible existing-use "natural trout waters" determination as part of the 2025 TR.

   MDE Response: Thank you for highlighting these two stream tributaries. These stream segments do not pertain to the existing use proposals in the current public comment period, but the Department will review the data available for the mentioned North Branch Patapsco tributaries to determine eligibility for existing use protections. This will be completed in a separate action after the 2025 Triennial Review cycle.

8. (Condensed): The current extent of the Deep Run (Carroll County) existing-use does not reflect best available scientific information. MBSS continues to recover trout at the St. Paul Rd station (LIBE-206-X) during its yearly survey and I ask that you review the results for the last several years of MBSS electrofishing. Recent results (since at least 2022) indicate that this section of the stream supports natural reproducing brown trout. Benthics and stream temperatures are similar to those in the existing-use determination. The existing use for Deep Run should be extended upstream to at least this station, which is a substantial increase in stream length.

   MDE Response: Thank you for your comment. This stream segment does not pertain to the existing use proposals in the current public comment period. The Department will review the data available for the upstream section of Deep Run and assess potential extension of the cool water existing use protection based on the available data and information in a separate action.

9. (Paraphrased): As part of the 2019 TR I argued that MDE should complete an existing use determination for Falls Creek as "natural brown trout water" based on repeated surveys by MD DNR. Can you tell me what happened to this?

   MDE Response: This stream segment does not pertain to the existing use proposals in the current public comment period. For questions or concerns about specific stream segments not within the scope of the current action, please contact Melinda Cutler at melinda.cutler@maryland.gov.

10. (Condensed and paraphrased): MDE has been reluctant to recognize the natural salmonid reproduction based on a narrow interpretation of the Coldwater Existing Use Policy and Procedures that does not hold up to scientific scrutiny. Natural trout water should primarily consider whether trout spawn in the water and whether water quality and habitat allow the progression from swim-up fry to reproducing adults. The original source of fish should be secondary. All of our wild brown trout are naturalized. If a wild population has established in Falls Creek, it is very likely that the introduction of stocked fish is inconsequential. Hatchery trout are stocked over wild trout throughout Maryland. Whether PA stocks triploid or diploid trout or whether the Falls Creek trout can be differentiated genetically from the trout stocked by PA are possible considerations besides fish passage blockages. The physical identification of active spawning redds, in-stream eggs or swim-up fry, or the electrofishing capture of age-0 immature fish too undeveloped to be stocked hatchery fingerlings, or the identification of morphological or genetic differences between assumed wild and known hatchery stocked fish by MD DNR biologists all provide evidence of natural salmonid reproduction and sustainability.

    MDE Response: This stream segment does not pertain to the existing use proposals in the current public comment period. The following information is provided to clarify Maryland's approach in determining natural salmonid reproduction for existing uses.

    Maryland's Cold Water Existing Use: Policy & Procedures[4] defines a naturalized, self-sustaining population of brown trout as a data collection event that demonstrates trout young of year (YOY) and multiple (at least two) adult year classes present in the stream where no stocking has occurred within the last five years within the stream or nearby hydrologically connected streams. The "five year no stocking" threshold was developed in collaboration with multiple stakeholders as part of the Cold Water Advisory Committee, which included parties from Trout Unlimited, Maryland Department of Natural Resources (MD DNR), and others.

    To incorporate additional factors for determining naturalized trout populations would require future coordination with the Cold Water Advisory Committee and updates to the Policy & Procedures document, which is incorporated by reference into COMAR 26.08.02.04-1[5]. The additional considerations mentioned by the commenter will need to be evaluated for their accuracy and consistency with determining naturalized trout populations.

[4]Cold Water Existing Use: Policy & Procedures - https://mde.maryland.gov/programs/water/TMDL/WaterQualityStandards/Documents/Cold%20Water%20Existing%20Use%20Determinations%20Policy%20and%20Procedures.pdf

[5] COMAR 26.08.02.04-1 - https://dsd.maryland.gov/regulations/Pages/26.08.02.04-1.aspx

11. For each distinct existing use determination, MDE should describe all water quality criteria that need to be applied to protect the existing use determination. For example, when making a natural salmonid existing use determination in a Use Class I water, MDE besides describing the temperatures that must be considered for antidegradation, should also describe codified protective water quality criteria for dissolved oxygen, ammonia, stream closure, and thermal barrier prohibition which differ from the Use Class I unprotective water quality standards.

    MDE Response: Existing use determinations will be afforded all protections consistent with State and Federal law. For example, the Department notes that COMAR 26.08.02.08(A)(s)[6] - Stream Segment Designations and Existing Uses does address effluent limits and stream closure requirements for the protection of existing uses, stating: " For determining effluent limits, closure periods, and other regulatory protection measures, these existing uses and the water quality necessary to maintain them must be protected consistent with Regulation .04-1 of this chapter." Appropriate stream closure elements as well as appropriate effluent limits for dischargers will be handled within MDE permits for existing use determinations in accordance with this regulation.

12. (Paraphrased): The restriction for a 5-year period without hatchery stocking in hydraulically connected water before making a natural salmonid existing use determination or redesignation recognizes that salmonids travel distance within watersheds. However, MDE's use of a segmented scale approach (river confluence to river confluence) to existing use determinations, redesignation, and temperature impairment delineation fails to recognize the inherent interrelatedness of connected waters. The segmented approach being used for the designated use change proposed for North Branch Potomac River (Allegany County) is flawed and unscientific, does not ensure protection of upstream waters or protection from thermal barriers, and does not follow codified policy.

    MDE Response: Please refer to the Department's discussion of the North Branch Potomac River (Allegany County) proposal in the Summary of Decisions section.

13. (Condensed): Use Class IV streams have not been traditionally managed for water quality as evidenced by the fact that temperature impairments are not being assigned to Use Class IV waters and proposed temperature TMDLs are not addressing impairments of Use Class IV waters. The 23.9 degrees C Class IV temperature criterion is not actively enforced for the myriads of currently designated Class IV waters.

[6] COMAR 26.08.02.08, Stream Segment Designations and Existing Uses - https://dsd.maryland.gov/regulations/Pages/26.08.02.08.aspx

MDE Response: This question does not pertain to the scope of the public comment period; however, the Department would like to clarify that Class IV(-P) streams are managed and protected for water quality. While there is not an assessment methodology currently developed to determine impairment status of Class IV(-P) waters for Maryland's Integrated Report of Surface Quality, such as there is for Class III(-P) waters (link[7]), Class IV(-P) streams are managed and protected for their specified temperature and other Class IV(-P) specific COMAR criteria through MDE's permitting processes.

14. (Condensed and paraphrased): Support the North Branch Potomac River from confluence with Savage River to confluence with Georges Creek and North Branch Potomac River from confluence with unnamed tributary to the North Branch Potomac River to the confluence with New Creek existing use determinations and redesignation of the segments during the 2025 Triennial Review of Water Quality Standards based on the obvious risk of degradation from a Use Class I designation, existence of coldwater, and the presence of coldwater obligate biology. However, urge MDE, within the issued existing use determination, to describe the complete list of water quality criteria standards that must be met to protect the existing use prior to Triennial Review redesignation such as water quality criteria for dissolved oxygen, ammonia, stream closure requirements, and thermal barrier prohibition which differ from unprotective Use Class I water quality standards.

    MDE Response: Please see response to comment #11. In regards to the existing use proposal for the North Branch Potomac River (Allegany County), please see the Department's Summary of Decisions section.

15. (Condensed and paraphrased): For the section of the North Branch Potomac River from confluence of Georges Creek to confluence with Stony Run, support providing an existing use determination based on the obvious risk of degradation from a Use Class I designation. However, disagree with the existing use determination provided and the MDE intent to redesignate the segment to Use Class IV in the 2025 Triennial Review. Urge MDE to change the existing use determination to recognize the evidence of natural trout reproduction and codified coldwater biology (obligate stoneflies) within the segment. The segmented approach being used for the proposed designated use change is flawed and unscientific. Additionally, coldwater obligate stoneflies which MDE uses to distinguish coldwater from cool and warm water do not survive in waters that frequently reach a 23.9 C water temperature, the water temperature criterion for Class IV waters. Natural salmonid sustainability in Class IV waters is likewise not adequately protected

[7]Temperature Assessment Methodology for Use III(-P) Streams in Maryland - https://mde.maryland.gov/programs/water/TMDL/Integrated303dReports/Documents/Assessment_Methodologies/Final_Temp_AM_UCIII_12_19_2023.pdf

because salmonids exposed to prolonged exposures at 23.9 degree C do not grow and have poor fitness and survivability. Also, there is no water quality criteria for thermal barrier protection and the assigned in-stream closure period for Use Class IV is short and designed to protect adult hatchery raised and stocked salmonids before being caught and not to protect natural spawning as for Use Class III. The Class IV "Recreational Trout Waters" designated use for seasonal put-and take trout fishing does not apply a proper "ceiling" or "goal" for natural salmonid waters or waters containing codified coldwater obligate stoneflies. The inability for Class I and Class IV use designations to protect salmonid populations and populations of coldwater obligate species from degradation as required by the CWA and MD Law's antidegradation requirements was exactly what precipitated the work of MDE Coldwater Advisory Committee to develop an existing use determination policy. The MDE should protect the existing use through an appropriate and descriptive existing use determination pending UAA and redesignation.

MDE Response: In regards to the existing use proposal for the North Branch Potomac River (Allegany County), please see the Department's Summary of Decisions section.

16. (Paraphrased): For the North Branch Potomac River from the confluence with unnamed tributary near Rebecca Lane to the confluence of another unnamed tributary near McKenzie Tower Rd SW near Pinto, MD, support MDE's decision to not assign an existing use determination based on available data. Recommend that MD DNR and MDE gather additional macroinvertebrate samples and seek evidence for natural salmonid reproduction. Following the development of a UAA policy and procedures for potential redesignations, recommend using developed UAA procedures for this segment of the North Branch Potomac.

    MDE Response: Thank you for your suggestions. Should new data become available, the Department will evaluate it at that time.

17. (Condensed and paraphrased): Historically, wild brook trout occupied much of the upper section of the North Branch Potomac (NBP). Anthropogenic effects extirpated much of the wild brook trout population in the upper NBP through acid mine discharge and stream corridor disturbances. Cold water fisheries exist in several reaches of the NBP above the Jennings Randolph (JR) dam and wild brook trout still exist in the upper headwaters of the NBP that are protected by an existing use determination [North Branch Potomac River (Garrett) Existing Use Determination]. Anthropogenic effects degraded the NBP downstream of JR dam most prevalently through industrial and domestic wastewater discharges. Water quality in the NBP has improved since construction of the JR dam and more recently by the cessation of major wastewater discharges to the NBP. Natural salmonid sustainability, once limited to a reach directly below the JR dam, now extends

well downstream and naturally occurring codified coldwater obligates stoneflies occupy downstream reaches of the NBP based on observations by MD DNR fisheries biologists and fishermen anecdotes.Below the JR dam, there is a gradual transition from coldwater conditions at tailrace to cool and finally to warmwater conditions. Such a transition is evident in many river systems without dams. The following are examples of tailwater discharges that enable trout fisheries now protected under a Use Class III designation issued by MDE. Several important and cherished coldwater fisheries are made possible by the shared use of coldwater stored in impoundments. The JR dam is not the only tailwater that provides, in addition to water supply and flood control, habitat for salmonids and recreational fishing opportunities that the public expects to be continued.

a. 4.1 Youghiogheny River – Deep Creek Reservoir release provide coldwater which supports a quality catch and release trout fishery
b. 4.2 Savage River mainstem – Savage River dam release provides wild trout habitat and exemplary blue-ribbon trout fishing
c. 4.3 Gunpowder Falls – Prettyboy Dam release provides wild trout habitat and a blue-ribbon nationally recognized trout fishery.
d. 4.4 Little Seneca Creek - Little Seneca Creek Dam releases coldwater that provides wild trout habitat and trout fishing.

Based on comments made during the hearing, some opposition argues that the NBP does not warrant coldwater protections because the NBP below JR dam and the Savage River dam is artificial. I do not know whether these comments are from a personal belief or an interpretation of previous guidance such as the 2008 Denise Keehner (EPA) letter to the State of Oklahoma. The NBP has not been a natural system for many years. Anthropogenic changes likely began in the 18th century and over the years have affected water quality in many ways, both good and bad. In Maryland, the precedent for assigning coldwater use designation to tailwaters is set. In recent times, MDE with the approval of EPA has established water quality standards for multiple tailwaters. Moving away from this precedent, especially without formal use attainability analysis and redesignations, will raise issues about the somewhat conflicted roles that MDE has for environmental protection and environmental permitting and may result in administrative and legal challenges.

MDE Response: Thank you for the background and insight. In regards to the existing use proposals for the North Branch Potomac River, please see the Department's Summary of Decisions section at the beginning of the comment response document.

18. (Condensed and paraphrased): The Maryland Chapter of the Brotherhood of the Jungle Cock (BOJC) strongly supports the Maryland Department of the Environment's proposed seven (7) cold water existing use determinations as published in the September 6, 2024, edition of the Maryland Register. The associated rationale documents provide data that show without a doubt that the proposed existing use determinations are necessary. The data makes the proposed existing use determinations applicable, and the resulting Use Classifications will offer improved thermal protection for the identified cold-water locations. BOJC supports the State of Maryland's responsibility to protect its natural resources. We support its resource management effort and the evidence-based existing use determinations being properly applied to identified cold waters as found in these existing use determination documents.

    MDE Response: Thank you for your comment of support.

19. It is the commenter's understanding the proposal is to change sections of the North Branch of the Potomac River currently designated as "Use I-P" (Water Contact Recreation, Warm Water Fishing, Aquatic Life and Public Water Supply) to a designation of either "Use IV-P" (Recreational Trout Waters and Public Water Supply) or "Use III-P" (Natural Trout Water and Water Supply).

    MDE Response: Please see the discussion in the Summary of Decisions section; the Department is not finalizing a determination for the North Branch Potomac River at this time.

    The Department would like to clarify the purpose of the original proposed action. The original proposed action was to evaluate the data available for several waters throughout the state so as to determine the existing use and whether the existing use is consistent with and protected by the current designated use for that water body. While a described existing use may be synonymous with currently defined Use Classes, the changing of designated uses (i.e. "redesignation") is a separate regulatory action. For additional clarification, Class III-P represents Nontidal Cold Waters and Public Water Supply, which may include trout but also other species that rely on cold water for survival (i.e. "cold water obligate species").

20. (Condensed and paraphrased) : The UPRC is concerned that MDE may consider the re-designation of North Branch of the Potomac River sections based only on information submitted by Maryland DNR and not take a broader look at other factors affecting "Designated Uses" as outlined in CFR 131.10(a) of the Clean Water Act (CWA) which include the economic and social impacts of a streams' "Designated Use change", their use and value for public water supplies, protection of fish, recreation, agriculture, and industry. 40 CFR 130.3 also outlines the consideration of downstream uses, existing uses, physical conditions, biological factors and chemical factors as considerations in the federal program. MDE cannot and should not undertake a "Designated Use" re-designation based solely on a narrow set of considerations outlined in the "Existing Use Determination and Rationale for the North Branch of the Potomac River" but instead consider the full range of considerations / factors outlined under the CWA.

MDE Response: Please see the Department's Summary of Decisions section regarding the existing use proposals along the North Branch Potomac River. The following response provides information and clarification on the general process of existing use determinations, Use Class designations, and the Code of Maryland regulations around designated uses.

To clarify the original proposal intentions, the action of the original proposal was to determine whether the sections of the North Branch Potomac River had an existing use. While an existing use can be described as synonymous with one of Maryland's currently defined use classes, a redesignation of the Use Class of a waterbody is a separate regulatory action.

Existing uses, as defined under 40 C.F.R. § 131.3(e), are "those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards". COMAR 26.08.02.04-1 further outlines Maryland's Tier I Antidegradation Policy for existing uses, which states that "waters that have demonstrated an existing use that is not protected by the water quality criteria specified for the current designated use for this water body shall be protected so as to maintain the existing use and the water quality necessary to protect the existing use.". An existing use is therefore specifically describing the attained conditions (use and water quality) of a waterbody that must be protected. As such, it is a scientific description of the waterbody condition that is completed without consideration of other factors.

An existing use determination, should it be determined to be synonymous with a defined Use Classification, will inform the need for later redesignation of a stream's Use Class. Any future redesignation action will also consider the factors listed under C.F.R. §

131.10(a), as well as those listed under COMAR 26.08.02.01(B)(2)[8] which include water contact recreation, fishing, propagation of fish, other aquatic life, and wildlife.

40 C.F.R. § 131.10(a) does not directly address social and economic elements as factors in a redesignation process. Rather, 40 C.F.R. § 131.10(g) lists social and economic impacts as factors for consideration when removing a designated use (that is not an existing use) that cannot be achieved without changes that result in major adverse social and economic impacts. A key consideration is that downgrades in designated uses must not impact or remove existing uses. Should certain uses and water quality be achieved in a stream and represent an existing use, social and economic impacts cannot be a justification to ignore the existing use of the river and allow downgrades or future degradation.

21. CFR 131.10(a) requires the consideration of industrial and municipal uses, as well as historical river conditions when evaluating a streams Designated Use.

MDE Response: Please see the Department's Summary of Decisions section regarding the existing use proposals along the North Branch Potomac River. While the Department will not be making a determination at this time, the Department would like to again clarify the original proposal's focus was determining the existing use of the waterbody. A redesignation of the Use Class of a waterbody is a separate regulatory action.

Though not within the scope of the current action, which was focused on determining existing uses rather than designated uses, the Department is also providing the following response regarding 40 C.F.R. § 131.10(a) on redesignation.

While the referenced federal regulation (40 C.F.R. §131.10(a)) does mention industrial use as a consideration for applying designated uses, in the same regulation that the commenter references, it states: "In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States." Industrial waste discharges therefore cannot be the basis for assigning a designated use. Water supply for industrial or agricultural uses, as stated as a consideration under COMAR 26.08.02.01(B)(2) and C.F.R. § 131.10(a), is a protected use under all Maryland Use Classes (I/I-P, II/II-P, III/III-P, IV/IV-P). Additionally, 40 C.F.R. § 131.10(a) does not address historical conditions as a designated use requirement.

[8] COMAR 26.08.02.01, Surface Water Quality Protection - https://dsd.maryland.gov/regulations/Pages/26.08.02.01.aspx

22. (Condensed): The North Branch of the Potomac River in the area near Luke MD has always existed as a "Use Class IP: Water Contact Recreation, and Protection of Non-tidal Warmwater Aquatic Life" stream. Prior to 1981, USGS measurements showed the summer temperatures of the river near the confluence of Savage River as being typically in the high seventies (degrees Fahrenheit). Only after the completion of Jennings Randolph Dam in 1981 is when the North Branch of Potomac River temperatures began to cool enough to support cold-water species. At some point after 1981, Maryland DNR began to actively pursue management of the temperature of the water releases from both the Jennings Randolph and Savage River dams, DNR's goal being to decrease downstream temperatures to promote the establishment of a cold-water trout fishery in the North Branch of the Potomac River. Both the Upper Potomac River Commission and Army Corp of Engineers have supported Maryland DNR's efforts in this temperature management strategy, but neither entity believes that artificially manipulating river temperatures (which are not guaranteed) constitute or justify changing the current Designated Use Classifications on the downstream (of the reservoirs) sections of the North Branch of the Potomac.
The cold-water temperatures noted in the "Existing Use Determination and Rationale: North Branch of the Potomac River" and observed in this document are not natural; the cold temperatures are accomplished through the cold-water management strategies employed at the Savage River and Jennings Randolph Reservoirs. The cold-water management strategy at both reservoirs is to store (capture) the coldest water possible during Spring snowmelt and runoff events, store this very cold water in the reservoir through late Spring and early Summer and then release this cold water during the hottest summer months to maintain and artificially lower stream temperatures in both tailwater's as well as the main-stem of the North Branch of the Potomac. This cold- water management cycle has artificially lowered in-stream temperatures of each reservoir's tail-water as well as the main-stem of the North Branch of the Potomac since Jennings Randoph project went into operation in the early 1980's. The effects of the cold-water management strategy employed at both reservoirs are easily seen if one compares the influent stream temperatures into the reservoirs to the temperatures observed in their tailwater during the hot summer months of July, August, and September every year.

MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

23. The UPRC operates under NPDES Permit #MD0021687 issued by the MDE. The NPDES Permit limits are based on the stream designation outlined in COMAR 26.08.02.08Q, which for the main-stem of the North Branch of the Potomac is Use I-P Water, Water Contact Recreation, Protection of Aquatic Life and Public Water Supply. Any changes to the current stream designation would have a major economic impact on the treatment facility, as well as a major social and economic impact on the surrounding communities.

    MDE Response: Please see the Department's Summary of Decisions at the beginning of this document regarding the North Branch Potomac River segments.

24. (Condensed): As stated in the "Existing Use Determination and Rationale" North Branch of the Potomac River" in 2019 the Luke Paper Facility unfortunately ceased operations. The closing of the paper manufacturing facility resulted in the loss of over 2000 good paying jobs in Western Maryland. The current state of the Luke Industrial Site remains in limbo. The current property owner is hoping to find a tenant who can redevelop the site and bring employment opportunities back to the Luke Industrial Site and our community. The Upper Potomac River Commission contends that changes to Water Quality Criteria Designated Uses for the North Branch of the Potomac could or may drive away possible tenants of the Luke Industrial Site. This would have a substantial socioeconomic impact on the Tri-Towns community. An undeveloped Luke Industrial Site has a major impact on the UPRC's ability to continue the operation of the wastewater treatment located in Westernport, MD because of lack of funding.

    MDE Response: Please see the discussion on the North Branch Potomac River segments in the Summary of Decisions section.

25. (Condensed and paraphrased): Coldwater management at Savage River Reservoir has negative impacts on other recreational interests, public safety, and local water supply. Coldwater management has negative recreational impacts on white water releases in tailwater, in lake boating, in lake warmwater fishing, in lake cold water fishing, shoreline fishing, warmwater fishing in the North Branch Potomac River mainstem. Managing Savage River Dam for cold water decreases flood control capacity of the reservoir during the Spring and early Summer months subsequently increasing the risk of flooding to the local community. Water storage for cold water management begins early and is held till Summer, so that there is a full reservoir for a longer period of time, creating an increased risk of flooding. Cold water management has a negative impact on the Savage River Dam's ability to augment low flow river conditions (Fall / Winter). Cold water management also puts local and downstream DC metropolitan public water supply at risk. In 2024, we were almost in a condition where we had to pump water into Westernport to maintain the public water supply. The Savage River Dam also has an agreement with Jennings Randolph Reservoir that if the downstream DC water utilities call for water to be released for their use we are to match it by 20% - we could never have done that this year. One it was dry, but also we used up all the water during our cold water phase through the Summer.

    MDE Response: Please see the discussion on the North Branch Potomac River segments in the Summary of Decisions section. While a determination is not being made at this time, the Department recognizes that addressing public safety risks are a top priority.

26. Of the historic species of the NBPR, trout are not indigenous. Trout were only established after the construction of Jennings Randolph Reservoir and the USACE cold water management strategy that began to be employed at the facility in the late 1980s. Aquatic species in the North Branch Potomac River prior to Jennings Randolph Lake and Savage River Dam were all warm water species.

    MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

27. All the tributaries on the NBPR below Savage River do not meet the cold water criteria being proposed by MDE for the Upper Potomac. All the tributaries do meet the criteria for Class I warm water.

    MDE Response: It is unclear which tributaries are being referenced by the commenter. Interpreting the commenter to mean all rivers and streams that drain into the North Branch Potomac River below Savage River, these referenced tributaries do not pertain to

the scope of the original proposal for the North Branch Potomac River, which was focused on the mainstem section.

Please see the Summary of Decisions section, the Department is not making a determination on the North Branch Potomac River at this time. If the commenter has additional continuous temperature monitoring data they would like to submit for the Department's consideration, please contact Melinda Cutler at melinda.cutler@maryland.gov.

28. (Condensed and paraphrased): The Potomac Patuxent Trout Unlimited Chapter of Trout Unlimited supports MDE's proposed seven cold water existing use determinations recently published in the Maryland Register. The streams listed represent a major part of our volunteer and educational activities. PPTU supports the State of Maryland and the Maryland Department of the Environment Protection of our natural resources. The supportive documents detailing temperature, electrofishing and biological data collections makes this existing use determinations applicable and we applaud this effort. We as anglers and conservationists seek to preserve our streams to ensure the survival and growth of native and wild trout for the people of Maryland and the next generation.

MDE Response: Thank you for your comment of support. Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

29. (Condensed): On behalf of the 200 members of the Potomac Valley Fly Fishers, we strongly support the Maryland Department of the Environment's proposed seven (7) cold water existing use determinations. These Proposed Existing Use Determinations are not only valid, but they are also critical to the protection of expanded self-sustaining trout populations and habitat in tributaries/waters in Hartford and Washington Counties and the North Branch of the Potomac River in Allegany County. The resulting Use Classifications will offer improved thermal protection for the identified cold-water locations. We support its resource management efforts and the evidence-based existing use determinations being properly applied to identified cold waters as found in these existing use determination documents. We hope that the DNR continues to support the identification, protection and preservation of promising and thriving cold/colder water habitats that Maryland's population growth and residential/commercial development spread have damaged, depleted and destroyed in much of our beautiful state. We look forward to these "Use Classifications" being included in the Triennial Review of Water Quality Standards of 2025.

MDE Response: Thank you for your comment of support. Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

30. (Condensed): I am a Chesapeake Women Angler member who enjoys the outdoors and wants to help preserve and protect Maryland's natural resources as best we can. I strongly support the proposed "existing use" classification recommended for these seven cold-water locations. Maryland's cold-water resources are few and far between. When they have been identified as locations that provide cool/cold water, have naturally reproducing trout populations, and have aquatic life to support the trout population, then it's imperative that the appropriate classifications be applied to these waters. Please add my name in support of these locations receiving cold-water "existing use" classifications. Protecting Maryland's naturally reproducing trout population is a priority of mine and all Chesapeake Women Anglers members.

    MDE Response: Thank you for your comment of support.

31. (Condensed): I am a fly fisher and member of the Chesapeake Women Anglers. I enjoy the outdoors and want to help preserve and protect all of Maryland's natural resources. I travel throughout the state of Maryland flyfishing for wild trout. I support the actions of MDE to protect the state's cold water resources which hold reproducing wild trout. I strongly support the proposed "existing use" classification recommended for these seven cold-water locations. Maryland's cold-water resources are few and far between. Human intervention and development negatively impacts and in many cases, destroys them and their functions in the ecosystem. Today they are in even greater jeopardy from climate change as well as development. Therefore, when they have been identified as locations that provide cool/cold water, have naturally reproducing trout populations, and have aquatic life to support the trout population, it's imperative that the appropriate classifications be applied to these waters so all possible measures to protect them can be enforced. Please add my name in support of these locations receiving cold-water "existing use" classifications. Protecting Maryland's naturally reproducing trout population is a priority of mine and all Chesapeake Women Anglers members.

    MDE Response: Thank you for your comment of support.

32. (Condensed): As President of the Chesapeake Women Anglers, I represent members who enjoy sustainable fly fishing and want to preserve and protect all of Maryland's natural resources. I strongly support the proposed "existing use" classification recommended for the seven cold-water locations. Maryland's cold-water resources are few and far between. Human intervention and development negatively impacts and in many cases, destroys them and their functions in the ecosystem. Climate change is also a real threat. When these waters have been identified as locations that provide cool/cold water, have naturally reproducing trout populations, and have aquatic life to support the trout population, it's imperative that the appropriate classifications be applied so all possible measures to protect them can be enforced. Please add my name in support of these locations receiving cold-water "existing use" classifications. Protecting Maryland's naturally reproducing trout population is a priority of mine and all Chesapeake Women Anglers members.

    MDE Response: Thank you for your comment of support.

33. I also have concerns about the small brook trout stream, Jabez Branch, located near Rte 3 and I-97 in Anne Arundel County.

    MDE Response: The Anne Arundel County stream, Jabez Branch, is not included within the current determination proposals and is beyond the scope of the public comment period. Concerns or specific information in relation to compliance with MDE permits for Jabez Branch can be directed to MDE's Central Division, 410-537-3510. For all general inquiries, please contact Anne Arundel County's Bureau of Watershed Protection and Restoration, aarivers@aacounty.org.

34. (Condensed): I am a Marylander and Trout Unlimited member who enjoys the outdoors and wants to help preserve and protect Maryland's natural resources as best we can. I strongly support the proposed "existing use" classification recommended for these seven cold-water locations.
    Maryland's cold-water resources are few and far between. When they have been identified as locations that provide cool/cold water, have naturally reproducing trout populations, and have aquatic life to support the trout population, then it's imperative that the appropriate classifications be applied to these waters. Please add my name in support of these locations receiving cold-water "existing use" classifications. Protecting Maryland's naturally reproducing trout population is a priority of mine and all Trout Unlimited members.

    MDE Response: Thank you for your comment of support.

35. (Condensed): As a Marylander who enjoys the outdoors and wants to help preserve and protect Maryland's natural resources as best we can, I strongly support the proposed "existing use" classification recommended for these seven cold-water locations. Maryland's cold-water resources are few and far between. When they have been identified as locations that provide cool/cold water, have naturally reproducing trout populations, and have aquatic life to support the trout population, then it's imperative that the appropriate classifications be applied to these waters. Please add my name in support of these locations being classified as a cold-water "existing use."

    MDE Response: Thank you for your comment of support.

36. (Condensed): As a Virginian with Maryland fresh and salt-water fishing licenses, who enjoys the outdoors and wants to help preserve and protect Maryland's natural resources as best we can, I strongly support the proposed "existing use" classification recommended for these seven cold-water locations.
    Maryland's cold-water resources are few and far between. When they have been identified as locations that provide cool/cold water, have naturally reproducing trout populations, and have aquatic life to support the trout population, then it's imperative that the appropriate classifications be applied to these waters. Please add my name in support of these locations being classified as a cold-water "existing use."

    MDE Response: Thank you for your comment of support.

37. As a long term MD resident, avid fisherwoman and member of Seneca Valley Trout Unlimited, I am writing to express my strong support for adoption of regulations under consideration by MDE that would classify 7 Maryland streams as "coldwater streams". As you may be aware, coldwater streams provide essential habitat for trout. The proposed classification would provide additional,much needed protection against environmental degradation of these waters. I urge you to do everything in your power to see that these regulations are adopted and that reclassification of these streams occurs as soon as possible.

    MDE Response: Thank you for your comment of support.

38. (Condensed): We strongly support the Maryland Department of the Environment's proposal to apply additional thermal protections to the identified streams through the assignment of a cool water existing use protection. The data makes the proposed existing use determinations applicable, and the resulting Use Classifications will offer improved thermal protection for the identified cold-water locations. The Seneca Valley Trout Unlimited chapter supports the State of Maryland's resource management effort and the evidence-based existing use determinations being properly applied to identified cold waters as found in these existing use determination documents. We look forward to these Use Classifications being included in the Triennial Review of Water Quality Standards of 2025.

    MDE Response: Thank you for your comment of support.

39. I am a resident of Frostburg, Maryland and a Trout Unlimited member who enjoys the outdoors and wants to help preserve and protect Maryland's natural resources as best we can. I taught hydrology and environmental science courses at Frostburg State University for 27 years. I have lived in Frostburg for 36 years and during this time I have observed a steady increase in the water quality of the North Branch of the Potomac. The river has changed for the better and should be managed to continue to change to support cold water fish. The section of the North Branch from Savage River downstream to Pinto should be changed from Class 1 to Class III (upper part of section) and Class IV (lower part of this section). I have fished the North Branch in the Lostland and Wallman areas many times. In the Wallman section, I was surprised to find rainbow trout and brook trout in some pools even in August when I was expecting to catch bass. The Class III classification for the upper main stem will help to protect a self-sustaining brook trout population.

    MDE Response: Thank you for your comment. Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments. While the Department is not making a determination for the North Branch Potomac River at this time, the Department notes that the section below Dawson, MD had approximately 9.5 stream miles of limited spatial data coverage between the Dawson, MD and Pinto, MD stream sections, in addition to the Pinto stations' failure to meet Class IV-P or Class III-P temperature criteria. No changes are thus anticipated for this section of the North Branch Potomac River at this time.

40. (Condensed): I strongly support the proposed "existing use" classification recommended for the seven cold-water locations. Maryland's cold-water resources are few and far between. When they have been identified as locations that provide 1) cool/cold water, 2) have naturally reproducing trout populations, and 3) have aquatic life to support the trout population, then it's imperative that the appropriate classifications be applied to these

waters. Please add my name in support of these locations receiving cold-water "existing use" classifications. Protecting Maryland's naturally reproducing trout population is a priority of mine and all Trout Unlimited members.

MDE Response: Thank you for your comment of support.

41. The Interstate Commission on the Potomac Basin (ICPRB) is writing to express its strong support for the proposed changes in designated use classes for the North Branch Potomac River (NBPR) tailwater region below Jennings Randolph Lake (JRL) from Class I warmwater to Classes III and IV. These changes recognize recent improvements in the watershed and represent a critical step toward protecting the ecological health of the region while potentially bolstering the economy of western Maryland via sustainable recreation and tourism.

    MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

42. While we support this use-class change, we also recognize the importance of JRL and Savage Reservoir (SR) as drinking water sources. We want to emphasize the need for a better, regional understanding of the tailwater as a product of JRL and SR operations. The North Branch Potomac tailwater is a remarkable natural resource, offering unique opportunities for fishing, hiking, and wildlife observation. Known as a "dead river" prior to the 1980's, the North Branch Potomac River is, and should continue being, a beacon of successful environmental restoration and successful interagency cooperation. Since the inception of JRL and recovery of the tailwater made apparent, stakeholders have participated in a "North Branch Shared Vision Plan" (ICPRB North Branch Planning, LINK[9]). The first plan (1994) laid out a vision of cooperation and improvement for the North Branch watershed. Nearly a decade later (2007-2008), the vision was revised to consider changes to the watershed. We believe that the change in use class, the changing obligations of the reservoirs, and changes in regional stakeholders collectively necessitates revisiting this shared vision exercise.

    MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments. The Department understands the North Branch Potomac River tailwaters balance a multitude of stakeholders and management interests. The Department supports any and all efforts to promote engagement and collaboration amongst stakeholders of the North Branch Potomac River.

[9]https://www.potomacriver.org/focus-areas/water-resources-and-drinking-water/water-resources/planning/north-branch-advisory-committee/

43. Following ICPRB's studies on climate change and drought resiliency in the Potomac Basin, we anticipate cold-water to be an increasingly stressed resource (2020 Washington Metropolitan Area Water Supply Study Demand and Resource Availability Forecast for the Year 2050, LINK[10]). As global temperatures rise and precipitation patterns shift, reservoirs face increased variability in water supply, making it essential that operational and resource management strategies are coordinated and flexible. In the last 5 years, the JRL reservoir has experienced prolonged droughts that reduced inflow (and tailwater release volumes), episodic heavy rainfall from tropical storms and hurricanes, and shifted phenology, or timing of natural cycles. By incorporating climate data-driven modeling into reservoir management, we can enhance resiliency, optimize water distribution, and ensure that both human and ecological needs are met in an increasingly uncertain climate. Flexibility in operational management and transparency of stakeholder obligations will be critical in the future of the North Branch region.

    MDE Response: Thank you for your comment and this information. Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

44. The proposed change in use class aligns with regional economic goals for sustainable development (Task Force on the Economic Future of Western Maryland, 2022, LINK[11]) and environmental stewardship (A critical path forward for the Chesapeake Bay Program partnership beyond 2025, LINK[12]). It has the potential to attract more visitors, benefiting local businesses and enhancing community engagement with the natural environment. By creating a framework that prioritizes water security, conservation, and recreation, we can create a legacy for future generations. By changing the use class, alongside defining operational obligations of stakeholders, we can ensure that this area is managed in a way that preserves its ecological integrity while accommodating other obligations.

    MDE Response: Thank you for your comment and this information. Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

[10] https://www.potomacriver.org/wp-content/uploads/2020/12/2020-WMA-Water-Supply-study-FINAL-September-2020.pdf

[11] https://commerce.maryland.gov/commerce/documents/task-force-economic-future-western-maryland-final-report-1-6-22.pdf

[12] https://d18lev1ok5leia.cloudfront.net/chesapeakebay/documents/Beyond-2025-Draft-Steering-Committee-Report.pdf

45. (Condensed and paraphrased): We, the undersigned organizations support the Maryland Department of the Environment's (MDE) proposed science that has identified and further characterized the physical and biological health of the seven streams known to have existing uses as cold water streams with self-sustaining trout populations and other cold water obligates which rely on coldwater for their lifecycle. We also fully support the related regulatory action that MDE is undertaking and agree that this action is consistent with the Executive Order 13508 of May 12, 2009 titled, CHESAPEAKE BAY PROTECTION AND RESTORATION.We also note that this proposed action is well-aligned Maryland's commitment to reaching several of the goals and outcomes in the 2014 Chesapeake Bay Agreement.
Thermal pollution is silent, invisible, and deadly to cold water species, including native populations of Eastern Brook trout and introduced brown trout that have become wild and self-sustaining across Maryland. Protections afforded to small upland segments are an essential aide to protecting the downstream connected tributaries of the imperiled Chesapeake Bay.
While it is our understanding that the designated use changes will establish new, minimum standards of performance for thermal discharges into these stream segments where appropriate, these permit conditions cannot be seen as overreach as they are based on sound science from the very state agency delegated by the Environmental Protection Agency under the Clean Water Act to provide protections to waterways the State of Maryland no matter where they are located.
We applaud this current proposal and stand ready to support the Department in examining further protections.

MDE Response: Thank you for your comment of support.

46. The U.S. Army Corps of Engineers, Baltimore District, owns and operates Jennings Randolph Lake (previously named Bloomington Lake). Jennings Randolph Lake was authorized to be regulated for flood control, domestic and industrial water supply, water quality control and recreation. As a multiple purpose project, regulation of the releases from Jennings Randolph requires a careful and conscientious balance of often dynamic conditions with the goal of maximizing benefits to each of these project purposes. Jennings Randolph Lake is located on the North Branch Potomac River between Garrett County, Maryland, and Mineral County, West Virginia. The dam is located approximately eight miles upstream of the confluence of the North Branch Potomac and Savage Rivers and controls as much as sixty-five percent of the drainage area at Luke, MD. As such, the releases from Jennings Randolph Lake have a significant effect on the quality and quantity of flows on the North Branch Potomac River. Jennings Randolph Lake's outlet works was designed to allow for the manipulation of releases for water quality. The intake tower includes a selective withdrawal system whereby water can be pulled from multiple levels within the reservoir to provide targeted releases to meet water quality criteria. In particular, Jennings Randolph is regulated to target a release of 13 degrees Celsius (+/- 0.5 degrees Celsius). Regulating releases from Jennings Randolph at 13 degrees Celsius the majority of the time over the years has provided the conditions and opportunity, in coordination with the MD Department of Natural Resources (MD DNR), for the cold-water fishery to develop in the North Branch Potomac between the dam and Luke, and to some extent also along the reaches identified in this proposal. Therefore, the historically observed river water temperatures downstream are not truly natural as they are being created by regulation of the reservoir.

    MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

47. The availability of cold water in the reservoir, while successfully managed over numerous years to allow the cold-water fishery to develop, is not a guarantee.
    a. The availability of cold water within the reservoir is entirely dependent on the volume and temperature of the inflow which fills the reservoir each spring, which can vary and change annually, seasonally, and daily. Storing water from snowmelt and/or cooler flows prior to ambient air temperature warming provides the optimum opportunities to create a cold reservoir ahead of the summer and fall.
    b. There is a chance, in any given year, and at any point in the year, for large releases to be required following a high water or flood event. High volume releases require the use of the largest capacity outlet gates which are located near the bottom of the reservoir. These types of releases would result in a loss of cold water, thereby risking the availability of cold water for downstream temperature regulation.

MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

48. The regulation of Jennings Randolph Lake is prescribed within U.S. Army Corps of Engineers document, "Master Manual for Reservoir Regulation, Jennings Randolph Lake, West Virginia and Maryland, North Branch Potomac River Basin – Appendix A, July 1997". The Water Control Plan (WCP) within this document prescribes how the reservoir is to be regulated in accordance with its authorized purposes. The current WCP states that the main goal in regulating Jennings Randolph Lake for water quality is to meet the mid-range of standards set by the State of Maryland for the North Branch Potomac River. These standards are referenced as the Class I-P standards. Regulation decisions are not permitted to deviate from the Master Manual without higher approval within the U.S. Army Corps of Engineers, and/or an update of the WCP. Potential or proposed changes to the regulation of Jennings Randolph Lake would need to be analyzed/evaluated and undergo a coordination and review process by the U.S. Army Corps of Engineers before being incorporated into a revised Water Control Plan. Until an official change is made and approved, the reservoir must be regulated as prescribed in the Water Control Plan.

    MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments. While no determination is being made on these segments at this time, the Department would like to note that the tailwaters of the Jennings Randolph Reservoir, immediately downstream of the reservoir, have been designated as Class III-P since 2014 with the designated use changes made to the North Branch Potomac River mainstem with the 2013 Triennial Review. The section from Laurel Run near Bloomington to the confluence of the Savage River was additionally redesignated as Class III-P in the 2019 Triennial Review which was approved by EPA in 2023.

    Class I-P standards are not appropriate for protecting the current biological and thermal resources of the immediate JRR tailwaters (from the dam downstream to the confluence with the Savage River), which are already defined as Class III-P in Code of Maryland Regulations (COMAR) 26.08.02.08(R).

49. Recommend ensuring that the data used in the analysis for the proposed existing use classification change encompasses a diverse range of hydrologic conditions (average, wet, dry/drought). Recommend characterizing the data already collected by the type of hydrologic year. If not already covering a representative sampling of diverse hydrologic conditions, recommend additional years of data be collected before deciding on these existing use classification changes.

    MDE Response: Thank you for your recommendation. Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments; a determination will not be made at this time. The Department will review precipitation data available for the Western Maryland region to compare information with the years of data available for the River and will consider including a discussion of this information in any future update.

50. On behalf of the Free State Fly Fishers and 130 members across the state of Maryland, we strongly support the Maryland Department of the Environment's proposed seven cold water existing use determinations as published in the September 6, 2024, edition of the Maryland Register. We support the Mid-Atlantic Council of Trout Unlimited's findings that the associated rationale documents provide the necessary data to show that the proposed changes to the existing use determinations are necessary. These data included temperature logger(s), electro-fishing and biological data collection. The data makes the proposed existing use determinations applicable, and the resulting Use Classifications will offer improved thermal protection for the identified cold-water locations. We commend both the Maryland Department of Natural Resources and the Maryland Department of the Environment for working together to both gather the necessary data and conduct the needed analyses and evaluations required by Maryland's regulations to provide this additional level of protection for these coldwater habitats and the coldwater fishery and other aquatic resources.

    MDE Response: Thank you for your comment of support.

51. (Paraphrased): With proposed changes, we would like there to be a pause. In the 2024 Maryland General Assembly, there was a bill to look at UPRC funding due to concerns with the Luke Paper Mill closing and how it would be able to perform its duties at the Wastewater Treatment Plant and how it would affect the working class down in the TriTowns (Westernport, Luke, and Piedmont) Area. The bill did get passed and was unanimous in the Senate and the House. That committee is working right now and is due to have a report back to the General Assembly before the session begins in January and its about to make its final recommendations. However, there is going to need to be some time to implement that recommendation. My recommendation, along with the delegate, would be that we would pause this, wait till the report is back, let the General Assembly figure out what it plans to do– and what it plans to do to be completely honest is how it is going to fund this area that when the mill closed it affected three communities immensely The last thing I want to do is make a decision on the determination of moving the designated use classes if some chance by UPRC and Allegany County Economic Development is able to fix the [economic] problem by having something come in the Mill site. The last thing we want is to shut all the doors down for lack of economic development. The last thing I want to leave you with is – I understand the need, I understand the science behind, I understand the benefits behind it. But they cannot outweigh the working class of people in Luke, Westernport, or Piedmont as they are already having to deal with a tremendous amount of financial changes and challenges by losing the Mill, it's location to a East West Corridor– meaning Interstate 68, and the overall changes that the people that I represent cannot afford. We need to do whatever we can to make sure the Mill, somehow, someway, has an opportunity. I believe this report will be part of that so I just ask that we pause and then we resume once we know where the outcome is. And it's not for an indefinite time; Allegany County, UPRC, everybody involved has an internal time clock that is ticking so it won't be forever.

MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

52. (Paraphrased): I am also representing the County Administrator for Allegany and three County Commissioners from Allegany County since they could not make it to the hearing. We've all discussed the situation and I believe the County Commissioners are going to send a letter as well. The Commissioners and everyone has expressed the concern for changing these classifications right now. Just as the good senator, Mike McKay, has alluded to, since the Mill closure in 2019, economic development both on the Maryland side and West Virginia side have been trying to see what kind of uses could go at the Mill and recover the 700 jobs that were lost in 2019. We've tried a lot of different things and a lot of methodologies and have had people kick the tires so to speak to be there but haven't landed any as of yet. But I will say that the rumors have been out there and I guess I'm confirming rumors; probably before Christmas Allegany County will enter into a public private partnership to control the land that the Mill was on the WV and MD side and we've had some folks possibly interested in locating. But this is all going to take a lot of time just from us coming in to control and Maryland Dept of Environment should be happy with the fact that we are going through the proper channels. We did a Phase 1 environmental assessment and Phase 2 will be in the future. But we intend to clean up the site and probably will be applying for federal funds to do that. That is going to likely take a year's time for us to do that and for some of these interested parties to actually come in and build anything. And there's the concern right; we don't know exactly what users are going to end up there. We are certainly not going to have a Paper Mill that is there that is going to require 18 MGD of discharge. But it sure would be nice to have a 3-5 MGD reservation there and I don't know what that does again to the temperatures. I read through a lot of the documentation [in the proposed existing use determination] and I understand those. So I guess what I'm saying is because things take time you know could take a year to clean up, could take a year or two for a company to get in there, I'm echoing the sentiments by our other public officials to at least have a pause on this with respect with trying to gain some jobs and private investment that we can leverage and then maybe we all end up as winners in the end with this.

MDE Response: Please refer to the Summary of Decisions section regarding the North Branch Potomac River segments. The Department would like to clarify that new discharges are not precluded by an existing use protection or a potential future redesignation change. Rather, any current and future dischargers would need to meet the applicable requirements specified within their permits. The Department encourages reaching out to MDE's Wastewater Permitting staff to discuss the requirements and capabilities with a new discharger. For Municipal permits, please contact Yen-Der Cheng, yen-der.cheng@maryland.gov; for Industrial permits, please contact Jonathan Rice, jonathan.rice@maryland.gov.

53. (Paraphrased): I am the former administrator of Garrett County Sanitary District, serving facilities and improved Water Quality in Garrett County. I'm a member of the UPRC, a former County Commissioner, and I served in Maryland House of Delegates for 16 years so I represent this whole district of 1A in Garrett County and a large portion of Allegany County.

When the sewer system in Kitzmiller was put in, the North Branch Potomac River was completely brown. No fish or stoneflies. Actually put in outhouses, in several cases had duplexes, triplexes. There were bushel baskets where town employees had to take and haul to the landfill. So we have done a lot to try to improve water quality. At the time, I remember they were building Jennings Randolph Lake. When the Lake was completed, at the groundbreaking ceremony, someone commented that the river was so brown and water so acidic that if you had an aluminium johnboat and you wanted to cross over from Maryland to the West Virginia side on the Jennings Randolph Lake, it would eat the bottom out of it before you got to the other side. That's how bad the water quality was. Once that impoundment was completed, the lake stratified and almost immediately they started seeing fish. After they got the stratification and determined where the fish were, they started sending out cold water from Jennings Randolph Lake. The DNR started net pens and they put in these huge brood trout stocks and now we have a world class trout fishery that we have had at Savage River for years and years in Garrett County. But then the DNR brought in some fish to put in there – brought in whirling disease and destroyed the whole thing. Then Mettiki Mines built a facility to treat their mine waste, and as all the companies that were doing business. Garrett County & State of MD regulatory people have done a tremendous job with cleaning up the mine drainage. It wouldn't be but for all these things that you would have the water quality you have and what you have shown with these improvements. The reason they have improved is because these things are happening. Now it seems like you are going to penalize us down here because now you have good quality water and now you want to drop the levels of the classification down so it's going to make it more difficult for us and we've concerned about the possibility of this inhibiting economic development to replace the Luke Mill and what's going on there and because of the Mill's going I'm speaking in total opposition to this change. Give us a chance to work these things out because at the UPRC we were able to settle with Verso to give us enough money to operate three years and if this is not resolved and we don't come up with some solution– and that's the reason for the bill Senator McKay's put in– this is all going to be dumped in the County or the State's hands, and we won't be able to afford it and the people in Westernport will not be able to pay the bills that it would cost to operate this facility. So we don't want anything to stand in the way of our ability and put something in the road that might be an impediment for someone that would come in and start a new development here.

MDE Response: Thank you for your comment and the historical background. Please see the Department's Summary of Decisions section regarding the North Branch Potomac River segments and the response to comment #52.

54. (Paraphrased): I represent Allegany County on the three member UPRC Board. I am opposed to the change. The improvement in temperature in the North Branch is due to the storage and cooperative releases of cold water from Savage River Dam and Jennings Randolph Lake and not any intrinsic changes in the river or its tributaries. The UPRC owns and operates Savage River Dam. The purposes of the dam are flood control, low flow augmentation, pollution abatement and public water supply. Although the UPRC has supported fisheries by providing cold water to the North Branch Potomac River, cooperating with DNR for cold water fisheries release for many years, that is not our mission and UPRC does not want to be mandated to do that. Any change in river classification that would somehow mandate cold water releases from the reservoir could adversely affect our ability to fulfill our mission.
In response to Senate Bill 135 in 2024, a study committee was formed to prepare a report on the funding of the UPRC wastewater treatment plant (WWTP) in Westernport. With the 2019 closing of the paper mill in Luke, MD, the flow at the WWTP has dropped by 90% and significantly increased the financial burden on the remaining users, many of whom lost their jobs due to the mill closure. The study group concluded that without redevelopment of the paper mill site , the WWTP will require significant annual subsidies from the State of Maryland. Allegany County intends to enter into a partnership to redevelop the site, but that is expected to take several years to see results. Any stream reclassification that inhibits development at the mill site or requires additional treatment facilities at the WWTP will further exacerbate the financial situation and increase the financial reliance on the State. I do support Senator McKay's recommendation that MDE "pause" the reclassification until we have a better idea of what may happen at the former Paper Mill site. I suggest that pause continue until at least the next Triennial reclassification. It's going to be some time until we know what is going to happen on the Mill site and what kind of impact that's going to have on the Wastewater Treatment Plant and UPRC funding is pretty tenuous going out in the next few years. Nothing will change in the river during that pause, as UPRC will continue to use its best efforts to appropriately release cold water from Savage River Dam, as it has for many years. We support the DNR – we are raising fish and trout with them right now in some of our unused tanks to try and help with fishery supply– and we are still going to have that cold water for the fish, but we don't want to be mandated to do that.

MDE Response: Please see the Summary of Decisions section and the Department's response to comment 52.

55. (Paraphrased): Briefly would like to support Senator McKay and Jeff Barclay's comments in the pause. We have worked very hard on economic development efforts along with Allegany County. The former Luke Paper Mill site is a very unique site, being right along the river, but it is so unique that you can't just get anybody there overnight, it's not just a big square site. A pause definitely sounds like a very reasonable request.

MDE Response: Please see the Summary of Decisions section and the Department's response to comment 52.

56. For 20 years I was a Western Regional fisheries manager and I retired in 2005. Maryland DNR Fisheries' studies on the river started in about 1980 water quality studies from Kempton to Pinto. The current staff of the Fisheries division has continued to work and I think it's a huge success story regarding the development of these trout fisheries resources. For about 20 years I have also worked seasonally as a float fishing guide on the North Branch. When I began, there were only 2 guys. Now there are about 10 fishing guides (full and part time) who are float guides on the North Branch and we have collectively seen a great increase in the number of private boat owners. In 2010, Maryland DNR commissioned a study by Downstream Strategies of Morgantown West Virginia to estimate the annual value of the trout fishery in the North Branch. At that time, they estimated the value to be about 3 million dollars per year. Since that time, the interest in the resource, the number of guides, all that has increased significantly. Therefore, the economic impact has as well. People who hire fishing guides are not local, generally. They travel, they stay in hotels, they eat, they spend money locally, so it is a significant economic benefit. Obviously the current designation of Class I has a 90 degree limit, which is well over the critical thermal maximum for trout. In fact it's lethal. The fact that we have been having a recreational fishery for all these years - literally decades– I think demonstrates what DNR proposed is logical and well founded. And fits the biological status and temperature regimes in the river. To address the point of increased flood probability as a result of cold water management, I would like to note that the JRL dam has four major legislative purposes. Number one is flood control, two I believe is water quality management, three is flow augmentation, and fishing recreation is the fourth priority. So I don't want folks to get the impression that the dam is being operated with trout as any kind of primary purpose. It is something that they are able to do and have been able to do successfully for probably 35 years. So I'll just close by saying, and I think I can speak for these other fishing guides in that they also support the proposal. The Youghiogheny Chapter of Trout Unlimited strongly supports these proposals. In closing, I'd like to commend DNR Fisheries for developing these reclassification proposals and for developing the biological and water quality case to support those classifications. I urge MDE to adopt them.

MDE Response: Thank you for your comment and insight. Please refer to the Summary of Decisions section regarding the North Branch Potomac River (Allegany County) proposal.

57. (Condensed): The UPRC has been operating the Savage River Dam since the early 1950s. It has long recognized that there are many people and groups that have an interest in how it regulates the flow of water from the dam, some of which are often in conflict. Nevertheless, the UPRC's position has always been and must remain that protecting the safety and property of the community through flood control is the primary consideration in managing water storage and releases. The imposition of a water temperature limit that is significantly lower than the river's natural temperatures during certain seasons and flow levels would make it difficult if not impossible to balance the diverse needs of the many people who depend on the dam. The UPRC has enjoyed working with the DNR, MDE and other fisheries advocates to promote trout fishing, but that interest cannot be imposed as a mandate to the exclusion of other demands, particularly flood control.

MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments. While a determination is not being made at this time, the Department recognizes that addressing public safety risks are a top priority.

58. (Condensed and Paraphrased): The UPRC's operation of the waste treatment facility would also be affected by a deviation from MDE's established classification system in the North Branch Potomac River. The permits have many different parameters that must be met in order to continue to improve water quality. However, the maintenance of a plant that complies with the various effluent limitations imposed is a complex undertaking. It requires constant monitoring of many different parameters with regular adjustments of the many different stages of the treatment process. A change in one permit limitation can make it more difficult to comply with another. Temperature regulation in particular is a complicated process that can affect many other aspects of the waste treatment process.

MDE Response: Please see the Summary of Decisions section regarding the North Branch Potomac River segments. Regarding questions related to specific municipal permitting requirements, please contact MDE's Wastewater Permitting Division, Yen-Der Cheng, yen-der.cheng@maryland.gov.

59. MDE has not yet finalized the definition of a Class IV waterway. It cannot make a determination that a river meets the definition of a classification before that definition exists. The definition of the classification will have the force of a regulation. It will include elements that must be established. It should include factors that must be considered to determination whether those elements exist. It is axiomatic that a determination that those factors show that the elements exist cannot be made before the elements and factors are established. You cannot call balls and strikes before you establish the strike zone. Moreover, the finalization of the regulation, like all regulations, must be an open and public process that affords everyone the opportunity to weigh in on the rule. The proposed determination notes that the CWAC and MDE are working on the final rule. That process should be opened to the general public. Input should also be solicited from Maryland's county and municipal governments, and the holders of NPDES Permits. Their activities will be greatly impacted by the final rule. They should have a say in what the rule will be. That is the essence of a functioning democracy.

MDE Response: Class IV is defined in Code of Maryland Regulations (COMAR) and has been since at least the 1980s. The current COMAR definition of a Class IV waterway, as codified and described in COMAR 26.08.02.03-3[13] represents waters with trout stocking activities and temperatures that do not exceed 23.9 C. MDE has identified and redesignated waters as Class IV during previous Triennial Reviews of Water Quality Standards and continues to have the discretion to do so. While the Department has stated its intention to revisit the identification of Class IV waters, this intention does not preclude the Clean Water Act requirement to protect waters that support a trout-stocking existing use and the water quality necessary to support this use. If and when any changes are proposed to Maryland's designated use classifications system or to the designated uses of any specific waters, these changes to water quality standards must follow the same public review and comment process as any other water quality standards regulation changes. At that time, any proposed regulation change will be open for public comment for all interested stakeholders and constituents, a public hearing will be held, and stakeholders will have the opportunity to provide comments.

[13] COMAR 26.08.02.03-3 - https://dsd.maryland.gov/regulations/Pages/26.08.02.03-3.aspx

60. Natural conditions: Nevertheless, one obvious factor that ought to be included is the natural state of the waterway. A use designation should be consistent with the natural conditions as much as possible. Human activity necessarily impacts nature. The regulation of that activity should be aimed at reasonably minimizing those impacts. The rules should not endeavor to artificially change the environment to something different than what nature created. That would inevitably lead to unintended consequences. In the present matter, the NBPR flow rates and temperatures are affected by the presence of the Savage River and Jennings Randolph Dams. Before the dams existed, flow rates varied greatly from season to season and year to year. Temperatures would also vary greatly depending on the season and on the fluctuations in the natural flow from time to time. In 2018 when the CW AC and the Department were studying the river, Ron Paugh, the Environmental Manager of the Verso Paper Mill, submitted comments that discussed river temperatures. He noted that the river temperature on June 25, 1975 was measured at 79.7 degrees Fahrenheit at a point below where the Jennings Randolph Dam would later be built. That point was above where the Savage River empties into the Potomac, so it was unaffected by the Savage River Dam. It is also above the UPRC outfall, so it was also unaffected by that. It shows that the river, in its natural state, would not meet the temperature limit of the proposed designation. The reading was taken just four days into the summer season. The natural temperature would continue to rise for another three months.

    The proposed designations are at odds with the Clean Water Act that authorizes MDE's regulations. The goal of the Act is the reduction and eventual elimination of the discharge of pollutants (point source and nonpoint source) into the nation's waters. 33 U.S.C.A. § 1251. To that end, the states are directed to establish water quality standards that "shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." 33 U.S.C.A. § 1313. The purpose of the Clean Water Act "is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C.A. § 1251. As noted above, the North Branch is not naturally a cold water river. The apparent goal of converting it to a commercial cold water trout fishery will not "restore" its chemical, physical, or biological integrity. It would significantly change the river to something that would require constant human intervention - the operation of the two dams on a particular storage and release schedule - to keep it viable. That is inconsistent with the goals of the Clean Water Act. The Act recognizes that heat is a different type of pollutant than chemical and biological pollutants. It provides that an NPDES permit can have a less stringent thermal effluent limitation than otherwise applicable as long as the limit imposed will assure the projection and propagation of a balanced, indigenous population of fish, and wildlife, which currently exists in the North Branch. 33 U.S.C.A. § 1326. Over the last few decades, the water quality improvements in the North Branch have helped to reestablish a

strong, diverse and balanced ecosystem that is consistent with its natural temperature range. That is precisely the goal of the Act. There is no need to create a different, artificial ecosystem simply to support a fish that is not indigenous to the river. Trying to turn it into something it is not can only cause more harm than good.

MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

61. The classification proposed is for a trout fishery, albeit a put and take one. Nevertheless, the method to determine whether the classifications should be changed does not include a study of whether a trout population can survive naturally for a five-year period. If the ultimate goal of the classification is to promote trout fishing, there should be a determination that trout could survive without unnatural human intervention. This is not meant to criticize the State's support for fishing. Rather, it is a recognition that the State's support is not guaranteed beyond any session of the General Assembly. It is subject to continuing authorization and continuing budgetary support. Neither is guaranteed. A change in the use designation would lock the river into an artificially-created status quo. It would impose temperature limits that would impede other potential uses of the river, and which would require resources to meet. If the stocking program or its funding were to ever change, the designation would be for nought. But the costs, including the opportunity costs for other economic development, would remain. If these designations are to be made, they should only be made if it is determined that the fisheries they support can survive without the support that cannot be guaranteed.

    MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

62. I would like to submit a comment in support of a more protective classification on the North Branch of the Potomac River. I am a full time guide during the fishing season and I would like to see protection of the fishery and the fish population we currently have. The fishery is very fragile and it would benefit from further protection through classification change. Let’s protect our river.

    MDE Response: Thank you for your comment of support. Please see the Summary of Decisions section regarding the North Branch Potomac River existing use proposals.

63. I am writing on behalf of the Town of Westernport related to the Maryland Department of Natural Resources (DNR) proposal to reclassify certain sections of the North Branch of the Potomac River (COMAR 26.08.02.0SQ. SUB-BASIN 2-14-10: NORTH BRANCH OF POTOMAC RIVER AREA.) We are in opposition to Maryland DNR's proposal. It is our understanding that the proposal is to change sections of the North Branch of the Potomac River currently designated as "Use 1-P" (Water Contact Recreation, Warm Water Fishing, Aquatic Life and Public Water Supply) to a designation of either "Use IV-P" (Recreational Trout Waters and Public Water Supply) or "Use 111-P" (Natural Trout Water and Water Supply.) We agree with the concerns from the Upper Potomac River Commission (UPRC) that the MDE, Science Services Administration may consider the re-designation of the North Branch of the Potomac River sections based only on information submitted by Maryland DNR and not take a broader look at other factors affecting "Designated Uses" as outlined in CFR 131.l0 of the Clean Water Act which includes the economic and social impacts of a streams' "Designated Use" change. The Clean Water Act (CWA) recognizes that consideration shall be given to multiple factors, such as their use and value for public water supplies, protection of fish, recreation, agriculture, and industry. 40 CFR 130.30. outlines the consideration of downstream uses, existing uses, physical conditions, biological factors and chemical factors as considerations in the federal program. MDE cannot and should not undertake a "Designated Use" re-designation based solely on a narrow set of considerations outlined in the "Existing Use Determination and Rationale for the North Branch of the Potomac dated August 1, 2024" as presented by the Maryland DNR. We believe that MDE should instead consider the full range of considerations outlined under the Clean Water Act. In 2019, the Luke Paper Facility ceased operations resulting in the loss of over 2000 jobs in our community, many of which were our residents. The current state of the Luke Industrial Site remains in limbo. The current property owner is hoping to find a tenant who can redevelop the site and bring employment opportunities back to the Luke Industrial Site and our community. We fear that changes to Water Quality Criteria Designated Uses for the North Branch of the Potomac may drive away possible tenants of the Luke Industrial Site. This would have a substantial socioeconomic impact on the Tri-Towns community and would impact the Town of Westernport greatly. Since CFR 131.l0 of the CWA requires the consideration of industrial and municipal uses, as well as historical river conditions when evaluating a streams' Designated Use. The Town of Westernport opposes the proposed Designated Use changes on the North Branch of the Potomac River and requests that all stream segments on the North Branch of the Potomac River remain as they are currently designated "Use I-P Waters".

MDE Response: Please see the responses to Comments #20 and 21. Please also see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

64. With the shutdown of the Luke mill many parts of the area, including Piedmont, have suffered a significant financial loss including but not limited to local businesses, residential tax base, business tax revenue and depressed real estate cost. The way to recovery can only be attained through economic development. With the proposed changes, specifically the suppression of any additional discharges into the North Branch we believe will significantly discourage any economic growth in the area including any re-purposing of land in Mineral County. For this reason the City vehemently opposes the re-classification.

    MDE Response: Please see the response to comment #52; additional discharges are not precluded by a recognition of an existing use or redesignation changes. Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

65. Secondly, with the future of the Upper Potomac River Commission in flux including the possibility of a substantial rate increase this could have a profound effect on the residents of Piedmont. In the event there is a rate increase on the City of Piedmont that we would consider unattainable, we have to at least look into the possibility of installing a package plant for our waste water treatment. This of course would involve a new discharge into the Potomac River. We are currently discharging through the UPRC, our package plant would be considered a "new discharge", even though the volume of effluent would not change. In the event the Department of the Environment would deny a pending discharge from Piedmont we would also oppose the re-classification of the river.

    MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments. Please also see the responses to comments #52 and 64, new discharges would not be necessarily precluded by an existing use determination nor in the event of any future redesignation. Rather, any current and future dischargers would need to meet the proper requirements as applicable within their permits.

66. I am interested in the determinations the state is making and believe the data supports the rationale for whether a stream is elevated in use class or not. I find the protections adequate and that understanding the streams through surveying are key. I support the state's reviews/data collection and believe the approach the state is taking yields good understanding and protections.

    MDE Response: Thank you for your comment.

67. The City of Keyser (City) writes this letter in support of The Upper Potomac River Commission's (UPRC) position on the proposal to reclassify certain sections of the North Branch of the Potomac River. The City's understanding is that the proposal would change sections of the North Branch Potomac River from "Use-I-P" (Water Contact Recreation, Warm Water Fishing, Aquatic Life and Public Water Supply) either to a designation of "Use IV-P" (Recreational Trout Waters and public Water Supply) or "Use III-P" (Natural Trout Water and Water Supply). The City opposes the proposed changes in "Designated Use", as the changes can impact the economic and social climates in the nearby communities, towns, and cities, in the region. Imposing more strict regulations on the North Branch of the Potomac River will not benefit nearby communities, towns, and cities in nearby communities, as it can lead to more strict effluent monitoring and potentially require upgrades to existing Wastewater Treatment facilities. Again, the City strongly opposes the proposed changes in "Designated Use" for the North Branch of the Potomac River.

    MDE Response: Please see the discussion in the Summary of Decisions section regarding the North Branch Potomac River segments.

68. On behalf of the WV Rivers Coalition, we appreciate the opportunity to comment on the proposed use designations for streams and rivers by Maryland Department of the Environment (MDE). We have reviewed supporting documents including the "Cold Water Existing Use Determinations: Policy and Procedures" (dated June 23, 2021) and the "Existing Use Determination and Rationale" for the North Branch Potomac River, Upper Mainstem in Garrett County (dated June 13, 2024), the North Branch Potomac River in Allegany County (dated August 1, 2024), and the Upper Mainstem of the North Branch Potomac River near Kempton in Garrett County (dated August 14, 2024). We fully support coldwater use designations for these sections of the North Branch Potomac River. Water temperature data collected by the Maryland Department of Natural Resources (MD-DNR) clearly indicates the presence of coldwater habitat consistent with Class III (or Class III-P) designation. Likewise, MD-DNR's biological data support these designations because coldwater obligate species such as stoneflies (Sweltsa spp.) and brook trout are present, including juvenile brook trout indicating self-sustaining populations. The North Branch Potomac is beloved by trout anglers across the region, and we commend MDE for taking steps to conserve this coldwater resource. The importance of such conservation is underscored by a recent paper revealing several locations with declining populations of brook trout in Maryland[14] in smaller streams. We believe that the proposed coldwater designations could provide important ecological, economic, and cultural benefits across the region.

MDE Response: Thank you for your comment. Please see the Summary of Decisions section regarding the existing use proposals for the North Branch Potomac River.

[14] Cited the following: Hitt NP, Rogers KM, Kelly ZA. Declines in Brook Trout Abundance Linked to Atmospheric Warming in Maryland, USA. Hydrobiology. 2024; 3(4):310-324. https://doi.org/10.3390/hydrobiology3040019