

# Safe & Healthy Delaware River: A Petition to DRBC & States



Presented to an advisory committee of the DRBC on July 28, 2020. Contents should not be published or re-posted in whole or in part without permission of the presenter and DRBC.

***Delaware Riverkeeper Network ~ Clean Air Council ~ PennFuture  
Environment New Jersey ~ PennEnvironment ~River Network  
Bartram's Garden ~ Glen Foerd on the Delaware  
Darby Creek Valley Association ~ Clean Water Action***

March 2, 2020

Commissioners  
Delaware River Basin Commission  
P.O. Box 7360, 25 Cosey Road  
West Trenton, NJ 08628

Dear Commissioners,

The Delaware Riverkeeper Network (“DRN”), Clean Air Council (“CAC”), PennFuture, Environment New Jersey, PennEnvironment, River Network, Bartram’s Garden, Glen Foerd on the Delaware, Darby Creek Valley Association, and Clean Water Action (collectively, “Petitioners”) submit this petition to urge the Delaware River Basin Commission (“DRBC” or “the Commission”) to promptly upgrade the designated use of Zone 3 and River Miles 95.0 to 81.8 of Zone 4 of the Delaware Estuary to include primary contact recreation. Zone 3 and Upper Zone 4 are currently designated only for secondary contact recreation. This designation is inconsistent with the existing uses of these portions of the Delaware River. A designation that includes primary contact recreation is needed to bring DRBC into conformance with the mandates of the Clean Water Act, thereby avoiding state, federal and/or interstate conflicts over the designated and existing uses of these Delaware River waters, and protecting those recreating on and in this portion of the Delaware River. Recognizing the existing use of primary contact recreation will ensure the DRBC and the member states prioritize putting in place, and enforcing, the standards and protections essential for those who are enjoying these reaches of the River for primary contact recreation.

# Safe & Healthy Delaware River: A Petition to DRBC & States



**PennFuture**



**Abby Jones**

Vice President of Legal & Policy  
PennFuture

# Clean Water Act

## Objective:

- To restore and maintain the chemical, physical, and biological integrity of the Nation's waters

## National Goal:

- All waters will be **“fishable and swimmable”** wherever attainable

*“water quality which provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water” (CWA Section 101(a))*



# How CWA is Implemented: Water Quality Standards (WQS)



*“A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses” (40 CFR 131.2)*

# WQS – Three Elements of Protection

## 1. Designated Protected Water Uses

- **All surface waters are given a designated use of the water that must be protected**
- **States have different names of uses that cover the same general categories of uses: aquatic life, water supplies, recreation, special protection waters, etc.**

## 2. Water Quality Criteria

- Numeric or narrative criteria (e.g., limits, concentrations, etc.) that protect the surface waters based upon the “use” of the water

## 3. Antidegradation Protections

- Provide a framework for maintaining and protecting water quality levels that have already been achieved (e.g., “existing uses”)



# Designated Uses vs. Existing Uses

All surface waters have both a “designated use” and an “existing use”

## Designated Uses

- Part of the water quality standards established by the State (codified in regulations)
- Sometimes thought of as “desired uses” or “water quality goals” especially in those cases where the water quality of the stream may be below that needed to meet the designated use
- Because they are part of the regulations of a State, they can be upgraded – or in some rare cases downgraded



## Requirements:

- Must include aquatic life, wildlife, and recreation uses (basic CWA goals)
- Must protect downstream waters

# Designated Uses vs. Existing Uses

All surface waters have both a “designated use” and an “existing use”

## Existing Uses

- “[T]hose uses actually attained in the waterbody after November 28, 1975, *whether or not they are included in the water quality standards*”
- Existing uses “shall be maintained and protected” – Antidegradation protections mean they cannot be degraded







# Delaware River Basin Commission

## Delaware River Basin Compact (1961)

- Created the DRBC to “conserve and manage the resources of the Delaware River”

## **DRBC sets water quality standards of the Delaware River**

- Designated uses & water quality criteria
- Basis for effluent limitations in DRBC dockets
- Incorporated into States’ WQS

# DRBC's Recreational Uses

DRBC regulations include two recreational uses

## **“Primary Contact” Recreation**

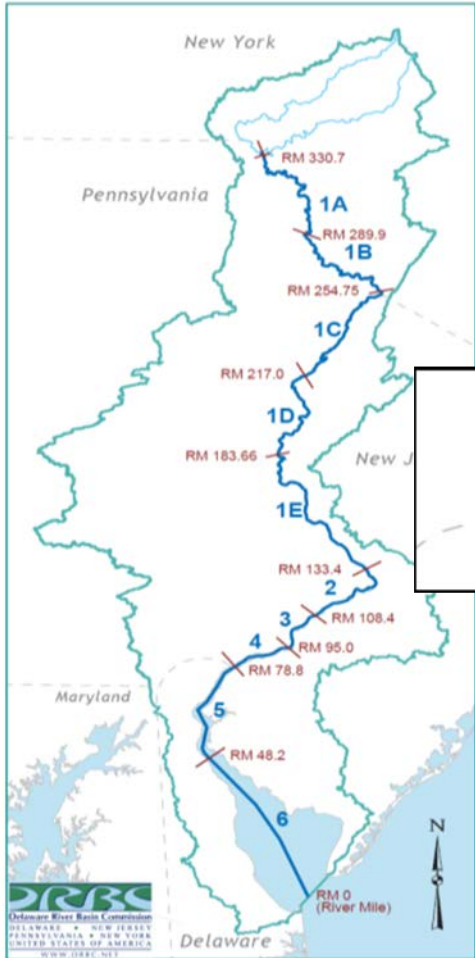
- Probability of water ingestion is high
- All water contact sports



## **“Secondary Contact” Recreation**

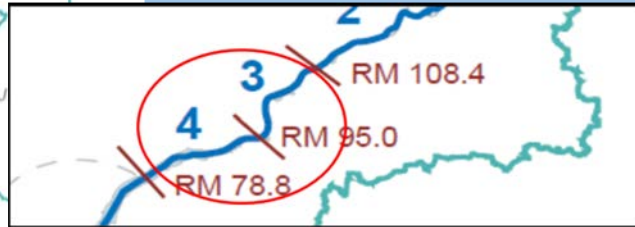
- Probability of water ingestion is minimal
- Boating, fishing, etc.

## Delaware River Main Stem Interstate Zones



All of the waters of the main stem Delaware River have primary contact recreation designations . . .

**EXCEPT for Zone 3 and RM 95.0 to 81.8 of Zone 4**



***Existing uses must be protected!***

If water bodies are being used for purposes that require better water quality than the current designated uses require then “the state shall revise its standards to reflect the uses actually being attained” (40 CFR 131.10(i)).

**The petition  
urges the  
DRBC and its  
member states  
to recognize  
the existing  
use of Primary  
Contact  
Recreation**

***Delaware Riverkeeper Network ~ Clean Air Council ~ PennFuture  
Environment New Jersey ~ PennEnvironment ~River Network  
Bartram's Garden ~ Glen Foerd on the Delaware  
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March 2, 2020

Commissioners  
Delaware River Basin Commission  
P.O. Box 7360, 25 Cosey Road  
West Trenton, NJ 08628

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Doug O'Malley

Director

Environment New Jersey



DRBC Rules of Practice and Procedure:

2.1.4 Project Applications and Proposed Revisions and Changes.

**The Commission may also receive and consider proposals for changes and additions**  
to  
the Comprehensive Plan which may be submitted by any agency of the signatory parties, or  
**any interested person, organization, or group.**

DRBC Compact:

Whereas such a comprehensive plan administered by a basin wide agency will provide...  
propagation of fish and game; ... aid to fisheries dependent upon water resources; ...  
abatement and control of stream pollution; and regulation of stream flows toward the  
attainment of these goals;



BEFORE THE DELAWARE RIVER BASIN COMMISSION

Re: Amendment to the DRBC Comprehensive Plan to designate  
Outstanding National Resource Waters and to provide for  
protection of water quality in the Upper Delaware Basin

The Delaware Riverkeeper  
The Watershed Association of the Delaware River

Petitioners

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PETITION FOR CLASSIFYING DELAWARE RIVER MILES 330.7 to 209.5 AS  
OUTSTANDING NATIONAL RESOURCE WATERS AND PROVIDING FOR IMMEDIATE AND  
PERMANENT PROTECTION THEREOF.

Delaware Riverkeeper  
Network & Watershed  
Association of the  
Delaware River responded  
to 2.1.4 opportunity by  
crafting a petition to carry  
the information and request

A RESOLUTION to amend the Comprehensive Plan, Water Code of the Delaware River Basin, Water Quality Regulations and Rules of Practice and Procedure in relation to water quality standards and policies to protect existing water quality in certain waters of the Basin.

WHEREAS, water quality standards and policies now in effect for the Delaware River between Hancock, New York and the Delaware Water Gap are based on the protection of designated uses for primary-contact recreation and aquatic life and do not specifically preserve the existing high level of water quality from degradation; and

WHEREAS, in 1988 the Commission and the National Park Service initiated the development of a water quality protection plan for the Middle Delaware Scenic and Recreational River and tributaries within the boundary of the National Recreation Area prompted by the existing and planned rapid growth and development in the drainage area and the potential decline in water quality due to increased point and non-point source pollution; and

WHEREAS, in 1989 the Watershed Association of the Delaware River petitioned the Commission to classify the Delaware River from Hancock, New York to the Delaware Water Gap as an Outstanding National Resource Water, as described by U. S. Environmental Protection Agency anti-degradation regulations; and

Responding to the petition and all the surrounding advocacy, DRBC created the Special Protection Waters Program and designated Middle & Upper Delaware SPW

*Whereas, in 1989 the Watershed Association of the Delaware River, [and Delaware Riverkeeper Network] petitioned the Commission ....”*



# Petition Process Embraced in SPW

Use of petition process to request DRBC action so successful as vehicle for communicating the request it included in the Special Protection Waters Program that first petition resulted in:

## 3.10.3A.2 Special Protection Waters

In determining waters suitable for classification as Special Protection Waters, the Commission will consider nomination petitions from ... the public for waters potentially meeting the definition of Outstanding Basin Waters and Significant Resource Waters as described in 3.10.3A.2.a.

# Petition

- DRBC first
- Governors of PA, NJ, DE, NY
- Clear that people are coming in contact with the River
- “Existing Use” demonstrated
- Upgrade the Designated Use from RM 81.8 to RM 108.4 (all of Zones 3 & 4)

***Delaware Riverkeeper Network ~ Clean Air Council ~ PennFuture  
Environment New Jersey ~ PennEnvironment ~River Network  
Bartram's Garden ~ Glen Foerd on the Delaware  
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March 2, 2020

Commissioners  
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*Delaware Riverkeeper Network ~ Clean Air Council ~ PennFuture  
Environment New Jersey ~ River Network  
Bartram's Garden ~ PennEnvironment*

June 25, 2020

Steve Tambini, Executive Director  
Commissioners  
Delaware River Basin Commission  
PO Box 7360  
West Trenton, NJ 08628

Dear DRBC Commissioners and Mr. Tambini,

## Existing Uses

To suggest that the DRBC and dischargers are collecting and will continue to collect data does not respond to the legal obligation to protect the primary contact recreation in which communities are engaged. It also fails to recognize the reality that the Delaware River belongs to the people; not the dischargers, not the regulators, not the ports. The people are already using this River for primary contact recreation and it is the obligation of the regulators to recognize and protect this use by setting standards, putting in programs, and making investments that will ensure the water quality necessary to support primary contact recreation for these reaches of the River.

does not respond to the legal obligation to protect the primary contact recreation in which communities are engaged. It also fails to recognize the reality that the Delaware River belongs to the people; not the dischargers, not the regulators, not the ports. The people are

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**Jack Byerly**  
Advocacy Coordinator  
Clean Air Council



# Existing Uses: Categories for Recreation

## Primary Contact

Risk of ingestion of/immersion in water

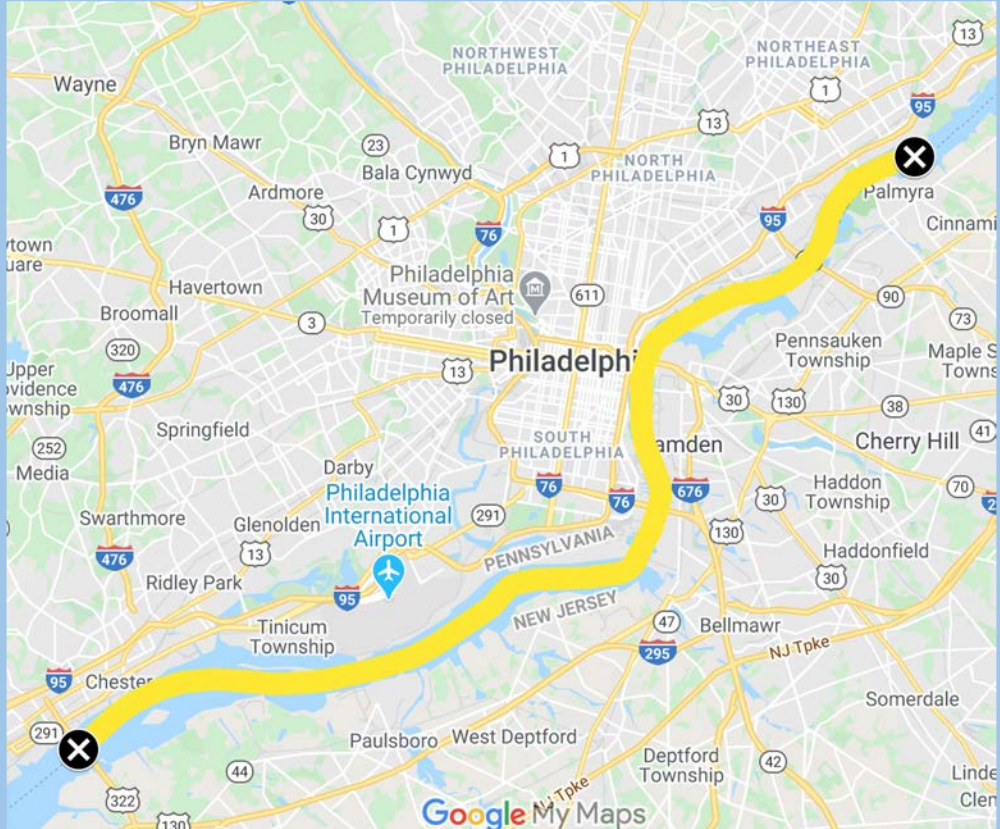
- ★ Kayaking
- ★ Canoeing
- ★ Stand-Up Paddleboarding
- ★ Jet Skiing
- ★ Water Skiing
- ★ Wakeboarding

## Secondary Contact

The probability of significant contact or water ingestion is minimal

- ★ Fishing
- ★ Boating
- ★ Shoreline Recreation

# Upgrading Protections for Zone 3 and Upper Zone 4



## Secondary Contact is Currently Protected



## Primary Contact Needs to be Protected



# Philadelphia: Independence Seaport Museum



Over 20,000 individuals participated in primary contact recreation activities in 2019

- ★ Paddle Penn's Landing
- ★ Youth Summer Camps

- ★ Kayaking Excursions
- ★ Walnut2Walnut River Challenge

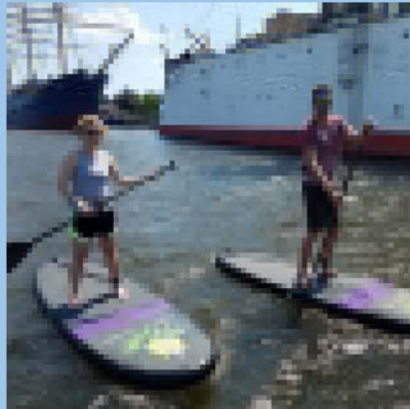


# Philadelphia: Aqua Vida



Between 300 and 400 participants each summer since 2014

- ★ Stand-Up Paddleboarding
- ★ Floating Yoga
- ★ Floating Acro



# Camden: UrbanPromise's Urban Boatworks and Urban Trekkers



377 participants in UrbanPromise's programs in 2019

- ★ After-School Programs
- ★ RiverGuides

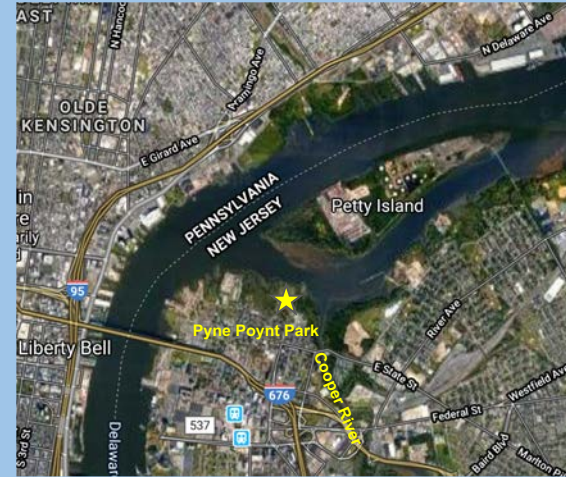
- ★ Community Paddles
- ★ Paddle for Promise Fundraiser

# Camden: UrbanPromise's Urban Boatworks and Urban Trekkers





# Camden: Center for Aquatic Sciences at Adventure Aquarium



Over 400 participants in kayak outings in 2019

- ★ School Groups
- ★ Organizations
- ★ Community Outings

# Upstream Alliance

Over 180 participants in primary contact recreation in 2019

- ★ Mayor's Paddle  
Petty's Island
- ★ Paddling for Clean Water  
Palmyra Cove
- ★ Floatopia
- ★ Discover the Delaware  
Philadelphia & Petty's Island
- ★ Trenton to Camden Paddle



# Safe & Healthy Delaware River: A Petition to DRBC & States



**Colleen Walters**

Delaware River Basin  
Program Manager



## Petition Support:

- 48 organizations in total now signed on
- 1400 individuals

And counting!

*Delaware Riverkeeper Network ~ Clean Air Council ~ PennFuture  
Environment New Jersey ~ PennEnvironment ~ River Network  
Bartram's Garden ~ Glen Foerd on the Delaware  
Darby Creek Valley Association ~ Schmid & Company, Inc., Consulting Ecologists  
Friends of Hopewell Valley Open Space ~ Great Egg Harbor Watershed Association  
Bucks County Audubon Society ~ UrbanPomise Ministries  
French & Pickering Creeks Conservation Trust  
Brodhead Watershed Association ~ New Jersey Highlands Coalition  
Willistown Conservation Trust ~ Pennypack Ecological Restoration Trust  
Brandywine Regeneration Initiative ~ Delaware Nature Society ~ Tincicum Conservancy  
Neshaminy Harbor Yacht Club ~ Chesapeake Bay Yacht Club Association  
Riverside Yacht Club ~ Delaware River Yachtsman League  
Wissinoming Yacht Club ~ Delaware River Yacht Club  
River Winds Yacht Club ~ Westville Power Boat Association  
New Jersey Tree Foundation ~ Schuylkill Pipeline Awareness  
Newton Creek Watershed Association ~ Cooper River Watershed Association  
Riverfront North Partnership ~ Sustainable South Jersey ~ Whetstone Coalition  
Save Carbon County ~ Friends of the Chester Creek Rail Trail  
East Coast Greenway Alliance ~ Aqua Vida ~ New Jersey Sustainable Business Council  
Sisters of St. Francis of Philadelphia ~ Delawareans for Environmental Safety  
Independence Seaport Museum ~ Center for Aquatic Sciences  
The Watershed Institute ~ New Jersey Conservation Foundation*

July 24, 2020

Commissioners  
Delaware River Basin Commission  
P.O. Box 7360, 25 Cosey Road  
West Trenton, NJ 08628

Dear Commissioners,

The Delaware Riverkeeper Network ("DRN"), Clean Air Council ("CAC"), PennFuture, Environment New Jersey, PennEnvironment, River Network, Bartram's Garden, Glen Foerd on the Delaware, Darby Creek Valley Association, Schmid & Company, Inc., Friends of Hopewell Valley Open Space, Great Egg Harbor

# Testimonials

- Written, video
- Individuals and organizations
- Accounts of swimming, canoeing, kayaking, wading, splashing, accidentally falling in, water rescue drills, jet skiing
- Strong support for upgrading the water quality, preserving natural areas

*“I am a college student and I support protecting the Delaware River ecosystem for its outdoor recreation, scenic enjoyment and wildlife habitat benefits!”*

*“As a mother, I support safeguarding the magnificent Delaware River and the wildlife that inhabit it.”*

*“I love the beautiful riparian zone of the Delaware River and, as a farmer, want to see it protected.”*

## Individual Testimonials

Existing Primary Contact Recreation - Risk of water ingestion is high

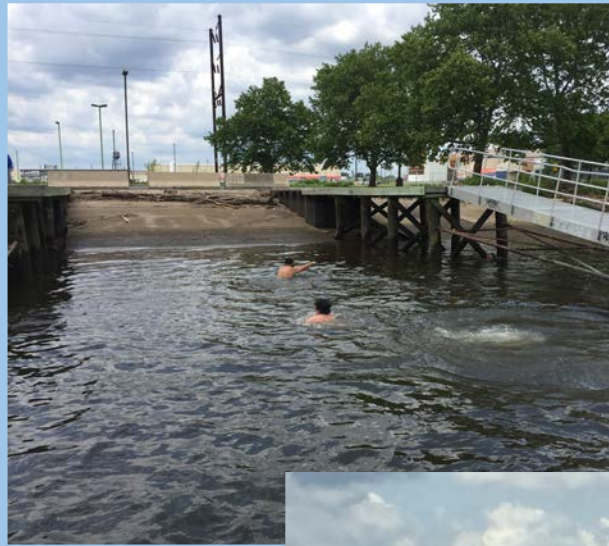
*"I swim in the Delaware and the Schuylkill and any other water I can. I swim in Philly in the Delaware off docks, piers and at the Frankford arsenal. I swim higher North by bulls island and Lambertville. I tube or float the Delaware around bulls island. I swim in lower Schuylkill at Grey's ferry and also higher up North of boat house row. I swim in the wissahickon. I canoe and kayak both the Schuylkill and Delaware in Philly. I Wade while kayaking or boating in the Delaware at Petty's island, at Palmyra cove and in the big and little timber. I do all of this with my husband and sometimes others."*

*"I am a water rescue technician on the local fire department. We rescue people from the river. I train in the river via full body immersion swimming, boat driving, wading, constructing line haul systems, etc. We rescue between 5 and 25 people per year. There are thousands of people who use this section of river for tubing and kayaking. We are responsible for their safety if they are injured physically. It is also important to keep them safe chemically. ... It is imperative that you protect the quality of the water so that recreational users are not poisoned. We are in the river water regularly for training and real rescue and do not want to be exposed to hazardous chemicals or pollution!"*



## Individual Testimonials

*"I typically spend 1-2 days a week kayaking/boating in the both the schuylkill and Delaware rivers. I often bring newcomers including children onto the river which often results in them falling into the water. I also swim in the river during the warmer months. I would like your department to classify these bodies of water as primary contact water sources because that's what they are. I know dozens of people who share the same experiences as myself. It is time to make reclassify these rivers and protect the water and the people who use it."*



# Organization Testimonials

## **Riverfront North:**

*“It is amazing to see people reconnecting to the river, reconnecting to nature and reconnecting to each other through on-river recreation on our beautiful Delaware river. As more and more people fall in love with the river and chose to do this recreation on their own, it is more important than ever to ensure the safety of the water quality.”*

## **Aqua Vida:**

*“When people ask me why I paddle on the Delaware, I say, why not? Paddling is the best way for tourists to experience the city, and for locals to enjoy connecting with a natural resource that is a powerful healer. We see a future where we expand our on-water activities to rival those of other waterfront cities. We deserve a seat at that table and a cleaner Delaware River.”*

