

DATE

MEMORANDUM

TO: State Water Control Board Members

FROM: Ellen Gilinsky, Ph.D., Director, Division of Water Quality Programs

SUBJECT: Consideration of Petition to Designate the Hazel River as an Exceptional State Water

Executive Summary

Staff intends to ask the Board at their March 15, 2006 meeting for a decision on whether or not to initiate a rulemaking to amend the Water Quality Standards regulation to designate the Hazel River from its headwaters to its confluence with the Rappahannock River as an Exceptional State Water (refer to the map in Attachment A). The upper portion of the nominated waterbody [approximately 15 miles] is within Rappahannock County and lower portion [approximately 30 miles] is within Culpeper County. Based on site visits, staff has concluded that only the segment of the Hazel River within Rappahannock County meets the required eligibility criteria (refer to the site visit report in Attachment B).

The Rappahannock County Board of Supervisors submitted comment acknowledging that Tier III protection of the Hazel River is consistent with the county Comprehensive Plan, but they oppose the nomination due to concerns of possible future restrictive amended regulations that could adversely impact existing or proposed sewage treatment facilities. The Culpeper County Board of Supervisors commented in support of the nomination (refer to summary of comment in Attachment C).

Background

At the September 27, 2005 meeting of the State Water Control Board, staff presented for Board consideration a citizen petition from Mrs. Sally Mello to designate the main stem of the Hazel River from its headwaters in Rappahannock County to its confluence in Culpeper County with the Rappahannock River as Exceptional State Waters. By unanimous vote at that meeting, the Board directed staff to:

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1. Proceed with notification to the Counties of Culpeper and Rappahannock and riparian landowners who would be potentially impacted by an Exceptional State Water designation of the main stem of the Hazel River and to provide these potentially impacted parties a 60-day opportunity for comment.

2. Publish in the Virginia Register the required notice of a 21-day comment period for the general public, and
3. Appear before the Board at the next scheduled meeting after the close of the comment periods to provide a summary of the comments and the results of the staff site visit so that the Board can decide at that time what course of action to take on the petition.

“Tier III” is how the public commonly refers to those waters that are protected from water quality degradation through a prohibition on new or increased point source discharges. The equivalent regulatory terms are “Outstanding National Resource Waters” for EPA and “Exceptional State Waters” for Virginia.

Staff Site Visit

DEQ exceptional state waters program guidance requires a staff site visit to the nominated waterbody for confirmation that the candidate water meets the exceptional state waters eligibility criteria. The nominated water body must meet certain eligibility criteria to be designated and protected by an Exceptional State Water, or Tier III, designation. The nominated water body must exhibit an exceptional environmental setting **and** either support an exceptional aquatic community **or** support exceptional recreational opportunities which do not require modification of the existing natural setting.

Attachment B presents staff findings from site visits conducted on November 3 and 4, 2005 at several points along the main stem of the Hazel River. The staff site visit report also contains photographs of the waterbody under consideration. The four staff members that conducted the site visit concurred that the segment of the Hazel River within Rappahannock County met the criteria necessary to be considered for an Exceptional State Waters designation. The segment within Culpeper County did not meet the primary eligibility criteria of possessing an exceptional environmental setting. Also, based on an assessment of 2002 data, a 5.58 mile segment in Culpeper County is listed as impaired for recreational uses due to exceedences of the fecal coliform bacteria standard.

Summary of Comments

The Code of Virginia, section 62.1-44.15:4(B), requires the Board to provide written notification of Exceptional State Waters petitions to each locality in which the waterway lies

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and to make a good faith effort to provide notice to impacted riparian property owners. These riparian property owner notices are based on the names and addresses taken from local tax rolls provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions at the request of the Board. A letter of notification and request for comment was sent to the potentially impacted localities and riparian landowners. A full summary of comment

received in response to the notification letters and the 21 day public comment period is provided as an attachment to this memo (Attachment C).

The Rappahannock County Board of Supervisors submitted comment opposing the nomination. While acknowledging that Tier III protection of the Hazel River is consistent with the county Comprehensive Plan, their opposition is due to concerns of possible future restrictive amended regulations that could adversely impact existing or proposed sewage treatment facilities.

Culpeper County Board of Supervisors commented in support of the nomination. The Culpeper County Comprehensive Plan contains language specifically stating the need to preserve the suitability of the Hazel River for Tier III designation.

Seventy-nine citizen comments in support of the nomination were received. Twenty-one of them were identified as riparian landowners. Sixteen citizen comments opposing the nomination were received and of these five were identified as riparian landowners.

Staff Contact Information

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Attachments

Attachment A – map of Hazel River
Attachment B – Hazel River staff site visit report
Attachment C – Comment summary