

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**OHIO VALLEY ENVIRONMENTAL
COALITION, WEST VIRGINIA RIVERS
COALITION, INC., WEST VIRGINIA HIGHLANDS
CONSERVANCY, INC., GREENBRIER RIVER
WATERSHED ASSOCIATION, INC., COAL
RIVER MOUNTAIN WATCH, WEST VIRGINIA
CITIZEN ACTION GROUP, FRIENDS OF THE
CHEAT, INC., FRIENDS OF THE CACAPON, INC.,
AMERICAN WHITEWATER AFFILIATION, BLUE
HERON ENVIRONMENTAL NETWORK, INC.,
STANLEY HEIRS FOUNDATION, INC.,
CONCERNED CITIZENS COALITION OF ROANE,
CALHOUN AND GILMER COUNTIES, WHEELING
ENVIRONMENTALISTS, FRIENDS OF THE LITTLE
KANAWHA, PLATEAU ACTION NETWORK, INC.,
WINNIE FOX, ELINORE TAYLOR, FRANCIS D.
SLIDER, DENISE GIARDINA, JULIAN MARTIN,
REGINA M. HENDRIX, KATHRYN A. STONE,
DOYLE COAKLEY, ABBY CHAPPLE, and
FRANCES LATTERELL,**

Plaintiffs,

v.

CIVIL ACTION NO.

**CHRISTIE WHITMAN, Administrator,
United States Environmental Protection Agency,**

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action seeks review of a November 26, 2001 decision by the U.S. Environmental Protection Agency ("EPA") to approve West Virginia's antidegradation

implementation procedures--60 Code of State Regulation, Series 5--as consistent with the requirements of Section 303(c)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1313(c)(2)(A), and its implementing regulations, 40 C.F.R. Part 131. This decision was made in violation of EPA's duties under the CWA and those regulations. Plaintiffs seek (1) a declaration that EPA has violated its statutory and regulatory responsibilities, (2) an order setting aside EPA's decision and remanding the case to the agency for further proceedings consistent with the CWA, and (3) an award of costs and expenses, including reasonable attorneys' and expert witness fees.

JURISDICTION AND VENUE

2. This action arises under the CWA, 33 U.S.C. §§ 1251, et seq., the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 553, 706(2)(A), and the All Writs Act, 28 U.S.C. § 1651(a). The Court has subject matter jurisdiction by virtue of 28 U.S.C. §§ 1331, 1361, 1551, 2201 and 2202.

3. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(e) because several plaintiffs reside in this District and a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

4. Defendant Christie Whitman is the Administrator of the EPA, and is sued in her official capacity. She is charged with the supervision and management of all EPA decisions and actions, including the approval or disapproval of state water quality standards, which are the subject of this lawsuit.

5. Plaintiff Ohio Valley Environmental Coalition is a nonprofit organization

incorporated in Ohio. Its principal place of business is in Huntington, West Virginia. It has approximately 1000 members. Its mission to organize and maintain a diverse grassroots organization dedicated to the improvement and preservation of the environment through education, communication, and leadership development.

6. Plaintiff West Virginia Rivers Coalition, Inc., is a nonprofit organization incorporated in West Virginia. It has approximately 2,800 members. Its mission is to seek the conservation and restoration of West Virginia's exceptional rivers and streams.

7. Plaintiff West Virginia Highlands Conservancy, Inc., is a nonprofit organization incorporated in West Virginia. It has approximately 2000 members. It works for the conservation and wise management of West Virginia's natural resources.

8. Plaintiff Greenbrier River Watershed Association, Inc. is a nonprofit organization incorporated in West Virginia. It works to protect the health of the Greenbrier River. It has approximately 200 members.

9. Plaintiff Coal River Mountain Watch is a nonprofit organization incorporated in West Virginia. It has approximately 250 members. It works for social, economic, and environmental justice for the people of the southern West Virginia coalfields.

10. Plaintiff West Virginia Citizen Action Group is a nonprofit organization incorporated in West Virginia. It has approximately 4200 members. It advocates for better public policy, rights of individuals, a clean environment and a stronger democratic process.

11. Plaintiff Friends of the Cheat, Inc., is a nonprofit organization incorporated in West Virginia. It has approximately 600 members. Its mission is to restore, preserve and promote the natural qualities of the Cheat River watershed.

12. Plaintiff Friends of the Cacapon, Inc., is a nonprofit organization incorporated in West Virginia. It has approximately 85 members. Its mission is to preserve, protect and promote the Cacapon River watershed.

13. Plaintiff American Whitewater Affiliation is a nonprofit organization incorporated in Missouri. It has approximately 8,400 members, and 160 club affiliates representing approximately 80,000 paddlers. Its mission is to restore and conserve America's whitewater resources and to enhance opportunities to enjoy those resources safely.

14. Plaintiff Blue Heron Environmental Network, Inc., is a nonprofit environmental organization incorporated in West Virginia. It has 52 members.

15. Plaintiff Stanley Heirs Foundation, Inc., is a nonprofit organization incorporated in West Virginia. It seeks to conserve and preserve an heirship on Kayford Mountain in Kanawha County, West Virginia, and to prevent destruction by surrounding mountaintop removal/valley fill coal mining operations.

16. Plaintiff Concerned Citizens Coalition of Roane, Calhoun and Gilmer Counties is an unincorporated organization of approximately 100 members. It seeks to educate citizens on issues pertaining to ecological recovery, economic sustainability, reestablishment of democratic principles, and corporate/government responsibility.

17. Plaintiff Wheeling Environmentalists, an unincorporated grassroots organization, focuses on the improvement and preservation of the environment of Ohio County, West Virginia, through education, grassroots organizing and leadership development, while staying informed and involved with environmental issues in the Ohio River Valley, across the state of West Virginia, and the nation.

18. Plaintiff Friends of the Little Kanawha is a nonprofit organization incorporated in West Virginia. It has approximately 75 members. It seeks to safeguard the integrity of the communities in the area of the headwaters of the Little Kanawha River, maintain the quality of the fragile waters of the Little Kanawha River, and safeguard the wildlife habitat and the recreational value of the area.

19. Plaintiff Plateau Action Network, Inc., is a nonprofit organization incorporated in West Virginia. It has approximately 100 members. It works within the Fayetteville, West Virginia community to promote responsible economic development and sustainable environmental management.

20. The organizational plaintiffs listed above have members who live in this District and recreate in, on, and/or near the streams and rivers of West Virginia. Those members are adversely affected by the decisions of West Virginia and EPA challenged herein, because those decisions increase the likelihood that those rivers and streams will suffer degradation from pollution. As a result, the environmental, aesthetic, and recreational interests of these members will be adversely affected.

21. Plaintiffs Winnie Fox and Elinore Taylor are residents of Cabell County, West Virginia. Plaintiff Francis D. Slider is a resident of Tyler County, West Virginia. Plaintiffs Denise Giardina, Julian Martin, Regina M. Hendrix, and Kathryn A. Stone are residents of Kanawha County, West Virginia. Plaintiff Doyle Coakley is a resident of Webster County, West Virginia. Plaintiff Abby Chapple is a resident of Morgan County, West Virginia. Plaintiff Frances Latterell is a resident of Jefferson County, West Virginia. They recreate in, on and/or near the streams and rivers of West Virginia. They are adversely affected by the decisions of

West Virginia and EPA challenged herein, because those decisions increase the likelihood that those rivers and streams will suffer degradation from pollution. As a result, their environmental, aesthetic, and recreational interests will be adversely affected.

STATUTORY AND REGULATORY BACKGROUND

22. The CWA was enacted to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” and to achieve “water quality which provides for the protection and propagation of fish, shellfish, and wildlife, and provides for recreation in and on the water.” 33 U.S.C. §§ 1251(a), (a)(2).

23. To accomplish these goals, the CWA requires states to establish water quality standards for intrastate waters. *Id.*, § 1313. As one of those standards, states must adopt an antidegradation review policy that allows the state to assess activities that may lower the water quality of the water body. *Id.*, § 1313(d)(4)(B); 40 C.F.R. § 131.12.

24. Whenever a state revises or adopts a water quality standard, the state must submit the standard to the EPA’s Regional Administrator for a determination as to whether the new standard is consistent with the CWA. 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. § 131.21(a). EPA must either approve the standard within sixty days of submission or—if EPA determines that the standard is inconsistent with the CWA—disapprove the standard and notify the state of any changes necessary to gain the EPA’s approval. 33 U.S.C. § 1313(c)(3). If the state fails to make the changes required by EPA, the agency must promptly promulgate and impose replacement standards upon the state. *Id.*, § 1313(c)(3)-(4)(A).

25. The antidegradation review policies adopted by the states as a part of their water quality standards must be consistent with the federal antidegradation policy. 40 C.F.R. § 131.12.

26. The federal antidegradation policy establishes three levels of water quality protection: Tier 1, Tier 2, and Tier 3. Tier 1 protection establishes the minimum water quality standard for all waters and requires that “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 40 C.F.R. § 131.12(a)(1). Tier 2 protection provides that, where the water quality of a water body exceeds that necessary to support aquatic life and recreation, that level of water quality shall be maintained unless the state determines that “allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.” 40 C.F.R. § 131.12(a)(2). In addition, “the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.” Id. Tier 3 protection provides that, where a water body “constitute[s] an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.” 40 C.F.R. § 131.12(a)(3).

FACTS

27. On July 5, 2001, the West Virginia Department of Environmental Protection submitted the West Virginia antidegradation implementation procedures—60 C.S.R. 5—to EPA in accordance with Section 303(c)(2)(A) of the CWA, 33 U.S.C. § 1313(c)(2)(A).

28. Among other provisions that are inconsistent with 40 C.F.R. § 131.12, West Virginia’s antidegradation implementation procedures contain provisions that:

A. Exempt the main stems of two of the three largest rivers in the state, the lower

Kanawha from milepoint 72 to the confluence of the Ohio River and the Monongahela, from Tier 2 review and permanently fix them in Tier 1. § 60-5-4.3.

B. Exempt from Tier 2 review activities that qualify for coverage under nationwide permits under § 404 of the CWA, 33 U.S.C. § 1344, and that are certified by the state pursuant to § 401 of the CWA, 33 U.S.C. § 1341. § 60-5-3.8. As a result, stream segments buried by valley fills associated with surface coal mining activities are likely to be exempt from Tier 2 review.

C. Exempt from Tier 2 review “a proposed new or expanded discharge from a publicly owned or publicly owned and privately operated sanitary wastewater treatment plant constructed or operated to alleviate a public health concern associated with failing septic systems or untreated or inadequately treated sewage.” § 60-5-5.6.c. This exemption includes “combined sewer overflow elimination or reduction projects” and “applies only where there will be a net decrease in the overall pollutant loading discharged.” Id.

D. Exempt existing sources, and only cover new or expanded discharges. §§ 60-5-4.8; 60-5-5.6.a.1; 60-5-6.3.h; 60-5-7.2.

E. Exempt from Tier 2 review regulated activities that are granted coverage by a WV/NPDES general permit under § 402 of the CWA, 33 U.S.C. § 1342. § 60-5-3.7.

F. Give WVDEP the discretion to exempt “types or classes of activities” from Tier 2 review “after balancing the relative impact of the activities on water quality against the overall benefit of the activities to public health and welfare or the environment.” § 60-5-5.6.c.

Examples given for activities that would fall under this exemption include “expansions or improvements to publicly owned wastewater treatment facilities or activities, public benefit activities by governmental entities, or discharges related to environmental remediation

activities.” Id.

G. Do not require nonpoint sources to be in compliance with Best Management Practices (BMPs) before degradation caused by point sources is allowed, and do not require BMPs to be sufficient to prevent degradation. § 60-5-1.5.b.

H. Do not require Tier 2 protection for every water segment that supports the minimum fishable/swimmable uses and has assimilative capacity remaining for some parameters, and instead provides that such segment “shall generally” have such protection. § 60-5-5.2.

I. Do not require Tier 2 or Tier 2.5 review unless the proposed activity would result in a 10% reduction of the water segment’s assimilative capacity or if the cumulative impacts of all activities on Tier 2 water segments would result in a 20% reduction to assimilative capacity. §§ 60-5-5.6.d; 60-5-6.3.a.

J. Provide only Tier 1 protection to waters that have one or more of their parameters impaired but whose other parameters exceed the water quality standard. § 60-5-4.4.

K. Provide only Tier I protection to some waters that are fishable and/or swimmable. § 60-5-4.6.

L. Do not provide intergovernmental and public participation procedures sufficient to satisfy 40 C.F.R. § 131.12(a)(2).

M. Exempt trades in Tier 2, 2.5 and 3 waters from anti-degradation review. §§ 60-5-5.6.f.; 60-5-6.3.h.; 60-5-7.5.

N. Allow trades in Tier 1 waters that do not guarantee the protection of existing uses. § 60-5-4.8.

O. Allow exemptions from Tier 2 and 2.5 review on a case-by-case basis based on best professional judgment. §§ 60-5-5.3; 60-5-6.3.b.

P. Limit reasonable and cost-effective less degrading alternatives to 110% of the costs of the pollution control measures. § 60-5-5.7.c.

Q. Allow exemptions for wastewater treatment plants from Tier 2.5 review. § 60-5-6.1.

R. Provide exemptions from Tier 2.5 review for dissolved oxygen, pH, thermal discharges and fecal coliform. § 60-5-6.3.a.

S. Allow short-term exemptions from Tier 2.5 review. § 60-5-6.3.k.

29. On November 26, 2001, EPA approved West Virginia antidegradation implementation procedures—60 C.S.R. 5—in their entirety, pursuant to Section 303(c)(2)(A) of the CWA, 33 U.S.C. § 1313(c)(2)(A).

CLAIM

30. Plaintiffs incorporate by reference the allegations of the above paragraphs.

31. West Virginia's antidegradation implementation procedures—60 C.S.R. 5—are inconsistent with the CWA and its implementing regulations.

32. By approving those procedures, Defendant has violated the CWA and has acted in a manner that is arbitrary, capricious, an abuse of discretion, and otherwise contrary to law, in violation of the APA, 5 U.S.C. § 706(2).

RELIEF

Wherefore, Plaintiffs respectfully request this Court to grant the following relief:

1. Declare that Defendant's November 26, 2001 decision is contrary to the CWA

and its implementing regulations, and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2)(A);

2. Issue an order setting aside EPA's decision and remanding the case to the agency for further proceedings consistent with the CWA and its implementing regulations;

3. Award Plaintiffs their costs and expenses, including reasonable attorneys' and expert witness' fees, as authorized by 28 U.S.C. § 2412(d)(2)(A); and

4. Grant Plaintiffs such other and further relief as this Court deems appropriate.

Respectfully submitted,

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**TITLE 60
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SECRETARY'S OFFICE**

**SERIES 5
ANTIDEGRADATION IMPLEMENTATION PROCEDURES**

§60-5-1. General.

1.1. Scope. -- This rule establishes the procedures by which the Department of Environmental Protection shall implement the State's water quality anti-degradation policy found at 46 CSR 1-4.

1.2. Authority. -- W. Va. Code §§22-11-7b (a)&(b). House Bills 3240 and 2663.

1.3. Filing Date. -- July 2, 2001.

1.4. Effective Date. -- July 2, 2001.

1.5. Applicability

1.5.a. Except as noted, the antidegradation implementation procedures herein apply to regulated activities that have the potential to affect water quality. The level of review required will depend upon the existing uses of the water segment that would be affected, the level of protection ("tier") assigned to the applicable water segment, the nature of the activity, and the extent to which existing water quality would be degraded.

1.5.b. Nonpoint source activities will be deemed to be in compliance with antidegradation requirements with the installation and maintenance of cost-effective and reasonable best management practices in accordance with 46 CSR 1-4.1.b. herein. These include, but are not limited to, best management practice programs for silviculture administered by the Division of Forestry, programs for oil and gas operations administered by the Office of Oil and Gas of the Department of Environmental

2.3. For purposes of this rule the term "minimum uses" refers to recreation and wildlife

Protection, nonpoint source construction activities, and reasonable land, soil and water conservation measures and practices applied to agricultural nonpoint sources.

1.5.c. Where applicable and practical, the antidegradation procedure and review shall be integrated into and proceed concurrently with existing environmental processes and reviews pursuant to the National Environmental Policy Act.

1.5.d. Information contained within existing environmental processes and reviews, such as environmental assessments, environmental impact statements, facilities plans, and findings of no significant impact, may be used to provide part or all of the requirements of the antidegradation procedure and review.

§60-5-2. Definitions.

2.1. For purposes of this rule the term "agency" or "agencies" refers to the Department of Environmental Protection or other federal, state, or local governmental entities with regulatory authority over activities that may affect water quality.

2.2. For purposes of this rule the term "regulated entity" refers generally to any regulated entity that affects or is proposing an activity that will affect water quality. For example, an applicant for a WV/NPDES permit, a WV/NPDES permit holder, or an owner or operator of an activity that discharges pollutants into a water of the state would be a regulated entity.

and the propagation and maintenance of fish and other aquatic life.

2.4. For purposes of this rule the term “Secretary” refers to the Secretary of the Department of Environmental Protection or its successor.

2.5. For purposes of this rule references to the “Board” or “EQB” mean the West Virginia Environmental Quality Board.

2.6. For purposes of this rule the definitions contained in 46 CSR 1-2 are hereby incorporated herein.

§60-5-3. Antidegradation Review Process.

3.1. As set forth in 46 CSR 1-4.1, the State’s antidegradation policy requires that existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. This requirement applies to all waters of the state.

3.2. Except where a water segment is specifically listed as a Tier 2.5 or Tier 3 water, the following sections outline how the agency conducting the antidegradation review will determine the level of protection (“tier”) assigned to the receiving water body associated with the activity subject to this rule.

3.3. Uses. The Secretary, in conducting an antidegradation review, must determine the existing uses of the receiving water body associated with the proposed activity. The Secretary shall determine the existing uses of the water body by identifying the uses set forth in 46 CSR 1 Section 6 that the water body currently supports, or has supported since November 28, 1975. The regulated entity may be required to provide data sufficient for the permitting agency to determine the existing uses of the water segment.

3.4. Baseline water quality. Where baseline water quality has not been established for the water

3.5.c. Water segments not within a federally designated Wilderness Area and not listed in Appendix A of this rule shall receive Tier 1 protection, and shall receive Tier 2 protection if the water segment is determined, pursuant to

segment the regulated entity proposes to impact or has not been established for a parameter of concern that is reasonably expected to be discharged into the water segment as a result of the proposed regulated activity, the Secretary must determine the baseline water quality for the receiving water body. The Secretary may consider data for establishing the baseline water quality from a federal or state agency, the regulated entity, the public, or any other source, as long as the data are recent and reliable. If adequate data are not available, the agency may, in conjunction with the regulated entity or on its own initiative, establish a plan for obtaining the necessary data. The regulated entity may be required to provide baseline water quality for those parameters of concern that are reasonably expected to be discharged as a result of the regulated activity into the affected water segment to help the permitting agency determine the baseline water quality, the existing uses, and the applicable tier. The regulated entity may contact the Secretary prior to initiating a baseline water quality evaluation to seek concurrence with its determination of the parameters of concern for its proposed activity and its proposed sampling protocol.

3.5. Determination of tier. If the tier has not already been determined for the water segment the regulated entity proposes to impact, then after determining the baseline water quality for parameters of concern and the existing uses for a water body, the agency will determine which level of protection (i.e. “tier”) applies to the receiving water body associated with the activity, as follows:

3.5.a. Water segments listed in Appendix A of this rule shall receive Tier 2.5 protection.

3.5.b. Water segments within a federally designated Wilderness Area, as well as other water segments specifically listed in this rule as an outstanding national resource water shall receive Tier 3 protection.

subsections 5.1. through 5.3. of this rule, to be a high quality water for purposes of antidegradation review.

3.5.d. Water segments may be determined

to receive only Tier 1 protection, pursuant to subsections 4.2. through 4.6. of this rule, for purposes of antidegradation review.

3.5.e. To the extent practicable, a list of water segments protected under Tier 2.5 or Tier 3 will be maintained on the West Virginia Department of Environmental Protection's website.

3.6. Level of review. Once the correct level of protection ("tier") and water segment use(s) are identified for the receiving water body, the agency shall document its findings and proceed with the appropriate level of antidegradation review.

3.7. On or after July 2, 2001, the effective date of these implementation procedures, new and reissued WV/NPDES general permits will be evaluated to consider the potential for significant degradation as a result of the permitted activity. Regulated activities that are granted coverage by a WV/NPDES general permit will not be required to undergo a Tier 2 antidegradation review as part of the permit registration process. Regulated activities that are granted coverage by a WV/NPDES permit that will degrade a Tier 2.5 or Tier 3 water segment must comply with the requirements of sections 6 and 7 herein.

3.8. Regulated activities that qualify for coverage under a Corps of Engineers regional or nationwide permit pursuant to section 404 of the Federal Act that has been certified by the state pursuant to section 401 of the Federal Act will not be required to undergo a Tier 2 antidegradation review, provided, however, that where an individual 401 certification is required, the Secretary may require an appropriate antidegradation review. Where an activity covered by a regional or nationwide permit pursuant to section 404 of the Federal Act and certified pursuant to section 401 of the Federal Act allows for filling of a water, this

4.3. In determining whether a water segment is afforded only Tier 1 protection, the agency will focus on whether the water segment is meeting or failing to meet minimum uses, except that, notwithstanding any other provision of this rule, the main stems of the Monongahela River, and the Kanawha River from milepoint 72 to the confluence

exemption only applies to the site of the fill, and does not apply to activities downstream of the site of the fill. Regulated activities that are granted section 401 certification that will degrade a Tier 2.5 or Tier 3 water segment must comply with the requirements of sections 6 and 7 herein.

3.9. The Secretary shall develop guidance which addresses these implementation procedures and provides additional information to persons conducting regulated activities that are affected by these procedures. Such guidance shall include, but shall not be limited to, information regarding the following: (a) the determination of baseline water quality; (b) social and economic importance pursuant to subsection 5.8; and (c) the reasonable alternatives analysis required by subsection 5.7. The Secretary shall provide an opportunity for public review and comment before finalizing any guidance. Within twelve months of the effective date of this rule, the Secretary shall report to the advisory committee established pursuant to W.Va. Code §22-1-9 regarding the status of its implementation.

§60-5-4. Tier 1 Protection.

4.1. Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

4.2. Tier 1 protection applies to all waters of the state. A water segment shall be afforded Tier 1 protection where the level of water quality is not sufficient to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life, or where the water quality meets but does not exceed levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life.

with the Ohio River shall be afforded Tier 1 protection only.

4.4. The Secretary will consider whether a water segment is listed on the state's 303(d) impaired waters list, but where the parameter(s) for which the water segment is listed does not result in

that water segment's failure to attain minimum uses and where all other parameters exceed the quality necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life, the water segment will be afforded Tier 2 protection. Where the parameter(s) for which the water segment is listed does result in failure to attain minimum uses, such as an acid mine drainage-impacted water segment, that water segment will be afforded only Tier 1 protection.

4.5. All water segments listed on the state's 303(d) impaired waters list will be afforded only Tier 1 protection for the parameter(s) that resulted in the water segment being listed.

4.6. There also may be waters in the state where one or both of the fishable/swimmable uses are attained, but existing water quality is not "better than necessary" to support those uses (i.e., assimilative capacity does not exist for any of the parameters that would be affected by the proposed activity). Tier 1 protection is appropriate for such a water segment.

4.7. Where existing uses of the water body are impaired, there shall be no lowering of the water quality with respect to the parameters of concern that are causing the impairment. The agency shall consider nomination of such water body for the 303(d) list of water quality-impaired streams.

4.8. Where a proposed activity will result in a new or expanded discharge that would otherwise prevent attainment of an existing use in a water subject to Tier 1 protection, the applicant may be allowed to satisfy antidegradation review requirements by implementing or financing upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the

5.3. Where a water segment does not meet or exceed applicable water quality criteria for every parameter, the Secretary will determine whether the water segment will be afforded Tier 2 protection as part of the antidegradation review process using best professional judgment. In addition to data available for review, the Secretary may consider factors such as (1) existing aquatic life uses, (2) existing recreational or aesthetic uses, (3) existing

proposed activity from the same parameters and insure an improvement in water quality as a result of the trade. The basis of the trade will be documented and will be consistent with the trading assessment procedure that has been approved by the Secretary.

A trade may be made between more than one stream segment where removing a discharge in one stream segment directly results in improved water quality in another stream segment. In addition, (1) the effluent trade must be for the same parameter; (2) where uncertainty exists regarding the effluent trade, an adequate margin of safety will be required; (3) dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (4) the trade must be enforceable.

§60-5-5. Tier 2 Protection (High Quality Waters).

5.1. A water segment shall be considered a Tier 2 high quality water where the level of water quality exceeds levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life.

5.2. Tier 2 waters need not exceed the level of quality needed to meet or exceed numeric criteria for every parameter. Water segments that support the minimum fishable/swimmable uses and have assimilative capacity remaining for some parameters shall generally be afforded Tier 2 protection. For example, a water segment listed on the state's 303(d) impaired waters list can qualify for Tier 2 protection, but where the impairment that caused the water segment to be listed results in failure to attain minimum uses, that water segment will be afforded only Tier 1 protection.

water quality data for upstream segments or comparable segments, (4) biological score for the water segment, and (5) the overall value of the segment from an ecological, health and public use perspective.

5.4. Where insufficient information is available to determine which tier should apply, a regulated entity may seek a determination that a water

segment should be afforded only Tier 1 protection by submitting water quality data consistent with guidance developed pursuant to subsection 3.9. of this rule showing that there is no remaining assimilative capacity for any parameter to be affected by its activity. In seeking such a determination, the impacts of all of the regulated entity's activities on the water segment must be considered.

5.5. Where there is insufficient information to establish which tier should apply, it is the intent of these procedures to apply Tier 2 protection to such waters until such time as sufficient water quality data is obtained to determine the appropriate level of protection. No presumption shall be made with regard to the actual quality of any waters as a result of such initial application.

5.6. Tier 2 antidegradation review.

5.6.a. Any regulated activity in a Tier 2 water segment is required to go through the Tier 2 antidegradation review process where:

5.6.a.1. The regulated activity is a new or expanded activity that would significantly degrade water quality; or

5.6.a.2. The Secretary determines, upon renewal of a permit or certification, that other individual circumstances warrant a full review such as cumulative degradation resulting from multiple discharges within a watershed, degradation resulting from a single discharge over time, or degradation caused by a regulated facility's historic noncompliance with its permit.

5.6.d. Degradation for Tier 2 shall be deemed significant if the activity results in a reduction in the water segment's available assimilative capacity (the difference between the baseline water quality and the water quality criteria) of ten percent or more at the appropriate critical flow condition(s) for parameters of concern. Critical flow conditions for non-precipitation induced discharges are the 7Q10 flow of the receiving stream, plus either of the following: maximum permitted flow or maximum flow

5.6.b. In allowing any degradation, the agency shall assure water quality adequate to protect existing uses fully (i.e., Tier 1 protection).

5.6.c. The Secretary may determine that certain types or classes of activities should be exempt from Tier 2 review after balancing the relative impact of the activities on water quality against the overall benefit of the activities to public health and welfare or the environment. The Secretary's discretion to exempt activities from review pursuant to this section shall be exercised and construed narrowly. Such types or classes of activities may include, for example, expansions or improvements to publicly owned wastewater treatment facilities or activities, public benefit activities by governmental entities, or discharges related to environmental remediation activities. Where the agency tentatively determines to grant an exemption under this provision, notice of this determination must be included in any required public notice, such as public notice required prior to issuance of an NPDES permit. The Secretary's final determination is a final decision and subject to appeal to the Environmental Quality Board. A proposed new or expanded discharge from a publicly owned or publicly owned and privately operated sanitary wastewater treatment plant constructed or operated to alleviate a public health concern associated with failing septic systems or untreated or inadequately treated sewage, is exempt from Tier 2 review. This exemption would include combined sewer overflow elimination or reduction projects affecting one or more water bodies and applies only where there will be a net decrease in the overall pollutant loading discharged to the combined receiving waters.

specified in the application, for industrial activities, or the average design flow, for wastewater treatment activities. Degradation will also be deemed significant if the proposed activity, together with all other activities allowed after the baseline water quality is established, results in a reduction in the water segment's available assimilative capacity of 20% or more at the appropriate critical flow conditions for the parameters of concern.

5.6.e. Significant degradation will be

determined on a parameter-by-parameter basis for each parameter of concern that might be affected by the regulated activity.

5.6.f. A proposed activity that will result in a new or expanded discharge in a water subject to Tier 2 protection may be allowed where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity from the same parameters and insure an improvement in water quality as a result of the trade. The basis of the trade will be documented and will be consistent with the trading assessment procedure that has been approved by the Secretary. A trade may be made between more than one stream segment where removing a discharge in one stream segment directly results in improved water quality in another stream segment. In addition, (1) the effluent trade must be for the same parameter; (2) where uncertainty exists regarding the effluent trade, an adequate margin of safety will be required; (3) dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (4) the trades must be enforceable.

5.6.g. New or expanded activities determined to be significant by the agency shall be subject to the Tier 2 review requirements described in subsections 5.6. through 5.9. herein. If the agency determines that no further Tier 2 review requirements shall apply for an activity, the activity must still achieve the highest established statutory and regulatory requirements applicable to them, or conditions of the permit, or water quality certification, and that determination must be made a part of the public notification, as provided in subsections 9.1 through 9.5.

5.7. Review of alternatives.

5.7.c. After alternatives to allowing degradation have been adequately evaluated, a determination shall be made regarding whether cost-effective and reasonable non-degrading or less-degrading alternatives to the proposed activity shall be required. This determination will be based primarily on the alternatives analysis developed by

5.7.a. If a determination is made that significant degradation will occur, the agency shall determine whether reasonable and cost effective less-degrading or non-degrading alternatives to the proposed activity exist. The agency will evaluate any alternatives analysis submitted by the regulated activity for consistency with the requirements set forth in Subdivision 5.7.b. herein.

5.7.b. A regulated entity proposing any new or expanded regulated activity that would significantly degrade water quality in a high quality water is required to prepare an evaluation of alternatives to the proposed activity. The evaluation must provide substantive information pertaining to the cost and environmental impacts associated with the following alternatives:

5.7.b.1. Pollution prevention measures;

5.7.b.2. Reduction in scale of project;

5.7.b.3. Water recycle or reuse;

5.7.b.4. Process changes;

5.7.b.5. Innovative treatment technology or technologies;

5.7.b.6. Advanced treatment technology or technologies;

5.7.b.7. Seasonal or controlled discharge options to avoid critical water quality periods;

5.7.b.8. Improved operation and maintenance of existing treatment systems; and

5.7.b.9. Alternative discharge locations.

the regulated entity, but may be supplemented with other information and data. As a rule of thumb, cost effective and reasonable non-degrading or less-degrading pollution control alternatives with costs that are less than 110% of the costs of the pollution control measures associated with the proposed activity shall be considered reasonable.

5.7.d. If it is determined that reasonable and cost effective less degrading or non-degrading alternatives to the proposed activity do exist, the project design may be revised accordingly. In general, if reasonable alternative(s) exist, the alternative or combination of alternatives that provide the least amount of degradation shall be implemented up to the determined reasonable and cost-effective threshold. If the regulated entity does not agree to adopt such reasonable and cost-effective alternatives, the alternatives analysis findings will be documented and the activity will not be allowed.

5.8. Review of social and economic importance.

5.8.a. If significant degradation would occur, even after application of reasonable less-degrading or non-degrading alternatives, a determination shall be made as to whether the proposed activity is necessary to accommodate important economic or social development in the area in which the waters are located.

5.8.b. The regulated activity must document the social and economic importance of the proposed activity.

5.8.c. The factors to be addressed in such documentation may include, but are not limited to, the following:

5.8.c.1. Employment (e.g., increasing,

5.8.e. Once the available information pertaining to the socio-economic importance of the proposed activity has been reviewed by the agency, a preliminary determination regarding importance shall be made. In evaluating the regulated activity's demonstration of socio-economic importance, the agency may use EPA's Interim Economic Guidance for Water Quality Standards Workbook (EPA 823-B-95-002, March, 1995). Where there is a request for a variance from groundwater standards pursuant to 47 CSR 57 for existing sites where activities on those sites have the potential to impact surface water from contaminated groundwater and the activity is otherwise subject to this rule, the socio-

maintaining or avoiding a reduction in employment);

5.8.c.2. Increased production;

5.8.c.3. Improved community tax base;

5.8.c.4. Housing;

5.8.c.5. Ancillary community economic benefit; and

5.8.c.6. Correction of an environmental or public health problem.

5.8.d. In addition to the above, a regulated entity may be required to submit the following:

5.8.d.1. Information pertaining to current aquatic life, recreational, or other water uses;

5.8.d.2. Information necessary to determine the environmental impacts that may result from the proposed activity;

5.8.d.3. Facts pertaining to the current state of economic development in the area (e.g., population, area employment, area income, major employers, types of businesses);

5.8.d.4. Government fiscal base; and

5.8.d.5. Land use in the areas surrounding the proposed activity.

economic justification process required under 47 CSR 57 subdivision 6.2.i will satisfy the requirements of this section. If the proposed activity is determined to have social or economic importance in the area in which the affected waters are located, the substance and basis for that preliminary determination shall be documented and the Tier 2 review shall continue.

5.9. Intergovernmental coordination for Tier 2 reviews.

5.9.a. The intergovernmental coordination requirements in 46 CSR 1-4.1.b. will be

accomplished by providing notice to those agencies listed in Appendix B that the Secretary believes may have regulatory oversight of the regulated activity of the preliminary determination of the socio-economic review and requesting comments from those agencies regarding that review.

5.9.b. The public notice of the proposed activity will be provided as set forth in subsections 9.1 through 9.5 herein.

5.9.c. Once the intergovernmental coordination and public notice requirements are satisfied, the Secretary shall make a final determination concerning the social or economic importance of the proposed activity. All social and economic importance determinations, including determinations to prohibit the activity, shall be documented and made a part of the public record.

§60-5-6. Tier 2.5 Protection Review Procedures (Waters of Special Concern). See 46 CSR 1-4.1.c and 46 CSR 1-2.29 for a description and definition of Waters of Special Concern.

6.1. Any proposed activity that would degrade a water segment listed in Appendix A of this rule as waters of special concern will go through the Tier 2.5 antidegradation review process. Discharges from publicly-owned or publicly-owned and privately operated sanitary wastewater treatment plants that expand to alleviate a public health concern associated with failing septic systems or untreated or inadequately treated sewage, shall be permissible in a Tier 2.5 water segment where there will be a net decrease in the overall pollutant loading discharged to the combined receiving waters: Provided, That less degrading alternative treatment technologies are considered and used where costs

6.2.b. Should an objection be received from an owner or holder of a legal interest in property adjoining any stream on Appendix C, the Secretary shall provide written justification for the inclusion of the stream as a Tier 2.5 stream with reference to the criteria set out in paragraph 8.1.a.2. of this rule. The Secretary shall then provide a thirty-day comment period on the proposed action.

6.2.b.1. Where no objection is made to

for such technologies are within budgets and rates approved for such expansion project. This provision may extend to combined sewer overflow elimination or reduction projects. Except as provided in subdivisions 6.2.a. and b. of this rule, the listing procedure for Tier 2.5 waters is set forth in section 8.1. herein. Currently listed Tier 2.5 waters are included in Appendix A to this rule.

6.2. Initial Presumptive Listing for Tier 2.5.

6.2.a. The stream or stream segments that appear on Appendix C shall be presumed to qualify as Tier 2.5 waters. Before any such stream or stream segment is protected as Tier 2.5 waters (and listed on Appendix A) the Secretary shall do the following:

6.1.a.1. Assure compliance with all provisions of article one-a of chapter twenty-two; and

6.1.a.2. No sooner than six months and no later than twelve months from the effective date of this rule, provide, where practicable, individual notice to property owners along such stream or stream segment. In addition, notice by publication shall be provided to all property owners and others with a legal interest in the property. The notice shall include at a minimum, the information set forth in subparagraphs 8.1.a.1.A. through 8.1.a.1.D. of this rule. The notice shall indicate that a property owner or holder of legal interest in the property shall have thirty days to file an objection to the inclusion of the stream or stream segment as a Tier 2.5 water.

the inclusion of a stream or stream segment as a Tier 2.5 water, the stream shall be included by the Secretary on Appendix A without further justification.

6.2.b.2. Any final decision by the Secretary with regard to the inclusion of a stream in Tier 2.5 made following the procedure set forth in this paragraph, may be appealed to the EQB.

6.2.c. Following the initial listing for Tier 2.5 waters, as described in subdivisions 6.2.a. and b. above, subsequent additions or deletions from Appendix A shall be in accordance with section 8.1., herein.

6.3. Tier 2.5 antidegradation review.

6.3.a. No significant degradation of Tier 2.5 waters will be allowed. For Tier 2.5 waters, degradation will be deemed significant if it exceeds the baseline water quality plus ten percent of available assimilative capacity (the difference between the baseline water quality and the water quality criteria), whether from a single activity or cumulatively, except that discharges affecting dissolved oxygen, pH, fecal coliform or temperature will be deemed insignificant provided that:

6.3.a.1. For dissolved oxygen, the maximum DO sag will not be greater than 0.4 ppm based on an appropriate wasteload allocation model, unless that reduction is projected to cause a violation of 46 CSR 1-8.12 through 8.12.3, Appendix E, Table 1;

6.3.a.2. pH is maintained within the 6.0 to 9.0 range;

6.3.a.3. Thermal discharges will be consistent with 316(a) of the Federal Act or will not increase the temperature more than two degrees Fahrenheit at any time or cause other violations of applicable criteria in 46 CSR 1-8.28 through 8.28.4, Appendix E, Table 1.

6.3.e. After the baseline water quality has been established for the parameters of concern reasonably expected to be discharged by the proposed activity, the *de facto* criteria for those parameters of concern will equal the established baseline water quality plus ten percent of available assimilative capacity.

6.3.f. Regulated entities with discharges existing on or before July 2, 2001, the effective date of this rule, that discharge into a Tier 2.5 water may be required to submit an alternatives analysis upon renewal of its application or upon the written request of the Secretary to evaluate reasonable and

6.3.a.4. For fecal coliform, necessary and appropriate treatment (disinfection) or control is required and the fecal coliform concentrations are established as 200/100 ml monthly average and 400/100 ml daily maximum.

6.3.b. Where a Tier 2.5 water has one or more parameters that fail to meet water quality criteria, the Secretary shall use best professional judgment in setting appropriate limitations for such parameters, with the goal of improving baseline water quality for such parameters over time.

6.3.c. Where baseline water quality has not been established for the Tier 2.5 water segment for a parameter of concern that is reasonably expected to be discharged into the water segment as a result of a new or expanded regulated activity, a determination of the baseline water quality for the receiving water segment must be established for that parameter of concern prior to allowing any new or expanded discharge.

6.3.d. The Secretary may consider data for establishing the baseline water quality from a federal or state agency, the regulated entity, the public, or any other source, as long as the data are recent and reliable. The regulated entity may be required to provide baseline water quality for those parameters of concern that are reasonably expected to be discharged as a result of the regulated activity into the affected water segment.

cost-effective alternatives that would reduce the activity's impact to a Tier 2.5 water.

6.3.g. Discharges from activities in waters upstream of a water of special concern shall not result in the ambient water quality within the Tier 2.5 water exceeding the *de facto* criteria.

6.3.h. A proposed activity that will result in a new or expanded discharge in a water subject to Tier 2.5 protection may be allowed where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed

activity from the same parameters and insure an improvement in water quality as a result of the trade. The basis of the trade will be documented and will be consistent with the trading assessment procedure that has been approved by the Secretary.

A trade may be made between more than one stream segment where removing a discharge in one stream segment directly results in improved water quality in another stream segment. In addition, (1) the effluent trade must be for the same parameter; (2) where uncertainty exists regarding the effluent trade, an adequate margin of safety will be required; (3) dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (4) the trades must be enforceable.

6.3.i. If a determination is made that the activity will result in significant degradation of a Tier 2.5 water, the activity shall not be allowed.

6.3.j. If the activity is determined not to result in significant degradation of a Tier 2.5 water, the activity may be allowed. In such case the antidegradation review findings will be documented in writing and public notice activities will be initiated consistent with subsections 9.1 through 9.5 herein.

6.3.k. Short-term water quality impacts. The Secretary shall determine whether a proposed activity is short term in nature and the resulting changes in water quality will be temporary and have limited effects. Notwithstanding subdivisions 6.3.a. and 6.3.e. herein, short-term activities which result

7.1. Tier 3 waters. ONRWs are to be maintained, protected and improved where necessary. Any proposed new or expanded regulated activity that would degrade (result in a lowering of water quality) a water body that has been approved as an ONRW, other than temporary lowering of water quality, is prohibited.

7.2. Tier 3 antidegradation review. The agency shall use the following antidegradation implementation procedures for evaluating new or expanded regulated activities that have the potential to affect Outstanding National Resource Waters (ONRWs), as described in 46 CSR 1-4.1.c. and as

in less than a 10% change in the available assimilative capacity may be deemed to have limited effects. Determinations will be made on a case-by-case basis and shall be made after consideration of the following factors:

6.3.k.1. The length of time during which the water quality will be lowered;

6.3.k.2. The percent change in ambient concentrations;

6.3.k.3. The parameters affected;

6.3.k.4. The likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments);

6.3.k.5. The degree to which achieving applicable water quality standards during the proposed activity may be at risk;

6.3.k.6. The potential for any residual long-term influences on existing uses; and

6.3.k.7. The cumulative impacts from all sources for the parameters affected.

§60-5-7. Tier 3 Protection Review Procedures (Outstanding National Resource Waters). See 46 CSR 1-4.1.d and 46 CSR 1-2.15 for a description of Outstanding National Resource Waters (ONRW).

nominated and approved in accordance with the provisions of this rule.

7.2.a. Determine whether the proposed activity is short term in nature and the resulting changes in water quality will be temporary. Such determination will be made on a case-by-case basis and shall be made after consideration of the following factors:

7.2.a.1. The length of time during which the water quality will be lowered;

7.2.a.2. The percent change in ambient

concentrations;

7.2.a.3. The parameters affected;

7.2.a.4. The likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments);

7.2.a.5. The degree to which achieving applicable water quality standards during the proposed activity may be at risk; and

7.2.a.6. The potential for any residual long-term influences on existing uses.

7.2.b. If after review of the factors in paragraphs 7.2.a.1 through 7.2.a.6, the agency determines that the proposed activity will be short term in nature and the changes in water quality will be temporary and limited, the proposed activity may be authorized. In such case the antidegradation review findings shall be documented and public notice activities shall be initiated. If after review of the factors in paragraphs 7.2.a.1 through 7.2.a.6, the agency determines that the proposed activity will not be short term in nature or that changes in water quality will not be temporary and limited, the proposed activity shall be denied.

7.3. Sources upstream from an ONRW. Any proposed activity that would result in a permanent new or expanded discharge upstream of an ONRW segment is prohibited except where such source

7.3.b. If a preliminary determination is made that the applicable criteria in paragraphs 7.3.a.1. through 7.3.a.7. will be met, the antidegradation review findings shall be documented and the applicable public notice activities shall be initiated. If after review of the factors in paragraphs 7.3.a.1. through 7.3.a.7., the Secretary determines that the proposed activity will result in the lowering of water quality in the downstream ONRW stream segment, the proposed activity shall be denied.

7.4. For ONRWs in areas designated as federal Wilderness, nothing in this rule is intended to authorize activities not authorized by the Wilderness Act.

would improve or not degrade the existing water quality of the downstream ONRW segment.

7.3.a. To determine whether the proposed activity will result in the lowering of water quality in the downstream ONRW segment, the following factors, when applicable, shall be considered:

7.3.a.1. Change in ambient concentrations predicted at the appropriate critical condition(s);

7.3.a.2. Change in loadings (i.e., the new or expanded loadings compared to total existing loadings to the segment);

7.3.a.3. Reduction in available assimilative capacity;

7.3.a.4. Nature, persistence and potential effects of the parameter;

7.3.a.5. Potential for cumulative effects;

7.3.a.6. Degree of confidence in the various components of any modeling technique utilized (e.g., degree of confidence associated with the predicted effluent variability); and

7.3.a.7. Other factors determined by the Secretary, when appropriate.

7.5. A proposed activity that will result in a new or expanded discharge in a water subject to Tier 3 protection may be allowed where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity from the same parameters and insure an improvement in water quality as a result of the trade. The basis of the trade will be documented and will be consistent with the trading assessment procedure that has been approved by the Secretary. A trade may be made between more than one stream segment where removing a discharge in one stream segment directly results in improved water quality in another stream segment. In addition, (1) the effluent trade must be for the same parameter; (2) where uncertainty exists

regarding the effluent trade, an adequate margin of safety will be required; (3) dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (4) the trade must be enforceable.

§60-5-8. Designation of Tier 2.5 and Tier 3 Waters.

8.1. Listing process for Tier 2.5.

8.1.a. Tier 2.5 Nomination Procedures. Any interested party or the Board may nominate a water to be listed as a Water of Special Concern. After reviewing the nomination the Board shall consider the qualification criteria and may designate the nominated water as a Tier 2.5 water in accordance with the notice and comment provisions of 46 CSR 6, Procedural Rules Governing Site Specific Revisions to Water Quality Standards. The address for filing such petitions is West Virginia Environmental Quality Board, 1615 Washington Street, East, Room 301, Charleston, West Virginia 25311-2126. The nominating party has the burden of establishing a basis for listing of a water segment as a Tier 2.5 water. The Board shall return insufficient nominations to the nominating party. Generally, nominations that fail to address at least three of the qualification criteria shall be considered insufficient.

8.1.a.2. Qualification Criteria. Factors to be considered in determining whether to assign a Water of Special Concern designation to a water from another category shall include the following:

8.1.a.2.A. Impact on private property owners;

8.1.a.2.B. Whether the interests of all affected parties have been adequately represented during the nomination and designation process;

8.1.a.2.C. The location of the water;

8.1.a.2.D. Any previous special designations;

8.1.a.1. Upon receiving a sufficient nomination of a water or segment of a water for designation as a Tier 2.5 water pursuant to the Board's antidegradation policy, the Board shall, within 180 days of receipt of the nomination, notify each locality in which the water or segment lies and shall provide individual notice to property owners on the nominated segment. Where individual notice to property owners is impracticable, constructive notice by publication shall be provided. The written notice shall include, at a minimum:

8.1.a.1.A. A description of the location of the waters or segment;

8.1.a.1.B. The procedures and criteria for designation as well as the impact of the designation;

8.1.a.1.C. The name of the person(s) making the nomination; and

8.1.a.1.D. The name of a contact person at the Environmental Quality Board who is knowledgeable about the nomination of the waters or segment. After receipt of the notice of the nomination, landowners, the public and localities shall be provided 60 days to comment.

8.1.a.2.E. Existing water quality;

8.1.a.2.F. Factors that indicate unique or exceptional ecological, recreational or aesthetic resource value;

8.1.a.2.G. Impact on economic development in the area, including development of demonstrated natural resources; and

8.1.a.2.H. Other factors determined by the Board, when applicable.

8.1.a.3. Reclassification of a Water of Special Concern. The Board may on its own, or at the request of an interested party, consider reclassifying a Water of Special Concern to another antidegradation tier. In considering a

reclassification, the Board shall review the criteria outlined in subparagraphs 8.1.a.2.A. through 8.1.a.2.H. above. After such consideration, the Board may reclassify a Tier 2.5 water in accordance with the notice and comment provisions of 46 CSR 6, Procedural Rules Governing Site Specific Revisions to Water Quality Standards.

8.2. Listing process for Tier 3 waters.

8.2.a. Tier 3 Nomination Procedures. Any interested party or the Board may nominate a water as an ONRW. After reviewing the nomination the Board shall consider the qualification criteria and may classify the nominated water as a Tier 3 water in accordance with the notice and comment provisions of 46 CSR 6, Procedural Rules Governing Site Specific Revisions to Water Quality Standards. The address for filing such petitions is West Virginia Environmental Quality Board, 1615 Washington Street, East, Room 301, Charleston, West Virginia 25311-2126. The nominating party has the burden of establishing a basis for listing of a water segment as a Tier 3 water. The Board shall return insufficient nominations to the nominating party. Generally, nominations that fail to address at least three of the qualification criteria set out in paragraph 8.2.a.2. of this rule shall be considered insufficient.

8.2.a.2. Qualification Criteria. Factors to be considered in determining whether to assign an ONRW designation to a water from another category shall include the following:

8.2.a.2.A. Impact on private property owners;

8.2.a.2.B. Whether the interests of all affected parties have been adequately represented during the nomination and designation process;

8.2.a.2.C. The location of the water;

8.2.a.2.D. Any previous special designations;

8.2.a.2.E. Existing water quality;

8.2.a.1. Upon receiving a sufficient nomination of a water or segment of a water for designation as a Tier 3 water pursuant to the Board's antidegradation policy, the Board shall notify each locality in which the water or segment lies and shall provide individual notice to property owners on the nominated segment. Where individual notice to property owners is impracticable, constructive notice by publication shall be provided. The written notice shall include, at a minimum:

8.2.a.1.A. A description of the location of the waters or segment;

8.2.a.1.B. The procedures and criteria for designation as well as the impact of the designation;

8.2.a.1.C. The name of the person(s) making the nomination; and

8.2.a.1.D. The name of a contact person at the Environmental Quality Board who is knowledgeable about the nomination of the waters or segment. After receipt of the notice of the nomination, landowners, the public and localities shall be provided 60 days to comment.

8.2.a.2.F. Outstanding ecological value;

8.2.a.2.G. Outstanding recreational or aesthetic value; and

8.2.a.2.H. Other factors determined by the Board, when applicable.

§60-5-9. Public Participation in Antidegradation Reviews/Appeals.

9.1. All antidegradation review findings shall be documented by the Secretary and made part of the public record. The findings, including the baseline water quality, the existing uses, and the tier assigned to the water body are to be available to the public.

9.2. Any required public notice will be provided through the appropriate Class I or Class II legal advertisement in a qualified newspaper with the largest circulation for the county where the activity will occur. The notice will identify the action being considered, list all existing uses identified of the water, and call for comments from the public regarding the proposed activity. The cost of such publication will be borne by the applicant.

9.3. Public notice, opportunity for public comment, and opportunity for a public hearing, consistent with the requirements of 47 CSR 10-12, will be provided of all activities proposed to be allowed after a Tier 1, 2, 2.5, or 3 antidegradation review. Such public notice may be combined with other required notifications, such as notification to agencies as part of required intergovernmental coordination or notification of a proposed permit decision. Public notice is not required to be provided for proposed activities on Tier 1 or Tier 2 waters for which a review process has not been required, such as activities covered by a WV/NPDES general permits, except that any trading approved by the Secretary for antidegradation purposes will require public notice

9.4.a.6. A description of the water segment that is subject to the antidegradation review.

9.5. Once the intergovernmental coordination and public notice requirements of subsections 9.1. through 9.5. are satisfied, the Secretary shall make a determination concerning the social or economic importance in the area in which the affected water bodies are located. All determinations, including determinations to prohibit the activity, shall be documented and made a part of the public record.

9.6. Appeals-Final agency decisions, made after public comment, that identify applicable uses, designate tiers, or that find regulated activities to be allowed or prohibited, are final actions that are appealable as set forth in the Administrative Procedures Act. Final agency actions made by the Secretary are appealable to the Board.

consistent with the requirements of 47 CSR 10-12.

9.4. Public notice of Tier 2 antidegradation reviews.

9.4.a. After a full Tier 2 review has been completed for a proposed activity, the public notice shall include notice of the availability of the following:

9.4.a.1. The decision as to whether the proposed activity has been determined to comply with the antidegradation implementation rule;

9.4.a.2. Findings from the alternatives analysis;

9.4.a.3. A determination of the impact of the activity to ambient concentrations and baseline water quality;

9.4.a.4. The results of the socio-economic evaluation of the activity;

9.4.a.5. The determination regarding existence of **reasonable and** cost effective non-degrading or **less degrading alternatives**; and

APPENDIX A

WV DNR and WV DEP - Waters of Special Concern

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APPENDIX B

**ANTIDEGRADATION IMPLEMENTATION PROCEDURES
INTERGOVERNMENTAL COORDINATION AGENCIES**

STATE AGENCIES

Bureau of Commerce

Department of Natural Resources
Division of Forestry
Development Office

Department of Health and Human Resources

Bureau for Public Health

Bureau of the Environment

Department of Environmental Protection - all offices

Department of Agriculture

Soil Conservation Agency

Department of Transportation

Division of Highways

FEDERAL AGENCIES

US Environmental Protection Agency, Region III
US Fish and Wildlife Service
US Army Corps of Engineers
US Forest Service
US Office of Surface Mining

APPENDIX C

Initial Presumptive Listing for Tier 2.5

| <u>DNR CODE</u> | <u>STREAM NAME</u> | <u>LENGTH (miles)</u> |
|--|--------------------------|-----------------------|
| Tug Fork Watershed | | |
| BST-60-D | CUB BRANCH | 0.72 |
| BST-60-E | GEORGE BRANCH | 3.79 |
| BST-60-F | CRANE CREEK | 1.22 |
| BST-60-G | HURRICANE BRANCH | 2.99 |
| BST-60-H-2 | WHITE OAK BRANCH | 1.78 |
| BST-70-N | LITTLE SLATE CREEK | 3.42 |
| BST-70-U-1 | BIG BRANCH | 1.86 |
| BST-70-W | JACOBS FORK | 10.50 |
| BST-70-Z | VALL CREEK | 2.31 |
| BST-76-E | DAYCAMP BRANCH | 1.67 |
| BST-99 ELKHORN CREEK | | 8.41 |
| | | 38.68 total miles |
| James River Watershed | | |
| J-1-A | EWIN RUN | 2.64 |
| J-1-C | NORTH FORK | 5.88 |
| J-2 | SWEET SPRINGS CREEK | 6.10 |
| J-3 | COVE CREEK | 6.66 |
| | | 21.27 total miles |
| Kanawha River Watershed (Upper & Lower) | | |
| K-13 | LITTLE SIXTEENMILE CREEK | 4.45 |
| K-14-B-1 | UNT OF FIVEFORK BRANCH | 1.87 |
| K-39-E-3 | BAYS BRANCH | 1.89 |
| K-39-M-1 | HOFFMAN HOLLOW | 2.32 |
| K-39-O | SHREWSBURY HOLLOW | 1.54 |
| K-76 | LOOP CREEK | 19.98 |
| | | 32.06 total miles |
| Coal River Watershed | | |
| KC-10-22 | WHITE OAK BRANCH | 2.08 |
| KC-31-B | HOPKINS FORK | 8.95 |
| | | 11.03 total miles |
| Elk River Watershed | | |
| KE | ELK RIVER | 5.00 |
| KE-102-A | CAMP CREEK | 14.19 |
| KE-111-K | SUGAR CREEK | 10.51 |
| KE-111-K-2 | LITTLE SUGAR CREEK | 7.61 |
| KE-117-B | RIGHT FORK | 13.60 |
| KE-118 | BERGOO CREEK | 8.19 |
| KE-127 | BIG RUN | 2.53 |
| KE-129 | VALLEY FORK | 2.68 |

60CSRS

| | | |
|-------------|-----------------|--------------------|
| KE-133 | DRY FORK | 3.80 |
| KE-135 | BIG RUN | 1.94 |
| KE-136 | PROPS RUN | 1.38 |
| KE-137 | LAUREL RUN | 2.63 |
| KE-138 | BIG SPRING FORK | 9.67 |
| KE-138-B | CUP RUN | 2.02 |
| KE-139-5A | SLATY FORK | 4.79 |
| KE-139-B | CROOKED FORK | 2.51 |
| KE-14-P | PANTHER HOLLOW | 1.55 |
| KE-50-B-10 | IKE FORK | 1.88 |
| KE-50-I | ROCKCAMP RUN | 6.66 |
| KE-76-L-5 | TUG FORK | 3.83 |
| KE-76-O | POPLAR CREEK | 6.29 |
| KE-76-U | JOHNSON BRANCH | 2.44 |
| KE-98-B-16 | DESERT FORK | 4.97 |
| KE-98-C | LEFT FORK | 5.73 |
| KE-98-C-1 | LAURELPATCH RUN | 1.51 |
| KE-98-C-11 | LAUREL FORK | 5.59 |
| KE-98-C-14 | FALL RUN | 6.06 |
| KE-98-C-15 | BIG RUN | 3.79 |
| KE-98-C-1-A | LONG FORK | 2.56 |
| | | 145.90 total miles |

Gauley River Watershed

| | | |
|-------------|---------------------|-------|
| KG | GAULEY RIVER | 26.56 |
| KG-19-A | DOGWOOD CREEK | 5.08 |
| KG-19-G | ANGLINS CREEK | 12.77 |
| KG-19-J | BRACKENS CREEK | 6.55 |
| KG-19-U-1 | BROWN CREEK | 3.19 |
| KG-19-U-2-C | OLD FIELD BRANCH | 2.88 |
| KG-19-U-2-D | JOB KNOB BRANCH | 3.85 |
| KG-19-V-5 | LAUREL CREEK | 3.61 |
| KG-19-V-7 | KUHN BRANCH | 1.91 |
| KG-20 | COLLISON CREEK | 4.98 |
| KG-24 | HOMINY CREEK | 23.40 |
| KG-24-E | GRASSY CREEK | 5.68 |
| KG-24-E-2 | BRUSHY MEADOW CREEK | 5.23 |
| KG-24-J | PRICE FORK | 2.83 |
| KG-26-K | BRUSHY FORK | 5.53 |
| KG-32-J | CRANES NEST RUN | 2.26 |
| KG-34-B | COAL SIDING RUN | 1.50 |
| KG-34-E | LAUREL CREEK | 9.18 |
| KG-34-E-11 | MIDDLE BRANCH | 3.34 |
| KG-34-E-13 | COLD SPRING BRANCH | 1.71 |
| KG-34-E-3 | SPRING RUN | 1.52 |
| KG-34-E-8 | BEECH RUN | 3.08 |
| KG-34-E-9 | HOGCAMP RUN | 2.55 |
| KG-34-F | LITTLE LAUREL CREEK | 9.87 |
| KG-34-F-2 | IMPROVEMENT BRANCH | 1.86 |
| KG-34-G | SOUTH FORK | 7.21 |

60CSR5

| | | |
|------------|--------------------------|-------|
| KG-34-G-10 | COLD KNOB FORK | 5.60 |
| KG-34-G-13 | BIG RUN | 1.44 |
| KG-34-G-5 | ELCLICK RUN | 2.10 |
| KG-34-G-6 | ROCKY RUN | 3.54 |
| KG-34-G-8 | BECKY RUN | 2.56 |
| KG-34-H | NORTH FORK | 16.37 |
| KG-34-H-14 | BEAR RUN | 2.21 |
| KG-34-H-4 | HUNTERS RUN | 3.09 |
| KG-34-H-5 | COATS RUN | 1.08 |
| KG-34-H-9 | ARMSTRONG RUN | 1.24 |
| KG-45 BIG | LAUREL CREEK | 6.56 |
| KG-57 | MILLER MILL RUN | 4.37 |
| KG-58 | LAUREL CREEK | 2.07 |
| KG-59 | BIG RUN | 1.32 |
| KG-5-F-3 | BEARPEN FORK | 1.27 |
| KG-5-H | ASH FORK | 3.09 |
| KG-5-J | NEIL BRANCH | 2.65 |
| KG-6 | RICH CREEK | 6.74 |
| KG-60 | TURKEY CREEK | 4.86 |
| KG-61 | HUGHES RUN | 2.79 |
| KG-65 | WILLIAMS CAMP RUN | 1.66 |
| KG-67 | STRAIGHT CREEK | 1.83 |
| KG-70 | BIG RUN | 3.22 |
| KG-72 | MIDDLE FORK | 1.96 |
| KG-73 | NORTH FORK | 3.29 |
| KGC | CRANBERRY RIVER | 38.39 |
| KGC-14 | LICK BRANCH | 1.22 |
| KGC-15 | HANGING ROCK BRANCH | 1.24 |
| KGC-19 | DOGWAY FORK | 8.75 |
| KGC-21 | BIRCHLONG RUN | 2.18 |
| KGC-23-E | CHARLES CREEK | 2.59 |
| KGC-24-C | LEFT FORK | 1.52 |
| KGC-3 | JAKEMAN RUN | 2.06 |
| KGC-4 | BARRENSHE RUN | 4.59 |
| KGC-7 | BEE RUN | 1.57 |
| KGC-8 | FOXTREE RUN | 1.56 |
| KGC-9 | ALDRICH BRANCH | 1.25 |
| KGW | WILLIAMS RIVER | 34.70 |
| KGW-1 | CRAIG RUN | 2.00 |
| KGW-19 | UPPER BANNOCK SHOALS RUN | 1.83 |
| KGW-2 | JONATHAN RUN | 1.38 |
| KGW-20 | TEA CREEK | 5.96 |
| KGW-20-A | LICK CREEK | 1.82 |
| KGW-21 | SUGAR CREEK | 3.63 |
| KGW-22 | LITTLE LAUREL CREEK | 2.47 |
| KGW-25 | DAY RUN | 3.08 |
| KGW-26 | BLACK MOUNTAIN RUN | 1.65 |
| KGW-27 | MOUNTAIN LICK RUN | 2.11 |
| KGW-3 | SAWYER RUN | 1.33 |
| KGW-4 | SPICE RUN | 1.81 |

60CSRS

| | | |
|-------|----------------|--------------------|
| KGW-8 | WHITE OAK FORK | 2.14 |
| KGW-9 | LICK BRANCH | 1.43 |
| | | 379.30 total miles |

New River Watershed (Upper & Lower)

| | | |
|----------|------------------------|--------------------|
| KN-17 | MANN'S CREEK | 3.37 |
| KN-18 | EPHRAIM CREEK | 4.22 |
| KN-23 | BUFFALO CREEK | 2.41 |
| KN-24 | SLATER CREEK | 5.08 |
| KN-26 | PINEY CREEK | 16.91 |
| KN-26-B | FAT CREEK | 6.56 |
| KN-27 | LAUREL CREEK | 12.37 |
| KN-27-C | CHESTNUT KNOB FORK | 3.54 |
| KN-29 | GLADE CREEK | 5.76 |
| KN-29-E | PINCH CREEK | 5.71 |
| KN-32 | MEADOW CREEK | 2.59 |
| KN-37 | FALL BRANCH | 1.93 |
| KN-51-O | TURKEY CREEK | 9.19 |
| KN-61 | RICH CREEK | 2.85 |
| KNB-12-B | LAUREL CREEK | 4.86 |
| KNB-13 | CAMP CREEK | 9.29 |
| KNB-13-D | MASH FORK | 2.91 |
| KNB-13-G | SENG BRANCH | 1.48 |
| KNB-3 | LITTLE BLUESTONE RIVER | 4.73 |
| KNB-30 | CRANE CREEK | 5.40 |
| | | 111.16 total miles |

Greenbrier River Watershed

| | | |
|------------|------------------|-------|
| KNG | GREENBRIER RIVER | 25.30 |
| KNG(S)-1 | MILLIGAN CREEK | 5.71 |
| KNG(S)-2-B | FLYNN CREEK | 4.27 |
| KNG(S)-3-A | BURNS RUN | 4.08 |
| KNG-23 | SECOND CREEK | 6.06 |
| KNG-28 | ANTHONY CREEK | 15.70 |
| KNG-28-D | LITTLE CREEK | 8.08 |
| KNG-28-P-1 | LAUREL RUN | 4.20 |
| KNG-28-Q-2 | TWOMILE RUN | 1.55 |
| KNG-47 | BEAVER CREEK | 8.18 |
| KNG-49 | SWAGO CREEK | 3.77 |
| KNG-53-G | BARCLAY RUN | 1.71 |
| KNG-53-H | DOUTHAT CREEK | 9.02 |
| KNG-60 | LAUREL RUN | 3.00 |
| KNG-66-D | SHOCK RUN | 4.46 |
| KNG-66-H-2 | LEFT PRONG | 3.29 |
| KNG-68 | DEER CREEK | 8.75 |
| KNG-68-A | NORTH FORK | 10.73 |
| KNG-68-A-3 | SUTTON RUN | 1.60 |
| KNG-68-A-4 | TACKER FORK | 2.46 |
| KNG-68-A-5 | BLACK RUN | 2.43 |
| KNG-68-A-6 | ELLEBER RUN | 3.08 |

60CSR5

| | | |
|--------------|-----------------|--------------------|
| KNG-68-A-6-A | GRIFFIN RUN | 1.69 |
| KNG-70 | LEATHERBARK RUN | 4.69 |
| KNG-74 | TROUT RUN | 1.14 |
| KNG-75 | ALLEGHENY RUN | 5.33 |
| KNG-77 | ELK CREEK | 2.56 |
| KNG-78 | EAST FORK | 19.87 |
| KNG-78-A | JOHNS RUN | 2.21 |
| KNG-78-C | LITTLE RIVER | 6.28 |
| KNG-78-G | FIVEMILE HOLLOW | 2.29 |
| KNG-78-H | POCA RUN | 2.73 |
| KNG-78-H-1 | LONG RUN | 2.85 |
| KNG-78-K | MULLENAX RUN | 2.92 |
| KNG-78-L | ABES RUN | 2.65 |
| KNG-79 | WEST FORK | 17.68 |
| KNG-79-B | FILL RUN | 1.91 |
| KNG-79-C | LITTLE RIVER | 7.59 |
| KNG-79-C-1 | SPAN OAK RUN | 2.32 |
| KNG-79-C-2 | CLUBHOUSE RUN | 11.02 |
| KNG-79-C-3 | HINKLE RUN | 10.41 |
| | | 245.59 total miles |

Little Kanawha River Watershed

| | | |
|-----------|----------------|-------------------|
| LK-111 | LAUREL RUN | 6.04 |
| LK-131 | GETOUT RUN | 3.01 |
| LK-86-E-4 | PINE RUN | 1.57 |
| LK-95-L | CARPENTER FORK | 5.04 |
| | | 15.66 total miles |

Cheat River Watershed

| | | |
|-----------|---------------------|------|
| MC-12-A | LAUREL RUN | 6.13 |
| MC-12-B-3 | HOG RUN | 4.42 |
| MC-12-B-6 | MILL RUN | 3.95 |
| MC-18 | ROARING CREEK | 8.03 |
| MC-1-A | RYAN HOLLOW | 2.33 |
| MC-20 | ELSEY RUN | 3.40 |
| MC-2-A | DARNELL RUN | 2.08 |
| MC-33-A | FLAG RUN | 5.51 |
| MC-36 | WOLF CREEK | 6.90 |
| MC-41 | LONG RUN | 1.22 |
| MC-45 | TOBES RUN | 1.16 |
| MC-46-B | RIGHT FORK | 3.80 |
| MC-47 | JOHNATHAN RUN | 1.86 |
| MC-50 | UPPER JOHNATHAN RUN | 2.53 |
| MC-51 | CLOVER RUN | 1.34 |
| MC-51- | LEFT FORK | 9.16 |
| MC-51-A | RIGHT FORK | 5.45 |
| MC-51-B | INDIAN FORK | 4.16 |
| MC-52 | MINEAR RUN | 6.63 |
| MC-52-0.7 | BRIDGE RUN | 1.12 |
| MC-52-A | ROARING RUN | 2.12 |

60CSR5

| | | |
|--------------|------------------------|-------|
| MC-53 | DRY RUN | 2.73 |
| MC-54 | HORSESHOE RUN | 15.55 |
| MC-54-A | MIKE RUN | 3.86 |
| MC-54-C | MAXWELL RUN | 2.92 |
| MC-54-D | HYLE RUN | 3.92 |
| MC-54-E | LICK DRAIN | 1.79 |
| MC-54-F | LAUREL RUN | 2.87 |
| MC-54-G | LYNN RUN | 1.33 |
| MC-54-H | THUNDERSTRUCK RUN | 3.89 |
| MC-54-I | LEADMINE RUN | 4.81 |
| MC-54-I-1 | LIME HOLLOW RUN | 1.14 |
| MC-54-J | WOLF RUN | 1.80 |
| MC-54-K | TWELVEMILE RUN | 2.25 |
| MC-55 | DRY RUN | 3.19 |
| MC-56 | MILL RUN | 4.77 |
| MC-57 | WOLF RUN | 1.90 |
| MC-60 | DRY FORK | 3.76 |
| MC-60-A | ROARING RUN | 0.77 |
| MC-60-C | ELKLICK RUN | 4.52 |
| MC-60-C-3 | JOHN B. HOLLOW | 1.12 |
| MC-60-D-10 | SAND RUN | 3.19 |
| MC-60-D-11 | YOAKUM RUN | 2.48 |
| MC-60-D- | LOWER BLACKWATER RIVER | 2.62 |
| MC-60-G | RED RUN | 5.56 |
| MC-60-I | MILL RUN | 2.92 |
| MC-60-J | ELKLICK RUN | 2.59 |
| MC-60-K | GLADY FORK | 31.31 |
| MC-60-K-1 | THREE SPRING RUN | 1.25 |
| MC-60-K-11 | MCCRAY CREEK | 2.41 |
| MC-60-K-15 | DANIELS CREEK | 3.18 |
| MC-60-K-16 | WEST FORK GLADY FORK | 6.13 |
| MC-60-K-16 | WEST FORK GLADY FORK | 4.27 |
| MC-60-K-17 | EAST FORK GLADY FORK | 7.28 |
| MC-60-K-17-A | LOUK RUN | 1.19 |
| MC-60-K-2 | PANTHER CAMP RUN | 1.73 |
| MC-60-K-2-A | HOG RUN | 1.17 |
| MC-60-K-4 | FIVE LICK CREEK | 1.71 |
| MC-60-K-5 | WOODFORD RUN | 1.14 |
| MC-60-K-6 | BAKER CAMP RUN | 1.19 |
| MC-60-L | BIG RUN | 3.69 |
| MC-60-N | LAUREL FORK | 21.52 |
| MC-60-N-4 | BEAVERDAM RUN | 2.12 |
| MC-60-N-8 | FIVE LICK RUN | 2.45 |
| MC-60-O | RED CREEK | 6.77 |
| MC-60-O-1 | BIG RUN | 3.47 |
| MC-60-O-2 | FLATROCK RUN | 2.89 |
| MC-60-O-3 | GANDY RUN | 2.26 |
| MC-60-P | SPRUCE RUN | 3.25 |
| MC-60-Q | HORSECAMP RUN | 4.59 |
| MC-60-R | TORY CAMP RUN | 2.43 |

60CSR5

| | | |
|------------|----------------------|--------------------|
| MC-60-T | GANDY CREEK | 15.68 |
| MC-60-T-1 | LOWER TWO SPRING RUN | 2.29 |
| MC-60-T-10 | NARROW RIDGE RUN | 2.16 |
| MC-60-T-11 | WARNER RUN | 2.21 |
| MC-60-T-2 | UPPER TWO SPRING RUN | 2.53 |
| MC-60-T-3 | SWALLOW ROCK RUN | 1.82 |
| MC-60-T-6 | TAYLOR RUN | 0.87 |
| MC-60-T-8 | BIG RUN | 3.75 |
| MC-60-T-9 | GRANTS BRANCH | 2.80 |
| MCS | SHAVERS FORK | 7.26 |
| MCS-12 | LITTLE LAUREL RUN | 1.31 |
| MCS-13 | LITTLE BLACK RUN | 4.74 |
| MCS-14 | CLIFTON RUN | 2.11 |
| MCS-15 | RATTLESNAKE RUN | 5.03 |
| MCS-16 | JOHNS RUN | 2.70 |
| MCS-2 | HAWK RUN | 1.09 |
| MCS-22 | TAYLOR RUN | 2.97 |
| MCS-22-A | STALNAKER RUN | 1.61 |
| MCS-28 | UPPER POND LICK | 6.29 |
| MCS-3 | HADDIT RUN | 2.68 |
| MCS-33 | FISHING HAWK CREEK | 3.60 |
| MCS-3-A | SOUTH BRANCH | 3.56 |
| MCS-4 | JOBS RUN | 1.72 |
| MCS-40 | YOKUM RUN | 2.56 |
| MCS-43 | GLADE RUN | 2.67 |
| MCS-46 | RED RUN | 2.75 |
| MCS-47 | BLISTER RUN | 1.95 |
| MCS-48 | FISH HATCHERY RUN | 2.66 |
| MCS-49 | LAMBERT RUN | 3.23 |
| MCS-5 | LAUREL RUN | 3.48 |
| MCS-50 | FIRST FORK | 5.42 |
| MCS-54 | BEAVER CREEK | 1.74 |
| MCS-55 | SECOND FORK | 4.15 |
| MCS-57 | BLACK RUN | 2.28 |
| MCS-6 | PLEASANT RUN | 3.52 |
| MCS-6-B | AARONS RUN | 2.35 |
| MCS-7 | STONELICK RUN | 1.68 |
| MCS-8 | LAUREL RUN | 1.18 |
| MCS-9 | NAIL RUN | 1.74 |
| | | 415.11 total miles |

Tygart River Watershed

| | | |
|-------------|---------------------------|------|
| MT-18-E-5-B | FROG RUN | 2.36 |
| MT-23-F | MILL RUN | 4.03 |
| MT-23-H | MILL RUN | 3.72 |
| MT-38 | ZEBS CREEK | 4.04 |
| MT-44 | MATHEUS RUN | 1.66 |
| MT-45-C | RIGHT FORK | 3.24 |
| MT-47 | BEAVER CREEK | 6.20 |
| MT-50-A | RIGHT FORK OF FILES CREEK | 8.33 |

60CSR5

| | | |
|-----------|------------------------------|-------|
| MT-50-A-1 | LIMEKILN RUN | 2.12 |
| MT-50-B | LEFT FORK FILES CREEK | 2.84 |
| MT-61 | SHAVERS RUN | 6.95 |
| MT-64 | MILL CREEK | 10.69 |
| MT-64-C | GLADE RUN | 1.59 |
| MT-64-E | MEATBOX RUN | 1.19 |
| MT-64-F | POTATOHOLE FORK | 1.84 |
| MT-66 | RIFFLE CREEK | 1.91 |
| MT-66-B | MCGEE RUN | 3.40 |
| MT-66-C | BACK FORK | 2.01 |
| MT-67 | RAFE RUN | 1.54 |
| MT-68 | BECKY CREEK | 9.41 |
| MT-68-A | BIG BRANCH | 2.25 |
| MT-72 | HAMILTON RUN | 2.49 |
| MT-73 | CLAY RUN | 2.61 |
| MT-74 | ELKWATER FORK | 5.20 |
| MT-74-A | MOWRY RUN | 2.34 |
| MT-74-B | LIMEKILN RUN | 1.93 |
| MT-75 | STEWART RUN | 8.08 |
| MT-77 | CONLEY RUN | 7.10 |
| MT-78 | RALSTON RUN | 6.99 |
| MT-79 | WINDY RUN | 4.60 |
| MT-80 | LOGAN RUN | 2.49 |
| MT-81 | BIG RUN | 5.14 |
| MTB-25-A | RIGHT FORK | 3.88 |
| MTB-27 | PANTHER FORK | 4.08 |
| MTB-28 | BIG RUN | 3.03 |
| MTB-31 | RIGHT FORK | 2.24 |
| MTB-31-B | REGER RUN | 1.13 |
| MTB-31-C | ALEC RUN | 1.93 |
| MTB-31-D | MILLSITE RUN | 3.76 |
| MTB-32 | LEFT FORK | 6.85 |
| MTB-32-D | BEARCAMP RUN | 5.00 |
| MTB-32-H | BEECH RUN | 4.62 |
| MTM | MIDDLE FORK RIVER | 7.32 |
| MTM-1 | HANGING RUN | 4.68 |
| MTM-11 | RIGHT FORK MIDDLE FORK RIVER | 7.42 |
| MTM-11-D | JACKSON FORK | 3.88 |
| MTM-11-E | JENKS FORK | 3.70 |
| MTM-13 | LONG RUN | 7.66 |
| MTM-16 | CASSITY FORK | 4.25 |
| MTM-16-A | PANTHER RUN | 4.43 |
| MTM-21 | PLEASANT RUN | 1.82 |
| MTM-22 | LAUREL RUN | 2.57 |
| MTM-23 | LAUREL BRANCH | 4.00 |
| MTM-24 | SUGAR RUN | 2.30 |
| MTM-25 | SCHOOLCRAFT RUN | 3.08 |
| MTM-25-A | BIRCH FORK | 1.48 |
| MTM-26 | BIRCH FORK | 3.56 |
| MTM-27 | MITCHELL LICK FORK | 2.52 |

231.49 total miles

Upper Ohio North

O-102-A WHITEOAK RUN 0.48

Twelvepole Creek Watershed

O-2-H-2-A STOWERS BRANCH 0.46

O-2-P-23 ARKANSAS BRANCH 0.75

O-2-P-25 SWEETWATER BRANCH 2.00

O-2-P-26 LONG BRANCH 2.59

O-2-P-27 SPRUCE FORK 1.84

O-2-Q-14 RICH CREEK 1.32

O-2-Q-16 BLUELICK BRANCH 2.28

O-2-Q-18-A LITTLE LAUREL CREEK 2.09

13.33 total miles

Upper Ohio South

O-77-B LONG RUN 4.51

Guyandotte River Watershed

OG-102 BRICKLE BRANCH 1.64

OG-29-C HORSESHOE BRANCH 1.98

OG-32-F PLUM BRANCH 2.35

OG-34-E STEER FORK 1.64

OG-37 LITTLE UGLY CREEK 1.42

OG-38 BIG UGLY CREEK 8.49

OG-38-A PIGEONROOST CREEK 3.62

OG-38-D LAUREL CREEK 2.60

OG-61 BUFFALO CREEK 3.01

OG-96-A STURGEON BRANCH 1.57

OGM-8-B LEFT FORK 2.75

31.06 total miles

Potomac Direct Drains Watershed

P-16 ROCKWELL RUN 10.39

P-9-G-1 NORTH FORK INDIAN RUN 1.49

P-9-G-2 SOUTH FORK INDIAN RUN 3.76

15.63 total miles

Cacapon River Watershed

PC-0.9 CONOR HOLLOW 7.73

PC-1 CONSTANT RUN 5.23

PC-10 EDWARDS RUN 7.00

PC-17 HAWK RUN 4.62

PC-23 TROUT RUN 16.62

PC-24-H LOWER COVE RUN 4.63

45.83 total miles

North Branch / Potomac River Watershed

PNB-14 HOWELL RUN 3.83

PNB-15 DEEP RUN 4.75

| | | |
|---|-------------------------|-------------------|
| PNB-15-A | CRANBERRY RUN | 2.66 |
| PNB-16-B | WYCKOFF RUN | 2.43 |
| PNB-18 | DIFFICULT CREEK | 5.17 |
| PNB-18-B-1 | JOHNNYCAKE RUN | 3.28 |
| | | 22.11 total miles |
| South Branch / Potomac River Watershed | | |
| PSB-13 | MILL RUN | 8.95 |
| PSB-21-F | DUMPLING RUN | 2.60 |
| PSB-21-K | ROUGH RUN | 6.92 |
| PSB-25-C-2 | SPRING RUN | 2.98 |
| PSB-28-A-1 | BIG RUN | 2.61 |
| PSB-28-A-2 | LAUREL RUN | 3.17 |
| PSB-28-B | SAMUEL RUN | 2.85 |
| PSB-28-C | BROAD RUN | 2.39 |
| PSB-28-D | MOYER FORK | 7.92 |
| PSB-28-E | HIGH RIDGE RUN | 2.28 |
| PSB-28-EE | BIG RUN | 12.84 |
| PSB-28-EE-2 | SAWMILL BRANCH | 3.22 |
| PSB-28-EE-2-A | BACK RUN | 3.39 |
| PSB-28-EE-3 | TEETER CAMP RUN | 3.71 |
| PSB-28-EE-3-A | HEMLOCK RUN | 1.91 |
| PSB-28-EE-3-B | LEONARD SPRING HOLLOW | 4.64 |
| PSB-28-EE-3-C | MIDDLE RIDGE HOLLOW | 4.81 |
| PSB-28-EE-3-D | BUD HOLLOW | 3.54 |
| PSB-28-EE-4 | ELK RUN | 3.93 |
| PSB-28-G | ZEKE RUN | 3.70 |
| PSB-28-GG-1 | VANCE RUN | 3.27 |
| PSB-28-GG-2 | SAMS RUN | 1.10 |
| PSB-28-GG-2-A | LITTLE LOW PLACE HOLLOW | 1.10 |
| PSB-28-I | POWDERMILL RUN | 2.84 |
| PSB-28-K | SENECA CREEK | 20.26 |
| PSB-28-K-1 | BRUSHY RUN | 7.79 |
| PSB-28-K-2 | ROARING CREEK | 6.13 |
| PSB-28-K-2-B | LONG RUN | 2.23 |
| PSB-28-K-3 | HORSECAMP RUN | 4.06 |
| PSB-28-K-3-B | WAMSLEY RUN | 1.52 |
| PSB-28-K-4 | STRADER RUN | 2.56 |
| PSB-28-K-5 | GULF RUN | 1.46 |
| PSB-28-K-6 | WHITES RUN | 3.86 |
| PSB-28-K-6-A | LOWER GULF RUN | 4.67 |
| PSB-28-K-6-B | UPPER GULF RUN | 2.67 |
| PSB-28-R | BLIZZARD RUN | 3.60 |
| PSB-28-S | BRIERY GAP RUN | 2.65 |
| PSB-28-T | LAUREL RUN | 2.74 |
| PSB-29 | REDMAN RUN | 3.41 |
| PSB-30 | LONG RUN | 2.88 |
| PSB-32 | BRIGGS RUN | 4.57 |
| PSB-33 | REEDS CREEK | 11.16 |
| PSB-40 | PETERS RUN | 5.08 |
| PSB-47 | THORN CREEK | 9.08 |

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| PSB-9 | MILL CREEK | 25.38 |
| | | 224.40 |
| Shenandoah River Watershed (Hardy County) | | |
| S-9-A | CAPON RUN | 2.19 |
| | Total number of streams | 444 |
| | Total Miles | 2006.80 |