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January 22, 2014

The Honorable Gerald J. Mullery
115B East Wing
P.O. Box 202119
Harrisburg, PA 17120-2119

**RE: The Endangered Species Coordination Act
HB 1576
SB 1047.**

Dear Representative Mullery:

I am writing to express my opposition to proposed legislation tentatively titled: "The Endangered Species Coordination Act," currently found in HB 1576 and SB 1047. Also, I am writing to request that you take these comments into consideration should the circumstances arise that require you to support or oppose this or similar legislation.

Unnecessary Bureaucracy.

This legislation creates unnecessary and costly barriers to the decision-making processes for classifying wild trout waters and endangered species. Rather than strengthen the existing science-based protocols, the proposed legislation diverts the process to the Regulatory Review Commission ("RRC") and to the Legislature. It codifies partisan political control over scientific, technical decisions.

This diversion into political control of decision-making for classification of wild trout waters and endangered species is harmful in three ways: first, it introduces serious delays into the decision-making process. Any proposed designation would need to complete the requirements under current law (the scientific analysis, public hearings, administrative and judicial review) prior to being forwarded to the RRC and to the General Assembly. Only then, will the

non-science based review process begin.

Second, the proposed legislation will divert agency resources, those of the Pennsylvania Fish and Boat Commission ("PFBC"), the Pennsylvania Game Commission ("PGC") and the RRC, from other matters to this new task. Scarce taxpayer dollars will be dissipated on multiple bureaucratic reviews. Even then, the Speaker of the House or President of the Senate can stop all designations of wild trout waters or endangered species by the simple expedient of refusing to appoint a quorum to the appropriate committee.

Third, the increased delay threatens the very waters and species the legislation should be protecting. Trout waters that deserve the designation "wild" are placed at risk for an extended period of time. This is particularly true because this proposal delays the protections for wild trout waters until the entire process has been completed. [HB1576, §5(c).] Species that are endangered may become extinct while a multi-year bureaucratic process plods to its conclusion.

Litigation Opportunities.

The proposed legislation appears to create opportunities for future litigation that will provide work for attorneys and clog our judiciary for several years. Let me point out just two examples: first, under §3 of the House bill, it is unclear if any species designated as endangered or threatened under the Pennsylvania Wild Resource Conservation Act, our current law, would be automatically delisted upon passage of this proposed legislation. The status of existing wild trout waters is unclear.

Second, the definition of "endangered" includes the requirements that the species be "in danger of extinction throughout all or a significant portion of its range within this Commonwealth." [HB 1576, §5 (d)(1).] And, a species can be listed as "threatened" only if it is likely to become endangered "within the foreseeable future." [HB 1576, §5(b)(2).]

"A significant portion of its range in Pennsylvania" and "within the foreseeable future" are amorphous phrases. Reasonable minds can differ on their definitions and scope. In other words, they are made for protracted and nuanced litigation, requiring judicial decisions on a case-by-case basis. Hence, years of litigation are guaranteed by these proposals.

Additional Regulatory Burdens.

This proposed legislation imposes some new, and unfunded, mandates on the PFBC and the PGC. Just two examples: first, there is the requirement, but no funding, for the creation of a centralized database. Incidentally, if the centralized

database is not created, no government agency, state or local, is permitted to consider impacts on a listed species in any government decision. [HB 1576, §6.]

Second, the PFBC and the PGC are given only thirty (30) days to clear a project for approval or provide the applicant “detailed” minimization or mitigation measures. Incidentally, here, there is no authority to deny the project. [HB 1576, §6.]

Limitations on Access and Use of Data.

Information about endangered species can be provided only to “authorized persons.” [HB 1576, §8.] An “authorized person” is one involved in commercial activities requiring a permit or someone with a “bona fide interest involved in conservation planning or resource management as determined by the Department of Conservation and Natural Resources.” [HB 1576, §2.]

The use of this information is limited to planning, resource management, compliance and mitigation. [HB 1576, §8 (d).] Any other use will be subject to a fine of not less than \$1,000 nor more than \$10,000. [HB 1576, §8(e).]

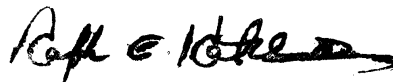
In other words, use of the data by citizens at a public meeting, using this data in a newspaper story or a television report, or for the purpose of disclosure of improper conduct by a government official, even though the information presented is accurate and truthful, will be subject to a substantial fine. And, the fine applies only to a “person.” The unspecified use of information by an “authorized person” (the commercial entity seeking a permit and industry groups) is not subject to a fine. This creates some due process and equal protection issues for this proposed legislation.

Conclusion.

As you can see, there are substantial substantive, financial, due process, equal protection and free speech problems with this proposed legislation. Consequently, I respectfully request that you oppose these, and similar, proposals.

Thank you for your courtesy in your consideration of this matter.

Very truly yours,



Ralph E. Kates, III, Esquire

REK/swb