

TESTIMONY OF ROBERT PARKS AND BRENT WALLS

CHESTER RIVER ASSOCIATION

IN SUPPORT OF SB 51

PRESENTED TO THE SENATE COMMITTEE

ON

EDUCATION, HEALTH AND ENVIRONMENTAL AFFAIRS

January 24th, 2006

Madam Chair and Honorable Senators:

Thank you for the opportunity to testify on SB51. As Executive Director of the Chester River Association, I represent one thousand members of my organization in Kent and Queen Anne's County. The Chester River Association is a member of the Waterkeeper Alliance which includes ten other Maryland Waterkeepers on tributaries of the Chesapeake Bay. Mr. Brent Walls, who will be speaking to you shortly, will testify as to the scientific impact of the landfill on Unicorn Lake. I urge you to support this bill, because it is based in good science and good public policy.

SB51 is a great chance to protect a unique natural resource. At a time when an unprecedented effort is being made to restore the Chesapeake Bay, it is more critical than ever to protect the headwater streams and wetlands that feed the Bay. That is exactly what SB51 does: it protects the headwaters of the Chester River, one of the major Maryland tributaries to the Bay.

The location of the rubble landfill, close to the headwaters of the Chester River, means there is a great chance of leaching hazardous materials into the headwaters of the Chester River. Just the trucks alone, carrying these materials to the rubble fill, present a chance of spilling the waste on the roads and carrying the material into the lake by stormwater.

This may seem to be a local issue, but the Chester River is a major tributary of the Chesapeake Bay. This Committee and this Legislature is working hard to clean up the Chesapeake Bay. Unicorn Lake is part of this process.

The Chester River Association and the other Chesapeake Bay Waterkeepers are struggling with pollution caused by “existing conditions” everyone is familiar with: sewage treatment plants, septic systems, stormwater and farm runoff. It is not necessary to give us another condition to struggle with; a rubble landfill leaching into the Chester River. You have the ability to prevent this from happening and help us with our efforts to save the Chester River and the Chesapeake Bay.

Additionally, SB51 is needed because:

- Unicorn Lake and its watershed are a unique natural resource;
- The environmental benefits of Unicorn Lake are enjoyed by citizens throughout the State of Maryland;
- Its value has been recognized by investment of public funds to provide public enjoyment;
- Its environmental value and public enjoyment are now threatened by a proposed rubblefill; and
- Existing processes are inadequate to protect it.

Unicorn Lake and its watershed are a unique natural resource

The Unicorn watershed is home to an abundance of life including rare species of bugs, fish, plants and birds:

- Unicorn Lake and its upstream tributaries are home to one of the few remaining populations of brown trout on Maryland's Eastern Shore. Trout require cold water, and they survive here because Unicorn Branch, with its abundant natural springs, provides them with a coldwater refuge on hot summer days.
- Other species of fish – including herring and perch – use the Lake and its feeder streams for spawning. MD. Department of Natural Resources has characterized the Lake as having “unprecedented” diversity and abundance of fish species.
- In addition to the cold, clear water, the Unicorn watershed provides the kinds of food and habitat that support healthy fish populations.
 - Studies by State scientists and others have shown that “river bugs” (more properly known as benthic macroinvertebrates) are of both high abundance and high quality in Unicorn; these “river bugs” are like the canaries in the coalmine, in this case telling us that the stream and its watershed are healthy.
 - Sites along Unicorn are consistently ranked in the top 5% of sites during Chester River Association's annual watershed snapshot, which looks at water chemistry and stream habitat.
- Unicorn Branch – and specifically the site of the proposed rubblefill – is home to several Wetlands of Special State Concern – areas identified by the State as supporting unique biological communities.
- Furthermore, the Lake itself supports a State endangered species – prickly hornwort (an aquatic grass) and a highly rare species – slender pondweed (also an aquatic grass).
- Bald eagles are routinely sighted over Unicorn Lake and appear to be nesting upstream.

Unicorn Lake has value to the State at large

Unicorn Lake is valued not only by residents of Kent and Queen Anne's County, but citizens from throughout Maryland come to the Lake to fish and admire its beauty. You will read testimony from fishing organizations and others of the importance of the Lake to their members.

Additionally, Unicorn Lake and its feeder streams form the headwaters of the Chester River. What happens in the headwaters – for good or bad – affects the health of the River and ultimately the Chesapeake Bay. While Unicorn Lake may seem far removed from the mainstem of the Bay, the fish that use it for spawning and feeding know the connection. If their spawning grounds are destroyed, there will be no fish to migrate down the river and out to the Bay, and all of us will be the poorer. If toxic chemicals seep into Unicorn Lake, they will make their way down the river and out to the Bay, affecting countless communities along the way.

Unicorn Lake is a public investment and a public trust resource

Unicorn Lake and some surrounding acreage was purchased by the State in 1961 in recognition of the recreational opportunities it offers. Further public investment occurred when the State installed a fish ladder to allow fish (particularly herring) to reach spawning grounds in the streams above the Lake.

In making these investments, the State made clear that there is a public interest in the Lake and its fisheries. To the extent that private decisions impact public trust resources, the state has a duty and a right to constrain private actions to avoid harm to the resource.

The proposed rubblefill is a threat to the Lake and watershed

Opponents of the SB51 will argue that the proposed rubblefill can be constructed without impact to the Lake or its fisheries. This is incorrect. The rubblefill has the potential to impact the Lake and streams both directly and indirectly:

- Direct impacts will occur from leaching of toxic chemicals from the rubblefill into the streams. While opponents will argue that no toxic chemicals will be allowed to enter the rubblefill, and that in any case the streams are protected by a liner system, the reality is that other rubblefill locations have shown evidence of toxic leaching¹ allowing chemicals such as lead, chromium and cadmium to enter waterways. These metals are highly toxic to fish and humans. Indeed, it was evidence of toxic leaching that persuaded MDE to require liners on rubblefills. Ironically, the presence of a liner makes it even harder to monitor leaching because it concentrates the leachate into a narrow plume which can easily bypass monitoring wells². Sadly, evidence of problems occurs long after the company has closed the dump and pulled out of the area, leaving citizens to pay for the cleanup.
- The rubblefill is proposed to intrude into the Wetland of Special State Concern, risking loss of habitat, rare species and the wetland's ability to filter pollutants and so protect the streams and Lake.

- Construction of the rubblefill and the continuous traffic generated by its operation may be anticipated to disturb reproductive success of the bald eagles.
- Indirect impacts will occur from the infrastructure needed to support the rubblefill. Roads will need to be widened and open areas paved to accommodate the delivery trucks. While roads and parking lots will no doubt be built according to stormwater specifications, current standards do not adequately address the fine suspended particles likely to be eroded from the soils on this site.
- The engineered ponds that manage stormwater will themselves pose a threat to the fishery. This is because stormwater ponds tend to discharge heated water – a process which will destroy the coldwater refuges used by fish on Unicorn Branch. The storm water ponds are also located adjacent to the leachate waste collection area. This can pose a serious threat during extreme weather events; for if the collection system becomes over burdened by rain water, there is a significant potential for all contaminants to pollute Unicorn Lake. Additionally, there will be residual waste on paved and compacted surfaces that will drain into the storm water management ponds. These ponds do not treat the out flowing water, and they are only good for the low rain fall events that produce minor amounts of nutrient and metal pollution. The occurrences of high volume rainfall in the Unicorn Lake area are extremely high and will produce significant hazards to the Lake.
- An additional indirect impact follows from the project proponent’s proposal to cap the landfill with impervious cover. This will prevent rainwater from infiltrating into the wetland and stream system. Such slow infiltration of rainwater provides what is called “base flow” for the streams and wetlands. This “base flow” is what enables streams and wetlands to exist – most of the time that you are looking at a stream you are looking at “base flow”. Without its base flow, Unicorn Branch and the Wetland of Special State concern are at risk of drying up.
- The cumulative effect of the adjacent Glanding Road landfill should be considered as a potential hazardous impact. The Glanding Road Landfill has been closed for over ten years now and has impacted Unicorn Lake to a small degree

through lead and copper leachate runoff. The cumulative impact of two land fills will potentially have a higher negative impact over the years to come.

Existing processes are inadequate to protect it.

Opponents of SB51 will argue that existing processes – County level land use review and issuance of a permit by Maryland Department of the Environment (MDE) - will provide adequate safeguard for the Lake and streams. Sadly, the County’s attempt to apply the “public safety and welfare” standard has been pre-empted by a judicial decision.

MDE’s review will compare the permit applications to the standards laid out in COMAR 26.04.07.14 etc., but we do not believe these standards are adequate to protect Unicorn Lake. In particular, we note that COMAR provides a less protective standard for rubblefills in Queen Anne’s County than for many other counties in the State, requiring only one foot of separation between liner and groundwater. In the sandy soils of Queen Anne’s County, this one foot separation would be easily traversed by leachate, allowing chemicals to reach drinking water wells and the Chester River. Additionally we note that there is no mention in the rubblefill regulations of the need for a stricter standard of review when a project potentially impacts high-quality waters such as Unicorn Branch, though this stricter review standard is required under the Clean Water Act and Maryland’s own anti-degradation policy.

In summary, the State’s existing investment confirms Unicorn Lake’s value as a public trust resource, one where the public interest – in this case the environmental conditions

that provide a coldwater fishery – must be protected. The proposed rubblefill has the potential to threaten this public interest. The State has a right to protect the lake and its fisheries. SB51 does exactly this.

Please support SB51 and help save Unicorn Lake.

Sincerely,

Robert W. Parks

Executive Director, Chester River Association

1 R. Klein, “An Assessment of the Potential Effects of the Days Cove Rubblefill on Aquatic Resources”

2 G. F. Lee and A. Jones-Lee, “A Groundwater Protection Strategy for Lined Landfills”