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March 8, 2019

The Honorable Michael J. Hough
403 James Senate Office Building
Annapolis, Maryland 21401-1991

Dear Senator Hough:

You have asked for advice concerning whether Frederick and Carroll Counties have to have one joint plan for the Monocacy River or whether they may each adopt different plans. It is my view that they may have different plans.

It is my understanding that the Monocacy Scenic River Citizens Advisory Board ("Advisory Board"), having updated the 1990 Monocacy Scenic River Management Plan in 2017, has come out with a Revision to the 2017 Monocacy Scenic River Management Plan 2018 ("the revised plan"). The Advisory Board voted on the revised plan on October 3, 2018 and sent it to Carroll and Frederick Counties the next day. The revised plan has been adopted by the Carroll County Council, but the Frederick County Council is opposed to it. The Frederick County Attorney has advised that Frederick County can have its own management plan and that the law does not require that the two counties adopt the same plan.¹ The Carroll County Attorney apparently disagrees.²

Natural Resources Article ("NR"), § 8-403(a) establishes the Scenic and Wild Rivers Review Board ("Review Board"), which is made up of the Secretaries of Natural Resources, Agriculture, and the Environment and the Director of Planning and a member of the Garrett County Commissioners. Among the duties of this Review Board are to "[a]ppoint, with the advice and consent of the appropriate local governing body, a local scenic and wild river advisory board for each river that is included in the Scenic and Wild Rivers Program." NR § 8-403(b)(3). The membership of the advisory boards is set out in NR § 8-403(c) and (d). They were created to review and study any inventory, study, plan, or regulation that is proposed under the Scenic and Wild Rivers Program and to make recommendations on the inventory, study, plan, or regulations. NR § 8-403(e)(1) and (2). While the language of this section can be read to apply to all inventories,

¹ A copy of this advice is available at https://www.fredericknewspost.com/news/politics-and-government/levels-of-government/council/council-county-attorney-frederick-county-can-have-its-own-monocacy-river/article_ad73afbd-51c7-5de0-8838-33a15268a038.html

² See article referenced in footnote 1.

studies, plans, or regulations regardless of when they occur, the language of NR § 8-403(g) makes clear that it applies only to the original inventories; studies, plans, or regulations from the beginning of the Scenic and Wild Rivers Program. Section 8-403(g) provides:

(1) On completion of an approved management plan, the local governing body may establish a scenic river advisory board for each designated scenic or wild river within its jurisdiction.

(2) Each board, as constituted by the local authority, may recommend policies, laws, and regulations in furtherance of the aims of this subtitle to the appropriate local governing body.

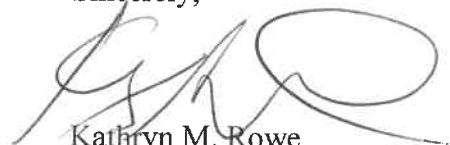
(3)(i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, if a scenic or wild river flows through more than one county, the scenic river advisory board may consist of an equal number of members from each county.

The remainder of NR § 8-403(g), as amended in the 2018 session, sets out the membership of any scenic river advisory board for a scenic or wild river that flows through Carroll County and one or more other county or that flows through Frederick County and one or more other county.

This provision makes clear that after the adoption of the original documents under the Scenic and Wild Rivers Program, the initial advisory boards were ended, and the existence and appointment of any additional advisory boards was up to the local jurisdictions. State law does not require that they be created and only placed requirements on their membership last year. Moreover, an advisory board is authorized, but not required, to make recommendations on policies, laws, and regulations and there is no requirement that any county follow the recommendations of an advisory board.

In short, the Advisory Board is strictly advisory and its recommendations are not binding on either county. As a result, the counties are free to adopt whatever policies strike them as expedient, with no requirement that those policies be the same.

Sincerely,



Kathryn M. Rowe
Assistant Attorney General