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Dear all,

The Lower Susquehanna Riverkeeper Association ("LSRA") submits these comments regarding CRW's March 31, 2024 Alternatives Analysis. Specifically, we urge that the EPA not approve the Alternatives Analysis for the reasons described below.

The 2023 Modified Partial Consent Decree requires CRW to "submit an Alternatives Evaluation that complies with the requirements of the CSO Control Policy Section II.C.4, and that is consistent with EPA's 'Guidance for Long-Term Control Plan,' EPA 832-B-95-002, September 1995." The Alternatives Evaluation "shall consist of: (1) the identification of feasible CSO control technologies, (2) a detailed evaluation of an appropriately wide range of specific CSO control alternatives and sizes of those alternatives, and (3) selection of an appropriate suite of proposed CSO controls to achieve compliance with the Clean Water Act." CD ¶ 19. EPA must approve the Alternatives Evaluation for it to become effective. Appendix C.

We urge the EPA to not approve CRW's March 2024 Alternatives Evaluation because: 1) the Alternatives Evaluation does not select an appropriate suite of proposed CSO controls to achieve compliance with the Clean Water Act, as required by the CD; 2) the Alternatives Evaluation does not include a detailed evaluation of an appropriately wide range of specific CSO control alternatives, as required by the CD; 3) the Alternatives Evaluation relies upon incomplete monitoring; and 4) the Alternatives Evaluation relies upon an incomplete financial analysis.

1. **The Alternatives Evaluation is Not Acceptable Because the Selected Alternative, the Modified MTA-6, Does Not Achieve Compliance with the Clean Water Act**

A fundamental requirement of the Alternatives Evaluation in the CD is for the "selection of an appropriate suite of proposed CSO controls to achieve compliance with the Clean Water Act." CD ¶ 19. The Alternatives Evaluation does not meet this requirement because the selected alternative, the Modified MTA-6, is too weak to achieve compliance with the Clean Water Act. While the selected alternative, the Modified MTA-6 achieves approximately 85% volume reductions to both the Susquehanna River and Paxton Creek, CSO events will still be common enough on Paxton Creek to

prevent it from achieving water quality standards, a fundamental requirement of the Clean Water Act. In addition, the Modified MTA-6's 40-year implementation timeframe is far too long to go without CWA compliance.

A. The Selected Alternative Will Still Result in Significant Pollution

The Modified MTA-6 will still result in approximately 10 CSOs to the Susquehanna and 16 CSOs to Paxton Creek annually. It must be kept in mind that a CSO event can consist of overflows from multiple outfalls and widespread pollution impacts, but counts as only one CSO event. Relative to current conditions, the Recommended Alternative results in considerable improvement, similar to the volume reduction of 85%; however, it will require up to 40 years to be fully implemented. Incremental improvement will occur over the implementation timeframe, including relatively large incremental improvements when the RTB comes online from a systemwide perspective and more localized perspective when satellite storage comes online. The improvements from GSI and Appendix B will occur more consistently over time as implemented (e.g., collection system rehabilitation).

B. Pursuing a Use Attainability Analysis (UAA) is Not Achieving CWA Compliance

Most troubling, the Modified MTA-6 is never expected to achieve compliance with Paxton Creek's water quality standards. Paxton Creek is classified for Warm Water Fishes aquatic life use and Water Contact Sports recreation use. Paxton Creek's Biochemical Oxygen Demand (BOD) water quality standard, which is needed to support the aquatic life use, is exceeded by CSOs. Paxton Creek's pathogens standard, which is needed to support the recreation use, is also exceeded by CSOs. The Alternatives Evaluation states that the selected alternative, the Modified MTA-6 "would not be sufficient to meet current water quality standards." Alternatives Evaluation at 7. Even after the 40-year implementation of the Modified MTA-6, CSO volumes to Paxton Creek will be still too high to achieve water quality standards. Based on the water quality modeling (which is incomplete), between 21 segments (at higher modeled CSO bacteria count estimates) and only 32 segments (at lower modeled CSO bacteria count estimates) will achieve compliance of the 35 total modeled segments in Paxton Creek.

Instead of selecting an alternative that will result in compliance with water quality standards, CRW proposes to achieve compliance with the Clean Water Act for Paxton Creek by pursing a Use Attainability Analysis (UAA), which would allow uses and their water quality standards to be removed. Alternatives Evaluation at 7. A promise to *pursue* a removal of Paxton Creek's two primary uses is not compliance with the Clean Water Act. Instead, the Clean Water Act is designed to achieve compliance with water quality standards and waterbodies' existing uses. 33 U.S.C. § 1312. In addition, as described below, there is no legal basis for obtaining a UAA.

C. CRW Cannot Meet the Legal Standards for a Use Attainability Analysis (UAA)

A CRW UAA would presumably remove both Paxton Creek's Warm Water Fishes aquatic life use, whose Biochemical Oxygen Demand (BOD) standard is exceeded by CSOs, and Paxton Creek's Water Contact Sports recreation use, whose pathogens standard is exceeded by CSOs. To obtain this UAA and remove these uses, CRW must demonstrate that achieving the uses is not feasible because of one of the following six factors.

1. Naturally occurring pollutant concentrations prevent the attainment of the use; or
2. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

3. Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or
4. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or
5. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or
6. Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

40 C.F.R. § 131.10(g). Given that CSOs are the cause of impairment for both the Warm Water Fishes aquatic life use and the Water Contact Sports recreation use, the only two of these six factors that could apply are that "[h]uman caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place," or that "[c]ontrols more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact." 40 C.F.R. §§ 131.10(g)(6), 131.10(g)(3).

There is no evidence that "[h]uman caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place." 40 C.F.R. § 131.10(g)(6). LSRA's previous comments and the Alternatives Evaluation itself demonstrate that the CSOs can in fact be remedied through a combination of storage projects. *See, e.g.,* LSRA Consent Decree Comments at 4 (Mar. 13, 2023).

Nor can CRW show that "[c]ontrols more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact." 40 C.F.R. § 131.10(g)(6). First, the Modified MTA-6 alternative is unlikely to even meet the controls that are required by section 301(b), meaning federal technology-based limits. 33 U.S.C. § 1311(b). For instance, any CSO will likely lead to exceedances of the technology-based BOD_5 secondary treatment standards for publicly-owned treatment works like CRW, which are required by section 301(b). *See* 40 C.F.R. § 133.102(a) (secondary treatment standards, BOD_5 30–day average shall not exceed 30 mg/l, the 7–day average shall not exceed 45 mg/l, and the 30–day average percent removal shall not be less than 85%).

Second, the raw sewage CSOs and high pathogen levels in Paxton Creek currently have widespread negative economic and social impacts. Rather than the controls having negative economic and social impacts, the controls will have positive economic and social impacts.

The Paxton Creek Watershed is situated within four municipalities in Central Pennsylvania – the City of Harrisburg, Susquehanna Township, Lower Paxton Township, and the Borough of Pennbrook. Its headwaters are on Blue Mountain and it discharges into the Susquehanna River at two locations, by means of spillway discharge from Wildwood Lake in Susquehanna Township and south of the City of Harrisburg, near Steelton. The Paxton Creek Restoration Master Plan (Master Plan) provides a comprehensive strategy to restore the natural ecological function of the creek's southern or lower reach, which extends approximately 6.2 miles (272,950 linear feet) from the Dauphin County (PA)-owned Wildwood Lake Morning Glory spillway structure in Susquehanna Township south through the City of Harrisburg to its confluence with the Susquehanna River.

Centuries of growth and development have had extensive impacts on Paxton Creek's ecological health and the Master Plan provides a feasible Natural Stream Channel Design (NSCD) approach to mitigate the creek's ecologically impaired condition. The NSCD approach will create a linear Urban Green Space (UGS) along the Paxton Creek corridor to its confluence with the Susquehanna River, offering recreational benefits, community connectivity and redevelopment opportunities, while addressing flood control, sediment control, clean water, and habitat restoration.

Some of the goals of the Master Plan include a natural stream channel with the appropriate dimension, pattern, and profile, provide adequate channel size and flood conveyance to reduce 100-year flood elevation to 314 feet, establish a riparian ecosystem that is supportive of natural biota, improve water quality by reduction of nutrients and chemical pollutants, provide balanced sediment transport, provide stormwater retention and treatment, create in-stream habitat and flow diversity, achieve bank stability and riparian buffers, create increased opportunities for passive recreation and aesthetics, and provide a multi-use pathway for bicycle and pedestrian access through the corridor.

In 2013, the PADEP determined that 20 miles (approximately 40 percent) of Paxton Creek (including all of the project study area reach limits) are considered impaired by sediment, with over 86 percent of the sediment contributed by stream erosion. To address this impairment, the USEPA published a Total Maximum Daily Loading (TMDL) Report that required all entities discharging stormwater or combined sewer overflows to Paxton Creek to collectively reduce sediment loads by 35 percent.

The Paxton Creek Interceptor Sewer largely remains intact per its original 19th century construction, and it is currently owned, maintained, and operated by Capital Region Water (CRW). The interceptor's age and alignment with the railroad and former Pennsylvania Canal create significant challenges for CRW to properly maintain the system. This Master Plan provides the opportunity to assist CRW with updating the interceptor sewer infrastructure as part of the overall flood reduction and habitat restoration strategy and permitting requirements.

The Paxton Creek Restoration Master Plan establishes a conceptual Natural Stream Channel Design (NSCD) approach to holistically improve the biological and morphological function of Paxton Creek. The NSCD approach is based on fluvial geomorphology (FGM), which is the study of a stream's interactions with the local climate, geology, topography, vegetation, and land use. The restoration project will reduce sedimentation pollution and improve water quality (temperature, Dissolved Oxygen (DO) and pH).

The NSCD approach will improve water quality to support a more diverse macroinvertebrate community and greatly improve the quality of life for habitat and residents. The NSCD approach consists of establishing a multi-stage channel, creating a pool-riffle sequence, establishing a natural sinuosity, implementing in-stream structures, and creating habitat for wildlife.

Paxton Creek is envisioned as a UGS corridor that will include recreational benefits, community connectivity, and redevelopment opportunities with improved ecological function. More specifically, the Paxton Creek UGS will act as a linear north-south corridor combining both a naturalized stream channel and a multi-use pathway for wildlife and human movement and add ecological value creating feeding, breeding, nesting, and resting areas between Wildwood Lake and the Susquehanna River.

On May 21, 2024, at a press conference in Harrisburg, Senator Bob Casey announced a federal funding earmark of $1.25 million to jump-start the replacement of the 120-year-old interceptor along Paxton

Creek as well as the restoration of the waterway's natural flow. Given the efforts around restoration of Paxton Creek, pursuing a UAA would be in direct contradiction with federal and state agency level commitments to restoring the recreational and aquatic life uses of Paxton Creek. Today, Paxton Creek sits on the brink of watershed recovery and enhancement.

Cleaning up Paxton Creek also will have environmental justice benefits. As many as one half to three quarters of local stakeholders are neither aware of, nor appreciative of the creek's many functions and benefits. Fragmented riparian forests and sparse creek-based recreation are also opportunities to build greenways with educational programs, and miniparks that have economic spinoffs. The wide array of problems and opportunities that exist in Paxton Creek watershed are diverse and extensive but restoring the watershed is still a priority for the community, local environmental NGOs, and elected officials.

D. The Modified MTA-6's 40-Year Implementation Schedule is Too Long and Fails to Consider Changes Over the Time Period

As a fundamental matter, waiting an additional 40 years for compliance with basic water quality standards is too long. It means forty more years of not being able to safely recreate in the Susquehanna, and forty more years where aquatic life will be compromised.

In addition, during a 40-year implementation period, the combined sewer system (CSS) and its flow characteristics are dynamic and will change. Even with Appendix B Project 7 (Collection System Renewal) and improved operations and maintenance/asset management by CRW in general, the CSS will continue to deteriorate and permit groundwater intrusion that offsets reductions from rehabilitation and can actually overwhelm them, resulting in continued increased groundwater intrusion rates over time. Similarly, portions of the collection system that are separate sanitary sewer systems ("SSS") and the SSS satellite systems will experience similar flow dynamics over time from inflow and infiltration ("I&I").

Additionally, domestic sewage flows have the potential to increase as the number of connections increase and/or population grows. The net result is the potential, and likelihood based on age of the CSS and SSS and proposed static funding amount of $5 million annually for Project 7, for increased CSS flows over the 40-year implementation period that need to be collected, conveyed, potentially stored during rainfall events, and ultimately treated at the AWTF or proposed RTB.

2. The Alternatives Evaluation Does Not Include A Detailed Evaluation Of An Appropriately Wide Range Of Specific CSO Control Alternatives

The CD requires that the Alternatives Evaluation include a detailed evaluation of an appropriately wide range of specific CSO control alternatives. This was not done. First, the Alternatives Evaluation lacks an analysis of at least one key alternative. Second, the comparison of alternatives is not accurate.

A. The Alternatives Evaluation Lacks an Analysis of at Least One Key Alternative

All of the current alternatives include a significant quantity of green infrastructure (GSI). While some GSI projects are required by Appendix B, most alternatives, in fact, spend more on GSI than the wet weather infrastructure. *See, e.g.*, Alternatives Evaluation at 3. In order to provide an appropriately wide range of specific CSO control alternatives, the Alternatives Evaluation should have considered an alternative with only the Appendix B GSI projects, more tanks, and larger storage basins.

GSI performs best in low intensity, short duration storms in reducing overall runoff volume and peak flows when stormwater runoff from impervious surfaces can be directed to it. GSI is less effective in reducing overall runoff volume and peak flows during low intensity, long duration storms. GSI performs least effectively in reducing volume and peak flows during high intensity storms, whether short or long in duration. GSI is especially ineffective at CSO and urban flood control in areas with a high degree of imperviousness and limited available land for implementation.[1] GSI works well at preventing CSOs from low intensity, short duration rainfall events, which are the most common rainfall events that occur on an annual basis. As a result, GSI implemented for CSO control that disconnects adequate impervious area from the CSS is effective at reducing the number of total CSO events by reducing small volume CSOs resulting from the most common rainfall events. [2] GSI is less effective in reducing overall CSO volumes, since longer duration storms of either low or high intensity and short duration, high intensity rainfall events produce greater stormwater volumes and peak flows which can enter the CSS. CSOs resulting from long duration and/or high intensity rainfall events have greater overall impacts on surface receiving waters, due to the greater overall volume and longer time period that they occur for. High intensity storms with high peak stormwater flows that result in relatively rapid increases in CSS peak flow are the main causes of urban flooding events and the largest CSO events by volume. The resulting stormwater runoff reduction by GSI to collection systems is lower relative to grey infrastructure CSO control strategies, such as sewer separation, which collects the entire stormwater volume in a drainage area regardless of rainfall intensity for discharge to receiving surface waters, or storage facilities, which can be sized to store millions of gallons of combined sewage.

During the process of refining MTA-6 and developing the Selected Alternative, CRW acknowledged some of the shortcomings of GSI, including notably its lower cost-effectiveness for CSO control relative to traditional CSO control infrastructure (e.g., satellite storage facilities). *See, e.g.,* Alternatives Evaluation at 101 ("While GSI is not the most cost-effective technology from a frequency reduction perspective…"). In addition, other combined sewer systems in the United States have identified during their analysis for CSO control alternatives that GSI is less cost efficient at reducing CSO events and volumes and is only effective at reducing relatively low volume CSO events in relatively low to medium intensity rainfall events.[3] LSRA specifically recommends that in place of GSI, additional or expanded satellite storage facilities are examined as part of the Modified MTA-6 Selected Alternative, which currently includes 200 acres of total GSI. As identified in the Alternatives Evaluation, satellite storage facilities are more cost effective at reducing CSO event occurrence and are just as effective in CSO volume reduction as GSI. MTA-4B was the second alternative selected and was directly compared against the MTA-6, which was refined into the Modified MTA-6 Selected Alternative. The CSO control infrastructure in MTA-4B consisted only of one sewer separation project and maximized satellite storage. The Modified MTA-6 Selected Alternative includes relatively small storage tanks of 20,000 gallons, 30,000 gallons, and 40,000 gallons with corresponding present values costs of $8 million, $11 million, and $10 million. In order to

[1] Tao, Jinsong, *et. al, Quantitative Analysis of impact of green stormwater infrastructures on combined sewer overflow and urban flooding control*, Frontiers of Environmental Science & Engineering, Volume 11, Issue 4, pages 1 -12, August 2017 ("Tao").

[2] New Jersey Department of Environmental Protection, *Division of Water Quality, Evaluating Green Infrastructure: A Combined Sewer Overflow Control Alternative for Long Term Control Plans* (Jan. 2018); LTCP, page 1-15; Tao at 1-12.

[3] San Francisco Public Utilities Commission, *San Francisco Wastewater Long Term Control Plan Synthesis* (Mar. 30, 2018); Sewer System Improvement Program, Program Management Consultant, San Francisco Public Utilities Commission, *Bayside Sensitive Areas Report* (Mar. 30, 2018).

conduct a detailed evaluation of an appropriately wide range of specific CSO control alternatives, CRW should have included an alternative with larger tanks, maximized satellite storage, and less GSI.

B. The Comparison of Alternatives is Not Accurate

CRW evaluated the full MTA-6 against other alternatives, but then modified MTA-6 significantly, reducing storage capacity by more than 50%. Alternatives Evaluation at 207. CRW never went back and compared the Modified MTA-6 against the other alternatives.

This failure to compare the modified MTA-6 against the other alternatives failed to allow "a reasonable reviewer a fair opportunity to choose between the alternatives." *Cf. Rankin v. Coleman,* 1975, 394 F.Supp. 647, *modified* 401 F.Supp. 664 (E.D. N. Carolina 1975) (discussing NEPA alternatives). This inaccuracy means that the Alternatives Evaluation did not contain an *accurate* detailed evaluation of an appropriately wide range of specific CSO control alternatives and sizes of those alternatives, which is not what the CD intended.

3. The Alternatives Evaluation Relies Upon Incomplete Monitoring For Paxton Creek

The CRW has not completed many aspects of the water quality monitoring needed to correctly characterize water quality in Paxton Creek. Additional data collection and calibration is still required, most importantly for Paxton Creek. As detailed in Table 5.2-1 and on page 107 of the AA, thirteen rainfall events were planned for monitoring; however, only three events were monitored and two of the three resulted in limited data. CRW did not monitor several rainfall events due to numerous safety concerns, including six rainfall events were not monitoring due to happening "after dark" and two that were prohibited by fog.

This undermines the accuracy of the water quality model for Paxton Creek, which estimated *E. Coli* levels with only an 81% frequency within acceptable accuracy boundaries due to limited data and inability to properly calibrate it. Comparatively, the Susquehanna water quality model was based on a considerably greater amount of data and had a 92% frequency within acceptable accuracy boundaries.

CRW needs to logistically determine how to safely monitor rainfall events during less than ideal conditions in order to ensure it is able to collect adequate data to complete the instream water quality monitoring necessary to properly and accurately develop, calibrate, and validate its water quality models. Proper development of accurate models is essential for the efficacy of the CSO Control Policy/CWA compliance through the Demonstrative Approach and proper CSO Control alternative development, evaluation, and comparison. Without this, CRW was unable to accurately evaluate specific CSO control alternatives and their effectiveness.

4. The Alternatives Evaluation Relies Upon an Incomplete Financial Analysis

The Alternatives Evaluation also relies upon a flawed CRW Financial Analysis.

First, the focus of the Financial Analysis should be on the incremental impact from future projects that are actually at issue here, not the total costs of the CRW system, including deferred maintenance and the biogas facility. The financial analysis should take out the projects that were completed.

Second, the impacts the Financial Analysis describes upon below-median economic populations can be ameliorated by various types of cross-subsidies among users, so that ultimately the best measure is the median impact. This is in fact how any municipality or other public authority actually views such impacts

(i.e., if the impact were always assessed at the poverty level, then no public works projects would be undertaken).

Third, one key financial constraint identified by CRW are its inter-municipal agreements, writing that "In accordance with its inter-municipal agreements with the suburban municipalities, CRW's ability to pass on the cost of future regulatory capital investments is significantly limited because sewer rates paid by these municipalities exclude costs attributable to CRW's collection system and wet weather treatment, except for a small number of suburban connections whose wastewater flows through CRW's collection system." But CRW's inter-municipal agreements are not imposed by some sort of outside entity, but instead are the result of bilateral negotiation among the municipalities that CRW services. It is likely that they can be renegotiated or changed in the future, and thus are not a fixed financial constraint.

Fourth, the Financial Analysis fails to note that some of the projected increases in bills are the result of CRW failing to address the CSOs in the past. Had CRW fixed its CSO problems earlier in time, the sewer bills would have been higher *then* - and not as high going into the future. To a significant extent, these projections are thus just playing catch-up.

Fifth, the Financial Analysis describes, but does not explain, that CRW keeps a very large amount of cash on hand. "CRW has also established a cash management target of maintaining a total cash reserve, including amounts in the Operating Reserve Account, at a minimum of 240 days of annual operating expenses. Therefore, an additional cash reserve equal to 180 days of operating expenses was included as a minimum cash target for the Sewer Fund. This amount, combined with the funds held separately in the Operating Reserve Account, provides CRW with a 240-day cash reserve target. As of January 1, 2024, the available cash balance in the Sewer Revenue Fund was approximately $17.3 million, or 480 days of cash, which excludes amounts held in the Operating Reserve Account and the Rate Stabilization Fund and exceeds CRWs minimum cash reserve target." Why? CRW is not like, say, Meta, that keeps lots of excess cash on hand in case it immediately wants to buy up the latest hot app. CRW can count on a steady cash stream from user fees, so this excess cash is puzzling.

The Financial Analysis also includes a number of instances of persuasive, rather than descriptive language. For instance, the report states that "The financial capability of CRW and the community is *significantly limited*," despite CRW's hundreds of millions of dollars in incremental financial capability. Similarly, the Financial Analysis characterizes increased bills between 2.7% and 4.5% of incomes as "placing an exceedingly high economic burden on these households," despite the fact that the actual dollar amount of 2.7% of income is relatively small when translated into a monthly or weekly amount - hardly a "high economic burden" compared to other household expenses.

Finally, the financial analysis also fails to consider potential federal grants and the lowered threshold for loan forgiveness under the 2021 Infrastructure Investment and Jobs Act (IIJA), H.R. 3684; *see also* Pa. Act 54 of 2022 (July 11, 2022, P.L. 40, No. 54) (authorizing PENNVEST to distribute IIJA funds). In 2023, PENNVEST significantly lowered the requirements for its affordability analysis pursuant to the IIJA.[4] *PENNVEST Clean Water State Revolving Fund Intended Use Plan, SFY23-24 Multiple Federal Grants*, at 13. The biogas facility may be eligible for a federal Investment Tax Credit for Energy Property (ITC). The ITC provides a credit amount up to 30-50% of eligible investment upon project completion. The ITC is uncapped and available through 2032.

[4] PENNVEST Virtual Information Exchange Event (Mar. 21, 2024) at 21:00, https://www.youtube.com/watch?v=TqklDB3EGAg.

5. Conclusion

Thank you for your review and meaningful consideration of these comments. The EPA should not approve CRW's Alternatives Evaluation because: 1) the Alternatives Evaluation does not select an appropriate suite of proposed CSO controls to achieve compliance with the Clean Water Act, as required by the CD; 2) the Alternatives Evaluation does not include a detailed evaluation of an appropriately wide range of specific CSO control alternatives, as required by the CD; 3) the Alternatives Evaluation relies upon incomplete monitoring; and 4) the Alternatives Evaluation relies upon an incomplete financial analysis.

For the River,

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