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**STATE OF NEW JERSEY**  
WATERSHED PROPERTY REVIEW BOARD

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**CATHERINE R. McCABE**  
*Commissioner*  
*Department of*  
*Environmental Protection*

**SHEILA Y. OLIVER**  
*Commissioner*  
*Department of Community*  
*Affairs*

IN THE MATTER OF THE REQUEST FOR AN )  
EXEMPTION FROM THE WATERSHED PROTECTION )  
AND MORATORIUM ACT BY NEW JERSEY AMERICAN )  
WATER ON BEHALF OF THE COUNTY OF MONMOUTH )  
FOR A PROPOSED DEED OF PERMANEANT EASMENT )  
BETWEEN NEW JERSEY AMERICAN WATER COMPANY, )  
INC. AND THE COUNTY OF MONMOUTH OVER A )  
PORTION OF BLOCK 4501, LOT 82 IN NEPTUNE, NEW )  
JERSEY )

ORDER  
  
GRANTING  
EXEMPTION

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

**BACKGROUND/PROCEDURAL HISTORY**

On September 13, 2019, New Jersey American Water Company, Inc. ("NJAWC"), on behalf of Monmouth County ("County"), filed an application with the Watershed Property Review Board ("Board") for an exemption from the Watershed Protection and Moratorium Act, P.L.1988, c. 163, as amended by P.L. 1990, c. 19 ("Act"). Specifically, NJAWC seeks to convey a permanent easement to the County on property owned by NJAWC in the Township of Neptune, located in the County in connection with the reconstruction of Bridge W-36 on Remsen Mill Road over the Shark River ("Project"). Without the exemption, the conveyance of any property interest is prohibited by the Act.

Board Staff has reviewed NJAWC's application and recommends the Board grant the requested exemption under the conditions outlined below.

NJAWC owns and manages Block 4501, Lot 82 (totaling 2.13 acres) in the Township of Neptune as the New Jersey American Water Jumping Brook Water Treatment Plant ("JBWTP") and Shark River Intake Facility (collectively, "Property"). The Property is utilized for the treatment and distribution of safe drinking water, consistent with NJAWC's utility obligations. The JBWTP was constructed in 1960, and upgraded in 1980, 2002 and 2012. The facility has a total capacity rating of 30 million gallons per day. The JBWTP, in conjunction with other wells and treatment facilities, serves eight municipalities in the County along with the Earle Naval Station and nine coastal municipalities in Ocean County.

The JBWTP's principal water supply source is the Glendola Reservoir located in Wall Township. Raw water from the Glendola Reservoir flows via a 36" gravity main to the JBWTP for treatment. The secondary supply source is from the Jumping Brook and Shark River (FW2-TMC1), which forms the southwestern boundary of the Property. The Shark River Intake Facility is located upstream of the Shark River Dam along Remsen Mill Road. The Shark River Intake Facility draws water from the Shark River onsite when required by demand to supplement the water flowing from the Glendola Reservoir.

The Property is bordered by the County Park System's Shark River Park to the north and south, and Remsen Mill Road to the east. At present, Remsen Mill Road is located outside the legal road right-of-way ("ROW") and encroaches on the Property. Stormwater flows overland through the Property since there is no curbing on the road. One stormwater inlet located on Remsen Mill Road directs stormwater to an existing headwall in the northeastern portion of the Property. The remainder of the Property consists of densely forested and forested wetland areas. An aerial photograph of the Property and a figure representing the permanent easement location attached as Exhibit 1.

## **PROPOSAL**

The Project consists of a complete replacement of Bridge W-36 on Remsen Mill Road over the Shark River just south of the Property, in the Townships of Neptune and Wall. The existing bridge is a two-span continuous timber and steel stringer type bridge that is in poor condition due to the condition of its substructure. The bridge is classified as structurally deficient and functionally obsolete due to insufficient curb to curb travel width, which is narrower than the approach roadways.

The Project is intended to eliminate structural load capacity restrictions, improve vehicular and pedestrian safety with consistent bridge and approach roadway widths, proper bridge railings and new approach guide rails. Additionally, the Project is intended to address maintenance of existing utilities and provisions for future utilities.

The existing bridge has deteriorated to such a point that it is a public safety hazard and

may impact both access and operations at the JBWTP if not abated by the planned reconstruction of Bridge W-36. Therefore, the County and NJAWC believe there is a compelling public need for the conveyance of this easement.

To support the Project and recognize the existing encroachment, the County has requested a 2,889 square foot or 0.066-acre permanent easement on the Property to support the Project. Exhibit 2 depicts the location of the permanent easement area. The easement area will allow for milling and paving of the existing road, installation of an improved stormwater drainage inlet structure and the construction of a small riprap apron which will provide erosion control at a natural low point along the roadway. This low point/depression currently accepts umbrella drainage from both directions of the roadway since Remsen Mill Road does not have curbing and will not have curbing after the Project is complete. The limits of the easement were determined by the requirements of a 10-foot wide clearance offset from the proposed edge of pavement. The 10 foot clearance is needed for the installation and future maintenance of roadway features such as guide rails and utility poles, as well as overall grading, seed planting and restoration.

While the County obtained New Jersey Department of Environmental Protection (“NJDEP”), Division of Land Use Regulation (“DLUR”) Freshwater Wetlands Protection Act and Coastal Zone Management approval for the entire Project on October 2, 2018, the proposed easement area subject to this exemption request does not include any wetlands impacts. To mitigate for riparian zone disturbance in other areas of the Project, the County will purchase mitigation credits from Evergreen Environmental at the Marsh Bog Brook II Mitigation Bank in Howell Township, located in the County.

There are three trees within the proposed easement area. While the County does not expect to remove these trees during the construction of the Project, the proposed easement language allows for future tree trimming and/or removal within the easement area, if necessary. To mitigate for the possible removal of these trees, the County will either mitigate offsite by planting six trees on the adjacent County Shark River Park or onsite by planting six trees within an area preselected by NJAWC on the JBWPT Property. The pre-selected area will not interfere with any NJAWC operations, facilities or subsurface mains but will be in a cleared area in close proximity to the surface water supply, the Shark River, above the intake point. Further, during construction, turbidity barriers, inlet filters and silt fencing will be placed within the Project area as required in the Freehold Soil Conservation District approval dated July 1, 2019.

Board Staff conducted a site visit of the Property on July 24, 2019. Board Staff was able to view the potential impact of the Project on NJAWC’s watershed property, as well as the existing conditions of Bridge W-36 and the approaching roadway. Board Staff confirmed the safety issues and the deteriorated state of Bridge W-36.

## **DISCUSSION**

The Act prohibits any “municipality, municipal utility authority, or public utility” from conveying “any land utilized for the purpose of the protection of a public water supply.”

Section 1 of P.L.1988, c. 163. In other words, the Act places a moratorium on all conveyances of watershed property. The Act permits the Board to grant an exemption from the moratorium under three circumstances. Section 2(a) of P.L.1988, c. 163. The Board may permit the conveyance of watershed property if it finds: “(1) that there is a compelling public need for the conveyance of the property, (2) the denial of the exemption would result in extraordinary hardship, or (3) the sale or development of the watershed property is otherwise consistent with the purposes of this act” (which are generally to protect water quality and encourage open space preservation).

NJAWC is seeking an exemption to convey a permanent easement to the County in support of the Project on the basis that the Project will fulfill a compelling public need. The County has prioritized this public project as a safety issue and has strict New Jersey Transportation Trust Fund Authority deadlines which require the commencement of the Project in 2019. The exemption application includes a letter dated August 19, 2019 from a NJAWC Project Manager stating that NJAWC determined that the proposed easement will not negatively affect or restrict water quality, or the operation and maintenance of the NJAWC Shark River Intake Facility.

The restoration of Bridge W-36 is required since, as Board Staff witnessed on its field inspection and as explained in this application, the bridge is in a state of extreme deterioration. Should it deteriorate further and result in a collapse, it will not only prevent access over the Shark River for the general public and prevent partial access to the JBWTP for the employees of NJAWC, but any debris from the deteriorating bridge would also fall into the Shark River and potentially impact the intake facilities located at the Property.

The County has requested this easement from NJAWC in order to provide a properly designed ROW for safe vehicular traffic and to provide access over the easement area to allow for the maintenance of the roadway and the other improvements as indicated above. It is important to emphasize that the properly designed ROW for Remsen Mill Road, as located in the easement area, cannot be relocated to the east on the other side of the roadway because the property bordering Remsen Mill Road to the east (Block 4601, Lot 1) is subject to Green Acres Program restrictions. In short, there is no other alternative design for the ROW on this portion of Remsen Mill Road to responsibly allow the County to satisfy its public safety obligations to NJAWC and the general public with respect to the reconstruction of Bridge W-36. It should be further noted that the easement is located on the Property below the Shark River Intake pipe.

Based on the July 24, 2019 site visit and its review of the information provided by NJAWC and the County, Board Staff concurs that there is a compelling public need for the Project. On this basis, Board Staff recommends that this Board approve the request for an exemption, subject to the following conditions:

1. The County shall provide NJAWC with notice prior to any construction activity on the Property.

2. The County shall work in good faith with NJAWC to determine the most beneficial on-going maintenance plan for the Project improvements that will limit the impact upon water quality of NJAWC's water supply.
3. The County shall provide NJAWC with the opportunity to have its representatives present to observe and comment on any actions taken by the County on NJAWC's property.
4. The County shall ensure that any utility relocations do not occur on NJAWC watershed property unless the area is subject to an existing utility easement or has been approved herein.
5. The County must comply with all federal, state and local regulations and permit conditions including but not limited to the NJDEP, DLUR Permit No. 1300-18-0003.1 and the Freehold Soil Conservation District approval.
6. The County shall work with NJAWC to determine an appropriate mitigation location either offsite by planting trees on the adjacent County Shark River Park or onsite by planting trees within an area preselected by NJAWC on the JBWPT Property, at a two to one ratio (a total of six trees shall be planted).

## **CONCLUSION**

The Board is aware of the findings of its Staff that not moving forward with the Project will lead to further public safety and water quality concerns due to the current structural deterioration and obsolescence of Bridge W-36. The record before the Board is replete with evidence demonstrating the public safety concerns if the Project is not completed.

Based on the foregoing discussion and the conditions set forth above, the Board **HEREBY FINDS** that there is a compelling public need for the Project and the conveyance of a permanent easement from NJAWC to the County. This finding is the result of the thorough and complete review of the record in this proceeding and it is limited to the facts and circumstances of this unique Project, and shall not be construed as a determination by this Board with regard to any other conveyance of properties for which a future application may now be pending or may be brought in the future. As with all determinations by this Board, any future determination will be made on a case by case basis giving due regard to the information presented within each such application. Further, the Board is satisfied that the mitigation plan for this Project is appropriate and protective of the watershed.

The application, NJDEP permits, plans and the conditions included above set forth the standards by which NJAWC shall conduct itself. After consideration of the entire application, including the NJDEP permits and Project plans, the Board **HEREBY GRANTS** an exemption under the Act from the moratorium of conveying watershed property, limited to the purposes set forth in this application. As stated above, the Board **FINDS** that there is a compelling public need for this Project.

The application, permits and plans contained in the documents submitted by NJAWC are sufficient, and the Board **RELIES** upon the conditions and protections contained therein in considering this application. The Board **HEREBY FINDS** that these protections, plus the additional conditions of this Order provide sufficient mitigation of any potential water quality impacts. Therefore, the Board **HEREBY ORDERS** that the conditions agreed to and incorporated in the plans and NJDEP permits shall become part of this Order.

Therefore, the Board **HEREBY ORDERS** that the application for an exemption, pursuant to Section 2(a) of P.L. 1988, c. 163, as amended, shall be and hereby is **APPROVED** subject to the conditions recited above.

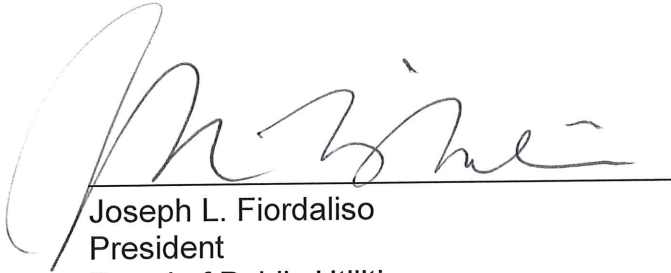
This Order addresses consideration of an exemption from the Act and does not relieve the County or NJAWC of any other obligations that may be required pursuant to any statute or regulation.

This Order confirms the vote on this matter taken at the duly noticed open public meeting of the Watershed Property Review Board on October 15, 2019.

DATED: 10/15/19

WATERSHED PROPERTY REVIEW BOARD

BY:



Joseph L. Fiordaliso  
President  
Board of Public Utilities



Donald Palombi, Chief Regulatory Officer  
As designee of  
Lt. Governor Sheila Y. Oliver  
Commissioner  
Department of Community Affairs  
Pursuant to delegation letter dated  
August 15, 2018

**EXHIBIT 1**  
**AERIAL PHOTOGRAPH AND**  
**PERMANENT EASEMENT MAP**







WATERSHED PROPERTY REVIEW BOARD  
REQUEST BY NEW JERSEY-AMERICAN WATER,  
ON BEHALF OF THE COUNTY OF MONMOUTH  
FOR A PROPOSED DEED OF PERMANENT  
EASEMENT OVER A PORTION OF BLOCK 4501,  
LOT 82 IN NEPTUNE, NEW JERSEY

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