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STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

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Commissioner
Department of
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JOSEPH L. FIORDALISO
President
Board of Public Utilities

SHEILA Y. OLIVER
Commissioner
Department of Community
Affairs

IN THE MATTER OF THE WATERSHED PROPERTY)
REVIEW BOARD REQUEST FOR AN EXEMPTION BY) ORDER GRANTING
THE TOWNSHIP OF LONG HILL AND NEW JERSEY) EXEMPTION
AMERICAN WATER COMPANY, INC.)

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

BACKGROUND/PROCEDURAL HISTORY

The Township of Long Hill, Morris County ("Township") has made an application before the Watershed Property Review Board ("Board" or "WPRB") to sell its wastewater system assets, including certain real property located in the Township, to New Jersey American Water Company, Inc. ("NJAWC") (collectively, NJAWC and the Township are referred to as "Co-Applicants"). The Township, by way of a written request dated March 11, 2020, is seeking an exemption from the Board to allow this sale to proceed. Without the exemption, conveyance of the property may be prohibited by the Watershed Protection and Moratorium Act, P.L. 1988, c. 163, as amended by P.L. 1990, c. 19 ("Act"). This Order adopts Board Staff's recommendation to grant the requested exemption.

The Township encompasses 12 square miles and has a population of approximately 8,702 residents. The Township, through its Public Works Department, operates and maintains a wastewater management system that includes a wastewater treatment plant, eight sanitary pump stations, and a wastewater collection system including 286,290 linear feet of sanitary sewers, 1,260 sanitary manholes, 15,200 linear feet of force mains and 221,325 linear feet of privately owned service laterals (collectively, "Wastewater System"). The Township's treatment plant, located at 1223 Valley Road (Block 10411,

Lot 6), was built in the 1930s and expanded in 1975, 1984 and 1991. Approximately 88% of the Township's residential units and nearly 100% of the commercial/industrial properties in the Township are connected to the Wastewater System. The Wastewater System services 2,800 customers, most of whom already receive water service from NJAWC.

NJAWC must also seek the Board of Public Utilities' ("BPU") approval of a municipal consent granted by the Township of Long Hill to operate in the Township. NJAWC's petition is currently pending before the BPU.¹

The Township has determined that it is in the public interest for the Wastewater System to be owned and operated by an entity with experience and expertise in owning and operating such systems in order to meet all necessary demands associated with the Wastewater System (i.e., in meeting regulatory requirements and making necessary capital improvements). Therefore, the Township is seeking to convey the Wastewater System to NJAWC. The conveyance will allow NJAWC to provide wastewater utility service within the Township, and to leverage its experience, expertise and economies of scale to benefit the customers of the Township. The Township believes that NJAWC's significant resources will assure more efficient service and provide additional system reliability to the Township.

Voters approved the proposed \$12.7 million sale via a Township referendum in November 2019. There is one parcel of land ("Property") included in this sale, which will be transferred in fee, and eight easements across private and public properties as inventoried in Exhibit 1 included with the Co-Applicants' application. In addition to this Property, the Township's utility rights within certain road rights-of-way ("ROWs") will also be transferred to NJAWC.

The Property and easements are located within the Upper Passaic River watershed. Board Staff have conducted a preliminary review of the Property and easement locations.. Other than the Township's facilities, which include a treatment plant and pump stations, the Property and easements are undeveloped.

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

¹ I/M/O the Petition of New Jersey-American Water Company, Inc. for Approval of a Municipal Consent Granted by the Township of Long Hill, County of Morris, BPU Docket No. WE20020117.

protect water quality and encourage open space preservation).

The Township is seeking an exemption to allow it to convey its interest in the Property, ROWs and easements to NJAWC on the basis that the sale is consistent with the purposes of the Act. Staff concur that the Property and easement interests will continue to be subject to the Act since they will be conveyed from one regulated entity to another. The sale would further allow NJAWC to improve the Wastewater System to meet current DEP standards. As a condition of the sale, NJAWC has agreed to substantial upgrades and repairs to the Wastewater System in an effort to lift an existing sewer ban. NJAWC has also agreed to extend the Wastewater System to connect non-sewered properties within the Township so that at least 95% of the existing properties within the Township are connected to the Wastewater System within five years. If in the future NJAWC decides to convey any interest in these properties to a third party, NJAWC has committed to contact the Board for a jurisdictional determination on each property proposed for sale as would be required under the Act.

Based on its review of this matter and the information above, Board Staff believes that the proposed conveyance by the Township to NJAWC is consistent with the purposes of the Act, which are to protect water quality and encourage open space preservation. Board Staff has also determined that the Property and easements will continue to be subject to the Act, and any future conveyance of property interests in the Property or easements would require the Board Staff to conduct a detailed jurisdictional determination for each property interest proposed for conveyance and/or an exemption from the Board.

Exhibit 1 identifies the property interests reported to the Board for sale at this time. To the extent that the Township and NJAWC identify additional property interests that will transfer to NJAWC at closing, Board Staff recommends that the Township and/or NJAWC must report these properties to Board Staff within 30 days of closing, via an updated Exhibit 1 inventory.

In addition, Board Staff notes there are Green Acres Program encumbrances on two properties on this list: Clover Hill P/S (Block 10101, Lot 18) and Heritage Road P/S (Block 10202, Lot 8). Board Staff consulted with the Green Acres Program and determined that the transfer of easement interests in the Clover Hill P/S property would not constitute a diversion of parkland under N.J.A.C. 7:36-26 et seq. Since the pump station and associated sewer and access easements predated the Green Acres encumbrance. However, Green Acres is still investigating whether the pump station at the Heritage Road P/S property was constructed before or after the site became encumbered with Green Acres restrictions.

If in the future NJAWC decides to convey any interest in these Properties to a third party, NJAWC has committed to contact the Board for a jurisdictional determination on each property proposed for sale, as would be required under the Act.

CONCLUSION

Based on the foregoing discussion, the Board **HEREBY FINDS** that conveyance by the Township to NJAWC is consistent with the purposes of the Act, which includes the protection of water quality and encourage open space preservation. The Board **FINDS** that the Properties will continue to be subject to the Act, and any future conveyance of property interests in the Properties would require the Board Staff to conduct a detailed jurisdictional determination for each property interest proposed for conveyance and/or an exemption from the Board. The Board **HEREBY ORDERS** that any future sale or conveyance of property interests in the Property, ROWs and easements requires Board Staff to conduct a detailed jurisdiction determination for each property interest proposed for conveyance and/or exemption from the Board.

In addition, the Board **ORDERS** the Co-Applicants to submit an updated inventory of property interests that will transfer to NJAWC as reflected on Exhibit 1 within 30 days of the closing, to the extent any such additional property interests are identified.

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.

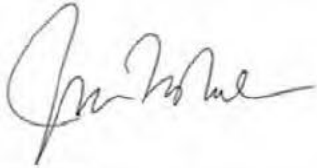
This Order addresses consideration of an exemption from the Act and does not relieve the Township or NJAWC of any other obligations that may be required pursuant to any statute or regulation. This order is contingent on the applicant obtaining approvals pursuant to any other statute or regulation.

This Order confirms the vote on this matter taken at the duly noticed open public meeting of the Watershed Property Review Board on April 21, 2020.

DATED: April 29, 2020

WATERSHED PROPERTY REVIEW BOARD

BY:



Joseph L. Fiordaliso
President
Board of Public Utilities

Ray Bukowski *Ray Bukowski*

Ray Bukowski, Assistant Commissioner
As designee of
Catherine R. McCabe
Commissioner
Department of Environmental Protection
Pursuant to delegation order dated
August 23, 2018

/s Donald Palombi

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

WATERSHED PROPERTY REVIEW BOARD

IN THE MATTER OF THE WATERSHED PROPERTY REVIEW BOARD REQUEST
FOR AN EXEMPTION BY THE TOWNSHIP OF LONG HILL AND NEW JERSEY
AMERICAN WATER COMPANY, INC.

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Long Hill Township | Properties

<u>Facility</u>	<u>Block</u>	<u>Lot</u>	<u>Address</u>	<u>Notes</u>	<u>Fee/Easement</u>
Valley Road P/S	10910	15	342-356 Valley Road	No Easement exists; Township to acquire easement and transfer	Easement
Centennial Village P/S	10908	4	375 Valley Road	Township to transfer existing easement	Easement
Morristown Road P/S	11203	11	279 Morristown Road	Township Owned; Township will convey easement (on portion of lot)	Easement
New Vernon P/S	14701	28	795 Meyersville Road	Township Easement; Township will transfer easement	Easement
Skyline Drive P/S	12804	4	265 Skyline Drive	Township Owned; Township will convey easement (on portion of lot)	Easement
Clover Hill P/S	10101	18	53 Rainbow Drive	County-owned open space property; Filed maps show easement for pump station and appurtenant facilities. Township will transfer easement, which existed prior to dedication to County and, therefore, is not encumbered by Green Acres restrictions	Easement
Heritage Road P/S	10202	8	632 Heritage Road	Township Owned; Township will convey easement (on portion of lot); Township will add property to its ROSI and carve out the easement for the pump station and access drive which were in existence prior to the dedication of the property to the Township	Easement
Union / Warren P/S	11504	1	15 Union Street	Township Owned; Township will convey easement (on portion of lot)	Easement
WWTP	10411	6	1223 Valley Road	Township Owned; Township to subdivide and convey portion of property containing treatment plant and appurtenant facilities	Fee