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STATE OF NEW JERSEY
WATERSHED PROPERTY REVIEW BOARD

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Department of Community
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IN THE MATTER OF NEW JERSEY AMERICAN WATER)
COMPANY'S REQUEST FOR AN EXEMPTION TO THE)
WATERSHED PROTECTION AND MORATORIUM)
ACT TO ALLOW THE TOWN OF CLINTON WATER) ORDER GRANTING
DEPARTMENT TO INSTALL WATER INFRASTRUCTURE) EXEMPTION
ON WATERSHED PROPERTY IN THE TOWN OF)
CLINTON)

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD:

BACKGROUND/PROCEDURAL HISTORY

On May 30, 2014, New Jersey American Water Company, Inc. ("NJAWC" or "Petitioner") filed an application with the Watershed Property Review Board ("Board") to review and approve both temporary and permanent easements on watershed property adjacent to the South Branch of the Raritan River in the Town of Clinton to the Town of Clinton on behalf of the Clinton Water Department (the Town of Clinton and the Clinton Water Department will hereafter collectively be referred to as "Clinton") to support the Halstead Street Water Main Replacement Project ("Project"). The Petitioner filed for an exemption from the Watershed Protection and Moratorium Act, P.L. 1998, c. 163, as amended by P.L. 1990, c. 19 (the "Act"). NJAWC is currently seeking an exemption to grant both temporary and permanent easements on portions of NJAWC's watershed property at Block 14, Lot 33 (the "Property").

On January 28, 2014, NJAWC submitted a request via email for a jurisdictional determination. On March 10, 2014, Board Staff conducted a site visit and were able to view the location of the proposed easements and the Property's close proximity to the Spruce Run Reservoir. On July 2, 2014, after reviewing NJAWC's exemption request and conducting a field visit, Board Staff requested additional information. All requests for additional information were fulfilled by NJAWC in a timely manner.

The purpose of the Project is to improve the existing infrastructure by replacing aging water mains and to create a secondary transmission line which will result in improved water system reliability and adequate fire protection coverage for customers in the northern service area. The Project does not propose to expand the existing water service area and, therefore, does not require an amendment to the Area-wide Water Quality Management Plan. The Project consists of two phases: Phase I – Route 31 Transmission Main and Phase II – Halstead Street and Water Street Main Replacement. Only Phase 1 will impact the Property. Phase 1 consists of extending an existing 12" water main along the southbound lane of State Route 31 from Halstead Street towards the intersection of State Route 31 and Moebus Place. The water main will be trenched behind the existing guide rail and, to the maximum extent practicable, within the existing NJDOT right-of-way ("ROW") for Route 31. In an effort to keep all utilities off of the existing bridge structure and to avoid the existing concrete wing walls associated with the bridge structure, the water main will be located within the Property for 100 linear feet (LF). The water main will cross the South Branch of the Raritan River through a concrete conduit placed below the stream bed utilizing an open trench method and covered by 48" of stable, native substrate. Temporary dewatering pumps, sandbag barriers and hay bales will be used to create a temporary diversion channel around the open trench in an effort to minimize sediment input into the stream. There will be no above ground structures placed within the Property as a result of the Project.

Clinton will need temporary construction easements and additional permanent easements on the Property in order to avoid impacts to the bridge structure. Approximately 0.035 acres (1,533 ft²) of permanent easement will be required for the installation of 100 (LF) of 12" water transmission main. Approximately 0.068 acres (2,979 ft²) of temporary construction easement will be required to provide access and to carry out the construction activities including grading. The Project will require the removal of one 10" *Ailanthus* tree¹ and various herbaceous vegetation within the easement area.

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. 1998, 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. 1998, c. 163. The Board may permit the conveyance of watershed property if it finds: "(1) that

¹ Tree of Heaven (*Ailanthus*) is not a native species.

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). Any person applying for an exemption must submit to the Board appropriate documentation addressing any impact on buffer areas and proposals for mitigation.

NJAWC bases this application for an exemption on its assertion that there is a compelling public need for the Project. NJAWC maintains the Property which is located in close proximity to the Spruce Run Reservoir. The Board has reviewed the proximity of the property to the reservoir and potential impacts on water quality and the Board **HEREBY FINDS** that the property is being utilized for purposes of protecting a public water supply. Hence, the Act's moratorium is applicable and prohibits NJAWC from conveying any easements to Clinton unless this Board finds one of the three exemptions applies.

Based on review of NJAWC's exemption request by Board Staff, the Board **HEREBY FINDS** that there is a compelling public need for the Project and denial of the exemption would result in the failure of provide improved water system reliability and adequate fire protection coverage for customers in the northern service area. 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 particular 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.

As part of its review of this Project, Board Staff requested that Clinton submit documentation addressing proposed mitigation of any adverse environmental impacts which would result from the Project. To this end, Clinton submitted a set of plans (the "Plans") which included the following mitigation tactics:

1. All work is to be done in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey.
2. All soil erosion and sediment control practices will be installed prior to any major soil disturbance, in their proper sequence, and maintained until permanent protection is established.
3. A subbase course will be applied immediately following rough grading and installation of improvements in order to stabilize street, roads, driveways and parking areas. In areas where no utilities are present, the subbase shall be installed within 15 days of the preliminary grading.

4. Immediately following initial disturbance or rough grading, all critical areas subject to erosion will receive a temporary seeding in combination with straw mulch or suitable equal.

5. Any steep slopes receiving pipeline installation will be backfilled and stabilized daily, as the installation proceeds (i.e. slopes greater than 3:1).

6. In accordance with the standard for permanent vegetative cover for soil stabilization, any soil having a pH of 4 or less or containing iron sulfides shall be covered with a minimum of 12 inches of soil having a pH of 5 or more prior to seeded preparation.

7. At the time when the site preparation for permanent vegetative stabilization is going to be accomplished, any soil that will not provide a suitable environment to support adequate vegetative ground cover shall be removed or treated in such a way that will permanently adjust the soil conditions and render it suitable for vegetative ground cover. If the removal or treatment of the soil will not provide suitable conditions, non- vegetative means of permanent ground stabilization will have to be employed.

8. Any change to the certified soil erosion and sediment control plans will require the submission of revised soil erosion and sediment control plans.

Board Staff is recommending the following conditions also be included:

1. Clinton must provide NJAWC with notice prior to any construction activity on the Property.

2. Clinton must work in good faith with NJAWC to determine the most beneficial on-going maintenance plan for the water main that will limit the impact upon water quality of the South Branch of the Raritan River.

3. Clinton and NJAWC must comply with any and all federal, state and local regulations and permit conditions including but not limited to the NJDEP, DLUR Freshwater Wetlands Protection Act and Flood Hazard Area Control Act approvals as well as the Hunterdon Soil Conservation District standards in order to limit the amount of sediment that is introduced to the South Branch of the Raritan River as a result of the Project (during construction and maintenance).

4. Since the proposed water main will only have 48" of cover from grade, Board Staff understands that the planting of trees in the easement area to stabilize the Property is not feasible. Clinton must, however, stabilize the Property with native herbaceous vegetation.

5. The Board's exemption is specific to the proposed 12" water main extension construction and maintenance. Any additional and/or future activities within the easement area are subject to further Board review.

The Board further notes, that after conveyance, the interest held in the property by Clinton will also be subject to the jurisdiction of the Board.

After consideration of the entire application, including the Plans, Report and correspondence between Clinton and NJAWC, 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 Report and Plans are contained in the documents submitted by Clinton and the Petitioner 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 Clinton's documents shall become part of this Order.

The Board **FURTHER ORDERS** that the NJAWC shall have the opportunity to have its representative present to observe and object to any actions taken by the Town of Clinton on NJAWC's watershed property.

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 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 August 14, 2014.

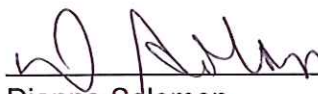
DATED: 8/18/14

WATERSHED PROPERTY REVIEW BOARD

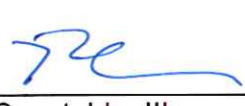
BY:



Bob Martin,
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