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## State of New Jersey

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JIM RILEE  
*Chairman*

MARGARET NORDSTROM  
*Executive Director*

### MEMORANDUM

**TO:** New Jersey Department of Environmental Protection

**FROM:** Margaret Nordstrom, Executive Director

**SUBJECT:** New Jersey Statewide Water Supply Plan - Draft 2017

**DATE:** July 21, 2017

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In accordance with P.L.1981, c.262 (C.58:1A-13d) the New Jersey Department of Environmental Protection (DEP) is required to consult with the Highlands Water Protection and Planning Council (Highland Council) concerning the possible effects and impacts of the New Jersey Statewide Water Supply Plan (NJSWSP) on the Highlands Regional Master Plan (RMP). The Highlands Council appreciates the NJDEP's attendance and presentation of the draft NJSWSP at the July 2017 Council meeting. On behalf of the Highlands Council please accept the following comments regarding the 2017 Draft NJSWSP:

The Highlands Act (C.13:20-6.u.) states that the Highlands Council shall promote, in conjunction with the DEP and the Department of Agriculture, conservation of water resources both in the Highlands Region and in areas outside of the Highlands Region for which the Highlands is a source of drinking water. The Draft NJSWSP should include a reference to the Highlands Council's work on the development and implementation of Water Use and Conservation Management Plans (WUCMPs), the requirements of EO114, and should identify the need to extend the requirements for WUCMPs to areas outside the Region for which the Highlands is a source of drinking water, particularly those areas receiving water from WMA3 (Appendix A, page A.21), which has large water exports to urban areas such as Newark and Jersey City.

Section 74 of the Highlands Act, N.J.S.A 58:1A-15.1-10 (Actions consistent with Pinelands, Highlands regulation) provides that no action taken by the DEP pursuant to the Water Supply Management Act shall be inconsistent with the provisions of the Highlands Act or the Highlands Regional Master Plan. The most effective way to comply with Section 74 of the Highlands Act is to incorporate the RMP results for Net Water Availability into the Draft NJSWSP by reference. The Council is responsible for updating and improving the RMP over time so that its Net Water Availability results remain current, are scientifically defensible based on methods available at the time, and are applied in a common sense manner. The current Net Water Availability results are supported by the RMP and the Water Resources Technical Report, and will continue to be monitored and updated as necessary

as part of the mandated updates to the RMP. In addition, the Net Water Availability results are updated on an individual HUC14 basis as WUCMPs are completed.

The Highlands Act and the RMP establish the special status of all waters in the Highlands Region. The Draft NJSWSP should incorporate language specifically recognizing the existence of stream systems with sensitive ecosystems for which a more protective approach is appropriate. The RMP recognizes the ecological sensitivity of waters in the less developed subwatersheds (i.e., Protection and Conservation Zones) of the Highlands Region through use of lower thresholds and enhanced standards. The Low Flow Margin method thresholds should recognize the lower thresholds established in the RMP for these areas.

The RMP utilizes a HUC14 scale to calculate Net Water Availability. A discussion of the Highlands Council use of the HUC14 scale and the lower thresholds used for the Low Flow Margin should be added. Although the HUC11 scale may be more manageable at a statewide level, the Highlands Council believes that the use of a HUC11 basis skews the amount of water available. The Highlands Council's ability to use a HUC14 subwatershed scale at a regional level better determines Water Availability and causes of corresponding deficits/surpluses than on a HUC11 scale.

Appendix A includes population projections to estimate future demand, but doesn't provide any estimated commercial growth. The North Jersey Transportation Planning Authority's projections for the Highlands Region indicate an overall 0.4% annualized population change, but also indicate a 0.9% annualized employment change. In addition, non-residential growth in the areas outside the region that receive water from the Highlands is expected to be substantial. This growth would produce greater stresses on the water available from the Highlands Region.

Appendix A states that "the water availability values have been 'grayed' out in the HUC11 watersheds that are wholly located in the Highlands Region as the Highlands Regional Master Plan presents availability values for these areas by HUC14 sub-watershed." (See Table A.1.4.) A note should be added to the table indicating that the Highlands Council uses HUC14s to calculate water availability and it should also refer readers to the Highlands RMP for those HUC11s partially located in the Highlands Region.

Due to the noted discrepancy of using HUC14s vs. HUC11s in the Highlands Region and the presence of multiple HUC11s only partially located in the Highlands Region, it would be helpful if the maps included in Appendix A showed the location of the Highlands boundary overlain on the appropriate WMA maps. In addition, the description of the WMAs in Appendix A should include references to the Highlands Region.

The surface water reservoirs discussed in Chapter 3 B.1 should be noted as receiving their water supply from, and being located in, the Highlands Region.

Figures 3.10(a) and 3.10(b) show blank areas over substantial portions of the Highlands Region. Although it is understood that this area includes the HUC11s located entirely within the Highlands Region, it is not clear to a reader why they are blank as the areas do coincide with the Highlands boundaries. Boundaries of the Highlands Region should be included and the figure should note that the RMP water availability applies in the Highlands Region.

The Draft NJSWSP states that one of the greatest stresses involves water being lost to out-of-basin wastewater transfers. However, no policies or guidance are set forth in the Draft NJSWSP regarding these out-of-basin wastewater transfer issues.

A reference to the Highlands Council website should be included in Chapter 5.

We suggest expanding the Water Savers Program (p. 58) to include the Highlands Region.

There is limited mention of stormwater as a resource. The Draft NJSWSP should discuss coordination with the DEP Stormwater Management Rules regarding groundwater recharge and the use of green infrastructure/low impact development.

**The following comments were discussed by the Highlands Council as part of the July 20, 2017 presentation of the NJSWSP by the DEP:**

The Draft NJSWSP provides limited detail on water quality issues and climate change. There may be a surplus of water available for use, but if water quality is impaired, this water is not necessarily available for use. Also, there is little mention of climate change and associated potential impacts to water supply in the plan.

Improvements to and funding for water infrastructure should be prioritized towards the Highlands Region, where the protection of water resources is required in areas of limited water availability.

The Highlands Council is aware of the ongoing contamination concerns regarding the Ringwood Mine site and the Wanaque Reservoir. Given the significant potential for disruption of northern New Jersey water supply should the reservoir become contaminated, the NJDEP, EPA and North Jersey District Water Supply Authority should continue to monitor the situation and prepare potential contingency plans to protect the reservoir.

When the Highlands Act was passed in 2004, the State Legislature recognized that implementation of the strict land use controls imposed by the Highlands Act would inevitably have an impact on landowner expectations regarding future land use potential and recognized the need to provide just compensation to the owners of lands affected by the Highlands Act. The Highlands Council has estimated that the total cost of implementing the Highlands Regional Master Plan's land preservation program, recognizing the use of the dual appraisal valuation, is approximately \$1.3 billion. The Highlands Council recommends that the NJSWSP include support for efforts to enact a water user fee imposed on water purveyors, at a rate of 0.1 cent per gallon, who derive water from Highlands Region sources and to dedicate funds raised by such fee to assist in compensating landowners in the Highlands Region whose future land use expectations have been impacted by the Highlands Act. (Attached please see Highlands Council Resolution 2016-8).

**RESOLUTION 2016-8**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**SUPPORT FOR A WATER USER FEE AS A DEDICATED SOURCE OF FUNDING**  
**FOR LAND CONSERVATION**

**WHEREAS**, the Highlands Water Protection and Planning Act (the "Highlands Act") has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (the "Highlands Council"); and

**WHEREAS**, the Highlands Act designated and established an 860,000 acre region of New Jersey as a regional planning, land use, and water management area subject to stringent land use controls in order to protect “an essential source of drinking water, providing clean and plentiful drinking water for one-half of the State’s population, including communities beyond the New Jersey Highlands”; and

**WHEREAS**, the State Legislature recognized that implementation of the strict land use controls imposed by the Highlands Act would inevitably have an impact on landowner expectations regarding future land use potential and recognized the need to provide just compensation to the owners of lands affected by the Highlands Act; and

**WHEREAS**, at the time the State Legislature considered passage of the Highlands Act, and conducted public hearings to generate support for the legislation, proponents promised to provide funding for compensation to landowners adversely impacted by land use restrictions imposed by the Highlands Act, but the State Legislature has failed to fulfil those promises; and

**WHEREAS**, the State Legislature declared its intent that the land use restrictions resulting from passage of the Highlands Act should be accompanied, as a matter of public policy and “fairness to property owners,” by a strong commitment by the State to fund the acquisition of open space and to attempt to compensate landowners for lost development potential; and

**WHEREAS**, the Highlands Act provides several mechanisms that seek to mitigate negative impacts on property owners, including, but not limited to, State funding for land acquisition, and a transfer of development rights (“TDR”) program; and

**WHEREAS**, the voluntary nature and other uncertainties relating to the effective implementation of the TDR program and the limited funding available thus far for acquisition of lands in the Highlands region raise doubt whether the stated legislative goal of “fairness to property owners” in the administration of the Highlands Act has been achieved; and

**WHEREAS**, one of the principal reasons the State Legislature adopted the Highlands Act was in recognition that the Highlands region serves as an “essential source of drinking water, providing clean and plentiful drinking water for one-half of the State's population” (now 70 percent); and

**WHEREAS**, while implementation of the Highlands Act burdens some property owners within the Highlands region, it benefits water users who do not reside in the Highlands region; and

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**WHEREAS**, in 2011 the Highlands region supplied 136 billion gallons of water or approximately one-third of the total potable water used in the State; and that Highlands water was distributed to 332 municipalities in 16 counties; and that these municipalities are home to 70 percent of the State's population; and

**WHEREAS**, the total cost of implementing the Highlands Regional Master Plan's land preservation program, recognizing the use of the dual appraisal valuation, is approximately \$1.3 billion; and

**WHEREAS**, it is appropriate that the cost burden of implementing the Highlands Act be shared amongst all beneficiaries, including by users of water derived from Highlands region sources through imposition of an appropriate water user fee; and

**WHEREAS**, the equitable distribution of the benefits and burdens of the implementation of the Highlands Act requires that all beneficiaries, including water users, share in the cost of implementing the Highlands Act, and that a water user fee would provide an equitable means by which to share these benefits and burdens; and

**WHEREAS**, the Highlands Council is an advocate for the establishment of dedicated sources of funding for the preservation and stewardship of open space lands in the Highlands region, including enactment of a water user fee; and

**WHEREAS**, the Highlands Council has attempted to achieve fairness to property owners by adopting in 2016 a program by rule to purchase development potential from landowners (HDC Purchase Program) and an Open Space Matching Grant Program for the purchase of land in the Highlands region, and interest in the HDC Purchase Program has far exceeded the available funds to purchase such development credits; and

**WHEREAS**, the Highlands Council has over many years expressed its support, by Resolutions 2005-18, 2006-22, 2008-13, and 2013-10, for a dedicated source of State funding for land preservation and to address landowner equity issues, including the enactment of a water user fee; and

**WHEREAS**, the Highlands Council shares the conviction of the many individuals and representatives of groups who have repeatedly testified before the Highlands Council that there needs to be a dedicated, directed, and stable funding source sufficient to preserve and steward the lands protected by the Highlands Act.

**NOW, THEREFORE, BE IT RESOLVED**

1. The Highlands Council hereby supports efforts to enact a water user fee imposed on water purveyors, at a rate of 0.1 cent per gallon, who derive water from Highlands region sources and to dedicate funds raised by such fee to assist in compensating landowners in the Highlands region whose future land use expectations have been impacted by the Highlands Act; and

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2. The Highlands Council recommends that any such efforts to enact a water user fee include a review of the property owners' lost value due to the passage of the Highlands Act to ensure the provision of just compensation in accordance with the goals of the Highlands Act, and that a means of distribution of funds to affected landowners be developed; and
3. The Highlands Council recommends that any water user fee sunset in ten (10) years after its enactment; and
4. That a copy of this resolution be sent to the New Jersey Governor and Legislature in support of these initiatives.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 20<sup>th</sup> day of October 2016.

  
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 Jim Rilee, Chairman

**Vote on the Approval of  
 This Resolution**

	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	_____	✓	_____	_____
Councilmember Dougherty	_____	_____	_____	_____	_____	✓
Councilmember Dressler	_____	✓	✓	_____	_____	_____
Councilmember Francis	_____	_____	✓	_____	_____	_____
Councilmember Holtaway	_____	_____	✓	_____	_____	_____
Councilmember James	_____	_____	_____	_____	✓	_____
Councilmember Richko	_____	_____	_____	✓	_____	_____
Councilmember Sebetich	_____	_____	_____	_____	_____	✓
Councilmember T'fank	_____	_____	_____	_____	_____	✓
Councilmember Visioli	_____	_____	✓	_____	_____	_____
Councilmember Vohden	_____	_____	✓	_____	_____	_____
Councilmember Walton	✓	_____	✓	_____	_____	_____
Chairman Rilee	_____	_____	✓	_____	_____	_____