



NEW JERSEY HIGHLANDS COALITION

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Attention: DEP Docket Number: 01-19-01

Office of Legal Affairs

NJ Department of Environmental Protection

Mail Code 401-04L; PO Box 402

401 East State Street, 7th Floor

Trenton, New Jersey 08625-0402

**Re: Proposed amendments to the Surface Water Quality Standards
at N.J.A.C. 7:9B**

May 31, 2019

Dear Mr. Brower:

The New Jersey Highlands Coalition represents the combined membership of its one hundred member organizations (currently) in submitting the below comments. Members of the Coalition share a common interest in protecting the water and other natural and cultural resources of the New Jersey Highlands region.

We support the Department in its proposal to upgrade 749 river miles statewide to the Category One (C-1) antidegradation designation. We note that of the statewide total, 326.1 of the proposed stream miles are located within the New Jersey Highlands.

This Department is considering upgraded designations based on qualifying criteria established for Exceptional Ecological Significance (Endangered & Threatened Species and Exceptional Aquatic Significance) and for Exceptional Fisheries Resources, but not Exceptional Recreational Significance or Exceptional Water Supply Significance at this time. The amount of data collected over time in order for a river segment to qualify for the designation is considerable and with Department staffing levels at an historic low, we appreciate the focused efforts of the Division of Water Monitoring and Standards to move forward with this proposal. We encourage the Department to continue with this momentum and to propose additional stream segments for upgraded designations based on Exceptional Recreational Significance and Exceptional Water Supply Significance because there are vulnerable stream segments whose resource values for recreational and water supply uses are at risk of being lost without the additional antidegradation protections.

For instance, the South Branch of the Rockaway Creek, east of Round Valley Reservoir, augments water supplies to purveyors drawing from the Raritan River at times of low flow, from water released from Round Valley Reservoir. The clean water supplied by this river segment currently receives no additional level of protection beyond those of an FW2-NT water despite providing drinking water to a significant population in Middlesex County. Similarly, the D&R Canal functions as a linear reservoir, transmitting drinking water from the Upper Delaware River at Bull's Island in Hunterdon County, to the Raritan River in New Brunswick. As these river segments provide drinking water for more than 50,000 users,

each of these waterbodies qualify for Category One antidegradation protection for their exceptional water supply significance.

There are many waterbodies in the Highlands whose scenic and recreational values are well known, where anglers, canoers, and kayakers come from miles to play on and in these waters, while contributing to the local tourist economy. A notable example is the Musconetcong River, which is a federally designated Wild & Scenic River. Yet the Department has yet to establish criteria for Exceptional Recreational Resource Values. Compatible, low impact, recreational activities that depend on New Jersey's natural landscapes not only provides a context for protecting, rather than developing these increasingly rare places, a vibrant recreation-based economy provides a welcomed balance to the loss of development opportunities that necessary legislation, such as the Highlands Act, incurred. In protecting the many components of a complex ecology, compatible human uses must be protected as well if the goal is to achieve a viable economic future for the Highlands. The development of criteria for Exceptional Recreational Values would help achieve such a goal and we highly recommend that the Department prioritize such an effort.

The Highlands Act requires not only the protection of Highlands Waters, but also *the restoration and enhancement* of Highlands Waters in both the Preservation and Planning Areas. However, the antidegradation policies of a Category-One designation fail to provide for a meaningful improvement of water quality beyond maintaining existing water quality. Because of this fundamental inconsistency with the water quality objectives of the Highlands Act, which are more appropriately *non-degradation*, rather than *antidegradation*, we strongly recommend that the Department adopt a special category for Highlands Waters, similar to the designation reserved for Pinelands Waters (PL Waters), which carries the same level of protection as Outstanding National Resource Waters (ONRW) and protects waters from any activity with potential negative effects. There are compelling reasons that justify such an increased level of protection for Highlands Waters:

- To rectify a fundamental inconsistency with the non-degradation policies of the Highlands Act;
- Highlands Waters provides source waters to all of northern New Jersey's major river systems, including the Walkkill, Passaic, Raritan and Upper Delaware rivers;
- The waters of the Highlands region are a critical resource for the state of New Jersey, meeting some or all of the drinking water needs of 70% of New Jersey residents and supporting economically vital businesses. Highlands waters exhibit exceptional clarity, color, scenic settings, and other aesthetic characteristics, and have unique ecological significance, exceptional recreational significance, exceptional water supply significance, and exceptional fisheries resources.
- Unlike the Pinelands, which under the Water Supply Management Act, is prohibited from exporting water beyond 10 miles of the Pinelands National Reserve boundary, the Highlands provides drinking water for 70% of the State's population, in 332 municipalities in 16 counties (as far south as Gloucester County);
- NJDEP's Highlands Rules at N.J.A.C. 7:38, and the Highlands Regional Master Plan already require 300' open water buffers for all Highlands Open Waters, which is consistent with the Riparian Zones required under Flood Hazard Area Rules for Category One and ONRW waters.

Furthermore, with respect to the first bullet above, when the Department is faced with an inconsistency between standards embodied in its rules and those in the Highlands Regional Master Plan, the Department is directed by the Department's Highlands Rules at NJAC 7:38 to apply the standards of the Highlands Regional Master Plan in a manner "consistent with the purposes of the Highlands Act to sustain and maintain the overall ecological values of the ecosystem of the Highlands Region with special reference to surface and ground water quality and supply; contiguous forests and woodlands; endangered and threatened animals, plants, and biotic communities; ecological factors relating to the protection and enhancement of agricultural

or horticultural production or activity; air quality; and other appropriate considerations affecting the ecological integrity of the Highlands Region.” [NJAC 7:38-1.1(i)]

Although we do not wish to delay the adoption of the currently proposed upgrades, and thus delaying the increased protection they would provide for the 749 miles of stream segments proposed for the upgrade to Category One, to consider such a sweeping addition to the current proposal, we strongly recommend that the Department give this serious consideration for a subsequent rule proposal and while under the current Administration.

However, we make the following, relatively simple recommendation for an additional Category-One upgrade. The Lopatcong Creek (in Harmony Township, Lopatcong Township, Greenwich Township, Alpha Borough, Pohatcong Township and the Town of Phillipsburg, in Warren County) is designated FW2-TP C-1 for its main stem and all tributaries, except for the final 850 feet (approximately), where it passes the Phillipsburg STP, before joining the Upper Delaware River at Phillipsburg. The designation currently changes here to FW2-TM, and the stream loses its C-1 designation. This change in designation was due to the discharge from the STP entering the Lopatcong Creek at this location, raising the water temperature and functioning as barrier for fish, preventing their entry to the Lopatcong Creek from the Delaware River. In November, 2014, as part of a series of upgrades to the Phillipsburg STP, the outfall pipe was moved from Lopatcong Creek so that the discharge is directly to the Delaware River. As a result of the change in location of the discharge, the Phillipsburg STP no longer has any influence on water quality in the Lopatcong Creek. As a technical update, to reflect the actual changed conditions, we recommend that the entirety of the Lopatcong Creek now be designated at FW2-TP C-1. We do not anticipate any negative consequences to any parties by this change.

Lastly, we recognize that the upgrades proposed in this rule amendment are based on standard water quality indicators and accurate data collected and verified over time with a valid QAPP. The proposed upgrades are not matters of policy, but based on actual conditions and supported by hard science. We would not support any reduction in the number of stream segments or stream miles adopted as a result of comments to this proposal due to discomfort, or discomfit with the increase in water resource protection or an incremental loss of development or economic opportunities. Protection of New Jersey’s water resources is a somber responsibility and provides greater economic stability in the long term. We applaud the Department for taking this responsibility with utmost care and resolve.

Sincerely,



Elliott Ruga, Policy and Communications Director
New Jersey Highlands Coalition

The organizations below have requested to be listed as signing-on to these comments because our comments accurately represent their concerns:

1. **Musconetcong Watershed Association**, Alan Hunt, Executive Director
2. **Ramapough Conservancy**, Judy Joan Sullivan, Executive Director
3. **Trout Unlimited, East Jersey Chapter**, Richard Malizia, Conservation Chair
4. **New Jersey Environmental Lobby**, Noemi de la Puente, Executive Director
5. **Coalition Against Pilgrim Pipeline (CAPP)**, Ken Dolsky, Director
6. **Union Forge Heritage Association**, William E. Honachefsky, Director