



EDWARD J. SMITH

Freeholder

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February 25, 2015

VIA FACSIMILE (908-879-4205) AND FIRST CLASS MAIL

New Jersey Highlands Council
Attn: RMP Monitoring Program
100 North Road
Chester, NJ 07930-2322

RE: RMP Comments Submission

Dear Director Nordstrom:

I am the Freeholder Director of the County of Warren. In that sworn capacity (1), I am writing to respectfully submit the following comments on the Highlands Regional Master Plan, as part of the Highland's Council's 2014 RMP Monitoring Program. Please note that, in accordance with my fiduciary responsibility to my constituents, my comments include issues I observe to be inconsistent with the interests and rights of the constituency I represent.

While the Legislature passed the Highlands Water Protection and Planning Act in 2004, it relies upon both the Highlands Council and the New Jersey Department of Environmental Protection ("NJDEP") to implement the stated goals of the Act. As you may know, the NJDEP's website states, "The Highlands Water Protection and Planning Act N.J.S.A. 13:20-1 et seq. protects drinking water for over 5.4 million people and helps preserve New Jersey's dwindling open space." As you also know, in Section 2 of the Act, the Legislature declared that the Highlands Region is an essential source of drinking water, provides clean and plentiful drinking water for one-half of the State's population, contains other exceptional resources, and provides abundant recreational opportunities for the citizens of the State. The Act created the Highlands Council as a regional planning and protection entity, to develop, and adopt and periodically revise a Regional Master Plan (RMP), with a primary goal of protecting and enhancing the significant values of the resources of the Highlands Region. According to the RMP, "The Highlands Act requires a substantive review take place every six years." "The implementation of a monitoring program will ensure that the RMP remain effective and current." (2)

A primary goal of the monitoring process, as presented to stakeholders, is to allow the measurement of progress toward goals outlined in the Act and the RMP, and shall among other tasks update the science and research agenda. (3)

I respectfully request that, upon review of the comments contained herein, the duly sworn officials (1) of both the NJDEP and the Highlands Council will be compelled by their oath of office, like me, to report the fatal flaws in the legislation that will require significant amendment, or possible repeal, to address the inconsistencies contained therein that preclude implementation of the stated goals of the Act by the agencies charged to do so.

When I began to prepare a comment on the RMP, I studied various aspects of the Highlands Act and its impact on the County of Warren. I found many disturbing facts that are inconsistent with the stated goals of the Act and constitutional provisions regarding equal protection under the law.

Please accept the following comments, which I respectfully request be addressed by the Council:

1. Citizens within the area, defined by the Legislature in the Highlands Act have responsibilities and obligations that are unique, and are not placed equally upon all of the citizens of the State solely based upon politically determined lines on a map. (4)
2. A stated goal of the Act is to protect the drinking water for over 5.4 million people. (5)
3. Protection of the drinking water supplies of the State, thereby enhancing the general health, safety and welfare of the citizens of the State has been adjudicated as justification for the Legislature to take extraordinary measures that may supersede constitutional protections.
4. A stated goal is that the Act helps to preserve New Jersey's dwindling open space. (6)
5. The preservation of open space, acquired by easement or purchase in fee, is well established in law. (7)
6. All watersheds in the County of Warren flow into the Delaware River, which is the western border of the State of New Jersey. (8)
7. The watershed area of the Highlands Preservation area of the County of Warren comprises 1.5%, or approximately 1/64th, of the watershed area of the upper and central Delaware River. (9)
8. 98.5% of the water, based upon the surface size of the watersheds, mixes with the water from the Highlands Preservation area of the County of Warren at an approximate ratio of 64:1 due to variations of localized weather events that may impact the ratio. (10)
9. There is no man made infrastructure to transport the "protected" drinking water from the County of Warren to the water intakes that facilitate delivery to millions of users in the State of New Jersey.
10. The statutorily protected drinking water of the County of Warren is released and mixed into the Delaware River as a means of transport for the fifteen or more miles to the water intakes for the New Jersey Water Authority. (11)
11. Any contribution, improvement, or protection by the County of Warren to the quality of the drinking water to be used by millions of the citizens of the State of New Jersey is not feasibly measurable and thereby non-existent as a matter of fact.
12. The protected surface waters from the County of Warren do not provide any measurable improvement in the general health safety and welfare of millions of citizens of the State of New Jersey.
13. Recharge of groundwater aquifers is a factor in the Highlands Act, and the key regulatory scheme in the form of nitrate dilution models and impervious coverage restrictions. (12)
14. There are numerous aquifers in the State of New Jersey. (13)
15. The County of Warren is situated upon two aquifers - the Highlands crystalline units in the South, and the Valley and Ridge sedimentary units in the North. (14)
16. The Highlands crystalline aquifer is predominant in the regions delineated in the Highlands Act.

17. The Pohatcong Valley Groundwater Contamination Superfund Site stretches across nearly 9800 acres in Warren County and was added to the "Superfund List" in 1989. (15)
18. The Pohatcong Valley Superfund Site is situated upon the Highlands Aquifer.
19. The plume of contamination, which is an indicator of both water flow speed and direction, has moved westward toward the Delaware River, with groundwater contamination still present decades later, although stretched further west with a defined distance from the source of less than ten miles. (15)
20. If the contamination is moving in the only direction that is not towards another area of the State of New Jersey, and contaminated waters still remain in the area decades later, it is a reasonable presumption that the groundwater resources within the aquifer in Warren County are not a factor in the quality of the groundwater drinking supplies for the rest of the State of New Jersey.
21. When evidence is analyzed from the perspective of Warren County, after ten years, the stated goal of the Highlands Act, being the protection of the drinking water for the millions of residents of the State, the Act is an abject and thorough failure.
22. There is no measurable benefit to justify the special legislation that obligates Warren County to perform unique tasks under the Highlands Act, and is its fatal flaw.
23. Equal protection under the law is a fundamental constitutional right. (16)

General Questions:

1. The nitrate dilution model is used to preserve pristine water quality in a locale, which then, if not harvested, is a component of an overall watershed. Given this fact, how is the impact of the nitrates from the septic of a single family dwelling in the 88 acre zone of the Preservation area more of a factor than the nitrates generated from a single family dwelling in the more densely populated areas of a Planning Zone when both impact the entire production of the watershed equally?
 2. Given the virtual non movement of contamination at the Pohatcong Valley Superfund Site, the restrictions of impervious coverage in the Highlands seem utterly irrelevant. Evidence indicates that surface water and groundwater both end up as river flow due to the impermeability of the aquifer. Is there some other factor that benefits the entire State that justifies the severe limits on impervious coverage in the Highlands?
 3. Wild and Scenic designation has been assigned to the Musconetcong River, which is a major carrier of the pristine quality drinking water that is produced in the Highlands and ultimately flows to be dumped into the Delaware River. Given the efforts to "Free the Musky" and the need to harness the pristine drinking water generated from the rivers in the Highlands region to benefit the rest of the State, how does such apparatus of diversion which would be needed to collect the Highlands waters before they are mixed with the lower quality water in the Delaware remain consistent with the other environmental initiatives enacted to date, especially since some are under federal law?
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1. NJS 41:1-1 et seq.
 2. Highlands Master Plan p.416
 3. Highlands Regional Master Plan Update "Briefing Report" 10/14

4. A-2635 MCKEON "The Highlands Water Protection and Planning Act" Section 7
5. www.nj.gov/dep/highlands
6. www.nj.gov/dep/highlands
7. N.J. Constitution Art. I; Paragraph 20
8. "Watersheds of the Delaware Basin" Delaware River Basin Commission (DRBC)
9. "Potable Water Supplied by the Highlands in 1999" NJGS & NJDEP 4/04
10. DRBC Watershed data
11. "Potable Water Supplied by the Highlands in 1999" Pg. 6
12. N.J.S.A. 13:20-1 et seq.
13. Aquifers in NJ NJGS & NJDEP 1998
14. US Geological Survey Principal Aquifers in NJ www.usgs.gov/infodata/aquifers
15. The Warren Reporter 1/23/15 "\$92 million settlement will guarantee funding for cleanup"
16. N.J. Constitution Art I: Par 5 and U.S. Constitution : Amendment XIV

Thank you for the opportunity to provide comments on the Regional Master Plan. If you have any questions, or would like any additional information, please do not hesitate to contact me.

Respectfully Submitted,



Edward J. Smith

Freeholder Director

Cc: Governor Chris Christie
Senate President Stephen Sweeney
Senator Robert Smith
Senator Michael J. Doherty
Senator Steven Oroho
Assembly Speaker Vincent Prieto
Assemblyman John McKeon
Assemblyman John DiMaio
Assemblyman Erik Peterson
Assemblywoman Alison McHose
Assemblyman Parker Space