

Department of Environmental Protection
Office of Legal Affairs
Attn: DEP Docket Number. 22-09-11/758
401 East State Street, 4th Floor
Post Office Box 402
Trenton, New Jersey 08625-0402

and

Henry S. Patterson
Executive Director
New Jersey Water Supply Authority
Attention: DEP Docket No. 22-09-11/758
1851 State Highway 31
Post Office Box 5196
Clinton, New Jersey 08809

The New Jersey Water Supply Authority (Authority) requests that commenters submit comments on disk or CDs as well as on paper. Submittal of a disk or CD is not a requirement. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. The Authority prefers Microsoft Word 6.0 or above. MacIntosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

The Basis and Background document, which is available at the New Jersey Water Supply Authority's web site at <http://www.njwsa.org>, explains in further detail the financial justification for the proposed revised rate schedule. The rules can also be viewed or downloaded from the Authority's web site.

The agency proposal follows:

Summary

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Authority is proposing to amend its Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir System (System), to cover expenses for the Fiscal Year (FY) commencing July 1, 2010. Final action on the rate adjustment is scheduled for the Authority's April 5, 2010 meeting.

The Authority proposes to adjust its existing debt service assessment for contracts effective as of July 1, 1990 and for a certain contract effective July 1, 2006 (initial water purchasers) for the FY commencing July 1, 2010. The Authority proposes to adjust its existing debt service assessment for contracts effective July 1, 2001, October 1, 2002 and January 1, 2005 (delayed water purchasers) for the FY commencing July 1, 2010. The Authority proposes a new debt component for all water purchases for the FY commencing July 1, 2010. The result of the rate modifications in this proposed rule action will be an increase in the overall rate in the amount of \$31.34 per million gallons (MG) for initial System customers and \$23.86 per MG for delayed System customers.

The Operations and Maintenance (O&M) Rate Component in N.J.A.C. 7:11-4.3 was last adjusted effective July 1, 2009 (FY 2010) to cover the operation expenses of the System. At that time, the rate was increased from \$302.52 to \$396.79 per MG. See 40 N.J.R. 6894(a) and 41 N.J.R. 2468(a). The Authority is proposing to amend N.J.A.C. 7:11-4.3(c) to hold the O&M Component Rate at \$396.79 per MG for the FY commencing July 1, 2010. The O&M component sales base of 20.560 million gallons per day (MGD) for FY 2010 is expected to remain constant for FY 2011.

The Debt Service Cost Component in N.J.A.C. 7:11-4.4 was last adjusted effective July 1, 2009. The Authority proposes an increase in the debt service component as set forth in N.J.A.C. 7:11-4.4(b), from \$568.26 to \$568.69 per MG based on total contract sales of 16.125 MGD, starting July 1, 2010. The debt service payment for initial System customers will increase by \$2,063.00 for FY 2011 relative to FY 2010. The increase in the rate components is necessary in order to meet coverage requirements. This rate is charged to all uninterruptible service contracts executed prior to July 1, 1990, which reflects commencement of System operations, and those water purchasers entering delayed water purchase contracts, who

(a)

NEW JERSEY WATER SUPPLY AUTHORITY
Schedule of Rates, Charges and Debt Service
Assessments for the Sale of Water from the
Manasquan Reservoir Water Supply System
Proposed Amendments: N.J.A.C. 7:11-4.3, 4.4, 4.5,
4.11 and 4.13

Proposed New Rule: N.J.A.C. 7:11-4.6

Authorized By: New Jersey Water Supply Authority, Mark N. Mauriello, Acting Chair, and Acting Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:1B-7.

Calendar Reference: See Summary below for explanation of the exception to the calendar requirement.

DEP Docket Number: 22-09-11/758.

Proposal Number: PRN 2009-388.

In accordance with N.J.A.C. 7:11-4.16(a)4, a **pre-public hearing** meeting concerning this proposal will be held on:

Friday, January 15, 2010 at 10:00 A.M.
New Jersey Water Supply Authority
Manasquan Reservoir System Administration Building
Hospital Road
Wall, New Jersey 07719

A **public hearing** concerning this proposal will be held on:
Thursday, February 11, 2010 at 10:00 A.M. to close of comments

New Jersey Water Supply Authority
Manasquan Reservoir System Administration Building
Hospital Road
Wall, New Jersey 07719

Submit written comments by February 19, 2010 to:
Oneida Cuevas, Esq.

reduce economic impacts while assuring that the State's waters are protected. Therefore, the Department believes there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. SURFACE WATER QUALITY STANDARDS

7:9B-1.4 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

... "Watershed-specific translators" means numeric translators developed, as part of a total maximum daily load (TMDL) in accordance with N.J.A.C. 7:15-6, to demonstrate compliance with the narrative [criteria] criterion pursuant to N.J.A.C. 7:9B-1.14(d)[5]4i to protect existing or designated uses for specified watershed(s).

7:9B-1.5 Statements of policy

(a)-(f) (No change.)

(g) Nutrient policies are as follows:

1. These policies apply to all [FW] waters of the State.

[2. Except as due to natural conditions, nutrients shall not be allowed in concentrations that render the waters unsuitable for the existing or designated uses due to objectionable algal densities, nuisance aquatic vegetation, abnormal diurnal fluctuations in dissolved oxygen or pH, changes to the composition of aquatic ecosystems or other indicators of use impairment caused by nutrients.]

[3.] 2. (No change in text.)

[4.] 3. The Department shall establish water quality based effluent limits for nutrients, in addition to or more stringent than the effluent standard in N.J.A.C. 7:14A-12.7, as necessary to meet a wasteload allocation established through a TMDL, or to meet the criteria at N.J.A.C. 7:9B-1.14(d)[5]4.

[5.] 4. (No change in text.)

(h) (No change.)

7:9B-1.14 Surface water quality criteria

(a)-(c) (No change.)

(d) Surface Water Quality Criteria for FW2, SE, and SC Waters:

| Substance | Criteria | Classifications |
|------------------------------|--|---------------------|
| 1.-3. (No change.) | | |
| 4. Nutrients | <p>i. Except as due to natural conditions, nutrients shall not be allowed in concentrations that render the waters unsuitable for the existing or designated uses due to objectionable algal densities, nuisance aquatic vegetation, abnormal diurnal fluctuations in dissolved oxygen or pH, changes to the composition of aquatic ecosystems, or other indicators of use impairment caused by nutrients.</p> <p>ii. Phosphorus (mg/L)</p> <p>(1) Non Tidal Streams: Concentrations of total P shall not exceed 0.1 in any stream, unless watershed-specific translators are established pursuant to N.J.A.C. 7:9B-1.5(g)3 or if the Department determines that concentrations do not render the waters unsuitable in accordance with (d)4i above.</p> <p>(2) Lakes: Concentrations of total P shall not exceed 0.05 in any lake, pond or reservoir, or in a tributary at the point where it enters such bodies of water, unless watershed-specific translators are developed pursuant to N.J.A.C. 7:9B-1.5(g)3 or if the Department determines that concentrations do not render the waters unsuitable in accordance with (d)4i above.</p> | All Classifications |
| [4.] 5. (No change in text.) | | |
| [5. Phosphorus, Total (mg/L) | <p>i. Lakes: Phosphorus as total P shall not exceed 0.05 in any lake, pond or reservoir, or in a tributary at the point where it enters such bodies of water, except where watershed or site-specific criteria are developed pursuant to N.J.A.C. 7:9B-1.5(g)3.</p> <p>ii. Streams: Except as necessary to satisfy the more stringent criteria in paragraph i above or where watershed or site-specific criteria are developed pursuant to N.J.A.C. 7:9B-1.5(g)3, phosphorus as total P shall not exceed 0.1 in any stream, unless it can be demonstrated that total P is not a limiting nutrient and will not otherwise render the waters unsuitable for the designated uses.</p> | FW2 |
| 6.-13. (No change.) | | |
| (e)-(h) (No change.) | | |

(a)

**NEW JERSEY WATER SUPPLY AUTHORITY
Schedule of Rates, Charges and Debt Service
Assessments for the Sale of Water from the
Raritan Basin System**

**Proposed Amendments: N.J.A.C. 7:11-2.3, 2.4, 2.5,
2.6 and 2.12**

Authorized By: New Jersey Water Supply Authority, Mark N. Mauriello, Acting Chair, and Acting Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 58:1B-7.

paid the total delayed water purchase surcharge payable over the contract term at the commencement of the contract term.

The Authority proposes a decrease in the delayed water purchase debt service component as set forth in N.J.A.C. 7:11-4.4(c) to all water purchasers who entered into a water purchase contract for an uninterruptible service commencing subsequent to the system operation date from \$763.24 to \$756.19 per MG based on total contractual sales base of 4.435 MGD, starting July 1, 2010. The debt service payment for delayed water purchase System customers will increase by \$592.00 in FY 2011 relative to FY 2010.

The Authority established a "Source Water Protection Fund Component Rate" (N.J.A.C. 7:11-4.5) starting July 1, 2003. The Source Water Protection Fund Component per MG provides administrative cost assistance for watershed planning and land acquisitions within the Manasquan Basin critical to the long-term protection of water quality and quantity in the System. It is proposed at N.J.A.C. 7:11-4.5(b) that the Source Water Protection Fund Component rate of \$15.00 per MG from FY 2010 remains the same for FY 2011.

The Authority is proposing new N.J.A.C. 7:11-4.6(a) to establish the New Jersey Environmental Infrastructure Financing Program (NJEIFP) Debt Component. The debt component will repay debt service to the New Jersey Environmental Infrastructure Trust for construction costs associated with the installation of a building structure over the Manasquan Reservoir Intake Pump Station. The purpose of the building is to enclose the pumps and travel water screens in order to protect them from adverse weather elements, thereby extending the useful life of the equipment. Engineering studies show that if the Authority does not build this structure, the pumps and travel water screens will require premature replacement involving significant cost and disturbance of the Manasquan River.

The Authority is proposing new N.J.A.C. 7:11-4.6(b) to establish the NJEIFP Debt Component rate at \$30.91 per MG for the FY beginning July 1, 2010.

The Authority proposes recodifying N.J.A.C. 7:11-4.6 through 4.16 as 4.7 through 4.17 with no changes in text.

Social Impact

The proposed amendments and new rule will have a positive social impact and effect. These proposed amendments and new rule represent the Authority's efforts to ensure that rates for the untreated water purchased from the System are equitably assessed to all purchasers and are sufficient to provide the revenues required by the Authority.

This four billion gallon capacity Reservoir provides a needed water supply to keep pace with the continuing growth in Monmouth County while reducing the dependence of water purveyors on the stressed ground water resources of the region.

The Authority does not anticipate the addition of the NJEIFP Debt Component rate will have any social impact.

Economic Impact

The proposed rate adjustments for initial System customers, including the new rate component to repay debt to the New Jersey Environmental Infrastructure Financing Program, will result in a total charge for the uninterruptible untreated water supply from the System of \$1,011.39 per million gallons (\$396.79 for O&M plus \$568.69 for Debt Service plus \$15.00 for Source Water Protection plus \$30.91 for NJEIFP Debt Component), starting July 1, 2010. This represents a net increase of \$31.34 per million gallons relative to the FY 2010.

The proposed rate adjustments for contracts executed subsequent to the System operation date (Delayed Water Purchase Customers) will result in a total charge for the uninterruptible untreated water supply from the System for contracts effective July 1, 2001, October 1, 2002, and January 1, 2005 of \$1,198.89 per million gallons (\$396.79 for O&M plus \$756.19 for Debt Service plus \$15.00 for Source Water Protection plus \$30.91 for NJEIFP Debt Component) starting July 1, 2010. This represents a net increase of \$23.86 per million gallons relative to the FY 2010 delayed water purchase contracts.

The Authority anticipates there will be a minimal economic impact upon the typical household within the billing area. Based upon the average household usage the annual average increase per household is approximately \$1.94.

The Authority anticipates that the proposed addition of a new component of the total rate (NJEIFP Debt Component) will only have a nominal economic impact on customers.

Environmental Impact

The adequate financing of upkeep and operation of the System, which is provided by the proposed amendments and new rule, will result in a positive environmental impact. Sixty percent of the water supply in Monmouth County was previously derived from stressed ground water resources. The System relieves the use of a portion of the existing ground water supply and meets the needs of a developing area. This water supply system has a very important and positive environmental impact since its operation reduces the stress on the valuable ground water resources of the region by providing an alternate surface water supply. By reducing the pumping of ground water, saltwater intrusion will be limited and present ground water levels will not be further reduced.

The 30 million gallon per day water supply that the System can provide helps to protect the region's threatened ground water resources from further depletion. In addition, the 770-acre Manasquan Reservoir provides for the protection of waterfowl and wildlife in the region through several protected wetland sites for the rearing of waterfowl and wildlife.

The continued financing of the Source Water Protection Fund will have a positive environmental impact by providing greater protection to water quality and quantity in the Manasquan Basin through real estate acquisitions, coordinated government land management practices, and remedial projects.

The addition of the NJEIFP Debt Component rate will not have any environmental impact.

Federal Standards Statement

Executive Order No. 27 (1994) requires administrative agencies which adopt, readopt, or amend any rule or regulation to which the Order applies to provide a comparison with Federal law, and to provide further discussion and analysis (including a cost-benefit analysis) if the standards or requirements by the agency exceed standards or requirements imposed by Federal law.

These amendments and new rule are promulgated under the procedures of the Authority. The Authority is an instrumentality of the State of New Jersey in but not of the Department of Environmental Protection. The Authority is charged with the operation and management of the State owned raw water supply facilities within the State of New Jersey.

These amendments and new rule are not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal law. In addition, the proposed amendments and new rule are not under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements.

Jobs Impact

The proposed amendments and new rule are an annual revision to the Authority's regulations covering rates for its water customers in the System. The implementation of these amendments, including the addition of the NJEIFP Debt Component, is not anticipated to result in the generation or loss of jobs.

Agriculture Industry Impact

In accordance with P.L. 1998, c. 48, which amends the Right to Farm Act, and in accordance with N.J.S.A. 52:14B-4(a)2, which requires that an Agriculture Industry Impact statement be included in the rule proposal, the Authority has evaluated this rulemaking to determine the nature and extent of the impact of the proposed amendments and new rule will have on the agriculture industry. Agriculture is impacted to the extent that farms and other agricultural users receive water allocations from the Department of Environmental Protection and contracts with the Authority for the purchase of water as a condition of the water allocation permit.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Authority has determined that the proposed amendments and new rule will not impose reporting, recordkeeping or other compliance requirements on small businesses

because they only affect the rates charged to users for water purchased from the Authority. The municipalities and major water purveyors which contract to purchase water from the Authority and which are impacted by these rules do not qualify as "small businesses" pursuant to N.J.S.A. 52:14B-16 et seq. The water companies that contract to purchase water from the Authority and that are impacted by these amendments and new rule all employ more than 100 full-time employees; therefore, they do not qualify as small businesses pursuant to N.J.S.A. 52:14B-16 et seq.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedures Act (N.J.S.A. 52:14B-4(a)) to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments' and new rule's impact on smart growth and the implementation of the State Plan. The proposed amendments and new rule modify the Authority's Schedule of Rate's, Charges and Debt Service Assessments for the Sale of Water from the System to cover expenses for the FY commencing July 1, 2010 and create an NJEIPF Debt Component.

Because the amendments and new rule do not involve land use policies or infrastructure development, they are not expected to have any impact on the achievement of smart growth. The proposed amendments and new rule are not expected to have any impact on implementation of the State Plan.

Housing Affordability Impact

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Authority has evaluated the proposed amendments and new rule for the purposes of determining their impact, if any, on the affordability of housing. The Authority has determined that the proposed amendments and the new NJEIPF Debt Component rule will impose an insignificant impact because it is unlikely that the amendments and new rule will evoke a change in the average costs associated with housing. The Authority finds that the proposed amendments and new rule do not change land use policies or the nature and scope of the rules. Therefore, it is unlikely that proposed amendments and new rule will evoke a change in the average costs associated with housing.

Smart Growth Development Impact

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Authority has evaluated the proposed amendments and new rule for purposes of determining their impact, if any, on smart growth development. The Authority has determined that the proposed amendments and the new NJEIPF Debt Component rule will impose an insignificant impact because it is unlikely that the amendments and new rule will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The Authority finds that the proposed amendments and new rule do not change land use policies or the nature and scope of the rules. Therefore, it is unlikely that the proposed amendments and new rule will evoke a change in housing production within Planning Areas 1 or 2 or within designated centers.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

7:11-4.3 Operations and maintenance expense component

(a)-(b) (No change.)

(c) Operations and maintenance expense component:

| <u>Effective Date</u> | <u>Rate/Million Gallons</u> (based upon a 20.560 mg per day sales base) |
|-----------------------|---|
| July 1, [2009]2010 | \$396.79 |

7:11-4.4 Debt service cost component

(a) (No change.)

(b) The following Debt Service rates based on a sales base of 16.125 million gallons per day, apply to all initial water purchase contract customers, and all delayed water purchase contract customers, who fully satisfied their contractual delayed water purchase surcharge obligations at the commencement of their contract terms:

| <u>Period</u> | <u>Rate/Million Gallons</u> (Coverage 120 percent) |
|--------------------------------------|---|
| 7/1/[2009]2010 to 6/30/[2010]2011 | [\$568.26] \$568.69 |

(c) A delayed water purchase surcharge will be assessed to all water purchasers who entered into a water purchase contract for an uninterrupted service commencing subsequent to the system operation date (delayed water purchase contract). This includes a purchaser under an initial water purchase contract, which provides for an increase in the amount of uninterrupted service effective subsequent to the system operation date.

1. The following debt service rate based on a sales base of 4.435 million gallons per day, applies to the delayed water purchase contracts commencing July 1, 2001, October 1, 2002, and January 1, 2005 in lieu of the debt service rate set forth in (b) above.

| <u>Period</u> | <u>Rate/Million Gallons</u> (Coverage 120 percent) |
|--------------------------------------|---|
| 7/1/[2009]2010 to 6/30/[2010]2011 | [\$763.24] \$756.19 |

(d) (No change.)

7:11-4.5 Source water protection fund component

(a) (No change.)

(b) The source water protection fund component is as follows:

| <u>Period</u> | <u>Rate/Million Gallons</u> |
|--------------------------------------|-----------------------------|
| 7/1/[2009]2010 to 6/30/[2010]2011 | \$15.00 |

7:11-4.6 New Jersey Infrastructure Financing Program debt component

(a) The New Jersey Infrastructure Financing Program debt component rate per million gallons listed at (b) below is established to fund debt service costs with respect to each annual payment period or portion thereof, and will be that amount accruing in the bond year (starting on August 1 of each calendar year and ending on the next following July 31) or corresponding portion thereof, commencing during the fiscal year (starting on July 1 of each calendar year and ending on the next following June 30) within which such annual payment period or portion thereof falls. The debt service costs include the aggregate amounts payable during the specified period for interest accruing during such period on the bonds and that portion of each required principal payment, which would accrue during such period;

(b) The New Jersey Infrastructure Financing Program debt component is as follows:

| <u>Period</u> | <u>Rate/Million Gallons</u> |
|-----------------------|-----------------------------|
| 7/1/2010 to 6/30/2011 | \$30.91 |

Recodify existing N.J.A.C. 7:11-4.6 through 4.10 as 4.7 through 4.11 (No change in text.)

7:11-[4.11]4.12 Standby service

(a) The rates for standby service shall consist of:

1. A standby charge established in N.J.A.C. 7:11-[4.12]4.13 for each month during which standby service is available equal to the capacity, in mgd, of the purchaser's withdrawal facilities to be served by such standby service multiplied by the rate per mg for uninterrupted service set forth in N.J.A.C. 7:11-4.3, 4.4 and 4.5; and

ENVIRONMENTAL PROTECTION

2. A charge for water actually consumed in any month at the rate per mg of water established by the rates for short-term service as set forth in N.J.A.C. 7:11-[4.10]4.11 at the time of such consumption, minus the standby charge for such month.

(b)-(c) (No change.)

7:11-[4.12]4.13 (No change in text.)

7:11-[4.13]4.14 Payments for other services

Payments for any other charges payable by reason of excessive withdrawals or otherwise, shall be made within 30 days following receipt of the Authority's invoice and shall be based upon Manasquan Reservoir System water actually consumed. The rate for excessive withdrawal shall be the rate set forth in N.J.A.C. 7:11-[4.8]4.9.

Recodify existing N.J.A.C. 7:11-4.14 through 4.16 as 4.15 through 4.17 (No change in text.)
