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PUBLIC NOTICES

**ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT**

38 N.J.R. 2742(a)

N.J.A.C. 7:9B

Notice of Action on Petition for Rulemaking

Surface Water Quality Standards

Petitioner: Township of Readington Environmental Commission

Take notice that Department has determined to deny the petition for rulemaking filed by Readington Township Environmental Commission dated February 24, 2006. Specifically, the petitioner requested that the antidegradation designation for the reach of the North Branch Rockaway Creek from the Route 523 bridge to the confluence with the South Branch Rockaway Creek be upgraded from FW2-TM(C2) to FW2-TM(C1). North Branch Rockaway Creek above Route 523 is already classified as FW2-TP(C1). This request is based both on "exceptional ecological significance" and "exceptional water supply significance." Notice of receipt of the petition was published on April 3, 2006 (*38 N.J.R. 1586(a)*).

The Department received letters in support of the petition for rulemaking from the following:

Town of Clinton

Tewksbury Environmental Commission

Pamela Sitek

Upper Raritan Watershed Association

Township of Readington Planning Board

Trout Unlimited

Rakesh Saini

Jason and Jennifer Price

Frederick C. Puelle

High Bridge Borough

Clinton Township

Clinton Township Environmental Commission

John W. Klotz

Sheldon R. Kay

Paddy and Chris Concannon, Jr.

Ryan Teti

Charlotte LaCroix and Harry Nijenhuis

South Branch Watershed Association

The petitioner states that reclassification is warranted to protect documented existing uses of Federal and State threatened and endangered species, as well as wild brown trout. Additionally, the petitioner states that the reclassification would protect Highlands water supply. The petitioner indicates that confirmed sightings of the Federal and State protected bog turtle (*Clemmys muhlenbergii*) and the State protected wood turtle (*Clemmys insculpta*) are documented in this reach of the North Branch Rockaway Creek. The petitioner further asserts that the stream supports and sustains wild brown trout populations which are highly sensitive to water quality degradation. However, the petitioner asserts that the waterbody is beginning to show evidence of stress and impact as demonstrated by benthic macroinvertebrate and water chemistry data compiled by the Upper Raritan Watershed Association and the Department. With reference to water supply, the petitioner indicates that the North Branch Rockaway Creek is part of the potable water supply system for Central New Jersey. The petitioner asserts that the stream originates in the Highlands Preservation Area in Washington Township in Morris County and Tewksbury Township in Hunterdon County. Ultimately, this water drains to the Raritan River which is a drinking water source for over one million people in central New Jersey through an intake at Bound Brook. The petitioner asserts that degradation of any of the tributaries of the Rockaway Creek and the Raritan River system has significant potential to adversely impact this valuable water supply.

In support of its assertion that this segment of the North Branch Rockaway Creek should be upgraded based upon "exceptional ecological significance," the petitioner provided various information. The petitioner compiled information collected by the Upper Raritan Watershed Association and the Department on the macroinvertebrate community and the water chemistry in support of its assertion that the North Branch Rockaway Creek currently supports a diversity of organisms reflective of high water quality but is beginning to show evidence of stress and impact. The petitioner's data indicate that the North Branch Rockaway Creek has levels of phosphorus above the Surface Water Quality Standards. Elevated phosphorus concentrations may cause objectionable algal growth, nuisance aquatic plants, abnormal diurnal fluctuations in dissolved oxygen or pH and changes to the aquatic ecosystem. The petitioner provided macroinvertebrate data for two stations located within the segment requested to be upgraded to Category One. The average score was 28.5, a score indicative of a waterbody that is considered to be unimpaired. The average Habitat Assessment for these two stations was 146 or suboptimal. The petitioner also provided information collected by the Division of Fish and Wildlife that demonstrated that the North Branch Rockaway Creek is capable of supporting trout but not trout production. A fish Index of Biotic Integrity (IBI) result was not available for the waterbody which is the subject of this petition.

In reviewing requests to upgrade a waterbody's antidegradation designation based upon "exceptional ecological significance," the Department relies upon an integrated ecological assessment. The integrated assessment utilizes a variety of water quality, biological survey, and environmental indicator information to determine if a stream exhibits characteristics that are of "exceptional ecological significance" and, thus, should be protected as a Category One waterbody. The information used includes the aquatic physical and chemical monitoring data, aquatic benthic macroinvertebrate biological monitoring and instream habitat quality data, the fish species data collected in the Department's Fish Index of Biotic Integrity Network, information on threatened and endangered species, and riparian habitat assessments. The decision to upgrade a waterbody to Category One based upon "exceptional ecological significance" is based upon the evaluation of all available information.

The Department has reviewed the information provided for the integrated ecological assessment. Based upon this review, the Department has determined that there is not sufficient information to support a determination of "exceptional

ecological significance." Among other things, information on fish IBI was not available to support an upgrade, there is no information to indicate that the waterbody segment supports trout production, the habitat in the watershed is classified as suboptimal and elevated levels of phosphorus were reported.

In addition, the Department has determined bog turtles are not located in the portion of the North Branch Rockaway Creek recommended by the petitioner for upgrade to Category One. Although much of the area is identified as suitable habitat for the State Threatened Wood Turtle, no sighting information was provided. Therefore, the petition to upgrade North Branch Rockaway Creek for "exceptional ecological significance" is denied.

Petitioner additionally requested that the upgrade for this section of the North Branch Rockaway Creek based upon "exceptional water supply significance." According to the petition, the North Branch Rockaway Creek is part of the potable water supply system for Central New Jersey. The North Branch Rockaway Creek flows into the Lamington River, the North Branch Raritan River and ultimately the Raritan River at Bound Brook.

The two subwatersheds that comprise the North Branch Rockaway Creek watershed drain approximately 22 square miles in Clinton Township, Readington Township and Tewksbury Township. This represents less than three percent of the land area located upstream of the potable water intake on the Raritan River at Bound Brook. Additionally, the water leaving this waterbody must pass through miles of land outside the Highlands Region before reaching the potable water intake at Bound Brook. While the Department believes that the protection of drinking water supplies is imperative, the North Branch Rockaway Creek does not qualify for the requested upgrade from Category Two to Category One on the basis of "exceptional water supply significance" because the contribution of water from this segment of the North Branch Rockaway Creek represents such a small portion of the water used for potable water supply purposes. Accordingly, the Department denies the petition to upgrade on this basis.

For the reasons indicated above, the Department has denied this petition. Should the petitioner obtain additional factual information to support the designation of the North Branch Rockaway Creek as a Category One waterbody, the petitioner could request that the Department again consider upgrading the antidegradation designation for the North Branch Rockaway Creek.

A copy of this notice has been mailed to the petitioner as required by *N.J.A.C. 1:30-4.2*.

