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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

In the Matter of the Petition of New Jersey
American Water Company for a Determination
Concerning the Fenwick Water Tank Pursuant
To N.J.S.A. 40:55D-19

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**REPLY OF MOVANT PAUL SAVAS TO PETITIONER’S RESPONSE TO MOTIONS
TO INTERVENE FROM HOMEOWNERS MR. SAVAS AND MS. MARTIN
RESPECTIVELY**

Paul Savas (“Mr. Savas” or “Movant”), by and through the undersigned counsel, submits this Reply to Petitioner’s Response to Motions to Intervene From Homeowners Mr. Savas and Ms. Martin Respectively in the above-captioned matter.

- A. The nature and extent of Mr. Savas’s interest in the outcome of the case is significant and is not “superficial at best.”

As set forth in the Motion to Intervene, Mr. Savas has a significant interest in the outcome of this case. N.J.A.C. 1:1-16.3(a). Mr. Savas’s property is adjacent to and partially surrounds the undersized parcel owned by New Jersey American Water (“NJAW”), where NJAW plans to install a new, larger water tank. While the existing, smaller tank is surrounded by and visually screened by trees and other vegetation, the proposed new tank would tower above the treeline. This condition is exacerbated by the fact that NJAW plans to remove some trees during construction and to replace only some of them, with immature saplings that will take decades to reach full height. The new water tank will be visually intrusive to Mr. Savas’s property.

Mr. Savas and his family will be substantially impacted by construction of the new water tank, which is anticipated to take longer than a year. Construction will bring heavy trucks, deafening noise, odors, dust, and other impacts onto Mr. Savas’s property. The impacts will be

felt most acutely at the residence of Mr. Savas's daughter and her fiancé, which is approximately 100 feet from the proposed tank. Making matters worse, Mr. Savas's daughter and her fiancé both work from home, and would be unable to do so during the duration of the construction. Construction of the proposed tank would completely upend their lives.

And, as explained by the expert witness retained by Mr. Savas who presented testimony before the Zoning Board, the presence of the new tank will substantially reduce the value of Mr. Savas's property and other properties in the immediate area.

Furthermore, if the new tank were to experience a failure, Mr. Savas's property would be inundated with water, at great risk to structures and human beings, particularly the occupied residence of Mr. Savas's daughter and her fiancé that sits within 100 feet of the proposed tank location. NJAW has declined to produce any evidence regarding any risk or safety assessments it has performed for this proposed project, despite the fact that it intends to place a 750,000 gallon elevated water tank in a residential neighborhood. Notably, NJAW ignored this issue entirely in its Response.

In addition, Mr. Savas has invested a substantial sum of his own money in retaining counsel and expert witnesses to express his opposition to the proposed water tank. He is prepared to expend the resources necessary to oppose the proposed water tank in this proceeding as well. Mr. Savas has "skin in the game," and should not be relegated to the sidelines now.

Curiously, NJAW's Response on this issue attempts to pre-litigate a contested fact: whether there are alternative sites in the vicinity that could reasonably accommodate an enlarged water storage tank. Mr. Savas's Motion to Intervene did not raise this issue. NJAW's Response also attempts to cast Mr. Savas's efforts to protect his property in a negative light, referring to Mr. Savas's property as an "estate" type property," as if the size or character of a homeowner's property should dictate whether he may oppose intrusions upon it.

B. Mr. Savas's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case. N.J.A.C. 1:1-16.3(a).

Mr. Savas, and putative intervenor Karen Martin ("Ms. Martin"), would be the only parties in this case who own property and reside in proximity to the proposed water tank. Construction of the proposed water tank would have significant impacts on the Savas and Martin properties that would not be experienced by any of the other parties in the case, including aesthetic impacts, impacts from construction, impacts on property values, and potential safety impacts in the event of a tank failure.

The Zoning Board's interest is in seeing that its Land Development Ordinance is enforced. The Zoning Board does not own property in proximity to the proposed water tank, would not experience diminution of property value if the tank is constructed, would not experience the most direct impacts of heavy construction, and would not be at immediate risk if the tank were to experience a failure. Therefore, Mr. Savas's interests are unique and would not be represented by the Zoning Board alone.

NJAW's Response unfairly minimizes the nature of Mr. Savas's interest in this case as "not in my back yard." First, the placement of an enormous water storage tank on an undersized

lot in a residential neighborhood is no small matter. Neighbors opposing such a project have valid and pertinent reasons to do so, as discussed above, that go far beyond the adverse visual impacts of seeing the tank from their property. NJAW does not appear to take seriously its obligation to consider safety concerns and construction impact concerns, among others, in its locational decisions. This cavalier attitude toward the impacts of its facilities is exactly why NJAW encountered such fierce resistance at the local level. NJAW has made no effort thus far to examine alternative sites for its proposed water tank, and Mr. Savas's intervention would ensure that this issue is fully vetted in this proceeding.

C. Granting intervention will not result in any confusion or undue delay. N.J.A.C. 1:1-16.3(a).

Mr. Savas will abide by the schedule set by the Court in this matter. Mr. Savas will also coordinate with the other parties in opposition to NJAW's Petition, including the Zoning Board and Ms. Martin, to the extent appropriate, to conserve resources and avoid repetitive discovery requests and questions during any hearings held by the Court. Granting intervention to Mr. Savas will not result in any confusion, as Mr. Savas's interest in the case is clear.

NJAW's Response on this issue relies on unsupported, pejorative statements about the interests of Mr. Savas and Ms. Martin and the conduct of attorneys for both Movants during the local zoning proceeding. As NJAW knows, Mr. Savas had every right to retain counsel and enter an appearance before the Zoning Board, and to participate fully in that proceeding. NJAW's frustration at the outcome before the Zoning Board is understandable, but NJAW's frustration does not curtail Mr. Savas's entitlement to due process.

D. "Other appropriate matters" favor intervention. N.J.A.C. 1:1-16.3(a).

NJAW's Response cites the purported urgency of obtaining approval from the BPU to overrule a decision of a local Zoning Board empowered to site land uses in accordance with its Zoning Code. Here, again, NJAW is pre-litigating contested facts that will be up to the Court to decide, including whether NJAW had – and still has – an alternative solution to its water supply problem in this area. To the extent that "other appropriate matters" weigh on the Court's decision on intervention, they favor intervention. Mr. Savas's and Ms. Martin's participation in the Zoning Board proceeding was instrumental in placing many facts into the record that otherwise would not have been brought to light. Many facts are still not fully explored, and will need to be proven to this Court in order to complete the record and allow the Court to come to a fully informed decision. Mr. Savas's intervention and full participation in this case is vital in pursuit of that goal.

It should also be noted that NJAW's Response contains several misleading statements and flat inaccuracies, including the assertion that Mr. Savas presented no expert testimony before the Zoning Board. While Mr. Savas had no obligation to present experts before the Zoning Board as he was not the party seeking relief, Mr. Savas did retain an appraiser who presented expert testimony on the impact of the proposed water tank on adjoining property values.

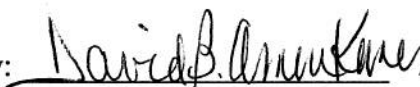
E. As an alternative, if intervention is denied, the Court should allow Mr. Savas to participate in the case pursuant to N.J.A.C. §1:1-16.6.

While we urge the Court to allow Mr. Savas to intervene and participate fully in this case, the Court may, as an alternative, permit Mr. Savas to participate in a more limited fashion pursuant to N.J.A.C. §1:1-16.6. Such participation may include the right to argue orally, the right to file a statement or brief, the right to file exceptions to an initial decision with the agency head, or any combination of the above. Ibid. We would request that if the Court decides against granting Mr. Savas's Petition to Intervene, the Court instead allow Mr. Savas to participate in this matter to the fullest extent the Court deems suitable.

For the reasons set forth above, Mr. Savas respectfully requests that the Court grant leave to intervene in this matter pursuant to N.J.A.C. 1:1-16.1 *et seq.*

Respectfully submitted,

Duane Morris LLP

By: 
David B. Amerikaner

Dated: March 14, 2022

CERTIFICATION OF SERVICE

I, Dawn M. Smith, certify that I am a Legal Administrative Assistant at the firm of Duane Morris LLP, and on this date, I caused copies of the attached Reply to Petitioner's Response to Motions to Intervene From Homeowners Mr. Savas and Ms. Martin Respectively to be served via email upon each of the parties named on the service list attached to this filing. The above statements made by me are true. I am aware that if any statement made by me is willfully false, I am subject to punishment.



Dawn M. Smith

Dated: March 14, 2022

**IN THE MATTER OF
THE PETITION OF NEW JERSEY AMERICAN WATER COMPANY FOR A
DETERMINATION CONCERNING
THE FENWICK WATER TANK PURSUANT TO N.J.S.A. 40:55D-19
BPU DOCKET NO: W022010004
OAL DOCKET # PUC 00319-2022 S**

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