

**MEADOWLANDS CONSERVATION TRUST
MEADOWLANDS CONSERVATION TRUST
OPEN SESSION MEETING MINUTES**

DATE: August 10, 2016
TIME: 10:00 a.m.
PLACE: NJSEA Environment Center 2nd Floor Lecture Room
Two DeKorte Park, Plaza, Lyndhurst, NJ

TRUSTEES PRESENT:

WILLIAM SHEEHAN, Chairman
Hackensack Riverkeeper

GREG REMAUD, Vice Chair
NY/NJ Baykeeper

GABRIELLE N. GALLAGHER, Delegate
Department of Community Affairs

CHRISTINE A. SANZ, Chief Executive Officer

ABSENT:

MAYOR ALBERTO SANTOS, HMMC Delegate
Mayor of Kearny

RALPH J. MARRA, JR., ESQ. Delegate
Senior Vice President Legal, NJSEA

ALSO PRESENT:

JASON STYPINSKI, Deputy Attorney General

COLLEEN MERCADO, Senior Operations Administrator, NJSEA

1. Welcome - Chairman Sheehan welcomed everyone and noted that two of the Trustees were not able to attend. He added that the Board could not take any action because there was not a quorum. Chairman Sheehan continued by saying that there was a pressing issue before the Board and they would use this time to gather some more information.
2. Flag Salute
3. Sunshine Law Statement
4. Roll Call

5. **REPORTS**

- Chairman Sheehan stated that he would forgo any reports and noted that CEO Sanz had some information to share.
- CEO Sanz updated everyone on the following documents received since the last Board meeting and noted that all of this correspondence had been provided to the Trustees:
 - i. MCT letter addressed to ACOE dated 7/22/2016;
 - ii. ACOE response to MCT dated 8/1/2016;
CEO Sanz noted that the ACOE essentially stated that Kane Mitigation requested a modification of the MBI for the Kane service area and upon receipt they notified Kane that for any formal process of the request to be processed, written documentation from MCT would first have to be provided indicating MCT approved the request;
 - iii. Kane Mitigation supplemental request dated 8/4/2016;
 - iv. Letter from Connell, Foley (Evergreen's Counsel) dated 8/8/2016;
 - v. Supplemental information letter from Kane Mitigation dated 8/9/2016.

6. **OLD BUSINESS** – REQUEST FOR MODIFICATION TO THE KANE MITIGATION BANKING INSTRUMENT

- Andrew Derickson introduced himself as Senior Vice President, General Counsel of Kane Mitigation – the bank's sponsor. Mr. Derickson began by saying he has had a request pending since April, which he says is being called an expansion but he's really calling it a clarification of the Kane service area. He requested that the MCT schedule another meeting, special or otherwise, to resolve this issue. He continued by saying that since his request in April, he anticipated the NJ Transit ("NJT") to issue the IFP for their Longslip Project and he was not aware it had already been issued, on 7/15/2016 when he attended the MCT meeting on 7/21/2016, adding that responses are due on 8/15/2016. Mr. Derickson went on to say that it concerned him that since April we could not come up with a decision and could not have a vote today, but asked the Chairman to move quickly to try to resolve this issue. He then said that it is still Kane Mitigation's position that this is more of a clarification of the service area, and is very consistent with MCT's 2008 RFP where it clearly intended to include this in WMA5 watershed. Mr. Derickson concluded by saying that the end of the service area exhibit is flawed; it's inconsistent with the terminology of the MBI, and said the RFP clearly included the hydrologic units that he is trying to add to the exhibit to make it clear.
- At the request of CEO Sanz, Mr. Derickson walked the Board through the issue of HUC's and WMA5, and what he is exactly looking for in terms of expansion.

Mr. Derickson's response was that this is all about WMA5, the north eastern watershed management area (WMA) that both Kane and Evergreen live in. He continued by saying that within the WMA5 there are specific hydrologic units (HUC) but the State delineates areas within the WMA that they define as a service area. He then made the following statements:

- His request started out as an expansion to include one additional HUC, which he made sure was in the WMA5; he referred to the HUC as 1170;
 - RFP originally had a draft MBI which called for five (5) separate HUC's, plus the Hackensack Meadowlands District, all within WMA5;
 - The final MBI called for only two (2) specific HUC's; draft MBI was much more broad;
 - HUC 1170 was special and very contemplated at the time; it was buried within a list of five (5) different HUC's within draft MBI;
 - His request now is more of a clarification that the service area is intended to be all of the WMA5, or at the very least include the HUC he is asking for;
 - RFP may have misled potential bidders.
 - He is not making the argument at this time that all the HUC's from WMA5 are included.
- Mr. Derickson feels the overriding reason for him being here today was the purpose of the bank to service the transportation agency, and believes his expansion would allow him to better serve the transportation agency and their needs. He made a comparison of the service areas of Wyckoff and Cranbury; noting that Wyckoff had a very broad service area – three watershed management areas, and Cranbury initially just one. However, over time needs changed and Cranbury asked for an extension of their service area to level the playing field so there wasn't sole source bidding and he doesn't see that as being much different than what he is looking for here. He commented that he is not guaranteed to win any proposal but right now he is being precluded from even talking about it.
 - CEO Sanz asked Mr. Derickson if he thought it was too late at this point for the Longslip project and was the Board really answering the question of expansion for future projects. She commented that even, hypothetically, if the Board responded in the affirmative, the Corps would not be able to review this in time to permit an expansion of his service area.
 - Mr. Derickson's hope is that it wasn't too late and noted that he had requested an extension from NJ Transit, not knowing if NJT would give it to him for two weeks, and that may not be long enough. He added that he didn't plan not to bid and would work around it based on current circumstances making assumptions that this may or may not occur.
 - CEO Sanz and Vice Chair Remaud both made points of clarification to certain statements made by Mr. Derickson:
 - The MCT Board did not receive the formal request until June 2, 2016 and prior to that the MCT had not received a request for its input on this discussion; similarly between Kane and ACOE;
 - Even though this issue has been on the table in one form or another since April, the substantive information did not get to the Board until recently in June, with a lot of outstanding questions. The Board is moving through it, but moving through it diligently; asking questions that need to be asked in order to make a thorough decision.

- Vice Chair Remaud also noted, that it is difficult when you have a MIMAC that doesn't allow even those who are directly involved, such as MCT, to attend their meetings. So, everything goes through a little bit of a telephone tag, which makes it difficult for the applicant and the MCT. He said that the MCT had met with NJT and then things changed; the MCT had no notification from NJT of that change. He added that there's a concern, if NJT has a deadline, it would be helpful if NJT would provide information in a timely fashion for those who have to make decisions that are impacted.
- CEO Sanz had asked Mr. Derickson to clarify that the issue he was presenting today is not as it relates to whether the current service area includes the entirety of WMA5, but only as it relates to Evergreen's argument about what happened during the bidding process. She noted that the Trust could not accept that the current service area is in WMA5 because that is exactly what the Trust is being asked for – an expansion of the current service area to include this area. She stated that the Army Corps requested the Trust to review this, to provide input; so they are not interpreting it the same way as Mr. Derickson.
- Mr. Derickson responded affirmatively, but noted he ultimately feels this is a business issue and that there is really no legal impediment to his request. He noted that if you look at the MBI its text says servicing WMA5, yet the specific exhibit only illustrates the two HUCs within WMA5, but the document says these are supposed to be within WMA5.
- Chairman Sheehan then asked Mr. Renna of Evergreen Environmental to present any information he may have to the Board.
- Mr. Renna asked to approach the Board and distributed handouts for reference. He began by pointing out that there is tremendous recognition of the purpose of the Kane Bank. He read from his prepared statements, bringing up what he referred to as unique topics of discussion: the service area and the use of the Kane Bank being limited to four transportation agencies. He noted that on the discussions of transportation projects, which he described as linear projects, there was a provision in the (Kane) service area relative to linear projects; specifically mentioning the ARC tunnel project and how its expansion would have impacts in the Meadowlands but also in the Hudson, which is accurately part of WMA5, allowing that same linear project to be mitigated in the same location. Mr. Renna spoke on the topic of linear projects stating that this occurs across the State where the agencies make compensation and consolidated exceptions for linear projects because it's hard to mitigate a project for each separate watershed as it may traverse 25 miles or so. He stated that the issues of Evergreen Environmental opposing the Kane service area expansion are legally oriented and related to the public bid process. He described the business of mitigation, how it is highly regulated, commenting that the mitigation bank units in this area should have a service area much larger than the Meadowlands. He said that back in 2008 there were critical issues that set up legal constraints and we need to pull back the people that were there then and figure out how it was done. Mr. Renna stated that in 2008, he was at the pre-bid meeting with

many people and they all highly desired this project – a project valued in the multi-million dollar range. He commented that there was just one bidder – one sole source. He compared the reference of “monopoly” that was kicked around at the last MCT meeting as it pertained to MRI3, being the only bank legally today to serve the Longslip, to what he considered a monopoly – the one bidder that won the (Kane) project – the one bidder that was essentially handed the ARC Tunnel contract – by the same agency being talked about today – NJ Transit. Mr. Renna discussed service areas, stating that there were several mischaracterizations of the MRI3 service area, Evergreen’s mitigation bank, at the last MCT meeting. He provided a history of the service area of MRI3, which was memorialized in 2011. He began with MRI-1 and 2, which were developed in 1998, making reference to graphics 1 and 2, part of the documents he had distributed earlier in the meeting. He continued with graphic 3, an aerial of WMA5, which he commented does indeed include the Hudson River. He noted that back in 2001 through 2003 (referencing graphic 4) there wasn’t any mitigation for projects in the Arthur Kill and Raritan, so the Agencies came to his client at that time, Marsh Resources, Inc. (MRI) and asked them to expand their service area. MRI expanded and MIMAC approved. He said that both the Hackensack Riverkeeper and Baykeeper came out at that time and opposed the expansion, requiring a retraction of the service area, back to WMA5. He pointed out that two of the representatives of the Trust fought against the expansion and today, for a bank on land that MCT owns, there is serious consideration of expansion. He described the difficulties of the mitigation business and how Evergreen would love to sell their credits to NJ Transit from their other banks in the state but can’t because they are defined and brachial; they have bright lines on them for legal, regulatory and sometimes ecological and hydrologic reasons. Mr. Renna brought up another option for mitigation, one that he would not recommend – the New Jersey Mitigation Bank, which set themselves up with service areas that cover areas in WMA5. He stated that he had opposed this and lost. Mr. Renna then commented that he had asked NJ Transit what they would do if they couldn’t use Kane and if MRI3, in the meantime, sold all its’ credits? He said NJT replied they would just go to the state bank. Mr. Renna continued on the topic of why mitigation is so difficult and controversial. He commented that one of the many reasons is because of the service area limitations. He referenced his graphic - #7, which depicted the State’s 21 mitigation banks, noting that WMA5 in the Meadowlands is the size of a postage stamp in the graphic, comparing it to others in the graphic that are three or four time larger. Mr. Renna stated that it’s the balkanization and shrinking that has mitigation bankers on top of each other and why banking is so restrictive and so competitive.

- Vice Chair Remaud interjected, commenting that he thought Mr. Renna was here to talk about his legal challenges, his application – not the many issues involved with mitigation.
- Mr. Renna responded that he was getting to that and said that due to the mischaracterizations of the service areas contained in the minutes of the last MCT meeting, he felt it necessary to provide an understanding of the “how and why” of service areas in the State. Mr. Renna made reference to the Longslip Project, stating that it was not new -- that NJ Transit had come to him, in his previous career, to buy credits from MR1 and 2. He noted that NJ Transit decided not to buy the credits at

that time, and now due to their lack of planning, NJ Transit has put upon the MCT to make a huge decision about mitigation banking in the region. He said NJ Transit isn't required to purchase credits from MRI3 or Kane, there is no monopoly on mitigation, they can do their own mitigation and the lack of credits from Kane doesn't preclude this worthy transportation project from meeting its mitigation obligations. He went on to say he believes Kane was reserved for four transportation agencies in the Meadowlands District for a specific reason: to protect and replace the resources of the Meadowlands. He made note that the Kane achieved a milestone recently by achieving 65.5 percent cover in order to get a credit release and that the next credit release would require 85 percent. He added that MRI3 has 88 percent cover as of June and referenced graphic 8, which were aerial shots of Kane and MRI3, pointing out that Kane had a heck of a lot of water.

Mr. Renna concluded his statement by saying if the MCT revises the Deed, allowing Kane to cover the Hudson, then the converse is true - a bank in the Hudson could then mitigate in the Meadowlands. Adding, that if MCT sets this precedent, the banking world will take note; the Oradell bank is waiting for this decision so that their bank, outside the Meadowlands, can be approved to mitigate in the Meadowlands. Mr. Renna concluded by saying he respectfully requests that the Board not approve the expansion and that his attorney, Joe Murphy could expand on the concerns in their letter of August 8, 2016.

- CEO Sanz asked Mr. Renna to elaborate on the point he had made relating to the ARC and how the project could have impacts outside the area, yet there is some connection to the area that he would support Kane being able to bid on.
- Mr. Renna responded by saying there was recognition that the (Kane) bank would quite likely serve linear projects, and described ARC as a linear project that could come through the Meadowlands (the service area), have a component that came up south of the area and then pop up through north of the area. He stated that the Agencies gave flexibility and weren't going to make the permittee, NJ Transit, have to do separate mitigation sites, since the Meadowlands is where the bulk of the wetlands are, so they permitted linear projects to be consolidated. Mr. Renna stated that he did not feel the Longslip was a linear project; that it was just the filling of the Longslip in the Hudson and was a self-contained project on the Hudson.
- Vice Chair Remaud stated he wanted to get back to the issue of the service area; not ecologically or less ecology but more to mitigation - money issues. He described industrial areas that tend to get dumped on more and how the general concept is to mitigate nearest the impacted communities. Otherwise, communities like Jersey City, Newark, Meadowlands communities where there's more industry get a lot of impact but then all the mitigation is outsourced because it's cheaper and easier outside of the region. Vice Chair Remaud concluded by saying the primary rationale is to make sure impacted communities have their ecology intact and it doesn't go to where it's cheapest or easiest for the mitigation bank or entity.
- Chairman Sheehan spoke a little bit about the philosophy behind all of this. He began with mitigation, saying that as defined under the Clean Water Act (Act), it was

originally intended as a deterrent for loss of wetlands, but over 20 years evolved into taking existing wetlands acreage and enhancing it, instead of creating additional wetlands. He noted that back in the '90's, in his day job as Riverkeeper, they were absolutely against it. He stated that what he saw with the evolution of mitigation was that it was becoming more like a get out of jail free card, commenting that "Mr. Developer" did not have to worry about doing mitigation because someone else would do it for him. He noted that Hackensack Riverkeeper and Baykeeper fought against the expansion at that time, agreeing with Mr. Renna's earlier statement. He spoke about the original purpose of the Act, which was to protect water quality and in turn restore the rivers and streams. He spoke of the Kane Mitigation Bank (Andy Derickson's project), saying that was something that grew out of the need to protect the Empire Tract. He explained circumstances at that time and how the idea was brought up that the Trust should become the custodian of the Empire Tract and with certain requirements. He noted the conversations that took place back in 2000, 2001, where they said at some point in the future they (the Trust) would open up a transportation related mitigation bank that would service the projects in the Meadowlands. Chairman Sheehan noted that even though he was philosophically opposed to the concept of mitigation banking, he was looking at the greater good - to preserve the 587 acre tract.

Chairman Sheehan spoke of the conversations in 2007, 2008 when they talked about the ARC project coming, the need for transportation credits and the promise that was made - a promise to the agencies that they would have credits available when the transportation projects started to happen. He said this was what started the whole process, which led to the foundation of the Kane Mitigation Bank. He then said he wanted to make it very clear to everyone that the decision as to whether to open up the bank to serve other areas or not, was something that was never anticipated when putting the RFP together; it was never anticipated when they put together the documents that led up to the granting of the contract to Earthmark and subsequently fell to EnviroFinance. Chairman Sheehan concluded by saying he couldn't make any decisions for the other trustees, but if he had to do a straight up and down vote today, he might not be able to support Mr. Derickson's request because he would have to dig very deep into his own soul in order to reconcile the promises that were made versus the reality that has presented itself today.

- Vice Chair Remaud stated that he had some points he wanted to make - one relative to an issue that Mr. Renna had made about Baykeeper and Riverkeeper on the Raritan River, he said that it was correct, but he wanted to note that when he and Chairman Sheehan are here, they are here as Trustees of the MCT, so they act accordingly - as they are supposed to do. He then noted that he agreed with Mr. Renna, it is all about boundaries, but said he is concerned when we just talk about hydrologic links, because if you use hydrologic links, impacts in the Canary Islands, can be linked to the Meadowlands and that's not what we are looking to do. He asked Mr. Derickson if he shared the opinion that Longslip is not a linear project.
- Mr. Derickson replied negatively and added that in his eyes, very logically, it does have a connection to the Meadowlands District and thus linear into the Meadowlands District.

- Vice Chair Remaud asked Mr. Renna to provide clarification on what boundaries he saw as included in WMA5 for Kane - as referenced by Mr. Derickson in the 2008 RFP from MCT.
- Mr. Renna responded that there may be an issue in the RFP that Mr. Derickson may have read, but he was not aware of it. He added that the instrument for Kane was very clear right down to the HUC 11 digit watershed, but there are two more HUC's that are in the WMA5. Mr. Renna noted the Hackensack Meadowlands District, a political boundary, is also included.
- CEO Sanz asked Mr. Murphy a question relative to the idea that Evergreen raised believing the Trust could not modify the service area because of the initial RFP process, yet, as she noted, Mr. Derickson has been showing documents that were circulated during the process that include the HUCs. She made comment to the issues that Mr. Renna raised regarding the ARC being on everyone's minds when all of these documents were generated. CEO Sanz questioned how do you preclude the Trust from modifying the service area when there has been such a dramatic change in circumstances?
- Mr. Murphy responded by saying in the documents they have they do not see the discrepancy and their interpretation of the background documents indicates to them that the expansion request would be a material change to a public contract, and thus be contrary to the NJ Public Contract Law. He commented that ARC may have been discussed at the time and may have been a potential use that was contemplated but in looking at the document he did not see any provision for modification or any condition stating this was solely based on proceeding with the ARC Tunnel.
- DAG Stypinski referred to Mr. Murphy's August 8, 2016 letter and the discussions today regarding local public contract law. He said that his understanding is the law only applies to counties and municipalities, and asked Mr. Murphy for more information.
- Mr. Murphy responded by saying that there are cases out there that basically say that even though there may be different statutes involved, the principles are the same. He then gave examples of some cases.
- CEO Sanz commented to Mr. Murphy that what might be helpful would be a briefing on the issue of changed circumstances and state contract law cases, where a public body is faced with changed circumstances since the time of bid and after it is awarded whether terms can be modified. She noted that obviously both sides were free to submit. She also asked Mr. Derickson, in response to his comments earlier, to make an official request to the Trust for another meeting, as the board resources and time are utmost important as each of them perform other duties. She stated that October was the next scheduled board meeting.

7. **NEW BUSINESS** - Don Smith made reference to the proposed BCUA project and presented some duck signs that had been made up previously for other open space projects. He noted that the signs did contain logos for Meadowlands and Ducks

Unlimited and thought as a money saving idea, the Trust could use these signs for the BCUA project.

CEO Sanz provided additional information to the Board noting that they were planning some additional signage and historical information for the BCUA project, so there would be prominent signage. She noted that this would need to be discussed at another time.

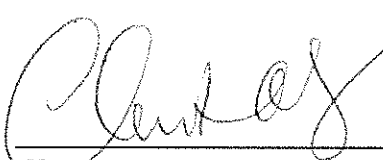
Mr. Smith then presented a draft of some ideas he had for the Kane Tract, what he called a future wetlands master plan for the property. He noted that he was presenting this as a citizen, not as the MCT consultant. He commented that he would like to see the property put into a better ecological state and hoped that this could be discussed in the future.

Chairman Sheehan thanked Mr. Smith, saying that he really appreciated all the work he does, both as a consultant and as a citizen, noting that he is one of the people that cares most about the Meadowlands.

Chairman Sheehan asked for a motion to adjourn. Vice Chair Remaud moved and Delegate Gallagher seconded, with all in favor.

The meeting concluded at 12:05 pm.

I certify that this is a true and accurate transcript of the Open Session Minutes of the Meadowlands Conservation Trust Board meeting of August 10, 2016.

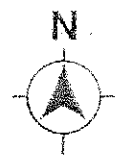
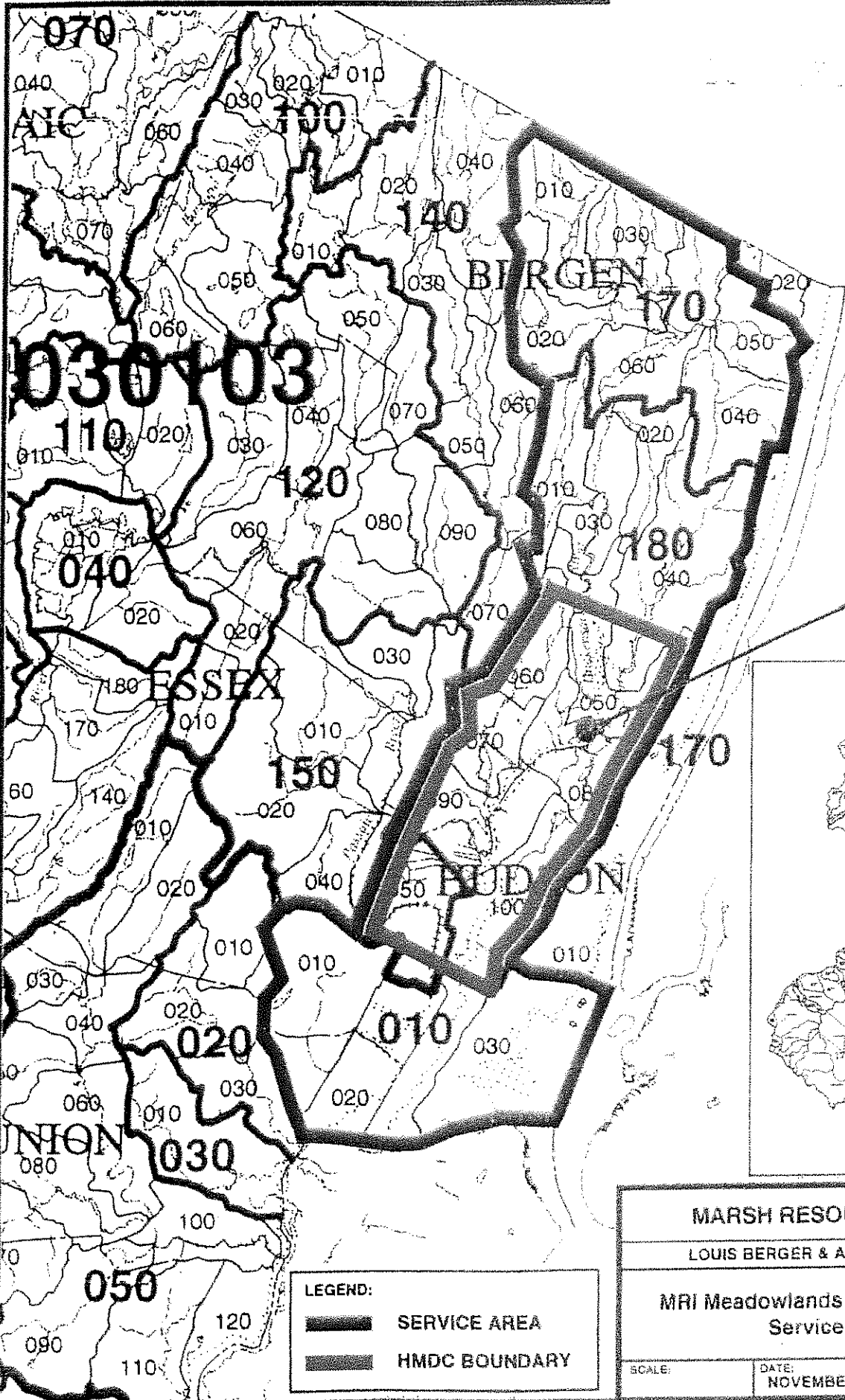


Christine A. Sanz
Chief Executive Officer

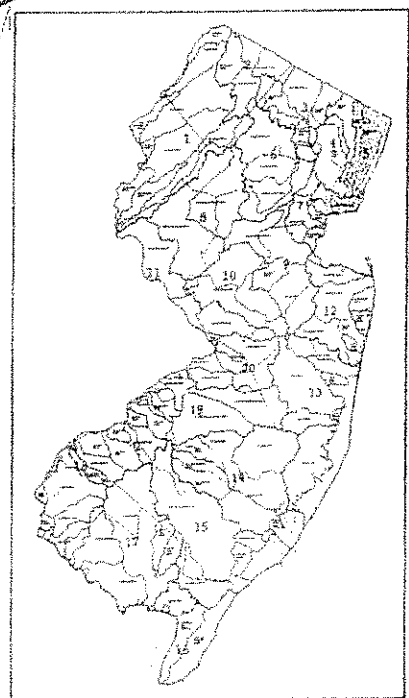
August 10, 2016

NAME	Roll Call
Chairman Bill Sheehan	P
NJSEA Delegate Ralph Marra	A
Trustee Greg Remaud	P
HMMC Delegate Mayor Alberto Santos	A
NJDCA Delegate Gabrielle Gallagher	P

P = Present A = Absent R = Recuse
Y = Affirmative N = Negative



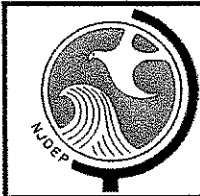
MRI
MEADOWLANDS
MITIGATION
BANK SITE



LEGEND:

- SERVICE AREA
- HMDC BOUNDARY

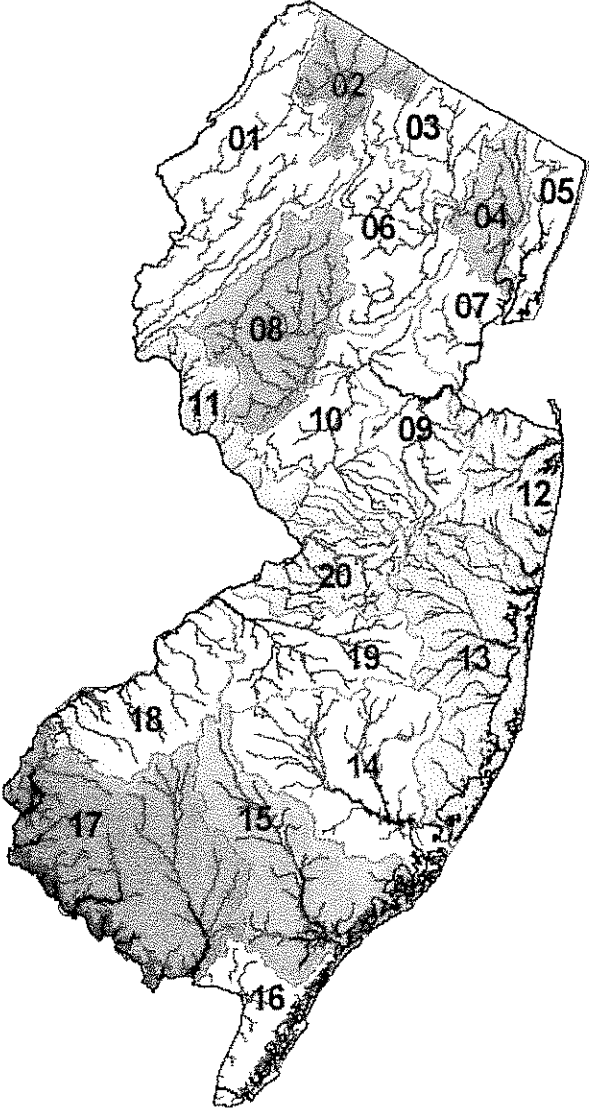
MARSH RESOURCES, INC.		
LOUIS BERGER & ASSOCIATES, INC.		
MRI Meadowlands Mitigation Bank Service Area		
SCALE:	DATE: NOVEMBER 1998	FIGURE: 1



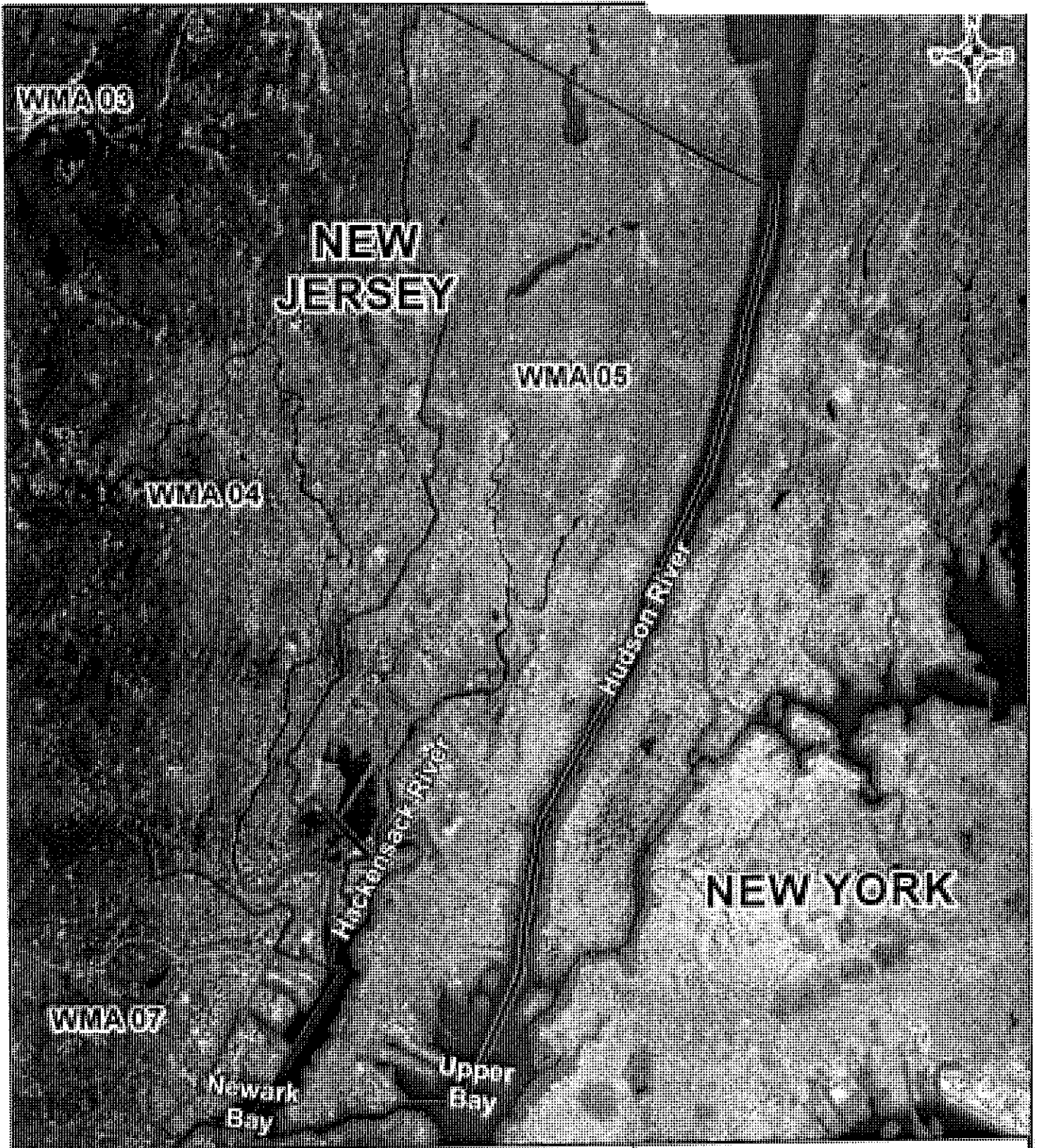
New Jersey Geological Survey
Technical Memorandum 04-1





Modifications to New Jersey's Watershed Management Area Boundaries, 1996-1999

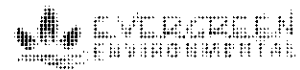


New Jersey Department of Environmental Protection
Land Use Management



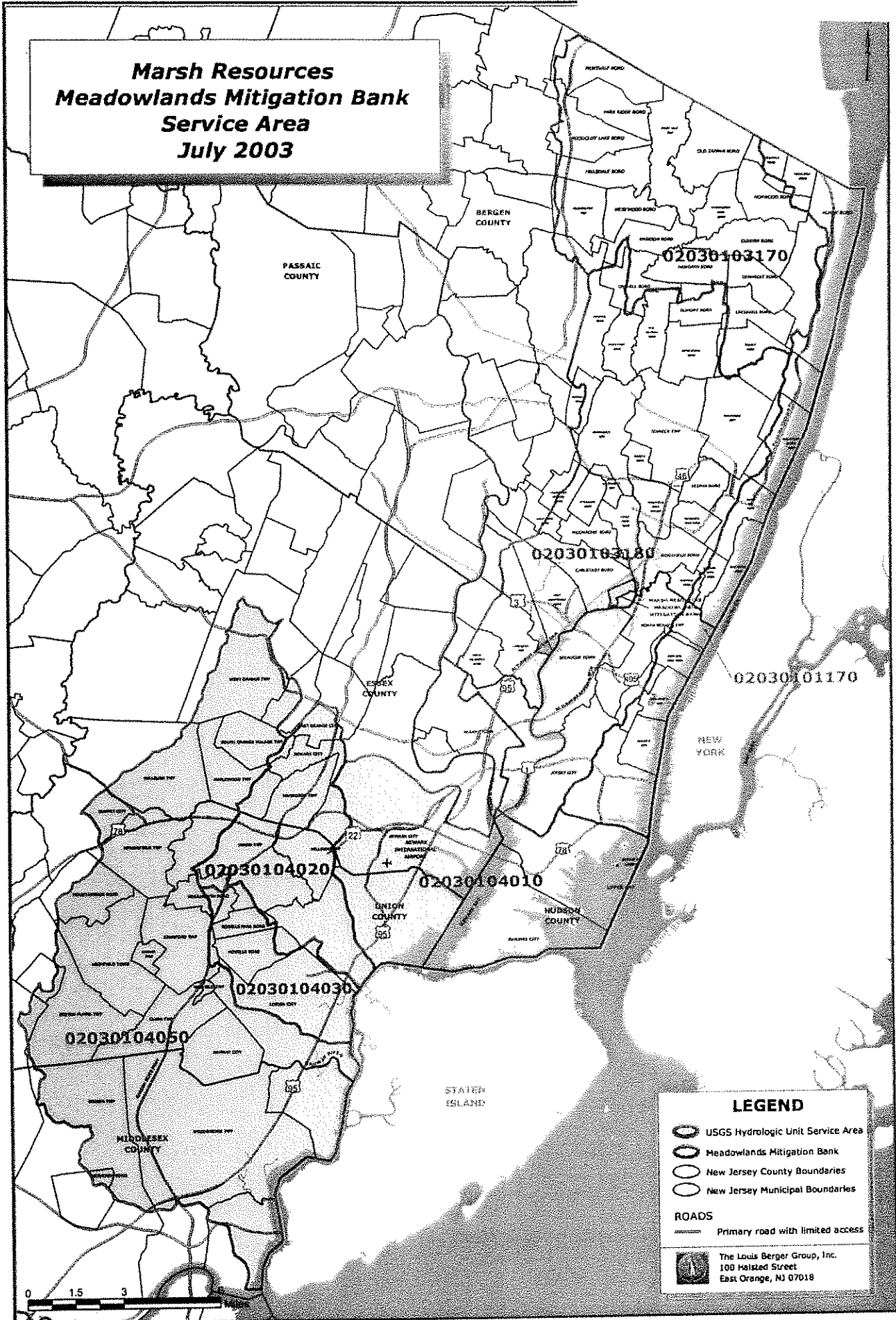
Legend

-  New Jersey Watershed Management Area
-  State Boundary



WATERSHED MANAGEMENT AREA 5

**Marsh Resources
Meadowlands Mitigation Bank
Service Area
July 2003**



LEGEND

- USGS Hydrologic Unit Service Area
- Meadowlands Mitigation Bank
- New Jersey County Boundaries
- New Jersey Municipal Boundaries

ROADS

- Primary road with limited access

The Louis Berger Group, Inc.
100 Halsted Street
East Orange, NJ 07018

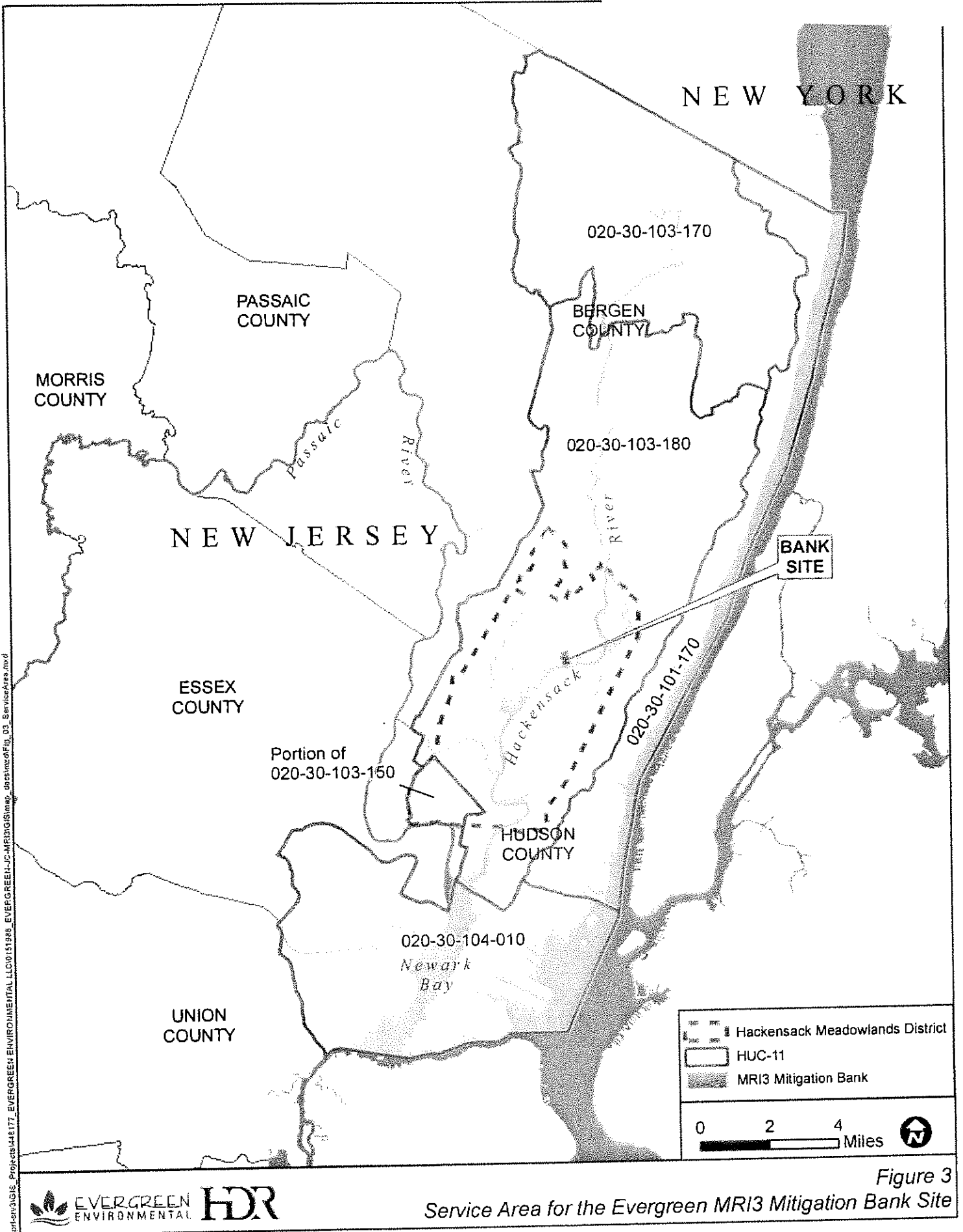
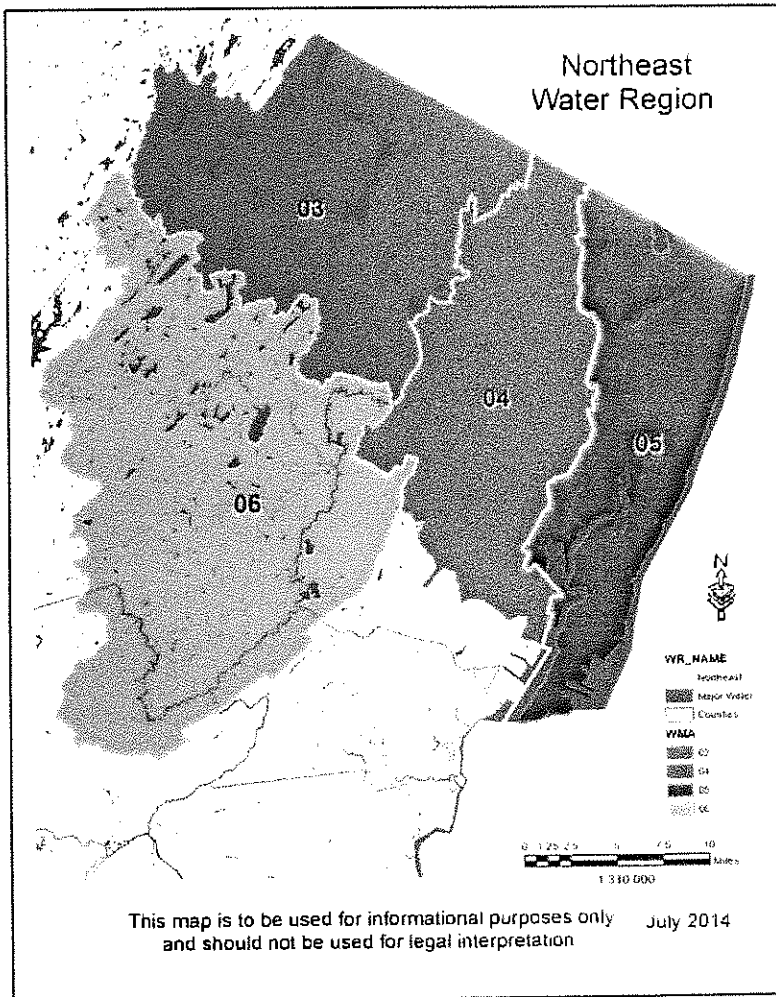


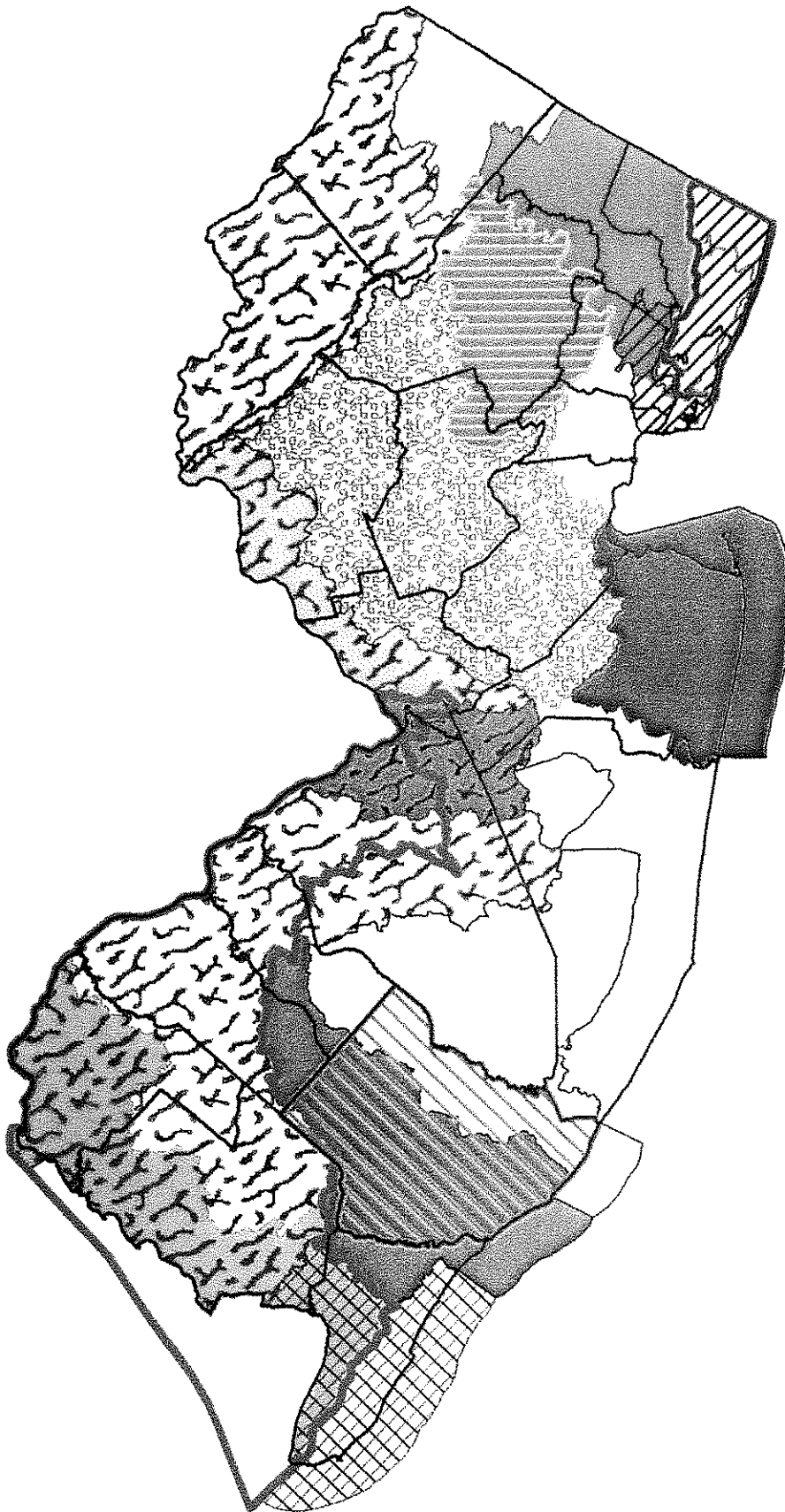
Figure 3
Service Area for the Evergreen MRI3 Mitigation Bank Site

Northeast Water Region: Watershed Management Areas 3, 4, 5, and 6


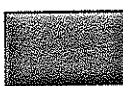
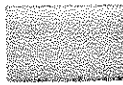















This Water Region contains the four most north east watershed management areas and encompasses all of Hudson, Passaic, and Bergen counties, a significant portion of Morris, and some of Union, Essex, Sussex, and Somerset counties. It also includes portions of the water-rich Highlands Region. The water in this area primarily flows into the Passaic and Hackensack Rivers which flow into the Newark Bay. The Hackensack Meadowlands area is also located within this region and is a large area with systems of protected complex tidal marsh. The most populated watershed management area is within this Water Region and it also contains several older industrial cities, Newark, Paterson, Clifton, and East Orange. Additionally the Great Falls is located within this very populated and historically polluted Water Region.



Approved Wetland Mitigation Banks



Legend

-  Wyckoff Mills
Cranbury
-  Marsh Bog Brook I&II
Manasquan
-  Rancocas
Barkers Brook
-  Lakes Creek
-  Mullica
-  Abbot Creek
-  Willow Grove
-  Oradell Reservoir
-  MRI 3
-  Stipsons Island FWW
-  Stipsons Tidal
-  Kane
-  Pio Costa
-  Nishisakawick
-  Oxford
-  Great Egg Harbor
-  Troy Meadows
-  Counties

Photos



Kane 6/21/18 at High Tide



MRI3 6/21/16 at High Tide