

**STATE OF RHODE ISLAND  
WATER RESOURCES BOARD**

**IN RE: PAUL AND GAIL FRECHETTE’S REPLY MEMORANDUM IN FURTHER  
SUPPORT OF THEIR APPEAL OF THE JAMESTOWN BOARD OF WATER AND  
SEWER COMMISSIONERS’ DENIAL OF THEIR APPLICATION FOR A WATER  
MAIN EXTENSION AND SERVICE CONNECTION**

**January 17, 2025**

Pursuant to the briefing scheduled entered by this Water Resources Board (WRB) in the above-captioned matter, the Appellants, Paul and Gail Frechette (together, the “Frechettes”), submit this reply memorandum in response to the Board of Water and Sewer Commissioners (“Board”) for the Town of Jamestown’s Memorandum in Response to Appellants’ Memorandum on Appeal, and in further support of the Frechettes’ appeal.

**Introduction**

The Frechettes submitted an application for Utility Service extension and Connection on January 2, 2024. Said application was accepted by the Town and heard by the Board. The Application took almost 7 months for the Board to render a decision. The Board denied the Frechettes application through its decision, erroneously concluding that the Frechette’s failed to satisfy the standards as set forth in R.I.G.L 46-15-2(b) and also maintained that R.I.G.L does not preclude the Board from imposing inconsistent and more restrictive provisions as set forth in the Jamestown Water and Sewer Commission Rules. The Frechettes then submitted an appeal to the WRB and a memorandum in support of said appeal on October 17, 2024.

The Board submitted a Reply Memorandum on December 11, 2024. The arbitrary arguments based on misrepresented facts and assumptions put forth by the Board in its Reply Memorandum are identical to that of the appeal application for Glenn and Marjorie Andreoni

The Board, in its Reply Memorandum, argues that it did not need to apply the R.I. Gen. Laws § 46-15-2(b), because it has unfettered discretion, at the outset, to apply its own standards from its Regulations to decide whether a water line should be extended. Before getting into why, legally this position has no basis, it is worth pointing out that the Board misrepresents key facts upon which its argument is based. The Board's Memorandum, tells a story that re-writes the actual facts, record and history of the Board and takes great liberty at expanding the role, authority and discretion of the Board in its enabling legislation. The Board's argument is premised on several alleged facts, conclusions and propositions: 1) that the 1968 Public Law creating the Board contains clear language providing unfettered discretion over the public water system and standards to apply for extensions to the water mains; 2) that the areas serviced by existing water lines is limited to the UWD; and 3) incredible assumptions that the number of connections to the system will increase exponentially as compared to the average over the last ten years and there will not be enough water to service these hypothetical future property owners/residents. As set forth the Frechette's initial Memorandum and here, these facts, assumptions and conclusions are not supported by the record or other Town documents.

**I. THE BOARD'S ENTIRE ARGUMENT IS CONTRARY TO ITS OWN PREVIOUS POSITIONS, LOGIC AND THE STATUTORY AUTHORITY GOVERNING WRB'S REVIEW OF THIS APPEAL.**

**A. The WRB is charged with the review of a decision on appeal made pursuant to R.I. Gen. Laws § 46-15-2(b).**

This appeal is to examine and review the Board's decision under R.I. Gen. Laws § 46-15-2(b). WRB's review of this appeal is under the 2022 Amendments to R.I. Gen. Laws § 46-15-*et. seq.*, which included only the addition of the standard at issue in R.I. Gen. Laws § 46-15-2(b) but also the new addition of R.I. Gen. Laws § 46-15-2.1, an appeal section related only to decisions

made under § 46-15-2(b). The appeal section provides that the Board’s review on appeal looks at the decisions made under the standards in R.I. Gen. Laws § 46-15-2(b):

An applicant may appeal a denial by a public water supply facility made under § **46-15-2(b)** which shall be reviewable by the state agency or commission having jurisdiction over the public water supply facility and thereafter by the superior court pursuant to the standards and timeframes set forth in § 42-35-15.

R.I. Gen. Laws § 46-15-2.1 (*emphasis added*). This WRB then promulgated regulations in order to review decisions under the standards set forth in that section. Included in those regulations is a request from the water supplier to submit a summary of the application of the local WSSMP as it relates to the decision on appeal. The Town submitted this summary to the WRB on August 20, 2024. The summary enables the WRB to examine threshold standard #1, set forth in R.I. Gen. Laws § 46-15-2(b)(1), specifically whether the application is prohibited by the “specific language” of the WSSMP. It is clear from the Board’s summary, the WSSMP itself, and the Board’s decision that the WSSMP did not prohibit the Frechettes’ Application.

The Board, in its Reply Memorandum, argues that it did not need to apply the R.I. Gen. Laws § 46-15-2(b), because it has unfettered discretion, at the outset, to apply its own standards from its Regulations to decide whether a water line should be extended. Not only does this position add a hurdle to an applicant that is not contained or contemplated in the new governing standard, but the Board is asking this WRB to not apply the very standards governing the Board’s review of this appeal. The Board seeks this WRB’s blessing on its stand that it does not *ever* intend to apply R.I. Gen. Laws § 46-15-2(b) and find that the Board has unfettered and unlimited discretion as to whether a property owner can extend the public water main to service his or her property, even when such extension: 1) does not impact fire protection; 2) is not prohibited by the WSSMP; 3) the applicant is not able to drill another private well; 4) and where the applicant pays for all costs associated with the extension. *See* R.I. Gen. Laws § 46-15-2(b).

This WRB should reject the Board's arguments and decide the appeal as statutorily contemplated by reviewing the decision and the application under the standards set forth in R.I. Gen. Laws § 46-15-2(b). The Frechettes' Application clearly and unequivocally meets those standards as established in their Original Memorandum.

**B. The Board's prior actions and statements blatantly contradict their position here.**

Since 2021 when the Board began denying extensions in the RWD for the first time based on § 14(B)(b)(4), the basis for doing so has been a moving target. Likewise, since the passage of the 2022 Amendments to R.I. Gen. Laws § 46-15-2(b) creating uniform standards, the basis for not applying those standards has also been a moving target. Counsel for the Board is tasked with the unenviable job of trying to justify these arbitrary and legally and factually flawed decisions in the face of positions taken by the Board and actions by the Board from 2021-present contradicting the position now taken by the Board that it has some super-authority or exemption from the standards adopted by the General Assembly for all water suppliers.

1. The CLP Trust, owner of 68 East Shore Road ("CLP")/68 East Shore Road Settlement

After the filing of several lawsuits regarding the 2021 and 2023 denials of the CLP applications for extension, CLP and the Town agreed to a settlement. In the settlement of the CLP litigation over applications for extensions of East Shore Road, the Board felt the need to issue a statement to the public at its meeting approving the settlement. Enclosed in their November 14, 2023 settlement statement was a recognition of the new law and the uniform application of the standards set forth therein: "Included in amended §46-15-2 RIGL are standards by which applications for plans for the extension of supply or distribution mains are to be reviewed." Moreover, the Board provided:

The Board is now in the process of rewriting our state mandated Water Management Plan . We will now act to review and amend our local water service rules and regulations, clarify the limits of the water district and the processes by which service is granted . The Board will also seek to improve the flawed newly amended general law to prevent intrusion into the affairs of our Town’s water system by the state.

## 2. The Moratorium

The next step the Town took, after the CLP settlement, was to pass a temporary moratorium on January 2, 2024 (“Moratorium”).<sup>1</sup> That Moratorium temporarily halted the Town’s review of applications and permitting of water service extensions. The Frechettes were one of several applications which was submitted prior to the passage of a moratorium on January 2, 2024 Applications such as the Frechettes, which were submitted prior to the Moratorium and complied with the provisions of the service extension submission filing, were not subject to the halt on applications and permitting. In that Moratorium, the Town alleges there is a conflict between the 1968 Public Law, and the 2022 Amendments to the General Laws, and the Moratorium was a temporary pause on new applications in order to “resolve the conflict” by preparing a “new water service plan in conformance with the pertinent requirements of Chapter 15 of Title 46 of the General Laws and to submit conforming rules and regulations to implement the new water service plan.” **Notably, there would be no need for a Moratorium if the Board could still enforce its Regulations and not apply the amended provisions of R.I. Gen. Laws § 46-15-2(b).** Importantly, the Moratorium provides that it would be in effect for six (6) months or until the “date of passage by the Commission or upon the passage of an ordinance, rule or regulation by the Commission **permitting new water service extension applications outside of the Urban Water District,** whichever comes first. ...”.

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<sup>1</sup> It is worthy of pointing out that no where in the JWD’s enabling legislation nor in Title 46 of the General Laws, does it provide authority for the Board to pass a moratorium in the first place. Since the Board found the Frechettes’ application was vested and not subject to the Moratorium, this argument was not raised, but it worthy of noting.

### 3. The Resolution and proposed legislative amendment in 2024

The Moratorium also stated that the Board approved and adopted a Resolution to request amendments to R.I. Gen. Laws Chapter 15 of Title 46 in part “to remove and eliminate any conflict between the authority of the Commission to supply water to only part of the Town.” Thereafter, the Board drafted, passed and signed a Resolution to the General Assembly advocating for an amendment to Chapter 15 of Title 46 of the General Laws, asserting, in relevant part that:

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**WHEREAS** the Water and Sewer Commission for the Town of Jamestown has determined that these amendments of Chapter 15 of Title 46 of the General Laws impairs the ability of the Commission to maintain adequate water supply and service for its present users due to the limited supply of water available to the Commission. The amendments also exposes ratepayers to unlimited liability to provide public water to any resident regardless of whether they are located within the existing public water service area.

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**BE IT FURTHER RESOLVED** the Town Clerk is hereby authorized to forward this Resolution to the representatives of the Town of Jamestown in the R.I. General Assembly for its introduction and advocacy for passage and to forward to all other Rhode Island communities and public water supply facilities which may be similarly affected for their consideration and request of support for passage of these requested amendments to Chapter 15 of Title 46 of the General Laws.

The Town caused their state Senator and state Representative to submit legislation which would provide an entirely new section in R.I. Gen. Laws § 46-15. *See*, 2024 – S 2414. The proposed statute proposed to add section 24, which provided: “[t]he commissioners of the water and sewer commission for the town of Jamestown may specifically limit its public water system’s obligation to supply water only to those applicants who reside within its designated and

described service area<sup>2</sup> as opposed to the entire land area of the town.” That legislation did not pass.

#### 4. The Frechettes’ January 2, 2024 Application

As set forth above and in the Initial Memorandum, the Frechettes’ Application pre-dated the Moratorium. It was submitted under the standards of R.I. Gen. Laws § 46-15-2(b). At no point did the Town reject the application. Despite this and the recognition of the application of the standards in the CLP Settlement, the Moratorium language vesting applications, the expressed need to amend the law and/or regulations, the resolution and the proposed legislative amendment, the Board applied the standards in the 2009 Regulations anyway.

The intent of the 2022 Amendments to R.I. Gen. Laws § 46-15-2(b) is clear: all Rhode Island municipal water department[s], agenc[ies], or public water system[s] governed under this section shall review applications for plans or work for the extension of supply or distribution mains or pipes in accordance with” Section 46-15-2(b)’s standards. The General Assembly aimed to establish a statewide standard for water main connections. The Board even recognized this intent, as set forth below.

## **II. THE BOARD’S ARGUMENTS ARE BASED ON MISREPRESENTED FACTS AND ASSUMPTIONS ABOUT THE SYSTEM AND WATER SUPPLY.**

### **A. Water service is not limited to the UWD.**

The Board’s narrative in their Memorandum is premised on its misrepresentation that the area serviced by water and water mains is limited to the UWD and the area has not changed since the 1968 Public Law creating the Board and public water supply. *See e.g.* p. 15. The Board makes a bold and blanket assertion, without a single reference other than an unsupported statement in its WSSMP, that “from its inception” the water service area purchased by it is “limited to the Town’s

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<sup>2</sup> As set forth below, the “service area” has been ever changing since the Board’s creation.

village area,” which is the equivalent to the area contained in the UWD. *See* Board’s Memorandum at p. 15.

There is no reference in the 1968 Public Law, which created and enabled the Board, nor any other documents cited by the Board from that time or the subsequent 1970 purchase of the assets of the Jamestown Water Company to the specific existing area at that time which was serviced by water lines or anything showing the mapped existence of the water lines. One of two things occurred: 1) the UWD was established (at some point after the Board took control of the system and its assets) with arbitrary mapping and did not encompass all of the areas serviced by water in the Town; or 2. the service area has consistently been expanded beyond the UWD, which makes the mapping of the UWD and its designation even more arbitrary.<sup>3</sup> In either circumstance, the premise that water service is limited to the UWD is flawed in the first instance.

At some point subsequent to the purchase of the assets of the Jamestown Water District, the Board created the UWD and the RWD.<sup>4</sup> The UWD and RWD are defined in the 2009 Regulations as follows:

“Rural Water and Sewer District” shall refer to all the land in the Town of Jamestown which is not contained within the Urban Water and Sewer District as described below and further designated as the Rural District on the Urban and Rural Water and Sewer District Map, Appendix A.

“Urban Water and Sewer District” shall refer to all the land in the Town of Jamestown bounded to the north by a line running east along the north property line of Plat 8, Lot 30, from the West Passage of Narragansett Bay extended to Arnold Avenue and continuing east on Arnold Avenue to North Road, then north on North Road to Whittier Road, then east on Whittier Road to Prudence Lane, then south on Prudence Lane to Bryer Avenue, then east on Bryer Avenue to Calvert Place, then

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<sup>3</sup> We know of at least 5 expansions into areas beyond the UWD since 2009.

<sup>4</sup> It is likely the UWD and RWD were not created/distinguished until the passage of the Board’s Regulations which did not occur until 1986, according to the Town’s 2024 WSSMP update. *See* 2024 WSSMP update at p. 2-11, available at on the Town’s website at <https://www.jamestownri.gov/home/showpublisheddocument/82257/638586410863600000>.



north on Calvert Place to Mount Hope Avenue, then east on Mount Hope Avenue to Bayview Drive, then north on Bayview Drive to property line of Plat 8, Lot 645, to the East Passage of Narragansett Bay and bounded to the south by the water shut off at the Mackerel Cove Beach House, running east along Hamilton Avenue right of way and along the northern edge of Plat 9, Lots 827 and 324, extended east to the East Passage of the Narragansett Bay and further defined as that land which is encompassed within the area shown and designated as the Urban District on the Urban and Rural Water and Sewer District Map, Appendix A. All reference to roadway boundaries is defined as the centerline of the roadway.

As noted in the definitions of the UDW and RWD, the 2009 Regulations contain a map, at Appendix A, as does the Town GIS system, of where the UWD boundaries are:

# THE TOWN OF JAMESTOWN RHODE ISLAND

## APPENDIX A: JAMESTOWN URBAN WATER & SEWER DISTRICT



0 1 2 Miles

The information depicted on this map is  
for general planning purposes only.  
It may not be adequate for legal boundary  
definition or regulatory interpretation.

**URBAN WATER  
& SEWER  
DISTRICT**

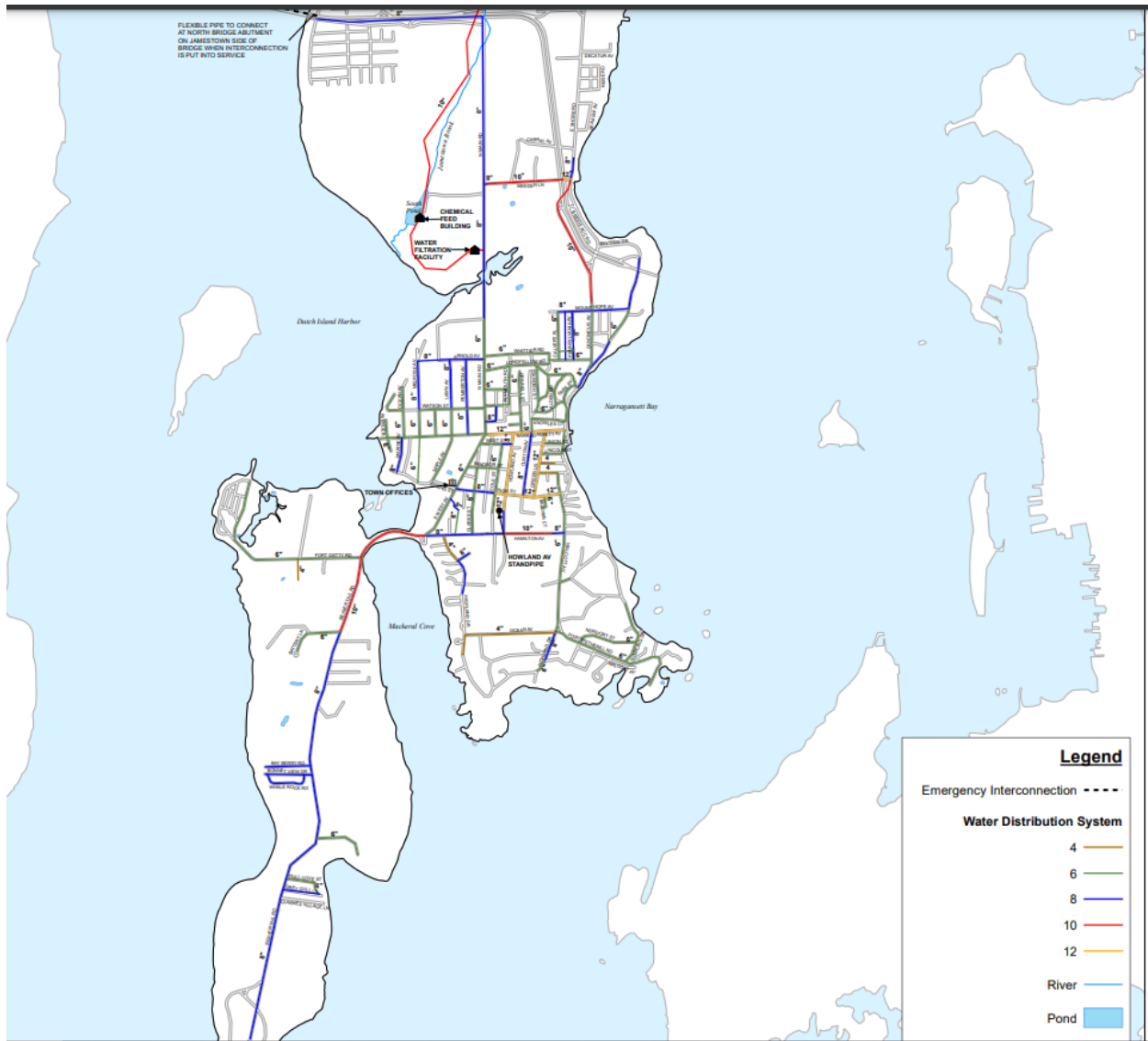
Jamestown GIS  
Department  
11/11/2022



However, when examining the UWD on the Town’s GIS system, despite the clear area in the definition and the map in the Regulations, the UWD is shown to include areas beyond those detailed in the definition and shown on the map in the Regulations:



Available at : <https://www.axisgis.com/jamestownri/> (Last visited January 15, 2025). Even beyond this arbitrarily expanded UWD, as of the 2018 WSSMP update, there are various lines throughout the Town well-beyond the UWD shown on either the map in the Regulations or the Town’s GIS system:



See System Map available at:

<https://jamestownri.gov/home/showpublisheddocument/49116/636588787298830000>

As shown above, and detailed below, extensions of water lines in the Town have often occurred, and water service is *not, in fact*, limited to the UWD. Even before the 2022 amendments to R.I. Gen. Laws § 46-15-2(b), which provides all water suppliers with the specific and objective standards in which to review and consider an extension application, the Board has always allowed property owners to apply for extensions. Additionally, as stated above, at some point no earlier than the adoption of the first regulations in 1986, the Board distinguished between (and created)

the UWD and RWD. At some point after the creation of the RWD until 2009, connections *and* extensions in the RWD were treated the same, and needed to satisfy the following standards:

14B. Rural Water Districts. All service connections and/or extensions in the Rural Water District shall be subject to the following conditions:

- a. The applicants shall be subject to the requirements described for extensions in the urban district for one or two-family residential uses.
- b. The applicants shall show to the satisfaction of the Commission that the proposed extension or service connection requested is:
  - 1. Is consistent with the Comprehensive Community Guide Plan adopted December 23, 1991, as amended.
  - 2. Will not impair the available resources of the urban water district.
  - 3. Will not reduce the level of fire protection of the community; the premises shall not be part of a subdivision. Except an Administrative Subdivision;
  - 4. Is necessary because the land will not produce a sufficient quantity of potable water by drilling private wells. The minimum well depth shall be 300’.

In 2009, the Regulations were amended to add the alleged prohibition on extensions in the RWD.

The May 2009 Board meeting minutes evidence the changes made to the Regulations related to this standard:

**Amendment 3**-Rural Water District-section 14B, subsection (a) (b) (3) and (4), is hereby amended to as follows:

14B. Rural Water Districts. All service connections in the Rural Water District shall be subject to the following conditions:

- a. The applicants shall be subject to the requirements described for connections in the urban district for one or two-family residential uses.
- b. The applicants shall show to the satisfaction of the Commission that the proposed service connection requested is:
  - 1. Is consistent with the Comprehensive Community Guide Plan adopted December 23, 1991, as amended.
  - 2. Will not impair the available resources of the urban water district.

3. Will not reduce the level of fire protection of the community; the property shall not be part of a major subdivision.
4. Extensions to and within the rural district shall be prohibited.

In the current iteration of the Regulations there is another sentence under standard 4, even though the same does not appear in the 2009 Amendments. That sentence is the one being utilized to form the only basis for denial of the Frechettes' Application,<sup>5</sup> and provides:

Nothing herein shall be construed to prohibit or prevent the Board of Water and Sewer Commissioners from making such improvements, including extensions, which shall, in the opinion of the Board, improve the quality or quantity of water furnished to existing water uses.

However, despite this amendment, from 2009 to 2021, all four extensions applied for in the RWD were granted, with no application of either the prohibition or the alleged standard allowing the extension if it would "improve the quality or quantity of water furnished to existing water uses".

To further illustrate the arbitrariness of the Board's decision making and thought processes, and the arbitrary designations of the UWD and RWD boundaries, (and despite the assertions that there is not enough water to service the Frechettes' single family home, the Board, in its 2024 Update to its WSSMP, further expands the use and draw on the water system by consolidating the RWD and UWD into one service area:

4.7.3 Consolidate the Two Current Water Districts into One Water District Based on the current configuration and distribution network of the water system, the prior distinction of an urban and rural district is no longer useful or meaningful. Moving forward, the Jamestown water supply and distribution system should be classified as the Jamestown Water District. This classification better represents the factual configuration and distribution network of the water system. In addition, this classification clearly defines that the public water supply network is confined to a limited geographic area within the Town's municipal boundaries. Jamestown's current water supply and production, as evidenced in this Plan, is a limited resource

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<sup>5</sup> See Decision at p. 4 ("Your sole reliance in making this application was compliance with General Laws 46-15-2 [sic](b). All the testimony and evidence you entered into the record of the hearing on this application focused on this sole metric. You failed to offer any evidence whatsoever regarding compliance with Rules 14B.b.4.")

which cannot safely or adequately supply an expansion of the current water supply network beyond the current water supply and distribution network as illustrated and bounded in the Jamestown Water District map, as shown on Figure 4.1. The Commission will consolidate the Urban and Rural water districts and replace them with one water district. The district boundaries shall be limited to the northern boundary of the current district and extend south to the incorporate the extent of the areas serviced by the current districts. There will be no provisions for extensions outside of this service area based upon limited capacity of the resources and the anticipated future demand determined by the buildout analysis completed in 2024. The Commission intends to adopt one uniform set of rules and regulations to govern all operations of the current service area.

See 2024 WSSMP update at p. 4-6, available at on the Town's website at <https://www.jamestownri.gov/home/showpublisheddocument/82257/638586410863600000>.

While the credibility of this report is called into question given that the RWD, as shown and described therein, does not include the area encompassing the Frechettes' Property which is indisputably and admittedly in the RWD. Moreover, even the expansion of the water district and water service into the entire south part of the island and Beavertail which is not yet fully serviced runs entirely contradictory to the proposition that there is currently not enough water to service the existing UWD.

**B. The Board's significant reliance in its Memorandum of the 2024 Buildout Report and Gray's testimony regarding the same is not logical or credible and fails to acknowledge significant inconsistencies and the notable departure from the historical data for the Board and the water system.**

Most, if not all, of the Board's rationale in its decision and in the Memorandum submitted in this Appeal focuses on a whole history of the water system and inconsistent and cherry-picked data which is not supported by the Town's records or documents in place at the time of the submission of the Frechettes' Application. While wholly irrelevant to either the basis for denial or the applicable standards for this application, the inaccuracies and misstatements are worthy of reiterating. This information is provided by the Board instead of addressing the standards this WRB is reviewing on appeal, or even, the standard in Section 14(B(b)(4) which the Board based

its decision on. To be clear, the only basis for denial of the Frechettes' Application was that they did not provide any evidence that the extension would improve the quality or quantity of water furnished to existing water uses. *See* Frechette Decision at p. 4. The Board has also never addressed the fact that they have *never* before applied this standard nor the prohibition until a couple of applications put forth in 2021.

These inaccuracies and the preposterous conclusions of the 2024 Buildout Report which was rushed to be drafted while the Board delayed the hearings on the Frechettes' Application have been addressed by multiple parties. Rather than acknowledge, the Board doubles down in its Memorandum, in reliance on these conclusions, which proved to lack credibility in the cross-examination of Gray and reference to other Town data. The cross examination compared previous reports and memoranda from Gray showing the average of only four new connections a year over a period of the last 10 years, as compared to the 2024 buildout report which predicted growth of over 24 new connections per year, *six times* the number of connections averaged over the previous 10-year period.

While not utilized in its Decision, the Board seems to allude to now, without citing it nor it being a basis for denial in the decision, that the extension would impair the resources to the UWD. This standard has never been applied to the numerous connection applications which have been granted since 2009.

**III. THE BOARD DOES NOT HAVE SPECIAL AUTHORITY WHICH WOULD SUPERSEDE THE APPLICATION OF THE STANDARDS IN R.I. GEN. LAWS § 46-15-2(B).**

This WRB should reject the Board's position that it has special authority which supersedes the application of the uniform standards set forth for all water suppliers in R.I. Gen. Laws § 46-15-2(b). In fact, the Board does not contest that the Frechettes' Application meets the specific and objective criteria established in R.I. Gen. Laws § 46-15-2(b). Rather, the Board's



position is that it is entitled to determine, in its own discretion, as a threshold issue, whether it wants to allow the extension of the water line in the first place. According to the Board's position then if that answer is no that ends the inquiry. If the answer is yes, it asserts it would apply the standards. There is no legal or factual basis for this position.

The Board seeks for this WRB to interpret its 1968 Public Law (its enabling legislation) which provides that the Board may supply water to the "Town or parts thereof" to mean that it is first allowed to make a completely discretionary and unreviewable determination of whether to extend the "legally mandated area of service,"<sup>6</sup> and then, if the Board decides to extend, *and only then*, do the standards of R.I. Gen. Laws § 46-15-2(b) apply. *See* the Board's Memorandum at p. 17-18.

**A. The Board fails to recognize the statutory scheme under which it is governed and the limits of its authority in the first instance.**

The Board, in its Memorandum, relies solely on the 1968 Public Law to provide it with broad authority. However, such broad, unfettered discretion is not enabled by the law, and there are no terms which exempt it from the application of R.I. Gen. Laws § 46-15-2(b) or any other law governing public water suppliers. As raised in the Initial Memorandum, in following the Board's logic, one would wonder what other statutory and regulatory requirements the Board and the JWD is exempt from, given its so-called broad authority and discretion in the 1968 enabling legislation which allows it unfettered discretion.

**I. The authority of the JWD and Board is governed by and limited by the State and relevant statutes and state regulations.**

The Board's argument is flawed in many ways, but none more than the failure to recognize that the state has ultimate authority over all water resources. The 1968 Public Law is nothing more

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<sup>6</sup> There is no such thing as the "legally mandated area of service."

than enabling authority creating the Board, outlining its voting, membership, ability to establish rates, obtain bonds, and purchase assets of a private water company or private property. The Board remains governed by all other statutory and regulatory state authority, including that of this WRB. To find otherwise would render the clear statutory requirements and regulations over water suppliers meaningless.

The General Assembly has been clear, in almost all of the statutes regarding water, water suppliers and this WRB, as such specifically detail the state's control of water resources which authority and management they place in the control of various state agencies including the WRB. Various reasons are set forth in these statutes justifying the need for state authority over all water resources including a finding that:

(4) Allocation of the water resource of Rhode Island has thus far been accomplished on a random, first come, first served, or ad hoc basis with minimal or no consideration given to overall allocation of the resource so as to meet all present and foreseeable future needs.

R.I. Gen. Laws § 46-15.7-1.<sup>7</sup>

The chapters governing water suppliers recognize and declare that “[w]ater is vital to life and comprises an invaluable natural resource which is not to be abused by any segment of the state’s population or its economy” and that “**public water supply systems have the responsibility to provide safe [sic] and potable drinking water to the state’s population.**” R.I. Gen. Laws §§ 46-30-2(a)(1) and 46-30-2(a)(3) (emphasis added). Moreover, “[g]ood management allows us to provide water **for necessary residential use** . . . .” and that the state “has abundant supplies of surface and groundwater and an average level of precipitation adequate to replenish these supplies

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<sup>7</sup> The Board’s allocation of water and proposed allocation of water is even worse than an ad-hoc, first come, first serve basis. It proposed to reserve water capacity to unknown, hypothetical potential future users in certain areas of the Town, while providing no long term solutions and excluding a significant number of property owners with a demonstrated need and evidence that there are no feasible alternatives to obtain potable water.

under normal conditions, and that these **supplies are sufficient in quantity and quality to meet the present needs of the people** and economy of this state. . .” R.I. Gen Laws. §§ 46-15.8-2(a)(4) and 46-15.3-1.1(a)(2) (emphasis added).

The JWD and Board are a public water supplier governed by these statutes with a duty to provide water and plan for the provision of water to its present and future residents. The Board and JWD is regulated by the State and its agencies, including this WRB and is required to submit reports and findings to meet the policies set forth above. In fact, the Board recognizes that it must submit a WSSMP every five years to the state which provides for certain requirements as established by statute. Consistent with its findings and declarations, the General Assembly requires each **public water supplier**’s WSSMP “achieve the effective and efficient conservation, development, utilization, and protection of this finite natural resource in ways **that meet the present and future needs of the state and its people**.” R.I. Gen. Laws § 46-15.3-1.1(b)(2) (emphasis added). The Town’s own Comprehensive Plan also sets forth this goal and the need to increase the water supply for residents.

The statutory scheme specifically recognizes that a public water supply system has the responsibility to provide safe and potable water to the State’s population, and it provides mechanisms to do so, such as infrastructure loans for improvements and increases to water supply, the ability to merge water districts to provide adequate water supplies to meet demand and provides for different suppliers/districts to share resources.

2. **R.I. Gen. Laws § 46-15-2 and the 1968 Public Law do not conflict.**

To the extent the state hasn’t clearly preempted the area of water resources management and the standards on extensions as set forth in the Frechettes’ Initial Memorandum, there is no

conflict between the 1968 Public Law and the 2022 Amendments to R.I. Gen. Laws § 46-15-2, nor is there authority for the Board to apply heightened standards for extension applications.

Rhode Island courts aim to understand and implement the General Assembly’s intent when aligning two statutes. *Tiernan v. Magaziner*, 270 A.3d 25, 30 (R.I. 2022) (quoting *Such v. State*, 950 A.2d 1150, 1155-56 (R.I. 2008)) (further citations omitted). If the statutes are clear, they interpret them literally, using ordinary meanings. *Id.* (quoting *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009)) (further citations omitted). When dealing with related statutes, the goal is to harmonize them to be consistent with their overall purpose. *Id.* (quoting *Such*, 950 A.2d at 1156 (quoting *State ex rel. Webb v. Cianci*, 591 A.2d 1193, 1203 (R.I. 1991))). Courts strive to resolve any apparent conflicts so both statutes can function effectively, focusing on the General Assembly’s intended objectives. *Id.* (quoting *Such*, 950 A.2d at 1156) (further citations omitted).

The 1968 Public Law did the following:

1. Sections 1 and 2 of the Public Act created the Board, which at that time consisted of three qualified electors of the town, elected by the town council. It set forth the terms for each Board member and other details regarding membership, voting and conflicts of interest. Lastly, it provided that the Board shall adopt by-laws or rules for the transaction of its affair under these sections.
2. Section 3 allowed the Board to employ attorneys, engineers and other professionals and elect a superintendent of the water works system and provided for the Board’s compensation.
3. Section 4 vested the Board with the authority to acquire, by purchase, subject to the approval of a special or annual financial town meeting, the assets of the Jamestown Water Company and thereafter the Board “may maintain, operate, extend and improve

- a water works system for the town and to provide an adequate supply of water for the town or any part thereof.” This section also allowed the Board to enter into contracts with the state or other municipalities or privately owned water systems for the purchase or sale of water or for the use of water facilities. Additionally, the section authorized the use of funds and allowed the Board to lease property or acquire such by eminent domain or gift, subject to town council approval.
4. Section 5 further detailed the Board’s rights, subject to the town council and approval at a financial town meeting to acquire land or take water.
  5. Section 6 limited the taxation of property held under this authority.
  6. Section 7 allowed the board to fix water rates allowed the town tax collector to collect the same.
  7. Section 8 provided for funds to run the Board.
  8. Sections 9-16 authorized the Board to issue bonds.
  9. Section 17 authorized the Twon to apply for, contract, or expend any federal survey or planning advances or grants related to the purposes of the act.
  10. Section 18 requires the board’s actions to meet constitutional requirements, whether or not such steps are required by statute.
  11. Section 19 prohibits the issuance of bonds in excess of that approved by the electors.
  12. Section 20 repealed the 1933 Public Law.
  13. Section 21 requires the approval of the electors of the Town for the act via a referendum.
  14. Section 22 provides that the approval of the act is effective only upon approval of the majority of the electors voting.

There is no language in the 1968 Public Law which does anything but create the Board and enable them as a public water supplier. There is no language which elevates the Board or the JWD as a superior authority with unfettered discretion.

As detailed above, the State clearly governs and had ultimate control over all of its water resources in the lengthy statutory provisions and regulations it has promulgated, only some of which are set forth above. Through these statutes, the State has enabled water districts and water suppliers to have certain authority, without getting specific approval from the WRB. However, the water suppliers still remained governed by state standards and regulations and are overseen by the WRB or public utilities commission or both.

The Board has admitted that they are subject to the jurisdiction and regulation under R.I. Gen. Laws § 46-15-2, generally, as it goes to great lengths to discuss the other parts of that section besides § 46-15-2(b). *See* Board's Memorandum at pps. 9, 16-17. R.I. Gen. Laws § 46-15-2 entirely consistent with the state's (and WRB) position as the authority over all water resources. R.I. Gen. Laws § 46-15-2(a) contains prohibitions on all municipal water departments, agencies, public water system, including special water districts and private water companies over certain actions including expansion of services. R.I. Gen. Laws § 46-15-2(b) is a limited *exemption* from that prohibition whereby a municipal water department, agency, public water system, including a special water district and a private water company can extend its service lines to supply water within the bounds of the municipality or special water district, as applicable, without approval from the state and WRB. It simply and in clear language enables water suppliers to extend their water lines in the areas of the district or municipal boundaries, as applicable. There are no other specialized authority or exemptions to water suppliers. Logically following the statutory scheme, in passing the 2022 Amendments to § 46-15-2(b), the state exercised its authority over the water

supply, to provide a uniform standard for the consideration of extension applications for all water suppliers, consistent with the goals of all chapters related to water, including addressing the ad hoc usage of the public water supply and the need to supply water to address the present needs of the people.

3. The absurdity of the Board's argument and position is evidenced by a simple reading of the standards in R.I. Gen. Laws § 46-15-2(b).

The Board's entire argument makes so much of the need to limit the water service in the Town because of the limited water supply. It also places itself as some gatekeeper with unfettered discretion on whether to allow an extension in the first instance. As noted, if the Board decides to allow the extension, then the applicant has to meet the statutory standards, but if it does not allow the extension, the inquiry ends there. This is the true example of arbitrary government action especially when examined alongside the standards it is seeking to avoid applying.

The standards adopted by the General Assembly in § 46-15-2(b) provide a very high burden for applicants to meet (i.e. infeasible to dig another private well), while ensuring that the extension does not impact fire protection, nor is it prohibited by the water supplier's WSSMP. *See* R.I. Gen. Laws § 46-15-2(b). The statute provides that a water supplier can adopt less stringent regulations. The Board, completely fails to recognize that the standards in R.I. Gen. Laws § 46-15-2(b) do consider local prohibitions on extensions if very simply set forth in specific language of its adopted and approved WSSMP. In fact, the very first standard provides that “[t]he application must not be prohibited by the specific language of the latest water supply system management plan (“WSSMP”) of the public water supply system.” R.I. Gen. Laws § 46-15-2(b)(1) (*emphasis added*). The Board doesn't need (nor does it have) super-authority or unfettered discretion to determine whether to allow extensions when it could, quite simply, prohibit extensions by clear

language in its WSSMP. It did not, and has not, done that, and the 2009 Regulations, where the prohibition is contained, is not the WSSMP, nor does it have the status of a general or specific law. In fact, there is no prohibition of the Frechettes' Application in the WSSMP. The operative WSSMP when the Frechettes Application was submitted and vested prior to the moratorium was the 2018 update.<sup>8</sup>

It's failure to take seriously, an amendment to the general laws applying to all water suppliers—a statutory provision it was well aware of, as noted in the CLP settlement statement, the Moratorium and Resolution, has resulted in the Board twisting itself into circles to justify its decisions. All this because it did not prohibit extensions in its WSSMP until it focuses on finding a solution for future water supply issues, which it has neglected to do or even take seriously in over a decade.

### **CONCLUSION**

Based on the above and the initial appeal application and memorandum, the Frechettes respectfully request that the WRB reverse the decision of the Board as it is clear from the evidence on the record that the WRB has the authority to hear this appeal and render a decision pursuant to Rhode Island General Law. Further, the Frechettes have been prejudiced because of administrative findings, inferences, conclusions, or decisions of the Board that are (1) in violation of constitutional or statutory provisions, (2) in excess of the statutory authority of the Board, (3) made upon unlawful procedure, (4) are affected by other error of law, (5) are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and

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<sup>8</sup> During the delayed proceedings on the Frechettes' Application, the Board worked on a new update to the WSSMP and various drafts of that, which were subsequently finalized. It is unclear as to whether this WRB has approved the Board's 2024 update, but in any event, it is not applicable to the Application.



(6) are arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Frechettes reserve their right to seek fees under the Equal Access to Justice Act codified at R.I. Gen. Laws Sec. 42-92-1 et. Seq

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*By and through their Attorneys,*

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