

**STATE OF RHODE ISLAND
WATER RESOURCES BOARD**

**APPEAL OF GLENN AND MARJORIE
ANDREONI AS TO DECISION OF THE TOWN
OF JAMESTOWN BOARD OF WATER AND
SEWER COMMISSIONERS**

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**GLENN AND MARJORIE ANDREONI'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**

Pursuant to the briefing schedule entered by this Water Resources Board (WRB) in the above-captioned matter, the Appellants, Glenn and Marjorie Andreoni (together the "Andreonis"), 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 Andreonis' appeal.

INTRODUCTION

This appeal is before this WRB¹ to review the decision of the Board under R.I. Gen. Laws § 46-15-2(b) pursuant to the statutory authority of this appeal proceeding. It is undisputed that the Andreonis met the standards in that section for their extension application. The review should end there. The uniform standards for the review of extension applications have existed in the law since June of 2022, and the Board was well-aware of them through previous legal action. The Board, instead of taking steps in accordance with the uniform standards in R.I. Gen. Laws § 46-15-2(b), (much like its lack of effort to ensure future water supply for the residents of the Town), stuck its head in the sand, and continued as business per usual under their superseded standards.

¹ All terms and exhibits are referenced to those utilized in the Andreonis' Initial Memorandum filed with this WRB on October 18, 2024, unless otherwise stated.

It was only beginning in late 2023, *a year and a half after the passage of the uniform standards*, that the Board began to even take the law seriously. The Board, at that point, recognized the applicability of these uniform standards to all water suppliers and its need to address the same, by way of a settlement statement in another matter, a purported Moratorium, a Resolution and an attempt at special legislation that failed. The Board, however, *never* prohibited extensions by way of specific amended language to its WSSMP—which would have addressed the very first provision of the uniform standards in R.I. Gen. Laws §46-15-2(b)(1). Instead, when faced with the submission of the Andreonis' Application just prior to a moratorium on review of extension applications, *which met every single standard of the uniform standards in the law*, the Board scrambled to delay the hearings, and hurry the drafting of plans, only to deny the Andreonis' Application on its old, superseded standards and not apply the law. Somehow, the Andreonis fared no better in their 2024 Application than their 2021 application both of which were denied under the Board's 2009 standard in their Regulations, despite the intervening passage of uniform standards in 2022, and the Board's recognition of the same.

The JWD and the Board in their Memorandum assert to this very WRB---ironically one of the state authorities with specific ultimate jurisdiction, management and control of the water supply and the JWD--- that its 1968 enabling authority vests it with superior authority to determine when, where and whom to allow an extension of its water system and the uniform standards do not apply to applications to extend unless they say they do. This is not only unsupported by the limited authority the State has given to water suppliers to *allow* extensions within their municipality, but is contrary to the clear and unambiguous statutes and the clear intent of the General Assembly in the passage of uniform standards applicable to all water suppliers in their consideration of extension applications.

The Decision of the Board to deny the Andreonis' Application, based on the arguments set forth in the Andreonis' Initial Memorandum and here, was arbitrary and capricious, clearly erroneous, an error of law, and in violation of state law. As such, the Andreonis respectfully request that this WRB grant their appeal and reverse the decision of the Board.

ARGUMENT

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.

The Board's Memorandum—an 11th hour attempted justification of the arbitrary denial of the Andreonis' Application, 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. In addition, the Board fails to recognize the limitations on its own authority and the very process and review proceedings before this WRB for the pending appeal.

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 are 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 Andreoni's Initial Memorandum and here, these facts, assumptions and conclusions are not supported by the record or any other Town documents.

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

The WRB's review of this appeal is under the 2022 Amendments to R.I. Gen. Laws § 46-15-*et. seq.*, which included not 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 to reviewing 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 to 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. *See* **Exhibit H**. The summary enables the WRB to examine threshold standard #1, set forth in R.I. Gen. Laws § 46-15-2(b)(1), which is 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 Andreonis' Application. *See* **Exhibits B; F and H**.

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 in order 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 governing law, 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)² 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) the existing well does not meet Department of Health standards and 5) 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). It is undisputed that the Andreonis' Application clearly and unequivocally meets those standards as established in their Initial Memorandum. *See* pps. 28-31 in the Initial 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 prior contradictory actions and statements by the Board. These prior positions, findings and statements by the Board contradicted its position that

² *See* Exhibits N and O.

it has some super-authority or exemption from the standards adopted by the General Assembly for all water suppliers.

1. The Andreonis' First Application and subsequent litigation regarding the property at 68 East Shore Road

In 2021, the Andreonis applied for an extension for the Property along with several other property owners in the area, including CLP Trust, owner of 68 East Shore Road ("CLP"). On these applications, the Board, for the first time, applied the prohibition on extensions to the RWD in § 14(B)(b)(4) of its Regulations and denied the Andreonis' and other applications. See Exhibit G, minutes; see also Exhibit DD, Andreonis' Denial Letter, attached hereto.

As this WRB is aware, in July 2022, just after the effective date of the 2022 Amendments, CLP applied for an extension under the new standards in the 2022 Amendments to R.I. Gen. Laws § 46-15-2(b). Like the Andreonis, CLP had applied and been denied previously. At both the August 22, 2022, and September 19, 2022, meetings, the Board indicated it did not believe the new statewide standards applied to the Board. See *id.* at 5; Exhibit O, Hr.'g Tr. at 23 (Sep. 19, 2022). At its September 19, 2022 meeting, the Board voted not to hear the CLP 2022 application, purportedly applying the doctrine of administrative finality, since it had previously denied the application under its 2009 Regulations. See *id.* at 24. In voting to deny hearing the application, a member of the board stated: "[i]t cannot be the case that the rule now is apply, and if your well doesn't produce, the town is on the hook to provide you water." *Id.* He added, "[i]f that is the requirement tell me, some court." *Id.*

2. The 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 on East Shore Road, the Board felt the need to issue a

statement to the public at its meeting approving the settlement. Included 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.” **Exhibit**

P. 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.

Exhibit P.

3. **The Moratorium**

The next step the Town took, after the CLP settlement, was to pass a temporary moratorium on January 2, 2024 (“Moratorium”).³ See **Exhibit T.** That Moratorium temporarily halted the Town’s review of applications and permitting of water service extensions. See **Id.** The Andreonis were one of several applications which were submitted prior to the passage of the Moratorium on January 2, 2024. Applications such as the Andreonis, 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. See **Id.** at p. 2, ¶ 4. 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

³ 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 Andreonis’ application was vested and not subject to the Moratorium, this argument was not raised, but it worthy of noting.

regulations to implement the new water service plan.” Id. at p. 1. 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. ...” Exhibit T, *emphasis added*.

4. 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.” Id. at p.2. 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:

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.

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.

See **Exhibit EE**, attached hereto.

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 **Exhibit U**, 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 area⁴ as opposed to the entire land area of the town.” *Id.* **That legislation did not pass.**

5. The Andreonis’ January 2, 2024 Application

As set forth above and in the Initial Memorandum, the Andreonis’ 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 due to administrative finality, as a decision had already been rendered in 2021 rejecting the extension under the 2009 Regulations. 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 still applied the standards in the 2009 Regulations anyway. Notably, despite the fact that the Town sought special legislation in 2024 to exempt it from the application of the standards in R.I. Gen. Laws § 46-15-2(b), the Board still operates as if that legislation was, in fact passed.⁵

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

⁴ As set forth below, the “service area” has been ever changing since the Board’s creation.

⁵ If the Town, in fact, had some specific special legislation allowing them to avoid the standards in R.I. Gen. Laws § 46-15-2(b) as they argue here, there would be no point to propose and advocate for, a legislative amendment.

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. *See id.* The Board even recognized this intent, as set forth below.

I. 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 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.⁶ In either circumstance, the premise that water service is limited to the UWD is flawed in the first instance.

⁶ We know of at least 5 expansions into areas beyond the UWD since 2009. *See* **Exhibit M** and **Exhibit P**.

At some point, subsequent to the purchase of the assets of the Jamestown Water District, the Board created the UWD and the RWD.⁷ 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 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.

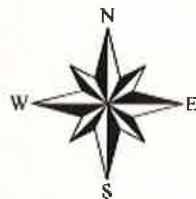
Exhibit E. As noted in the definitions of the UWD and RWD, the 2009 Regulations contain a map, at Appendix A, as does the Town GIS system, of where the UWD boundaries are:

[EXCERPT OF EXHIBIT E TO FOLLOW]

⁷ 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>.

THE TOWN OF JAMESTOWN RHODE ISLAND

APPENDIX A: JAMESTOWN URBAN WATER & SEWER DISTRICT

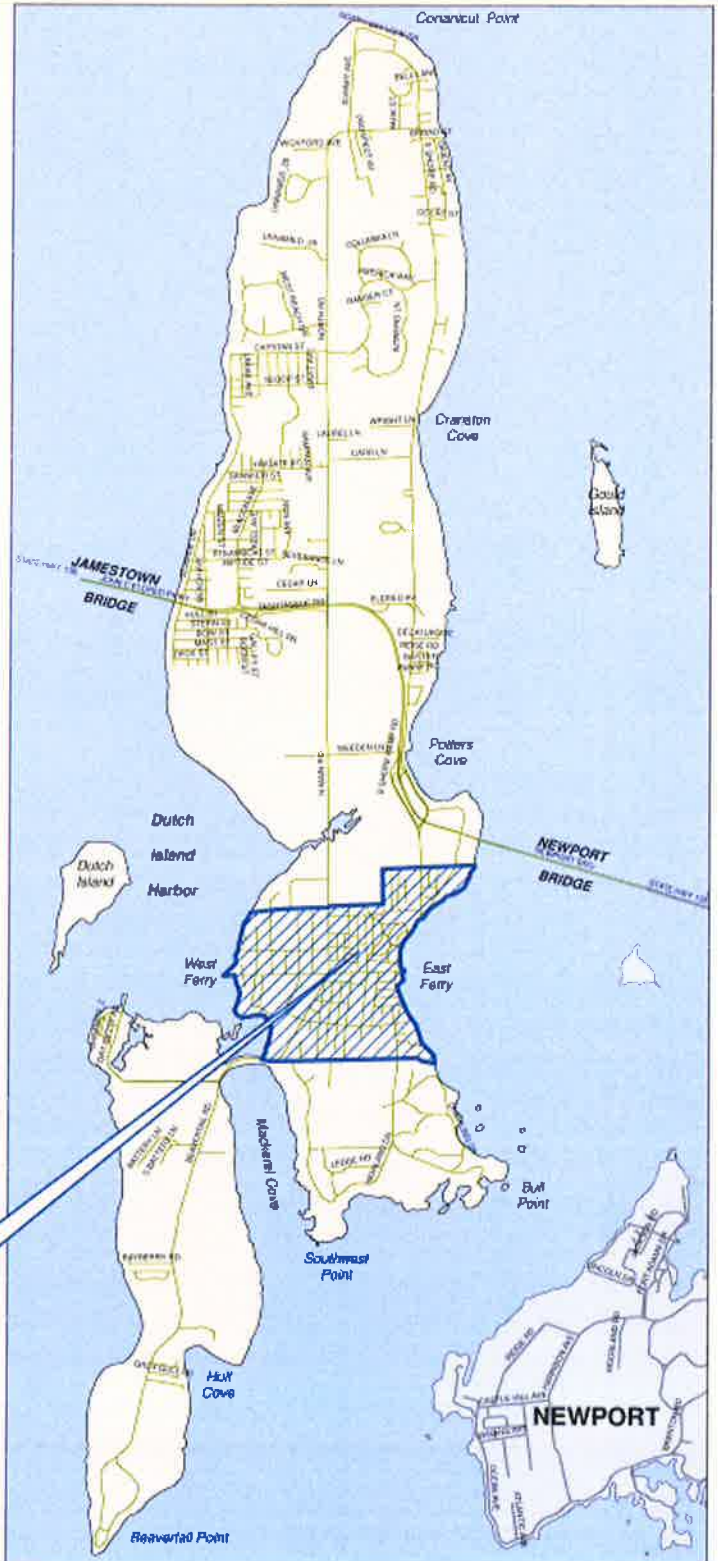


0 1 2 Miles

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
11/11/2010

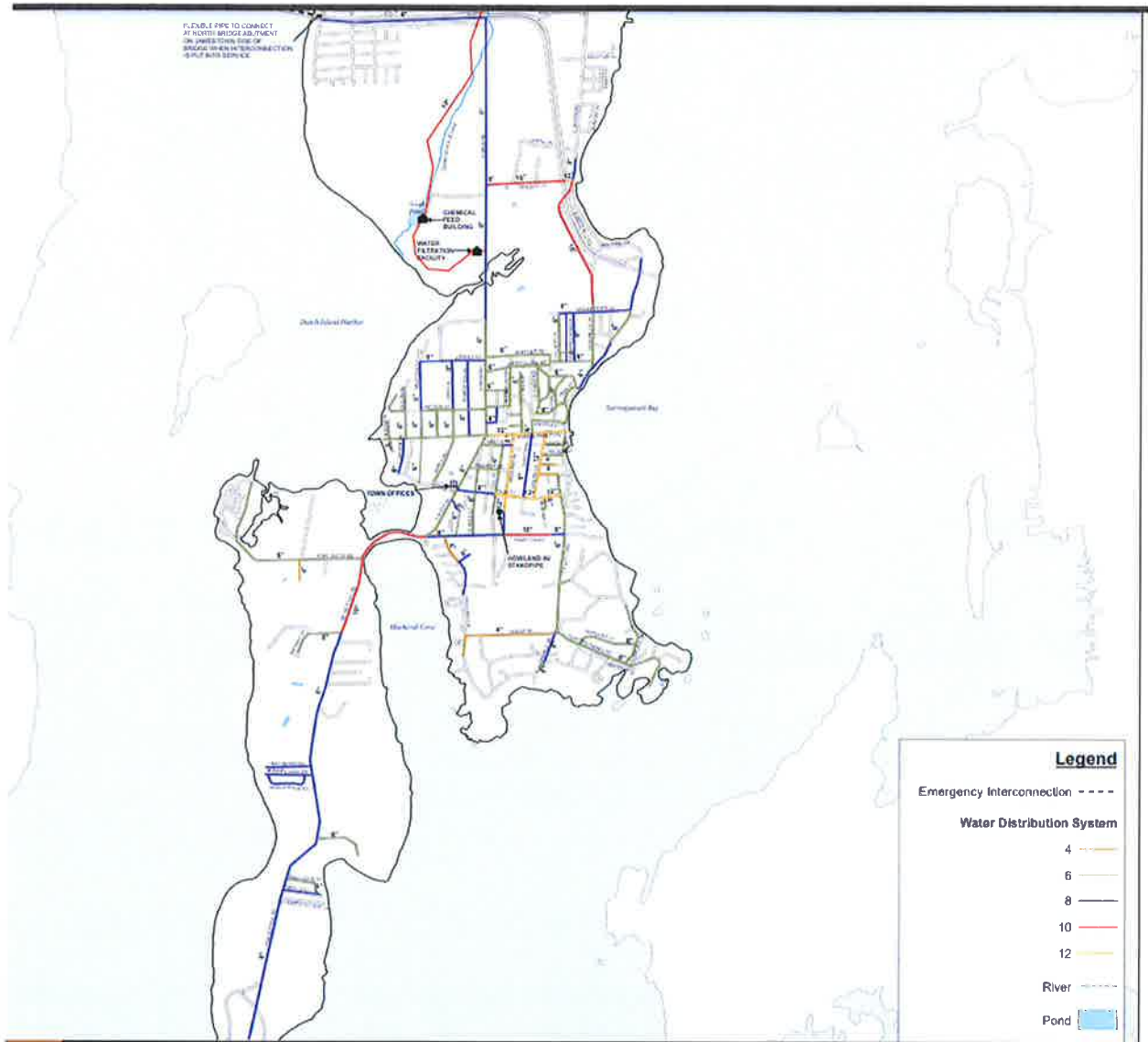


See **Exhibit E**. However, when examining the UWD on the Town's GIS system, despite the clear area in the definition and the map in the Regulations, the UWD is shown to include areas beyond those detailed in the definition and shown on the map in the Regulations:



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 **Exhibit F** at p. 82 “System Map.” Also 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'.

See **Exhibit L**. In 2009, the Regulations were amended to add the alleged prohibition on extensions in the RWD. See **Id.** 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 ~~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 ~~connections 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 ~~property premises~~ shall not be part of a major subdivision. ~~Except an Administrative Subdivision;~~
4. Extensions to and within the rural district shall be prohibited.
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’.~~

Id. and Exhibit E at 8-9.

In the current iteration of the Regulations there is another paragraph under standard #4, even though the same does not appear in the 2009 Amendments and seems to lack authority for its sudden appearance in the Regulations. Compare Exhibit L and Exhibit E. That sentence is the one being utilized to form the only basis for denial of the Andreonis’ Application,⁸ 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.

Exhibit E at 8-9. 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”. See Exhibit M.⁹

⁸ See Exhibit A, 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.”)

⁹ The Board asks this Board to strike documents attached to the Andreonis’ Memorandum because they are not in the certified record. There is little to nothing in the certified record—which was not provided to counsel until after the submission of the Memorandum, and was only provide to us by the WRB since the Board never provided us with a copy. The exhibits attached to the Andreonis’ Memorandum are all public documents or public records of the Board—most of which were cited in the record. The Board’s Memorandum makes referenced (without even attaching the documents) to various other public documents which are also not in the Certified Record including reports that post-dated the Andreonis’ Application. In any event, for the rules and law in the reasons set forth in the Andreonis’ Memorandum, these documents should be considered in this appeal. It is worthy to note, that the Board did not even provide the 2018 WSSMP, which relevant portions are included in the Andreonis’ Memorandum.

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 Andreonis' single family home which is located one house from an approved water line extension) 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 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 Andreonis' 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

served¹⁰, 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 its Memorandum submitted in this Appeal focuses on the 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 Andreonis' 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 Andreonis' 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 Exhibit A*, Decision at p. 4. The Board has not addressed the fact that they have *never* before applied this standard nor the prohibition until the Andreonis first submitted an application in 2021. *See Exhibit M*, Initial Memorandum at p. 11.

In their Initial Memorandum, the Andreonis addressed 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 Andreonis' Application. *See Andreonis' Initial Memorandum* at pps 10, 22. Instead, 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. *See Exhibit AA* at pps.103-108. The cross-examination compared previous

¹⁰ *See Exhibit F* at p. 82.

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. *See Id.*

While not utilized in its Decision, the Board seems to now allude to the fact (without citing it nor it being a basis for denial in the decision) that the extension would impair the resources to the UWD. *See Exhibit E*, § 14(B)(b)(2). This standard has never been applied to the numerous connection applications which have been granted since 2009, including one at the same time the Andreonis' Application was heard. *See Exhibit M* for 12 connections granted from 2009-2021; Exhibit X for the connection granted in 2024.

II. 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 Andreonis' 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, at 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 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. Specifically, 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,"¹¹ and

¹¹ There is no such thing as the "legally mandated area of service."

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 the Board 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 are exempt from, given the Board's so-called broad authority and discretion in the 1968 enabling legislation which allows it unfettered discretion.

1. **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 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 § 46-15.7-1.¹²

As set forth in more detail in the Andreonis' Initial Memorandum, 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 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 the 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

¹² 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.

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. See Exhibit D at 311, 313.

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 Andreonis' 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 allows the Board to maintain, operate, extend and improve a water works system. 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 and 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 Board 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 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 a 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. existing well does not meet department of health standards and it is infeasible to drill another 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 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 does not 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 Andreonis' Application in the WSSMP. The operative WSSMP when the Andreonis Application was submitted and vested prior to the Moratorium, was the 2018 update.¹³ *See* **Exhibit A** and **Exhibits F and H**.

The Board'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

¹³ During the delayed proceedings on the Andreonis' 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.

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 focused on finding a solution for future water supply issues, which it has neglected to do or even take seriously for over a decade.

CONCLUSION

Based on the reasons set forth in the Andreonis' Initial Memorandum and herein, the Andreonis' respectfully request that this WRB grant its appeal and reverse the decision of the Board to deny their extension Application as such decision was arbitrary and capricious, clearly erroneous, an error of law, and in violation of state law.

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