

WATER RESOURCES BOARD

**Glen and Majorie Andreoni,
Paul and Gail Frechette,
Stephen Ziminski and Suzanne Gagnon,
Jeffrey Saletin and Deborah Saletin,
("Appellants")
Appellants,**

Vs.

Appeal No. 24-01

**Jamestown Water and Sewer
Commission ("JWSC"),
Appellee,**

RECOMMENDATION OF THE PRE-HEARING BOARD

This matter comes before the Water Resources Board, hereinafter referred to as the ("WRB"), on a timely filed consolidated appeal pursuant to RIGL 46-15-2.1, from four (4) separate decisions of the Jamestown Water and Sewer Commission, hereinafter referred to as the ("JWSC"), denying the four (4) Appellants' applications to allow extensions from and connections to the existing Jamestown public water supply system to the Appellants' four (4) single family residential properties.

The Appellants each timely appealed pursuant to RIGL 46-15-2.1 from the decision(s) of the JWSC dated June 24, 2024. An appeal(s) filed pursuant to RIGL 46-15-2.1 may be filed upon a denial by a public water facility made under RIGL 46-15-2(b). Pursuant to 490-RICR-00-00-9, the WRB then appointed a three (3) member Pre-Hearing Board, hereinafter referred to as the ("PHB"), consisting of three (3) duly appointed members of the full WRB to hear the appeal(s) and make factual determinations and legal findings and forward a written recommendation to the full WRB. The PHB conducted a thorough review of the whole record of the initial record of proceedings held by the JWSC, and resulting decision(s) of the JWSC. The Parties submitted written legal briefs and exhibits and additional responsive legal briefs and exhibits . Further, on

March 12, 2025, the PHB heard testimony and oral argument from the Parties and their respective legal counsel. On April 7, 2025, the PHB unanimously voted to approve a motion to reverse the decision(s) of the JWSC against the Appellants and recommend the full WRB adopt and accept same.¹

For the reasons cited below, it is the recommendation of the PHB to the full WRB that the decision(s) of the JWSC as applicable against all the Appellants be **REVERSED** as: same are in violation of statutory provisions; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and the initial decision(s) of the JWSC are arbitrary and capricious.

DECISION-RECOMMENDATION

The JWSC's denial of the instant applications is based primarily on its legal position that the Town of Jamestown is exempt from R.I.G.L. 46-15-2 because the JWSC maintains the 1968 Special Act, by which JWSC was created, is an exception to and/or an exemption from R.I.G.L. 46-15 et. seq. and as such the 1968 Special Act vests JWSC with exclusive authority to regulate which residents and businesses do and do not get potable water from its public water supply system in the Town of Jamestown.²

In support of this argument, JWSC makes a number of assertions, which will be addressed below: (1) that the 1968 Special Act is a specific legislative enactment which conflicts with R.I.G.L. 46-15-2 which is a general act or statute enacted by the Rhode Island legislature and, (2)

¹ The motion adopted by the PHB reads in pertinent part: "That the PHB, upon a thorough review of the whole record submitted by the Parties, oral arguments and testimony from the Parties, and by and through their respective legal counsel, on March 12, 2025, hereby recommends that the full Board of Directors of the WRB reverse the decisions of the JWSC denying water extensions from and water connections to the four Appellants...."

² The PHB notes that in the hearing conducted on this appeal dated March 12, 2025 that both a Jamestown town official and legal counsel for the JWSC acknowledged that in both the 2022 and 2023 RI legislative sessions the Town of Jamestown unsuccessfully attempted, via a proposed amendment, to have itself exempted from the requirements of RIGL 46-15-2(b)(1-7).

the 1968 Special Act is an exception and/or is exempted from the applicability of R.I.G.L. 46-15-2, and thus the Town of Jamestown is exempt from R.I.G.L. 46-15-2, (3) that the 1968 Special Act authorizes the JWSC to promulgate rule and regulations, which carry the force of State law, and (3) that the Applicants' failed to satisfy Section 14.B.b.4 of the JWSC's regulations, which in the decision of the JWSC was the sole basis for the its' denial of the Appellants' applications.³ As set forth below, the PHB holds that the JWSC's assertions are without merit and hereby rejected.

CONFLICT BETWEEN 1968 SPECIAL ACT AND R.I.G.L. 46-15-2, ET. SEQ.

In its each of its initial decisions and in legal briefs and argument filed by the JWSC before the PHB denying the Appellants' applications, the JWSC relies primarily on the legal argument that the 1968 Special Act is a specific legislative enactment and that R.I.G.L. 46-15-2 is a general legislative act or statute enacted by the Rhode Island legislature. And in so far as the 1968 Special Act and R.I.G.L. 46-15-2 conflict, the 1968 Special Act is an exception or exemption to R.I.G.L. 46-15-2(b)⁴, and therefore the Town of Jamestown in not subject to R.I.G.L. 46-15-2(b), et. seq. The PHB finds that the JWSC's argument is without merit.

Contrary to the legal position adopted by the JWSC, the 1968 Special Act is not a specific legislative enactment. Nor do the substantive terms and requirements of the 1968 Special Act conflict with the substantive terms and requirements of R.I.G.L. 46-15-2. The 1968 Special Act, *inter alia*, created the JWSC. The fact that the Act is specific to the Town of Jamestown does not

³ See the JWSC's initial decision(s) at page 4. The JWSC clearly rejects the Appellants' applications which are based upon compliance with the standards set forth in RIGL 46-15.2(b)(1-7). The JWSC's decision denied the Appellants' applications solely on the basis that same did not address the Town of Jamestown's local regulation or rule 14.B.b.4. The initial decision(s) of the JWSC in the instant appeals never engaged in any analysis to determine whether or not the Appellants' applications were in compliance with RIGL 46-15-2(b)(1-7).

⁴ The General Assembly has specifically stated that when there is a conflict between two of its own legislative acts that cannot be harmonized, the special provision "shall prevail and shall be construed as an exception to the general provision." R.I. Gen. Laws § 43-3-26 (emphasis added).

render each provision therein an exception or exemption to the provisions of R.I.G.L. 46-15, et. seq. RIGL 46-15, et. seq. addresses public water supplies throughout the State of Rhode Island. To interpret the 1968 Special Act as an exception or as the granting of an exemption from the applicability of the general statute would render an incongruous result allowing any one of the thirty-nine cities and towns and/or the multitude of municipal water boards, special districts or other agencies within the State of Rhode Island created by statute to maintain that they are exempt from State statutory enactments relating to public water supplies. Such an interpretation is an absurd result and is in direct contradiction with the declared legislative intent of R.I.G.L. 46-15-1, which in its entirety is as follows:

§ 46-15-1. Legislative declaration

The general assembly hereby finds and declares that:

(1) The state of Rhode Island has been endowed with many and abundant sources of water supplies located advantageously, for the most part, throughout the state. The proper development, protection, conservation, and use of these water resources are essential to the health, safety, and welfare of the general public, and to the continued growth and economic development of the state;

(2) In recent years it has become increasingly apparent that water supply management, protection, development, and use must be fully integrated into all statewide planning, and rivers and watershed planning and management processes, and that the allocation of the state's water resources to all users, purposes, and functions, including water to sustain our natural river and stream systems and natural biotic communities, must be equitably decided and implemented under a process which emphasizes efficiency of use and management, minimization of waste, protection of existing supplies, demand management, drought management, conservation, and all other techniques to ensure that our water resources serve the people of Rhode Island for the longest time, in the most efficient use, and in an environmentally sound manner;

(3) The character and extent of the problems of water resource development, utilization, and control, and the widespread and complex interests which they affect, demand action by the government of the State of Rhode Island in order to deal with these problems in a manner which adequately protects the general welfare of all the citizens of the State;

(4) In order to retain and encourage the expansion of our present industries, and to attract new industries, and to promote the proper growth and desirable economic growth of the entire State, and to sustain the viability of water resource-dependent natural systems, agriculture, and recreation, State government must play an active role in fostering and guiding the management of water resources;

(5) There are State and municipal departments, special districts, private firms, and other agencies in the State who have capabilities and experience in the design, construction, operation, and financing of water supply and transmission facilities, which capabilities and experience must be brought to bear on the total problem of water resources development in a coordinated manner if the proper development, conservation, apportionment, and use of the water resources of the State are to be realized; and

(6) It shall be the duty of the water resources board to regulate the proper development, protection, conservation and use of the water resources of the state.⁵

As set forth above, the JWSC asserts that the 1968 Special Act conflicts with R.I.G.L. 46-15, et. seq.; that the 1968 Special Act is a specific legislative enactment and R.I.G.L. 46-15, et. seq. is a general statutory enactment. Thus, the 1968 Special Act is an exception and/or an exemption from the applicability of R.I.G.L. 46-15, et. seq. The JWSC's argument, however, presupposes that these two legislative enactments conflict. That assertion is likewise not correct.

It is well settled law in Rhode Island that, if possible, separate legislative enactments must be interpreted such that they are in harmony. "When construing statutes, this Court's role is 'to determine and effectuate the Legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes.'" *Such v. State*, 950 A.2d 1150, 1155-56 (R.I. 2008) (quoting *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987)). "It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009), 983 A.2d at (quotation omitted). However, "[i]t is an equally well-

⁵ It is notable that RIGL 23-65-1(4) and 23-65-1(11) designate that towns' water supply systems are public water supplies and more specifically are a "community water supply systems" which is consistent with RIGL 46-15-1.

settled principle that 'statutes relating to the same subject matter should be considered together so that they will harmonize with each other and be consistent' with their general objective scope." *Such*, 950 A.2d at 1156 (quoting *State ex rel. Webb v. Cianci*, 591 A.2d 1193, 1203 (R.I. 1991)). When faced with the task of statutory construction, the Court "constru[es] and appl[ies] apparently inconsistent statutory provisions in such a manner so as to avoid the inconsistency." *Id.* (quoting *Kells v. Town of Lincoln*, 874 A.2d 204, 212 (R.I. 2005)). "In such cases, 'courts should attempt to construe two statutes that are in apparent conflict so that, if at all reasonably possible, both statutes may stand and be operative.'" *Id.* (quoting *Shelter Harbor Fire District v. Vacca*, 835 A.2d 446, 449 (R.I. 2003)). In applying these principles, the aim is to "give effect 'to the apparent object and purpose of the Legislature.'" *Id.* (quoting *Merciol v. New England Telephone and Telegraph Company*, 110 R.I. 149, 153, 290 A.2d 907, 910 (1972)). Analyzing the 1968 Special Act and R.I.G.L. 46-15, et. seq. through the lens of this well settled law, it is apparent and the PHB finds that there exists no conflict between these two legislative enactments.

Section 4 of the 1968 Special Act, entitled Powers of the Commission, provides in pertinent part as follows:

The board of water commissioners shall be vested with the power and authority to acquire by purchase, subject to approval of a special or annual financial town meeting the assets of the Jamestown Water Company, and thereafter may construct, operate, maintain, 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. (Emphasis added).

R.I.G.L. 46-15-2 vests the WRB with the authority to approve local town or city extensions of water supply systems, subject to satisfaction of the standard set forth in subsection (b) of that statute. Section 2(b) provides:

Notwithstanding any provision of this section to the contrary, a municipal water department, agency, or public water system governed under this section shall

review applications for plans or work for the extension of supply or distribution mains or pipes in accordance with the following standards:

- (1) Such application must not be prohibited by the specific language of the latest water supply system management plan ("WSSMP") of the public water supply system;
- (2) Such applications must comply with the design and construction standards and specifications established by the public water supply system for the sizing and location for the infrastructure;
- (3) Such extensions shall not reduce the necessary level of fire protection for the community;
- (4) All water main and service connection materials, construction and inspection required hereunder shall be at the sole cost and expense of the applicant;
- (5) The public water supply system shall be granted an easement in a form acceptable to them which shall permit the maintenance, repair or replacement of water lines and all other related activities;
- (6) For applications for single-family residential lots, the applicant must show that:
 - (i) The existing or proposed well for the property does not meet the well industry standard as described in the department of environmental management regulations for "yield per depth of well chart" which is required by the department of health for a dwelling unit; and
 - (ii) Due to the unique characteristics of the property that the drilling of a new well is not feasible;
- (7) For applications located within a public water supply system with limited capacity, applicants for commercial uses/properties shall be governed by the rules established for such connections by the public water supply system, which shall be in accordance with the system's approved WSSMP.

A public water supply system governed under this section may provide for lower standards for approval for residential property if such standards meet the requirements of the agency's state-approved WSSMP, and such WSSMP is not expired.

(Emphasis added).

To the extent that the 1968 Special Act and R.I.G.L. 46-15-2(b) both authorize the extension of local or town water supply systems, the two statutory provisions clearly do not conflict with each other.

The JWSC, in its argument and legal briefs before the PHB, makes repeated reference to language in the 1968 Special Act, specifically the language “or any part thereof” for the proposition that same authorizes it to limit the area in which it extends the public water supply to “part” of the Town and thereby authorizes the JWSC to deny water extensions and connections. R.I.G.L. 46-15-2 (b)(1), specifically and unambiguously provides the JWSC or any other similar entity the opportunity to define instances and/or specific areas within its jurisdiction wherein the extensions and connections to the public water supply may be specifically prohibited. Provided, however, that such a prohibition is specifically included and defined in the most current version of the JWSC’s or any others similar entity’s WSSMP.⁶

Therefore, to the extent that the 1968 Special Act may or may not provide authority for the JWSC to limit the area in which it extends its public water supply, it is evident that the plain and unambiguous statutory language contained in R.I.G.L. 46-15-2(b)(1) also specifically provides the JWSC or any other similar entity the opportunity and the authority to limit the area to which it extends the public water supply and residential connection to water service. Simply put, there exists no conflict between the statutes. As previously cited, the ability of the JWSC or any other similar entity to limit the area to which it extends the public water supply and water service is

⁶ As noted previously herein, R.I.G.L. 46-15-2 et. seq. specifically provides that a public water supplier, such as the JWSC may limit and define areas where extensions and connections are specifically prohibited. Same also “may provide for lower standards (emphasis added) for approval for residential property if such standards meet the requirements of the agency’s state-approved WSSMP.” A WSSMP is defined in RIGL 46-15-2(b)(1) as a “water supply management plan ... of the public water supply system.” The WSSMP is then submitted by the local water supplier for approval by the WRB. As noted later in this decision, the 2018 JWSC’s WSSMP, which is the governing and last WRB approved JWSC WSSMP, does not prohibit by specific language the Appellants’ applications for extension from and connection to the Jamestown public water supply system.

specifically provided for in RIGL 46-15-2(b)(1). Further, to date, as noted earlier in this decision, the JWSC, although it has the statutory authority to do so pursuant to RIGL 46-15-2(b)(1), has not and did not specifically limit the area to which it will extend its public water supply and water service in its current WSSMP.

Therefore, the PHB finds that with respect to the authority to grant and/or limit water supply system extensions, the 1968 Special Act and R.I.G.L. 46-15, et. seq. do not conflict. Accordingly, even if the 1968 Special Act is deemed a specific legislative enactment, since it does not conflict with R.I.G.L. 46-15, et. seq., it is not an exception or exemption thereto and the Town of Jamestown and the JWSC are not exempt from the provisions and requirements of RIGL 46-15 et. seq.

Therefore, the PHB finds that the Appellants' consolidated applications are **NOT** specifically prohibited by the specific language of the JWSC's latest and WRB approved water supply system management plan or WSSMP. After a thorough review of the entire record of this appeal, it is evident that the JWSC, as noted previously in this recommendation, in its initial hearings and decision(s), did not apply any of the required standards as set forth by the Rhode Island legislature in RIGL 46-15-2(b)(1-7). In fact, in its initial decision denying the Appellants' applications the JWSC specifically and erroneously applied its own local rule or regulation and standard of review contained therein, in denying the Appellants' applications. In light of the JWSC's sole reliance on Section 14.B. of its own rules and regulations, the following discussion bears significant relevance, in the opinion of the PHB, on the arbitrariness and capriciousness of the JWSC's decision in the instant appeal.

SECTION 14.B. OF THE RULES AND REGULATIONS OF THE BOARD OF WATER AND SEWER COMMISSIONERS

The JWSC asserts that “in accordance with its discretionary authority whether to extend water mains” the 1968 Special Act authorizes the JWSC to enact rules and regulations that carry the force and effect of law. In support of this assertion, the JWSC relies upon the provisions of P.L. 1968, ch. 273, §§ 2. In its initial decision denying the Appellants’ applications, the JWSC relied exclusively on Section 14.B. of its own rules and regulations, particularly the last paragraph of that section, highlighted below. That section provides 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 Board that the proposed service connection requested:
 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.

Nothing herein shall be construed to prohibit or prevent the Board of Water and Sewer Board 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 users.

The JWSC’s sole reliance on Section 14.B. of its local rules or regulations is entirely misplaced. Further, in the opinion of the PHB, based upon its review of the entire record and evidence presented by the Parties to this appeal, said section sets forth a standard that is virtually impossible

for any applicant applying for an extension from and/or connection to the JWSC's existing public water supply system to successfully meet and/or satisfy.

The JWSC maintains that the 1968 Special Act authorizes it to enact rules and regulations “in accordance with its discretionary authority whether to extend water mains.” The JWSC purports to find authority to promulgate its rules and regulations in P.L. 1968, ch. 273, §§ 2. The JWSC's reliance on Section 2 for such authority to promulgate rules and regulations is entirely misplaced.⁷

It is evident that Section 2 of the 1968 Special Act is limited to and solely addresses the composition of the board of water commissioner, i.e., election of a chairman, a secretary and other officers. In fact, Section 2 of the Special Act is actually entitled “Officers”. In that context, that section empowers the Board to adopt by-laws and rules “for the conducting of its affairs”, i.e., the mechanism for the internal functioning of the Board to manage its affairs. Section 2 clearly does **NOT** authorize the Board to promulgate rules and/or regulations that vest and/or expand the powers of the JWSC beyond the powers that the General Assembly specifically bestowed upon the JWSC within the Special Act. RIGL 46-15-2(b(1-7)) clearly, specifically, and unambiguously sets forth the standards which must be met by an applicant for an extension from and a connection to a public water supply system.

In other sections of the Special Act, the Act expressly establishes the JWSC's powers and authority to engage in certain actions. For example, the most express proclamation of the JWSC's power is Section 4 of the Special Act, entitled “The Powers of the Commission”. That section specifically empowers the JWSC to acquire/purchase the Jamestown Water Company, to construct, operate, maintain, extend and improve a water works system”, to contract for the purchase or sale

⁷ See attached RI Public Law 1968, ch. 273, §§ 2.

of water, to “lease property or acquire the same by purchase or gift”. Section 5 of the Special Act entitled “Condemnation”, subject to approval by the Town Council, authorizes the JWSC to acquire land by eminent domain. Section 7 of the Special Act entitled “Water rates”, authorizes the JWSC to fix and set water rates.

These are the limited enumerated and specific powers that the General Assembly bestowed upon the JWSC. Nowhere in the 1968 Special Act did the General Assembly authorize the JWSC to promulgate rules and regulations that, in effect, expand these limited, enumerated, and specific powers to require applicants for extensions from and connections to the public water supply system to meet a standard such as that set forth in Section 14.B.b.4. Said standard requires an applicant to prove that their respective application for expansion would “improve the quality or quantity of water furnished to existing water users”. This is the standard as set forth in its rules and regulations that the JWSC relied upon on to deny the Appellants’ initial applications.

It is evident to the PHB that if the legislature intended to vest the JWSC with the authority to promulgate rules and regulations which carry the force and effect of State law, it would have specifically done so. Particularly since the legislature included a section in the Act entitled “Powers of the Commission”, which does not so vest the JWSC. The JWSC’s assertion that a vague reference to the JWSC’s authority to adopt by-laws and rules “for the conducting of its affairs” in the context of a section of the Special Act entitled “Officers” which is directed solely, exclusively and expressly to the internal mechanisms of the conducting of its affairs, somehow vests the JWSC with the authority to promulgate rules and regulations that carry the force of State law is a blatant and unlawful distortion of the plain and unambiguous text of the Section 2.⁸

⁸ Section 2 of the 1968 Special Act is exclusively relied upon by the JWSC as its authority to promulgate its own rules and regulations as same pertain to the regulation of the Town of Jamestown’s water supply system. Any fair reading of Section 2 of the 1968 Special Act lends itself to the legal conclusion, and the PHB so finds, that same refers back

Therefore, the PHB rejects the JWSC's reliance on Section 2 of the 1968 Special Act. It is evident that same does not provide the JWSC with the authority to promulgate local rules or regulations as they relate to its public water supply system nor does same grant the JWSC the authority to ignore State law enacted to govern in this area or to override same.

The PHB does not take the position that the JWSC is prohibited from promulgating local rules or regulations to manage the Town's water supply system. The PHB has determined that such authority does not come from Section 2 of the 1968 Special Act as consistently argued by the JWSC in this appeal. Further, to the extent that said local rules or the regulations conflict with the requirements of a statute, the statute prevails. The PHB notes that there has been no evidence presented that any rules and regulations relied upon by the JWSC were ever formally adopted by the Jamestown Town Council. The record is silent as to their status. For the purposes of this decision, however, the PHB shall treat the JWSC's local rules and regulations, such as Section 14.B as cited by the JWSC in its evidence and legal briefs presented in this Appeal, with the authority and legal effect afforded a local town ordinance.

Accordingly, to the extent that a local rule, regulation, or ordinance conflicts with a statute, the statute preempts the regulation. The Rhode Island Supreme Court recognized as far back as 1953 ““that municipal ordinances are inferior in status and subordinate to the laws of the state.”” *Town of E. Greenwich v. O’Neil*, 617 A.2d 104, 109 (R.I. 1992) (quoting *Wood v. Peckham*, 80 R.I. 479, 482, 98 A.2d 669, 670 (1953)). The Court further held ““an ordinance inconsistent with a state law of general character and state-wide application is invalid.”” *Id.* (quoting *Wood*, 80 R.I. at 482, 98 A.2d at 670). There are two methods by which a Rhode Island statute may preempt a municipal

to JWSC's authority to adopt by-laws and rules “for the conducting of its affairs” which is directed solely, exclusively and expressly to the internal mechanisms of the conducting of its affairs.

ordinance. See *URI Student Senate v. Town of Narragansett*, 631 F.3d 1, 7–8 (1st Cir. 2011) (citing *Amico’s Inc. v. Mattos*, 789 A.2d 899, 907 (R.I. 2002); *Thornton Whitehouse*, 740 A.2d at 1261).

The first preemption avenue is conflict preemption, in which “[a]n ordinance is invalid when it is ‘in direct and material conflict with a State law.’” *State ex rel. City of Providence v. Auger*, 44 A.3d 1218, 1229 (R.I. 2012) (quoting *Town of Glocester v. R.I. Solid Waste Management Corp.*, 120 R.I. 606, 607, 390 A.2d 348, 349 (1978)). When such conflict occurs, a State statute will preempt the local regulation, rendering it ineffective. Terrence P. Haas, *Constitutional Home Rule in Rhode Island*, 11 *Roger Williams U. L. Rev.* 677, 708 (2006) (“Valid State legislation will always preempt a conflicting local ordinance.”). Moreover, our RI Supreme Court was clear when it held that “a State law of general character and statewide application is paramount to any local or municipal ordinance inconsistent therewith.” *Thornton-Whitehouse*, 740 A.2d at 1261; *Mongony v. Bevilacqua*, 432 A.2d 661, 664 (R.I. 1981).

The second preemption avenue asks whether “‘either the language in the statute or when the [General Assembly] has intended to thoroughly occupy the field.’” *Thornton-Whitehouse*, 740 A.2d at 1261 (quoting *Coastal Recycling, Inc. v. Connors*, 854 A.2d 711, 715 (R.I. 2004)) (further citations omitted).

In the instant matter, the PHB finds that both preemption principals apply. Section 14.B. of the JWSC’s rules and regulations directly conflicts with R.I.G.L. 46-15-2(b). Moreover, the clear and stated legislative intent as set forth in R.I.G.L. 46-15-1, along with various other provisions in R.I.G.L. 46-15, et. seq., clearly establish that the General Assembly has determined the State will occupy this field with the establishment of statewide standards for applications such as those filed by the Appellants in the instant Appeal now before the PHB and the WRB.

Further, as set forth above, the JWSC's rules and regulations do not carry the force and effect of State law. It is also important to again note, as it applies to the arbitrariness and capriciousness of the JWSC's legal reasoning in its initial decisions denying the Appellants' initial applications, it is apparent to the PHB that Section 14.B. creates a standard which is virtually impossible for applicants to successfully satisfy or meet.

In fact, in its initial decision denying the Appellant's initial applications, the JWSC, inadvertently, admits that its standard of review is impossible for any applicant to successfully meet. At page 4 of its initial decision denying the Appellants' initial applications, the JWSC states as follows:

"By their very nature, extensions, expansions, and new connections outside of the current water service area are injurious to and endangers the Commission's obligations to its present users." (Emphasis added).

Considering this declaration by the JWSC, there exists virtually no scenario in which an applicant for an extension from and connection to the Jamestown public water supply system can satisfy and/or meet the standard as set forth in Section 14.B. As noted again by the PHB said section requires a showing that the extension would "improve the quality or quantity of water furnished to existing water users". Therefore, if as stated by the JWSC in its' decision on the Appellants' initial applications, that by their very nature, extensions, expansions, and new connections outside of the current water service area are injurious to and endangers the Commission's obligations to its present users, no extension of service, which by definition increase the demand on Jamestown's public water supply system, would ever be approved by the JWSC to a new applicant.

The PHB finds that such a standard is the very definition of "arbitrary and capricious". Therefore, the PHB finds that there are no factual scenarios under the JWSC's local rules and

regulations in which an additional user or new applicant improves the “quantity” of water supplied to current users. Nor is there any scenario that an increase in water usage, i.e., supplying water to prospective new applicants or new users, would improve the “quality” of the water to current users.

The PHB notes this exact issue was raised at its March 12, 2025 hearing, at which time the attorney for the JWSC was asked by members of the PHB to describe a previous case wherein an extension outside the current or existing water supply system service area improved the quantity and/or quality of water to existing users. Counsel for the JWSC struggled to provide such an example and ultimately described one instance where a planned extension included a new fire hydrant and another where an expansion to a non-customer replaced a 2-inch diameter service line with a 4-inch diameter service line. Counsel for the JWSC did not explain how the existence of a fire hydrant improved the quantity or quality of the existing water supply to existing customers nor how doubling the water flow volume in an extension from and connection to non-customers outside existing public water supply system’s service area would improve the quantity or quality of water to existing customers.

The inability of Counsel for the JWSC to provide the PHB with a factual scenario that would satisfy Section 14.B. of the standard as set forth in its rules and regulations, coupled with her offer of two examples that failed abjectly to bolster the case, is further evidence of the arbitrary and capricious nature of the JWSC’s decision and the standard it applied to deny the Appellants’ initial applications for an extension from and connection to Jamestown’s public water supply system based solely upon the standard set forth in Section 14.B. of the JWSC’s rules the regulations.⁹

⁹ Again, it is duly noted by the PHB that R.I.G.L. 46-15-2 provides that public water supply systems governed under this section may specifically prohibit extensions in their respective WSSMP’s and may also provide for lower standards for approval for residential property if such standards meet the requirements of the agency’s state-approved

For the reasons set forth above, it is the finding, determination and recommendation of the PHB that the JWSC is subject to R.I.G.L. 46-15-2(b)(1-7) and same should have applied the standards as set forth therein to the Appellants' initial applications. Further, that the 1968 Special Act is not an exception and/or an exemption from the applicability of the statutory standards enacted by the RI legislature in R.I.G.L. 46-15, et. seq. Further, Section 2 of the 1968 Special Act does not vest the JWSC with the authority to promulgate the JWSC's local rules and regulations nor do same carry the force and effect of State law.

Lastly, pursuant to the legislative intent specifically declared in R.I.G.L. 46-15-1, the PHB finds that the RI General Assembly has occupied the space of water resources and water supply law within the State of RI, and that as such the JWSC's rules and regulations promulgated by local ordinance are preempted by R.I.G.L. 46-15, et. seq. Therefore, PHB finds that its determination on whether the Appellants' applications should be allowed or denied be determined solely by applying the standards as set forth in R.I.G.L. 46-15-2(b)(1-7) to each application.

APPLICATION OF R.I.G.L. 46-15-2(b)(1-7) STANDARDS TO APPELLANTS' APPLICATIONS

The PHB finds that each Appellant provided clear and convincing evidence sufficient to satisfy each of the statutory requirements as set forth in RIGL 46-15-2(b)(1-7). First, the PHB cites the evidence and exhibits each Appellant presented to the JWSC in each of the Appellants' initial hearing before same. The PHB is satisfied, after a thorough review of the record and

WSSMP, and such WSSMP is not expired. However, the standard set forth in the JWSC's rules and regulations, Section 14.B, as set forth herein, clearly establishes a much higher standard than that provided for in RIGL 46-15-2 and is, therefore, not lawful nor is it in compliance with the State statute.

transcript¹⁰ of each of the Appellants' initial hearings before the JWSC, that said evidence as presented by each of the Appellants is more than sufficient to satisfy the requirements of RIGL 46-15-2(b)(1-7). Further, the PHB also finds, after a thorough review of the evidence provided by each Appellant in their respective legal briefs and exhibits, response legal briefs and exhibits submitted directly to the PHB, and the transcript of the March 12, 2025 hearing¹¹ before the PHB, that each of the Appellants provided clear and convincing evidence sufficient to satisfy each of the statutory requirements as set forth in RIGL 46-15-2(b)(1-7). It is noted again for the record that the PHB has already concluded and found by clear and convincing evidence sufficient to satisfy statutory requirement number one (1) as set forth in RIGL 46-15-2(b)(1-7) that the each of the Appellants' consolidated applications are **NOT** specifically prohibited by the specific language of the JWSC's latest and WRB approved water supply system management plan or WSSMP. RIGL 46-15-2(b)(1-7) reads in pertinent part as follows:

- (1) Such application must not be prohibited by the specific language of the latest water supply system management plan ("WSSMP") of the public water supply system;
- (2) Such applications must comply with the design and construction standards and specifications established by the public water supply system for the sizing and location for the infrastructure;
- (3) Such extensions shall not reduce the necessary level of fire protection for the community;
- (4) All water main and service connection materials, construction and inspection required hereunder shall be at the sole cost and expense of the applicant;

¹⁰ See attached transcript(s) and exhibits provided by the Appellants at their respective initial hearings before the JWSC. It is evident to the PHB that although the JWSC never considered the evidence and exhibits presented by each of the Appellants and applied same to the statutory requirements of RIGL 46-15-2(b)(1-7) said evidence was more than sufficient to meet and satisfy the requirements of the applicable review statute.

¹¹ Please see attached transcript of the hearing before the PHB dated March 12, 2025.

(5) The public water supply system shall be granted an easement in a form acceptable to them which shall permit the maintenance, repair or replacement of water lines and all other related activities;

(6) For applications for single-family residential lots, the applicant must show that:

(i) The existing or proposed well for the property does not meet the well industry standard as described in the department of environmental management regulations for "yield per depth of well chart" which is required by the department of health for a dwelling unit; and

(ii) Due to the unique characteristics of the property that the drilling of a new well is not feasible;

(7) For applications located within a public water supply system with limited capacity, applicants for commercial uses/properties shall be governed by the rules established for such connections by the public water supply system, which shall be in accordance with the system's approved WSSMP.

A public water supply system governed under this section may provide for lower standards for approval for residential property if such standards meet the requirements of the agency's state-approved WSSMP, and such WSSMP is not expired.

As cited above, the PHB finds that the evidence on the record as provided by each of the Appellants, after a thorough and complete review of said record before the PHB, is such that each of the Appellants provided clear and convincing evidence sufficient to satisfy each of the statutory requirements as set forth in RIGL 46-15-2(b)(1-7).

The PHB finds that each Appellant respectively provided sufficient and clear and convincing evidence and exhibits to both the JWSC at its initial hearing and to the PHB on appeal and at hearing that conclusively established the following:

1. That each Appellant fully complied with the design and construction standards and specifications established by the JWSC for its public water supply system for the sizing and location of infrastructure.
2. That each Appellant respectively provided an affidavit or letter from an approved fire official that the requested extensions did not reduce the necessary level of fire protection for the community.

3. That each Appellant provided letters and/or affidavits attesting that all water main and service connection materials, construction and inspection required would be provided for at the sole cost and expense of each Appellant.
4. That each Appellant would grant the JWSC and the public water supply system an easement in a form acceptable to the JWSC which permitted the JWSC to maintain, repair or replace of water supply system lines and all other necessary and related activities.
5. That each Appellant, as an applicant for single-family residential lots, demonstrated: (i) The existing or proposed well for each of the Appellants' respective residential properties did meet the well industry standard as described in the department of environmental management regulations for "yield per depth of well chart" as is required by the department of health for a dwelling unit; and (ii) that due to the unique characteristics of each Appellants' respective residential properties the drilling of a new wells was not and is not feasible.
6. That each of the Appellants' respective applications to the JWSC are not prohibited by the specific language of the latest JWSC water supply system management plan ("WSSMP") of the public water supply system.
7. That requirement number seven (7) of RIGL 46-15-2(b)(1-7) is applicable solely to applicants for commercial uses/properties.

REMAND TO THE JWSC IS NOT AN ADEQUATE REMEDY

For the following reasons, the PHB declines to exercise its discretionary authority pursuant to 490-RICR-00-00-9.4 to remand this appeal to the JWSC for re-hearing.

First, a remand would cause an unjust delay in the Appellants receiving potable water from the Jamestown public water supply system. The hearing process commenced almost 18 months ago. The Appellants' filed applications to be heard before the JWSC in January of 2024. The JWSC scheduled and held hearings on the Appellants' request for expansion from and connection to the Jamestown public water supply system from February of 2024 through April of 2024. The JWSC did not issue an opinion denying the Appellants' request until late June of 2024. The Appellants were then required to initiate the instant appeal to the WRB. It is now late April of 2025. The Appellants have gone

without a consistent potable water source for their respective homes for approximately 18 months or longer rendering their homes essentially useless and not livable. A home without a consistent source of potable water is not a home. The PHB finds that a remand to the JWSC for a re-hearing of this matter is simply not reasonable, not justified, nor is same required given the clear and convincing evidence the Appellants placed on record and that the PHB finds more than meets the standards set forth by the Rhode Island legislature in RIGL 46-15-2(b)(1-7).

Second, a remand clearly will not provide the Appellants with a fair resolution of this matter. The PHB finds that a remand would simply delay justice, is clearly not an adequate remedy to the ongoing dispute and would be extremely prejudicial to the Appellants. As discussed at length in this recommendation to the full board of the WRB, the JWSC abjectly refused to apply the correct legal standards for review of the Appellants' applications. Instead of applying the standards set forth in RIGL 46-15-2(b)(1-7) the JWSC simply ignored the State statute and incorrectly applied its own local standard. The JWSC was adamant and unequivocal in its opposition to utilizing the legal standard as set forth in RIGL 46-15-2(b)(1-7) as same pertained to the Appellants' applications. Given the clear and convincing evidence put forth on the record by the Appellants both initially before the JWSC and in the instant appeal, the PHB finds there is no reason to further delay the Appellants' applications for expansion from and connection to the Jamestown public water supply system.

The Rhode Island Supreme Court has held on several occasions that "parties who are subject to administrative proceedings have the right to an expeditious agency decision and judicial decision." *Kyros v. Rhode Island Department of Health*, 253 A.3d 879, 887

(R.I. 2021) Our Supreme Court has also ruled that a remand to an administrative agency (here to the JWSC) is not the most appropriate remedy where a remand is not in the further interest of justice...or will not provide decisive new information.” Id. (citing *Champlin’s Realty Associates v. Tikoian*, 989 A.2d 427, 449 (R.I. 2010)(quoting *Easton’s Point Association, Inc. v. Coastal Resources Management Council*, 559 A.2d 633, 636 (R.I. 1989))). For the aforementioned reasons, the PHB concludes that a remand to the JWSC is not in the further interest of justice nor is a remand likely to yield any new decisive information regarding this matter.

CONCLUSION

Therefore, the PHB makes the following factual and legal findings:

1. That in both its initial hearing and initial decision(s) denying the Appellants’ applications the JWSC abjectly failed to adhere to and apply the applicable statute, RIGL 46-15-2(b)(1-7). Therefore, the JWSC’s denial of the Appellants’ applications for extensions from and connections to the Jamestown public water supply system is in clear violation of the applicable statutory provision.
2. That the JWSC, in both its initial hearing and initial decision(s) denying the Appellants’ applications, said decision(s) were and are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. The whole record clearly and plainly establishes that that each respective Appellant provided both the JWSC at its initial hearing and the PHB on appeal sufficient and clear and convincing evidence that the Appellants’ respective applications for relief should have been and must now be granted pursuant to the statutory provisions of RIGL 46-15-2(b)(1-7).
3. That in both its initial hearing and initial decision(s) denying the Appellants’ applications

the JWSC's decision to rely on its own local rule and regulation, Section 14.B, and the JWSC's further reliance on Section 2 of the 1968 Special Act as a legal basis for promulgating same as the correct standard to apply to the Appellants' applications for relief is both arbitrary and capricious and is in clear violation and contradiction to the applicable statutory provision on appeal, RIGL 46-15-2(b)(1-7).

4. That the PHB hereby grants each of the Appellants' respective appeals and hereby reverses the decision of the JWSC denying each of the Appellants' respective applications for an extension from and connection to the Town of Jamestown's public water supply and service. Therefore, the JWSC and the Town of Jamestown are hereby ordered to forthwith permit each Appellant respectively to be allowed an extension from and connection to the Town of Jamestown public water supply and service in accordance with the statutory provisions of RIGL 46-15-2(b)(1-7).

5. That the PHB finds that a remand is not in the further interest of justice, is prejudicial to the Appellants, and is not reasonable, not justified, nor is same required given the clear and convincing evidence the Appellants placed on record that the PHB finds more than meet and satisfy the standards set forth by the Rhode Island legislature in RIGL 46-15-2(b)(1-7).

6. That the full board of the WRB may adopt, in whole and/or in part or may reject in whole and/or in part or may modify in whole and/or in part the recommendation-decision of the PHB.

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SO ORDERED:

Meredith Brady

Meredith Brady, Chair of the Pre-Hearing Board

Zakary Kinzel

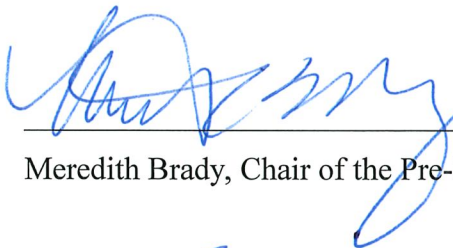
Zakary Kinzel, Board Member

Russell Houde

Russell Houde, Board Member

Dated: April 23, 2025

SO ORDERED:

A handwritten signature in blue ink, appearing to read 'M. Brady', written over a horizontal line.

Meredith Brady, Chair of the Pre-Hearing Board

A handwritten signature in blue ink, appearing to read 'Z. Kinzel', written over a horizontal line.

Zakary Kinzel, Board Member

A handwritten signature in blue ink, appearing to read 'R. Houde', written over a horizontal line.

Russell Houde, Board Member

Dated: 4/23/2025

The recommendation of the Prehearing Board dated April 23, 2025 is hereby accepted, approved, and adopted in its entirety by the Water Resources Board.

SO ORDERED:

Daniel O'Rourke




Daniel O'Rourke, Vice-Chair

George G. Palmisciano, P.E



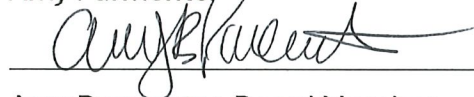
George G. Palmisciano, P.E, Board Member

Meredith Brady



Meredith Brady, Chair, Pre-Hearing Board

Amy Parmenter



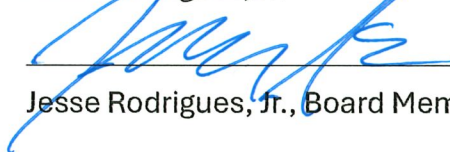
Amy Parmenter, Board Member

J. Christopher Champi



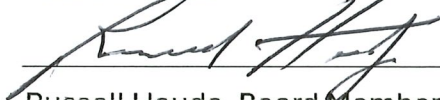
J. Christopher Champi, Board Member

Jesse Rodrigues, Jr.



Jesse Rodrigues, Jr., Board Member

Russell Houde



Russell Houde, Board Member

June Swallow



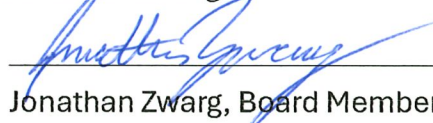
June Swallow, Board Member

Zakary Kinzel



Zakary Kinzel, Board Member

Jonathan Zwarg



Jonathan Zwarg, Board Member

Eugenia Marks



Eugenia Marks, Board Member

Dated: May 14, 2025