STATE OF RHODE ISLAND
WATER RESOURECES BOARD

IN RE: APPEAL OF PAUL AND GAIL FRECHETTE, 19 SEAVIEW DRIVE, JAMESTOWN, RI AS TO DECISION DATED JUNE 28, 2024 OF THE BOARD OF WATER AND SEWER COMMISSIONERS FOR TOWN OF JAMESTOWN	**:**

BOARD OF WATER AND SEWER COMMISSIONERS FOR THE TOWN OF JAMESTOWN'S MEMORANDUM IN SUPPORT OF RESPONSE TO APPELLANTS' MEMORANDUM ON APPEAL

I. INTRODUCTION

The issue in the instant case is whether the Special Act granting the Board of Sewer and Water Commissioners for the Town of Jamestown (hereinafter "Commissioners" or "Commission") the authority to purchase an existing water district, along with the authority to determine whether to extend the water works services, has been preempted by Rhode Island General Law § 46-15-2. *Compare P.L. 1968 Chap. 273 ("Special Act") with R.I. Gen. Laws § 46-15-2 ("General Act").* Appellants claim that the General Assembly, through the enactment of § 46-15-2, has "preempted" the Special Act's grant of authority to the Commission, including the determination of whether there is sufficient basis to extend water mains and thus expand the District's service area. However, the doctrine of preemption does not apply when there is a conflict between two (2) legislative enactments by the General Assembly. Rather, 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).*

In the instant case, the Commission first submits that the General Law and Special Act can be read in harmony with each other by recognizing the Special Act's grant of authority to the Commission to determine in the first instance whether to "extend and improve a water works systems" beyond the existing service area before applying the § 46-15-2(b) standards to the requests for such extensions. Nevertheless, if it were found that the provisions cannot be harmonized, as a matter of law, the Special Act granting the Commission the authority to determine whether to extend its water works system must prevail as an exception to the General Law. *Id.* In this case, there is no dispute that Appellants did not meet the requisite showing that the extension of the water main would amount to an improvement to the quality or quantity of water. As such, the Decision denying Appellants' application should be affirmed.

II. BACKGROUND

Appellants' arguments in support of their appeal center on an apparent misunderstanding of the source of the Commission's authority over the Jamestown Water District ("JWD"). Because, as noted, the issue in this case involves an apparent conflict between the Special Act and the General Law, two (2) legislative acts of the General Assembly, the history of the creation of the Commission and the JWD under that Special Act will assist this Board in addressing the instant appeal.

A. *The Creation of the Board of Water And Sewer Commissioners for Town of Jamestown*

The Rhode Island General Assembly passed a Special Act during their 1968 session to enable the establishment of the Board of Water Commissioners for the Town of Jamestown (the "Water Board"). *P.L. 1968, Ch. 273*. In pertinent part, the Special Act provided for the establishment of the Water Board, whose members were appointed by the Town Council, with the authority to acquire "the assets of the Jamestown Water Company, and thereafter **<u>may</u>** 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**." *Id*. (emphasis added). The Special Act also provided that "the approval of this act shall be submitted to the electors of the town of Jamestown…." *Id*. The Special Act was approved by the Town of Jamestown voters.

In 1973, the Rhode Island General Assembly passed another Special Act to amend the authority and jurisdiction of the Water Board to create a Board of Water and Sewer Commissioners. *See P.L. 1973, Ch. 233*. In addition to the water supply and distribution authority previously granted in 1968 by Chapter 273, the 1973 Special Act expanded the authority of the Commission to provide for a "sewage disposal system for the town or any part thereof." *Id.* (Emphasis added). Subsequently, in 1975, the General Assembly passed a third Special Act which *inter alia* ratified certain amendments to the Home Rule Charter adopted by the Town of Jamestown. *See P. L. 1975, Ch. 12.*

The service area of the Jamestown Water Company purchased by the Water Board in 1968 consisted of the center of Town, known as the village and some outlying areas in proximity to former U.S. Department of Defense installations on the island at locations known as Fort Wetherill, Fort Getty, and Beavertail. This original service area is now identified as the "Urban District" by the Commission in the JWD's Regulations, the JWD's state approved, Water Supply System Management Plan ("WSSMP") and the Town's Comprehensive Community Plan, while the remaining parts of the island are identified as the "Rural District." See *WSSMP*, at ES-1, § 2.6 & Figure 2.3; *Jamestown Comprehensive Plan*, at § B.2 & Map 22; *Regulations*, at Appendix B.

Since its establishment, the Water Board and its successor, the Commission, has had a water distribution service area generally limited to the urban district but has also had a limited water supply. With the assistance of improvements by the military to the southern portion of the island,

as well as expansion of the main source of the water supply, the North Pond, and improvement to the water treatment plant, the District was able to incrementally expand its service area outside the village to parts of the rural district. *WSSMP*, at ES-1. The water supply for this area originally consisted of two surface water reservoirs and was later supplemented with ground water wells. At present, all water supply sources provide a total safe daily yield of 233,000 gallons per day. *WSSMP (Apr. 2024), at §* 5.5. The Commission uses two 1.0-million-gallon water storage tanks with each having a useable capacity of 700,000 gallons.[1] This potable water is distributed to a limited-service area. The system-wide average daily demand is presently 0.168 million gallons per day and a per capita average daily demand of 50.4 gallons per day.[2] Because the island experiences seasonal occupancy increases, water demand increases in the summer to an average daily demand of 0.245 million gallons per day and a peak daily demand estimated to be 0.336 million gallons per day.[3]

In his Memorandum to the Board on the instant application, Michael Gray, the Director of Public Works reported that the recent update to the Water System Supply Management Plan included a Build-Out analysis, along with an analysis of current and projected water demands within the water district service area and a review of available water supply in the system. According to Mr. Gray, the "current supply does not produce enough water to meet maximum day demands." *Memorandum, M.Gray to Board of Water and Sewer Commissioners (Feb. 13, 2024; April 11, 2024 (rev.), at 4 (hereinafter "Gray Memorandum").* In addition, the forecasted data, which is limited to an analysis of the current water district, indicates that average day demand at build-out within the existing district will exceed the available capacity of the District's reservoir

[1] Jamestown Water and Sewer Commission, *WSSMP* (Apr. 2024) at § 2.4.2.
[2] *Id.* at § 2.9.1.
[3] *Id.*

and well. *Id.* Mr. Gray concluded that "the extensions of watermains outside of the current district boundaries will place additional demand stress on the limited simply not factored into the build-out analysis." *Id.*

Mr. Gray also testified at the hearing before the Commission and provided further elucidation of the District. In addition to outlining the history of the Commission's purchase of the prior private water company, Mr. Gray also advised that the District's main source of water emanates from the North Pond. *Transcript (5/6/24) at 67; See also WSSMP, at ES-1.* Throughout its fifty (50) year existence, while serving the original service area of the purchased private water company, the JWD has operated, maintained and improved its water supply system in accordance with its Regulations as well as the WSSMP, as approved by the Rhode Island Water Resource Board, and the Comprehensive Plan. In accordance with a Study conducted in 2000, several improvements were made to the system including an upgrade of its water treatment plant in and around 2009-2010, drilling of bedrock wells, and the upgrade of a permanent transfer pipe between the reservoirs in order to enable the otherwise unusable water from South Pond to be combined with North Pond. *Water Study Committee*, at 11. Although the North Pond can be supplemented occasionally with water from the South Pond, the South Pond has its own limitations. In the first instance, the South Pond has poor water quality and therefore it cannot be used as a direct source of water. *Transcript (5/6/24) at 68, 77*. Rather, as suggested by the 2000 Study, it can only be used if the water is first transferred to and mixed with the water in North Pond. However, transferring South Pond water to North Pond can only be achieved when South Pond is spilling over.[4] *Id. at*

[4] South Pond is a reservoir impounded by an earthen dam with a concrete spillway. It is "spilling over" when the water is overtopping the spillway to a stream that runs directly to Narragansett. During a typical summer season and during drought conditions there is no water flowing into the south reservoir from the watershed and therefore the level is below the spillway elevation at the dam preventing the transfer of water. *WSSMP* (Apr. 2024), at ES-6.

78. This only occurs during limited times of the year and does not occur during the drought conditions of the summer season when demand is at its highest. *Id.*

Mr. Gray also explained that there have been past attempts to access additional sources of potable water for the District. *Id. at 78-79.* Such efforts included drilling eight (8) potential well sites. However, as explained by Mr. Gray, only two (2) of the eight (8) well drills resulted in possible water sources – JR1 and JR3. *Id.* While JR1 has been able to provide an additional water source for the District, JR3 turned out to have poor water quality. *Id.* In addition, the approvals for these wells limited their operation such that they cannot be used simultaneously. Because of this, along with the poor water quality of JR3, JR1 is the only well that provides the JWD with potable water. However, even JR1 is limited during drought conditions. According to Mr. Gray, a number of times over the past ten (10) years they have had to shut the pump to JR1 down because the water elevation dropped too low. *Id at 80.*

Because of these restrictions on both the well and the use of the South Pond as an alternative source of water, during the peak summer season, the maximum day demand and average day demand "exceed the safe yield of North Pond and often exceeds the combined safe yield of North Pond and [the operating well] JR-1." *WSSMP*, at ES-5. The WSSMP further cautions that "[t]he public water system is also currently drawing a greater volume than the safe daily yield of North Pond, the primary supply source at certain times of year. This causes great fluctuations in the amount of usable stored water in the reservoir from year to year." *WSSMP* at § 9.2.2. See also *Transcript (5/6/24), at 88-89.* According to Mr. Gray the JWD has nevertheless been able to avoid running the North Pond dry, as happened in 1993 when the District needed the National Guard to truck water onto the island. *Transcript (5/6/24) at 99.* However, currently, on

average five months of the year the daily demand for water exceeds the safe yield for the North Pond. *Id. at 90.*[5]

Mr. Gray's opinion is consistent with the updated WSSMP's conclusion that because of the water supply limitations, "there is no ability to service the entire Town with water. The existing water system is limited in scope geographically to the village area within Jamestown and is not capable of extending beyond the water service area." *WSSMP* (2024), at § 2.10. Moreover, as the State approved WSSMP specifically recognizes, the District is only legally obligated to supply drinking water to the Urban District. *WSSMP*, at § 2.9.3 ("The Town of Jamestown is obligated to supply drinking water to properties located within the Urban Water District"). See also *P.L. 1968, ch. 273*, §4. This obligation emanates from the JWD's original purchase of the assets of the private company under the authority of P.L. 1968, ch. 273.

The 1968 Special Act also authorized the Board to enact rules and regulations. *P.L. 1968, ch. 273,* §§ 2 & 4. In accordance with this authority, the Rules and Regulations of the Commission distinguish between water service connections within the urban area, that is the existing service area, and water service extensions both inside and outside the existing service area.[6] Both water service connections and water service extensions within the current service area are subject to design standards and eligible for administrative review and approval.[7] Alternatively, water service extensions outside the water service area, that is the Rural District, are subject to review and approval by the Commissioners.[8] Notably, a proposed service connection in the rural district to an existing water main must demonstrate that it is consistent with the Jamestown Comprehensive

[5] The JWD also has a non-permanent emergency interconnection with the Town of North Kingstown but is waiting for approval from the RIDOH. *WSSMP* (Apr. 2024), at § 2.5.
[6] Rules and Regulations of the Board of Water and Sewer Commissioners, Definitions (May 2009).
[7] *Id.* at § 14A.
[8] *Id.* at § 14.B.

Community Plan, will not impair the available resources of the water service area, and will not reduce the level of fire protection of the community.[9]

Because a water line extension outside the existing service area into the rural district effectively amounts to an expansion of the District, water service extensions in the rural district are not contemplated in the current Water Supply Management Plan. *WWSMP* (Apr. 2024), at § 4.1.[10] This is due to the limited water supply resources available on the island and the mandate that the District provide services within the Urban District. Nevertheless, as noted, under the Special Act, the Commission has the discretion whether to extend its services beyond the urban district as conditions allow. *Id*. See also *P.L. 1968, ch. 273, § 4* ("may . . . extend" services). Accordingly, in accordance with the Special Act's discretionary authority, the Commission has recognized a minimal exception to allow the Commission to make such improvements, including extensions of water mains, which improve the quality or quantity of water furnished to existing water users.[11]

Importantly, in accordance with its enabling act, the JWD is fully funded by the water service fees paid by its existing customers. *P.L. 1968, ch. 273, § 4. Transcript* (5/6/24) at 73-74. Currently, the JWD is operated as an "Enterprise Fund Agency," that is, self-supporting through user charges, with the services and infrastructure being fully financed by user rate charges. *WSSMP*, at ES-2. As a result of this financial organization, the current rate users have born the cost of the infrastructure of the JWD. That is, improvements such as the treatment plant, water mains, hydrants and wells have been paid for and maintained by the users through the rates assessed by the JWD.

[9] *Id*. at § 14.B.b., 1-3.
[10] See also, *WSSMP* (2018), at 2.9.
[11] Rules and Regulations of the Board of Water and Sewer Commissioners, at § 14B.

B. *Current Application*

The current appeal involves a request to effectively change the service area of the JWD by allowing for a water service extension in the Rural District, outside of the existing water service area. Along with the instant appeal, there are three (3) other applicants who also seek to expand the service area by and through their own applications for a water main extension.[12] Although the instant appeal only seeks the addition of one house, as Mr. Gray advised the Commission in his Memorandum, because of these three additional applications from neighboring properties as well as due to the limited resources, Mr. Gray recommended that the Commission should not make its decision in a vacuum for one property owner. *Gray Memorandum, at 4.* "Watermain extensions must not be completed incrementally on the same street in the same neighborhood. Extensions if proved must be planned and limits must be set." *Id.*

Appellants' property is located at 19 Seaview Avenue in Jamestown, R.I. There is no dispute that this property is in the Rural District and that there are no current water mains servicing Appellants' property. Before the Commission, Appellants relied entirely and exclusively upon the amendment to § 46-15-2(b) of the General Laws, as enacted by P.L 2022, Chapter 065. Section 46-15-2 provides for exemptions of certain water service and distribution extensions outside the respective districts from approval by the Water Resources Board. While § 46-15-2 notably does not mandate the extensions of water mains, according to Appellants, § 46-15-2(b) preempts the Commission's right to make its own determination of whether it should extend its water mains

[12] See *In Re: Appeal of Stephen Zimniski and Suzanne Gagnon from Decision Dated June 28,2024 of the Board of Water and Sewer Commissioners for Town of Jamestown; In Re: Appeal of Glenn and Marjorie Andreoni from a Decision Dated June 28, 2024 of the Board of Water and Sewer Commissioners for Town of Jamestown; In Re: Appeal of Jeffrey Saletin, Trustee of the Jeffrey Saletin Living Trust Dated September 29, 2016, and Deborah L. Furness Saletin, Trustee of the Deborah L. Furness Trust N/K/A the Deborah L. Furness Saletin Trust Dated April 2, 1998 from Decision Dated June 28, 2024 of the Board of Water and Sewer Commissioners for Town of Jamestown.*

under P.L. 1968, Chapt. 273 and thus, they are not bound by the Commission's own restrictions limiting the expansion of its service area as codified in its Regulations, through its authority under the Special Act.

In rendering its Decision on the Appellants' application, the Commission first recognized that the District had been created and was governed by the mandates of the 1968 Special Act. *Decision, at 3.* The Commission further concluded that in accordance with its underlying legal obligation to preserve and protect the water supply and ensure its wise and responsible use for the existing water district, the Special Act had granted the Commission the authority to determine what parts of the Town to extend the water services. As explained by Mr. Gray in his Memorandum to Board, the "current supply does not produce enough water to meet maximum day demands." *Gray Memorandum*, at 4. See also *Transcript* (5/6/24), at 88- 90.[13] Pursuant to its authority under the Special Act as well as recognizing the limitations of current water supply, the Commission enacted Rules and Regulations that limited extensions of the water services into the rural district unless it could be shown that the extension would be to the benefit of the existing system. *Decision, at 3.* The Commission further noted that these restrictions were enumerated in the State approved WSSMP wherein it was recognized that no further extensions of the water mains into the Rural District were contemplated at that time. *Id.* The Commission further explained in rendering its Decision on the instant application that permitting extensions would put a further strain on the already limited water resources available in the District and thus additional extensions would be

[13] In addition, the forecasted data of the District, which is limited to an analysis of the current service area, demonstrates that the average day demand at build-out (within the existing district) will exceed the available capacity of the District's reservoir and well. *Id*. This is due on part to the change in law allowing Accessory Dwelling Units to be added to existing properties currently being serviced by the JWD. *Transcript (5/6/24) at 91.*

injurious to and endanger the Commission's legal obligations to the present service area. *Id. at 3-4.*

The Commission explained that all these factors were taken into consideration in the adoption of § 14B of the Regulations as authorized by the Special Act and the requirement that extensions outside the Urban Water District may only be granted when the extension or other improvement will constitute an improvement to the quality or quantity of the water to the existing users. *Id.* There is no dispute that the Appellants did not demonstrate, nor did they make any attempt to demonstrate, that the extension of the water main to their property would result in such an improvement. Therefore, Appellants application was denied. This appeal followed.

III. ARGUMENT

A. Standard of Review and Summary

Pursuant to the recently enacted § 46-15-2.1, a party aggrieved by a denial of an application brought under § 45-15-2(b) may appeal to this Board and thereafter the Superior Court. Pursuant to § 46-15-2.1 such appeals are heard "pursuant to the standards and timeframes set forth in § 42-35-15 ("administrative procedures"). This Board has enacted regulations that mimic the standard R.I. Gen. Laws § 42-35-15(g). See *WRB Regulations,* at 490 RICR 00-00-9.7(E). The standard on appeal thus, is as follows:

> The Board shall not substitute its judgment for that of the Supplier as to the weight of the evidence on questions of fact. The Board may affirm the decision of the Supplier or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions of the Supplier are:
>
> 1. In violation of constitutional or statutory provisions;
> 2. In excess of the statutory authority of the Supplier;
> 3. Made upon unlawful procedure;
> 4. Affected by other error of law;
> 5. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

6. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Pursuant to these same Regulations, as well as § 42-35-15(g), review is limited to the certified record produced before the Commission. *WRB Regulations*, at 490 RICR 00-00-9.7(D).

As noted, in the instant case, Appellants' application was denied because Appellants' property is in the Rural District and, as the Commission has determined under the discretionary authority vested in it through the Special Act, expansion of the water services to parts of the Town in the Rural District are prohibited unless it can be shown that the extension or improvement would improve the water quality or quantity of the current system. Appellants, however, nevertheless maintain that they are entitled to reversal of the Commission's Decision primarily because the Special Act has been preempted by the recent amendment to § 46-15-2(b).

However, as described herein, the law of preemption does not apply when addressing an apparent conflict between a general law and a special act. Therefore, as described below, properly applying settled rules of statutory construction and the General Assembly's own mandated rules of interpretation under § 43-3-26, the Commission did not commit an error in denying Appellants' application and the instant appeal should be denied.

B. The Difference Between a General Law and a Special Act

Part of the General Assembly's many grants of authority to govern the state's citizenry include the authority to pass "general laws". In its most basic definition, a general law in this context is one which applies to all municipalities within the State. In comparison to its general laws' authority, the General Assembly also has the authority to pass "special acts". This function is properly defined as particular and specific to a municipality as compared to all municipalities. *See, e.g., Landry v. Reynolds*, 169 A.2d 367, 368, 92 R.I. 403 (R.I. 1961). A special act that is specific to a municipality requires approval by local electors prior to enactment.

The several special legislations passed by the General Assembly concerning the establishment, formation, organization, operation and authority of the Commission constitute "Special Acts". These Special Acts refer only to the Jamestown Water and Sewer Commission and not to any other municipality. Conversely, the amendment to § 46-15-2(b), as passed pursuant to Public Law 2022, Chapter 065, constitutes a general law since it applied to all municipalities in the state.

C. Statutory Interpretation Rules of Construction demonstrate that the Special Act takes precedence over the General Law

This distinction between a general law and special act is important to this appeal because, as noted, Appellants are claiming that the General Law dictates review of their application. "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-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 "construe[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)).

Of course, with all statutory provisions, when confronted with competing statutory provisions that cannot be harmonized, the principle that "the specific governs the general" controls the application of the respective legislative provisions. *Felkner v. Chariho Reg'l Sch. Comm.*, 968 A.2d 865, 870 (R.I. 2009) (quoting *Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 384 (1992) (other citations omitted). See also *R.I. General Laws § 43-3-26*.

As noted, the General Assembly itself has specifically mandated the preeminence of a Special Act over a general law by stating that:

> Wherever a general provision shall be in conflict with a special provision relating to the same or to a similar subject, the two (2) provisions shall be construed, if possible, so that effect may be given to both; and in those cases, **if effect cannot be given to both, the special provision shall prevail and shall be construed as an exception to the general provision**."

R.I. Gen. Laws § 43-2-26 (emphasis added). Quite simply a general law does not and cannot supplant or make superfluous a special act of the General Assembly. *Cf. Town of Cumberland v. Susa*, No. : PC 01-3726, 2007 R.I. Super. LEXIS 161, at *27 (Super. Ct. Nov. 2, 2007) citing *Rossi v. Employees' Retirement Sys. of the State of R.I.*, 895 A.2d 106, at 112-13 (R.I. 2006) (requiring interpretation of statute so as not to render particular clause superfluous); *Retirement Bd. of the Employees Retirement Sys. of R.I. v. DiPrete*, 845 A.2d 270, 279 (R.I. 2004) (presum[ing] that the General Assembly intended to attach significance to every word, sentence and provision of a statute") (citing *Champlin's Realty Assocs., L.P. v. Tillson*, 823 A.2d 1162, 1165 (R.I. 2003)); see *Stackhouse v. De Sitter*, 620 F. Supp. 2d 208, 210 (N.D. Ill. 1985) (stressing "[w]henever possible,

each provision of a legislative enactment is to be interpreted as meaningful and not surplusage") (citing *Laufman v. Oakley Bldg. & Loan Co*., 408 F. Supp. 489, 498 (S.D. Ohio 1976).

In this case, not only is there a basis to read § 46-15-2 such that it does not conflict with the Commission's authority under the Special Act, but even if it did, then the special provision prevails and "shall" be construed as an exception to the general provision. R.*I. Gen. Laws § 43-2-26.*

i. The Special Act and Section 46-15-2 can be harmonized

As noted, the first step when confronted with allegedly conflicting provisions is to consider whether the § 46-15-2(b) conflicts with the Special Act's grant of authority to the Commission, and if so, whether they can be harmonized with each other. As previously stated herein, from its inception the water service area purchased by the Commission is limited to the Town's village area otherwise known as the Urban District. This area is identified in the Special Act, P.L 1968, Chapt. 273, as the assets of the Jamestown Water Company, and defined in the Jamestown WSSMP and the Rules and Regulations of the Board of Water and Sewer Commissioners, as follows:

> "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.[14]

[14] See, *WSSMP*, at ES-1, § 2.6 & Figure 2.3 and Rules and Regulations of the Board of Water and Sewer Commissioners, Definitions (May 2009).

It is undisputed that appellants' property which is the subject of this appeal is not within the Urban Water District. Appellants are thus requesting an extension of the water service distribution system outside of the existing and established water service area. By virtue of the grant of authority under the Special Act, the decision whether to permit such extensions lies within the sole and exclusive jurisdiction of the Commission. *P.L 1968, Chapt. 273*, § 4 (Commission "shall be vested with power and authority to acquire by purchase . . . the assets of the Jamestown Water Company, and thereafter ***may*** . . . ***extend*** and improve a water works system for the town ***or any part thereof***") (emphasis added).

Section 46-15-2(b) meanwhile by its very terms recognizes that while approval from the Water Resource Board is needed for an extension outside the geographic boundaries of a district, it is not necessary for water service extension applications within the District's geographic area.[15] Importantly, there is nothing within P.L. 2022, Ch. 065 that expressly divests the Commission of the authority to approve the water service extension and make the decision whether to "extend . . . the water works system" to other parts of the Town. Specifically, under both P.L. 1968, Chapt. 273 and Chapter 15 of Title 46, the authority to grant extensions within the District's geographic area remains the sole and exclusive authority of the local authority, in this case, the Commission. *R.I. Gen. Laws § 46-15-2(b)* ("Approval shall not be necessary of any plan or work for the extension of supply or distributing mains or pipes of municipal water supply plant . . .in any territory within the limits of the municipality…"). This is entirely consistent with the authority granted the Commission under the Special Act, P. L. 1968, Chapt. 273, §4 (Commission "***may*** . . . extend . . . a water works systems for the town ***or any part thereof***")(emphasis added). Appellants' arguments that somehow § 46-15-2(b) mandates the approval of an extension request under

[15] *P.L. 2022, Ch. 065* (R.I. Gen. Laws § 46-15-2 (b)).

particular circumstances is without merit. No such language or directive prescriptions exist in this amendment. Thus, all § 46-15-2 provided to these appellants was an exemption from Water Resources Board approval for any water service extension outside of the existing water service area which the Commission may have approved.

Further evidence of this is revealed by the fact that noticeably absent from the standard outlined in § 46-15-2(b) is any consideration of the availability of sufficient water resources or infrastructure to accommodate the requested extension. More specifically, the new standards espoused by § 46-15-2(b) focus exclusively on the needs of an applicant and do not take into consideration the capabilities of the supplier itself to meet the resulting impact an expansion of the service area would have on the system overall. In light of this, if Appellants' interpretation were to be applied making § 46-15-2(b)'s standards the sole determinative factor of whether to extend a water main, the result could be that a supplier is placed in a position of being required to expand its services beyond its own capabilities, putting at risk not only the availability but the quality of water. This creates a clear absurd result that, under settled precedent, must be avoided in the interpretation of statutes. *Grasso v. Raimondo*, 177 A.3d 482, 490 (R.I. 2018) citing *Harvard Pilgrim Health Care of New England, Inc. v. Gelati,* 865 A.2d 1028, 1038 (R.I. 2004) ("We are mindful that our interpretation should not construe [the] statute to reach an absurd or unintended result"). Quite simply, the more reasonable interpretation is to abide by the mandates of the Special Act and leave it to the Commission to first make the determination, based on the existing resources, systems, capabilities and projected uses within the legally mandated area of service, whether there are adequate resources and/or a basis to "extend … water works system" beyond the designated area. Once the Commission has made the discretionary determination to "extend . .. the water

works system", then the standards espoused by § 46-15-2(b) could be applied to determine whether the extension is warranted.

Harmonizing the Special Act and the General Law by recognizing in the first instance the Commission's authority to determine whether to expand its service area and "extend . . [its] water works system" by requiring applicants to first comply with all other relevant local provisions applicable to their requests for water service extensions outside of the existing water service area is consistent with the intents of both legislative acts. This is further supported by the approved WSSMP itself which specifically recognizes "[n]o future extension of water service are planned at this time." *WSSMP*, at 2-8. It is only if the determination is made that extension of the system is warranted that the standard for granting such extension as contained in § 46-15-2(b) applies. Reading these provisions as such works to harmonize the legislative provisions in accordance with the General Assembly's mandate of *§ 43-3-26* and settled rules of statutory construction. As such, the Appellants were not relieved of nor entitled to ignore the relevant JWD Regulations and the denial of their application should accordingly be affirmed.

ii. If the amended general law is in conflict with the Special Act and cannot be harmonized, the Special Act prevails

As noted, the General Assembly has specifically mandated that if the general law and special act cannot be harmonized then the Special Act shall be deemed an exception to the general law. *R.I. Gen. Laws § 43-3-26.* Although Appellants claim that the conflict is between the JWD's Regulations and the General Law, thus giving precedence to the General Law, Appellants' position is that the elements identified in § 46-15-2(b) dictate whether the District should "extend and improve its water works system" to other parts of the Town. It is the Special Act, not the Regulations, that vests the Commission with the authority and discretion to determine whether the District is in a position to expand its service area. By its very terms the Special Act "vest[s the

Commission] with the power and authority . . . [to] **extend** and improve a water works system for the town . . . **or any part thereof**" and to adopt "by-laws or rules for the transaction of its affairs." P.L. 1968, Chapt. 273, § 2 and 4 (emphasis added). Thus, although the Regulations are the embodiment of the Commission's exercise of its discretion and authority, it is the enabling act, P.L. 1968, Chapt. 23, that provide such authority and therefore, the perceived conflict is between the Special Act and the General Law, § 46-15-2(b).

As a matter of both statutory law and Supreme Court precedent, the Special Act "**shall** prevail and shall be construed as an exception to the general provision." *R.I. Gen. Laws § 43-3-26*. See also *City of Woonsocket v. RISE Prep Mayoral Acad.,* 251 A.3d 495, 501 (R.I. 2021) ("when a statute of general application conflicts with a statute that specifically deals with a special subject matter, and when the two statutes cannot be construed harmoniously together, the special statute prevails over the statute of general application"). As such, to the extent the statutory provisions conflict and cannot be harmonized, the discretionary authority vested in the Commission by the Special Act "*shall* prevail and *shall* be construed as an exception to the general provision." *R.I. Gen.Laws § 43-3-26* (emphasis added). The Commission therefore properly denied the Appellants' application and the underlying Decision should be affirmed.

D. Special Act is not Preempted by the General Law

In the face of the General Assembly's clear statutory mandate declaring that the Special Act prevails and is deemed an exception to the general statute if the perceived conflict between two cannot be harmonized, Appellants first attempt to avoid § 43-3-26's statutory mandate and Supreme Court case law by claiming that the law of preemption demands that effect be given the amended statute. See *Memorandum, at 8-10.* However, Appellants' reliance on the doctrine of preemption is misplaced.

i. General Assembly's mandate that special provision prevail over general provisions negates application of the preemption doctrine

Quite simply, the doctrine of preemption cannot nullify § 43-3-26's statutory mandate specifically controlling the interaction of the General Assembly's legislative enactments of special and general provisions. That is, to apply the doctrine of preemption to alleged conflicting general and special provisions would amount to ignoring the General Assembly's specific statutory direction that when there is a conflict between the General Assembly's own statutory provisions that can't be harmonized, the special provision "shall prevail." *R.I. Gen. Laws § 43-3-26.*

Apparently recognizing that the General Assembly has specifically mandated that when two statutory provisions of the General Assembly cannot be harmonized, the special act "shall prevail", Appellants attempt to recast the issue as being a conflict between the Commission's "Regulations" and the General Law. However, as noted, Appellants' position is that § 46-15-2(b) supplants the Special Act's grant of discretionary authority to the Commission to "*extend* and to improve a water works system for the town . . . *or any part thereof*" and to adopt "by-laws or rules for the transaction of its affairs." *P.L. 1968, Chapt. 273, § 2 and 4 (emphasis added).* Although the Regulations identify the standard to be applied in determining whether to extend water mains, the authority to make that determination emanates from the Special Act itself not the Regulations. Thus, the alleged conflict lies between the authority granted under the Special Act and the amended § 46-15-2(b) which Appellants claim dictates when the Commission should extend its water mains. Any such perceived conflict, as a matter of law, is controlled by the statutory mandate contained in § 43-2-26 requiring the special act to prevail and be read as an exception to the general law.

It should also be noted that none of the cases Appellants cite in support of their preemption claim address conflicts between a Special Act and a General Law. Rather, in each of the cases cited, the conflict is between a local ordinance and the general laws. See ie *Town of E. Greenwich*

v. O'Neil, 617 A.2d 104, 109 (R.I. 1992) (ordinance governing electric transmission lines preempted by statute granting PUC authority); *State ex rel. City of Providence v. Auger*, 44 A.3d 1218 (R.I. 2012) (ordinance controlling use of certain electronic devices that disturb the peace, not preempted by statute); *Town of Warren v. Thornton-Whitehouse*, 740 A.2d 1255, 1260 (R.I. 1999) (General Assembly had not explicitly granted to municipalities the authority to regulate tidal lands and thus CRMC has exclusive jurisdiction over wharves in tidal waters); *Glocester v. R. I. Solid Waste Mgmt. Corp.*, 120 R.I. 606, 608, 390 A.2d 348, 349 (1978) (Waste Management Act preempted local ordinances banning the dumping of waste materials in that town not gathered from local sources); *Wood v. Peckham*, 80 R.I. 479, 482, 98 A.2d 669, 670 (1953) (ordinance preempted by state statute). The simple reason is that when there is conflict between two statutory enactments of the General Assembly, the General Assembly has mandated, pursuant to R.I. General Laws § 43-3-26, that the special "shall prevails."

ii. Even if preemption applied to conflicts between General Assembly's legislative acts, there is no basis to find preemption in the instant case

That being said, even if the preemption doctrine could be applied, there is nevertheless no basis to conclude that § 46-15-2 preempts the Commission's authority. The preemption doctrine applies "when . . . the language in the ordinance contradicts the language in the statute [direct] or when the [General Assembly] has intended to thoroughly occupy the field [implied]." *Auger*, 44 A.3d at 1229 (emphasis added) (quotation omitted); see also *URI Student Senate v. Town of Narragansett*, 631 F.3d 1, 7 (1st Cir. 2011) (applying principles of Rhode Island law regarding preemption). The presence or absence of a direct conflict "depends on what the Legislature intended when it enacted the statute." *Town of Glocester v. R.I. Solid Waste Management Corp.*, 120 R.I. 606, 607, 390 A.2d 348, 349 (1978). Similarly, to determine whether the General Assembly intended to completely occupy the field of regulation on a particular subject giving rise

to an implied preemption also requires consideration of the General Assembly's underlying intent behind the statutory scheme. *Grasso Service Center, Inc. v. Sepe*, 962 A.2d 1283, 1289 (R.I. 2009) (internal quotation marks omitted). In determining if either a direct or implied preemption has occurred, the provisions are interpreted under the settled rules of statutory construction.

In the first instance, as described *infra*, reading § 46-15-2(b) in harmony with the authority granted the Commission under the Special Act demonstrates no direct conflict between the legislation. In fact, the noticeable absence in § 46-15-2(b) of any consideration of whether the supplier has adequate water and infrastructure to accommodate a proposed extension demonstrates that the standard identified in § 46-15-2(b) was only intended to apply *after* the supplier has made the decision to expand its service area. To find otherwise, could result in the absurd result of requiring extensions of water mains and thus expansion of a water system without the capability to provide adequate water.

Appellants' claim that by and through § 46-15-2(b) the State has intended to entirely occupy the field and thus preempt the Special Act also lacks support. Section 46-15-2 actually regulates the extension of water mains beyond the geographical area of the district and into *other* water districts. *R.I. Gen. Laws § 46-15-2(a).* That is, 46-15-2 does not allow a municipality to extend its main into another water supply area or municipality without approval from the state agencies including WRB. Section (b) meanwhile first states that State approval (agencies or WRB) is *not* necessary for the water district to extend its main within any limits of the district or municipality. *R.I. Gen. Laws § 46-15-2(b).* That is, the Board has the authority to make decisions for extending water mains without seeking state approval as long as the water mains do not extend into another jurisdiction. While Appellant would point to the amendment adding the new standards as demonstrating that the state has occupied the field, it is telling that in enacting this section, the

General Assembly did not repeal the Special Act. "It is presumed that the General Assembly knows the 'state of existing relevant law when it enacts or amends a statute.'" *Retirement Board of Employees' Retirement System of Rhode Island v. DiPrete*, 845 A.2d 270, 287 (R.I. 2004) (quotation omitted). Despite the General Assembly presumptively knowing that the Special Act had specifically granted the Commission the discretionary authority to determine if it can and should "extend . . . a water works system", the General Assembly did not repeal the Special Act. Had the General Assembly intended to "entirely occupy the field", then it clearly would have taken the necessary steps to repeal the prior grant of authority to the Commission pursuant to the Special Act.

As such, not only does the doctrine of preemption not apply when the apparent conflict is between two of the General Assembly's own enactments, but even if it did, there is no basis to find that there is either direct or indirect preemption of the General Law over the Special Act.[16] Accordingly, the Decision of the Commission denying Appellants' application should be affirmed.

E. No basis not to remand the matter for further proceedings consistent with the Board's decision

Appellants finally ask this Board to exercise its discretion and simply grant their application for a water main extension, without remanding the matter to the Commission for

[16] Without further elucidation, Appellants reference the fact that a proposed amendment to § 46-15-2 excluding the JWD from the scope of § 46-15-2 failed to pass before the General Assembly. To the extent Appellants attempt to rely upon the same, it is a red herring primarily because they fail to provide any legislative history demonstrating a basis for the failure of this provision to be enacted. There are many possible reasons for why a Bill is not enacted, including the fact that the Legislature recognized that there was no need for the amendment in light of the General Assembly's mandate that the special provision prevails over the General Law. See *R.I. Gen. Laws § 43-2-26.* In fact, in light of the legal maxim that "[t]he Legislature is presumed to know the state of existing relevant law when it enacts . . . a statute," it is more reasonable to conclude that the amendment was not needed because of the already stated dominance of the Special Law over any conflicting provisions of § 46-15-2. *Narragansett Food Services, Inc. v. Rhode Island Department of Labor*, 420 A.2d 805, 808 (R.I.1980). As such, the fact that the proposed amendment was not enacted has no legal significance to the proper interpretation of the statute.

consideration of what Appellants claim are the relevant standards enunciated under § 45-15-2(b). Not only is there no support for Appellants' arguments in support of this position, but they nevertheless ignore the Supreme Court precedent favoring remand of agency decisions. According to the Supreme Court, "[r]emand to the agency generally is the proper remedy "under a variety of circumstances" and **the more favored approach** because of "the unique expertise possessed by administrative agencies.'" *Champlin's Realty Assocs.*, 989 A.2d 448 (quotations omitted) (emphasis added).

Turning to Appellants' arguments, they claim that the matter should not be remanded because the Commission has allegedly shown a clear intent that the Commission will not apply the state standards. However, simply because the Commission found that it had the authority to determine in the first instance whether to extend its water services beyond its current service area, does not mean that the Commission would ignore a properly issued decision. In fact, rather than demonstrate a clear intent not to follow the state statute, the Commission has merely found, based on clear legal support, that the Special Act prevails over the General Law. The fact that the Commission applied the standard they found as a matter of law controlled does not prove that the Commission, upon a lawfully issued decision, would fail to comply with the same nor does it defeat the "presumption of honesty and integrity" afforded the Commission. *Larue v. Registrar of Motor Vehicles, Dep't of Transp.,* 568 A.2d 755, 759 (R.I. 1990).

Appellants alternatively claim that remand is unwarranted because the underlying hearing was tainted by violation of due process rights. Appellants specifically challenge the Commission's chairman, Randall White, asking the Director of Public works, Michael Gray to testify at hearing and asking Mr. Gray questions during the hearing. Classifying the testimony as the Board "calling its own witness" and "building one party's adversarial case", Appellant claims that having the

Director testify and answer questions that were raised in the process of the appellants' presentation violates appellant's due process rights. *Memorandum*, 14-15. There is absolutely no basis for this assertion. In fact, at the administrative level, agency personnel and staff are frequently called on to assist Boards and Commissions in making decisions by providing information not obtained or obtainable from the applicant themselves. Appellants do not claim that they did not have an opportunity to question Mr. Gray themselves or even that they lacked an opportunity to prepare for the same. Notably, there was no objection raised as to the admissibility of Mr. Gray's memorandum to the Commission summarizing the respective applications and relevant law, Regulations, Comprehensive Plan and WSSMP. By like token, having Mr. Gray testify to provide additional information, explain his written presentation and/or respond to Appellants' presentation is entirely proper.

Moreover, unlike *Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427 (R.I. 2010),* the case cited and relied upon by Appellants, the Commission did not have two adversarial parties before it. Taking Appellant's position to its logical conclusion, Appellants appear to claim that when presented with an application, the Commission is limited to information provided by the applicant alone, without an opportunity to obtain additional information from staff or personnel either to obtain additional information relevant to the application or further explain a previously submitted memorandum. There is no legal basis for the same.

That being said, it is settled that administrative officers enjoy a presumption of honesty and integrity. *Larue*, 568 A.2d at 759. To overcome the presumption in favor of an adjudicator's honesty and integrity, a party claiming bias or some other disqualifying factor must adduce evidence that: (1) the same person(s) involved in building one party's adversarial case is also adjudicating the determinative issues; and/or (2) other special circumstances render the risk of unfairness

intolerably high. *Kent Cty. Water Auth. v. State (Department of Health)*, 723 A.2d 1132, 1137 (R.I. 1999) citing *La Petite Auberge, Inc. v. Rhode Island Commission for Human Rights,* 419 A.2d 274, 285 (R.I. 1980). Here, Appellants fail to adduce any evidence to support its charge of bias against the Commission. In the first instance, Appellants summarily state that the Commissioners participated in assembling an "adversarial case" against the appellant, but yet fail to offer any evidence of the same. *Id.* In fact, as noted, it was Mr. Gray who prepared and submitted a Memorandum to the Commission in accordance with his duties and responsibilities. Rather than demonstrating bias, calling Mr. Gray to present follow-up information and answer the Commission's questions as to the system's history and capacity, simply reflects the Commission meeting its obligations to fully understand applications before making a decision on the same. Contrary to demonstrating "assembling any adversarial case" or special circumstances rendering the risk of unfairness, having Mr. Gray testify and granting the Appellants the opportunity to cross-examine him actually demonstrates fairness and complies with the Commissioners' duties and obligations. It allowed the applicants to hear from the Director and the underlying understanding as to the Commission's authority and to counter such information in a timely manner.

This conclusion is further supported by the well settled presumption of expertise accorded to an administrative agency or a department and the fact that the administrative agency is entitled to rely upon the same in making a decision. Cf. *New Castle Realty Co. v. Dreczko*, 248 A.3d 638, 645 (R.I. 2021). The administrative agency similarly has the obligation to disclose such specialized knowledge should they rely upon the same in making a decision. Cf. *Harrison v. Zoning Bd. of Review*, 74 R.I. 135, 142, 59 A.2d 361, 364 (1948) ("not be presumed that . . . acted upon . . . special knowledge in the absence of a disclosure to that effect"). Accordingly, to the extent it is alleged that the introduction of Mr. Gray's testimony is a form of "adversarial" evidence, to the

contrary, it is merely a direct way of presenting the specialized knowledge of the Commission in its own history and enabling act. Rather than infringe upon a due process right or otherwise prejudice the Appellants, it provided the Appellants with the information along with an opportunity to timely respond.[17]

In the final analysis, Appellants noticeably do not identify any particular questions posed to Mr. Gray that would support any level of bias. To the contrary, the questions were all geared towards supplementing the information already provided to Commission as well as identifying the specialized knowledge as to the Commission's history and scope of authority. Having a staff member testify at hearing does not overcome the presumption of honesty and integrity which all Commission members hold. See e.g. *Interstate Navigation Co. v. Coastal Res. Mgmt. Council,* Nos. PC-2005-6081, PC-2005-6088, 2010 R.I. Super. LEXIS 148, at *20 (Super. Ct. Oct. 19, 2010) (reliance on on-the-record information from staff proper). Accordingly, there is no support for Appellants' claim that elucidating additional information by calling the Director of Public Works as a witness overcomes the presumption of honesty and integrity enjoyed by all Commission members.

IV. CONCLUSION

Appellants' underlying premise effectively is that the JWD is statutorily required to provide water to all current and future residents in Jamestown. However, this conclusion not only is an impossibility due to the limited resources but is nevertheless specifically negated by the

[17] It is also telling that Appellants rely exclusively on their exchange with Commission Chairman, Randall White and Mr. White's questioning of Mr. Gray in support of their claim of presumed prejudice. Even if it could be said that providing such information put Mr. White's neutrality into question, there is absolutely no basis to support a finding that any other Commission member or the Commission as a whole possessed any such perceived prejudice. The Decision to deny the application was passed upon a 5-0 vote. Accordingly, even if there were any basis to exclude Mr. White, the Decision denying the application still stands.

Special Act establishing the JWD and granting the Commission the discretion to determine whether the water works system could and should extend throughout the Town "or any part thereof." *P.L. 1968, Ch.273, §4 ("**may** . . . . extend and improve a water works system for the town **or any parts thereof**.") (emphasis added).* Section 46-15-2(b)'s utter lack of any consideration of the available water resources to accommodate a proposed extension, standing alone, demonstrates that § 46-15-2(b) was never intended to undermine or override the Special Act's grant of authority or to preempt the authority of the Commission to make that determination in the first instance.

In the final analysis, nothing contained in § 46-15-2 can or should be construed to preempt, supersede, or supplant the several Special Acts establishing and granting the Commission the discretionary authority whether to extend its services. Under the Appellants' theory, the Commissioners are expected to disregard the WSSMP, the Comprehensive Plan, their own Rules and available resources to approve these applications. Nothing in the General Laws demand this result. To the contrary, pursuant to settled rules of statutory construction as well as the General Assembly's mandate, § 46-15-2(b) and P.L. § 1968, Chapt. 273 should in the first instance be read to harmonize with each other and, to the extent they 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).

The Appellants' sole and exclusive reliance on the provisions of § 46-15-2(b) as the basis for their water service extension request outside of the water service area was insufficient to warrant approval of their application to extend the water main. As such, the Commission properly denied the application and Appellants' appeal should be denied.

THE BOARD OF WATER AND SEWER COMMISSIONERS
FOR TOWN OF JAMESTOWN
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December 2024, the within document has been e-mailed to kathleen.crawley@doa.ri.gov and matthew.smith@doa.ri.gov, along with Appellants' counsel of record.

/s/ Jillane S. Perreira