

**MEMORANDUM OF UNDERSTANDING (“MOU”)
BETWEEN
THE RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS
AND
THE RHODE ISLAND WATER RESOURCES BOARD
FISCAL YEAR 2018**

Whereas, the Rhode Island Division of Public Utilities and Carriers (“Division” or “DPUC”) is charged with the responsibility of supervising and regulating the operations of public utilities that furnish supplies of water for domestic, industrial, and commercial use in order to protect and promote the convenience, health, comfort, safety, accommodation, and welfare of the people; and for the purpose of preserving the state’s resources and assuring the state’s citizens adequate water supplies (R.I.G.L. §39-1-1).

Whereas, the Division is further charged with the responsibility to partner with the Rhode Island Water Resources Board (“Water Resources Board” or “WRB”) in reviewing and approving Water Supply Management Plans, prepared and submitted by the state’s water suppliers, which are required by law to, *inter alia*, ensure that water suppliers protect and develop their water resources, properly manage peak and seasonal use of water, and endeavor to advance the safety and reliability of their water supply systems (R.I.G.L. §46-15.3-1, *et seq.*).

Whereas, the Division and the Water Resources Board additionally share statutory responsibilities to carry out the goals and requirements of the Rhode Island Water Facilities Assistance Program (See R.I.G.L. §46-15.2-1, *et seq.*), the Clean Water Infrastructure Act (See R.I.G.L. §46-15.6-1, *et seq.*), the Public Drinking Water Supply System Protection Act (See R.I.G.L. §46-15.3-1, *et seq.*), the Water Protection Revolving Loan Fund (See R.I.G.L. §46-12.8-1, *et seq.*), and provisions associated with Water Suppliers Subject to Rate Regulation (See R.I.G.L. §39-15.1-1, *et seq.*).

Whereas, based on the above-delineated overlapping responsibilities, on October 20, 2017, the Rhode Island Office of Management and Budget (“OMB”) shifted the staff and operations of the Water Resources Board from the Department of Administration to the Division. This move came in response to a legislative mandate that OMB and the Governor’s Office effectuate a \$25 million budget reduction by pursuing savings opportunities throughout state government. In its decision to shift the Water Resources Board to the Division, OMB cited the following reasoning for transferring the Water Resources Board’s staff and operations over to the Division:

The Water Resources Board’s mission is to foster collaboration between state and municipal agencies, with water suppliers, and with the public to ensure sufficient freshwater is available to meet Rhode Island’s current and long term potable water needs. WRB has a statutory obligation to regulate the protection, conservation, use and development of the state’s water resources. DPUC is responsible for executing all laws relating to public utilities and carriers and for executing all regulations and Commission orders that govern the conduct and charges of public utilities in the state, including water suppliers.

Both DPUC and WRB address water management, programs, and policy and are statutorily empowered to regulate water providers in the state. The FY 2018 enacted budget includes funding for the staff and operations of WRB from general revenues. The proposed shift of WRB staff and operations to DPUC includes the shift of an associated \$0.4 million of expenditures from general revenues to DPUC restricted receipts that come from assessments to the regulated utilities, including water providers.

The staff of the Board and DPUC staff are often in contact regarding water supply planning and management. With the Board managed by staff within DPUC, the Division will be able to more effectively manage water suppliers in the state and establish more comprehensive water supply and use planning activities. The merger will foster integrated water resources and supply planning management for water systems in the state. It will ensure adequate technical, managerial, and financial capacity for the state's water systems.

It is anticipated that this initiative will generate operational efficiencies over time. However, OMB does not assume any reductions to the duties and responsibilities of DPUC or WRB or its staff.

There appear to be no statutory, regulatory, or other legal impediments to utilizing PUC restricted receipts from the regulated utilities to fund the staff and operations of the WRB. The WRB will retain statutory authority to promulgate regulations, eliminating the need for any regulatory changes to be made.¹

With respect to the issue of timing, OMB added:

We envision the shift will be completed prior to the Governor's introduction of her FY 2019 Budget on January 18, 2018. As part of this budget proposal, we will include the requisite legislation necessary to affect this consolidation. However, it is our current interpretation of the FY 2018 undistributed savings mandate that actions taken in fulfillment of this mandate can proceed prior to the enactment of any required statutory modifications

¹ See October 20, 2017 Memorandum from Jonathan Womer, Director, R.I. Office of Management and Budget to Macky McCleary, Administrator, R.I. Division of Public Utilities and Carriers and Patag Agrawal, Associate Director, R.I. Division of Planning.

Whereas, the Division agrees with OMB's assessment that merging the operations of the Division and the Water Resources Board should promote a synergistic and efficient consolidation of regulatory activities, collectively designed to ensure that Rhode Islanders receive reliable, abundant, sustainable and economical supplies of potable water. The Division expects that both agencies will benefit from the merger.

Whereas, the General Assembly and the Governor have provided for funding of the expenses associated with this merger of the Division and the Water Resources Board pursuant to R.I. Gen. Laws §§ 39-1-19, 39-1-23 and 39-1-38. Specifically, under § 39-1-19, the Division is authorized to "...retain... experts, consultants, and assistants on a contract or other basis for rendering legal, financial, professional, technical or other assistance or advice;" under §39-1-23, the Division is authorized to "assess these expenses among the state's regulated utilities;" and under §39-1-38, the Division is conferred "all additional, implied, and incidental power which may be proper or necessary to effectuate... [its] purposes."

Now therefore, the parties agree that the funding in an amount not to exceed the total listed on Exhibit A, made available by law to support the proposed merger shall be channeled through the Division in accordance with the following:

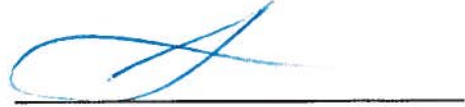
1. The Division through the administrator shall arrange for the transfer of the funds outlined in the budget attached as Exhibit A from the Public Utilities General Account.
2. Funding to the Water Resources Board under this MOU shall be limited to the salary/wages/benefits expenses associated with the Water Resources Board's currently authorized FTE count. Any expenses not related to personnel costs must be approved by the Administrator or his/her designee.
3. The Water Resources Board shall provide the Division on a monthly basis, or such other basis as the parties may agree to in writing, with an accounting of all charges in total. The Water Resources Board will certify each month that all payroll charges appearing on the Expenditure Report were incurred for staff members working full time on water supply related matters, as provided in statute. The Water Resources Board shall have the obligation to notify the Administrator or his/her designee of any personnel funded through this MOU who have taken on responsibilities not related to water supply related regulation.
4. The Administrator retains the right to exclude from the transfer of funds to the Water Resources Board's Account the costs not related to water supply related regulation.
5. Exhibit A attached may be revised from time to time by agreement of the parties.
6. Implementation of this Memorandum of Understanding by the parties is subject to the appropriation of monies by the General Assembly, or the provision of funding from other sources.

This Memorandum of Understanding shall be effective July 1, 2017 and shall terminate June 30, 2018.

This Memorandum of Understanding is hereby ratified on this 14th day of December, 2017.



MICHAEL DIBIASE
Director, Department of Administration



MACKY MCCLEARY
Administrator, DPUC

Exhibit "A"

*Anticipated Water Resources Board Expenditures
FY 2018 Enacted*

July 1, 2017 – June 30, 2018

| <u>Personnel:</u> | TOTAL |
|--|-------------------------|
| General Manager - Unclassified (Grade 839) | |
| Staff Director - Classified (class code – 02992600/Grade 37) | |
| Supervising Civil Engineer - Classified (class code -02968507/Grade35) | |
| | |
| Total Salary/Wages and Benefits | <u>\$327,913</u> |
| | |
| <u>Non Personnel Costs:</u> | |
| Contracted Professional Services | \$55,000 |
| Operating Supplies and Expenses | \$23,057 |
| Assistance & Grants | \$4,200 |
| | |
| Total Non-Personnel Costs | <u>\$82,257</u> |
| | |
| TOTAL ENACTED BUDGET | <u>\$410,170</u> |

Note: OMB

*Budget \$227,708 for staff costs and \$82,257 for operations costs: **total of \$309,965**. As the enacted budget assumes zero turnover - that all three of the WRB's positions will be filled for the fiscal year. The enacted level of funding for the WRB's staffing an operations is \$410,170. The \$309,965 recognizes the turnover savings from holding one position (general manager) vacant for the fiscal year. [11-28-17 e-mail paraphrase]*