

Control Number: 45283



Item Number: 44

Addendum StartPage: 0

LAW OFFICE OF RICHARD T. MILLER

414 E. Wallace Street
P.O. Box 99
San Saba, Texas 76877
325-372-4400 phone 325-372-3645 fax
Email: rtmiller@centex.net

RECEIVED

2016 JUN 14 AM 9:06

PUBLIC UTILITY COMMISSION
FILING CLERK

June 9, 2016

Via UPS Overnight

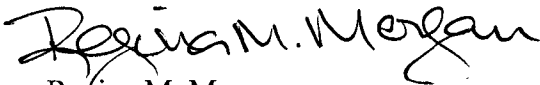
Public Utility Commission of Texas
Attention: Filing Clerk
1701 N. Congress Ave.
P.O. Box 13326
Austin, TX 78711-3326

Re: PUC Docket No. 45283; SOAH Docket No. 473-16-1834.WS; Ratepayers'
Appeal of the Decision by North San Saba Water Supply Corporation to Change
Rates

Greetings,

Enclosed are one original paper copy and 12 disc copies of Roger Whatley's Second Supplement to his Rebuttal to PUC Staff's Direct Testimony. Please file with the papers in the above-referenced matter.

Thanks,



Regina M. Morgan
rmmorgan@centex.net

Encl.

**SOAH DOCKET NO. 473-16-1834.WS
PUC DOCKET NO. 45283**

**RATEPAYERS' APPEAL OF THE
DECISION BY NORTH SAN SABA
WATER SUPPLY CORPORATION TO
CHANGE RATES**

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

SECOND SUPPLEMENT TO REBUTTAL TESTIMONY

OF

ROGER WHATLEY

ON BEHALF OF

NORTH SAN SABA WATER SUPPLY CORPORATION

June 9, 2016

INDEX TO THE SECOND SUPPLEMENT TO REBUTTAL TESTIMONY OF

ROGER WHATLEY, WITNESS FOR

NORTH SAN SABA WATER SUPPLY CORPORATION

- I. Rebuttal to Direct Testimony from PUC Staff Fred Bednarski**
- II. CONCLUSION**

LIST OF EXHIBITS

- EXHIBIT RW-18 NSSWSC Gallonage Demand 2014-2016**
- EXHIBIT RW-19 Promissory Installment Note – NSSWSC & Nelson Lewis**
- EXHIBIT RW-20 NSSWSC 2015 Tax Return**

1 **SUPPLEMENT TO REBUTTAL TESTIMONY OF ROGER WHATLEY**

2 **I. REBUTTAL TO BEDNARSKI/SCAFF DIRECT TESTIMONY**

3 **Q. PLEASE STATE YOUR SUPPLEMENTAL REBUTTAL TESTIMONY IN**
4 **RESPONSE TO DIRECT TESTIMONY BY PUC STAFF FRED**
5 **BEDNARKSI AND SEAN SCAFF.**

6 A. My Rebuttal to Staff testimony by Mr. Bednarski and Mr. Scaff was filed
7 last month in this docket. I believe that I amply addressed what the NSSWSC Board
8 (Board) knew when it raised water rates last August 2015, and effective September
9 2015. Included in that knowledge were historical accounting facts, such as a
10 persistently declining cash position, as well as certain, yet unquantified knowledge
11 of near-term future expenses connected with TCEQ compliance as well as capital
12 equipment damages arising out of the 2014 capital project. I also noted that, because
13 of all the rain, demand for water is much lower recently than in 2014, resulting in
14 a continued declining cash position despite current rates. In fact, in the five months
15 ended with April 2016, average demand is a calculated 34% lower than in all of
16 2014 (Exhibit RW-18). My testimony stressed demand as an important variable to
17 consider. Staff made no such mention, nor reasoned any such consideration to
18 account for demand variation.

19 I also believe that further rebuttal to Staff's testimony in this docket is not
20 strictly necessary, given the earlier testimony rebutting such. However, it has
21 continued to bother me that Mr. Bednarski (and therefore Mr. Scaff) came, from
22 different route of calculation (termed as "cash needs"), to such different
23 conclusions than myself and the Board. This caused me to begin studying their

1 testimony in more detail to try and understand what caused the divergence of
2 opinion.

3 Parenthetically, I will state that it appears to me that “cash needs” is merely
4 a formalization of the same perspective the Board prefers when it keeps an eye on
5 “cash on hand.” So what else may have contributed to the different outcomes?

6 In short, my study of Mr. Bednarski’s Exhibit FB-2 uncovered two
7 significant issues that I judge to be errors. One is an error of omission, using an out-
8 of-date amount, and the other is, in my opinion, an error of judgment. If these two
9 errors are corrected, and the resulting fixed cost is used, as Mr. Scaff’s testimony
10 instructs, the resulting calculated Base Rate is \$84.79, not the \$72.05 which Mr.
11 Scaff actually calculated and recommended.

12 **The Two Errors & Proposed Correction**

13 The first error I found in Exhibit FB-2 is that our operator’s contracted
14 compensation is given as \$66,000 per year. From May 2015, and forward, this
15 amount is actually \$90,000 per year, for reasons that are amply justified in Ms.
16 Gage’s testimony, my own testimony (specifically in rebuttal to Ms. Horn), and is
17 documented in the addendum portion of Will Broyles’ Exhibit WB-1. This is a
18 \$2,000 per month, \$24,000 per year, error of omission.

19 The second error is more one of judgment, in that Mr. Bednarski took the
20 three-year term \$70,000 Nelson Lewis loan, with its annual payments of
21 \$24,800.16, and computed hypothetical annual payments of \$4,010.29 as if it were
22 a 30 year loan, and used this hypothetical figure instead of the actual figure. Mr.

1 Bednarski explains this in terms of appropriateness for finding a long-term average
2 revenue requirement.

3 However, the immediate financial effect of this hypothetical substitution is
4 to remove $\$24,800.16 - \$4,010.29 = \$20,789.87$ from the calculation of required
5 revenue. That is not at all inconsequential, as Mr. Bednarski later argues that it is.
6 He argues that this is ok, because he has already allocated an amount, 25% of capital
7 P&I payments, or $\$25,763.37$, and termed as "Debt Coverage." This "debt
8 coverage" is said by Mr. Bednarski to be an amount determined by "generally
9 accepted practice" and "experience" (Bednarski 8:16-17) to be needed to cover
10 "...recurring capital improvements that are not debt-financed or contributed, and
11 reasonable contributions to a cash reserve account,..." (Bednarski 9:10-12)

12 Elsewhere on page 12-13 he states, "To provide for recurring capital
13 improvements that are not debt-financed, or contributed, cash-reserve balance, and
14 non-recurring expenses (such as fines or penalties), I included debt coverage of
15 $\$25,763.37$ (Attachment FB-2, column E, row 33). " (Bednarski, 12:15-13:1) In
16 other words, I gather that this is an amount to deal with short term financial
17 exigencies that may come up, whether planned or unplanned.

18 But if such an amount is necessary and recognized as such in standard
19 practice, as Mr. Bednarski says, what sense does it make to effectively allocate
20 $\$20,789.87$ of the debt coverage before any of the actual purposes given for the
21 debt coverage have any opportunity to materialize?

22 **$\$20,789.87/\$25,763.37 = 80.7\%$** . Fully 80% of the debt coverage described
23 by Mr. Bednarski as being for one set of purposes is allocated up front for an

1 altogether different purpose, namely to rationalize a hypothetical choice he makes
2 to align loan terms to a long-term perspective. This leaves \$4,973.50 as the effective
3 value of debt coverage which Mr. Bednarski has *actually* allocated in the
4 calculation of NSSWSC required revenue. That is 4.8% of his calculated total
5 annual debt payment of \$103,053.48. His 1.25 standard-practice rule is therefore
6 effectively a 1.048 rule for a three-year period because of his rationalization here.

7 I understand Mr. Bednarski's concern that a three-year term on a loan for
8 capital improvements is incongruous with the normal thirty-year term nature of
9 such loans, but in fact his hypothetical thirty-year term for the three-year reality
10 introduces an incongruity at least as egregious as the one he wishes to correct.
11 Namely, he expects NSSWSC to recover funds from income over a thirty-year
12 period which will actually be disbursed within a three-year period. To further
13 illustrate, there is an identifiable amount of income that Mr. Bednarski would have
14 NSSWSC collect in the 30th year, but which must be disbursed by NSSWSC in the
15 third year. To me this seems very incongruous and totally inconsistent with
16 accounting standards as I understand them.

17 I think it may be appropriate to convert that three-year P&I to a thirty-year
18 loan for the purpose of computing long-term total annual debt payments and then
19 only for the express narrower purpose of then computing a debt coverage amount
20 (\$25,763.37). I do have reservations about this arbitrary choice of 25%, and I
21 would hazard a guess that there is actually a range of standard practice here.

22 However, NSSWSC must pay its bills in the concrete present three years,
23 not in the abstract hypothetical thirty years because NSSWSC has a signed

1 agreement with Nelson Lewis that states that NSSWSC must pay off in three years
2 the debt it owes as a result of the work that Nelson Lewis performed for NSSWSC
3 during the recent improvements to the water system (Exhibit RW-19). The terms
4 of the Nelson Lewis Loan included a \$30,000 down payment. This can be seen in
5 Exhibit RW-13 (previously provided) in the month of May 2015 as a precipitous
6 one-month drop in cash-on-hand.

7 Specifically, NSSWSC must pay that \$24,800.16/year to Nelson Lewis in
8 the next three years, beginning 2015, and the course of action Bednarski suggests
9 would deprive us the required income to do this. In order to remedy this, I propose
10 that the full and actual loan payment obligation should be included in the
11 computation of required income.

12 Since both of these two corrective amounts – \$24,000 in operator contract
13 and \$20,789.87 in additional loan P&I payments – are 100% fixed expenses (see
14 FB-2), they may each be added to the total fixed expense \$253,329.04 given in FB-
15 2, resulting in the following:

16
$$\text{\$253,329.04} + \text{\$24,000} + \text{\$20,789.87} = \text{\$298,118.91}$$

17 If this figure is divided by 12 months, then by 293 connections (per Scaff), then the
18 corrected base rate calculation is

19
$$(\text{\$298,118.91}/12\text{mo})/293 \text{ connections} = \text{\$84.79/month.}$$

20 The conclusion, therefore, is that since NSSWSC's current base rate is
21 \$82.00 and less than the corrected amount to yield a reasonable and required
22 revenue to cover fixed costs, I will positively assert that this rate is fair and
23 reasonable under Texas Water Code §13.043.

1 Further Discussion

2 Is an effective debt coverage of \$4,973.50 adequate? Emphatically, No. Has
3 NSSWSC experienced exigencies which would have depleted such an annual
4 allocation of debt coverage? Emphatically, Yes.

5 The Board had last year approved up to a \$22,500 expenditure for various
6 measures to proactively mitigate issues reported in the Jacob & Martin Engineering
7 Report, Exhibit KG-2. Approximately \$4,000 of that work has been previously
8 done and has previously hit the monthly P&L statement. But, as I write this,
9 approximately \$18,000 in capital improvement required to mitigate a TCEQ
10 violation, is in progress at our FM500 pumping station. None of the \$18,000 has
11 hit the P&L yet.

12 There are other known issues, even more TCEQ compliance issues, facing
13 NSSWSC, as I have previously testified. Our financial risks are still quite daunting,
14 and the Board and I would prefer to be directing our energy in that direction.

15 Since I first filed Rebuttal to Staff Testimony last month, NSSWSC's 2015
16 Federal Tax Return Form 990 has become available from our accountant (Exhibit
17 RW-20). It gives a revenue loss of \$50,814 for the tax year 2015.

18 So, what about beyond the 3-year term when the Nelson Lewis Loan is paid
19 off? Will NSSWSC be taking in too much revenue? Possibly, but largely because
20 demand may eventually return. But the Board would be delighted in such
21 circumstance to return funds to members, or to pay down loans, or even to lower
22 rates once the danger of insolvency has passed. However, to reach that point while

1 maintaining the level of service and care that NSSWSC desires to provide its
2 members, the current rates are absolutely necessary.

3 **II. CONCLUSION**

4 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENT TO YOUR REBUTTAL**
5 **TESTIMONY?**

6 **A.** Yes, although I reserve the right to add to or amend my testimony.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

EXHIBIT RW-18

NSSWSC Gallonage Demand Jan2014 to May 2016

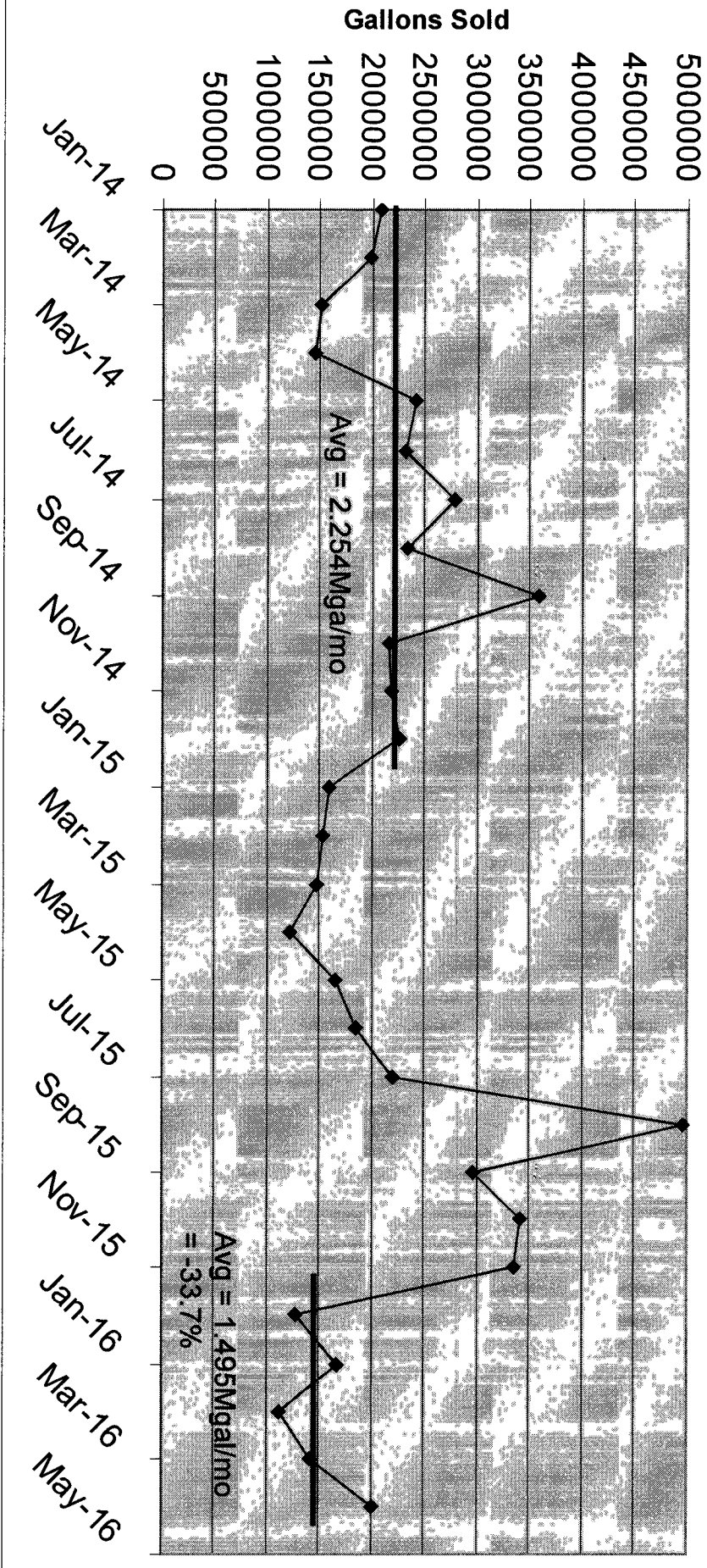


EXHIBIT RW-19

Promissory Installment Note

On this date of **May 12, 2015**, in return for valuable consideration received, North San Saba Water Supply Corporation, the "Borrower", promises to pay to **Nelson Lewis, Inc.**, the "Lender", the sum of seventy thousand dollars and 00/cents (\$70,000.00 Dollars) together with interest thereon at the rate of four percent (4%) per annum.

Terms of Repayment: All payments shall be first applied to interest and the balance to principal.

Terms of Repayment (Periodic Payment): Starting on June 12, 2015 and continuing until the principal balance of this Note and any accrued interest have been repaid in full, on the 12th day of each month the borrowers shall pay the amount of \$ 2,066.68. All payments shall be first applied to accrued interest and the balance to principal.

Late Fees: In the event that a payment due under this Note is not made within ten (10) days of the time set forth herein, the Borrower shall pay an additional late fee in the amount of \$25.00.

Place of Payment - all payments due under this note shall be made at P.O. Box 217, Marble Falls, TX 78654, or at such other place as the holder of this Note may designate in writing.

Prepayment - This Note may be prepaid in whole or in part at any time without premium or penalty. All prepayments shall first be applied to accrued interest, and then to principal payments in the order of their maturity.

Default - In the event of default, the Borrower agrees to pay all costs and expenses incurred by the Lender, including all reasonable attorney fees for the collection of this Note.

Acceleration of Debt - In the event that the Borrower fails to make any payment due under the terms of this Note, seeks relief under the Bankruptcy Code, or suffers an involuntary petition in bankruptcy or receivership not vacated within thirty (30) days, Lender may give Borrower written notice of such default and if Borrower does not cure the default within 30 days of Borrower's receipt of such written notice, Lender may declare the entire balance of this Note and any interest accrued thereon to be immediately due and payable to the holder of this Note.

~~**Modification** - No modification or waiver of any of the terms of this Agreement shall be allowed unless by written agreement signed by both parties. No waiver of any breach or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.~~

~~**Transfer of the Note** - The borrowers hereby waive any notice of the transfer of this Note by the Lender or by any subsequent holder of this Note, agree to remain bound by~~

EXHIBIT RW-19

Modification - No modification or waiver of any of the terms of this Agreement shall be allowed unless by written agreement signed by both parties. No waiver of any breach or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

Transfer of the Note - The borrowers hereby waive any notice of the transfer of this Note by the Lender or by any subsequent holder of this Note, agree to remain bound by the terms of this Note subsequent to any transfer, and agree that the terms of this Note may be fully enforced by any subsequent holder of this Note.

Severability of Provisions - In the event that any portion of this Note is deemed unenforceable, all other provisions of this Note shall remain in full force and effect.

Choice of Law - All terms and conditions of this Note shall be interpreted under the laws of Burnet County, State of Texas.

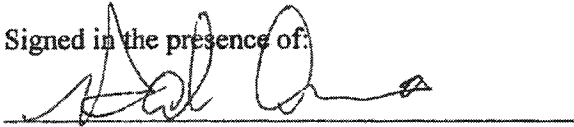
Signed Under Penalty of Perjury, this 12th day of May 2015



Borrower(s)
Katherine B. Gage

President, North San Saba WSC

Signed in the presence of:



Hank Lewis

Witness

Return of Organization Exempt From Income Tax

COPY
2015

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.

Information about Form 990 and its instructions is at www.irs.gov/form990.

Department of the Treasury
Internal Revenue Service

A For the 2015 calendar year, or tax year beginning

, 2015, and ending

, 20

B Check if applicable

☐ Address change☐ Name change☐ Initial return☐ Final return/terminated☐ Amended return☐ Application pendingC Name of organization **NORTH SAN SABA WATER SUPPLY CORP**

Doing business as

Number and street (or P.O. box if mail is not delivered to street address)

PO BOX 598

Room/suite

City or town, state or province, country, and ZIP or foreign postal code

SAN SABA, TX 76877

D Employer identification no.

E Telephone number

(325) 372-5711**402,880**

G Gross receipts

F Name and address of principal officer

ROGER WHATLEY**PO BOX 598, SAN SABA, TX 76877**H(a) Is this a group return for subordinates? ☐ Yes ☒ NoH(b) Are all subordinates included? ☐ Yes ☒ No
If "No," attach a list (see instructions)

H(c) Group exemption number

I Tax-exempt status

☐ 501(c)(3)☒ 501(c)(12) (insert no.)☐ 4947(a)(1) or☐ 527J Website: **N/A**K Form of organization: ☒ Corporation☐ Trust☐ Association☐ OtherL Year of formation: **1970**M State of legal domicile **TX**

Summary

Activities & Governance

1 Briefly describe the organization's mission or most significant activities: **TO PROVIDE WATER AND WATER RELATED SERVICES TO RURAL CUSTOMERS OF SAN SABA COUNTY.**2 Check this box ☐ if the organization discontinued its operations or disposed of more than 25% of its net assets.3 Number of voting members of the governing body (Part VI, line 1a) **3****7**4 Number of independent voting members of the governing body (Part VI, line 1b) **4****7**5 Total number of individuals employed in calendar year 2015 (Part V, line 2a) **5****1**6 Total number of volunteers (estimate if necessary) **6****0**7a Total unrelated business revenue from Part VIII, column (C), line 12 **7a****0**b Net unrelated business taxable income from Form 990-T, line 34 **7b****0**

Revenue

8 Contributions and grants (Part VIII, line 1h) **2,137,313****38,753**9 Program service revenue (Part VIII, line 2g) **40****42**10 Investment income (Part VIII, column (A), lines 3, 4, and 7d) **353,300****364,085**11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e) **2,490,653****402,880**12 Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12) **2,074,457****(50,814)**

Expenses

13 Grants and similar amounts paid (Part IX, column (A), lines 1-3) **16,089****15,590**14 Benefits paid to or for members (Part IX, column (A), line 4) **400,107****438,104**15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10) **416,196****453,694**16a Professional fundraising fees (Part IX, column (A), line 11e) **2,678,054****2,627,240**b Total fundraising expenses (Part IX, column (D), line 25) **0**17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e) **400,107****438,104**18 Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25) **416,196****453,694**19 Revenue less expenses. Subtract line 18 from line 12 **2,074,457****(50,814)**

Net Assets or Fund Balances

20 Total assets (Part X, line 16) **3,945,474****3,542,148**21 Total liabilities (Part X, line 26) **1,267,420****914,908**22 Net assets or fund balances. Subtract line 21 from line 20 **2,678,054****2,627,240**

Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here

ROGER WHATLEY

Signature of officer

Date

ROGER WHATLEY, PRESIDENT

Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name

KEVIN SHAHAN

Preparer's signature

Date

05-25-2016Check ☒ if PTIN

self-employed

Firm's name

KEVIN SHAHAN, CPA, PLLC

Firm's EIN

Firm's address

1102 W WALLACE ST

Phone no.

SAN SABA TX 76877**325-372-4613**May the IRS discuss this return with the preparer shown above? (see instructions) ☒ Yes ☐ No

For Paperwork Reduction Act Notice, see the separate instructions.

Form 990 (2015)

STATE OF TEXAS

COUNTY OF SAN SABA

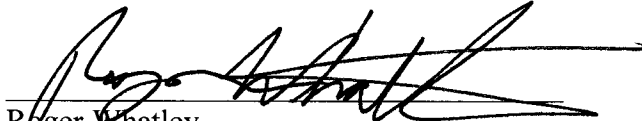
§
§
§

AFFIDAVIT OF ROGER WHATLEY

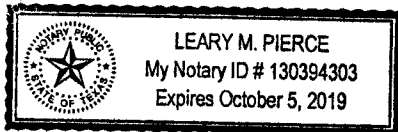
BEFORE ME, the undersigned authority, on this day personally appeared Roger Whatley, who, having been placed under oath by me, did depose as follows:

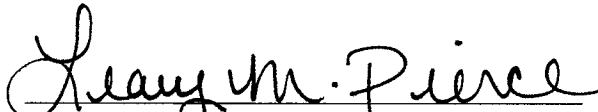
1. "My name is Roger Whatley. I am of sound mind and capable of making this affidavit. The facts stated herein are true and correct based upon my personal knowledge.
2. The foregoing Second Supplement to my Rebuttal Testimony and the attached exhibits have been prepared by me, under my direct supervision, or are co-sponsored by me and are true and correct to the best of my knowledge."

Further affiant sayeth not.


Roger Whatley

SUBSCRIBED AND SWORN TO BEFORE ME by the said Roger Whatley this 9th
day of June 2016.




Notary Public, State of Texas