



Control Number: 49871



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<b>PETITION OF THE CITY OF RED OAK</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>INDUSTRIAL DEVELOPMENT</b>	<b>§</b>	
<b>CORPORATION TO AMEND</b>	<b>§</b>	<b>OF TEXAS</b>
<b>ROCKETT SPECIAL UTILITY</b>	<b>§</b>	
<b>DISTRICT'S WATER CERTIFICATE</b>	<b>§</b>	
<b>OF CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>IN DALLAS AND ELLIS COUNTIES BY</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	

**ROCKETT SPECIAL UTILITY DISTRICT'S  
SUPPLEMENT TO ITS MOTION TO DISMISS**

COMES NOW, ROCKETT SPECIAL UTILITY DISTRICT ("Rockett") and files this Supplement to its Motion to Dismiss. In support thereof, Rockett respectfully shows as follows:

**I. BACKGROUND**

On August 19, 2019, the Petitioner City of Red Oak Industrial Development Corporation ("CROIDC" or "Petitioner") filed a Petition for Streamlined Expedited Release of certain property (the "Property") from Rockett's Certificate of Convenience and Necessity (CCN) in Dallas and Ellis Counties (the "Petition"). The Petition was filed pursuant to Texas Water Code (TWC) § 13.254(a-5) and 16 TAC § 24.245(1).

On October 2, 2019, Rockett filed its Response and Objection to the Petition, asserting entitlement to 7 U.S.C. § 1926(b) ("§ 1926(b)") protection, that decertification is improper because the Property is "receiving service" from Rockett, and that the Petition must be denied and dismissed in light of the order against the Commissioners in *Crystal Clear Special Utility District v. Walker, et al.*, No. 1:17-cv-254-LY, 2019 WL 245377 (W.D. Tex. Mar. 27, 2019).

On October 11, 2019, Commission's Staff ("Staff") submitted its Recommendation on Final Disposition Staff's recommendation also noted that the issues concerning determining how a USDA indebted association meets the requirements for § 1926(b) protection, and the issue of whether §1926(b) preempts TWC § 13.254(a-6) was before the Fifth Circuit in the case styled *Crystal Clear Special Util. Dist. v. Marquez*, 316 F.Supp.3d 965 (W.D. Tex., Mar. 29, 2018).<sup>1</sup>

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<sup>1</sup> Commission Staff's Recommendation on Final Disposition at 3 (Oct. 11, 2019)

Staff also recommended as an alternative, that the Commission could abate this proceeding until the courts resolved these issues.<sup>2</sup>

On October 16, 2019, Rockett filed suit in federal court styled *Rockett Special Util. Dist. v. Shelly Botkin, et al.*, U.S. District Court W.D. Tex., Austin Division, Case No. 19-cv-1007, seeking to preclude the Commission from proceeding in this matter (the “Rockett Federal Case”).

On November 15, 2019, Order No. 4 was issued and abated this proceeding, as “[a]n issue raised in this case pertaining to possible federal preemption under 7 U.S.C. § 1926(b) has recently become the subject of federal court litigation between the parties.”<sup>3</sup>

On November 19, 2019, City of Red Oak, Texas brought a federal suit, *City of Red Oak v. United States Department of Agriculture, et al.* in the U.S. District Court, N.D. Tex., Dallas Division, Case No. 19-2761 and later amended to add ROIDC as an additional Plaintiff (hereafter the “Red Oak Federal Case”). The Red Oak Federal Case was later transferred to the U.S. District Court, W.D. Texas, and was assigned Case No. 20-cv-00483-RP and remains pending.

On March 31, 2020, Order No 6. was issued and continued abatement in this proceeding, noting the federal litigation *Rockett v. Botkin*, No. 1:19-CV-1007-RP, (W.D. Tex. filed Oct. 16, 2019) “remains pending. Because the applicability of federal preemption to this case is a matter of federal law best resolved by the federal courts ....”<sup>4</sup>

On November 3, 2020, Red Oak Industrial Development Corporation (“ROIDC” or “Red Oak”)<sup>5</sup> filed a pleading and provided a copy of the Order issued November 3, 2020 dismissing the Rockett Federal Case.<sup>6</sup>

Among other pending federal litigation regarding Rockett’s assertion of preemption and protections under 7 U.S.C. § 1926(b) that directly affect in this proceeding, Rockett provided that the Rockett Federal Case has been appealed to the Fifth Circuit.<sup>7</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> Order No. 4, at 1 (Nov. 15, 2019).

<sup>4</sup> *See* Order No. 6, at n. 1 (Mar. 31, 2020) (referring to the Rockett Federal Case as provided in the proceeding sentence with footnote 1).

<sup>5</sup> The Petition in this proceeding was filed by Petitioner City of Red Oak Industrial Development Corporation.

<sup>6</sup> Red Oak Industrial Development Corporation’s Supplement to Third Motion to Lift Abatement, at Attachment A (Nov. 3, 2020).

<sup>7</sup> Rockett’s Response to Order No. 11, at 3 (Dec. 7, 2020).

In its Response to Order No. 11, Red Oak asserts, among other things, that the Order issued on November 3, 2020 dismissing the Rockett Federal Case, in addition to Red Oak's arguments surrounding Rockett's federal preemption in this proceeding, is based on the non-existence of a federal loan guarantee<sup>8</sup> (issuance of a Loan Note Guarantee) from the United States Department of Agriculture (USDA) to lender CoBank ACB ("CoBank") related to Rockett's loan funded September 26, 2019.<sup>9</sup> On December 8, 2020, the USDA issued its Loan Note Guarantee to CoBank. A copy of the Loan Note Guarantee is attached hereto as Attachment 1.

Immediately following the issuance of the Loan Note Guarantee, Rockett refiled its federal suit, *Rockett Special Utility District v. Botkin, et al.*, No. 1:20-cv-01207-RP (W.D. Tex. filed Dec. 10, 2020) and a copy of Rockett's Complaint filed therein is attached as Attachment 2.

## II. ARGUMENTS AND AUTHORITIES

### A. Loan Note Guarantee Has Been Issued; Petition Must Be Dismissed

The dismissal of the Rockett Federal Case was premised entirely on the non-existence of a Loan Note Guarantee, such that ROIDC's arguments were centered not only on the dismissal of the Rockett Federal Case itself, but also on the non-existence of Loan Note Guarantee. ROIDC asserts that "[w]ithout a federal loan guarantee, there is no qualifying federal protection under Section 1926."<sup>10</sup> Following Petitioner's argument to its logical conclusion, if the USDA issues a Loan Note Guarantee, then indeed Rockett enjoys protections under 7 U.S.C. § 1926(b) ("§ 1926(b)") and the Petition must be dismissed.

As provided above, the USDA has issued the Loan Note Guarantee. Rockett in no way concedes that it did not have a loan qualifying it for § 1926(b) protection prior to the USDA's issuance of the Loan Note Guarantee. However, premised on ROIDC's own argument, Petitioner and ROIDC must now concede that Rockett's § 1926(b) protections have been triggered by the issuance of the Loan Note Guarantee.

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<sup>8</sup> Red Oak Industrial Development Corporation's Response to Order No. 11, at 2-4 (Dec. 8, 2020).

<sup>9</sup> See Rockett's Response and Objection to the Petition, at 2-5, Exhibit B (Oct. 2, 2019) (providing a copy of the email receipt of the funding received by Rockett on September 26, 2019).

<sup>10</sup> ROIDC's Response to Order No. 11, at 4.

## **B. Petition Cannot Be Granted, As Federal Claims To Be Decided By Federal Courts**

Rockett maintains that Rockett has a loan qualifying it for protections under 7 U.S.C. § 1926(b) (“§ 1926(b)”) prior to the USDA’s issuance of the Loan Note Guarantee. That federal law issue is reserved not only to the federal district courts in various pending actions involving Rockett, Petitioner CROIDC and ROIDC, among others, but also the federal courts of appeal, to decide that issue with finality.

### **1. Rockett filed its England Reservation in this proceeding**

Rockett has reserved its right to have its § 1926(b) protections decided in federal court by virtue of its England Reservation submitted in this docket,<sup>11</sup> which remains effective. The Order issued on November 3, 2020 dismissed the Rockett Federal Case “without prejudice.” Since that dismissal, Rockett has filed its appeal to the Fifth Circuit<sup>12</sup> and also re-filed its federal suit following the USDA’s issuance of a Loan Note Guarantee.<sup>13</sup> Additionally, the pending *City of Red Oak v. United States Dep’t. of Agric.*, No. 1:20-CV-00483-RP (W.D. Tex, filed Nov. 19, 2019), where ROIDC is a plaintiff, seeks federal judicial review of the USDA’s decision to issue a “Conditional Commitment” for Rockett’s loan.

The England Reservation persists until all federal actions have been fully exhausted, as “[t]he right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied.”<sup>14</sup> Petitioner and ROIDC have urged the Commission to deny Rockett’s choice and rights under its England Reservation and to grant the Petition. Under the principles announced in *England*, the issue of § 1926(b) protection remains one to be resolved solely in federal court.

Although the federal district court dismissed the Rockett Federal Case, that dismissal is now on appeal to the Fifth Circuit, to which Rockett’s England Reservation remains alive and well. Therefore, the Commissioners are deprived of any jurisdiction to decide the federal issues, until such time as the appeal (and any subsequent appeal to the United States Supreme Court) is fully concluded and/or the federal district court rules in *Rockett Special Util. Dist. v. Botkin, et al.*, No. 1:20-cv-01207-RP (W.D. Tex. Dec. 10, 2020).

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<sup>11</sup> Rockett’s Response and Objection to Petition, at 8 (Oct. 2, 2019).

<sup>12</sup> Rockett’s Response to Order No. 11, at Attachment A (Dec. 7, 2020).

<sup>13</sup> *Rockett v. Botkin*, No. 1:20-cv-01207-RP (W.D. Tex. filed Dec. 10, 2020).

<sup>14</sup> *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411, 415 (1964).

## 2. Rockett has re-filed its federal suit

Without discarding Rockett's assertion that it enjoys § 1926(b) protection with the issuance of the Conditional Commitment, certainly the USDA's issuance of the Loan Note Guarantee equates to § 1926(b) protections, as the Loan Note Guarantee is in full force and effect.

In addition to the Rockett Federal Case, which is pending appeal in the Fifth Circuit, and as provided herein, Rockett refiled its federal suit against the Commissioners, Petitioner CROIDC, ROIDC, and others following the issuance of the Loan Note Guarantee. Additionally, the Red Oak Federal Case also remains pending.

If the Commission will not grant dismissal pursuant to *Crystal Clear* as the Loan Note Guarantee has been issued, then the Commission should abate this proceeding consistent with its issued Order Nos. 4, 5, 6, 7, and 8, until the federal issues surrounding preemption and § 1926(b) protections have been resolved by the federal courts. Although *Crystal Clear* has been remanded to the District Court, the ruling by District Court Judge Yeakel, that § 1926(b) preempts Tex. Water Code §§ 13.254(a-5), (a-6), remains undisturbed.<sup>15</sup>

Because Rockett's rights under its England Reservation remain undisturbed, the appeal of the Rockett Federal Case to the Fifth Circuit is pending, because of the issuance of the Loan Note Guarantee triggering § 1926(b) protections and because Rockett has refiled its suit against the Commissioners, Petitioner, and ROIDC, the Petition filed in this proceeding must be dismissed.

### III. CONCLUSION

Granting the Petition, while the federal issues related thereto remains pending in the Fifth Circuit and the Western District would violate the mandate of an England Reservation. More importantly, the now issued Loan Note Guarantee and pending *Rockett v. Botkin*, No. 1:20-cv-01207-RP (W.D. Tex. Dec. 10, 2020) defeats all of Petitioner's arguments which were premised on the non-existence of the Loan Note Guarantee, such that it now requires the Commission to dismiss the Petition.

WHEREFORE, PREMISES CONSIDERED, Rockett respectfully requests that the Petition be denied and this proceeding be dismissed, or, in the alternative, this proceeding be abated

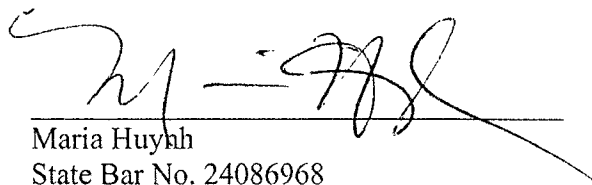
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<sup>15</sup> See ROIDC's Response to Order No. 11, Attachment D (Dec. 8, 2020) (providing a copy of the Fifth Circuit's judgment issued on November 6, 2020 in *Crystal Clear Special Util. Dist. v. Marquez*, which states "[w]e express no opinion how the issues in this case should be resolved on remand.")

consistent with previously issued Orders, until all federal issues surrounding the Petition and the parties' rights have been fully resolved by the federal courts.

Respectfully submitted,

JAMES W. WILSON & ASSOCIATES, PLLC



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ATTORNEYS FOR ROCKETT SPECIAL  
UTILITY DISTRICT

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this document was served on the following parties of record on December 15, 2020, via e-mail in accordance with the Commission's Order.<sup>16</sup>

via e-mail: creighton.mcmurray@puc.texas.gov

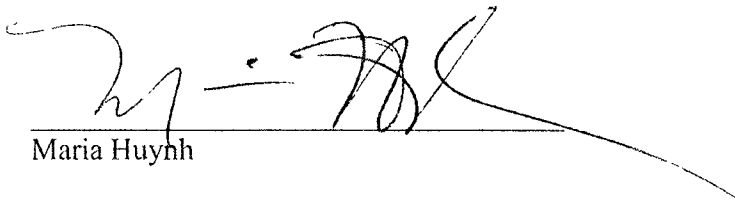
Creighton R. McMurray  
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<sup>16</sup> *Issues Related to the State of Disaster for Coronavirus Disease 2019, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).*

## **ATTACHMENT 1**



USDA  
Form RD 449-34  
(Rev. 10-95)

LOAN NOTE GUARANTEE

Type of Loan: Water

Applicable 7 C.F.R. part 1980  
subpart 1779

State	Texas
County	Ellis
Date of Note	
Borrower	Government Loan Identification Number 49-070-776150909
Lender	Lender's IRS ID Tax Number 8412686705
Lender's Address	Principal Amount of Loan \$1,720,000.00

The guaranteed portion of the loan is \$1,548,000.00 which is ninety ( 90 %)

percent of loan principal. The principal amount of loan is evidenced by One note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note

one in the face amount of \$1,720,000.00 and is number one of one.

LENDER'S IDENTIFYING NUMBER	FACE AMOUNT	PERCENT OF TOTAL FACE AMOUNT	AMOUNT GUARANTEED
	\$ 1,720,000.00	90 %	\$ 1,548,000.00

TOTAL	\$ 1,720,000.00	100%	\$ 1,548,000.00
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In consideration of the making of the subject loan by the above named Lender. The United States of America, acting through the Consolidated Farm Service Agency, Rural Business and Cooperative Development Service, Rural Utilities Service, or Rural Housing and Community Development Service (herein called "Government"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961 Pub. L. 93-357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C note preceding 1921 Pub. L. 95-334), or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion and any capitalized interest on such portion resulting from the restructuring of a Guaranteed Farm Credit Program loans but not exceeding statutory loan limits.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:
  - a. Principal and interest indebtedness as evidenced by said note(s) or by, assumption agreement(s), and
  - b. Any loan subsidy due and owing, and
  - c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with Government's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or
  - d. and, Capitalized interest on such portion resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits, or
2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon and any capitalized interest resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits.

If Government conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date Government accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee to date of final settlement when the lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by Government.



#### Definition of Holder.

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the Guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee become a Holder only when Form RD 449-36, "Assignment Guarantee Agreement," is used.

#### Definition of Lender.

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart of 7 C.F.R. part 1980. The Lender is also the party requesting a loan guarantee.

### CONDITIONS OF GUARANTEE

#### 1. Loan Servicing.

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of subpart B of 7 C.F.R. part 1980, and request a determination of the Borrower's eligibility by Government. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility, of the Borrower to participate in the Interest Rate Buydown Program.

#### 2. Priorities.

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

#### 3. Full Faith and Credit.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for the payment of interest on interest, then this Loan Note Guarantee is void. However, in the case of the Farm Credit Programs loans, the capitalization of interest when restructuring loans will not void this Loan Note Guarantee. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which Government acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by Government in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

#### 4. Rights and Liabilities.

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by Government of any rights it possesses against the Lender will be liable for and will promptly pay to Government any payment made by Government to Holder which if such Lender had held the guaranteed portion of the loan, Government would not be required to make.

#### 5. Payments.

Lender will receive all payments of principal, or interest, and any loan subsidy on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

#### 6. Protective Advances.

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee notwithstanding the guaranteed portion of the loan that is held by another.

#### 7. Repurchase by Lender.

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy) less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to Government. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and Government of its decision.



8. Government Purchase.

If Lender does not repurchase as provided by paragraph 7 hereof, Government will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to Government from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from Government. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to Government or the original of the Assignment Guarantee Agreement properly assigned to Government without recourse including all rights, title, and interest in the loan. Government will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by Government, such proposed payment will not be later than 30 days from the date of demand.

The Government will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the Government with the information necessary for Government determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. Government will notify both parties who must resolve the conflict before payment by Government will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, Government will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the Government Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. Lender's Obligations.

Lender consents to the purchase by Government and agrees to furnish on request by Government a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by Government does not change, alter or modify any of the Lender's obligations to Government arising from said loan or guarantee nor does it waive any of Government's rights against Lender, and that Government will have the right to set-off against Lender all rights inuring to Government as the Holder of this instrument against Government's obligation to Lender under the Loan Note Guarantee.

10. Repurchase by Lender for Servicing.

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or Government to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

- a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.
- b. Any repurchase will only be made after the Lender obtains Government written approval.
- c. If the Lender does not repurchase the portion from the Holder(s), Government at its option may purchase such guaranteed portions for servicing purposes.

11. Custody of Unguaranteed Portion.

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. When Guarantee Terminates.

This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to Government that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by Government.

13. Settlement.

The amount due under this instrument will be determined and paid as provided in the applicable subpart of 7 C.F.R. part 1980 in effect on the date of this instrument.

14. Loan Subsidy.

\*In addition to the interest rate of the note attached hereto, Government will pay a loan subsidy of N/A percent per year. Payments will be made annually.

15. Interest Capitalization.

In the case of Farm Credit Programs loans, the Lender/Holder(s) may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the principal amount of the loan listed herein, but may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this Loan Note Guarantee. Such capitalized interest will be covered by this loan Note Guarantee. References to "principal and interest" and "principal advanced" herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits.

16. Notices.

All notices will be initiated through the Government

for Texas (State) with mailing address at the day of this instrument:

1502 Highway 77 North

Hillsboro, TX 76645

*\*If not applicable delete paragraph prior to execution of this instrument.*

UNITED STATES OF AMERICA

RURAL DEVELOPMENT

*(insert applicable agency)*

By:

Edd Hargett

Title:

State Director

**DEC 08 2020**

(Date)

Assumption Agreement by \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_

Assumption Agreement by \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_

## **ATTACHMENT 2**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

ROCKETT SPECIAL UTILITY DISTRICT,  
a political subdivision of the State of Texas

Plaintiff,

VS.

SHELLY BOTKIN, DEANN T. WALKER, and ARTHUR C. D'ANDREA, in their official capacities as Commissioners of the PUBLIC UTILITY COMMISSION OF TEXAS; JOHN PAUL URBAN, in his official capacity as Executive Director of the PUBLIC UTILITY COMMISSION OF TEXAS; ALAMO MISSION LLC, a Delaware limited liability company; CITY OF RED OAK INDUSTRIAL DEVELOPMENT CORPORATION, a Texas non-profit corporation; RED OAK INDUSTRIAL DEVELOPMENT CORPORATION, a Texas non-profit corporation; FCS LANCASTER, LTD a Texas limited partnership; and COMPASS DATACENTERS DFW III, LLC, a Texas limited liability company

Defendants.

Civil Action No.:  
20-CV-1207

## Jury Trial Demanded

**PLAINTIFF'S ORIGINAL COMPLAINT**

COMES NOW Rockett Special Utility District, and for its Original Complaint against Defendants Shelly Botkin, Deann T. Walker and Arthur C. D'Andrea, in their official capacities as Commissioners of the Public Utility Commission of Texas; John Paul Urban, in his official capacity as Executive Director of the Public

Utility Commission of Texas; Alamo Mission LLC; City of Red Oak Industrial Development Corporation; Red Oak Industrial Development Corporation; FCS Lancaster, Ltd.; and Compass Datacenters DFW III, LLC, respectfully states and alleges as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction under 28 U.S.C. § 1331, as this case is based on a federal question claim brought under 7 U.S.C. § 1926(b) (“§ 1926(b)”), 42 U.S.C. § 1983 (“§ 1983”), and U.S. Const. art. VI, cl. 2, otherwise known as the Supremacy Clause. This Court has jurisdiction over Plaintiff’s claims for declaratory judgment under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

2. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1) and (2) because at least one Defendant resides in this judicial district, and a substantial part of the events giving rise to Plaintiff’s claims occurred, and continue to occur, in this judicial district.

### **PARTIES**

3. Rockett is a political subdivision and an agent and instrumentality of the State of Texas created under the authority of Article XVI, Section 59 of the Texas Constitution, and operating pursuant to, among others, Chapters 13, 49 and 65 of the Texas Water Code, furnishing water service to areas in Ellis and Dallas Counties.

Rockett is an “association” as that term is used in 7 U.S.C. § 1926(a). Rockett is indebted on a loan guaranteed by the USDA. Rockett holds the federal right to be the exclusive water service provider within any area for which Rockett has the legal right to provide water service and provided or has made service available (can provide water service within a reasonable period of time), which includes the land described in the Decertification Petitions referenced below. Rockett moves the District Court to take judicial notice of the Decertification Petitions and all other matters filed in said actions pending before the Public Utility Commission of Texas.

4. Defendants Shelly Botkin, Deann T. Walker and Arthur C. D’Andrea, (collectively referred to as the “Commissioners”) are commissioners for the Public Utility Commission of Texas, a state agency (“PUC”). The Commissioners are named as Defendants solely in their official capacities as commissioners of the PUC. The Commissioners are charged with the primary responsibility for implementing state laws relating to the use and conservation of natural resources, environmental protection and water service. The Commissioners may be served with process by serving each at the William B. Travis Building, 1701 N. Congress Ave., 7<sup>th</sup> Floor, Austin, TX 78701.

**Rockett seeks only prospective injunctive relief against the Commissioners.**

To ensure the enforcement of federal law ... the Eleventh Amendment permits suits for prospective injunctive relief against state officials acting in violation of federal law.



*Pzifer, Inc. v. Texas Health & Human Servs. Comm'n*, No. 1:16-CV-1228-LY, 2017 WL 11068849, at \*2 (W.D. Tex. Sept. 29, 2017) (quoting *Nelson v. Univ. of Tex. at Dallas*, 535 F.3d 318, 322 (5th Cir. 2008)).

5. Defendant John Paul Urban (“Urban”), in his official capacity as Executive Director of the PUC, is named as a Defendant solely with respect to his official capacity as Executive Director of the PUC. Urban may be served with process at the William B. Travis Building, 1701 N. Congress Ave., 7<sup>th</sup> Floor, Austin, TX 78701.

**Rockett seeks only prospective injunctive relief against Urban.**

6. Defendant Alamo Mission LLC (“Alamo”) is a Delaware limited liability company, authorized to conduct business in the State of Texas. Alamo may be served with process on its registered service agent: Corporation Service Company dba CSC – Lawyers Incorporating Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

7. Defendant City of Red Oak Industrial Development Corporation (“CROIDC”) is a Texas nonprofit corporation incorporated under the Development Corporation Act of 1979 (Chapter 501, Texas Local Government Code). CROIDC may be served with process on its registered service agent: Todd Fuller, 200 Lakeview Parkway, Red Oak, TX 75154.

8. Defendant Red Oak Industrial Development Corporation (“ROIDC”) is a Texas nonprofit corporation incorporated under the Development Corporation Act of 1979 (Chapter 501, Texas Local Government Code). ROIDC may be served with process on its registered service agent: Todd Fuller, 200 Lakeview Parkway, Red Oak, TX 75154.

9. FCS Lancaster Ltd. (“FCS”) is a Texas limited partnership. FCS may be served with process on its registered service agent: Koons Real Estate Law, P.C., 1410 Robinson Road, Unit 100, Corinth, TX 76210.

10. Compass Datacenters DFW III, LLC, (“Compass”) is a Delaware limited liability company. Compass may be served with process on its registered service agent: Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

#### **DEFENDANTS’ VIOLATIONS OF § 1926(b)**

11. On March 27, 2019 judgment was entered against the Commissioners in *Crystal Clear*:

The court **ORDERS AND DECLARES:**

(1) PUC Officials' Final Order of September 28, 2016, in the matter titled Tex. Pub. Util. Comm'n, *Petition of Las Colinas San Marcos Phase I LLC*, Docket No. 46148 **was entered in violation of 7 U.S.C. § 1926(b)** and is void.

(2) **7 U.S.C. § 1926 preempts and voids** the following section of Tex. Water Code § 13.254(a-6): “The utility commission may not deny a

petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program.”

(3) To the extent that Tex. Water Code § 13.254(a-5) directs PUC Officials to grant a petition for decertification that meets the requirements of that provision without regard to whether the utility holding the certification is federally indebted and otherwise entitled to the protections of 7 U.S.C. § 1926(b), **the statute is preempted and is void.**

**IT IS FURTHER ORDERED** that the PUC, its officers, employees, and agents **are permanently enjoined** from enforcing in any manner the order of September 28, 2016, in the matter titled Tex. Pub. Util. Comm'n, Petition of Las Colinas San Marcos Phase I LLC, Docket No. 46148 (Final Order).

*Crystal Clear Special Util. Dist. v. Walker*, No. 1:17-CV-254-LY, 2019 WL 2453777, at \*2 (W.D. Tex. Mar. 27, 2019) (Emphasis added).

12. Prior to the District Court entering judgment against the Commissioners and declaring that Tex. Water Code §§ 13.254(a-5) and (a-6) are void (relative to entities that enjoy the protection of § 1926(b)) the Commissioners suggested that they had no choice but to follow state law despite that law being contrary to federal law. U.S. Magistrate Judge Andrew W. Austin (Western District) stated in his report and recommendation to the District Court:

Thus, regardless of whether § 13.254(a-5) explicitly directs the PUC to consider the provisions of 7 U.S.C. § 1926(b), the PUC has no choice in the matter, as the Constitution compels it to consider that applicable federal law. The fact that the PUC suggests otherwise is troubling. Generally, a court should be as circumscribed as possible when it determines the scope of a ruling invalidating a statute, and this is particularly true when there are both separation of powers and federalism issues implicated, as there are here. **But the PUC Officials'**

**suggestion that they have no choice but to follow state law even in the face of a directly contrary federal law—despite the fact that the agency has a general counsel and a staff full of attorneys—supports Crystal Clear’s argument that the Court should go further than simply enjoining enforcement of § 13.254(a-6).<sup>4</sup> Accordingly, the Court has added in its recommended relief, a declaration regarding § 13.254(a-5) as well.**

*Crystal Clear Spec. Util. Dist. v. Walker*, No. A-17-CV-00254-LY, 2018 WL 6242370, at \*4 (W.D. Tex. Nov. 29, 2018), *report and recommendation adopted as modified sub nom. Crystal Clear Spec. Util. Dist. v. Walker*, No. 1:17-CV-254-LY, 2019 WL 2453777 (W.D. Tex. Mar. 27, 2019).

The Commissioners persistently disregard the judgment of the District Court and continue ignoring the protections afforded by § 1926(b) to qualifying associations including Rockett. The Commissioners persistently consider actions such as the Decertification Petitions that are preempted by § 1926(b) and therefore void.

13. On August 16, 2019, Defendant Alamo filed its petition with the PUC (case number 49863) seeking a decertification of property situated within Rockett’s Certificate of Convenience and Necessity (“CCN”) purportedly owned by Defendant Alamo, pursuant to Tex. Water Code § 13.254(a-5). Alamo’s petition to decertify or remove a part of Rockett’s CCN is a form of interference prohibited by Rockett’s federal rights under § 1926(b) and is a violation of § 1926(b) because Alamo is

seeking to reduce the customer pool for Rockett within Rockett's protected service area.

Indeed, the type of encroachment contemplated by § 1926(b) is not limited to the traditional guise of an annexation followed by the city's initiation of water service. **It also encompasses other forms of direct action that effectively reduce a water district's customer pool within its protected area.** See *id.* at 716 (“[T]he question becomes whether McAlester's sales to customers ... purport to take away from Pitt 7's § 1926 protected sales territory.”).

*Rural Water Dist. No. 4, Douglas Cty., Kan. v. City of Eudora, Kan.*, 659 F.3d 969, 985 (10th Cir. 2011) (Emphasis added).

All land Alamo seeks to decertify is situated within Rockett's CCN No.10099.

14. On August 19, 2019, Defendant CROIDC filed its Petition with the PUC (case number 49871) seeking a decertification of property situated within Rockett's CCN and purportedly owned by Defendant CROIDC (and for which CROIDC later conceded it does not own), pursuant to Tex. Water Code § 13.254(a-5). CROIDC's petition to decertify or remove a part of Rockett's CCN is a form of interference prohibited by Rockett's federal rights under § 1926(b) and is a violation of § 1926(b) because CROIDC is seeking to reduce the customer pool for Rockett within Rockett's protected service area. All land CROIDC seeks to decertify is situated within Rockett's CCN No. 10099.

15. During the pendency of CROIDC's petition referenced in paragraph 14 above, Defendant ROIDC sought to substitute itself as the petitioning landowner, in

place of CROIDC, and filed pleadings directly requesting that the PUC decertify or remove a part of Rockett's CCN. ROIDC's actions to decertify or remove part of Rockett's CCN is a form of interference prohibited by Rockett's federal rights under § 1926(b) and is a violation of § 1926(b) because ROIDC is seeking to reduce the customer pool for Rockett within Rockett's protected service area. All land ROIDC seeks to decertify is situated within Rockett's CCN No. 10099.

16. On July 13, 2020, Defendant FCS filed its Petition with the PUC (case number 51044) seeking a decertification of Rockett's CCN regarding property purportedly owned by Defendant FCS, pursuant to Tex. Water Code § 13.2541 and 16 Tex. Admin. Code § 24.245(h). FCS's petition to decertify or remove a part of Rockett's CCN is a form of interference prohibited by Rockett's federal rights under § 1926(b) and is a violation of § 1926(b) because FCS is seeking to reduce the customer pool for Rockett within Rockett's protected service area. All land FCS seeks to decertify is situated within Rockett's CCN 10099.

17. On November 20, 2020, Defendant Compass filed its petition with the PUC (case number 51545) seeking a decertification of property situated in Rockett's CCN and purportedly owned by Defendant Compass, pursuant to Tex. Water Code § 13.2541. Compass's petition to decertify or remove a part of Rockett's CCN is a form of interference prohibited by Rockett's federal rights under § 1926(b) and is a violation of § 1926(b) because Compass is seeking to reduce the customer pool for

Rockett within Rockett's protected service area. All land Compass seeks to decertify is situated within Rockett's CCN No. 10099.

18. Defendants Alamo, CROIDC, ROIDC, FCS and Compass, knew or should have known that the Texas statutes that their respective Decertification Petitions depend upon are unconstitutional and void because those statutes are preempted by § 1926(b).

19. Defendant Commissioners knew or should know that petitions for decertification filed with the PUC pursuant to Tex. Water Code § 13.254(a-5) or § 13.2451, against an entity such as Rockett, that is entitled to the protections of § 1926(b), are premised on statutes that are void and unenforceable.

20. The PUC Commissioners have failed to dismiss the petitions for decertification referenced in paragraphs 13–17 above and are actively considering those Decertification Petitions in violation of § 1926(b).

21. Rockett is indebted on a loan guaranteed by the United States Department of Agriculture ("USDA") ("Guaranteed Loan"). Specifically, the USDA issued both a Conditional Commitment (a method used by the USDA to insure a loan) and a Loan Note Guarantee, insuring and guaranteeing a loan made by lender CoBank ACB to Rockett. An insured or guaranteed loan qualifies the borrower (Rockett) for § 1926(b) protection.

Under Section 1926(a), "such loans" include loans the government makes or insures, *see id.* § 1926(a)(1), and loans the

government guarantees, *see id.* § 1926(a)(24). Therefore, under § 1926(b), **the federal guarantee of Douglas–4's private loan may be considered one “such loan” for purposes of meeting the requirements of § 1926(b).”**

*Rural Water Dist. No. 4, Douglas Cty., Kan. v. City of Eudora, Kan.*, 659 F.3d 969, 976 (10th Cir. 2011).

22. The Decertification Petitions each admit that the property for which decertification is sought is within the CCN granted to Rockett by the State of Texas.

23. Rockett is entitled to § 1926(b) protection because (1) Rockett is indebted on a loan both insured and guaranteed by the USDA, and (2) Rockett has “made service available” because of its nearby facilities and infrastructure maintained by Rockett and Rockett’s physical ability to provide water service immediately or within a reasonable period of time. Specifically, Rockett has (1) adequate facilities to provide water service to the areas specified in the Decertification Petitions within a reasonable time after a request for service is made and (2) the legal right to provide service. *Green Valley Spec. Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460, 477 (5th Cir. 2020).

24. Rockett’s “territory” (i.e., area under Rockett’s CCN) for which it has the *legal right* to provide water service under Texas law, includes land identified in the Decertification Petitions. This legal right cannot be diminished or altered once Rockett becomes indebted on a loan insured or guaranteed by the USDA.



In addition to these principles defining the protection § 1926(b) affords rural water districts from competition, **state law cannot change the service area to which the protection applies, after that federal protection has attached.** See *Pittsburg County*, 358 F.3d at 715. For instance, “where the federal § 1926 protections have attached, § 1926 preempts local or state law that can be used to justify a municipality's encroachment upon disputed area in which an indebted association is legally providing service under state law.” *Pittsburg County*, 358 F.3d at 715 (quotation, alteration omitted).

*Rural Water Sewer & Solid Waste Mgmt. v. City of Guthrie*, 344 F. App'x 462, 465 (10th Cir. 2009), *certified question answered sub nom. Rural Water Sewer & Solid Waste Mgmt., Dist. No. 1, Logan Cty., Oklahoma v. City of Guthrie*, 2010 OK 51, 253 P.3d 38 (Emphasis added).

Defendants Alamo, CROIDC, ROIDC, FCS and Compass are attempting to diminish or alter the territory of Rockett through their Decertification Petitions, all of which violate § 1926(b).

25. Any doubts regarding whether Rockett is entitled to the protections of § 1926(b) must be resolved in Rockett's favor. Rockett's territory is sacrosanct.

In order to achieve both of these stated purposes, “[d]oubts about whether a water association is entitled to protection from competition under § 1926(b) should be resolved in favor of the F[M]HA-indebted party seeking protection for its territory.” *Sequoyah Cnty. Rural Water Dist. No. 7*, 191 F.3d at 1197 (citing *North Alamo Water Supply Corp.*, 90 F.3d at 913 and *Jennings Water, Inc.*, 895 F.2d at 315 (citing five federal courts which have held that § 1926 should be liberally interpreted to protect FmHA-indebted rural water associations from municipal encroachment)).

In addition to interpreting § 1926(b) broadly to “indicate a congressional mandate” that local governments not encroach upon the services provided by federally indebted water associations, regardless of the method of encroachment, **the Fifth Circuit has gone so far as to designate “the service area of a federally indebted water association” as “sacrosanct”, emphasizing the virtually unassailable right of an indebted association to protection from municipal encroachment.** *North Alamo Water Supply Corp.*, 90 F.3d at 915; *see also Bear Creek Water Ass'n, Inc.*, 816 F.2d at 1059 (affirming that one dollar of debt would be enough to afford the statute's protection because Congress “literally proscribed interference by competing facilities ... ‘during the term of said loan’”).

*El Oso Water Supply Corp. v. City of Karnes City, Tex.*, No. SA-10-CA-0819-OLG, 2011 WL 9155609, at \*6 (W.D. Tex. Aug. 30, 2011), *report and recommendation adopted*, No. CIV. SA-10-CA-819-OG, 2012 WL 4483877 (W.D. Tex. Mar. 19, 2012), *judgment entered*, No. SA10CA0819-0G, 2012 WL 4747680 (W.D. Tex. Apr. 11, 2012) (Emphasis added) (Note: *N. Alamo Water Supply Corp. v. City of San Juan, Tex.*, 90 F.3d 910, 914 (5th Cir. 1996), was overruled on other grounds by *Green Valley Spec. Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460 (5th Cir. 2020)).

26. The Commissioners are precluded from re-litigating the issues decided in *Crystal Clear*.

**Collateral estoppel, or issue preclusion, may be applied to bar relitigation of an issue previously decided by a court of competent jurisdiction** where: (1) the issue under consideration is identical to that litigated in the prior action; (2) the issue was fully and vigorously litigated in the prior action; (3) the issue was necessary to support the judgment in the prior case; and (4) there is no special circumstance that would make it unfair to apply the doctrine. *Winters v. Diamond*

*Shamrock Chem. Co.*, 149 F.3d 387, 391 (5th Cir. 1998) (quoting *Copeland, et al. v. Merrill Lynch & Co., et al.*, 47 F.3d 1415, 1422 (5th Cir. 1995)). “**Complete identity of parties in the two suits is not required.**” *Robin Singh Educ. Servs. Inc. v. Excel Test Prep Inc.*, 274 F. App'x 399, 404 (5th Cir. 2008) (quoting *Terrell v. DeConna*, 877 F.2d 1267, 1270 (5th Cir. 1989)). In *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979), the seminal Supreme Court case setting out the parameters of the *offensive* use of collateral estoppel—the type at issue here—the Court observed that “[t]he general rule should be that in cases ... [where] the application of offensive estoppel would be unfair to a defendant, a trial judge should not allow the use of offensive collateral estoppel.” *Id.* at 330–31. **The Court emphasized, however, that the trial court has broad discretion to determine whether collateral estoppel is appropriately employed offensively to preclude issue relitigation.** *Id.* at 331; *see also Winters*, 149 F.3d at 392 (highlighting the Supreme Court's grant of broad discretion to trial court's determination of whether offensive collateral estoppel is appropriate).

*Taylor v. Vaughn*, No. A-15-CV-648-LY-ML, 2016 WL 11588707, at \*5 (W.D. Tex. July 25, 2016) (Emphasis added).

### Count 1

#### Violation of § 1983 – Commissioners and Urban

27. Rockett incorporates by reference all allegations above.

28. In order to state a cause of action under 42 U.S.C. § 1983, Rockett must allege only that some person has threatened to deprive or has deprived it of a federal right and that such person acted under color of state or territorial law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980).

29. Rockett has a federal right under § 1926(b) to be protected from any curtailment or limitation of its right to sell water within Rockett's territory.

30. Actions of the Commissioners and Urban constitute an attempt to deprive Rockett of its § 1926(b) federal rights.

31. The actions of the Commissioners and Urban are conducted under color of state law by virtue of their statutory power to decertify land situated within the boundaries of Rockett's CCN after Rockett became indebted on a loan which qualified Rockett for § 1926(b) protection, and for which Rockett has made water service available, as the term "made water service available" has been interpreted by the Fifth Circuit and other Federal Circuit Courts of Appeal.

32. Rockett suffered or is in immediate jeopardy of suffering loss and damage as a result of the wrongful acts of the Commissioners and Urban in connection with the Decertification Petitions.

## **Count 2**

### **Declaratory Judgment – § 1926(b) – All Defendants**

33. Rockett incorporates by reference all allegations above.

34. This claim is brought pursuant to and in accordance with 28 U.S.C. §§ 2201 and 2202 seeking a declaration of the rights and other legal relations of the Parties under § 1926(b).

35. There exists an actual case or controversy between Rockett and all of the Defendants concerning the Commissioners or Urban's authority to decertify a portion of Rockett's CCN, namely to remove the land described in the

Decertification Petitions from Rockett's territory (its CCN) to allow Alamo, CROIDC, ROIDC, FCS and Compass to obtain water service from another competitive entity and/or whether such decertifications, if not directly prohibited, will negatively affect Rockett's rights under §1926(b) to be the exclusive water service provider to the land specified in the Decertification Petitions.

36. Section 1926(b) prohibits decertification of any portion of Rockett's CCN if the decertification would function to limit or curtail the water service provided or made available by Rockett or allow competition with Rockett within Rockett's CCN, or function to impair the collateral pledged to secure the federally guaranteed loan referenced above or deprive the lender (CoBank) and guarantor (USDA) of their rights in the collateral. Decertification of Rockett's territory/CCN is prohibited under the Fifth Circuit's "bright-line" rule. *City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057, 1059 (5th Cir. 1987). The threatened decertification violates Rockett's § 1926(b) rights and any order issued by the PUC or Commissioners, if issued, shall be a nullity and of no force or effect.

37. Texas Water Code Section 13.254(a-6) (re-designated as Section 13.2541(d)) originally stated in pertinent part: "The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program." Tex. Water Code § 13.254. Section 13.2541(d) now states: "The utility commission may not deny the petition based on

the fact that the certificate holder is a borrower under a federal loan program.” *Id.* This statutory language is void because it violates the Supremacy Clause. The Commissioners were parties to *Crystal Clear*, and are bound by the judgment entered in that case. *Crystal Clear*, 2019 WL 2453777. The Commissioners and Urban are prohibited from disregarding the judgment entered in *Crystal Clear* relative to the Decertification Petitions.

38. Regardless of whether the Texas Water Code explicitly directs the PUC to disregard the provisions of § 1926(b), the PUC has no choice in the matter, as the Constitution compels it to consider and comply with applicable federal law. *See Crystal Clear Spec. Util. Dist. v. Walker*, No. A-17-CV-00254-LY, 2018 WL 6242370, at \*4 (W.D. Tex. Nov. 29, 2018), report and recommendation adopted as modified sub nom. *Crystal Clear Special Util. Dist. v. Walker*, No. 1:17-CV-254-LY, 2019 WL 2453777 (W.D. Tex. Mar. 27, 2019).

39. The Texas statutes upon which the Decertification Petitions depend are unconstitutional for the reason that they interfere with Rockett’s rights under § 1926(b). Any action by the Commissioners or Urban to decertify or remove portions of Rockett’s CCN would frustrate an important federal statutory scheme intended to promote rural development as codified in 7 U.S.C. § 1926.

40. The Texas statutes upon which the Decertification Petitions are premised must be declared preempted, void, and unconstitutional because the

statutes are in direct conflict with the purposes and objectives of § 1926(b). As a result, the Commissioners and Urban have no authority to act upon the Decertification Petitions relative to Rockett's territory or CCN, and Alamo, CROIDC, ROIDC, FCS and Compass, have no lawful right to pursue their Decertification Petitions.

### **Count 3**

#### **Injunctive Relief – All Defendants**

41. Rockett incorporates by reference all allegations above.

42. Rockett does not have a proper and adequate remedy at law and injunctive relief is a proper remedy for violation of § 1983 as well as for violations of § 1926(b).

**Jury Demand – Rockett demands a jury trial as to all issues triable by jury.**

#### **Prayer**

Rockett prays the Court grant the following relief:

1. The Court enter a declaration that Texas Water Code sections on which the Decertification Petitions are based are preempted to the same extent and in the same manner as that specified in *Crystal Clear*.

2. The Court enter a permanent injunction against all of the Defendants from the further presentation, prosecution, consideration, or granting relief of the pending Decertification Petitions.

3. The Court award attorney fees and costs of this action in the form of a judgment in favor of Rockett and against Defendants Alamo, CROIDC, ROIDC, FCS and Compass.

4. The Court grant such other and additional relief as Rockett demonstrates it is entitled.

Respectfully submitted,

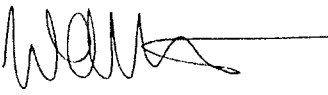
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