

## VI.

Water well equipment and distribution lines thereof together with all appurtenances thereto presently owned or which may hereafter be acquired by Borrower, including but not limited to pump house and mechanical equipment, pumps, motors, electrical material, pipes, valves, meters, couplings, drills, casings, reservoirs and tanks located on the above-described property, and all collateral similar to the above hereafter acquired by Borrower, and all substitutes and replacements for, accessions, attachments and other additions to, and tools, parts and equipment used in connection with the above collateral.

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.

As a result of the reorganization of the United States Department of Agriculture under the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the "Act"), Pub. Law No. 103-354, 108 Stat. 3178 (October 13, 1994), the Farmers Home Administration and the Rural Development Administration were abolished. Pursuant to Sec. 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the "Act"), Pub. Law No. 103-354, 108 Stat. 3178 (October 13, 1994) (7 U.S.C. § 6942) the Secretary of Agriculture created a new agency, the Rural Utilities Service, to assume the water and waste facility programs and activities formerly administered by the Farmers Home Administration and the Rural Development Administration. Therefore, all references to the Farmers Home Administration or to the Rural Development Administration in the attached instrument shall be deemed to refer to the Rural Utilities Service, United States Department of Agriculture, or to its successor agency.

Signed for identification:

DOBBIN-PLANTERSVILLE WATER  
SUPPLY CORPORATION

May 11, 2000

(date)

By



Johnny Mock, President

Exhibit B to Utility Security Instrument-Real Estate Deed of  
Trust for Texas dated May 11, 2000 from Dobbin-  
Plantersville Water Supply Corporation to Steven A. Carriker,  
Trustee

## Attachment A

## I.

TRACT 1:

All that tract or parcel of land situated in Grimes County, Texas out of the Elizabeth J. Graham Survey A-225 and being a portion of a called 236.86 acre tract designated as T85M4-a and described in a deed from Champion International Corporation to Champion Realty Corporation dated November 8, 1985 and recorded under Montgomery County Film Code No. 373-01-1462, said 2.004 acre tract being more particularly described as follows:

BEGINNING at a found  $\frac{1}{2}$ " iron pin and fence corner lying in the division line between the Elizabeth J. Graham Survey A-225 and the Valentine Snider Survey A-429 and marking the northwest corner of the original 236.86 acre tract (T85M4-a), interior corner of a 30 acre tract now or formerly owned by J. Walker and northwest corner of this tract;  
 THENCE departing said survey division line with the fenced north line of this tract N  $89^{\circ} 26' 06''$  E, 355.42 ft. to a set  $\frac{1}{2}$ " iron pin and fence corner lying in southwest right-of-way line of F.M. Highway 1486 marking the east corner of the Walker tract and northeast corner of this tract;  
 THENCE with the southwest line of F.M. Highway 1486 in a curve to the right having a radius of 1,382.39 ft., a central angle of  $10^{\circ} 32' 08''$  for a distance of 254.19 ft. (chord S  $38^{\circ} 35' 16''$  E, 253.83 ft.) to a set  $\frac{1}{2}$ " iron pin 3.6 ft. east of an existing fence line for southeast corner;  
 THENCE departing said highway right-of-way line with the south line of this tract, S  $89^{\circ} 26' 06''$  W, 507.83 ft. to a set  $\frac{1}{2}$ " iron pin lying 2.3 ft. west of an existing fence line in the division line between the Graham and Snider Surveys and the east line of the Walker tract for southwest corner of this tract;  
 THENCE continuing with said survey division line, the east line of the Walker tract and west line of this tract, N  $01^{\circ} 41' 44''$  W, 200.00 ft. to the place of beginning and containing 2.004 acres of land.

TRACT 2:

Being 0.229 acre of land in the Zachariah Landrum Survey, A-22, Montgomery County, Texas, and a part of a called 40.0 acre tract conveyed Allen Bates, recorded in Volume 124, Page 538, Deed Records of Montgomery County, Texas, said 0.229 acre tract being described as follows:

BEGINNING at a  $\frac{1}{2}$  inch iron rod in the east line of Spring Branch Road, N  $02^{\circ} 26'$  W, 681.3 feet from the Bates southwest corner;  
 THENCE East 100.0 feet to a  $\frac{1}{2}$  inch iron rod for corner;  
 THENCE North 100.0 feet to a  $\frac{1}{2}$  inch iron rod for corner;

THENCE West 100.0 feet to a ½ inch iron rod for corner in the east line of road;  
 THENCE South 100.0 feet to the place of beginning and containing 0.229 acre of land.

TRACT 3:

Being 0.23 acre in the Jacob Shannon Survey, in Montgomery County, Texas, and being a part of a 7.02 acre tract deeded from Katherine Smith Diehl et al. to Barbara Smith Swonke dated April 27, 1970, and recorded in Volume 708, Page 743, Deed Records, Montgomery County, Texas, and said 0.23 acre tract being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a point for corner in the north line of the said Barbara Smith Swonke 7.02 acre tract, as fenced, at a fence corner, and being in the west margin of a public road;  
 THENCE S 0° 03' E with a fence and with the west margin of said public road, a distance of 100.00 feet to a point for corner in said fence and said west margin of said public road;  
 THENCE N 89° 58' W a distance of 100.00 feet to a point for corner;  
 THENCE N 0° 03' W a distance of 100.00 feet to a point for corner in a fence, same being in the north line of the said Barbara Smith Swonke 7.02 acre tract, as fenced;  
 THENCE S 89° 58' E with a fence and with the north line of the said Barbara Smith Swonke 7.02 acre tract, as fenced, a distance of 100.00 feet to the place of beginning, containing 0.23 acre.

TRACT 4:

Being .157 acre of land in the John Landrum Survey, A-35, (also referred to as part in the Joel Greenwood Survey, A-20) Grimes County, Texas, and being parts of certain tracts conveyed Planters Lodge No. 147, by Beatrice Brown recorded in Volume 296, Page 59, and Volume 338, Page 181, Deed Records of Grimes County, Texas, more fully described as follows:

BEGINNING at an iron rod in the northeast line of F.M. 1774, being N 47° 00' W, 106.0 feet from the intersection of the west line of the old School tract with the northeast line of F.M. Road;  
 THENCE N 47° 00' W, along the northeast line of road, 100.0 feet to an iron rod for corner;  
 THENCE N 03° 28' W, 100.0 feet to an iron rod for corner;  
 THENCE S 47° 00' E, 100.0 feet to an iron rod for corner;  
 THENCE S 03° 28' E, 100.0 feet to the place of beginning and containing .157 acre of land.

TRACT 5:

Being all that certain tract or parcel of land lying and being situated in Grimes County, Texas, and being out of the Joel Greenwood Labor, A-227, also being out of and a part of a 46.5 acre tract described in deed from George W. Mason et ux. to Leon U. Mason dated March 21, 1941, and recorded in Volume 154, Page 492, Deed Records of Grimes County, Texas, said 46.5 acre tract being the north 46.5 acres out of a 86.5 acre tract and being more particularly described as follows:

BEGINNING at the intersection of the south line of said 46.5 acre tract with the east fence line of the High Point County Road;  
 THENCE North along the east side of said road, 292.1 feet to a 3/8 inch iron rod for the beginning point of this survey;  
 THENCE North along the east side of said road, 100 feet to a 3/8 inch iron rod for corner;  
 THENCE East 100 feet to a 3/8 inch iron rod for corner;  
 THENCE South 100 feet to a 3/8 inch iron rod for corner;  
 THENCE West 100 feet to the place of beginning and containing 0.2296 acre of land.

TRACT 6:

All that tract or parcel of land situated in Grimes County, Texas out of the Asa Yeamans Survey A-63 and being a portion of the tract of land called 12.313 acres and designated as Tract 1 in the Last Will and Testament of C. I. Lechinger as recorded in Volume 685, Page 361 of the Real Property Records of Grimes County, said 0.3673 acre tract being more particularly described as follows:

COMMENCING at a found 1/2" iron pin and fence corner lying in the east line of County Road 204 at the northwest corner of the original tract called 12.313 acres;  
 THENCE with the east line of County Road 204, S 00° 17' 37" W, 170.00 ft. to a set 1/2" iron pin for northwest corner and place of beginning of the tract herein described;  
 THENCE with the north line of this tract, S 89° 42' 23" E, 160.00 ft. to a set 1/2" iron pin for northeast corner;  
 THENCE with the east line of this tract, S 00° 17' 37" W, 100.00 ft. to a set 1/2" iron pin for southeast corner;  
 THENCE with the south line of this tract, N 89° 42' 23" W, 160.00 ft. to a set 1/2" iron pin in the east line of County Road 204 for southwest corner;  
 THENCE with the east line of County Road 204 and the west line of this tract, N 00° 17' 37" E, 100.00 ft. to the place of beginning and containing 0.3673 acres of land.

TRACT 7:

All that certain tract or parcel of land situated in Montgomery County, Texas out of the Jacob Shannon Survey A-35 and being a portion of the tract of land called 109.57 acres in a deed dated January 8, 1968 from Robert Herzog and wife, Louise Herzog, to James Herzog and wife, Mary Frances Herzog, as recorded in Volume 656, Page 407 of the Deed Records of Montgomery County, said 1.705 acre tract being more particularly described as follows:

BEGINNING at a set ½" iron pin lying in the south line of Mount Mariah Cut-off Road marking the northwest corner of the tract herein described, a said ½" iron pin and fence corner marking the intersection of the east right-of-way line of Mount Mariah Cut-off Road and the north line of the original tract called 109.57 acres lies N 89° 56' 00" W, 1,263.37 ft. from this point; THENCE with the south line of Mount Mariah Cut-off Road, also the north line of the original tract called 109.57 acres and the tract herein described, N 89° 56' 00" E, 309.46 ft. to a set ½" iron pin in the west line of the Gulf States Utilities Company right-of-way tract called 7.75 acres (M.C.C.F. No. 8112583 R.P.R.M.C.) for northeast corner of the tract herein described; THENCE with the west line of the Gulf States Utilities Company right-of-way called 7.75 acres and the east line of this tract, S 14° 10' 07" E, 247.46 ft. to a set ½" iron pin for southeast corner; THENCE with the south line of this tract, S 89° 56' 00" W, 309.46 ft. to a set ½" iron pin for southwest corner; THENCE with the west line of this tract, N 14° 10' 07" W, 247.46 ft. to the place of beginning and containing 1.705 acres of land.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Deed of Trust dated March 8, 1977 from Dobbin-Plantersville WSC to J. Lynn Futch, Trustee, securing one promissory note in the original principal amount of \$245,000.00, payable to the United States of America, filed for record on March 21, 1977 under File No. 77-036422 in the Office of the Secretary of State of Texas which deed of trust was assigned to GECC on November 3, 1987.
2. Deed of Trust from Dobbin-Plantersville WSC to J. Lynn Futch, Trustee, securing promissory notes payable to the United States of America, filed for record on December 28, 1983 under File No. 83-293206 in the Office of the Secretary of State of Texas which deed of trust was assigned to GECC on November 3, 1987.
3. Deed of Trust dated \_\_\_\_\_ from Dobbin-Plantersville WSC to Steven A. Carriker, Trustee, securing one promissory note in the original principal amount of \$378,000.00, payable to the United States of America, filed for record on \_\_\_\_\_

Exhibit A to Utility Security Instrument-Real Estate Deed of Trust for Texas dated \_\_\_\_\_ from Dobbin-Plantersville Water Supply Corporation to Steven A. Carriker, Trustee,

under File No. \_\_\_\_\_ in the Office of the Secretary of State of Texas.

4. Reservation and/or conveyance of all oil, gas and other minerals as described in deed dated March 27, 1998 from Champion Realty Corporation to Dobbin-Plantersville WSC recorded in Volume 885, Page 685, Deed Records, Grimes County, Texas. (TRACT 1)

5. Restrictive covenants as described in deed dated March 27, 1998 from Champion Realty Corporation to Dobbin-Plantersville WSC recorded in Volume 885, Page 685, Deed Records, Grimes County, Texas. (TRACT 1)

6. Reservation and/or conveyance of all oil, gas and other minerals described in deed dated February 17, 1983 from Ida Lee Bates to Dobbin-Plantersville WSC as recorded on February 21, 1983, in Clerk's File Number 8308890 and later transferred to Film Code Number 186-01-1744 of the Real Property Records of Montgomery County, Texas. (TRACT 2)

7. Easement dated May 26, 1983 from Dobbin-Plantersville WSC to Gulf States Utilities Company filed of record on June 20, 1983 under Clerk's File Number 8329692 and later transferred to Film Code Number 210-01-1264 of the Real Property Records, Montgomery County, Texas. (TRACT 2)

8. Reservation and/or conveyance of all oil, gas and other minerals described in deed dated March 27, 1976 from Barbara S. Swonke to Dobbin-Plantersville WSC recorded in Volume 708, Page 473, Deed Records, Montgomery County, Texas. (TRACT 3)

9. Reservation and/or conveyance of all oil, gas and other minerals described in deed dated February 22, 1983 from Leon U. Mason to Dobbin-Plantersville WSC recorded in Volume 471, Page 61, Deed Records, Grimes County, Texas. (TRACT 5)

10. Utility easement dated September 29, 1998 from Jackie Lechinger to Mid-South Utility Cooperative, Inc. recorded in Volume 905, Page 442, Real Property Records, Grimes County, Texas. (TRACT 6)

11. Pipeline easement dated January 5, 1923 from W. S. Turney et ux. to Sinclair Pipe Line Company recorded in Volume 108, Page 16, Deed Records, Montgomery County, Texas. (TRACT 7)

12. Pipeline easement from James Herzog et al. to Humble Oil & Refining Company recorded in Volume 618, Page 145, Deed Records, Montgomery County, Texas, the location of said easement having been defined and established by instrument dated October 10, 1967 executed by Humble Oil and Refining Company recorded in Volume 641, Page 252, Deed Records, Montgomery County, Texas. (TRACT 7)

Exhibit A to Utility Security Instrument-Real Estate Deed of Trust for Texas dated \_\_\_\_\_ from Dobbin-Plantersville Water Supply Corporation to Steven A. Carriker, Trustee,

13. Easement dated June 14, 1975 from James Herzog et ux. to Mid-South Electric Co-operative, Inc. recorded in Real Property Records, Montgomery County, Texas, under Clerk's File Number 9888853. (TRACT 7)

Together with any and all other real property now owned, held, leased, or claimed or which may hereafter be owned, held, leased or claimed by Borrower in said counties.

## II.

All right, title and interest of Borrower in, to and under any and all rights, grants, privileges, rights of way and easements now owned, held, leased, enjoyed or exercised, or which may hereafter be owned, held, leased, acquired, enjoyed or exercised by Borrower for the purposes of, and in connection with, the construction or operation by or on behalf of Borrower of water distribution lines, or systems, and facilities, whether underground or overhead or otherwise, or of any water pumping and filter plants and facilities, wherever located in said counties.

## III.

All right, title and interest of Borrower in, to and under any and all licenses, franchises, ordinances, privileges and permits heretofore granted, issued or executed, or which may hereafter be granted, issued or executed, to it or to its assignors by the United States of America, or any state or by any county, city, municipality, or other political subdivision thereof, or by any agency, board, commission or department of any of the foregoing, or by any individual, partnership or corporation, authorizing the construction, acquisition, or operation of water pumping or filter plants or distribution lines, or systems, in the said counties.

## IV.

All right, title and interest of Borrower in, to and under any and all contracts heretofore or hereafter executed by and between Borrower and any individual, partnership, corporation, state, county, city, municipality, or other political subdivision thereof, providing for the purchase of water by Borrower. Borrower does hereby agree not to modify or terminate any contract providing for the purchase of water without first obtaining the consent of FmHA to such modification or termination.

Exhibit A to Utility Security Instrument-Real Estate Deed of Trust for Texas dated \_\_\_\_\_ from Dobbin-Plantersville Water Supply Corporation to Steven A. Carriker, Trustee,



## V.

All water charges and other income from the sale of water, tolls, assessments, accounts receivable and other choses in action of whatever nature.

## VI.

Water well equipment and distribution lines thereof together with all appurtenances thereto presently owned or which may hereafter be acquired by Borrower, including but not limited to pump house and mechanical equipment, pumps, motors, electrical material, pipes, valves, meters, couplings, drills, casings, reservoirs and tanks located on the above-described property, and all collateral similar to the above hereafter acquired by Borrower, and all substitutes and replacements for, accessions, attachments and other additions to, and tools, parts and equipment used in connection with the above collateral.

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.

## Attachment B

All water charges and other income from the sale of water, tolls, assessments, accounts receivable and other choses in action of whatever nature.

Water well equipment and distribution lines thereof together with all appurtenances thereto presently owned or which may hereafter be acquired by Borrower, including but not limited to pump house and mechanical equipment, pumps, motors, electrical material, pipes, valves, meters, couplings, drills, casings, reservoirs and tanks located on the above-described property, and all collateral similar to the above hereafter acquired by Borrower, and all substitutes and replacements for, accessions, attachments and other additions to, and tools, parts and equipment used in connection with the above collateral.

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.



UNITED STATES  
DEPARTMENT OF  
AGRICULTURE

RURAL  
DEVELOPMENT

101 SOUTH MAIN STREET 110  
SUITE 102, FEDERAL BUILDING  
TEMPLE, TEXAS 76501

Voice: (254) 742-9789  
Fax: (254) 742-9709  
TDD: (254) 742-9712

DEC 22 1997

COPY

Mr. Frank A. Gabriel, President  
Dobbin-Plantersville Water Supply Corporation  
P. O. Box 127  
Plantersville, Texas 77363

Dear Mr. Gabriel:

Enclosed is your copy of Form FmHA 1940-1, "Request for Obligation of Funds." Your loan in the amount of \$930,000.00 and grant in the amount of \$1,500,000.00 was approved on December 19, 1997.

Sincerely,

  
STEVEN A. CARRIKER  
Acting State Director

Enclosure

LOAN #1

ATTACHMENT 2

Rural Development is an Equal Opportunity Lender  
Complaints of discrimination should be sent to:  
Secretary of Agriculture, Washington, DC 20250

EXHIBIT 7

# REQUEST FOR OBLIGATION OF FUNDS

111

INSTRUCTIONS-TYPE IN CAPITALIZED ELITE TYPE IN SPACES MARKED (IIII) Complete Items 1 through 30 and applicable Items 31 through 43. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 4 9   0 9 3   0 7 4 1 9 4 1 8 1 9		LOAN NUMBER 0 3	FISCAL YEAR 9 8
2. BORROWER NAME D O B B I N - P L A N T E R S V I L L E 2   (1, 2, or 3 from Item 2)		3. NUMBER NAME FIELDS	
W A T E R S U P P L Y C O R P		4. STATE NAME T E X A S	
		5. COUNTY NAME G R I M E S	
GENERAL BORROWER/LOAN INFORMATION			
6. RACE/ETHNIC CLASSIFICATION 1 - WHITE 4 - HISPANIC 2 - BLACK 5 - A/P 3 - AI/AN	7. TYPE OF APPLICANT 1 - INDIVIDUAL 2 - PARTNERSHIP 3 - CORPORATION 4 - PUBLIC BODY 5 - ASSOC. OF FARMERS 6 - ORG. OF FARMERS WORKERS 7 - OTHER	8. COLLATERAL CODE 1 - REAL ESTATE SECURED 2 - REAL ESTATE AND CHATTEL 3 - NOTE ONLY OR CHATTEL ONLY 4 - MACHINERY ONLY 5 - LIVESTOCK ONLY 6 - CROPS ONLY 7 - SECURED BY BONDS	9. EMPLOYEE RELATIONSHIP CODE 1 - EMPLOYEE 2 - MEMBER OF FAMILY 3 - CLOSE RELATIVE 4 - ASSOC.
10. SEX CODE 1 - MALE 2 - FEMALE 3 - FAMILY UNIT 4 - ORGAN. MALE OWNED 5 - ORGAN. FEMALE OWNED 6 - PUBLIC BODY	11. MARITAL STATUS 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOWED/DIVORCED)	12. VETERAN CODE 1 - YES 2 - NO	13. CREDIT REPORT 1 - YES 2 - NO
14. DIRECT PAYMENT 3   (See FMI)	15. TYPE OF PAYMENT 1 - MONTHLY 2 - ANNUALLY 3 - SEMI-ANNUALLY 4 - QUARTERLY	16. FEE INSPECTION 1 - YES 2 - NO	17. INTEREST CREDIT 1 - YES (FOR SFH ONLY) 2 - NO
18. COMMUNITY SIZE 1 - 10,000 OR LESS 2 - OVER 10,000 (FOR SFH AND HPG ONLY)		19. DWELLING TYPE/USE OF FUNDS CODE 0 5   (See FMI)	
COMPLETE FOR OBLIGATION OF FUNDS			
20. TYPE OF ASSISTANCE 0 6 7   (See FMI)	21. PURPOSE CODE	22. SOURCE OF FUNDS 2	23. TYPE OF ACTION 1 - OBLIGATION ONLY 2 - OBLIGATION/CHECK REQUEST 3 - CORRECTION OF OBLIGATION
24. TYPE OF SUBMISSION 2   1 - INITIAL 2 - SUBSEQUENT	25. AMOUNT OF LOAN 9 3 0   0 0 0 0 0 0		26. AMOUNT OF GRANT 1 5 0   0 0 0 0 0 0
27. AMOUNT OF IMMEDIATE ADVANCE 0 0 0	28. DATE OF APPROVAL MO DEC DA 11 YR 1997	29. INTEREST RATE 0 4 5 0 0 0 0	30. REPAYMENT TERMS 4 0
COMPLETE FOR SINGLE FAMILY HOUSING ONLY			
31. INCOME CATEGORY CODES 1 - VERY LOW 2 - LOW 3 - MODERATE 4 - ABOVE MODERATE		32. LOW INCOME LIMIT-MAX. 0 0	33. ADJUSTED FAMILY INCOME 0 0 0
34. R.E. INSURANCE 0 0	35. R.E. TAXES 1st year 0 0	36. R.E. TAXES 2nd year 0 0	37. NOTE INSTALLMENT INELIGIBLE 0 0
38. TYPE OF UNIT 1 - FARM TRACT 2 - NON-FARM TRACT			
COMPLETE FOR COMMUNITY PROGRAM AND CERTAIN MULTIPLE-FAMILY HOUSING LOANS			
39. PROFIT TYPE 1 - FULL PROFIT 2 - LIMITED PROFIT 3 - NONPROFIT			
COMPLETE FOR EM LOANS ONLY		COMPLETE FOR CREDIT SALE-ASSUMPTION	
40. DISASTER DESIGNATION NUMBER (See FMI)		41. TYPE OF SALE 1 - CREDIT SALE ONLY 2 - ASSUMPTION ONLY 3 - CREDIT SALE WITH SUBSEQUENT LOAN 4 - ASSUMPTION WITH SUBSEQUENT LOAN	
FINANCE OFFICE USE ONLY		COMPLETE FOR FP LOANS ONLY	
42. OBLIGATION DATE MO DA YR		43. BEGINNING FARMER/RANCHER (See FMI)	

If the decision contained above in this form results in denial, reduction or cancellation of USDA assistance, you may appeal this decision and have a hearing or you may request a review in lieu of a hearing. Please use the form we have included for this purpose.

**EXHIBIT 7**  
Position 2

Form RD 440-22  
(Rev. 6-98)

**PROMISSORY NOTE**  
(ASSOCIATION OR ORGANIZATION)

## KIND OF LOAN:

- ☒ ASSOCIATION- ORGANIZATION  
☐ HOUSING-ORGANIZATION  
☐ PUBLIC BODY  
☐ OTHER

**COPY FOR YOUR RECORDS**

State <u>TEXAS</u>			
County <u>GRIMES</u>			
Case No. <u>49-93-741941819</u>			
<b>FINANCE OFFICE USE ONLY</b>			
F	LN	LC	IA

Date AUGUST 3, 2000

FOR VALUE RECEIVED, DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION  
 (herein called "Borrower") promises to pay to the order of the United States of America, acting through the Rural Housing Service, Rural Business-Cooperative Service, or Rural Utilities Service within the Rural Development Mission Area, the Farm Service Agency, or their successor Agencies, United States Department of Agriculture, (herein called the "Government") at its office in BRYAN, TEXAS

, or at such other place as the Government may hereafter designate in writing, the principal amount of NINE HUNDRED THIRTY THOUSAND - - - - - dollars  
 (\$ 930,000.00 ), plus interest on the unused principal balance at the rate of FOUR AND ONE-HALF percent  
 ( 4.50 %) per annum. The said principal and interest shall be paid in the following installments on or before the following dates:

\$ INTEREST ONLY on AUGUST 3, 2001  
 \$ 4,223.00 on SEPTEMBER 3, 2001,  
 \$ \_\_\_\_\_ on \_\_\_\_\_,  
 \$ \_\_\_\_\_ on \_\_\_\_\_, and  
 \$ 4,223.00 thereafter on the 3rd of each MONTH

until the principal and interest are fully paid except that the final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable FORTY ( 40 ) years from the date of this note, and except that prepayments may be made as provided below. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the reverse hereof.

Every payment made on any indebtedness evidenced by this note shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this note and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder. No assignment of this note shall be effective unless the Borrower is notified in writing of the name and address of the assignee. The Borrower shall thereupon duly note in its records the occurrence of such assignment, together with the name and address of the assignee.

While this note is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment of Borrower, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

LOAN RESOLUTION SECURITY AGREEMENT

A RESOLUTION OF THE BOARD OF DIRECTORS

OF THE DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION  
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS IN THE

PRINCIPAL AMOUNT OF \$ 930,000.00 FOR THE PURPOSE

OF PROVIDING A PORTION OF THE COST OF ACQUIRING AND CONSTRUCTING A

WATER SYSTEM IMPROVEMENTS, PROVIDING FOR THE COLLECTION, HANDLING AND  
DISPOSITION OF REVENUES THEREFROM, AND AUTHORIZING MAKINGS OF PROMISSORY  
NOTE(S), SECURITY INSTRUMENTS, AND PLEDGES OF REVENUES TO EVIDENCE AND  
SECURE THE PAYMENT OF SAID INDEBTEDNESS AND FOR RELATED PURPOSES.

WHEREAS, the DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION, (hereinafter  
referred to as the "Organization"), we organized under ARTICLE 1434a OF THE REVISED CIVIL STATUTES OF  
TEXAS, 1925 for the purpose of improving the  
central water system to serve the residents in and near the community of Plantersville and Stoneham in Grimes County and  
Dacus and Dobbin in Montgomery County (hereinafter referred to as  
the "Facility") to serve the Members of the said Organization; and

WHEREAS, a meeting of the Board of Directors of the said organization was held on the 10th day of December 1997  
o proper notice thereof to consider plans for the acquisition and construction methods of financing the Facility:

and, as shown by the minutes of said meeting of the Seven (7) members of record of the organization there were  
present and voting Seven (7), and by a recorded majority vote, the Facility and its financing authorized; and,

WHEREAS, the proposed Facility is to be constructed and equipment in accordance with plans, and specifications  
prepared by J.F. FONTAINE & ASSOCIATES, INC., P.O. BOX 4187, PALESTINE, TEXAS 75802

and in order to finance the Facility, the BOARD OF DIRECTORS  
(hereinafter referred to as the "Board") is authorized and empowered, in their discretion, for and in the name of the organization,  
to make application to the United States of America, acting through the United States Department of Agriculture,  
(hereinafter referred to as the "Government"), for financial assistance; to cause the execution and delivery of a  
promissory note or notes or other evidence of indebtedness (hereinafter referred to as the "note"), and appropriate security  
instruments to secure any loan or loans made or insured by the Government; to comply with any requirements, terms or  
conditions prescribed by the Government or by Government regulations; and to execute contracts or enter into agreements and,  
without limitation, to take any and all other action as may be necessary, incidental or appropriate to finance, acquire, construct,  
complete, and/or equip the Facility for and on behalf of the Organization.  
NOW THEREFORE, it is hereby resolved by the Board as follows:

Section 1. (Determination of Board). That it is necessary to defray a portion of the costs of financing the Facility by  
obtaining a loan made or insured by the Government in accordance with applicable provisions of the Consolidated Farm and  
Rural Development Act, it being determined that the Organization is unable to obtain sufficient credit elsewhere to finance the  
Facility, taking into consideration prevailing private and cooperative rates and terms currently available;

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions,  
searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments  
regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of  
Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction  
Project (OMB No. 0575-0015), Washington, D.C. 20503.

EXHIBIT 7

Section 2. (Terms of Loan). That the Organization borrow (An additional) \$930,000.00 and issue as evidence thereof an installment promissory note in the form prescribed by the Government for the full principal amount of the loan. The note shall be signed by the President, attested by the Secretary and have the corporate seal of the Organization affixed thereto, & shall bear interest from its date, which shall be the date of delivery, at a rate not to exceed 4.50% percent per annum; the principal and interest shall be paid over a period of 40 years in accordance with the payment schedule set forth in the promissory note, until the principal and interest are fully paid except the final payment of the entire indebtedness, if not sooner paid, shall be due and payable 40 years from the date of the note. Each payment shall be applied first to the payment of the accrued interest and second to the payment of the principal. Prepayments of any installment may be made in any amount at any time at the option of the Organization.

Section 3. (Assignment and Pledge of Revenue). The indebtedness hereby authorized to be incurred, together with the interest thereon, shall be payable from the gross income and revenue to be derived from the operation of the Facility, a sufficient portion of which, to pay the principal and interest as and when the same shall become due, is hereby assigned, and pledged and shall be set aside for that purpose and this assignment and pledge shall extend to and include any assessments that may be levied pursuant to Section 5 (d) hereof.

Section 4. (Protection and Disposition of Funds). The SECRETARY-TREASURER of the Organization shall be the custodian of all funds of the Organization. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

The SECRETARY-TREASURER is hereby directed to establish the following accounts into which the current funds of the Organization, note proceeds, the revenues from the Facility and any other income shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the indebtedness hereby authorized remains unpaid:

(a) Construction Account

The proceeds of the borrowing hereby authorized not disbursed contemporaneously with loan closing for incurred Facility costs, and at least the amount of \$ 0 to be contributed by the Organization from the collection of initial connection fees, membership fees or contributions shall be deposited in the Construction Account which shall be established as required by the Government. Withdrawals from the construction account shall be made only on checks signed by the

SECRETARY-TREASURER of the Organization as authorized by the Board from time to time, and with prior concurrence of FmHA. At the option of the Government, the construction account may be established as a "supervised bank account". Amounts in the supervised bank account exceeding \$100,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. Withdrawals from a supervised bank account shall be made only on checks signed by the SECRETARY-TREASURER of the Organization and countersigned by an authorized official of the Department of Agriculture. The Organization's share of any insurance or liquidated damages and other monies paid by defaulting contractors or their sureties will be deposited in the Construction Account to assure completion of the Facility. When all construction costs have been paid in full, any balance remaining in the Construction Account may be applied on the loan or used for other authorized purposes that have been approved by the Government and the Construction Account shall be closed.

(b) General Account

As soon as the facility becomes revenue producing, all funds received shall be set aside in an account to be designated as the General Account, and disbursements and transfers from this account shall be in the following priority: Debt Service, Operations and Maintenance, transfers to Reserve Account. Monies deposited in the General Account shall be used only in the manner and order as follows:

(1) Borrowers making monthly USDA Debt Service Payments shall use the General Account for making such payments plus operating and maintenance expenses. Also, funds will be transferred from this account to the Reserve Account in accordance with (d) below.

(2) Borrowers making other than monthly USDA Debt Service Payments shall use the General Account to pay operating and maintenance expenses. Other transfers from this account will be made in the following order: (i) Transfers to the Debt Service Account will be made in accordance with (c) below, (ii) Transfers to the Reserve Account will be made in accordance with (d) below.

(c) Debt Service Account

For borrowers on other than monthly debt service payments, transfers, in proportion to income availability, shall be made from the General Account and set aside in an account designated as the Debt Service Account, in sufficient amounts which will accumulate for the next installment on the note.

(d) Reserve Account

From the remaining funds in the General Account, after transfers and payments required in (b) (1) or (b) (2) and (c), there shall be set aside into an account(s) designated as the Reserve Account(s) the sum of \$ (An additional) 421.13 every month for the life of the loan unless prohibited by Federal or state law. If collection of the sum above is prohibited by Federal or state law an amendment to this Resolution will be adopted by the Organization setting forth the reserve amounts to be collected and attached to this Resolution. With the prior written approval of the Government, funds may be withdrawn and used for such things as loan installments, emergency maintenance, extensions to facilities and replacement of short-lived assets.

(c) Whenever there shall accumulate in the General Account amounts in excess of those required in subsections (b)(1) and (2), (c), and (d), such excess will be used by the organization to make prepayments on the loan or retained in the General Account.

(f) The accounts required in subsections (b)(1) and (2), (c), and (d) may be established and maintained as bookkeeping accounts or as separate bank accounts at the election of the Organization, unless otherwise directed by the Government.

Section 5. (Other Covenants and Agreements of the Organization). The Organization covenants and agrees that so long as the indebtedness hereby authorized remains unpaid:

(a) It will indemnify the Government for any payments made or losses suffered by the Government.

(b) It will comply with applicable State laws and regulations and continually operate and maintain the Facility in good condition.

(c) It will impose and collect such rates and charges that gross revenues will be sufficient at all times to provide for payment of the operation and maintenance thereof; and the installment payments on the note; and the maintenance of the various funds herein created. All service rendered by or use of the Facility shall be subject to the full rates prescribed in the rules and regulations of the Organization; no free service by or use of the Facility will be permitted.

(d) It will cause to be levied and collected such assessments as may be necessary to operate and maintain the Facility in good condition and meet installment payments on the note when the same become due if, for any reason, gross revenues are insufficient.

(e) It will establish and maintain such books and records relating to the operation of the system and its financial affairs and will provide for the annual audit thereof, in such manner as may be required by the Government; will provide the Government without its request a copy of each such audit; and will make and forward to the Government such additional information and reports as it may from time to time require.

(f) It will provide the Government, at all reasonable times, access to all books and records relating to the Facility and access to the property of the Facility so that the Government may ascertain that the Organization is complying with the provisions hereof and with the provisions of other instruments incident to the making or insuring of the loan.

(g) It will maintain at least such insurance and fidelity bond coverage as may be required by the Government.

(h) It will not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the Facility, exclusive of normal maintenance, without obtaining the prior written consent of the Government.

(i) It will not cause or permit any voluntary dissolution of its organization, or merge or consolidate with any other organization, without obtaining the prior written consent of the Government. It will not dispose of or transfer title to the facility or any part thereof, including lands and interest in lands, by sale, security instrument, lease or other encumbrance, without obtaining the prior written consent of the Government. Revenue, in excess of the amount required to maintain the accounts described in Section 4 herein will not be distributed or transferred to any other organization or legal entity.

(j) It will not modify or amend the Articles of Incorporation or the Bylaws of the Organization without the written consent of the government.

(k) It will provide adequate service to all persons within the service area who can feasibly and legally be served and will obtain USDA's concurrence prior to refusing new or adequate service to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the organization or public body.

(l) All present and future contract rights, accounts receivable, and general intangibles arising in connection with the facility are pledged as security for the loan.

(m) It will comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

## EXHIBIT 7



Section 6. (Security Instrument). In order to secure the payment of the principal and interest of the note, the President and Secretary of the Organization are hereby authorized and directed to execute and deliver good and sufficient lien instruments, where necessary, encumbering the properties and assets both real and personal constituting said Facility, as completed or as the same may be thereafter extended, including an assignment and pledge of revenues and such other instruments as may be prescribed by the Government.

Section 7. (Refinancing). If at any time it shall appear to the Government that the Organization is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources at reasonable rates and terms for loans for similar purposes and periods of time, the Organization will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take such actions as may be required in connection with such loan.

Section 8. ("Equal Employment Opportunity under Construction Contracts and Nondiscrimination"). The President and the Secretary be and they are hereby authorized and directed to execute for and on behalf of the Organization, Form RD 400-1, "Equal Opportunity Agreement", and Form RD 400-4, "Assurance Agreement".

Section 9. In the case of a grant in the sum not to exceed \$1,500,000.00, the Organization hereby accepts the grant under the terms as offered by the Government and that the President and Secretary-Treasurer of the Organization are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant and the Organization hereby resolves to operate the facility under the terms as offered in said grant agreement(s).

Section 10. Default under the provision of this agreement or any instrument incident to the making or issuing of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Organization, and default under any such instrument may be construed by the Government to constitute default hereunder.

Section 11. (Resolution of Contract). The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instruments, shall constitute a contract between the Organization and the Government or assignee so long as the note hereby authorized remains unpaid.

Section 12. This resolution shall take affect and be in force from and after the 10th day of December, 1997, being the date of its enactment.

The vote was:

Yeas 7 Nays 0 Absent 0

(SEAL) (if applicable)

DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION

By

John Mock  
John Mock

Title President

Attest:

Joy Stephenson  
Joy Stephenson

Title Secretary-Treasurer

#### CERTIFICATION

I, the undersigned, as secretary of the DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION hereby certify that the BOARD OF DIRECTORS of such Organization or Corporation is composed of seven (7) members of whom seven (7), constituting a quorum, were present at a meeting thereof duly called and held on the 10th day of December, 1997; that the foregoing resolution was adopted at such meeting by the vote shown above, and that said resolution has not been rescinded or amended in any way.

Dated, this 29<sup>TH</sup> day of June, 1999.

Joy Stephenson  
Joy Stephenson

Secretary of DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION

**EXHIBIT 7**

**COPY FOR YOUR  
INFORMATION**

# Water and Waste System Grant Agreement

United States Department of Agriculture

Rural Utilities Service

**JAN 05 2000**

THIS AGREEMENT dated June 29, 1999, between

Dobbin-Plantersville Water Supply Corporation  
a public corporation organized and operating under

State Statutes

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Development Service, Department of Agriculture, herein called "Grantor," WITNESSTH:

## WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of \$ 2,430,000.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 930,000.00 of the development cost through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 930,000.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 1,500,000.00 or 62 percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, in consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act, for the purpose only of defraying a part not to exceed 35 percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the service of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, martial status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated December 10, 1997, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and dept service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service required in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operation by a representative of the Grantor.

H. to execute any agreement required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instruments, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for completion to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

See Attachment A

Time 11/21/2013

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority.

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirements exist within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exist in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Record which accurately provided for; a description of the equipment; manufacture's serial number or other identification number; acquisition date and cost; source of the equipment; percentage(at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

## EXHIBIT 7

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for completion to the extent practicable and result in the highest possible return.

**This Grant Agreement covers the following described equipment (use continuation sheets as necessary).**

See Attachment B

M. Provide Financial Management System which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Record which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and return to Grantors interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local Government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

## EXHIBIT 7

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S. C, §7414) and Section 308 of the Water Pollution Control Act (33 U.S. C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clear Air Act and Section 308 of the Water Pollution control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

*[Revisions 1, 11/20/1997]*

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

*[Revision 1, 11/20/1997]*

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the terms "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperation, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plan, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that the independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ 1,500,000.00 which it will advance to Grantee to meet not to exceed 62 percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

### Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

\_\_\_\_\_  
John Mock, President

attested and its corporate seal affixed by its duly authorized

\_\_\_\_\_  
Joy Stephenson, Secretary-Treasurer

Attest:

By \_\_\_\_\_

\_\_\_\_\_  
John Mock  
(Title) President

By \_\_\_\_\_

\_\_\_\_\_  
Joy Stephenson  
(Title) Secretary-Treasurer

June 29, 1999

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By \_\_\_\_\_

\_\_\_\_\_  
Danda M. Micklitz, Community Development Specialist  
(Title)



JAN 05 2000

## GRANT RESOLUTION

WHEREAS, the Dobbin-Plantersville Water Supply Corporation deems it necessary  
(Legal name of Applicant)

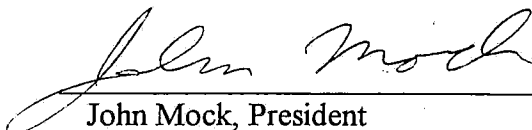
and proper to apply for grant assistance under the rules and regulations of Farmers Home Administration, a department of the United States Department of Agriculture,

NOW, THEREFORE, BE IT PROVIDED by the above-named Applicant that

John Mock, President, as the Signatory Agent of

the applicant, or the successor of said Agent, is hereby authorized and directed to make application for grant assistance under the rules and regulations of Farmers Home Administration, a department of the United States Department of Agriculture; and to sign the acceptance of the grant assistance, when made, and any other documents required to complete the project, on behalf of the above-named Applicant.

PASSED, APPROVED, AND ADOPTED THIS 29th day of June, 1999.

  
John Mock, President

(Seal)

ATTEST:

  
Joy Stephenson, Secretary-Treasurer

## EXHIBIT 8

1  
EXHIBIT 8

## 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. DP is a Texas water supply corporation formed pursuant to Texas Water Code Chapter 67. DP furnishes water service to areas in Montgomery County and parts of Grimes County, Texas. DP is an “association” as that term is used in 7 U.S.C. § 1926(a). DP is indebted on two loans made by the United States Department of Agriculture (“USDA”) that qualify DP for the protections afforded by § 1926(b). DP holds the federal right to be the exclusive water service provider within any area for which DP has the legal right to provide water service and has provided or has made water service available (can provide water service within a reasonable period of time), which includes the land described in the Decertification Petitions referenced below. *See Green Valley Special Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460, 465 (5th

Cir. 2020) (“We hold that a utility has ‘provided or made available’ service if it (1) has adequate facilities to provide service to the relevant area within a reasonable time after a request for service is made and (2) has the legal right to provide service.”).

DP moves the District Court to take judicial notice of the Decertification Petitions pursuant to Federal Rule of Evidence 201, and all other matters filed in said actions pending before the Public Utility Commission of Texas in Dockets 51979<sup>1</sup> and 52090.<sup>2</sup>

4. 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.

5. Defendant Gleeson, 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. Gleeson may be served with process at the William B. Travis Building, 1701 N. Congress Ave. 7<sup>th</sup> Floor, Austin, TX 78701.

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<sup>1</sup> *Petition by Sig Magnolia LP for Expedited Release from Water CCN No. 11052 Held by Dobbin Plantersville Water Supply Corporation*, Docket No. 51979 (Tex. Pub. Util. Comm’n April 5, 2021).

<sup>2</sup> *Petition by Redbird Development, LLC for Expedited Release from Water CCN No. 11052 Held by Dobbin Plantersville Water Supply Corporation*, Docket No. 52090 (Tex. Pub. Util. Comm’n May 6, 2021).

6. Defendant SIG is a Texas limited partnership, authorized to conduct business in the State of Texas. SIG may be served with process on its registered service agent: Daniel K. Signorelli, 1400 Woodloch Forest Dr., Suite 200, The Woodlands, TX 77380 USA.

7. Defendant Redbird is a Texas limited liability company. Redbird may be served with process on its registered service agent: Ronnie Matthews, 5910 FM 2920, Suite C, Spring, TX 77388 USA.

### DEFENDANTS' VIOLATIONS OF § 1926(b)

8. The Commissioners routinely disregard the federal protections that § 1926(b) afford water districts. On March 27, 2019, judgment was entered against the Commissioners:

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.**

*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). This ruling by the District Court

was later vacated and remanded by the Fifth Circuit for reconsideration in light of *Green Valley*. However, the reasoning and analysis in *Crystal Clear* remain persuasive.

The District Court entered the following Orders and Declarations 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*, 2019 WL 243777 at \*2 (emphasis added).

9. Prior to the District Court entering judgment against the Commissioners and declaring Tex. Water Code §§ 13.254(a-5) and (a-6) 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 *directly contradictory*

to federal law. U.S. Magistrate Judge Andrew 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 federal law and continue to ignore the protections afforded by § 1926(b) to qualifying associations including DP. Despite being adequately warned in *Crystal Clear*, the Commissioners continue disregarding federal law and continue to consider actions such as the Decertification Petitions that are preempted by § 1926(b) and void. Once the protections of § 1926(b) have attached, removal of territory from a USDA indebted water supply corporation is barred by § 1926(b) even if fair market value is paid for the territory sought to be released/decertified. *See City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.*, 816



F.2d 1057, 1060 (5th Cir. 1987) (“Even if fair value is paid for the lost facilities, such an action would inevitably have an adverse effect on the remaining customers of Bear Creek, in the form of lost economies of scale and resulting higher per-user costs.”); *see also Pittsburg Cty. Rural Water Dist. No. 7 v. City of McAlester*, 358 F.3d 694, 716 (10th Cir. 2004) (“There is thus preemption of any local or state law that purports to take away from an indebted rural water association any territory for which the association is entitled to invoke the protection of § 1926(b).”).

10. On April 5, 2021, Defendant SIG filed, pursuant to Tex. Water Code § 13.2541, its Petition with the PUC (Docket No. 51979) seeking a decertification (release) of property purportedly owned by Defendant SIG, which is situated within DP’s Certificate of Convenience and Necessity (“CCN”) No. 11052. SIG’s Petition to decertify/remove/release a part of DP’s CCN is a form of interference or taking prohibited by DP’s federal rights under § 1926(b) and is a violation of § 1926(b). SIG seeks to remove territory for which DP has made water service available; such removal would reduce the customer pool for DP within DP’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. .**

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

All land SIG seeks to decertify is situated within DP’s CCN 11052.

11. On May 6, 2021, Defendant Redbird filed, pursuant to Tex. Water Code § 13.2541, its Petition with the PUC (Docket No. 52090) seeking a decertification (release) from a part of DP's CCN 11052 of property purportedly owned by Defendant Redbird. Redbird's Petition to decertify/remove/release a part of DP's CCN is a form of interference or taking prohibited by DP's federal rights under § 1926(b) and is a violation of § 1926(b) because Redbird is seeking to remove territory for which DP has made water service available in accord with *Green Valley*, and by so doing, would reduce the customer pool for DP within DP's protected service area. *City of Eudora*, 659 F.3d at 985.

12. Defendants SIG and Redbird knew or should have known that the Texas statutes that their respective Petitions for Decertification depend on are unconstitutional and void. because they are preempted by § 1926(b).

13. Defendants Commissioners and Gleeson knew or should have known that petitions for decertification filed with the PUC pursuant to Tex. Water Code § 13.2541 against an entity such as DP, that is entitled to the protections of § 1926(b), are premised on Texas statutes that are void and unenforceable.

14. Despite clear notice sent to their counsel, the PUC Commissioners have failed to dismiss the SIG and Redbird Decertification Petitions, and the Commissioners are actively considering those Petitions in violation of § 1926(b).

15. DP is indebted on two loans made by the USDA. ("Loans"). These Loans qualify the borrower (DP) for § 1926(b) protection. Each loan is a "such loan" within the contemplation of § 1926(b). See *El Oso Water Supply Corp. v. City of Karnes City*,

*Tex.*, No. SA-10-CA-0819-OLG, 2011 WL 9155609, at \*5 (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) (“In affording a water utility the protection of § 1926(b), federal courts have identified three requirements that a water utility must establish: (1) that the utility is an ‘association’ within the meaning of § 1926; (2) that the utility has a qualifying federal loan outstanding; and (3) that the utility ‘provided or made [service] available’ to the disputed area..”).

16. The Decertification Petitions each admit that the property for which decertification is sought is within CCN 11052, granted to DP by the State of Texas.

17. DP is entitled to § 1926(b) protection because (1) DP is an association within the meaning of § 1926; (2) DP has the legal right and duty under CCN 11052 to provide water service to the properties described in the SIG and Redbird Decertification Petitions; (3) DP is indebted on two qualifying Loans made by the USDA; and (4) DP has “made service available” because of its nearby facilities/infrastructure maintained by DP (facilities on/within or immediately adjacent to the properties described in the Decertification Petitions) and DP’s physical ability to provide water service immediately or within a reasonable period of time to said properties. Specifically, DP 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 water service. *Green Valley Spec. Util. Dist.*, 969 F.3d at 477. DP has water facilities that are either

within or immediately adjacent to the SIG property sought to be decertified and DP has water facilities (pipeline and water treatment plant) within 700 feet of the Redbird property sought to be decertified.

18. DP's "territory" for which DP has the *legal right* and duty under its CCN 11052 to provide water service under Texas law, includes land identified in the Decertification Petitions. This legal right cannot be diminished or altered once DP becomes indebted on a loan made 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.** 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."

*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) (internal citations omitted).

Defendants SIG and Redbird are attempting to diminish or alter DP's territory through their Decertification Petitions, all of which violates and is prohibited by § 1926(b).

19. Any doubts whether DP is entitled to the protections of § 1926(b) must be resolved in DP's favor. DP'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<sup>3</sup> 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.*, 2011 WL 9155609, at \*5.

### Count 1

#### Violation of 42 U.S.C. § 1983 (and at Equity) – Commissioners and Gleeson

20. DP 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)). *See also Green Valley* 969 F.3d at 471 (“And second, the Ex parte Young exception ‘permits

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<sup>3</sup> *North Alamo* has been overruled on other grounds by *Green Valley Special Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460 (5th Cir. 2020).

suits for prospective ... relief against state officials acting in violation of federal law.”).

21. DP incorporates all allegations above.

22. In order to state a cause of action under 42 U.S.C. § 1983, DP 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).

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

24. Actions of the Commissioners and Gleeson constitute an attempt to deprive DP of its § 1926(b) federal rights.

25. The actions of the Commissioners and Gleeson are conducted under color of state law by virtue of their statutory power to decertify land situated within the boundaries of DP’s CCN for which DP 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, after DP became indebted on a loan which qualified DP for § 1926(b) protection.

26. DP suffered or is in immediate jeopardy of suffering loss and damage as a result of the wrongful acts of the Commissioners and Gleeson in connection with the Decertification Petitions.

27. DP is a proper party plaintiff for a claim presented under 42 U.S.C. § 1983, and the Defendants Commissioners and Gleeson are also proper parties,

despite the decision in *City of Safety Harbor v. Birchfield*, 529 F.2d 1251 (5th Cir. 1976). *Birchfield* has been implicitly overruled by *Green Valley Special Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460, 475 (see footnote 26) (5th Cir. 2020). DP is enforcing its federal *statutory* rights here, not constitutional rights. *Birchfield* is also not applicable here because DP is a water supply corporation. In addition, even if *Birchfield* remains operative which DP denies, DP has a cause of action against the Commissioners and Gleeson in equity under § 1926(b). *Green Valley, supra* at 475. (“Ultimately, however, we need not decide whether to pull the PUC Officials back from the precipice. *Birchfield* stands as no obstacle to having this case proceed against the PUC Officials, because Green Valley has a cause of action against them at equity, regardless of whether it can invoke § 1983.”).

## **Count 2**

### **Declaratory Judgment – 7 U.S.C. § 1926(b) – All Defendants**

28. **DP seeks only prospective injunctive relief against Gleeson.**
29. DP incorporates by reference all allegations above.
30. 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).
31. There exists an actual case or controversy between DP and all of the Defendants concerning the Commissioners or Gleeson’s authority to decertify (release) a portion of DP’s CCN, namely to remove the land described in the Decertification Petitions from DP’s territory (its CCN) to allow SIG and Redbird to

obtain water service from another competitive entity. Water sales by a neighboring municipality or other entity formed to provide water service to the land described in the Decertification Petitions is strictly prohibited by § 1926(b). The Decertification Petitions are directly prohibited and are contemplated/intended to negatively affect DP's rights under §1926(b) to be the exclusive water service provider to the land specified in the Decertification Petitions.

32. Section 1926(b) prohibits decertification (release or taking) of any portion of DP's CCN if the decertification would (1) function to limit or curtail the water service provided or made available by DP, (2) allow competition within DP's CCN, (3) function to impair the collateral pledged to secure the Loans, (4) deprive the USDA of its rights in the collateral, or (5) deprive the rights enjoyed by DP's customers. Decertification of DP'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 at 1059 (5th Cir. 1987). The threatened decertification violates DP's § 1926(b) rights and any order issued by the PUC or Commissioners shall null and void. DP is obligated to initiate this action to prevent violations of § 1926(b), pursuant to 7 C.F.R. § 1782.14(b).<sup>4</sup>

33. Texas Water Code Section Section 13.2541(d), previously numbered as 13.254 (a-6),) states : "The utility commission may not deny a petition based on the fact that a certificate holder is a borrower under a federal loan program." Tex. Water

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<sup>4</sup> "(b) Responsibility for initiating action in response to those actions prohibited by 7 U.S.C. 1926(b) rests with the borrower." 7 C.F.R. § 1782.14.



Code § 13.2541(d). This statutory language is void because it violates the Supremacy Clause. The Commissioners were parties to *Crystal Clear*, and were provided specific notice that the Commissioners had no choice but to recognize and obey federal law. *Crystal Clear*, 2019 WL 2453777 at \*5.

34. 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).

35. The Texas Water Code section 13.2541(d) is unconstitutional for the reason that it interferes with DP's rights under § 1926(b). Any action by the Commissioners or Gleeson to decertify or remove portions of DP's CCN would frustrate an important federal statutory scheme intended to promote rural development ( 7 U.S.C. § 1926) and to accomplish the congressional purposes of § 1926(b).<sup>5</sup>

36. Texas Water Code section 13.2541(d) upon which the Decertification Petitions are premised must be declared preempted, void, and unconstitutional

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<sup>5</sup> "This history indicates two congressional purposes behind § 1926: 1) to encourage rural water development by expanding the number of potential users of such systems, thereby decreasing the per-user cost, and 2) to safeguard the viability and financial security of such associations (*and FmHA's loans*) by protecting them from the expansion of nearby cities and towns." *City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.*, 816 F.2d at 1060 (5th Cir. 1987) (emphasis added).

because this statute is in direct conflict with the purposes and objectives of § 1926(b). As a result, the Commissioners and Gleeson have no authority to act upon the Decertification Petitions relative to DP's territory or CCN, and SIG and Redbird have no lawful right to pursue their Decertification Petitions under a void statute.

37. DP has suffered damages in the form of legal expense associated with resisting the Decertification Petitions before the PUC in a sum not less than \$10,000. DP seeks damages solely against SIG and Redbird, and not against the Commissioners or Gleeson.

### **Count 3**

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

38. DP incorporates by reference all allegations above.

39. DP 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 – DP demands a jury trial as to all issues triable by jury.**

### **PRAYER**

DP prays the Court grant the following relief:

1. The Court enter a declaration that Texas Water Code section 13.2541(d) on which the Decertification Petitions rely is preempted to the same extent and in the same manner as described in *Crystal Clear*;

2. The Court enter a permanent injunction against Defendants SIG and Redbird from the further presentation or prosecution of the pending Decertification Petitions;

3. The Court enter a permanent prospective injunction against Defendant Commissioners and Defendant Gleeson from any further consideration, or granting relief under the Decertification Petitions, and if any relief is granted by these Defendants, permanently enjoining these Defendants from any enforcement of any order issued granting the Decertification Petitions or implementing action in furtherance of decertification;

4. The Court award damages, attorney fees, and costs of this action as may be permitted by federal law against Defendants SIG and Redbird only; and

5. The Court grant such other and additional relief to which DP demonstrates it is entitled.

Respectfully submitted,

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