



Control Number: 52090



Item Number: 52



## Filing Receipt

**Received - 2021-11-05 02:40:56 PM**

**PUC DOCKET NO. 52090**

<b>PETITION BY REDBIRD</b>	<b>§</b>	<b>BEFORE THE</b>
<b>DEVELOPMENT, LLC FOR</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	
<b>FROM WATER CCN NO. 11052</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>HELD BY DOBBIN PLANTERSVILLE</b>	<b>§</b>	
<b>WATER SUPPLY CORPORATION</b>	<b>§</b>	<b>OF TEXAS</b>

**DOBBIN PLANTERSVILLE WATER SUPPLY CORPORATION'S  
MOTION FOR REHEARING**

Dobbin Plantersville Water Supply Corporation (“Dobbin Plantersville” or “CCN holder”) files this Motion for Rehearing pursuant to PUC Rule 22.264 and Texas Government Code Chapter 2001 requesting that the Public Utility Commission of Texas (the “Commission”) reconsider its Order granting Redbird Development, LLC’s (“Redbird” or “Petitioner”) Petition for Expedited Release from Water CCN No. 11052 held by Dobbin Plantersville and deny the Petition. In support thereof, Dobbin Plantersville would respectfully show as follows:

**I. INTRODUCTION**

On October 12, 2021, the Commissioners signed an Order in the above-referenced docket granting the Petition (the “Order”) [Docket 52090 at Item 47], which amended Dobbin Plantersville’s water CNN No. 11052 to remove a 372.2-acre tract of land (“Release Property” or “Redbird Property”). This Motion for Rehearing is timely filed pursuant to PUC Rule 22.264 and Texas Government Code § 2001.146.

Dobbin Plantersville respectfully requests the Commission reconsider the Order and deny Redbird's Petition. Specifically, Dobbin Plantersville requests the Commission to reconsider the Findings of Fact and Conclusions of Law set forth below in Arguments and Authorities.

The Release Property identified in Redbird's Petition is receiving water service from Dobbin Plantersville under applicable law and the Order should be reconsidered and Redbird's Petition denied. Under Texas Water Code section 13.2541(b) a petition for streamlined expedited release may only be filed by a person whose property “is not receiving water or sewer service.” Tex. Water Code § 13.2541(b). The Water Code defines “service” broadly as including “any

act performed, anything furnished or supplied, and *any* facilities or lines *committed or used* by a retail public utility in the performance of its duties [under Chapter 13] . . .” Tex. Water Code § 13.002(21) (emphasis added). Dobbin Plantersville’s evidence demonstrates that it has water facilities committed to the Release Property showing that the Release Property is receiving water service. Redbird has presented no credible evidence disputing the facts presented by Dobbin Plantersville. The undisputed evidence demonstrated that Dobbin Plantersville has committed or dedicated facilities or lines for providing service to the area that Redbird seeks to decertify.

Dobbin Plantersville specifically requests the Commission to reconsider Finding of Fact Nos. 14, 22, 23, 26, 27, and 30 and the addition of Dobbin Plantersville’s proposed Nos. 31 and 32; Conclusion of Law Nos. 9, 10, and 11 and deletion of Nos. 13, and 14; and replacement of all Ordering Paragraphs with Dobbin Plantersville’s proposed Ordering Paragraph No. 1 denying the petition.

## **II. EVIDENCE**

In support of this Motion for Rehearing and for the convenience of the Commission, Dobbin Plantersville attaches copies of the following documents, which were made part of the record<sup>1</sup>:

- | <b><u>Exhibit No.</u></b> | <b><u>Document</u></b>   |
|---------------------------|--|
| 1.                        | The Affidavit of Steve Duncan executed June 28, 2021, which was attached as Exhibit A to Dobbin Plantersville’s Response to Petition and Motion to Dismiss filed June 29, 2021.  |
| 2.                        | A map identifying the Release Property and location of Dobbin Plantersville’s existing waterlines and facilities and future expansion, which was attached to the June 28, 2021, Duncan affidavit (referenced in Item 1, above), as Attachment 2. |
| 3.                        | A map identifying the Release Property in reference to the Dobbin Plantersville certificated area in Montgomery County, which was attached to the June 28, 2021, Duncan affidavit (referenced in Item 1, above), as Attachment 3.                |
| 4.                        | The Affidavit of Janie Legge executed June 28, 2021, which was attached as Exhibit B to Dobbin Plantersville’s Response to Petition and Motion to Dismiss filed June 28, 2021.   |

---

<sup>1</sup> Exhibit 6, the Federal Complaint, was not officially noticed as requested by Dobbin Plantersville, as discussed below. Therefore, it was not made part of the record.

5. United States Department of Agriculture loan documents, which were attached to the June 28, 2021, Legge affidavit (referenced in Item 4, above), as Attachment 2.
6. The Federal Complaint initiating Dobbin Plantersville v. Peter Lake, Will McAdams, et al., Case 1:21-cv-00612 (W.D. Texas) (“Federal Lawsuit”).

### **III. FACTUAL HISTORY**

On May 6, 2021, Redbird filed an original Petition for expedited release to amend Dobbin Plantersville’s water CNN No. 11052 to remove a 372.2-acre tract of land (Docket 52090 at Item 1). Dobbin Plantersville’s Motion to Intervene was granted in Order No. 2 on June 9, 2021 (Docket 52090 at Item 7).

On June 29, 2021, Dobbin Plantersville filed its Response to Redbird Development, LLC’s Petition for Streamlined Expedited Release, and Motion to Dismiss and attached the supporting Affidavits of Steve Duncan, Dobbin Plantersville consulting engineer, and its General Manager, Janie Legge (Docket No. 52090 at Item 12, Exhibits A and B, respectively). As stated by Mr. Duncan, Dobbin Plantersville's water system serving customers in Montgomery County includes: (a) multiple water plants authorized by the TCEQ with the capacity for 1450 connections; (b) ongoing construction contract to drill a well at a location that will contain facilities referred to as Water Plant No. 9; (c) once Water Plant No. 9 is completed it will have TCEQ approved capacity for 500-750 additional connections; (d) these water plants, once construction of Water Plant No. 9 is completed, will have a total capacity to serve between 1950 and 2200 connections; and (e) Dobbin Plantersville's water system serving customers in Montgomery County currently serves 1,346 active connections.<sup>2</sup>

Existing Water Plant No. 4 (a) is located approximately 700 feet north of the Release Property along Spring Branch Road; (b) has a water well approved by the TCEQ with the capacity for 300 connections; (c) has water tanks with TCEQ approved capacity for 420 connections; (d) Dobbin Plantersville currently has approximately 230 active connections for that portion of the Montgomery County interconnected system; and (e) additionally, Dobbin Plantersville has recently purchased adjacent land for future expansion in alignment with the Catahoula Project.<sup>3</sup>

---

<sup>2</sup> See Exhibit 1 at Item No. 7 and Exhibits 2 and 3.

<sup>3</sup> See Exhibit 1 at Item No. 8 and Exhibits 2 and 3.

Spring Branch Road water lines include (a) a 6-inch water line within the Spring Branch Road right-of-way on the same side of the road as the Release Property; (b) a 4-inch water line within the Spring Branch Road right-of-way on the opposite side of the road as the Release Property; (c) the TCEQ approved combined capacity of both lines is 350 connections; and (d) Dobbin Plantersville currently has approximately 230 active connections on those 2 lines.<sup>4</sup>

In summary, Dobbin Plantersville currently has excess capacity, which would allow it to serve approximately 100 additional connections. There are no outstanding requests for service from the undeveloped portions of the subject CCN area that will use the remainder of the existing capacity. Dobbin Plantersville could expand Water Plant No. 4 because it has acquired property adjacent to the plant to allow expansion. In discussions with Redbird, Dobbin Plantersville stated that alternatively, it could build a new water plant on the Release Property on property that Redbird would provide. The new plant could be built to have the capacity to serve the entire Release Property with both potable water and fire flow.<sup>5</sup>

#### **IV. ARGUMENT AND AUTHORITY**

##### **A. The Redbird Property Cannot be Released Because the Property Does Not Qualify for Expedited Release.**

Dobbin Plantersville proved that the Redbird Property cannot be released from its territory, and its Certificate of Convenience and Necessity (CCN) No. 11052 cannot be amended under Texas Water Code section 13.2541 because the Release Property is receiving water “service” as defined by state law. The Order states incorrect facts and law regarding Dobbin Plantersville’s “service” to the Release Property. The Order disregards that Dobbin Plantersville’s facilities and waterlines are serving the Release Property and are committed or dedicated to providing water service. The Order also disregards evidence provided by Dobbin Plantersville that it is performing acts to supply water to the Release Property. For these reasons, the Commission must amend its Order to deny release of the Redbird Property.

##### **B. The Commission Erred in Several Regards Resulting in an Improper and Illegal Order Granting Release.**

The Commission's actions will be reversed on appeal under Texas Government Code Section 2001.174(2), which states that a court:

---

<sup>4</sup> See Exhibit 1 at Item No. 9 and Exhibits 2 and 3.

<sup>5</sup> See Exhibit 1 at Item No. 10.

(2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (A) in violation of a constitutional or statutory provision;
- (B) in excess of the agency's statutory authority;
- (C) made through unlawful procedure;
- (D) affected by other error of law;
- (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
- (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Tex. Gov't Code. Section 2001.174(a)(A)–(F). The Commission made erroneous findings of fact and conclusions of law; and erroneously refused to take judicial notice of the pending Federal Lawsuit or to dismiss this action. By these actions or inaction, the Commission violated each category in sections (A) through (F) as described in more detail below. Therefore, the Commission must reverse its decision and deny release of the Redbird Property.

**1. Dobbin Plantersville's Recommended Changes to Findings of Fact Must Be Adopted in the Commission's Final Order.**

The Order includes a number of incorrect Findings of Fact regarding Dobbin Plantersville's water service to the Release Property. Read together, they purport to support the "ultimate finding" that "[t]he CCN holder has not performed any acts for or supplied anything to the Release Property." See Finding of Fact No. 30. Not only is the meaning of this finding vague and unclear – it supports no legal standard or conclusion of law applicable to this docket. Finding of Fact No. 30 must be changed as follows:

- 30.** The CCN holder has performed various acts and acquired funds in furtherance of providing service to the release property- and to the CCN No. 11052 area in Montgomery County that includes the Release Property, including:
- a. acquiring property adjacent to water plant number four to allow expansion;
  - b. discussing with petitioner building a new water plant on the Release Property on property to be transferred to the CCN holder, such new water plant to be dedicated to serving the entire Release Property with both potable water and fire flow; and

- c. preparing an application for a USDA loan to include improvements to the Montgomery County water service area, which would expand current capacity.

Dobbin Plantersville provided sufficient evidence that it has committed and dedicated facilities and lines, has facilities and lines, and has performed many acts in furtherance of providing water service to the Release Property. The Order ignores or misconstrues the evidence. Dobbin Plantersville requests a rehearing on its proposed changes to the findings of fact misconstruing that evidence. The findings in the Commission Order are provided with the changes required using track changes, as follows:

**22.** The release property is not receiving actual water service from the CCN holder (nor has the Petitioner requested such service); however, the CCN holder has invested in nearby facilities that can provide service to the release property.

**23.** The petitioner has not requested that the CCN holder provide water service to the release property; however, if the petitioner requests service from the CCN holder, all facilities are in place to deliver water to active water taps located on the release property once petitioner pays for the improvements needed to hook up its water service taps to the 6-inch and 4-inch water lines described in Finding of Fact No. 26.

**26.** A six-inch water line and a four-inch water line owned and operated by the CCN holder run parallel to, but just outside of, the extreme western edge of the release property for a distance of roughly 60 feet. The lines are along Spring Branch Road. The TCEQ approved combined capacity of both lines is 350 connections. The CCN holder currently has approximately 230 active connections on those 2 lines. Thus, the lines have excess capacity for 120 connections.

**27.** The CCN holder's water plant number four is located approximately 640 feet north of the extreme western edge of the release property along Spring Branch Road. Water plant number four has a water well approved by the TCEQ with the capacity for 300 connections and water tanks with TCEQ-approved capacity for



420 connections. The CCN holder has approximately 230 active connections whose water can be provided by water plant number four and has recently purchased adjacent land for future expansion of water plant four.

Dobbin Plantersville's changes are required based on evidence in the record of this docket. See Exhibits 1–5, attached, all of which are filed in this Docket as cited above.

Only property “that is not receiving water service” may be released under Texas Water Code section 13.2541. A determination of whether the Release Property receives water service from the CCN holder is a fact-specific inquiry and the lack of active water taps or facilities on the Release Property itself is not determinative.<sup>6</sup> An analysis of the facts begins with the definitions of “service” and “facilities” in the Texas Water Code. “Service” is defined as:

[A]ny act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties...to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

Tex. Water Code § 13.002(21); *see also*, 16 TAC § 24.3(33) (same definition). The term “facilities” is defined as:

[T]he plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

Tex. Water Code § 13.002(9); *see also*, 16 Tex. Admin. Code § 24.3(15) (same definition).

Although the Release Property is not receiving actual water service from the CCN holder, the CCN holder has adequate facilities to provide service to the Release Property. Under the quoted statutory definitions, a property can “receive water service” even before development and delivery of water to active water taps.<sup>7</sup> In the *Crystal Clear* decision, the court stated that facilities or lines “used” or “committed” to providing such service might cause a property to “receive service” under the statutory and regulatory definition.<sup>8</sup> Dobbin Plantersville has constructed

---

<sup>6</sup> *See Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 - 141 (Tex. App.- Austin 2014, pet. denied).

<sup>7</sup> *See Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140–41 (Tex. App.- Austin 2014, pet. denied).

<sup>8</sup> *See Id.*

infrastructure and developed water supply “committed” to the Redbird Property; therefore, the Redbird Property is “receiving service.”

The record supports a conclusion of law that the Release Property receives water service from the CCN holder under its proposed Conclusion of Law No. 9, above, and as summarized here. The CCN holder began planning for service to the area, including the Release Property, in its plan for the Catahoula Project commissioned several years ago. The CCN holder began the application process for a loan of nearly \$5 million from the USDA for infrastructure in the High Meadows and Catahoula projects plan, which calls for building infrastructure in the service area where growth and development are expected, including the Release Property. Additionally, the CCN holder has recently purchased land adjacent to water plant number four for future expansion in alignment with the Catahoula Project.<sup>9</sup>

The CCN holder has not received a request for water service from Petitioner, but if Redbird Development requests service from the CCN holder, all facilities are in place to deliver water to active water taps on the Release Property once Redbird Development pays for improvements needed to hook up its water service taps to the six-inch and four-inch water lines that run parallel to, but just outside of the extreme western edge of the Release Property for a distance of roughly 60 feet. The CCN holder currently has excess capacity, which would allow it to serve approximately 100 additional connections and Redbird Development has presented no definite information about when a specific number of connections would be needed, and in fact, as with all proposed residential developments, the number of connections will depend on the success in selling lots. There are no outstanding requests for service from the undeveloped portions of the CCN area that would use existing excess capacity. The CCN holder could expand water plant number four because it has acquired property adjacent to the plant to allow expansion. The CCN holder could, alternatively, build a new water plant on the Release Property on property that Redbird would provide. The new plant could be built to have the capacity to serve the entire Release Property with both potable water and fire flow.<sup>10</sup>

While the Commission has granted SER petitions in the past unless the CCN holder had actual infrastructure on the Release Property, this precedent may be changing under the new commissioners. During deliberations in Docket No. 51352, Commissioners Lake and McAdams

---

<sup>9</sup> See Exhibit 1 at Item No. 8 and Exhibits 2, 3, and 4.

<sup>10</sup> See Exhibit 1 at Item No. 10.

discussed a “bright-line” rule to assess whether to grant a SER petition seeking release of property from an existing CCN, stating that the petitioner has the obligation of showing it is entitled to the release. Commissioner McAdams stated that he wanted a clear rule for determining whether a CCN holder “has sufficient facilities committed to providing service to warrant a determination that a tract of land was receiving service in this context.” Both Commissioners agreed that in order to avoid a release, it must be shown that the CCN holder is capable of providing reliable service in a timely manner.<sup>11</sup>

The record shows that the CCN holder has performed various acts and supplied funds in furtherance of service to the Release Property and its CCN No. 11052 area that includes the Release Property, including the acts and funding that are detailed in the record<sup>12</sup> and in Dobbin Plantersville’s proposed findings of fact, above. The CCN holder’s facilities--and the acts planning, funding, installing, and maintaining them--are all plainly “committed” or “used” by the CCN holder in the performance of its duties to supply water service to the Release Property. The Release Property “receives water service” from the CCN holder through its commitments to serve, and its existing facilities and capacity sized to serve, the Release Property. Mr. Duncan's affidavit, in attached Exhibit 1, describes all the diverse ways Dobbin Plantersville has served the Release Property through its various acts. Ms. Legge’s Affidavit in attached Exhibit 4, described the funding obtained and sought for such service. Exhibit 5 contains the USDA loans already in place. Under these facts, the Commission must deny the Petitioner’s request to release the Redbird Property from Dobbin Plantersville’s CCN No. 11052 because such a release would violate Tex. Water Code § 13.2541.

Petitioner’s Perry Senn’s contention about the size of the planned development and the associated needed water capacity is premised on speculation. His affidavit states, “Redbird plans to develop the Redbird Property with approximately 575 residential homes at full build out. Because the Redbird development will be a dense development, the water system must be capable of providing fire flows in addition to potable water service. Redbird anticipates there will be 575 water and sewer connections that come online between June 2022 and July 2025.” See Senn July 12, 2021, affidavit at 5 (Docket 52090 at Item 17).

---

<sup>11</sup> See Public Utility Commission of Texas Open Meeting Broadcast (May 21, 2021), Admin Monitor, [http://www.adminmonitor.com/tx/puct/open\\_meeting/20210421/](http://www.adminmonitor.com/tx/puct/open_meeting/20210421/).

<sup>12</sup> See Exhibits 1 – 5.

It is pure speculation that Redbird will actually build 575 homes (connections) all at once. Although Redbird contends it “intends” to do so, there is no evidence that Redbird has the financial ability to actually construct 575 homes between June 2022 and July 2025. Mr. Senn, who is not an engineer, uses these dates to conclude that water service to these speculative 575 homes would exceed Dobbin Plantersville’s ability to satisfy the water demand “within a reasonable period of time.” Redbird’s Mr. Senn is making predictions that may never come true. Most residential developments are “phased,” so the developer does not have too large of an investment in infrastructure (water and sewer lines, etc.) up front, in case lot sales do not occur as predicted. Redbird’s prediction is merely a wish without evidentiary support and may never come true, and the Commissioners should not release the Redbird Property on the basis of wishes and guesswork. It is common for developers to exaggerate anticipated water needs as a means to attempt to remove Redbird Property from a CCN. On information and belief, this case is no different.

Moreover, if the Commission decertifies based exclusively on the speculative assertions by a landowner about their future water needs, that will effectively make the decertifying landowner the judge in its own case, and reward bad behavior. All the landowner will need for decertification to do is assert an outrageous future need for water beyond what any CCN holder can meet. And since the Commission does not permit CCN landowner’s a hearing, the Commission is robbed of any opportunity to test the credibility of the landowner’s assertion. The Commission’s reliance on the Perry Senn affidavit would violate Dobbin Plantersville’s due process rights, and place the decertification procedure under Tex. Water Code § 13.2541 in constitutional jeopardy. For these reasons, the Commission must reverse its decision and deny release of the Redbird Property, issuing an order including the findings of fact as recommended by Dobbin Plantersville.

**2. Dobbin Plantersville’s Recommended Changes to the Order’s Conclusions of Law Must Be Adopted in the Commission’s Final Order.**

Based on the erroneous findings of fact discussed in section IV.B.1, above, the Commission issued its Order with erroneous conclusions of law. These errors resulted in an Order releasing the Redbird Property from CCN No. 11052. This Motion for Rehearing provides the Commission with the opportunity to correct these errors as discussed here. The erroneous conclusions in the Commission Order are provided with the changes required using track changes, as follows:

9. The release property is considered to be receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.-Austin 2014, pet denied).

10. The petitioner is not entitled under TWC § 13.2541(6) to the release of the release property from the CCN holder's certificated service area.

11. After the date of this Order, the CCN holder continues to be obliged under TWC §13.254(h) to provide retail water service to the petitioner's release property.

Further, Conclusion of Law Nos. 13 and 14 must be deleted because they are unsupported by findings of fact as proposed by Dobbin Plantersville.

Based on the evidence in the record and the corrected findings of fact as recommended by Dobbin Plantersville in Section IV.B.1, above, the Commission must reverse its decision and deny release of the Redbird Property, issuing an order including the conclusions of law as recommended by Dobbin Plantersville.

**3. The Commission erred in denying Dobbin Plantersville's Motion to Take Official Notice of the Pending 7 U.S.C. § 1926(b) Federal Lawsuit.**

The Commission's Order releasing the Redbird Property fails to mention Dobbin Plantersville's Motion to Take Official Notice filed on July 9, 2021, and Order No. 6 denying it on the basis that Docket 52090 is not a contested case. *See* Docket 52090 at Items 18 and 32, respectively. Thus, the Order fails to provide the court, on appeal, sufficient information for its review. In order to facilitate such a review, the Commission's Order must include the addition of Finding of Fact Nos. 31 and 32, as follows.

31. On July 9, 2021, the CCN holder filed a Motion to Take Official Notice of its lawsuit filed in the United States District Court for the Western District of Texas, Austin Division, in Case 1:21-cv-00612. A copy of the Original Complaint was attached as Exhibit A. The suit challenges the PUC's authority to release the release property due to the protections under 7 United States Code section 1926(b).

32. On August 11, 2021, in Order No. 6, the ALJ denied the Motion to Take Official Notice on the basis Docket 52090 is not a contested case.

ff

While 16 Texas Administrative Code section 24.45(h)(7) states that “no hearing will be held” in streamlined expedited release cases, section 245 painstakingly sets up a process during which evidence is produced and evaluated by the Commission in order to make a decision. It is error for the administrative law judge to accept into the record affidavits, maps, loan documents, and other evidence, and then to refuse to take official notice because this “is not a contested case.” For this reason, the Commission must take official notice of the federal lawsuit so that the record will be complete on appeal, issuing an order including the Finding of Fact Nos. 31 and 32 as recommended by Dobbin Plantersville.

**4. The Commission erred in denying Dobbin Plantersville’s Motion to Dismiss.**

With its Response to the Petition, Dobbin Plantersville filed a Motion to Dismiss. *See* Dobbin Plantersville’s Response to Petition and Motion to Dismiss (Docket 52090 at Item 12). Quoting Texas Water Code section 13.2541, Order No. 5 denied the motion concluding that “the question of whether the CCN holder possesses a federal loan is immaterial to the determination to be made in this case.” In the Commission Order releasing the Redbird Property, the Commission failed to include a finding of fact and conclusion of law that would provide the court, on appeal, sufficient information for its review of this erroneous decision. In order to facilitate such a review, the Commission’s Order must include the following changes to Finding of Fact No. 14 and Conclusion of Law No. 9.

**Finding of Fact 14.** On June 29, 2021, the CCN holder filed a motion to dismiss. The CCN holder argued that the petition must be dismissed because petitioner is receiving water service from the CCN holder and, in the alternative, that the CCN holder has provided or made service available and enjoys protection under Title 7 United States Code section 1926(b). The motion to dismiss was supported by the affidavits described in Finding of Fact No. 13.

**Conclusion of Law 9.** The release property is receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.-Austin 2014, pet denied).

The question of whether the release property is receiving water service has been discussed above in section IV.B.1. The Petitioner has never requested service from the CCN holder;

ffgffrdf

however, Dobbin Plantersville has shown that it has adequate facilities to provide service and could provide water service to the Release Property as soon as Petitioner requests water service. After such a request is received, the next step would be for Petitioner to pay for improvements needed to hook up its water service taps to the nearby lines. The CCN holder has adequate facilities to provide service to the area upon request. For this reason, the Commission must reverse its decision and deny release of the Redbird Property, issuing an order including Finding of Fact No. 14 and Conclusion of Law No. 9 as recommended by Dobbin Plantersville.

**5. The Commission erred in denying Dobbin Plantersville's Motion to Abate.**

The Order granting release of the Redbird Property was signed by the Commissioners on October 12, 2021. *See*, Order at Docket 52090 at Item 47. Under 16 TAC § 22.264, the timing for filing a Motion for Rehearing is controlled by Texas Government Code section 2001.146. Section 2001.146(a) requires such a motion to be filed not later than the 25<sup>th</sup> day after the order is signed. In order to provide the Commission with one more opportunity before filing this Motion for Rehearing to cure the defects in its October 12 Order, Dobbin Plantersville filed a Motion to Abate. *See* Dobbin Plantersville WSC's Notice of Non-Agreement on Appraiser and Objection to Compensation Phase and Motion to Abate (*Docket* 52090 at Item 49). The Commission erroneously denied this motion in Order No. 10, without explanation. *See* Order No. 10 at Docket 52090 at Item 51.

Dobbin Plantersville objected to the compensation phase of this docket and requested that it be abated until a decision in the Federal Lawsuit is entered by the court. Such abatement is warranted for the following reasons.

The Fifth Circuit has created a bright-line rule prohibiting the taking of any territory from a water supply corporation that has qualified for the protections of 7 U.S.C. § 1926(b) ("§ 1926(b)"). Dobbin Plantersville has previously informed the Commission that Dobbin Plantersville qualifies for the protections of § 1926(b) because Dobbin Plantersville is indebted on two loans made by the United States Department of Agriculture (USDA). Even if fair compensation would be paid to Dobbin Plantersville as part of the takings process under Texas Water Code section § 13.2541, that entire process is preempted and forbidden by federal law. The Fifth Circuit held:

***Even if fair value is paid on 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.* To allow expanding municipalities to “skim the cream” by annexing and condemning those parts of a water association with the highest population density (and thus the lowest per-user cost) *would undermine Congress's purpose of facilitating inexpensive water supplies for farmers and other rural residents and protecting those associations' ability to repay their FmHA debts.* See Public Utility District No. 1 of Franklin County v. Big Bend Electrical Cooperative, Inc., 618 F.2d 601 (9th Cir.1980) (similarly rejecting utility's attempt to condemn property owned by cooperative financed by the Rural Electrical Administration).

*City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057, 1060 (5th Cir. 1987) (emphasis added). Although *Bear Creek* involves a municipality seeking to condemn part of a water association's water service area, the case applies equally to this case where a developer seeks a release of part of a water supply corporation's water service area. There is a direct conflict for Dobbin Plantersville to participate in the compensation process in any way, while objecting to and challenging this process in Dobbin Plantersville's motion for rehearing and related pending Federal Lawsuit filed against the Commissioners, in their official capacities, and the Petitioner, among others.

In fact, Title 7 Code of Federal Regulations section 1782.14 (“§ 1782.14”) obligates Dobbin Plantersville to “initiate action” to protect its territory and prosecute any violation of its federal rights under § 1926(b)<sup>13</sup> such as the release of the Redbird Property from Dobbin Plantersville's CCN No. 11052 service area, which has been ordered in this docket. Because the Redbird petition and the Public Utility Commission process to determine compensation to Dobbin Plantersville for the taking of part of its territory is prohibited by § 1926(b) and by

---

<sup>13</sup> Section 1782.14 reads as follows:

(a) **7 U.S.C 1926(b) was enacted to protect the service area of Agency borrowers** with outstanding loans, or those loans sold in the sale of assets authorized by the "Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987, Pub. L. 99-591, 100 Stat. 3341 (1986)," from loss of users due to actions or activities of other entities in the service area of the Agency financed system. ***Without this protection, other entities could extend service to users within the service area, and thereby undermine the purpose of the congressionally mandated water and waste loan and grant programs and jeopardize the borrower's ability to repay its Agency debt.***

(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 (emphasis added).



the law announced in *City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057, 1060 (5th Cir. 1987), Dobbin Plantersville is not participating in the compensation phase of this docket and sought to have the compensation phase abated until the federal court rules on these issues.

The Commissioners of the Public Utility Commission of Texas are named, in their official capacities only, as defendants in the pending Federal Lawsuit in which Dobbin Plantersville seeks “prospective” injunctive relief to preclude the enforcement of any findings, rulings, or orders issued in this docket. Thus, Dobbin Plantersville must-and has been and continues to-vigorously prosecute violations of § 1926(b) and must defend against the release of the Redbird Property from Dobbin Plantersville’s CCN in all available forums.

In its October 12 Order, the Commission ordered the release of the Redbird Property. Dobbin Plantersville challenges that order in this Motion for Rehearing. Dobbin Plantersville requested that the Commission abate proceedings in this docket for determining whether Redbird will be required to compensate Dobbin Plantersville for release of the Redbird Property from CCN No. 11052 because any further conduct by the Petitioner or the Commission in this docket, continues the violation of Dobbin Plantersville’s federal rights under § 1926(b). Therefore, the Commission erred in denying Dobbin Plantersville’s Motion to Abate.

**ENGLAND RESERVATION:** Dobbin Plantersville reserves all of its federal rights and claims (both statutory under 7 U.S.C. § 1926(b)) and constitutional rights under the Supremacy Clause Art. VI, cl. 2. – (challenging Tex. Water Code § 13.2541 as preempted by 7 U.S.C. § 1926(b) and therefore rendering § 13.2541 null and void), and Dobbin Plantersville’s entitlement to have all such federal rights, claims and remedies resolved and adjudicated in a federal forum in accordance with *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411, 421 (1964). Dobbin Plantersville is merely informing this Court of Dobbin Plantersville’s federal rights, claims and pending federal proceedings, and is not seeking an adjudication of such federal rights or claims in this case. Rather, Dobbin Plantersville maintains its right to have its federal rights and claims adjudicated in a federal forum. Dobbin Plantersville has in fact first sought adjudication of its federal rights and claims in the Dobbin Plantersville Federal Case pending in the United States District Court for the Western District of Texas (Civil Action No.: 1:21-cv-00612-RP).

**V. PRAYER**

THEREFORE, Dobbin Plantersville respectfully requests that the Commission reconsider its October 12, 2021, Order, deny Redbird's Petition and amend its Order, or alternatively, set this matter for rehearing and abate the proceeding until Dobbin Plantersville's federal protections are fully adjudicated by the federal court system.

Respectfully submitted,

*Mary K. Sahs*

**MARY K. SAHS, P.C.**

Mary K. Sahs

State Bar No. 17522300

P.O. Box 40970

Austin, Texas 78704

Telephone: (512) 585-1705

Facsimile: (512) 597-2516

Email: [marysahs@sahslaw.com](mailto:marysahs@sahslaw.com)

**ATTORNEY FOR DOBBIN  
PLANTERSVILLE WATER  
COMPANY**

**CERTIFICATE OF SERVICE**

Pursuant to Docket No. 50664, Second Order Suspending Rules (July 16, 2020) the undersigned hereby certifies that a copy of foregoing Motion for Rehearing was served on all parties of record in this proceeding on November 5, 2021, by electronic mail.

*Mary K. Sahs*

Mary K. Sahs

**DOCKET NO. 52090**

**PETITION OF REDBIRD DEVELOPMENT, LLC §  
TO AMEND DOBBIN PLANTERSVILLE §  
WATER SUPPLY CORPORATION'S §  
CERTIFICATE OF CONVENIENCE §  
AND NECESSITY IN MONTGOMERY COUNTY §  
BY EXPEDITED RELEASE §**

**BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS**

---

**AFFIDAVIT OF STEVE DUNCAN**

---

THE STATE OF TEXAS §  
§  
COUNTY OF BRAZOS §

BEFORE ME, the undersigned official, on this day personally appeared Steve Duncan, who is personally known to me and first being duly sworn according to law, upon his oath deposed and said:

1. My name is Steve Duncan. I am over the age of 18 years and reside in Brazos County, Texas. I am of sound mind and fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

2. I am an engineer and the employee of Bleyl Engineering ("Bleyl"). The company serves as the engineering consultant for Dobbin Plantersville Water Supply Corporation ("Dobbin Plantersville"), the Intervenor in this matter, and I am the engineer for the utility. I have been in that position for over 15 years, first with Pledger Kalkomey, Inc, then with Jones & Carter, Inc. and now with Bleyl. A copy of my resume is attached as Attachment 1.

3. I am authorized to make this affidavit on behalf of Dobbin Plantersville in Docket 52090 in support of its response to Redbird Development, LLC's ("Petitioner") request for a streamlined expedited release ("SER") of approximately 372.2 acres in Montgomery County, Texas ("the SER Property") from Dobbin Plantersville water certificate of convenience and necessity ("CCN") No. 11052. The Redbird development comprises approximately 388.5 acres.



4. The attached map, Attachment 2, shows the SER Property that the Petition in Docket No. 52090 seeks to remove through SER from water CCN No. 11052. I prepared Attachment 2 as part of this affidavit.

5. Through the work that I and my employers have done for Dobbin Plantersville, I am familiar with Dobbin Plantersville's facilities designed to serve the SER Property and the vicinity and their location in relation to the SER Property and the service area under CCN No. 11052. Attachment 2 shows the SER Property and the location of Dobbin Plantersville's water facilities within approximately 700 feet of the SER Property, which have capacity to meet some of the Redbird water service needs. These are part of Dobbin Plantersville's water system (PWS ID No. 1700178).

6. Several years ago, the Board of Directors approved a plan developed with the consulting engineering firm, Jones & Carter, Inc., for facilities upgrades, replacements, and additions throughout Dobbin Plantersville's entire water system. I was employed by Jones & Carter at that time and worked on this plan. The plan included water system planning for the area including the SER Property. That part of the planning is referred to as the Catahoula Project. As part of the Catahoula Project a new public supply well was permitted and constructed with a tested TCEQ capacity for 2511 connections. The current equipment Dobbin Plantersville has installed allows for 583 TCEQ rated connections of flow, with a plan to install larger equipment as demand for the excess 1928 connections is realized. Dobbin Plantersville applied for a loan from CoBank for the facilities associated with the High Meadows portion of the plan. Dobbin Plantersville intended to seek a U.S.D.A. loan to finance the remainder of these activities and infrastructure. The area is served by public water wells permitted by the Lone Star Groundwater Conservation District.

7. Dobbin Plantersville's water system serving customers in Montgomery County includes: (a) multiple water plants authorized by the TCEQ with the capacity for 1450 connections; (b) Ongoing construction contract to drill a well at a location that will contain facilities referred to as Water Plant #9; (c) once Water Plant #9 is completed it will have TCEQ approved capacity for 500-750 additional connections; (d) these water plants, once construction of Water Plant #9 is completed, will have a total capacity to serve between 1950 and 2200 connections; and (e) Dobbin Plantersville's water system serving customers in Montgomery County currently serves 1,346 active connections. See Attachment 2 and Attachment 3, which shows the SER Property in reference to CCN No. 11052 and includes the improvements mentioned here.

8. Existing Water Plant 4 (a) is located approximately 700 feet north of the SER Property along Spring Branch Road; (b) has a water well approved by the TCEQ with the capacity for 300 connections; (c) has water tanks with TCEQ approved capacity for 420 connections; (d) Dobbin Plantersville currently has approximately 230 active connections for that portion of the Montgomery County interconnected system; and (e) additionally, Dobbin Plantersville has recently purchased adjacent land for future expansion in alignment with the Catahoula Project. See Attachments 2 and 3.

9. Spring Branch Road water lines include (a) a 6-inch water line within the Spring Branch Road right-of-way on the same side of the road as the SER Property; (b) a 4-inch water line within the Spring Branch Road right-of-way on the opposite side of the road as the SER Property; (c) the TCEQ approved combined capacity of both lines is 350 connections; and (d) Dobbin Plantersville currently has approximately 230 active connections on those 2 lines. See Attachments 2 and 3.

10. In summary, Dobbin Plantersville currently has excess capacity, which would allow it to serve approximately 100 additional connections. There are no outstanding requests for service from the undeveloped portions of the subject CCN area that will use the remainder of the existing capacity. Dobbin Plantersville could expand the Water Plant #4 because it has acquired property adjacent to the plant to allow expansion. In discussions with Redbird, Dobbin Plantersville stated that alternatively, it could build a new water plant on the SER Property on property that Redbird would provide. The new plant could be built to have the capacity to serve the entire SER Property with both potable water and fire flow.


11. Dobbin Plantersville has provided for water service to the SER Property in several ways: (1) performing acts and supplying funds to permit, plan, design, construct, own, and operate the facilities described in Item 7 - 10, above; (2) performing acts and supplying funds necessary to obtain and maintain the water CCN No. 11052 service area covering the SER Property under prevailing regulations; and (3) performing acts and supplying funds necessary to obtain and maintain permits and approvals for PWS No. 1700178 including groundwater permits from Lonestar Groundwater Conservation District and construction approval from TCEQ.

12. CCNs, groundwater permits, and TCEQ approvals have value that purchasers of utilities will pay for when acquiring a utility because of the rights to serve the public that they provide and because the time and expense to acquire the CCNs and permits has already been spent.

13. Dobbin Plantersville is incurring legal and professional expenses and is likely to incur other legal and professional expenses because of the decertification and Petition.

14. If the decertification is approved, Dobbin Plantersville will be compelled to spend time and resources to make the filing required by Texas Water Code section 13.257(r)-(s), which requires it to file in county records a description and maps of its certificated area after its amendment.

FURTHER AFFIANT SAYETH NOT.

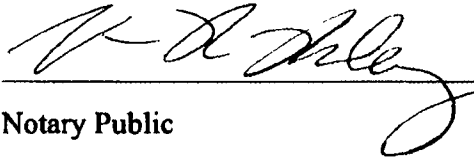


---

Steve E. Duncan

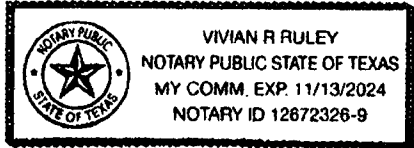


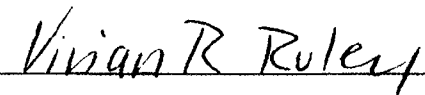
SUBSCRIBED AND SWORN TO BEFORE ME the undersigned authority on this the 28 day of June 2021 to certify which witness my hand and seal of office.



Notary Public

In and for the State of Texas





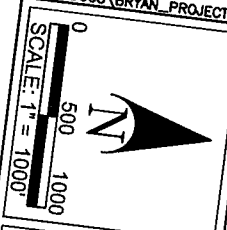
Printed Name of Notary Public

My Commission Expires: 11/13/2024

SEAL:



BLEYL ENGINEERING



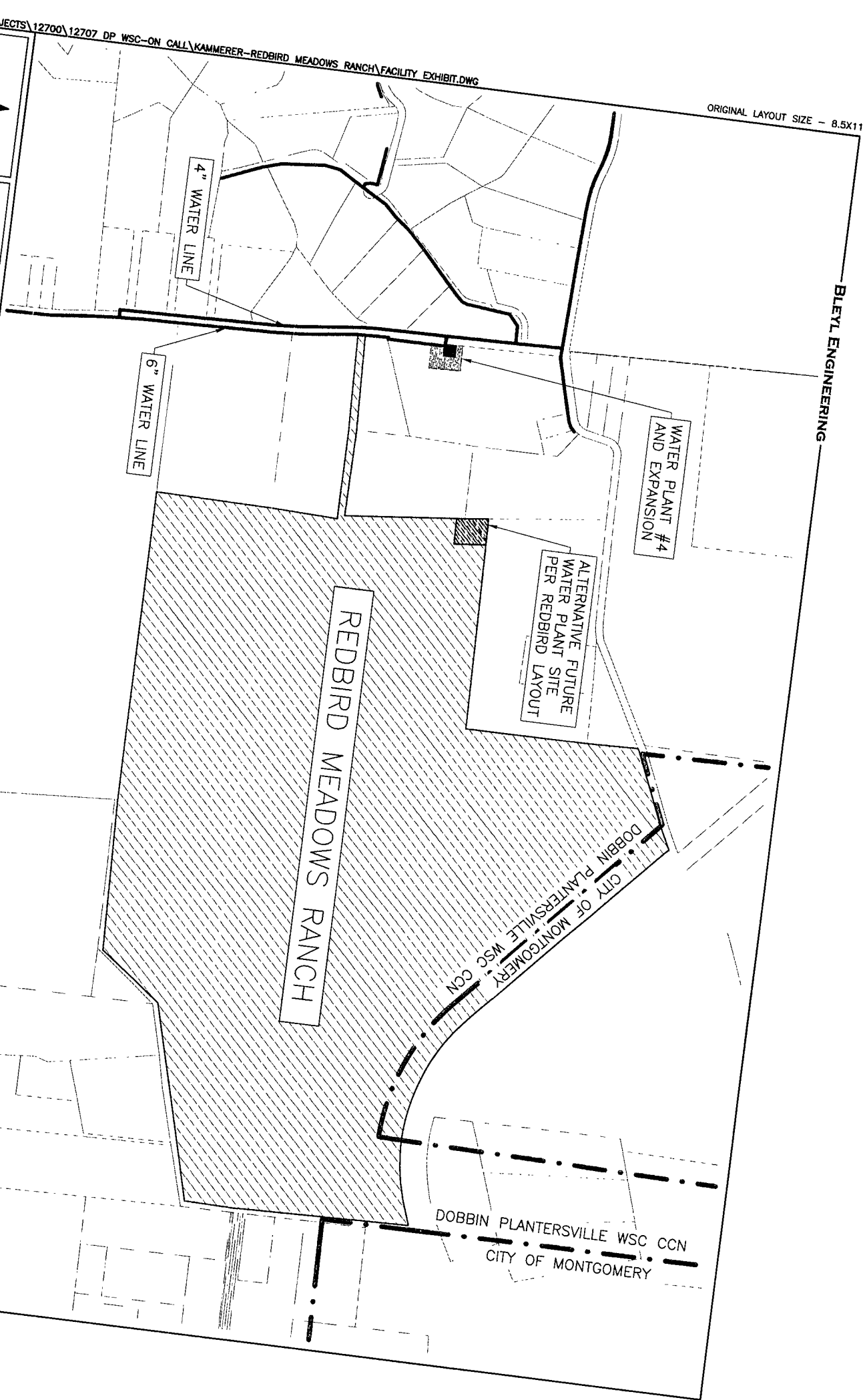
PROJECT NAME:	REDBIRD MEADOWS RANCH
PROJECT NUMBER:	12707
PREPARED FOR:	DOBBIN PLANTERSVILLE WSC
DATE:	JUNE 28, 2021



**DOBBIN-PLANTERSVILLE WSC FACILITIES**  
**BLEYL ENGINEERING**  
 TEXAS FIRM REGISTRATION NO. F-678  
 WWW.BLEYLENGINEERING.COM

EXHIBIT 2

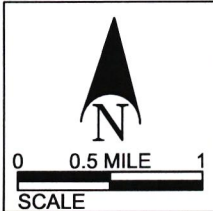
1722 BROADMOOR, STE 210  
 BRYAN TEXAS 77802  
 PHONE 979-268-1125



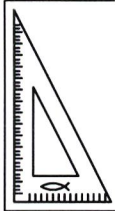




### DOBBIN PLANTERSVILLE WSC CCN MAP



PROJECT NAME:	REDBIRD MEADOWS RANCH
PROJECT NUMBER:	12707
PREPARED FOR:	DOBBIN PLANTERSVILLE WSC
DATE:	JUNE 28, 2021



**BLEYL ENGINEERING**  
 TEXAS FIRM REGISTRATION NO. F-678

1722 BROADMOOR, STE 210  
 BRYAN TEXAS 77802  
 PHONE 979-268-1125  
 WWW.BLEYLENGINEERING.COM

DOCKET NO. 52090

PETITION OF REDBIRD DEVELOPMENT, LLC §  
TO AMEND DOBBIN PLANTERSVILLE §  
WATER SUPPLY CORPORATION'S §  
CERTIFICATE OF CONVENIENCE §  
AND NECESSITY IN MONTGOMERY COUNTY §  
BY EXPEDITED RELEASE §

BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS

---

AFFIDAVIT OF JANIE LEGGE

---

THE STATE OF TEXAS §  
§  
COUNTY OF MONTGOMERY §

BEFORE ME, the undersigned official, on this day personally appeared Janie Legge, who is personally known to me and first being duly sworn according to law, upon her oath deposed and said:

1. My name is Janie Legge. I am over the age of 18 years and reside in Grimes County, Texas. I am of sound mind and fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

2. I am the general manager of Dobbin Plantersville Water Company also known as Dobbin Plantersville Water Supply Corporation. Dobbin Plantersville holds certificate of convenience and necessity No. 11052 for water service in Montgomery County and parts of Grimes County. As stated on our website, Dobbin Plantersville provides water service to areas that are or historically have been rural.

3. On or about May 11, 2021, I received a copy of the petition to decertify approximately 372.2 acres being developed by Redbird Development, LLC. The Redbird development comprises a total of approximately 388.5 acres.

4. The attached map, Attachment 1, shows the streamlined expedited release property ("SER Property") that the Petition in Docket No. 51979 seeks to remove through SER from water CCN No. 11052. Attachment 1 was prepared by Dobbin Plantersville's engineer, Steve Duncan.

**EXHIBIT**  
**4**



5. Several years ago, the Board of Directors approved a plan developed with the consulting engineering firm, Jones & Carter, Inc., for facilities upgrades, replacements, and additions throughout Dobbin Plantersville's entire water system. The plan included water system planning for the area including the SER Property. That part of the planning is referred to as the Catahoula Project. Dobbin Plantersville applied for a loan from CoBank for the facilities associated with the High Meadows portion of the plan. Dobbin Plantersville intended to seek a U.S.D.A. loan to finance the remainder of these activities and infrastructure, including the Catahoula Project.


6. Dobbin Plantersville currently has two outstanding U.S.D.A. loans and an outstanding CoBank loan. It expects to apply for an additional U.S.D.A. loan by the end of the year. Copies of the loan documents on the two outstanding U.S.D.A. loans are attached as Attachments 2 and 3.

7. CCNs and Lone Star Groundwater Conservation District groundwater permits have value that purchasers of utilities will pay for when acquiring a utility because of the rights to serve the public that they provide and because the time and expense to acquire the CCNs and permits has already been spent.

13. Dobbin Plantersville is incurring legal and professional expenses and is likely to incur other legal and professional expenses because of the decertification and Petition.

14. If the decertification is approved, Dobbin Plantersville will be compelled to spend time and resources to make the filing required by Texas Water Code section 13.257(r)-(s), which requires it to file in county records a description and maps of its certificated area after its amendment.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Jamie Legge



SUBSCRIBED AND SWORN TO BEFORE ME the undersigned authority on this the 28  
day of ~~January~~ June 2021 to certify which witness my hand and seal of office.

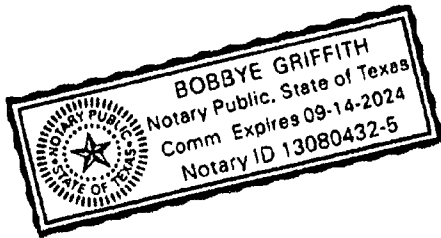
Bobbie Griffith

Notary Public

In and for the State of Texas

Bobbie Griffith

Printed Name of Notary Public



SEAL:

My Commission Expires: 09-14-2024





United States  
Department of  
Agriculture

Rural  
Development

101 South Main  
Fed. Bldg., Ste. 102  
Temple, TX 76501  
VOICE: (254) 298-1306  
FAX: (254) 298-1477  
TDD: (254) 298-1349

COPY

JUN 17 1997

COPY

Mr. Frank A. Gabriel, President  
Dobbin-Plantersville Water Supply Corporation  
P. O. Box 39  
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 \$378,000.00 and grant in the amount of \$202,000.00  
were approved on May 19, 1997.

Sincerely,

  
STEVEN A. CARRIKER  
Acting State Director

Enclosure

LOAN # 2



### REQUEST FOR OBLIGATION OF FUNDS

INSTRUCTIONS-TYPE IN CAPITALIZED ELITE TYPE IN SPACES MARKED (1111) Complete Items 1 through 30 and applicable Items 31 through 43. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 11 01 01 20 17 41 19 41 18 19		LOAN NUMBER 011	FISCAL YEAR 917
2. BORROWER NAME D C E B I N P L A N T E R S V I L L E W A T E R S U P P L Y C O R P O R A T I O N		3. NUMBER NAME FIELDS (1, 2, or 3 from Item 2)	
		4. STATE NAME T E X A S	5. COUNTY NAME C R I M E S
GENERAL BORROWER/LOAN INFORMATION			
6. RACE/ETHNIC CLASSIFICATION 1 - WHITE 2 - BLACK 3 - A/AN 4 - HISPANIC 5 - A/PI	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 (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 (FOR SFH AND HPG ONLY) 2 - OVER 10,000		19. DWELLING TYPE/USE OF FUNDS CODE (See FMI)	
COMPLETE FOR OBLIGATION OF FUNDS			
20. TYPE OF ASSISTANCE (See FMI)	21. PURPOSE CODE	22. SOURCE OF FUNDS	23. TYPE OF ACTION 1 - OBLIGATION ONLY 2 - OBLIGATION/CHECK REQUEST 3 - CORRECTION OF OBLIGATION
24. TYPE OF SUBMISSION 1 - INITIAL 2 - SUBSEQUENT	25. AMOUNT OF LOAN 3 7 8 0 0 0 0 0	26. AMOUNT OF GRANT 2 0 2 0 0 0 0 0	
27. AMOUNT OF IMMEDIATE ADVANCE 0 0 0	28. DATE OF APPROVAL MO MAY 0 8 1997	29. INTEREST RATE 0 4 5 0 0 0 0 0 4 0	30. REPAYMENT TERMS
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.

**PROMISSORY NOTE**  
(ASSOCIATION OR ORGANIZATION)

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

- KIND OF LOAN:  
 ASSOCIATION- ORGANIZATION  
 HOUSING-ORGANIZATION  
 PUBLIC BODY  
 OTHER

Date May 11, 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 THREE HUNDRED SEVENTY EIGHT THOUSAND-- -- -- -- -- dollars (\$ 378,000.00), 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 May 11, 2001,  
 \$ INTEREST ONLY on May 11, 2002,  
 \$ \_\_\_\_\_ on \_\_\_\_\_,  
 \$ 1,735.00 on June 11, 2002, and  
 \$ 1,735.00 thereafter on the 11th 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.



Unit States  
Depa: Ont of  
Agriculture

Rural  
Development

101 South Main  
Fed. Bldg., Ste. 102  
Temple, TX 76501  
VOICE: (254) 298-1306  
FAX: (254) 298-1477  
TDD: (254) 298-1349

JUN 17 1997

Mr. Frank A. Gabriel, President  
Dobbin-Plantersville Water Supply Corporation  
P. O. Box 39  
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 \$378,000.00 and grant in the amount of \$202,000.00  
were approved on May 19, 1997.

Sincerely,

STEVEN A. CARRIKER  
Acting State Director

Enclosure



**COPY**

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 \$ 378,000.00 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"), was organized under Article 1434a of the revised civil statutes of  
Texas, 1925 for the purpose of providing a  
central water system in Grimes and Montgomery counties (hereinafter referred to as the  
"Facility") to serve the Members of the said Organization; and

WHEREAS, a meeting of the members of the said organization was held on the 21st day of March, 2000  
pursuant to 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 equipped in accordance with plans, and specifications  
prepared by J. F. Fontaine & Associates, Inc., P.O. Box 4187, Palestine, TX 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;

Section 2. (Terms of Loan). That the Organization borrow \$ 378,000.00 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, and shall bear interest from its date, which shall be the date of delivery at a rate not to exceed 4.5% 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 the Government. 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 173.50

each month until the sum of \$83,280 is reached. 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, subject to conditions established by the Government.

(e) 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; 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 by 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 services 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 adverse environmental impacts of the facility's construction or operation.

Section 6. (Security Instrument(s)). 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 \$202,000, 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 provisions 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 effect and be in force from and after the 21st day of March, 2000, being the date of its enactment.

The vote was: Yeas 7 Nays 0 Absent 0

Dobbin-Plantersville Water Supply Corporation

(SEAL) (if applicable)

By /s/ JOHN MOCK  
JOHN MOCK  
Title President

Attest:

/s/ 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 21st day of March, 2000; 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 21st day of March, 2000.

/s/ JOY STEPHENSON  
JOY STEPHENSON  
Secretary of Dobbin-Plantersville Water Supply Corporation

AFFIDAVIT ON BEHALF OF BORROWER

STATE OF TEXAS )

COUNTY OF GRIMES )

Johnny Mock, being first duly sworn on his oath deposes and says:

That he is the President of the Dobbin-Plantersville Water Supply Corporation, which corporation is the owner of the facilities being mortgaged to the United States of America as security for the repayment of a loan in the amount of \$378,000.00;

That there has been no material furnished or labor performed in connection with the construction, enlargement or rehabilitation of said facilities which has not been paid for,

That there are no financing statements, security agreements, chattel mortgages, conditional sales contract or other title retaining instruments of any kind covering or affecting any improvements, equipment or fixtures appurtenant to the said facilities,

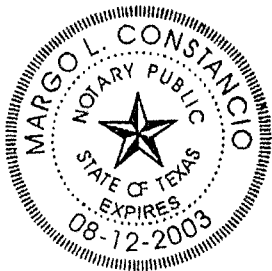
Executed this 11th day of May, 2000.

DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION

By Johnny Mock  
Johnny Mock, President

Subscribed and sworn to before me this 11th day of May, 2000.

(SEAL)



Margo L. Constancio  
Notary Public, State of Texas  
MARGO L. CONSTANCIO

ASSURANCE AGREEMENT  
(Under Title VI. Civil Rights Act of 1964)

COPY

To Dobbin-Plantersville Water Supply Corporation

P.O. Box 127, Plantersville, Texas 77360

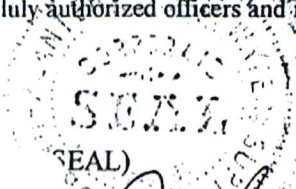
(address)

("Recipient" herein) hereby assures the U.S. Department of Agriculture that Recipient is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d et. Seq.), 7 CFR Part 15, and Farmers Home Administration regulations promulgated thereunder, 7 C.F.R. §1901.202. In accordance with the Act and the regulations referred to above. Recipient agrees that in connection with any program or activity for which Recipient receives Federal financial assistance (as such term is defined in 7 C.F.R. §14.2) no person in the United States shall, on the ground of race, color, or natural origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination.

1. Recipient agrees that any transfer of any aided facility, other than personal property, by sale, lease or other conveyance of contract, shall be, and shall be made expressly, subject to the obligations of this agreement and transfer's assumption thereof.
2. Recipient shall:
  - (a) Keep such records and submit to the Government such timely, complete, and accurate information as the Government may determine to be necessary to ascertain our/my compliance with this agreement and the regulations.
  - (b) Permit access by authorized employees of the Farmers Home Administration or the U.S. Department of Agriculture during normal business hours to such books, accounts and other sources of information and its facilities as may be pertinent to ascertaining such compliance.
  - (c) Make available to users, participants beneficiaries and other interested persons such information regarding the provisions of this agreement and the regulations, and in such manner as the Farmers Home Administration or the U.S. Department of Agriculture finds necessary to inform such persons of the protection assured them against discrimination.
3. The obligation of this agreement shall continue:
  - (a) As to any real property, including any structure, acquired or improved with the aid of the Federal financial assistance, as long as such real property is used for the purpose for which the Federal financial assistance is made or for another purpose which affords similar services of benefits, or for so long as the Recipient retains ownership or possession of the property whichever is longer.
  - (b) As to any personal property acquired or improved with the aid of the Federal financial assistance, so long as Recipient retains ownership or possession of the property.
  - (c) As to any other aided facility or activity, until the last advance of funds under the loan or grant has been made.
4. Upon any breach or violation of this agreement the Government may, at its option:
  - (a) Terminate or refuse to render or continue financial assistance for the aid of the property, facility, project, service or activity.
  - (b) Enforce this agreement by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the breach or violation occurs.

Rights and remedies provided for under this agreement shall be cumulative.

In witness whereof, Dobbin-Plantersville Water Supply Corporation on this date has caused this agreement to be executed by its duly authorized officers and its seal affixed hereto or if a natural person, has hereunto executed this agreement.

Attest:  Joy Stephenson, Secretary-Treasurer  
Joy Stephenson, Secretary-Treasurer

Dobbin-Plantersville Water Supply Corporation  
Recipient  
June 29, 1999  
Date  
John Mock, President  
Title  
Recipient

Water and Waste System Grant Agreement

United States Department of Agriculture

Rural Utilities Service

THIS AGREEMENT dated December 15, 1998, between

Dobbin-Plantersville G & W 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 \$ 580,000.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 378,000.00 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 \$ 378,000.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 202,000.00 or 35 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, marital 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 May 1, 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 debt 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).

37,805 Feet.(7.16 miles) of PVC Line ranging in size 4" to 6".

One (1) deep well and pump

One (1) standpipe

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.

(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).**

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.

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 \$ 202,000.00 which it will advance to Grantee to meet not to exceed 35 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)

John Mock  
President

By \_\_\_\_\_  
*Joy Stephenson*

(Title)

Joy Stephenson  
Secretary-Treasurer

December 15, 1998

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By \_\_\_\_\_

(Title)



together with all rights (including the rights to mining products, gravel, oil, gas, coal or other minerals), interests, easements, hereditaments and appurtenances thereunto belonging, the rents, issues, and profits thereof and revenues and income therefrom, all improvements and personal property now or later attached thereto or reasonably necessary to the use thereof, including, but not limited to, ranges, refrigerators, clothes washers, clothes dryers, or carpeting purchased or financed in whole or in part with loan funds, all water, water rights, and water stock pertaining thereto, and all payments at any time owing to Borrower by virtue of any sale, lease, transfer, conveyance, or condemnation of any part thereof or interest therein—all of which are herein called "the property".

TO HAVE AND TO HOLD the property unto Trustee, Trustee's successors, grantees and assigns forever;

IN TRUST, NEVERTHELESS, (a) at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the payment of the note, to secure prompt payment of the note and any renewals and extensions thereof and any agreements contained therein, including any provision for the payment of an insurance or other charge, (b) at all times when the note is held by an insured holder, to secure performance of Borrower's agreement herein to indemnify and save harmless the Government against loss under its insurance contract by reason of any default by Borrower, and (c) in any event and at all times to secure the prompt payment of all advances and expenditures made by the Government, with interest, as hereinafter described, and the performance of every covenant and agreement of Borrower contained herein or in any supplementary agreement.

AND BORROWER for Borrower's self, Borrower's heirs, executors, administrators, successors and assigns WARRANTS the property unto Trustee for the Benefits of the Government against all lawful claims and demands whatsoever except any liens, encumbrances, easements, reservations, or conveyances specified hereinabove, and COVENANTS AND AGREES as follows:

(1) To pay promptly when due any indebtedness to the Government hereby secured and to indemnify and save harmless the Government against any loss under its insurance of payment of the note by reason of any default by Borrower. At all times when the note is held by an insured holder, Borrower shall continue to make payments on the note to the Government, as collection agent for the holder.

(2) To pay the the Government such fees and other charges as may now or hereafter be required by regulations of the Farmers Home Administration

(3) If required by the Government, to make additional monthly payments of 1/12 of the estimated annual taxes, assessments, insurance premiums and other charges upon the mortgaged premises.

(4) Whether or not the note is insured by the Government, the Government may at any time pay any other amounts required herein to be paid by Borrower and not paid by Borrower when due, as well as any costs and expenses for the preservation, protection, or enforcement of this lien, as advances for the account of Borrower. All such advances shall bear interest at the rate borne by the note which has the highest interest rate.

(5) All advances by the Government as described in this instrument, with interest, shall be immediately due, and payable by Borrower to the Government without demand at the place designated in the latest note and shall be secured hereby. No such advance by the Government shall relieve Borrower from breach of Borrower's covenant to pay. Any payments made by Borrower may be applied on the note or any indebtedness to the Government secured hereby, in any order the Government determines.

(6) To use the loan evidenced by the note solely for purposes authorized by the Government.

(7) To pay when due all taxes, liens, judgments, encumbrances, and assessments lawfully attaching to or assessed against the property, including all charges, and assessments in connection with water, water rights, and water stock pertaining to or reasonably necessary to the use of the real property described above, and promptly deliver to the Government without demand receipts evidencing such payments.

(8) To keep the property insured as required by and under insurance policies approved by the Government and, at its request, to deliver such policies to the Government.

(9) To maintain improvements in good repair and make repairs required by the Government; operate the property in a good and husbandmanlike manner; comply with such farm conservation practices and farm and home management plans as the Government from time to time may prescribe; and not to abandon the property, or cause or permit waste, lessening or impairment of the security covered hereby, or, without the written consent of the Government, cut, remove, or lease any timber, gravel, oil, gas, coal, or other minerals except as may be necessary for ordinary domestic purposes.

(10) To comply with all laws, ordinances, and regulations affecting the property.

(11) To pay or reimburse the Government for expenses reasonably necessary or incidental to the protection of the lien and priority hereof and to the enforcement of or the compliance with the provisions hereof and of the note and any supplementary agreement (whether before or after default), including but not limited to costs of evidence of title to and survey of the property, costs of recording this and other instruments, attorneys' fees, trustees' fees, court costs, and expenses of advertising, selling, and conveying the property.

(12) Except as otherwise provided by the Farmers Home Administration regulations, neither the property nor any portion thereof or interest therein shall be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. The Government shall have the sole and exclusive rights as beneficiary hereunder, including but not limited to the power to grant consents, partial releases, subordinations, and satisfaction, and no insured holder shall have any right, title or interest in or to the lien or any benefits hereof.

(13) At all reasonable times the Government and its agents may inspect the property to ascertain whether the covenants and agreements contained herein or in supplementary agreement are being performed.

(14) The Government may (a) adjust the interest rate, payment, terms or balance due on the loan, (b) increase the mortgage by an amount equal to deferred interest on the outstanding principal, (c) extend or defer the maturity of, and renew and reschedule the payments on, the debt evidenced by the note or any indebtedness to the Government secured by this instrument, (d) release any party who is liable under the note or for the debt from liability to the Government, (e) release portions of the property and subordinate its lien, and (f) waive any other of its rights under this instrument. Any and all this can and will be done without affecting the lien or the priority of this instrument or Borrower's or any other party's liability to the Government for payment of the note or debt secured by this instrument unless the Government says otherwise in writing. HOWEVER, any forbearance by the Government—whether once or often—in exercising any right or remedy under this instrument, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

(15) The power to appoint a substitute trustee is hereby granted to the Government and its assigns, to be exercised at any time hereafter, without notice and without specifying any reason therefor, by filing for record in the office where this instrument is recorded an instrument of appointment, whereupon the substitute trustee shall succeed to all the estates, rights, powers, and trusts herein granted to or vested in Trustee, and the former trustee or substitute trustee shall be divested thereof; and notice of the exercise of this power and any requirement of, or right to require, a bond from any trustee hereunder, are hereby waived.

(16) If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a production credit association, a Federal Land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, upon the Government's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such loan.

(17) Default hereunder shall constitute default under any other real estate, or under any personal property or other security instrument held or insured by the Government and executed or assumed by Borrower, and default under any such other security instrument shall constitute default hereunder.

(18) SHOULD DEFAULT occur in the performance or discharge of any obligation in this instrument or secured by this instrument, or should the parties named as Borrower die or be declared incompetent, or should any one of the parties named as Borrower be discharged in bankruptcy or declared an insolvent or make an assignment for the benefit of creditors, the Government at its option, with or without notice, may: (a) declare the entire amount unpaid under the note and any indebtedness to the Government hereby secured immediately due and payable, (b) for the account of Borrower incur and pay reasonable expenses for repair or maintenance of and take possession of, operate or rent the property, (c) upon application by it and production of this instrument, without other evidence and without notice of hearing of said application, have a receiver appointed for the property, with the usual powers of receivers in like cases, and (d) authorize and request Trustee to foreclose this instrument and sell the property as prescribed by law.

(19) Upon default aforesaid: (a) at the request of the Government, Trustee may foreclose this instrument either by court action pursuant to law or by advertisement and sale of the property as provided by law, for cash or secured credit at the option of the Government, personal notices of which sale need not be served on Borrower; (b) such sale may be adjourned from time to time without other notice than oral proclamation at the time and place appointed for such sale and correction made on the posted notices, and at such sale the Government and its agents may bid and purchase as a stranger; (c) Trustee at Trustee's option may conduct such sale, without being personally present, through Trustee's delegate authorized by Trustee for such purpose orally or in writing and without notice to Borrower of such authorization; and (d) if the property is situated in two or more counties, the sale may be held in any one of such counties selected by the Government in its sole discretion: Provided, however, that in any deed or deeds executed by Trustee hereunder, any and all statements of fact and other recitals therein made as to the nonpayment of the money secured, the nonperformance of covenants herein, the request to Trustee to enforce this Trust, the proper and due appointment of any substitute Trustee, the advertisement or due publication of sale, the due authorization by Trustee of Trustee's delegate to conduct the sale, or as to any other preliminary act or thing having been duly done by said Trustee shall be taken by any and all courts of law and equity as prima facie evidence that said statements or recitals do state facts, and without further questioning shall be accepted as such by Borrower; and provided further, that in the event of foreclosure sale, Borrower shall give up and deliver immediately possession of the property to the purchaser thereof or assume the status of a tenant at will and be subject to summary dispossession as by law provided.

(20) The proceeds of foreclosure sale shall be applied in the following order to the payment of: (a) costs and expenses incident to enforcing or complying with the provisions hereof, (b) any prior liens required by law or a competent court to be so paid, (c) the debt evidenced by the note and all indebtedness to the Government secured hereby, (d) inferior liens of record required by law or a competent court to be so paid, (e) at the Government's option, any other indebtedness of Borrower owing to or insured by the Government, and (f) any balance to Borrower. In the case the Government is the successful bidder at foreclosure or other sale of all or any part of the property, the Government may pay its share of the purchase price by crediting such amount on any debts of Borrower owing to or insured by the Government, in the order prescribed above.

(21) All powers and agencies granted in this instrument are coupled with an interest and are irrevocable by death or otherwise; and the rights and remedies provided in this instrument are cumulative to remedies provided by law.

(22) Borrower agrees that the Government will not be bound by any present or future State laws, (a) prohibiting maintenance of an action for a deficiency judgment or limiting the amount thereof or the time within which such action must be brought, (b) prescribing any other statute of limitations, or (c) limiting the conditions which the Government may by regulation impose, including the interest rate it may charge, as a condition of approving a transfer of the property to a new Borrower. Borrower expressly waives the benefit of any such State laws.

(23) If any part of the loan for which this instrument is given shall be used to finance the purchase, construction or repair of property to be used as an owner-occupied dwelling (herein called "the dwelling") and if Borrower intends to sell or rent the dwelling and has obtained the Government's consent to do so (a) neither Borrower nor anyone authorized to act for Borrower will, after receipt of a bona fide offer, refuse to negotiate for the sale or rental of the dwelling or will otherwise make unavailable or deny the dwelling to anyone because of race, color, religion, sex, handicap, familial status, age or national origin, and (b) Borrower recognizes as illegal and hereby disclaims, and will not comply with or attempt to enforce any restrictive covenants on the dwelling relating to race, color, religion, sex, handicap, familial status, age or national origin.

(24) Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

(25) This instrument shall be subject to the present regulations of the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

(26) Notices given hereunder shall be sent by certified mail, unless otherwise required by law, and addressed, unless and until some other address is designated in a notice so given, in the case of the Government to Farmers Home Administration at Temple, Texas 76501, and in the case of Borrower at the address shown in the Farmers Home Administration Finance Office records (which normally will be the same as the post office address shown above).

(27) If this deed of trust should be invalid for any purpose for which it is executed, such invalidity for such purpose shall not impair its validity for any other purpose and in the event that any portion of the indebtedness under the note when it is held by the Government or any assignee of this deed of trust, or any portion of the indebtedness to the Government under this deed of trust, is not validly secured hereunder, then in that event, the first payments made upon any such indebtedness shall be applied in payment of that portion of the indebtedness which is not validly secured, and no payment shall be applied toward that portion of the indebtedness secured by a valid lien hereunder until any indebtedness not so secured shall have been paid in full.

(28) If any provision of this instrument or application thereof to any person or circumstances is held invalid, such invalidity will not affect other provisions or applications of the instrument which can be given effect without the invalid provision or application, and to that end the provisions hereof are declared to be severable.

~~IT IS AGREED by and between Borrower and the Government that the Government will, for the sum of \$ \_\_\_\_\_, erect, construct, complete and repair buildings or other improvements upon, and will furnish all labor and material necessary for the purpose of making such repairs and improvements upon said property as are described in the Development Plan agreed to in writing by Borrower and the Government and made a part hereof and incorporated herein by reference, except labor to be performed by Borrower; to secure which sum Borrower hereby gives and creates a valid constitutional and contractual lien on said property; and that if said sum is not actually expended for such repairs and improvements, any amount not so expended shall be credited on the indebtedness evidenced by the note. It is further agreed that a failure to complete said repairs and improvements, or failure to complete same according to said Development Plan, shall not defeat said indebtedness and lien, but in such event said indebtedness and lien upon said property shall exist in favor of the Government or its assigns for the amount herein agreed upon, less such amount as would be reasonably necessary to complete said repairs and improvements according to said Development Plan.~~



~~BORROWER, for the express purpose of inducing the Government to make or insure the loan evidenced by the note described herein represent that Borrower does not reside upon, use, or claim, as either a business or residence homestead, the property described above, but that Borrower now resides upon, used and claims as a homestead the following described tract, lot or parcel of land, the fee simple title to which is vested in Borrower:~~

(29) IMPORTANT NOTICE FOR HOMESTEAD IMPROVEMENT LIENS: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW. SEE ADDITIONAL PROVISIONS ON ATTACHED EXHIBIT A.

WITNESS the signature(s) of borrower on this 11th day of May, 2000

DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION

By Johnny Mock  
Johnny Mock, President

STATE OF TEXAS

COUNTY OF GRIMES

} ss:

ACKNOWLEDGMENT

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Johnny Mock, President of Dobbin-Plantersville Water Supply Corporation, a Texas corporation known to me to be the person(s) whose name(s) is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 11th day of May, 2000

MARGO L. CONSTANCIO  
Notary Public in and For  
the State of Texas

(SEAL)

MARGO L. CONSTANCIO

~~XXXXXXXXXXXX~~

STATE OF TEXAS

COUNTY OF \_\_\_\_\_ } ss:

I, the undersigned, do hereby certify that the foregoing instrument was filed for record in my office on the \_\_\_\_\_ day of \_\_\_\_\_ A. D., 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and was duly recorded on this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 19 \_\_\_\_\_, in Volume \_\_\_\_\_, page \_\_\_\_\_ of the Deed of Trust Records of said County.

WITNESS MY HAND and the seal of the County Court of Said County at my office in \_\_\_\_\_, the day and year last above written.

County Clerk \_\_\_\_\_ County, Texas  
By \_\_\_\_\_ Deputy

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° 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° 32' 08" for a distance of 254.19 ft. (chord S 38° 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° 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° 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° 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;

Exhibit A 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,  
Page 1 of 5

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.

Exhibit A 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,

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.

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. 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)
4. 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)
5. Reservation and/or conveyance of all oil, gas and other minerals by prior owners of record. (TRACTS 2, 3 and 5)

Exhibit A 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,  
Page 3 of 5

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.

V.

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

Exhibit A 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,

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*  
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 ½" 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° 26' 06" E, 355.42 ft. to a set ½" 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° 32' 08" for a distance of 254.19 ft. (chord S 38° 35' 16" E, 253.83 ft.) to a set ½" 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° 26' 06" W, 507.83 ft. to a set ½" 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° 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 ½ inch iron rod in the east line of Spring Branch Road, N 02° 26' W, 681.3 feet from the Bates southwest corner;  
THENCE East 100.0 feet to a ½ inch iron rod for corner;  
THENCE North 100.0 feet to a ½ inch iron rod for corner;

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,



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.

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  
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



## REQUEST FOR OBLIGATION OF FUNDS

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 W A T E R S U P P L Y C O R P		3. NUMBER NAME FIELDS 2 (1, 2, or 3 from Item 2)	
		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 2 - BLACK 3 - AI/AN 4 - HISPANIC 5 - A/PI	7. TYPE OF APPLICANT 3 1 - INDIVIDUAL 2 - PARTNERSHIP 3 - CORPORATION 4 - PUBLIC BODY 5 - ASSOC. OF FARMERS 6 - ORG. OF FARMERS WORKERS 7 - OTHER	8. COLLATERAL CODE 2 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 4 - ASSOC.
10. SEX CODE 4 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 2 1 - YES 2 - NO	13. CREDIT REPORT 2 1 - YES 2 - NO
14. DIRECT PAYMENT 3 (See FMI)	15. TYPE OF PAYMENT 1 1 - MONTHLY 2 - ANNUALLY 3 - SEMI-ANNUALLY 4 - QUARTERLY	16. FEE INSPECTION 2 1 - YES 2 - NO	17. INTEREST CREDIT 2 1 - YES (FOR SFH ONLY) 2 - NO
18. COMMUNITY SIZE 1 - 10,000 OR LESS (FOR SFH AND HPG ONLY) 2 - OVER 10,000	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 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	26. AMOUNT OF GRANT 1 5 0 0 0 0 0 0	
27. AMOUNT OF IMMEDIATE ADVANCE 0 0 0	28. DATE OF APPROVAL MO DA YR DEC 11 1997	29. INTEREST RATE 0 4 5 0 0 0 0 1	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.

Position 2

**PROMISSORY NOTE**  
(ASSOCIATION OR ORGANIZATION)

State TEXAS			
County GRIMES			
Case No. 49-93-741941819			
FINANCE OFFICE USE ONLY			
F	LN	LC	IA

- KIND OF LOAN:
- ASSOCIATION- ORGANIZATION
  - HOUSING-ORGANIZATION
  - PUBLIC BODY
  - OTHER

**COPY FOR YOUR RECORDS**

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;

COPY FOR YOUR  
INFORMATION

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.

Section 6. (Security Instrument. In order to secure the payment of the principal & 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

DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION

(SEAL) (if applicable)

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

**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, marital 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 debt 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

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.

(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.

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, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subcontract, 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)

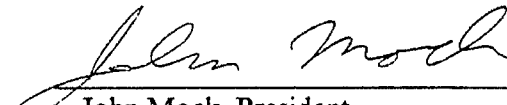
and proper to apply for grant assistance under the rules and regulations of Farmers Home Administration, a department of the United States Department of Agriculture,

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

John Mock, President, as the Signatory Agent of

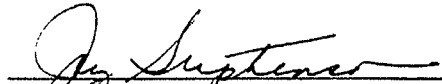
the applicant, or the successor of said Agent, is hereby authorized and directed to make application for grant assistance under the rules and regulations of Farmers Home Administration, a department of the United States Department of Agriculture; and to sign the acceptance of the grant assistance, when 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



## 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.

---

<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 ILLC*, 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-OG, 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

---

<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

---

<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

---

<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,

**ALLENSWORTH AND PORTER, L.L.P.**

100 Congress Avenue, Suite 700

Austin, Texas 78701

(512) 708-1250 Telephone

(512) 708-0519 Facsimile

By: /s/ Will W. Allensworth

Will W. Allensworth

State Bar No. 24073843

wallensworth@allensworthlaw.com

Karly A. Houchin

State Bar No. 24096601

khouchin@allensworthlaw.com

**DOYLE HARRIS DAVIS & HAUGHEY**

Steven M. Harris, OBA #3913

Michael D. Davis, OBA #11282

Max Harris, OBA #22166

2419 East Skelly Drive

Tulsa, OK 74105

(918) 592-1276  
(918) 592-4389 (fax)  
steve.harris@1926blaw.com  
mike.davis@1926blaw.com  
max.harris@1926blaw.com

**Mary K Sahs,**  
State Bar No. 17522300  
P.O. Box 40970  
Austin, TX 78704  
(512) 585-1705  
(512) 597-2516 (fax)  
marysahs@sahslaw.com

***ATTORNEYS FOR PLAINTIFF***