

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

(1) CITY OF DURANT AND (2) DURANT )  
CITY UTILITIES AUTHORITY, )

Plaintiffs, )

vs. )

(3) UNITED STATES DEPARTMENT OF )  
AGRICULTURE, (4) MICHAEL W. )  
SCHRAMMEL, PROGRAM DIRECTOR, )  
RURAL DEVELOPMENT, (5) JERRY W. )  
TUCKER, AREA MANAGER, RURAL )  
DEVELOPMENT, AND (6) BRYAN )  
COUNTY RURAL WATER SEWER AND )  
SOLID WASTE MANAGEMENT )  
DISTRICT NO. 2, )

Defendants. )

MOTION BY THE PLAINTIFFS, CITY OF DURANT AND DURANT CITY UTILITIES  
AUTHORITY, FOR PRELIMINARY INJUNCTION AND  
COMBINED BRIEF IN SUPPORT

**FILED**

NOV - 1 2006

WILLIAM B. GUTHRIE  
Clerk, U.S. District Court  
By \_\_\_\_\_  
Deputy Clerk

Case No. CIV 06 - 470 - RAW

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL &  
ANDERSON, L.L.P.

James C. Milton, OBA No. 16697  
320 South Boston Avenue, Suite 500  
Tulsa, Oklahoma 74103-3725  
Telephone (918) 582-1211  
Facsimile (918) 591-5360  
jmilton@dnda.com  
COUNSEL FOR THE PLAINTIFFS

**TABLE OF CONTENTS**

	<b><u>Page(s)</u></b>
Introduction.....	1
Facts in Support of Motion .....	2
Background of 7 U.S.C. §1926(b) .....	4
Argument and Authorities.....	6
I. Plaintiffs Have Standing to Bring This Action.....	6
A. Plaintiffs Meet the Case or Controversy Requirement .....	6
B. Plaintiffs are within the Zone of Interests .....	7
C. The APA Waives Sovereign Immunity.....	9
D. Plaintiffs Are Not Subject to any Exhaustion of Administrative Remedies Requirement .....	10
II. The Preliminary Injunction is Proper .....	10
A. Plaintiffs have a substantial likelihood of prevailing on the merits of the case.....	11
1. The proposed loan to the District is not consistent with the current developmental plans of the area.....	11
2. The USDA has failed to determine the shortest possible repayment period necessary for the loan .....	12
3. The District failed to provide sufficient public notice of its required public informational meeting .....	13
4. The proposed loan to the District constitutes a violation of the Oklahoma Constitution, Article V, section 51.....	134
B. Plaintiffs Will Suffer Irreparable Injury If the Proposed Loan Closes .....	21
C. The Threatened Injury to the Plaintiffs Outweighs Any Harm A Preliminary Injunction Might Do to the USDA or the District .....	21

D. The Granting of this Preliminary Injunction Will Not Disserve Public Interest .....	23
Summary.....	22

**TABLE OF AUTHORITIES**

**Page(s)**

**Federal Cases**

*Association of Data Processing Serv. Org., Inc. v. Camp*, 397 U.S. 150 (1970) ..... 6, 7, 9

*Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289 (1979) ..... 21

*City of College Station v. United States Dept. of Agriculture*, 395 F. Supp. 2d 495 (S.D. Tex. 2005) ..... 11, 13

*City of College Station v. United States Dept. of Agriculture*, No. H-04-4558 slip op. (S.D. Tex. Oct. 17, 2005) ..... 12

*City of Madison v. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057 (5th Cir. 1987) ..... 8

*Coletti v. Cudd Pressure Control*, 165 F.3d 767 (10th Cir. 1997) ..... 18

*Curtis Pub. Co. v. Cassel*, 302 F.2d 132 (10th Cir. 1962)..... 18

*Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 269 F.3d 1149 (10th Cir. 2001) ..... 11

*Farmers Alliance Mut. Ins. Co. v. Salazar*, 77 F.3d 1291, 1294 (10th Cir. 1996) ..... 18

*Glenpool Util. Servs. Auth. v. Creek County Rural Water Dist. No. 2*, 861 F.2d 1211 (10th Cir. 1988), *cert. denied*, 490 U.S. 1067 (1989) ..... 16, 17, 18, 19

*Lane v. Pena*, 518 U.S. 187 (1996)..... 9

*Melissa Indus. Devel. Corp. v. North Collin Water Supply Corp.*, 316 F. Supp.2d 421 (E.D. Tex. 2004)..... 21

*Melissa Indus. Devel. Corp. v. North Collin Water Supply Corp.*, 256 F.Supp.2d 557 (E.D. Tex. 2003)..... 7, 8

*Moongate Water Co. v. Butterfield Park Mutual Domestic Water Association*, 291 F.3d 1262 (10th Cir. 2002)..... 5

*Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479 (1988)..... 8

*Pena v. U.S.*, 157 F.3d 984 (5th Cir. 1998)..... 9

*Pennhurst v. Halderman*, 451 U.S. 1 (1981) ..... 11, 16

*Pittsburg County Rural Water Dist. No. 7 v. City of McAlester*, 358 F.3d 694 (10th Cir.), *cert. denied*, 125 S. Ct. 44, 125 S. Ct. 54 (2004) ..... 5, 6, 20

*Productos Carnic, S.A. v. Central American Beef and Seafood Trading Co.*, 621 F.2d 683 (5th Cir. 1980)..... 22

*Rhody v. State Farm Mut. Ins. Co.*, 771 F.2d 1416 (10th Cir. 1985)..... 19

*Rothe Dev. Corp. v. U.S. Dep't of Defense*, 194 F.3d 622 (5th Cir. 1999) ..... 9

*Rural Water District # 3 v. Owasso Utils. Auth.*, 530 F. Supp. 818 (N.D. Okla. 1979)..... 15

*Salve Regina College v. Russell*, 499 U.S. 225 (1991)..... 18, 19

*Sault Ste. Marie Tribe of Chippewa Indians v. U.S.*, 288 F.3D 910 (6th Cir. 2002)..... 8

*Sequoyah County Rural Water Dist. No. 7 v. Town of Muldrow*, 191 F.3d 1192 (10th Cir. 1999), *cert. denied*, 529 U.S. 1037, 529 U.S. 1049 (2000) ..... 5, 18

*U.S. v. Nixon*, 418 U.S. 683 (1974)..... 11

*UPS Worldwide Forwarding, Inc. v. U.S. Postal Serv.*, 66 F.3d 621 (3rd Cir. 1995)..... 8

**State Cases**

*Comanche County Rural Water District No. 1 v. City of Lawton*, 1972 OK 117, 501 P.2d 490 ..... 15, 16, 17, 18, 19, 20, 21

*Rural Water & Sewer Dist. No. 4 v. Coppage*, 2002 OK 44, 47 P.3d 872 ..... 3, 12, 14, 17, 18, 19, 20, 21

**Federal Statutes**

7 U.S.C. § 1926(b) ..... 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 19, 20, 21, 23

**State Statutes**

Okla. Const. art. 5, §5 ..... 11, 14, 15, 16, 17, 20, 21, 23

Okla. Stat. tit. 82, §1324.10(4)..... 16

Okla. Stat. tit. 82, §1085.31 ..... 20

Okla. Stat. tit. 82, §1085.36 ..... 3, 12, 14, 19, 20

**Federal Regulations**

7 C.F.R. § 1780.1(a)..... 8

7 C.F.R. § 1780.1(h) ..... 8, 11, 12, 23

7 C.F.R. § 1780.13(e)..... 9, 12, 13, 23

7 C.F.R. § 1780.15 ..... 14, 23

7 C.F.R. § 1780.19(b) ..... 9, 13, 14, 23

**Other Authorities**

Note, Water Associates and Federal Protection under 7 U.S.C. §1926(b): A Proposal to  
Repeal Monopoly Status, 80 Tex. L. Rev. 155 (2001) ..... 4

## INTRODUCTION

This is a case involving the threatened closing of an illegal and unauthorized federal loan. The loan, if made, will cause harm to the City of Durant (“Durant”) and Durant City Utilities Authority (“the Authority”). This action seeks to enjoin the United States Department of Agriculture (“USDA”), its officers and employees, and Bryan County Rural Water District No. 2 (“the District”) from entering into the loan agreement. The requested injunction is based upon the serious and immediate collateral consequences that will result from the funding of the loan. Specifically, funding of the loan will trigger the operation of 7 U.S.C. § 1926(b). Once the loan is funded, the District will receive the monopoly protection made available by Section 1926(b) and the case law that has interpreted it. This Section 1926(b) protection will interfere with current and future water services provided by Durant and the Authority.

Section 1926(b) protection extends to those areas where the protected entity has “made service available.” This legal test, as interpreted by the Courts, would extend the District’s monopoly protection to any area where (1) the District has the right to serve and (2) the District has the capability to serve within a reasonable time after a request is made. Courts interpreting Section 1926(b) have rejected defenses based upon (1) existing legal boundaries, (2) economic harm to other public agencies that provide water services, (3) whether other public agencies began serving water to an area before the federal loan is funded, and (4) whether the funds from the federal loan providing the protection were used for service to the area claimed by the indebted water provider. As a result of these legal tests, it would certainly be possible for the District to disrupt the water services provided by Durant and the Authority in a substantial way.

As it stands now, Durant and the Authority hold state-law protection from interference by the District with any water customer currently served by Durant and the Authority. But if the

federal loan in question is closed, the federal protection available under Section 1926(b) will preempt the state-law protection held by Durant and Authority.

The threatened Section 1926(b) protection will last for a period of forty years.

If the Defendants are allowed to close this loan, the result will be disruption of the civic development of Durant and its surrounding areas. The growth (and resulting increased tax base) of Durant would be significantly impacted and impaired. It is only by obtaining a preliminary injunction now, to prevent the loan from closing, that the vast and far-reaching, 40-year impact of the threatened Section-1926(b) protection can be avoided. Thus, unless the injunction is granted, the Plaintiffs could very likely lose any opportunity to obtain relief.<sup>1</sup>

#### **FACTS IN SUPPORT OF MOTION**<sup>2</sup>

1. Plaintiff Durant is a municipality located in Bryan County, Oklahoma. Durant organized the Authority, a public trust designed to provide utility and other services to Durant and others who contract with it to do so.

2. Defendant Bryan County Rural Water District No. 2 is a special utility district organized pursuant to the constitution and the laws of the state of Oklahoma, and is located and doing business in Bryan County, Oklahoma.

---

<sup>1</sup> Counsel for the City of Durant and the Durant City Utilities Authority also represents the City of Guthrie and the City of Elk City, as well as their public works authorities. These two municipalities are engaged in federal court litigation in the U.S. District Court for the Western District of Oklahoma, in which the municipalities have challenged federal loans that are already in place. Some of the arguments raised in this action are also raised in the Guthrie and Elk City actions. The rural water districts in those cases have argued that these challenges were lost once the loans were closed. It is unknown whether Guthrie and Elk City will be successful in challenging these aspects of the federal loans that have already been closed. This uncertainty regarding the state of the law on the availability of relief after the closing of this type of federal loan underscores the need for injunctive relief in this case.

<sup>2</sup> The facts contained in the factual statement are supported by the Affidavit attached hereto as Exhibit "A".

3. Defendant United States Department of Agriculture (“USDA”) is a federal agency authorized to grant water and waste facility loans and grants pursuant to 7 U.S.C. § 1926(b) and regulations promulgated thereto.

4. Defendants Michael W. Schrammel, Program Director, USDA Rural Development, and Jerry W. Tucker, Area Manager, USDA Rural Development are employees of the USDA responsible for all aspects of loan making, loan servicing and program requirements, including compliance with applicable federal regulations.

5. A portion of Durant is located within the state-law geographic territory of the District. To that extent, both entities participate in the same customer market.

6. Durant and the Authority are indebted to the Oklahoma Water Resources Board (“OWRB”) on a loan that was used to construct a new water tower, new ground storage tank and new pumping station. The balance of the loan remains outstanding.

7. Under Oklahoma law, once an OWRB loan is obtained, “no person, other than the eligible entity obtaining the financial assistance, shall be authorized to provide services of the type relied upon for security of the loan.” 82 O. S. § 1085.36. Section 1085.36 protects “established customers of the borrowing entity who are served by the financed portion of the system.” *Rural Water & Sewer Dist. No. 4 v. Coppage*, 2002 OK 44, ¶ 12, 47 P.3d 872, 874.

8. The District has initiated the process of obtaining a loan from the USDA. On or about February 3, 2006, the USDA, acting through Mr. Schrammel and Mr. Tucker, issued a letter of conditions to the District, indicating its approval of the District’s application for federal funding and outlining the steps that would need to be completed by the District in order to close the USDA loan.

9. On August 23, 2006, Plaintiffs sent a letter to Utilities Programs, USDA Rural Development, challenging the District's application for assistance and requesting all information relating to Plaintiffs' appeal rights as interested parties. On October 5, 2006, Administrator James M. Andrew responded as follows: "Your letter does not assert that Durant has applied for or been denied any agency benefit, therefore Durant does not have appeal rights."

#### **BACKGROUND OF 7 U.S.C. § 1926(B)**

The claims in this case arise against the backdrop of 7 U.S.C. § 1926(b). That statute provides that:

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan.

Section 1926(b) is part of a statutory program that provides federal loans to rural water providers. Note, *Water Associations and Federal Protection under 7 U.S.C. § 1926(b): A Proposal to Repeal Monopoly Status*, 80 Tex. L. Rev. 155, 157-60 (2001) (outlining the history of 7 U.S.C. § 1926(b)). Section 1926(b) provides that, for an association indebted to the federal government on loans authorized by the Agricultural Act of 1961, "[t]he service provided or made available . . . shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan." 7 U.S.C. § 1926(b). This provision has been a frequent source of litigation between municipalities and rural water districts primarily because, in the typical case, there exists a difference between the level of water service provided by a rural system and that provided by a municipal water system.

In order to receive the protection provided by Section 1926(b), a water association must (1) have a continuing qualifying indebtedness to the federal government and (2) have provided or

made available service to the disputed area. *Pittsburg County Rural Water Dist. No. 7 v. City of McAlester*, 358 F.3d 694, 713 (10th Cir.), *cert. denied*, 125 S. Ct. 44, 125 S. Ct. 54 (2004). Thus, it is important to note that the District *does not currently hold Section 1926(b) protection*. The District does not currently satisfy the first element – that it have a continuing qualifying indebtedness to the federal government. This action seeks to prevent the District from satisfying this first element of Section 1926(b) protection.

The second element of Section 1926(b) protection is commonly referred to as the “made-service-available” element of Section 1926(b). The Tenth Circuit has held that as regards rural water associations in Oklahoma, the made-service-available element of Section 1926(b) protection is governed by the “pipes-in-the-ground” test. *Pittsburg County*, 358 F.3d at 713; *Moongate Water Co. v. Butterfield Park Mutual Domestic Water Association*, 291 F.3d 1262, 1267 (10th Cir. 2002). Under Tenth Circuit precedent, a water association meets the pipes-in-the-ground test by demonstrating that it has adequate facilities within or adjacent to the area and can therefore provide service to the area within a reasonable time after a request for service is made. *Pittsburg County*, 358 F.3d at 713.

Under current law in the Tenth Circuit, the geographic scope of Section 1926(b) protection is determined by the federal tests outlined above. *Pittsburg County*, 358 F.3d at 716 n.6. “Federal, not state law, controls the geographic scope of the § 1926 protections, which attach as of the entry into the loan agreement and remain as long as the conditions for § 1926 protection discussed above – FMHA indebtedness and service ‘made available’ – are met.” *Id.* Section 1926(b) protection is not necessarily limited to the corporate boundaries of the entities involved. *See Sequoyah County Rural Water Dist. No. 7 v. Town of Muldrow*, 191 F.3d 1192, 1202-03 (10th Cir. 1999) (rejecting the suggestion that inclusion of areas within a rural water

district's state-law territory, by itself, establishes Section 1926(b) protection and holding, instead, that a plaintiff must meet the pipes-in-the-ground test), *cert. denied*, 529 U.S. 1037, 529 U.S. 1049 (2000). Furthermore, the Tenth Circuit has held that state regulatory agencies (such as the county boards of commissioners in Oklahoma) cannot alter Section 1926(b) protection by removing (or "deannexing") areas from the rural water district's state-law geographic territory. *Pittsburg County*, 358 F.3d at 715. Therefore, the corporate boundaries of the entities involved in this dispute will have no bearing on the scope of Section 1926(b) protection that might be gained by the District if the federal loan is closed.

## **ARGUMENT AND AUTHORITIES**

### **I. Plaintiffs Have Standing to Bring This Action**

Plaintiffs have standing to bring this action against the USDA, its officers and employees, and the District because this issue is a case or controversy, Plaintiffs are within the "Zone of Interests," and judicial review has not been precluded.

#### **A. Plaintiffs Meet the Case or Controversy Requirement.**

The first requirement of prudential standing under the Administrative Procedures Act ("APA") is that the issue represent a genuine case or controversy. Article III of the Constitution restricts Courts to adjudicating cases or controversies. The critical determination is whether "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." *Association of Data Processing Serv. Org., Inc. v. Camp*, 397 U.S. 150, 151-52 (1970). This element requires "that the challenged action has caused [Plaintiffs] an injury in fact, economic or otherwise." *Id.* at 152. There is no doubt but that Plaintiffs have established an injury in fact since they have alleged direct and unlawful economic injury in the way of unconstitutional preclusion from the market in which they previously participated.

In *Melissa Indus. Development Corp. v. North Collin Water Supply Corp.*, 256 F. Supp. 2d 557, 565 (E.D. Tex. 2003), the Court found that municipal plaintiffs seeking to prevent closing of a Section 1926(b) loan had suffered an injury in fact because the threatened loan would “essentially shut[] Plaintiffs out of the water market for four decades.” Furthermore, any services provided by the plaintiffs to customers in areas that could be served by the rural water district would be precluded by the federal loan, resulting in “immediate injuries.” *Id.* at 566. The same is true of Durant and the Authority. If the proposed loan closes, they will be precluded from competition for water services in the area protected by Section 1926(b) for forty years, and will be unable to provide or continue providing water services to customers that may be serviced by the District.

**B. Plaintiffs are within the Zone of Interests.**

The “second” part of the standing requirement in administrative actions is the requirement that the Plaintiffs’ injuries are “arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.” *Data Processing*, 397 U.S. at 153. In *Melissa*, the City of Melissa sued to enjoin the USDA from funding a loan to the North Collin Water Supply Corporation without first complying with the USDA’s regulations. 256 F.Supp.2d 557. The District Court held that the city fell within the zone of interests that Section 1926(b) sought to protect:

In light of the general policies and interest affected by [7 U.S.C. § 1926], Plaintiffs have standing to police/enforce the statute’s regulations. As stated above, Plaintiffs are competitors for water service with NCWSC, which is an entity regulated by section 1926, and as such, Plaintiffs have a zone of interest in the proprietary [sic] of the loan/grant. As water providers, the Plaintiffs have an interest in ensuring that only a “financially needy” competitive water supplier is able to capture their potential customers and prevent city expansion for 40 years. Thus, Plaintiffs satisfy the prudential “zone of interest” requirement.

*Id.* at 567.

In making this determination, the Court properly relied on the well-established body of judicial precedent that holds that competitors of regulated entities have standing to challenge/enforce applicable regulations. *See, e.g., Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 495 (1988) (“As competitors of national banks, travel agents and data processors had that [arguable] interest, and that interest had been affected by the Comptroller’s interpretations opening their markets to national banks.”); *Sault Ste. Marie Tribe of Chippewa Indians v. U.S.*, 288 F.3d 910, 914 (6th Cir. 2002) (“the ‘zone of interests’ concept is sufficiently broad to embrace the interests of an actual or potential competitor”); *UPS Worldwide Forwarding, Inc. v. U.S. Postal Serv.*, 66 F.3d 621, 630 (3rd Cir. 1995) (“competitors fall within the zone of interests of the postal monopoly statutes”). Therefore the *Melissa* court properly determined that one’s status as a competitor satisfies the zone of interests test.

Additionally, the Supreme Court has stated that “we should not inquire whether there has been a congressional intent to benefit the would-be plaintiff.” *Nat'l Credit Union Admin.*, 522 U.S. at 488-89. However, a look at the statute implicated reveals that the Plaintiffs are clearly the types of individuals whose interests are implicated by 7 U.S.C. § 1926(b). The Fifth Circuit has recognized that the “overall effect of [7 U.S.C. § 1926(b)] is . . . to foster a cooperative effort between local and federal authorities.” *City of Madison v. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057, 1061 (5th Cir. 1987). The USDA’s own regulations suggest that the intent of its loan program is “to assure maximum support to the State’s strategy for rural development.” 7 C.F.R. § 1780.1(a). Thus, the regulations require that facilities financed under the program be consistent with current development plans of municipalities in which the proposed project is located. *Id.* at 1780.1(h). The federal program seeks to impose the shortest possible repayment period, presumably to minimize the protection against competition triggered by Section 1926(b).

Id. § 1780.13(e). Finally, the regulations also require public participation in the loan process. Id. at § 1780.19(b).

In light of these general policies and interests affected by the Act, this loan that the USDA has approved implicates the Plaintiffs' interests far in excess of the "arguable" standard required by the Supreme Court. *Data Processing*, at 153. The Plaintiffs are competitors for water services with the District, which is an entity regulated by Section 1926. As such, the Plaintiffs have an interest in the propriety of the USDA's approval of the loan. The Plaintiffs also have an interest in fostering the kind of cooperative effort between local and federal authorities that the Fifth Circuit recognized 7 U.S.C. § 1926(b) seeks to promote. *Bear Creek*, 816 F.2d at 1061. For these reasons, the Plaintiffs clearly have prudential standing to raise their claims under the APA.

**C. The APA Waives Sovereign Immunity.**

Although the Plaintiffs in this action seek to enjoin a branch of the United States government, they are not barred by the Doctrine of Sovereign Immunity. Generally, sovereign immunity protects the federal government from suit except insofar as that immunity is waived. *Pena v. U.S.*, 157 F.3d 984, 986 (5th Cir. 1998). The waiver must be unequivocally expressed in the statutory text. *Lane v. Pena*, 518 U.S. 187, 192 (1996).

The APA contains an explicit waiver of the government's sovereign immunity. See *Rothe Dev. Corp. v. U.S. Dep't of Defense*, 194 F.3d 622, 624 (5th Cir. 1999) (recognizing APA waives sovereign immunity from non-monetary claims against government agencies). That waiver has been specifically held to apply to a claim raising the precise issues presented here – *i.e.*, a request to enjoin a Section 1926 loan because the USDA did not follow its own regulations. *North Collins*, 256 F.Supp.2d at 564. Because Plaintiffs have properly stated a claim under the APA, the USDA is not immune from the Plaintiffs' claims.

**D. Plaintiffs Are Not Subject to any Exhaustion of Administrative Remedies Requirement.**

Plaintiffs are not program participants of any USDA programs and are thus not subject to any exhaustion of administrative remedies requirement as a prerequisite to this court's exercise of jurisdiction over this case. The statutes and regulations governing Section 1926(b) loans contain no provision for administrative appeal by a non-party to a proposed loan. *See* 7 U.S.C. § 6912(e); 7 C.F.R. § 11.1. Administrative appeal is limited to "participants," defined as "any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of an agency to which the regulations in this part apply is affected by a decision of such agency." 7 C.F.R. § 11.1. Plaintiffs are not "participants" within the meaning of this definition.

On August 23, 2006, Plaintiffs sent a letter to Utilities Programs, USDA Rural Development, challenging the District's application for assistance and requesting all information relating to Plaintiffs' appeal rights as interested parties. On October 5, 2006, Administrator James M. Andrew responded as follows: "Your letter does not assert that Durant has applied for or been denied any agency benefit, therefore Durant does not have appeal rights." Plaintiffs do not have standing to initiate an *administrative* appeal from the decision by the USDA and its employees to grant the referenced loan.

**II. The Preliminary Injunction is Proper.**

There are four elements to be considered when a preliminary injunction is sought: (1) a substantial likelihood of success on the merits; (2) irreparable injury to the movant if the injunction is denied; (3) the threatened injury to the movant outweighs the injury to the party opposing the preliminary injunction; and (4) the injunction would not be adverse to the public

interest. *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 269 F.3d 1149, 1156 (10th Cir. 2001).

**A. Plaintiffs have a substantial likelihood of prevailing on the merits of the case.**

Section 1926(b) and the federal regulations promulgated thereto were enacted pursuant to Article I, § 8, cl. 1 of the United States Constitution (the “Spending Clause”). It is well settled that legislation enacted pursuant to the Spending Clause operates in the nature of a contract. *See e.g., Pennhurst v. Halderman*, 451 U.S. 1, 17 (1981). USDA loans are conditioned upon the receiving entity’s voluntary and knowing acceptance of the terms of the “contract.” *Id.* at 17. 7 C.F.R. Part 1780 sets forth contractual prerequisites for contracts between the USDA and rural water districts. Federal regulations have the force of law and are binding on the agency. *U.S. v. Nixon*, 418 U.S. 683, 695-96 (1974).

The proposed loan violates at least three federal regulations and is thus unauthorized. Furthermore, obtaining a loan offering the exclusive protection of a Section 1926(b) loan is in violation of and prohibited by Oklahoma Constitution, Article V, section 51. Accordingly, the Plaintiffs are likely to prevail on the merits of their case.

1. *The proposed loan to the District is not consistent with the current developmental plans of the area.*

First, the proposed loan to the District does not comply with 7 C.F.R. § 1780.1(h), which requires that “RUS financed facilities will be consistent with any current development plans of State, multijurisdictional areas, counties, or municipalities in which the proposed project is located.” *See City of College Station v. United States Dept. of Agriculture*, 395 F. Supp. 2d 495, 513 (S.D. Tex. 2005) (quoting 7 C.F.R. § 1780.1(h)).

As stated *supra*, Durant and the Authority are currently indebted to the Oklahoma Water Resources Board (“OWRB”) on a loan that was used to construct a new water tower, new ground

storage tank and new pumping station to enable the Authority to provide water services within its service area. Durant and the Authority therefore hold state-law protection covering the provision of certain services to persons and entities within their service area, pursuant to Okla. Stat. tit. 82, § 1085.36. *See Rural Water & Sewer Dist. No. 4 v. Coppage*, 2002 OK 44, 47 P.3d 872 (Okla. 2002). Durant and the Authority are concerned that the District will engage in the provision of services in a manner that infringes on their ability and right to serve their existing customers. The District could use the proposed loan to further infringe on the area served by Durant and the Authority, as well as preclude Durant and the Authority from serving future customers within their existing service area. As a result, Durant and the Authority believe that the proposed loan will be used to interfere with Durant and the Authority's rights under state law. Regardless of whether Durant and the Authority hold Section 1085.36 protection, the overlapping boundaries and overlapping claimed service areas will result in a conflict between the proposed loan and currently existing and future development plans of Durant and the Authority, and would therefore violate 7 C.F.R. § 1780.1(h).

Moreover, the proposed loan "interferes with the [Plaintiffs'] development plan because it will threaten the [Plaintiffs'] ability to grow and expand," in violation of 7 C.F.R. § 1780.1(h). *College Station v. United States Dep't of Agriculture*, No. H-04-4558, slip op. at 29 (S.D. Tex. Oct. 17, 2005). Furthermore, Mr. Schrammel and Mr. Tucker, acting on behalf of the USDA and RUS, have conducted an inadequate inquiry into the application of Section 1780.1(h) to the proposed loan.

2. *The USDA has failed to determine and impose the shortest possible repayment period necessary for the proposed loan.*

Second, 7 C.F.R. § 1780.13(e) provides that the "loan repayment period shall not exceed the useful life of the facility, State statute or 40 years from the date of the note or bond,

whichever is less.” The duration of the loan is critically important, as it dictates the duration of Section 1926(b) monopoly protection. The far-reaching impact of the federal loan warrants application of the shortest possible duration to minimize disruption to other water service providers. The USDA did not consider the life of the proposed facility when it determined the 40-year loan repayment period. Mr. Schrammel and Mr. Tucker, acting on behalf of the USDA and RUS, have conducted an inadequate inquiry into the application of section 1780.13(e) to the proposed loan.

3. *The District failed to provide sufficient public notice of its required public informational meeting.*

Third, the proposed loan to the District does not comply with the notice requirements of 7 C.F.R. § 1780.19(b), which requires that the applicant “must hold at least one public information meeting” regarding its proposed loan from the USDA. *City of College Station*, 395 F. Supp. 2d at 514 (quoting 7 C.F.R. § 1780.19(b)). Section 1780.19(b) mandates that the District hold a general public meeting to “give the citizenry an opportunity to become acquainted with the proposed project and to comment on such items as economic and environmental impacts, service area, alternatives to the project,” etc. In order to achieve this objective, applicants must provide notice at least 10 days prior to the meeting. *Id.* Notice must be published in a “newspaper of general circulation in the service area” and posted at the applicant’s principal office. *Id.* According to documents submitted to the USDA, the District published notice in the *Durant Daily Democrat* only 6 days before it held its public meeting. It posted notice at its office only 8 days before its meeting. The shortened notice period caused by the District’s violation of 1780.19(b) deprived the area’s citizenry of the opportunity to evaluate and comment upon the proposed project. Although the USDA had actual or constructive knowledge of these postings, it nevertheless approved the District’s loan application, in violation of section 1780.19(b).

4. *The proposed loan to the District constitutes a violation of the Oklahoma Constitution, Article V, section 51.*

7 C.F.R. § 1780.15 requires the District, as a condition precedent to the disbursement of funds, to comply with applicable state laws regarding, *inter alia*, borrowing money and giving a security interest as a condition to obtaining the USDA loan. Specifically, Section 1780.15 states in part:

Applicants will be *required to comply with Federal, State, and local laws* and any regulatory commission rules and regulations *pertaining to: (a) Organization of the applicant and its authority to own, construct, operate, and maintain the proposed facilities; (b) Borrowing money, giving security therefore, and raising revenues for the repayment thereof; (c) Land use zoning; and (d) Health and sanitation standards and design and installation standards unless an exception is granted by RUS.*

*Id.* (emphasis added).

The proposed loan does not comply with state law, nor does the District hold authority under state law to enter into the proposed loan. As noted above, Durant and the Authority hold state-law exclusive protection covering the provision of certain water services they provide to existing customers in their service area, pursuant to Okla. Stat. tit. 82, § 1085.36. *See Rural Water & Sewer Dist. No. 4 v. Coppage*, 2002 OK 44, 47 P.3d 872. To the extent that the proposed loan will enable or facilitate an infringement upon the Section 1085.36 rights held by Durant and the Authority, the proposed loan violates state law.

Furthermore, Oklahoma constitutional law prohibits the District from entering into a contract that carries with it exclusive rights. Article V, section 51, of the Oklahoma Constitution provides: “The Legislature shall pass no law granting to any association, corporation, or individual any exclusive rights, privileges, or immunities within this State.”

In 1972, the Oklahoma Supreme Court rejected the theory that an Oklahoma water district can hold exclusive franchise rights to distribute water. *Comanche County Rural Water*

*Dist. No. 1 v. City of Lawton*, 1972 OK 117, 501 P.2d 490, 493 (Okla. 1972). The Oklahoma Supreme Court held that a rural water district cannot enter into a contract that has the effect of cloaking the rural water district with prohibited exclusive rights. *Id.* at 493. The Supreme Court held that rural water districts are prohibited from “creat[ing] for [themselves] an exclusive franchise by entering into [a] loan contract with the [Rural Utilities Service].” *Id.* The Court reasoned that this would “ascribe to our Legislature an intention to violate Art. 5, § 51 of the Oklahoma Constitution.” *Id.*

In 1979, the *Comanche County* decision was addressed by the U.S. District Court for the Northern District of Oklahoma. *Rural Water District # 3 v. Owasso Utils. Auth.*, 530 F. Supp. 818 (N.D. Okla. 1979). The *Owasso* decision distinguished *Comanche County* on the basis that “[t]he *Comanche County* case did not involve an ‘encroachment’ by the municipality into areas within the confines of the Water District territory by either annexation or otherwise.” *Owasso*, 530 F. Supp. at 822. The *Owasso* court determined that, while the *Comanche County* court struck down an Oklahoma Attorney General opinion dealing with Section 1926(b), “[t]he Court did not deal with the constitutionality of § 1926(b), nor did the Court consider the question of the supremacy of the Federal Act.” *Id.* The *Owasso* decision is inapplicable to the issues raised in this case because the *Owasso* court did not address the impact of *Comanche County* or the Oklahoma Constitution on the rural water district’s authority to borrow federal funds, or the impact of the district’s lack of authority on the conditions imposed by the federal government pursuant to the Spending Clause. Indeed, the *Owasso* court noted that the parties had stipulated that the loans in question were valid. *Id.* at 825. There is no such stipulation regarding the validity of the current loans.

In 1988, the U.S. Court of Appeals for the Tenth Circuit addressed the impact of the Oklahoma Constitution on rural water districts' authority to enter into loans that carried with them Section 1926(b) protection. *Glenpool Util. Servs. Auth. v. Creek County Rural Water Dist. No. 2*, 861 F.2d 1211 (10th Cir. 1988), *cert. denied*, 490 U.S. 1067 (1989). Unfortunately, the Tenth Circuit was silent on the *Comanche County* decision and its impact on the state-law issues regarding rural water districts' authority to enter into such contracts. Indeed, the *Glenpool* decision contradicts *Comanche County* on issues of Oklahoma state law regarding the types of contracts that are prohibited under Okla. Const. Art. 5, § 5. On page 1216 of the *Glenpool* decision, the Tenth Circuit quoted from Section 1324.10(4) and concluded that "Oklahoma thus authorized [the rural water district] to borrow from the federal government and to enter into any required agreements in connection with those loans." *Glenpool*, 861 F.2d at 1216. The Tenth Circuit concluded that Section 1324.10(4) did not contravene the Oklahoma constitution because it "authorized the acceptance of a condition rather than having granted an exclusive right. The district's right to exclude Glenpool's water service here was granted to the rural water district by the *federal* legislature through Section 1926(b), and not by the Oklahoma state legislature." *Id.* (emphasis original).

The effect of Okla. Const. Art. V, § 51 on the District's authority to borrow funds from the federal government is an issue of state law. Section 1926(b) rests upon the congressional spending power. *Glenpool*, 861 F.2d at 1215. Legislation enacted pursuant to the Spending Clause operates in the nature of a contract. *Pennhurst v. Halderman*, 451 U.S. 1, 17 (1981). In order for the conditions upon USDA loans to be effective, the receiving entity must voluntarily and knowingly accept the terms of the "contract." *Id.* at 17. Here, the District's conduct in entering into the October 4, 2000 federal loan was violative of the Oklahoma Constitution, and

thus cannot bind the State of Oklahoma to the conditions that would otherwise attach to the loans pursuant to Section 1926(b).

The *Glenpool* court applied Oklahoma state law when it determined that the Oklahoma constitutional prohibition did not apply to the Oklahoma statute purporting to authorize rural water districts to enter into federal loans. The *Glenpool* court determined that the challenged Oklahoma statutory provision “authorized the acceptance of a condition rather than having granted an exclusive right.” *Id.* The Oklahoma Supreme Court has disagreed, holding that the Oklahoma constitutional prohibition “could not be evaded by entering into a contract with the [USDA].” *Coppage*, 2002 OK 44, ¶ 14, 47 P.3d at 875; *Comanche County Rural Water Dist. No. 1 v. City of Lawton*, 1972 OK 117, ¶ 20, 501 P.2d 490. “[W]e will not ascribe to our Legislature an intention to violate Art. 5, § 51, of the Oklahoma Constitution. As we have seen, under that section our Legislature is without power to grant an exclusive franchise. Such being true, the theory advanced amounts to a suggestion that the Legislature intended to evade that restriction upon its power by authorizing the District to create for itself an exclusive franchise by entering into the loan contract with the Farmers Home Administration.<sup>3</sup> Under this theory, the contracting power of the District, authorized by the Legislature, becomes a sort of ‘intermediate link’ between the power of the Legislature and the creation of an exclusive franchise. This Court has previously rejected a line of reasoning which included a similar ‘intermediate link’ in a case involving other constitutional limitations.” *Comanche County*, 1972 OK 117, ¶ 20, 501 P.2d 490.

The Tenth Circuit requires that, where state law governs, the decisions (including dicta) of the highest court of that state must be applied, even if it conflicts with otherwise-controlling

---

<sup>3</sup> The Farmers Home Administration has since changed its name to Rural Utilities Service (“RUS”).

federal-court decisions. *Coletti v. Cudd Pressure Control*, 165 F.3d 767, 775 (10th Cir. 1999); *Farmers Alliance Mut. Ins. Co. v. Salazar*, 77 F.3d 1291, 1294 (10th Cir. 1996); *Curtis Pub. Co. v. Cassel*, 302 F.2d 132, 135 (10th Cir. 1962). Thus, the issue of the District's authority to enter into the October 4, 2000 federal loan is governed by the Oklahoma Supreme Court's decisions in *Coppage* and *Comanche County* rather than the Tenth Circuit's decision in *Glenpool*.

The *Glenpool* decision contains a number of specific findings regarding issues of state law. Specifically, the *Glenpool* decision contained a statement regarding the rural water district's obligation to provide service to those within its state-law geographic boundaries. But in 1999, the Tenth Circuit retraced its steps and held that "*Glenpool* did not expressly hold that Oklahoma water districts have a legal duty to provide service; it merely referred to a specific water district's 'responsibilities to applicants within its territory' in affirming a factual finding by the district court." *Sequoyah County Rural Water Dist. No. 7 v. Muldrow*, 191 F.3d 1192, 1202 (10th Cir. 1999), *cert. denied*, 529 U.S. 1037, 529 U.S. 1049 (2000).

Furthermore, a significant development in federal jurisprudence occurred subsequent to the Tenth Circuit's decision in *Glenpool*. In 1991, more than two years after the Tenth Circuit's decision in *Glenpool*, the U.S. Supreme Court announced its decision in *Salve Regina College v. Russell*, 499 U.S. 225 (1991). In *Salve Regina*, the U.S. Supreme Court held that "a court of appeals should review de novo a district court's determination of state law." *Salve Regina*, 499 U.S. at 231. Prior to the announcement of the Supreme Court's decision in *Salve Regina*, the Tenth Circuit paid "great deference . . . to the views of a federal judge who is familiar with the local law and practice," in cases "[w]here there is no authoritative decision of a state court on an issue under purely local law." *Rhody v. State Farm Mut. Ins. Co.*, 771 F.2d 1416, 1419 (10th Cir. 1985). At that time, the then-prevailing rule in nearly all federal courts was that the

Supreme Court was reluctant “to overrule decisions of federal courts skilled in the law of particular states unless their conclusions are shown to be unreasonable.” *Id.* (quoting *Propper v. Clark*, 337 U.S. 472, 486-87 (1949)).

As a result of the Supreme Court’s decision in *Salve Regina*, the standard of review applied to the review of state-law issues has changed significantly since the Tenth Circuit announced its decision in *Glenpool*. To the extent that the *Glenpool* court addressed the Oklahoma-law issue of whether the challenged Oklahoma statutory provision “authorized the acceptance of a condition rather than having granted an exclusive right,” such a determination must have been “an issue under purely local law,” on which “there is no authoritative decision of a state court.” *Rhody*, 771 F.2d at 1419. (Of course, the 1972 Oklahoma Supreme Court decision in *City of Lawton* shows that the *Glenpool* court decided the issue incorrectly based upon authoritative Oklahoma decisional law.) As a result, the 1988 determination of this purely local issue of law in *Glenpool* was decided under an incorrect standard of review that is substantially different from the standard now in place under *Salve Regina*.

In 2002, the Oklahoma Supreme Court reaffirmed the *Comanche County* rule. *Rural Water and Sewer Dist. No. 4 v. Coppage*, 2002 OK 44, ¶ 13, 47 P.3d 872, 874-75 (Okla. 2002). In *Coppage*, the Court considered whether to expand the anticompetitive protection of the state counterpart to 7 U.S.C. § 1926(b), Okla. Stat. tit. 82, § 1085.36. The rural water district argued that Section 1085.36 should be given the same broad protection associated with Section 1926(b). The Oklahoma Supreme Court rejected the argument:

The Water District’s proposed territorial approach to application of section 1085.36 would not, however, be consistent with the public policy of encouraging and promoting the development of water and sewer facilities. Okla. Stat. tit. 82, § 1085.31 (2001). It would limit County Commissioners’ ability to release and separate areas from a water district even when it was in the best interests of the landowners and the water district to do so. Additionally, a territorial approach

would impose provisions of a water district's loan agreement with the Water Resources Board on non-customer landowners who are not parties to the contract. Finally, such an approach would result in the granting of an exclusive right to provide water and sewer services within the geographical boundaries of a water district in contravention of Article V, section 51, of the Oklahoma Constitution and this Court's holding in *Comanche County Rural Water District No. 1 v. City of Lawton*, 501 P.2d 490 (Okla. 1972).

*Id.* at 874-75.

The *Coppage* decision clarified that, in the context of a rural water district that borrows money from the federal government, "the [state] constitutional prohibition could not be evaded by entering into a contract with the Farmers Home Administration." *Id.*

In *Coppage*, the Court limited the protection offered by Okla. Stat. tit. 82, § 1085.36, a statute similar to Section 1926(b), by holding that the state statute could only protect water sales to *existing* customers of the rural water district. *Id.* at 875-76. Such an interpretation was required, otherwise the state statute would violate the Oklahoma Constitution.

The federal protection associated with Section 1926(b) is far broader than the protection authorized by *Coppage*, and, as a result, is violative of the Oklahoma Constitution. Under Tenth Circuit law, Section 1926(b) protection applies to the rural water district's territory – its "service area" as defined by the "made service available" test. *Pittsburg County*, 358 F.3d at 713. Under this federal test, the "service area" is not limited to actual existing customers of the rural water district. In contrast, the state counterpart to Section 1926(b), Okla. Stat. tit. 82, § 1085.36 has been interpreted as limiting state-law protection to existing customers only, so as not to violate the Oklahoma constitution. *Coppage*, 47 P.3d at 875-76. As a result, the Oklahoma statute that purportedly authorizes a rural water district to borrow federal money and thereby invoke federal Section 1926(b) protection is unconstitutional under the Oklahoma Constitution, the *Comanche County* decision, and the *Coppage* decision.

**B. Plaintiffs Will Suffer Irreparable Injury If the Proposed Loan Closes.**

The irreparable injury associated with a USDA loan was recently discussed by the United States District Court for the Northern District of Texas in *Melissa Indus. Devel. Corp. v. North Collin Water Supply Corp.*, 316 F. Supp.2d 421 (E.D. Tex. 2004). Just as in this case, the issue was the impact on a neighboring municipality of a USDA loan awarded to a rural water supplier. As the court pointed out, once the loan is funded, the rural water supplier's certificate of need becomes the collateral for the loan as provided in 7 U.S.C. § 1926(b), which then triggers exclusive protection of the supplier's provision of water services. 7 U.S.C. § 1926(b); *Melissa*, 316 F.Supp.2d at 430.

Most significantly is the fact that once the loan is funded, it cannot be unfunded and the Plaintiffs' possibility for any remedy will disappear. *Melissa*, 316 F.Supp.2d at 431. A plaintiff does not have to await the consummation of a threatened injury to obtain injunctive relief: "If the injury is certainly impending, that is enough." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (citing *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)). In some ways, this situation is similar to a suit to enjoin the impending violation of an environmental statute. Consider a suit in which plaintiff has standing to enjoin the pollution of a river that the plaintiff uses for fishing and recreation. Although the impending injury, *i.e.*, the disappearance of fishing on the river, may not culminate for some time, the court may properly enjoin the immediate and irreversible actions of the polluter that will lead to that inevitable result.

**C. The Threatened Injury to the Plaintiffs Outweighs Any Harm A Preliminary Injunction Might Do to the USDA or the District.**

If the preliminary injunction is not granted, the harm to Plaintiffs is immediate and complete. The loan will close and will be collateralized for up to 40 years. The harm Durant

sought to prevent will have occurred and will stay in place for up to 40 years. Durant's ability to obtain relief will most likely be at an end.

On the other hand, a preliminary injunction will merely maintain the status quo by holding the District and the USDA in place until the court can determine the merits of the case. While delay may be inconvenient, it is not final—assuming, of course, that the Defendants ultimately can prevail on the merits of the case. If the Defendants cannot prevail on the ultimate decision on the merits, then they can have no legitimate interest in proceeding with was an illegal loan.

Additionally, on February 3, 2006, the District stated its intention to fulfill the conditions set forth in the Letter of Conditions by June 3, 2006. The proposed loan currently remains unclosed. However, given the fact that the District could at any time complete the obligations set forth in the Letter of Conditions, thus securing the right to the loan, this does not diminish Plaintiffs' necessity for an immediate and preliminary injunction. It does, however, demonstrate the fact that an injunction would merely preserve the status quo of the Defendants who have not taken steps necessary to close the proposed loan.

In sum, on one side of the balance is the Plaintiffs' loss of any possibility of obtaining relief. On the other side is a delay until the court can decide the case on the merits. Since the delay relates only to matters of convenience between parties who seemingly are not yet prepared to close the proposed loan, the balance weighs heavily in favor of granting the injunction. *Productos Carnic, S.A. v. Central American Beef and Seafood Trading Co.*, 621 F.2d 683 (5th Cir. 1980) (finding the loss of any possibility of obtaining an effective remedy far outweighed the comparatively small storage fees incurred by Defendants and a possibility of a loss of value of beef held in cold storage).

**D. The Granting of This Preliminary Injunction Will Not Disserve Public Interest.**

The regulations of the USDA represent the policy of the United States. Surely it is in the public interest to ensure that the standards and procedures for dispersing public funds are followed. This is especially so given the nature of the regulations at issue here. Those regulations are designed to ensure public notice and participation (7 C.F.R. § 1780.19(b)); to ensure that federal monopoly protection lasts only as long as is required (7 C.F.R. § 1780.13(e)); and to ensure that federal money is not used in a manner inconsistent with local development plans or in a manner that thwarts those local policy decisions (7 C.F.R. § 1780.1(h)).

**SUMMARY**

Because a Section 1926(b) loan effectively prevents expansion of municipal water service to any territory covered and serviced by the recipient of the loan, portions of cities and neighboring cities may find their development severely checked for 40 years. Here there were significant departures from the procedures required by the USDA's regulations governing Section 1926(b) loans. Additionally, the Oklahoma statute which purportedly authorizes this type of loan is unconstitutional in the event that it authorizes monopoly protection for recipients of Section 1926(b) loans in contravention of Article V, section 51 of the Oklahoma Constitution. The Plaintiffs, if not granted a preliminary injunction before these loans are consummated, will lose any possibility of obtaining relief on their claims, and this Court may lose jurisdiction of the dispute because the Plaintiffs' claims may be rendered moot. This Court should accordingly grant the preliminary injunction to protect the Plaintiffs from irreparable injury and to preserve its jurisdiction.

DOERNER, SAUNDERS, DANIEL  
& ANDERSON, L.L.P.

By: 

James C. Milton, OBA No. 16697  
320 South Boston Avenue, Suite 500  
Tulsa, Oklahoma 74103-3725  
Telephone (918) 582-1211  
Facsimile (918) 591-5360  
jmilton@dnda.com  
COUNSEL FOR THE PLAINTIFFS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 31 day of Oct., 2006, a true and correct copy of the above and foregoing *Motion by the Plaintiffs, City of Durant and Durant City Utilities Authority, For Preliminary Injunction and Combined Brief in Support* was mailed, with proper postage thereon, to:

Brent J. Kisling, State Director  
USDA Rural Development State Office  
100 USDA, Suite 108  
Stillwater, OK 74074

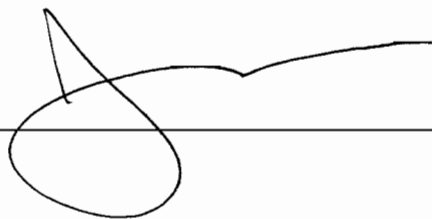
Michael W. Schrammel, Business and Community Program Director  
USDA Rural Development State Office  
100 USDA, Suite 108  
Stillwater, OK 74074

Jerry W. Tucker, Area Manager, Area 4  
USDA Rural Development Area Office  
Route 4, Box 1118  
Atoka, OK 74525

Office of the Under Secretary  
USDA Rural Development, Room 205-W  
Mail Stop 0107  
1400 Independence Avenue, SW  
Washington, D.C. 20250-0107

Utilities Programs  
National Office  
USDA Rural Development, Room 4051-S  
Mail Stop 1510  
1400 Independence Avenues, SW  
Washington, D.C. 20250-1510

Bryan County Rural Water District No. 2  
Chairman and Manager  
9077 U.S. Highway 70  
Mead, OK 73449



A handwritten signature in black ink, consisting of a large loop and a long horizontal stroke, is written over a solid horizontal line.