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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-51282

GREEN VALLEY SPECIAL UTILITY DISTRICT,
Plaintiff-Appellant,

v.

CITY OF CIBOLO, TEXAS,
Defendant-Appellee.

[Filed Aug. 2, 2017]

Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

JERRY E. SMITH, Circuit Judge:

Green Valley Special Utility District ("Green Valley") seeks an injunction, claiming that 7 U.S.C. § 1926(b) prohibits the City of Cibolo from encroaching on its sewer service. Because the district court's interpretation is inconsistent with the statute's plain language, we reverse and remand its dismissal of the complaint.

I.

The Public Utility Commission of Texas ("PUC") issues certificates of convenience and necessity ("CCNs"), which give holders the exclusive right to provide water or sewer service within particular service areas.[1] Green Valley is a special utility

[1] *See* TEX. WATER CODE § 13.242(a) (setting forth the general requirement that utilities obtain CCNs before providing water or sewer service).

district[2] with a service area encompassing parts of Guadalupe, Comal, and Bexar Counties. Green Valley holds two CCNs: one for water service and one for sewer service. In 2003, Green Valley obtained a $584,000 loan from the United States to fund its water service. That loan, which remains outstanding, is secured by Green Valley's water utility revenues.

The city is a municipality located in Guadalupe and Bexar Counties. In March 2016, it applied for a CCN to provide sewer service to all of Cibolo, including portions within Green Valley's service area. Granting the application would require the PUC to strip Green Valley of the right to provide sewer service to those areas of Cibolo currently within Green Valley's service area. The application is for sewer service only; if granted, it would not disturb Green Valley's water service.

Section 1926 is the statute governing the U.S. Department of Agriculture's water and sewer utility loan program. Green Valley claims that the application violates § 1926(b), which prohibits municipalities from encroaching on services provided by utilities with outstanding loans:

> 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; nor shall the happening of any such event be the basis of requiring such association to secure any franchise,

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[2] *See id.* § 65.011 (providing for the creation of special utility districts).

> license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

§ 1926(b).

In May 2016, Green Valley sued for injunctive and declaratory relief, alleging that § 1926(b) protects both its sewer and water service from municipal encroachment. The city moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), claiming that § 1926(b)'s protection extends only to services secured by an association's federal loan—in this case, only Green Valley's water service. The district court dismissed though rejecting the city's interpretation of the statute. It found that "§ 1926(b) protects only the service for which the loan was made—the funded service—regardless of what secures the loan." The court gave Green Valley an opportunity to amend its complaint to specify which of its services are funded by federal loan proceeds.

In August 2016, Green Valley filed an amended complaint in which it explained that the federal loan funded only its water service and elaborated on its earlier theories for why § 1926(b) should be interpreted to prohibit municipalities from encroaching on any services made available by federally indebted utilities. The city filed a second motion to dismiss, which the court granted.

II.

This is a tight question of statutory interpretation. Section 1926(b) prohibits the curtailment or limitation of "[t]he service provided or made available through any such association." § 1926(b). Where a CCN imposes a duty on a utility to provide a service, that utility has "provided or made available" that service

under § 1926(b),[3] and both sides agree that Green Valley qualifies as an "association." The dispute is over the meaning of "service," which the statute does not define. Green Valley claims that § 1926(b)'s protection extends to any service made available by a federally indebted utility. The district court decided, to the contrary, that § 1926(b) applies only to services that are funded by federal loans. We have never considered a case with these facts, though we have held that § 1926(b) "should be liberally interpreted to protect [federally] indebted rural water associations from municipal encroachment."[4] The only circuit that has considered this issue found that § 1926(b) applies only to "the type of service financed by the qualifying federal loan."[5]

"When interpreting statutes, we begin with the plain language used by the drafters."[6] The plain language of § 1926(b) is dispositive.

The statute refers to "[t]he service provided or made available through any such association." The parties urge us to read "service" in one of the following three ways: (1) as a noun that refers to a combined water-and-sewer service; (2) as a noun that

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[3] *N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 915-16 (5th Cir. 1996) (per curiam).

[4] *Id.* at 915.

[5] *See Pub. Water Supply Dist. No. 3 v. City of Lebanon*, 605 F.3d 511, 520 (8th Cir. 2010). The court did not clarify what it meant by "financed," explaining that "we need not decide whether it is the type of service which provides the collateral for the loan or the type of service for which the loan was made that is entitled to protection." *See id.* at 520 n.9.

[6] *United States v. Uvalle-Patricio*, 478 F.3d 699, 703 (5th Cir. 2007) (quoting *United States v. Williams*, 400 F.3d 277, 281 n.2 (5th Cir. 2005)).

refers to a specific service—either a water service or a sewer service—made available by a federally indebted utility; or (3) as a noun that refers to a specific service made available by a federally indebted utility and financed through the federal loan program. Green Valley favors the first two readings; the city, the district court, and the Eighth Circuit adopt the third. The trouble with the third reading is that the statute does not include any language limiting "service" to those services that have received federal financing. The statute refers just to "[t]he service." *See* § 1926(b).

Under either of the first two readings, Green Valley wins. If "service" encompasses what Green Valley describes as its "integrated" water-and-sewer service, then § 1926(b) protects its sewer service from municipal encroachment.[7] If "service" refers to a specific service made available by a federally indebted utility, it must encompass Green Valley's sewer service, which is a "service provided or made available" by a federally indebted utility.

The city claims that Congress's use of the definite article "the" before "service," combined with the use of the singular form of the noun, implies that the statute is referring to a specific service—the service "provided or made available by the federal debt."[8] We disagree.

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[7] Green Valley notes that its water and sewer services share employees, a board of directors, a general manager, and an operating account.

[8] The city's claims track the Eighth Circuit's reasoning in *Public Water Supply*, 605 F.3d at 519-21.

The presence of a definite article can affect a statute's meaning.[9] But, for two reasons, Congress's use of "the" in § 1926(b) is not decisive. First, it is consistent with "service" referring to an integrated water-and-sewer service. Second, if "service" refers to a specific service, it must be possible to read it as referring to more than one service. Otherwise, if an association received federal loans for both its water and sewer service, only one of them would be able to receive § 1926(b)'s protection. If "service" refers to a specific service but can be used iteratively, then both Green Valley's water and sewer service can be examples of "[t]he service made available through any such association." Thus, the use of "the" in § 1926(b) is consistent with all three readings of "service."

Congress used both "service" and "services" throughout § 1926. The city claims that if Congress wanted to safeguard all services made available by a federally indebted utility, it would have used "services," not "service," in § 1926(b). But though "each part or section of a statute should be construed in connection with every other part or section to produce a harmonious whole,"[10] it is not evident what conclusions we can draw from Congress's various uses of "service" and "services" in § 1926. The statute uses "service" seven times outside § 1926(b):

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[9] *See, e.g.*, *Brooks v. Zabka*, 168 Colo. 265, 269, 450 P.2d 653 (1969) ("It is a rule of law well established that the definite article 'the' particularizes the subject which it precedes. It is a word of limitation as opposed to the indefinite or generalizing force of 'a' or 'an.'").

[10] *Uvalle-Patricio*, 478 F.3d at 703 (quoting *Williams*, 400 F.3d at 281 n.2).

three times as part of a proper noun,[11] twice as a verb ("service the loan"),[12] once as an apparently countable noun,[13] and once as an apparently uncountable noun.[14] The statute refers to "services" four times, but none of those references is obviously describing water or sewer services: The word is used twice to refer to broadband services,[15] once to refer to "small-scale extension services" for water and sewer projects,[16] and once to refer to "services . . . of local governments and local economic development organizations."[17] None of this sheds much light on the meaning of "service" in § 1926(b).

The city points out that § 1926(b) prohibits "the granting of any private franchise for *similar* service within such area during the term of such loan." § 1926(b) (emphasis added). It urges the court to read that prohibition in tandem with the prohibition on municipal encroachment on federally indebted utilities' service areas. The city claims that "similar service" should be understood to refer to a similar variety of a specific service—that is, a water service is similar to another water service, and a sewer

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[11] *See* 7 U.S.C. § 1926(a)(9) ("Public Health Service Act"); *id.* § 1926(a)(13) ("Soil Conservation Service"); *id.* § 1926(a)(22)(A)(ii) ("Rural Utilities Service").

[12] *See id.* § 1926(a)(24)(B)(i); *id.* § 1926(a)(24)(B)(ii).

[13] *See id.* § 1926(a)(20)(E) ("local broadband service").

[14] *See id.* § 1926(a)(4)(B) (defining "project" to "include facilities providing central service or facilities serving individual properties, or both.").

[15] *See id.* § 1926(a)(20)(E) (referring to "common carrier facilities and services" and "affordable broadband services").

[16] *See id.* § 1926(a)(2)(B)(i)(II).

[17] *See id.* § 1926(a)(23)(A).

service is similar to another sewer service—and claims that the "similar service" requirement must apply to municipalities as well as to private entities. But that logic assumes that "service" refers to the federally financed service. If "service" refers to any service made available by a federally indebted utility, then "similar service" refers to any services that are similar to those provided by the utility.

Section 1926(b) has two purposes: "(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 . . . by protecting them from the expansion of nearby cities and towns."[18] Green Valley's interpretation is consistent with those purposes. A utility that is protected from municipal encroachment will be able to achieve greater economies of scale, thereby decreasing its per-user costs, and will be less vulnerable to financial disruptions than would a utility that is not protected from municipal encroachment.

It is possible that Congress intended to limit § 1926(b)'s protection to services directly financed by a federal loan. Such a policy would provide federally indebted utilities with substantial benefits while, at the same time, allowing other service providers to compete with federally indebted utilities in the provision of non-federally financed services. But § 1926(b)'s plain language does not limit the statute's protection to services that have received federal financing.

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[18] *N. Alamo*, 90 F.3d at 915.

III.

We decline the city's invitation to read adjectives into § 1926(b). The judgment of dismissal is REVERSED and REMANDED.[19]

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[19] Because both of the readings of "service" that Green Valley favors are consistent with the plain language of the statute, we do not decide which one to adopt.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Case No. A-16-CA-627-SS

GREEN VALLEY SPECIAL UTILITY DISTRICT,
Plaintiff,
v.

CITY OF CIBOLO, TEXAS,
Defendant.

[Filed Oct. 3, 2016]

ORDER

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Defendant's Motion to Dismiss for Failure to State a Claim Under Rule 12(b)(6) [#13], Plaintiff's Response [#15] in opposition, and Defendant's Reply [#16] in support. Having reviewed the documents, the governing law, and the file as a whole, the Court now enters the following opinion and orders GRANTING the motion to dismiss.

Plaintiff Green Valley Special Utility District (Green Valley) brings this suit against Defendant, the City of Cibolo, Texas (the City), claiming the City is attempting to illegally provide sewer service to customers within Green Valley's certified district. *See* Am. Compl. [#12] ¶ 10. Green Valley has a loan to fund its water service from the United States

Department of Agriculture (USDA) under 7 U.S.C. § 1926, which is secured by revenues from that same water service. *See id.* ¶ 6.

Earlier in this case, this Court interpreted "[t]he service" in § 1926(b) to refer to an association's funded service. *See* Order [#9]. Because Green Valley failed to plead which service is funded by federal loan, the Court dismissed Green Valley's Original Complaint but granted leave to amend. *See id.* Green Valley has now filed an Amended Complaint, clarifying it received federal funds for its water service, not its sewer service. *See* Am. Compl. ¶ 9. The City filed a motion to dismiss in reaction. The Court finds Green Valley cannot establish a cause of action under § 1926(b) to protect its sewer service, a service for which it has not used federal funds. Thus, the Court dismisses Green Valley's Amended Complaint with prejudice because further amendment would be futile.

Although the Court previously recounted the facts of this case, we must begin again at the beginning: a summary of the facts, drawn from the Amended Complaint and recounted in the light most favorable to Plaintiff, follows.

I. Background

A. Factual History

Both state and federal law govern the right to sell water and sewer services to the public in Texas. The Texas Public Utility Commission (PUC) issues applicants Certificates of Convenience and Necessity (CCNs), which grant exclusive rights to provide water or sewer utility services to a specified geographic area.

In addition, 7 U.S.C. § 1926(a) authorizes loans and grants to nonprofit associations that provide water and sewer services in rural areas. 7 U.S.C. § 1926(a). With this statute, Congress intended to create a "very effective program of financing the installation and development of domestic water supplies and pipelines serving farmers and others in rural communities." S. Rep. No. 87-566, *as reprinted in* 1961 U.S.C.C.A.N. 2243, 2309. To protect these indebted associations, Congress included the following provision:

> 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; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

7 U.S.C. § 1926(b).

Green Valley provides water and sewer services to a rural area covering parts of Guadalupe, Comal, and Bexar Counties. *See* Am. Compl. [#12] ¶ 1. Green Valley has two CCNs allowing it to provide water and sewer services to the area. *See id.* ¶ 5. Green Valley also has an outstanding loan from the USDA to fund its water service, secured by revenues from the same water service. *See id.* ¶¶ 6, 9.

The City filed an application under Texas Water Code § 13.255 to obtain a CCN for the right to provide sewer service in an area that overlaps with Green

Valley's sewer service. *See id.* ¶ 7. In its application, the City also requested the decertification of Green Valley, which would prevent Green Valley from providing sewer service in the overlapping area. *See id.* Green Valley claims the City's application violates § 1926(b). *See id.* ¶ 13.

B. Procedural History

This Court dismissed Green Valley's Original Complaint. *See* Order [#9]. In evaluating that complaint, the Court conducted a thorough analysis of "the service provided or made available" as defined under § 1926(b). *Id.* at 4-10. Interpreting the statute in light of its statutory and regulatory context, the Court concluded § 1926(b) refers to the funded service and not other, ancillary services an association may provide. *Id.* Because Green Valley failed to plead which of its services, water or sewer, is funded by federal loan, the Court granted the City's Motion to Dismiss but also gave leave for Green Valley to amend its complaint. *Id.* at 10.

Green Valley returns with an Amended Complaint, explaining the federal loan funds its water service and is secured by the water service revenues. Again, the City moves to dismiss under Federal Rule of Civil Procedure 12(b)(6). Green Valley responds, asking the Court to "reconsider its construction of [§] 1926(b) . . . ." *See* Pl.'s Resp. [#15] ¶ 1.

II. Legal Standard

A motion under Rule 12(b)(6) asks a court to dismiss a complaint for "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). The plaintiff must plead sufficient facts to state a claim for relief that is facially plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has

facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 566 U.S. at 678. Although a plaintiff's factual allegations need not establish that the defendant is probably liable, they must establish more than a "sheer possibility" that a defendant has acted unlawfully. *Id.* Determining plausibility is a "context-specific task," and must be performed in light of a court's "judicial experience and common sense." *Id.* at 679.

In deciding a motion to dismiss under Rule 12(b)(6), a court generally accepts as true all factual allegations contained within the complaint. *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993). A court, however, is not bound to accept legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Although all reasonable inferences will be resolved in favor of the plaintiff, the plaintiff must plead "specific facts, not mere conclusory allegations." *Tuchman v. DSC Commc'ns Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994). In deciding a motion to dismiss, courts may consider the complaint, as well as other sources such as documents incorporated into the complaint by reference, and matters of which a court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

Although leave to amend a complaint is to be freely given under Rule 15(a), a district court may deny leave to amend after considering factors such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the

amendment, and futility of the amendment." *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 566 (5th Cir. 2003). If a plaintiff has had fair opportunity to make its case and a cause of action has not been established, the court should finally dismiss the suit. *Id.* at 567.

III. Analysis

Green Valley's ability to state a claim in this case hinges on whether its sewer service is protected under 7 U.S.C. § 1926(b). This Court interprets § 1926(b) to safeguard only the type of service funded by federal loan, not ancillary services an association may also provide. Because Green Valley "acknowledges that proceeds from its federal loan were used . . . only in connection with its water system" but nevertheless seeks protection for its sewer service, the Court finds Green Valley has failed to state a claim.

As previously noted, this Court determined the meaning of "the service provided or made available" under § 1926(b) when it evaluated the prior motion to dismiss. Here, Green Valley spends the majority of its response to the City's Motion to Dismiss arguing this Court's prior order was incorrect. In particular, Green Valley argues the Court should interpret § 1926(b)'s protections to apply to "any service" an association provides if the association receives a federal loan because (1) the plain language of the statute does not limit protection to the funded service; (2) the Court's interpretation of the singular term "service" is inapplicable where a federal loan funds more than one service; (3) this Court's interpretation contradicts Fifth Circuit precedent endorsing a liberal interpretation of the statute; (4) a broader interpretation better serves the statute's

purposes; and (5) the Court should refrain from legislating by judicial mandate.

The Court finds none of Green Valley's arguments regarding the interpretation of § 1926(b) more persuasive the second time around. Green Valley continues to urge a broader reading of § 1926(b), but this Court declines to expand the definition of "the service" beyond the funded service, the construction most directly suggested by § 1926(b) and its context.

A. Plain Language

As discussed in this Court's prior order, because no court within the Fifth Circuit has interpreted "the service provided or made available" and the plain language of the statute is not instructive, this Court turns to the statute's context, both statutory and regulatory, and the purposes behind its enactment. *See United States v. Uvalle-Patricio*, 478 F.3d 699, 703 (5th Cir. 2007) (noting interpretation of a statute begins with the statute's plain language); *Pub. Water Supply Dist. No. 3 v. City of Lebanon*, 605 F.3d 511, 519 (8th Cir. 2010) (looking at the plain language of § 1926(b) and finding the language provided "little insight into the interpretive question"). While Green Valley claims § 1926(b) "unambiguously states that any 'service provided or made available' through any federally indebted association" should be protected, Green Valley misstates the plain language of § 1926(b). Pl.'s Resp. [#15] ¶ 2. The exact language of the statute specifies "*[t]he* service provided or made available" is eligible for § 1926(b)'s shield. § 1926(b) (emphasis added). Green Valley's argument *any* service should be protected ignores the definite article in front of service. And although the plain language of the statute does demonstrate § 1926(b) intended to safeguard a specific service, it does not resolve the issue of *which* service.

B. Statutory Context

The conclusion § 1926(b) protects a specific service is further bolstered by the statute as a whole, specifically Congress's use of the singular rather than the plural. *See United States v. Morton*, 467 U.S. 822, 828 (1984) ("We do not . . . construe statutory phrases in isolation; we read statutes as a whole."). As previously analyzed by this Court, because Congress used "service" and "services" throughout the statute, "the service provided or made available" was not intended to mean all services an association may provide. *Compare* 7 U.S.C. § 1926(b) *with* 7 U.S.C. § 1926(a)(20)(E) (describing a grant program for "cable operators that establish common carrier facilities and *services*") (emphasis added); *see also Pub. Water Supply*, 605 F.3d at 520 ("Read *in pari materia* with 7 U.S.C. § 1926(a), Congress's pattern of using the singular to refer to a single type of service while using the plural to refer to a collection of multiple types of services is decisive.").

Responding to this conclusion, Green Valley claims the Court's interpretation of "service" to mean the funded service is unsuitable where a federal loan funds more than one service. Pl.'s Resp. [#15] ¶ 4. But Green Valley's argument fails to understand the Court is not interpreting service under § 1926(b) to mean one, singular service. *See* Order [#9] at 7-8. Instead, the Court construes service as a category, the type of service financed by a qualifying federal loan. *Id.* An association may have multiple funded services, all of which would benefit from § 1926(b)'s protection. But that is not the case here as Green Valley's sewer service is not federally funded. *See* Am. Compl. [#12] ¶ 9. Thus, the Court concludes the statutory context supports finding § 1926(b) protects a definitive type of service, the funded service.

C. Policy

This Court's interpretation of the statute also conforms to the policy goals of § 1926. Green Valley disagrees, arguing this Court's interpretation contradicts the Fifth Circuit's directive in *North Alamo* to liberally interpret § 1926(b) to protect indebted water associations from municipal encroachment. Pl.'s Resp. [#15] ¶¶ 5-6 (citing *N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 915 (5th Cir. 1996)). Under the Fifth Circuit's precedent, according to Green Valley, § 1926(b) should be extended to shield all of an association's services from encroachment. *Id.* Green Valley's interpretation of § 1926(b), however, stretches the statute and the Fifth Circuit's prior decision too far.

For context, in *North Alamo* the Fifth Circuit observed "[e]very federal court to have interpreted § 1926(b) has concluded that the statute should be liberally interpreted to protect FmHA-indebted rural water associations from municipal encroachment." 90 F.3d at 915. The Fifth Circuit did not, as Green Valley seems to advocate, establish a directive mandating a liberal interpretation favoring the indebted association in every case. *See id.* Furthermore, other courts have recognized limits on liberally interpreting § 1926(b) after considering the entirety of the statute and its objectives. *See Scioto Cty. Reg'l Water Dist. No. 1 v. Scioto Water Inc.*, 103 F.3d 38, 41-42 (6th Cir. 1996) (finding an association is no longer entitled to § 1926(b) protection if it has repaid its federal debt); *Pub. Water Supply*, 605 F.3d 520-21 (limiting an association's § 1926(b) shield to the financed service).

Thus, like the Fifth Circuit in *North Alamo*, this Court looks to the objectives underlying § 1926(b) rather than merely applying a liberal interpretation

as a general rule. *See N. Alamo*, 90 F.3d at 915. The Fifth Circuit explained the two purposes behind § 1926(b): "(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." *Id.* Considered together, these two purposes support viewing § 1926(b) as protecting the very service the federal government sought to encourage. Furthermore, § 1926's purposes show the statute as a whole was primarily intended to encourage rural development. Expanding § 1926(b) to grant an association monopoly power over all services it might provide could discourage rural development by stymieing the growth of other service providers, potentially undermining the purposes of § 1926.

By contrast, Green Valley claims a broader interpretation of § 1926(b)'s protections better aligns with the statute's purposes, especially because Green Valley administers an "integrated service area." Pl.'s Resp. [#15] ¶ 11 (citing Am. Compl. ¶ 21). Green Valley argues any reduction in its integrated water and sewer services will decrease its revenues, damage its viability and financial security, and therefore defeat the statute's purpose. *Id.* But how far should a court go to safeguard an association's revenues? Should it shelter every auxiliary service an association provides? No, to expand § 1926(b)'s protection to services unconnected with the federal loan overextends the statute. *See Pub. Water Supply*, 605 F.3d at 521 ("In short, divorcing the type of service underlying [an association's] qualifying federal loan from the type of service that § 1926(b) protects would stretch the statute too far.").

Although Green Valley complains this Court should refrain from legislating by judicial mandate, this Court avoids that very misstep. Rather than create a new application for § 1926(b), this Court's interpretation of "the service" as the funded service remains within the confines of the statute and its purposes. Consequently, because Green Valley has not received federal funds for its sewer service, the Court finds Green Valley cannot establish a cause of action under § 1926(b) and Green Valley's Amended Complaint should be dismissed.

IV. Conclusion

For all the foregoing reasons, the Court GRANTS the City's Motion to Dismiss. Although leave to amend a complaint is to be freely given, here additional amendment of the complaint would be futile. Because the Court determined § 1926(b) protects an association's funded service, Green Valley cannot establish a cause of action to protect its sewer service, a service for which it has not used federal funds. Thus, Green Valley's Amended Complaint must be dismissed WITH PREJUDICE.

Accordingly:

IT IS ORDERED that Defendant's Motion to Dismiss [#13] is GRANTED; and

IT IS FINALLY ORDERED that all claims brought by Plaintiff in this case are DISMISSED WITH PREJUDICE.

SIGNED this the 3rd day of October 2016.

/s/ SAM SPARKS

SAM SPARKS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Case No. A-16-CA-627-SS

GREEN VALLEY SPECIAL UTILITY DISTRICT,
Plaintiff,
v.

CITY OF CIBOLO, TEXAS,
Defendant.

[Filed July 21, 2016]

ORDER

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Defendant's Motion to Dismiss for Failure to State a Claim Under Rule 12(b)(6) [#4], Plaintiff's Response [#7] in opposition, and Defendant's Reply [#8] in support. Having reviewed the documents, the governing law, and the file as a whole, the Court now enters the following opinion and orders GRANTING the motion to dismiss.

Plaintiff Green Valley Special Utility District (Green Valley) brings this suit against Defendant, the City of Cibolo, Texas (the City), claiming the City is attempting to illegally provide a sewer service to customers within Green Valley's certified district. *See* Orig. Compl. [#1] ¶ 9. Green Valley has a loan from the United States Department of Agriculture

(USDA) under 7 U.S.C. § 1926, which is secured by revenues from its water service. *See id.* ¶ 6. The record is unclear whether the loan funds Green Valley's water or sewer service or both. Green Valley argues the City violates Section 1926(b), which protects indebted associations such as Green Valley. Section 1926(b) states: "[t]he service provided or made available through [an association] shall not be curtailed or limited." Because the Court finds "[t]he service" refers to Green Valley's funded service, not its collateralized water service, and Green Valley has failed to plead which service is funded by the USDA loan, the Court grants the City's Motion to Dismiss.

I. Background

Both state and federal law govern the right to sell water and sewer services to the public in Texas. The Texas Public Utility Commission (PUC) issues applicants Certificates of Convenience and Necessity (CCNs), which grant exclusive rights to provide water or sewer utility services to a specified geographic area.

In addition, 7 U.S.C. § 1926(a) authorizes the USDA to make loans and grants to nonprofit associations that provide water and sewer services in rural areas. 7 U.S.C. § 1926(a). With this statute, Congress intended to create a "very effective program of financing the installation and development of domestic water supplies and pipelines serving farmers and others in rural communities." S. Rep. No. 87-566, *as reprinted in* 1961 U.S.C.C.A.N. 2243, 2309. To protect these indebted associations, Congress included the following provision:

> 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; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

7 U.S.C. § 1926(b).

Green Valley provides water and sewer services to a rural area covering parts of Guadalupe, Comal, and Bexar Counties. *See* Orig. Compl. [#1] ¶ 1. Green Valley has two CCNs allowing it to provide water and sewer services to the area. *See id.* ¶ 5. Green Valley also has an outstanding loan from the USDA secured by revenues from its water service. *See id.* ¶ 6.

The City filed an application under Texas Water Code § 13.255 to obtain a CCN for the right to provide sewer services in an area that overlaps with Green Valley's sewer service. *See id.* ¶ 7. In its application, the City also requested the decertification of Green Valley, which would prevent Green Valley from providing sewer services in the overlapping area. *See id.*

In its Original Complaint, Green Valley asserts the City's application violates § 1926(b). *See id.* ¶ 12. In light of its outstanding loan from the USDA, Green Valley argues the City cannot curtail or limit *either* the water or the sewer service Green Valley provides

in its certified areas.[1] *See id.* The City interprets § 1926(b) differently, claiming the statute protects only the service which secures the outstanding loan. *See* Mot. Dismiss [#4] ¶ 4.

The City now moves to dismiss under Federal Rule of Civil Procedure 12(b)(6).

II. Legal Standard

A motion under Rule 12(b)(6) asks a court to dismiss a complaint for "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). The plaintiff must plead sufficient facts to state a claim for relief that is facially plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 566 U.S. at 678. Although a plaintiff's factual allegations need not establish that the defendant is probably liable, they must establish more than a "sheer possibility" that a defendant has acted unlawfully. *Id.* Determining plausibility is a "context-specific task," and must be performed in light of a court's "judicial experience and common sense." *Id.* at 679.

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[1] Green Valley also argues it has met the test an association must prove to invoke § 1926(b) protection. *See* Resp. [#4] ¶ 11. Specifically, a utility must establish: "(1) it has a continuing indebtedness to the [USDA], and (2) the City has encroached on an area to which the Utility 'made the service available.'" *N. Alamo Water Supply Corp. v. City of San Juan, Tex.*, 90 F.3d 910, 915 (5th Cir. 1996) (internal quotation marks and citation omitted). The Court agrees this is the correct analysis. But the issue before the Court today is how to interpret the meaning of "service" referred to in the second prong of the test.

In deciding a motion to dismiss under Rule 12(b)(6), a court generally accepts as true all factual allegations contained within the complaint. *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993). A court, however, is not bound to accept legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Although all reasonable inferences will be resolved in favor of the plaintiff, the plaintiff must plead "specific facts, not mere conclusory allegations." *Tuchman v. DSC Commc'ns Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994). In deciding a motion to dismiss, courts may consider the complaint, as well as other sources such as documents incorporated into the complaint by reference, and matters of which a court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

III. Analysis

Section 1926(b) states "[t]he service provided or made available through any such association shall not be curtailed or limited . . . ." The Court must determine the meaning of "the service provided or made available." 7 U.S.C. § 1926(b). The City argues the statute requires the "service" to be secured by an association's USDA loan, and because Green Valley's water service revenues provide the collateral for its USDA loan, § 1926(b) protects only its water service. *See* Mot. Dismiss [#4] ¶ 4. Green Valley, on the other hand, seems to claim "service" includes all services within a certified area, as long as the USDA has financed one of those services. *See* Resp. [#7] ¶ 5. After analyzing the statute's plain language, the statutory and regulatory context, and the policy behind § 1926(b), the Court rejects both parties' interpretations and finds § 1926(b) protects only the

service for which the loan was made—the funded service—regardless of what secures the loan.

A. Plain Language

"When interpreting statutes, we begin with the plain language used by the drafters." *United States v. Uvalle-Patricio*, 478 F.3d 699, 703 (5th Cir. 2007) (internal quotation marks and citation omitted). Section § 1926(b) protects "the service provided or made available" by an association from being "curtailed or limited . . . ." The statute does not define "service."[2]

In addition, no courts within the Fifth Circuit have interpreted this phrase in this context. As the City points out, the Eighth Circuit is the only court that has addressed whether "the service provided or made available" refers "solely to the service for which a qualifying federal loan was obtained and which provides the collateral for the loan . . . or to all services that a rural district provides . . . ." *See Pub. Water Supply Dist. No. 3 v. City of Lebanon*, 605 F.3d 511, 519 (8th Cir. 2010).

In *Public Water Supply*, the plaintiff rural district asserted the defendant city violated § 1926(b). *See id.* at 514. Similar to Green Valley, the district provided both water and sewer services. *See id.* The district obtained a USDA loan for the purpose of improving its sewer system. *See id.* The district alleged the city violated § 1926(b) by providing water and sewer services within the district, claiming, as Green Valley does, the USDA loan for its sewer service also protected its water service. *See id.* at 519.

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[2] "Service area" is defined in the regulations as "the area reasonably expected to be served by the project." 7 C.F.R. § 1780.3. This definition, however, is not useful for interpreting the statutory phrase, "the service provided or made available."

The Eighth Circuit first looked at the statute's plain language and determined the term "'service' . . . provide[d] little insight into the interpretive question" at hand. *See id.* This Court agrees the plain language of the phrase does not resolve the issue: "service" could be interpreted to mean the collateralized service, in support of the City's position, or all services provided by the utility, as Green Valley claims. Thus, the plain language of the statute is not instructive.

B. Statutory and Regulatory Context

Statutes are not read in isolation; rather, "each part or section of a statute should be construed in connection with every other part or section to produce a harmonious whole." *Uvalle-Patricio*, 478 F.3d at 703 (internal quotation marks and citation omitted). Here, because Congress used both "service" and "services" throughout the statute, the Court finds "the service provided or made available" represents a single service, and cannot mean all services an association provides. *Compare* 7 U.S.C. § 1926(b) *with* 7 U.S.C. § 1926(a)(20)(E) (describing grant program for "cable operators that establish common carrier facilities and *services*") (emphasis added); *see also* 7 C.F.R. § 1782.14 (explaining § 1926(b) protects "the service area of Agency borrowers with outstanding loans . . . from loss of users due to actions or activities of other entities in the service area of *the* Agency financed *system*") (emphasis added).

Because of the singular construction of "service," the Eighth Circuit ultimately held "'the service provided or made available' is best interpreted to include only the type of service financed by the qualifying federal loan." *Pub. Water Supply*, 605 F.3d at 520. But the court did not determine whether "the

type of service financed by the qualifying federal loan" meant the funded service or the collateralized service. Because the district's USDA loan in *Public Water Supply* "was both for improvements to the [d]istrict's sewer system and was secured by sewer revenues," the court concluded it "need not decide whether[,]" under § 1926(b), "it is the type of service which provides the collateral for the loan or the type of service for which the loan was made that is entitled to protection." *See Pub. Water Supply*, 605 F.3d at 520 n.9.

Here, however, the facts as pleaded require the Court to make that determination. Similar to *Public Water Supply*, Green Valley's USDA loan is secured through revenues from one of its two services: the water service. *See* Orig. Compl. [#1] ¶ 6. But Green Valley has not pleaded whether its USDA loan funds its water or sewer service. Thus, it is not clear from the record whether the scenario is identical to *Public Water Supply*, where the loan was secured by and funded the same service, or whether Green Valley's loan is secured by its water service but funds its sewer service.

The Court finds "the service provided or made available" refers to the funded service, not the collateralized service. The USDA's regulatory context supports this conclusion. The regulations detail possible types of collateral or security for loans under § 1926(b). *See* 7 C.F.R. §§ 1780.14(a)(1)-(3) (listing types of security for water and waste loans and grants: "(1) The full faith and credit of the borrower when the debt is evidenced by general obligation bonds; and/or (2) Pledges of taxes or assessments; and/or (3) Pledges of facility revenue . . ."), 1779.48(b) (listing types of collateral for water and waste

guaranteed loans: "[g]eneral obligation bonds, revenue bonds, pledge of taxes or assessments, assignment of facility revenue, land, easements, rights-of-way, water rights, buildings, machinery, equipment, accounts receivable, contracts, cash, or other accounts or assignments of leases or leasehold interest."). Revenues from a service may not always provide the collateral for the loan. Interpreting "service" to mean "the collateralized service" does not fit within the statutory scheme since there may not be a collateralized service in every case. Thus, the Court finds the phrase "the service provided or made available" refers to the service for which the loan was made.[3] *See* 7 U.S.C. § 1926(b).

C. Policy

The Court's interpretation of "the service provided or made available" serves the two 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 [the USDA's] loans) by protecting them from the expansion of nearby cities

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[3] This interpretation comports with other circuits' treatment of a related issue: "whether § 1926(b) protection is limited to customers receiving service from the particular project being financed by the qualifying federal loan or whether it extends to all customers receiving the type of service financed by the loan." *Pub. Water Supply*, 605 F.3d at 519 n.8. The Fourth and Tenth Circuits determined the statute protects associations' customers of the entire financed service system, not solely customers receiving services from the specific financed project. *See Bell Arthur Water Corp. v. Greenville Utils. Comm'n*, 173 F.3d 517, 524 (4th Cir. 1999); *Sequoyah Cnty. Rural Water Dist. No. 7 v. Town of Muldrow*, 191 F.3d 1192, 1198 n.5 (10th Cir. 1999). Here, the Court similarly finds § 1926(b) protection extends to the *entire* service for which the loan was made.

and towns." *N. Alamo Water Supply Corp. v. City of San Juan*, Tex., 90 F.3d 910, 915 (5th Cir. 1996).

First, protecting the funded service will incentivize associations to begin or continue providing that service and allow such associations to maintain economies of scale for that service. The purpose of the statute is not to protect an association's other services—services that are completely disconnected from any § 1926(b) loan. Extending § 1926(b) protection to services unrelated to an association's loan may even discourage rural development. Without loans funding those services, associations may not be able to efficiently provide them to their rural customers. Preventing municipal entities from competing for those services and providing better services would only hinder rural development. *See Pub. Water Supply*, 605 F.3d at 520.

Second, the protection of the funded service will safeguard associations' financial security and the USDA's loans. Associations will not have to compete with others for the funded services. This protection from competition should not, however, extend to unfunded services. The USDA loan for that service will also be protected, especially if the security for the loan is the protected service's revenues. Yet USDA's interest will be protected even where the funded service differs from the collateralized service. Specifically, the USDA controls what will secure the loan even if § 1926(b) does not protect the collateral. *See* 7 C.F.R. §§ 1780.14 (water and waste loans "will be secured by the best security position practicable in a manner which will adequately protect the interest of [the USDA] during the repayment period of the loan."), 1779.48(b) ("Collateral must be of such a nature that repayment of the [guaranteed] loan is

reasonably ensured when considered with the integrity and ability of project management, soundness of the project, and the borrower's prospective earnings.").

In its Response, Green Valley argues the Fifth Circuit's emphasis on liberally interpreting § 1926 shows the statute's protection extends to all of an association's services. *See* Resp. [#4] ¶¶ 8-9); *N. Alamo Water Supply*, 90 F.3d at 915 ("The service area of a federally indebted water association is sacrosanct. Every federal court to have interpreted § 1926(b) has concluded that the statute should be liberally interpreted to protect [USDA]-indebted rural water associations from municipal encroachment."). The Court agrees the City's interpretation—§ 1926(b) protects only the collateralized service—is too narrow given this precedent. On the other hand, Green Valley's construction stretches the statute too far. The Court's conclusion the statute's protection extends to the funded service adheres to Fifth Circuit authority without disregarding the statutory and regulatory context.

IV. Conclusion

As previously noted, Green Valley has failed to plead which service—water or sewer—is funded by the loan proceeds. *See* Orig. Compl. [#1] ¶ 6. Section 1926 protects "the service provided or made available," which, as the Court has determined, refers to the funded service. Without pleading which service is the funded service, Green Valley has failed to sufficiently plead its claim under § 1926. Thus, Green Valley's complaint, as pleaded, must be dismissed. This Court grants Green Valley leave to amend its Original Complaint to include this pertinent fact, along with anything else Green Valley deems relevant in light of the Court's opinion.

Accordingly:

IT IS ORDERED that Defendant's Motion to Dismiss [#4] is GRANTED; and

IT IS FINALLY ORDERED that all claims brought by Plaintiff in this case are DISMISSED WITHOUT PREJUDICE. Plaintiff shall have THIRTY (30) DAYS from date of entry of this Order in which to file an amended complaint, or this case will be closed.

SIGNED this the 20th day of July 2016.

/s/ SAM SPARKS

SAM SPARKS
UNITED STATES DISTRICT JUDGE

STATUTORY PROVISIONS INVOLVED

1. 7 U.S.C. § 1926 provides:

§ 1926. Water and waste facility loans and grants

(a) In general

(1) The Secretary is also authorized to make or insure loans to associations, including corporations not operated for profit, Indian tribes on Federal and State reservations and other federally recognized Indian tribes, and public and quasi-public agencies to provide for the application or establishment of soil conservation practices, shifts in land use, the conservation, development, use, and control of water, and the installation or improvement of drainage or waste disposal facilities, recreational developments, and essential community facilities including necessary related equipment, all primarily serving farmers, ranchers, farm tenants, farm laborers, rural businesses, and other rural residents, and to furnish financial assistance or other aid in planning projects for such purposes. The Secretary may also make or insure loans to communities that have been designated as rural empowerment zones or rural enterprise communities pursuant to part I of subchapter U of chapter 1 of title 26, or as rural enterprise communities pursuant to section 766 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law 105-277; 112 Stat. 2681, 2681-37), to provide for the installation or improvement of essential community facilities including necessary related equipment, and to furnish financial assistance or other aid in planning projects for such purposes.

The Secretary may also make loans to any borrower to whom a loan has been made under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), for the conservation, development, use, and control of water, and the installation of drainage or waste disposal facilities, primarily serving farmers, ranchers, farm tenants, farm laborers, rural businesses, and other rural residents. When any loan made for a purpose specified in this paragraph is sold out of the Agricultural Credit Insurance Fund as an insured loan, the interest or other income thereon paid to an insured holder shall be included in gross income for purposes of chapter 1 of title 26. With respect to loans of less than $500,000 made or insured under this paragraph that are evidenced by notes and mortgages, as distinguished from bond issues, borrowers shall not be required to appoint bond counsel to review the legal validity of the loan whenever the Secretary has available legal counsel to perform such review.

(2) Water, waste disposal, and wastewater facility grants.—

(A) Authority.—

(i) In general.—The Secretary is authorized to make grants to such associations to finance specific projects for works for the development, storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas.

(ii) Amount.—The amount of any grant made under the authority of this subparagraph shall not exceed 75 per centum of the development cost of the project to serve the area which the association determines can be feasibly served by the facility and to adequately serve

the reasonably foreseeable growth needs of the area.

(iii) Grant rate.—The Secretary shall fix the grant rate for each project in conformity with regulations issued by the Secretary that shall provide for a graduated scale of grant rates establishing higher rates for projects in communities that have lower community population and income levels.

(B) Revolving funds for financing water and wastewater projects.—

(i) In general.—The Secretary may make grants to qualified private, nonprofit entities to capitalize revolving funds for the purpose of providing financing to eligible entities for—

(I) predevelopment costs associated with proposed water and wastewater projects or with existing water and wastewater systems; and

(II) short-term costs incurred for replacement equipment, small-scale extension services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems.

(ii) Eligible entities.—To be eligible to obtain financing from a revolving fund under clause (i), an eligible entity must be eligible to obtain a loan, loan guarantee, or grant under paragraph (1) or this paragraph.

(iii) Maximum amount of financing.—The amount of financing made to an eligible entity under this subparagraph shall not exceed—

(I) $100,000 for costs described in clause (i)(I); and

(II) $100,000 for costs described in clause (i)(II).

(iv) Term.—The term of financing provided to an eligible entity under this subparagraph shall not exceed 10 years.

(v) Administration.—The Secretary shall limit the amount of grant funds that may be used by a grant recipient for administrative costs incurred under this subparagraph.

(vi) Annual report.—A nonprofit entity receiving a grant under this subparagraph shall submit to the Secretary an annual report that describes the number and size of communities served and the type of financing provided.

(vii) Authorization of appropriations.—There are authorized to be appropriated to carry out this subparagraph $30,000,000 for each of fiscal years 2008 through 2018.

(C) Special evaluation assistance for rural communities and households program.—

(i) In general.—The Secretary may establish the Special Evaluation Assistance for Rural Communities and Households (SEARCH) program, to make predevelopment planning grants for feasibility studies, design assistance, and technical assistance, to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects described in paragraph (1), this paragraph, and paragraph (24).

(ii) Terms.—

(I) Documentation.—With respect to grants made under this subparagraph, the Secretary shall require the lowest amount of documentation practicable.

(II) Matching.—Notwithstanding any other provisions in this subsection, the Secretary may fund up to 100 percent of the eligible costs of grants provided under this subparagraph, as determined by the Secretary.

(iii) Funding.—The Secretary may use not more than 4 percent of the total amount of funds made available for a fiscal year for water, waste disposal, and essential community facility activities under this chapter to carry out this subparagraph.

(iv) Relationship to other authority.—The funds and authorities provided under this subparagraph are in addition to any other funds or authorities the Secretary may have to carry out activities described in clause (i).

(3) No grant shall be made under paragraph (2) of this subsection in connection with any project unless the Secretary determines that the project (i) will serve a rural area which, if such project is carried out, is not likely to decline in population below that for which the project was designed, (ii) is designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area, and (iii) is necessary for an orderly community development consistent with a comprehensive community water, waste disposal, or other development plan of the rural area.

(4)(A) The term "development cost" means the cost of construction of a facility and the land, easements, and rights-of-way, and water rights necessary to the construction and operation of the facility.

(B) The term "project" shall include facilities providing central service or facilities serving individual properties, or both.

(5) Application requirements.—Not earlier than 60 days before a preliminary application is filed for a loan under paragraph (1) or a grant under paragraph (2) for a water or waste disposal purpose, a notice of the intent of the applicant to apply for the loan or grant shall be published in a general circulation newspaper. The selection of engineers for a project design shall be done by a request for proposals by the applicant.

(6) The Secretary may make grants aggregating not to exceed $30,000,000 in any fiscal year to public bodies or such other agencies as the Secretary may determine having authority to prepare comprehensive plans for the development of water or waste disposal systems in rural areas which do not have funds available for immediate undertaking of the preparation of such plan.

(7) Repealed. Pub. L. 107-171, title VI, § 6020(b)(1), May 13, 2002, 116 Stat. 363.

(8) In each instance where the Secretary receives two or more applications for financial assistance for projects that would serve substantially the same group of residents within a single rural area, and one such application is submitted by a city, town, county or other unit of general local government, he shall, in the absence of substantial reasons to the contrary, provide such assistance to such city,

town, county or other unit of general local government.

(9) Conformity with state drinking water standards.—No Federal funds shall be made available under this section for a water system unless the Secretary determines that the water system will make significant progress toward meeting the standards established under title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300f et seq.).

(10) Conformity with federal and state water pollution control standards.—No Federal funds shall be made available under this section for a water treatment discharge or waste disposal system unless the Secretary determines that the effluent from the system conforms with applicable Federal and State water pollution control standards.

(11) Repealed. Pub. L. 113-79, title VI, § 6012(b), Feb. 7, 2014, 128 Stat. 845.

(12)(A) The Secretary shall, in cooperation with institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C. 301-305, 307 and 308), or the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute and State, substate, and regional planning bodies, establish a system for the dissemination of information and technical assistance on federally sponsored or funded programs. The system shall be for the use of institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C. 301-305, 307, and 308), or the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321–326 and 328), including the Tuskegee Institute and State, substate, and

regional planning bodies, and other persons concerned with rural development.

(B) The informational system developed under this paragraph shall contain all pertinent information, including, but not limited to, information contained in the Federal Procurement Data System, Federal Assistance Program Retrieval System, Catalogue of Federal Domestic Assistance, Geographic Distribution of Federal Funds, United States Census, and Code of Federal Regulations.

(C) The Secretary shall obtain from all other Federal departments and agencies comprehensive, relevant, and applicable information on programs under their jurisdiction that are operated in rural areas.

(D) Of the sums authorized to be appropriated to carry out the provisions of this chapter, not more than $1,000,000 per year may be expended to carry out the provisions of this paragraph.

(13) In the making of loans and grants for community waste disposal and water facilities under paragraphs (1) and (2) of this subsection the Secretary shall accord highest priority to the application of any municipality or other public agency (including an Indian tribe on a Federal or State reservation or other federally recognized Indian tribal group) in a rural community having a population not in excess of five thousand five hundred and which, in the case of water facility loans, has a community water supply system, where the Secretary determines that due to unanticipated diminution or deterioration of its water supply, immediate action is needed, or in the case of waste disposal, has a community waste disposal system, where the Secretary determines that due to unanticipated

occurrences the system is not adequate to the needs of the community. The Secretary shall utilize the Soil Conservation Service in rendering technical assistance to applicants under this paragraph to the extent he deems appropriate.

(14) Rural water and wastewater technical assistance and training programs.—

(A) In general.—The Secretary may make grants to private nonprofit organizations for the purpose of enabling them to provide to associations described in paragraph (1) of this subsection technical assistance and training to—

(i) identify, and evaluate alternative solutions to, problems relating to the obtaining, storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas;

(ii) prepare applications to receive financial assistance for any purpose specified in paragraph (2) of this subsection from any public or private source; and

(iii) improve the operation and maintenance practices at any existing works for the storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas.

(B) Selection priority.—In selecting recipients of grants to be made under subparagraph (A), the Secretary shall give priority to private nonprofit organizations that have experience in providing the technical assistance and training described in subparagraph (A) to associations serving rural areas in which residents have low

income and in which water supply systems or waste facilities are unhealthful.

(C) Funding.—Not less than 1 nor more than 3 percent of any funds appropriated to carry out paragraph (2) of this subsection for any fiscal year shall be reserved for grants under subparagraph (A) unless the applications, qualifying for grants, received by the Secretary from eligible nonprofit organizations for the fiscal year total less than 1 per centum of those funds.

(15) In the case of water and waste disposal facility projects serving more than one separate rural community, the Secretary shall use the median population level and the community income level of all the separate communities to be served in applying the standards specified in paragraph (2) of this subsection and section 1927(a)(3)(A) of this title.

(16) Grants under paragraph (2) of this subsection may be used to pay the local share requirements of another Federal grant-in-aid program to the extent permitted under the law providing for such grant-in-aid program.

(17)(A) In the approval and administration of a loan made under paragraph (1) for a water or waste disposal facility, the Secretary shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such facility.

(B) If the Secretary determines that a design or materials, other than those that were recommended, should be used in the water or waste disposal facility, the Secretary shall provide such applicant or borrower with a comprehensive justification for such determination.

(18) In making or insuring loans or making grants under this subsection, the Secretary may not condition approval of such loans or grants upon any requirement, condition or certification other than those specified under this chapter.

(19) Community facilities grant program.—

(A) In general.—The Secretary may make grants, in a total amount not to exceed $10,000,000 for any fiscal year, to associations, units of general local government, nonprofit corporations, Indian tribes (as such term is defined under section 5304(e) of title 25), and federally recognized Indian tribes to provide the Federal share of the cost of developing specific essential community facilities in rural areas.

(B) Federal share.—

(i) In general.—Except as provided in clauses (ii) and (iii), the Secretary shall, by regulation, establish the amount of the Federal share of the cost of the facility under this paragraph.

(ii) Maximum amount.—The amount of a grant provided under this paragraph for a facility shall not exceed 75 percent of the cost of developing the facility.

(iii) Graduated scale.—The Secretary shall provide for a graduated scale for the amount of the Federal share provided under this paragraph, with higher Federal shares for facilities in communities that have lower community population and income levels, as determined by the Secretary.

(20) Community facilities grant program for rural communities with extreme unemployment and severe economic depression.—

(A) Definition of not employed rate.—In this paragraph, the term "not employed rate", with respect to a community, means the percentage of individuals over the age of 18 who reside within the community and who are ready, willing, and able to be employed but are unable to find employment, as determined by the department of labor of the State in which the community is located.

(B) Grant authority.—The Secretary may make grants to associations, units of general local government, nonprofit corporations, and Indian tribes (as defined in section 5304 of title 25) in a State to provide the Federal share of the cost of developing specific essential community facilities in rural communities with respect to which the not employed rate is greater than the lesser of—

(i) 500 percent of the average national unemployment rate on November 9, 2000, as determined by the Bureau of Labor Statistics; or

(ii) 200 percent of the average national unemployment rate during the Great Depression, as determined by the Bureau of Labor Statistics.

(C) Federal share.—Paragraph (19)(B) shall apply to a grant made under this paragraph.

(D) Authorization of appropriations.—There are authorized to be appropriated to carry out this paragraph $50,000,000 for fiscal year

2001 and such sums as are necessary for each subsequent fiscal year, of which not more than 5 percent of the amount made available for a fiscal year shall be available for community planning and implementation.

(E) Rural broadband.—Notwithstanding subparagraph (C), the Secretary may make grants to State agencies for use by regulatory commissions in states 2 with rural communities without local broadband service to establish a competitively, technologically neutral grant program to telecommunications carriers or cable operators that establish common carrier facilities and services which, in the commission's determination, will result in the long-term availability to such communities of affordable broadband services which are used for the provision of high speed Internet access.

(21) Community facilities grant program for rural communities with high levels of out-migration or loss of population.—

(A) Grant authority.—The Secretary may make grants to associations, units of general local government, nonprofit corporations, and Indian tribes (as defined in section 5304 of title 25) in a State to provide the Federal share of the cost of developing specific essential community facilities in any geographic area—

(i) that is represented by—

(I) any political subdivision of a State;

(II) an Indian tribe on a Federal or State reservation; or

(III) other federally recognized Indian tribal group;

(ii) that is located in a rural area (as defined in section 2009 3 of this title);

(iii) with respect to which, during the most recent 5-year period, the net out-migration of inhabitants, or other population loss, from the area equals or exceeds 5 percent of the population of the area; and

(iv) that has a median household income that is less than the nonmetropolitan median household income of the United States.

(B) Federal share.—Paragraph (19)(B) shall apply to a grant made under this paragraph.

(C) Authorization of appropriations.—There are authorized to be appropriated to carry out this paragraph $50,000,000 for fiscal year 2001 and such sums as are necessary for each subsequent fiscal year, of which not more than 5 percent of the amount made available for a fiscal year shall be available for community planning and implementation.

(22) Rural water and wastewater circuit rider program.—

(A) In general.—The Secretary shall continue a national rural water and wastewater circuit rider program that—

(i) is consistent with the activities and results of the program conducted before February 7, 2014, as determined by the Secretary; and

(ii) receives funding from the Secretary, acting through the Rural Utilities Service.

(B) Authorization of appropriations.—There is authorized to be appropriated to carry out this paragraph $20,000,000 for fiscal year 2014 and each fiscal year thereafter.

(23) Multijurisdictional regional planning organizations.—

(A) Grants.—The Secretary shall provide grants to multijurisdictional regional planning and development organizations to pay the Federal share of the cost of providing assistance to local governments to improve the infrastructure, services, and business development capabilities of local governments and local economic development organizations.

(B) Priority.—In determining which organizations will receive a grant under this paragraph, the Secretary shall give priority to an organization that—

(i) serves a rural area that, during the most recent 5-year period—

(I) had a net out-migration of inhabitants, or other population loss, from the rural area that equals or exceeds 5 percent of the population of the rural area; or

(II) had a median household income that is less than the nonmetropolitan median household income of the applicable State; and

(ii) has a history of providing substantive assistance to local governments and economic development organizations.

(C) Federal share.—A grant provided under this paragraph shall be for not more than 75 percent of the cost of providing assistance described in subparagraph (A).

(D) Maximum amount of grants.—The amount of a grant provided to an organization under this paragraph shall not exceed $100,000.

(E) Authorization of appropriations.—There is authorized to be appropriated to carry out this paragraph $30,000,000 for each of fiscal years 2003 through 2007.

(24) Loan guarantees for water, wastewater, and essential community facilities loans.—

(A) In general.—The Secretary may guarantee a loan made to finance a community facility or water or waste facility project in a rural area, including a loan financed by the net proceeds of a bond described in section 142(a) of title 26.

(B) Requirements.—To be eligible for a loan guarantee under subparagraph (A), an individual or entity offering to purchase the loan shall demonstrate to the Secretary that the person has—

(i) the capabilities and resources necessary to service the loan in a manner that ensures the continued performance of the loan, as determined by the Secretary; and

(ii) the ability to generate capital to provide borrowers of the loan with the additional credit necessary to properly service the loan.

(C) Use of loan guarantees for community facilities.—The Secretary shall consider the benefits to communities that result from using loan guarantees in carrying out the community facilities program and, to the maximum extent practicable, use guarantees to enhance community involvement.

(25) Tribal college and university essential community facilities.—

(A) In general.—The Secretary may make grants to an entity that is a Tribal College or

University (as defined in section 1059c of title 20) to provide the Federal share of the cost of developing specific Tribal College or University essential community facilities in rural areas.

(B) Federal share.—The Secretary shall establish the maximum percentage of the cost of the facility that may be covered by a grant under this paragraph, except that the Secretary may not require non-Federal financial support in an amount that is greater than 5 percent of the total cost of the facility.

(C) Authorization of appropriations.—There is authorized to be appropriated to carry out this paragraph $10,000,000 for each of fiscal years 2008 through 2018.

(26) Essential community facilities technical assistance and training.—

(A) In general.—The Secretary may make grants to public bodies and private nonprofit corporations (such as States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations) that will serve rural areas for the purpose of enabling the public bodies and private nonprofit corporations to provide to associations described in paragraph (1) technical assistance and training, with respect to essential community facilities programs authorized under this subsection—

(i) to assist communities in identifying and planning for community facility needs;

(ii) to identify public and private resources to finance community facility needs;

(iii) to prepare reports and surveys necessary to request financial assistance to develop community facilities;

(iv) to prepare applications for financial assistance;

(v) to improve the management, including financial management, related to the operation of community facilities; or

(vi) to assist with other areas of need identified by the Secretary.

(B) Selection priority.—In selecting recipients of grants under this paragraph, the Secretary shall give priority to private, nonprofit, or public organizations that have experience in providing technical assistance and training to rural entities.

(C) Funding.—Not less than 3 nor more than 5 percent of any funds appropriated to carry out each of the essential community facilities grant, loan and loan guarantee programs as authorized under this subsection for a fiscal year shall be reserved for grants under this paragraph.

(b) Curtailment or limitation of service prohibited

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; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served

by the association at the time of the occurrence of such event.

(c) Repealed. Pub. L. 91-606, title III, § 302(2), Dec. 31, 1970, 84 Stat. 1759

(d) Carryover of unused authorizations for appropriations

Any amounts appropriated under this section shall remain available until expended, and any amounts authorized for any fiscal year under this section but not appropriated may be appropriated for any succeeding fiscal year.

2. Texas Water Code § 13.242 provides:

§ 13.242. Certificate Required

(a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension, and except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(b) A person that is not a retail public utility or a utility or water supply corporation that is operating under provisions pursuant to Subsection (c) may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certificated area of a retail public utility without first obtaining written consent from the retail public utility. A person that violates this section or the reasonable and legal terms and conditions of any written consent is subject to the administrative penalties described by Section 13.4151 of this code.

(c) The utility commission may by rule allow a municipality or utility or water supply corporation to render retail water service without a certificate of public convenience and necessity if the municipality

has given notice under Section 13.255 that it intends to provide retail water service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility.

(d) A supplier of wholesale water or sewer service may not require a purchaser to obtain a certificate of public convenience and necessity if the purchaser is not otherwise required by this chapter to obtain the certificate.

3. Texas Water Code § 13.250 provides:

§ 13.250. Continuous and Adequate Service; Discontinuance, Reduction, or Impairment of Service

(a) Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the utility commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate or a person who possesses facilities used to provide utility service shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a utility commission-ordered arrangement between the two service providers;

(3) nonuse; or

(4) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the utility commission, shall be in conformity with and subject to conditions, restrictions, and limitations that the utility commission prescribes.

(d) Except as provided by this subsection, a retail public utility that has not been granted a certificate of public convenience and necessity may not discontinue, reduce, or impair retail water or sewer service to any ratepayer without approval of the regulatory authority. Except as provided by this subsection, a utility or water supply corporation that is allowed to operate without a certificate of public convenience and necessity under Section 13.242(c) may not discontinue, reduce, or impair retail water or sewer service to any ratepayer without the approval of the regulatory authority. Subject to rules of the regulatory authority, a retail public utility, utility, or water supply corporation described in this subsection may discontinue, reduce, or impair retail water or sewer service for:

(1) nonpayment of charges;

(2) nonuse; or

(3) other similar reasons in the usual course of business.

(e) Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the utility commission and the commission in writing.

4. Texas Water Code § 13.254(a) provides:

§ 13.254. Revocation or Amendment of Certificate

(a) The utility commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if the utility commission finds that:

(1) the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action pursuant to Section 13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

* * *

5. Texas Water Code § 13.255 provides:

§ 13.255. Single Certification in Incorporated or Annexed Areas

(a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase "franchised utility" shall mean a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the

area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed with the utility commission, and the utility commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the utility commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. If an application for single certification is filed, the utility commission shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility.

(c) The utility commission shall grant single certification to the municipality. The utility commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the utility commission shall also determine in its order the adequate and just

compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the utility commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered pursuant to Subsection (d) or (e). The grant of single certification by the utility commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation pursuant to court order, or pays an amount into the registry of the court or to the retail public utility under Subsection (f). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) In the event the final order of the utility commission is not appealed within 30 days, the municipality may request the district court of Travis County to enter a judgment consistent with the order of the utility commission. In such event, the court shall render a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property to be transferred to the municipally owned utility or franchised utility

as delineated by the utility commission's final order and property determined by the utility commission to be rendered useless or valueless by the granting of single certification; and

(2) orders payment to the retail public utility of adequate and just compensation for the property as determined by the utility commission in its final order.

(e) Any party that is aggrieved by a final order of the utility commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final. The hearing in such an appeal before the district court shall be by trial de novo on all issues. After the hearing, if the court determines that the municipally owned utility or franchised utility is entitled to single certification under the provisions of this section, the court shall enter a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property requested by the municipality to be transferred to the municipally owned utility or franchised utility and located within the singly certificated area and property determined by the court or jury to be rendered useless or valueless by the granting of single certification; and

(2) orders payment in accordance with Subsection (g) to the retail public utility of adequate and just compensation for the property transferred and for the property damaged as determined by the court or jury.

(f) Transfer of property shall be effective on the date the judgment becomes final. However, after the judgment of the court is entered, the municipality or

franchised utility may take possession of condemned property pending appeal if the municipality or franchised utility pays the retail public utility or pays into the registry of the court, subject to withdrawal by the retail public utility, the amount, if any, established in the court's judgment as just and adequate compensation. To provide security in the event an appellate court, or the trial court in a new trial or on remand, awards compensation in excess of the original award, the municipality or franchised utility, as the case may be, shall deposit in the registry of the court an additional sum in the amount of the award, or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages in excess of the original award of the trial court. On application by the municipality or franchised utility, the court shall order that funds deposited in the registry of the court be deposited in an interest-bearing account, and that interest accruing prior to withdrawal of the award by the retail public utility be paid to the municipality or to the franchised utility. In the event the municipally owned utility or franchised utility takes possession of property or provides utility service in the singly certificated area pending appeal, and a court in a final judgment in an appeal under this section holds that the grant of single certification was in error, the retail public utility is entitled to seek compensation for any damages sustained by it in accordance with Subsection (g) of this section.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in

Chapter 21, Property Code, governing actions in eminent domain; the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate, shall, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt, the value of the service facilities of the retail public utility located within the area in question, the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question, the amount of the retail public utility's contractual obligations allocable to the area in question, any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification, the impact on future revenues lost from existing customers, necessary and reasonable legal expenses and professional fees, factors relevant to maintaining the current financial integrity of the retail public utility, and other relevant factors.

(g-1) The utility commission shall adopt rules governing the evaluation of the factors to be considered in determining the monetary compensation under Subsection (g). The utility commission by rule shall adopt procedures to ensure that the total compensation to be paid to a retail public utility under Subsection (g) is determined not later than the 90th calendar day after the date on which the utility commission determines that the municipality's application is administratively complete.

(h) A municipality or a franchised utility may dismiss an application for single certification without prejudice at any time before a judgment becomes

final provided the municipality or the franchised public utility has not taken physical possession of property of the retail public utility or made payment for such right pursuant to Subsection (f) of this section.

(i) In the event that a municipality files an application for single certification on behalf of a franchised utility, the municipality shall be joined in such application by such franchised utility, and the franchised utility shall make all payments required in the court's judgment to adequately and justly compensate the retail public utility for any taking or damaging of property and for the transfer of property to such franchised utility.

(j) This section shall apply only in a case where:

(1) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under Chapter 65, Water Code, or a fresh water supply district under Chapter 53, Water Code; or

(2) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a retail public utility, other than a nonprofit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census.

(k) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in Subsection (j)(2):

(1) the utility commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;

(2) if the municipality abandons its application, the court or the utility commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees; and

(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding hereunder.

(*l*) For an area incorporated by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the 10th business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of

compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the utility commission or a person the utility commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the third appraiser may not be less than the lesser or more than the greater of the two original appraisals. The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the municipality. The determination of compensation under this subsection is binding on the utility commission.

(m) The utility commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the commission's minimum requirements for public drinking water systems.

6. Texas Water Code § 65.011 provides:

§ 65.011. Creation of District

A special utility district may be created under and subject to the authority, conditions, and restrictions of, and is considered a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution.

7. Texas Water Code § 65.012 provides:

§ 65.012. Purposes of District

A district may be created:

(1) to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the transportation of water; and to sell water to towns, cities, and other political subdivisions of this state, to private business entities, and to individuals;

(2) for the establishment, operation, and maintenance of fire-fighting facilities to perform all fire-fighting activities within the district; or

(3) for the protection, preservation, and restoration of the purity and sanitary condition of water within the district.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

SCOTT S. HARRIS
Clerk of the Court
(202) 479-3011

October 17, 2017

Mr. David C. Frederick
Kellogg, Hansen, Todd,
Figel & Frederick, P.L.L.C.
1615 M Street, NW
Suite 400
Washington, DC 20036-3209

Re: City of Cibolo, Texas
v. Green Valley Special Utility District
Application No. 17A420

Dear Mr. Frederick:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Alito, who on October 17, 2017, extended the time to and including December 29, 2017.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk
by /s/ MELISSA BLALOCK
Melissa Blalock
Case Analyst

[attached notification list omitted]