

FILED

AUG 20 2018

GREENE CO. CIRCUIT CLERK

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

**OBJECTION TO RULE 30(b)(6) NOTICE OF DEPOSITION AND
“NOTICE OF DEPOSITION DUCES TECUM” (SIC)**

Comes the Plaintiff, St. Francis River Regional Water District (“SFRRWD”), by and through its attorneys, Lyons & Cone, P.L.C., and for its Objection to Rule 30(b)(6) Notice of Deposition and “Notice of Deposition Duces Tecum” (sic), states:

INTRODUCTION

The Plaintiff filed its action against the City of Marmaduke on June 21, 2017. Following the filing of numerous pleadings and documents, the Defendant e-mailed a Notice of Rule 30(b)(6) deposition which included a Rule 30(b)(5) request (although to our knowledge this document has not been filed yet). (Attached hereto and incorporated by reference herein as Exhibit A is a true and correct copy of the Rule 30(b)(6) Notice). Rule 30(b)(5) states that “the notice to a party deponent may be accompanied by a Request made in compliance with Rule 34 [of the ARCP] for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the Request.”

LAW AND ARGUMENT

A. RULE 30(b)(5)

Rule 30(b)(5) by itself accomplishes nothing. To the contrary to accomplish any discovery under this subsection, the party seeking the discovery must comply with Rule 34 of the ARCP. Rule 34 provides as follows:

(b) Procedure.

(1) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with **reasonable particularity**. The request shall specify a **reasonable time**, place and manner of making the inspection and performing the related acts.

(2) **The party upon whom the request has been served shall serve a written response within 30 days after the service of the request**, except that a defendant must serve a response within 30 days after the service of the request upon him or within 45 days after the summons and complaint have been served upon him, whichever is longer. . . . The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts.

Rule 34 states that the party upon whom the request has been served shall serve a written response within thirty (30) days after service of the request. Setting the deposition before thirty (30) days cannot be allowed if the party requesting the documents desires to have the documents brought to the deposition as the responding party has thirty (30) days to lodge its objections, i.e. per the rule, the “response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated.”

B. RULE 30(b)(6)

The notice as provided to the Plaintiff is improper for a number of reasons and, therefore, the Plaintiff should not be required to appear for the deposition. First, the Plaintiff is not available on the date noticed and we will not appear then as no attempt to work out the date was made prior to the notice being sent. Second, the City's notice is woefully inadequate and improper under the Arkansas Rules of Civil Procedure as set forth below.

Rule 30(b)(6) requires that the requesting party describe the matters for examination with reasonable particularity. Clearly, the Defendant has failed to do so in this case. Judge Leon Holmes in the case of *RM Dean Farms v. Helena Chemical Co.*, 2012 WL 169889, at *1 (E.D.Ark. 2012) while describing a Rule 30(b)(6) notice states that “[m]any of the topics are expansive inasmuch as they say that the testimony would include, but not be limited to, items listed”. Additionally, Judge Holmes states that “[s]ome of the topics cover historical information without any time limit”. He found this unacceptable. In fact, Judge Holmes struck the vast majority of the 30(b)(6) notice. [Note: He found that only eight (8) items out of the seventy (70) topics were described with reasonably particularity.]

The reason that Judge Holmes' opinion is so important is explained by the Arkansas Supreme Court. Because Arkansas, generally, does not allow interlocutory appeals, there are very few cases in the State which describe, define or interpret the rules of civil procedure. Thus, *City of Ft. Smith v. Carter*, 364 Ark. 100, 216 SW3d 954 (2005) provides “based upon the similarities of our rules with the federal rules of civil procedure, we consider the interpretation of these rules by federal courts to be of a significant precedential value”. Thus, it is proper to look to federal cases for assistance in interpretation of Rule 30. As these issues have been addressed by our own federal judges who remain on the bench today, it is apparent that Defendant's notice

is deficient and cannot be enforced for the reasons stated herein.

In regard to the notice sent by the Defendant herein, it is deficient for the following reasons:

- a. Item A is deficient because it not stated with “reasonable particularity” as it includes all allegations in the complaint, most of which have been admitted and, are, therefore, not subject to discovery. Further, it is overly broad and not susceptible of a determination what is being sought;
- b. Item B is deficient because it not stated with “reasonable particularity” as it has no time limit and is not reasonably calculated to lead to the discovery of admissible evidence;
- c. Item F is deficient because it includes the words, “including, but not limited to” and as such Plaintiff has no method of determining the outer bounds of this request;
- d. Item G is deficient because it asks for documents of any kind which reflect or relate to the allegations in Plaintiffs complaint. This is not described with reasonable particularity and includes many items that have been admitted and, are, therefore, not subject to discovery. Further, it is overly broad and not susceptible of a determination what is being sought;
- e. Item I is deficient because it includes the words “including, but not limited to” and as such Plaintiff has no method of determining the outer bounds of this request;
- f. Item J is deficient because it is poorly worded and Plaintiff cannot reasonably determine what is being sought; and

- g. Item K is deficient because it not stated with “reasonable particularity” as it includes all allegations in the complaint, most of which have been admitted and, are, therefore, not subject to discovery. Further, it is overly broad and not susceptible of a determination what is being sought.

An overly broad Rule 30(b)(6) notice subjects the noticed party to an impossible task. “To avoid liability, the noticed party must designate persons knowledgeable in the areas of inquiry listed in the notice Where, as here, the defendant cannot identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible.” *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000). Judge Holmes in his opinion referenced above continued “[t]he 30(b)(6) notice would require Helena Chemical Company to produce a corporate representative or corporate representatives to testify on topics so vast in number, so vast in scope, so open ended, and so vague that compliance with the notice would be impossible.” *RM Dean Farms*, 2012 WL 169889, at *1. This is exactly what the Defendant has sought in this case and, thus, the objection to the 30(b)(6) notice should be sustained.

For example in Defendant’s notice, “[t]he allegations contained in the Complaint” in Item A of Schedule 1 literally cover every aspect of the Complaint including, jurisdiction, venue, history of ARI, City of Marmaduke’s city limits [borders], the entire property covered by the territory of SFRRWD, the manufacturing of ARI, the ARI buildings, construction of ARI buildings, the City of Marmaduke’s actions in supplying water to ARI, the Commission’s lack of authorization to the City of Marmaduke as well as “[a]ny subject matter referred to or contained within Plaintiff’s Complaint” in Item K of Schedule 1.

As explained above, many of these items were admitted by the Defendant. However, the party appearing at a Rule 30(b)(6) deposition is required “to compile the information you

requested in one or more people who will testify”. See Fed. R. Civ. Pro. 30(b)(6) advisory committee’s note (1970 amendment). In this instance, a large majority of the allegations in the complaint cannot be proven by testimony from a representative of Plaintiff. To the contrary, many of the allegations will be proven by testimony from witnesses who are employees of ARI or of the City of Marmaduke.

The responding party (SFRRWD) must prepare its witnesses to provide non-evasive and complete answers for the organization. In fact, the case of *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) states that the organization has the duty “to make a conscientious, good faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unequivocally answer questions about the designated subject matter.” Thus, the obligation to prepare is substantial. However, in this case, the Defendant has admitted a large majority of the items contained in the complaint. Thus, the so-called “topic designations” (which are not topic designations) which SFRRWD would have to prepare for are simply a waste of time, effort and money. These are clearly not intended to gain knowledge or information necessary for this suit, but to harass as most of these issues have previously been established by admissions. [See attached as Exhibit B examples from the cases of *Hartford Fire Ins. Co. v. P & H Cattle Co.*, 2009 WL 2951120, at *1 (D. Kan. Sept. 10, 2009); *Latrisha Williams v. Ouachita County Medical Center, an Arkansas Corporation; Arkansas Health Group D/b/a Ouachita Valley Family Clinic/ a Baptist Health Affiliate, an Arkansas Corporation; Johnathan Lewis, M.D; et al.* (No. 52-CV-17-184, Circuit Court of Ouachita County, Arkansas, Civil Division, Thirteenth Judicial Circuit); and, finally, a sample of topics that can be used.]

Importantly, the failure to properly prepare a witness(es) on all of the topics is subject to sanctions by the Court. Thus, the topics must be ones that the responding party has the ability to prepare for and are at issue in the case. Otherwise, a party could be subject to sanctions for failing to prepare on topics that it is unable to prepare for. Sanctions are available pursuant to ARCP Rule 37(d). In fact, in the case cited above of *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) sanctions were awarded in favor of the party giving the Rule 30(b)(6) notice due to the responding party's failure to properly prepare a witness and for such witness failing to "fully and unequivocally answer questions about the designated subject matter." Thus, it is incumbent upon the party sending such notice to properly designate the topics so that the responding party can properly prepare for the deposition.


"NOTICE DUCES TECUM"

As the Court is aware, there is no such thing as a "notice duces tecum". It is impossible to respond to this with any law because it simply does not exist. In regard to the so called "Notice Duces Tecum", we object to being required to bring to a deposition items that are not properly sought. Under Rule 34, there is a proper procedure for requesting documents which the Defendant has not followed. Further, trial decisions have not been made and, therefore, it is impossible to bring documents when you have not made decisions on the documents that are being sought. Additionally, the Defendant sought some of these same documents in its Interrogatories and Request for Production of Documents and those documents were not produced then based upon proper objections lodged in a timely manner. (Attached hereto and incorporated by reference herein as Exhibit C is a true and correct copy of Answers and Objections to Interrogatories and Requests for Production of Documents without attached Bates Numbered documents).

CONCLUSION

This objection to the Rule 30(b)(6) notice must be sustained as the federal courts of the State of Arkansas have addressed these same questions and have found that notices which are deficient must not be enforced when they are not issued in compliance with the Arkansas Rules of Civil Procedure and the similar Federal Rules of Civil Procedure.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: 

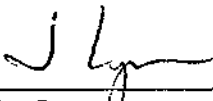
State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 17th day of August, 2018.



Jim Lyons

**IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION**

ST. FRANCIS RIVER REGIONAL WATER DISTRICT **PLAINTIFF**

VS. **No. 4CV-2017-219-MR**

CITY OF MARMADUKE, ARKANSAS **DEFENDANT**

**NOTICE OF RULE 30(b)(6) DEPOSITION AND NOTICE OF DEPOSITION
DUCES TECUM**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(5), Rule 30(b)(6) of the Arkansas Rules of Civil Procedure, Defendant shall take the deposition of one or more officers, directors, agents, member, employee, or other representative who shall be designated to testify on behalf of St. Francis River Regional Water District ("the District") regarding all information known or reasonably available to the District with respect to the subject matters identified in Schedule 1. Defendant requests that the District provide written notice at least five (5) business days before the deposition of the name(s) and the position(s) of the individual(s) designated to testify on the District's behalf.

The deposition(s) shall commence on August 23, 2018, beginning at 10:30 a.m. at the Marmaduke Community Center, located at 307 West Mill Street, Marmaduke, Arkansas 72443 or at such other time and location as agreed upon by the parties, and shall be taken before a duly certified court reporter recorded by stenographic means.

The deponent(s) is directed to bring all documents and records that it relied on, read, reviewed, received, or sent in preparation for the deposition. The deponent(s) is further directed to bring all documents and records that it anticipates may be introduced by it at the trial of this matter.



Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

BY: /s/ Amanda LaFever
Amanda LaFever, Ark. Bar No. 2012133
Attorney for Defendants
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-978-6117
FACSIMILE: 501-978-6554
EMAIL: alafever@arml.org

CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on August 3, 2018, I provided the foregoing to the counsel for Plaintiff, via email and Certified Mail Return Receipt, postage prepaid, respectively, to the address below:

Jim Lyons
David Tyler
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403

/s/ Amanda LaFever
Amanda LaFever, Ark. Bar No. 2012133

SCHEDULE 1

In accordance with Ark. R. Civ. P. 30(b)(6), Defendant designates the matters identified below for examination. In construing these topics, the following instructions and definitions shall apply:

1. All terms shall be construed to encompass as broad a range of information as permitted under the Arkansas Rules of Civil Procedure.
2. "Plaintiff" is defined to mean St. Francis River Regional Water District, and any of its officers, directors, agents, members, employees, or other representative.
3. "Defendant" is defined to mean the City of Marmaduke, Arkansas.
4. "Complaint" is defined to include the originally filed Complaint as well as any subsequently filed Amended Complaint, unless specified otherwise.

The deponent(s) shall be prepared to address the following topics:

- A. The allegations contained in the Complaint;
- B. The District's financial and fiscal history as well as records reflecting such;
- C. Any responses served or produced by the District in response to Interrogatories or Requests for Production;
- D. The name, mailing address, phone numbers, and email addresses for any and all custodians of any and all documents produced by the District in response to Interrogatories or Requests for Production;
- E. The District's administration structure, organizational structure, operational structure, and management structure;

- F. The District's bookkeeping and accounting policies and practices, including but not limited to the authority to sign contracts and make payments for work performed on its behalf and authorized users of financial and accounting;
- G. Identification of all reports, photographs, videotapes, surveys, notes, or any other documents of any kind which reflect or relate to the allegations set forth in Plaintiff's Complaint;
- H. Identification of all written or otherwise recorded statements in connection with the subject matter of this litigation;
- I. Identification of any communications (other than with counsel of record), including but not limited to written communications, emails, text messages, phone calls, or otherwise recorded, between any agents, representatives, officers, directors, or employees of the District and anyone else or any entity, concerning the provision of services by the District to American Railcar Industries ("ARI")—whether actual or anticipated, the geographical limitations or boundaries of the District, the alleged exclusivity of the District regarding its provision of services, the provisions of water services by the City to ARI, and the allegations made in the Complaint. In doing so, the deponent should know who the communication was between, when it occurred, the method or format of the conversation, i.e., email, phone call, etc., and the substance of the communication;
- J. Identification of any efforts, steps, or inquiries made regarding the District's geographical limitations or boundaries of the District as well as the alleged exclusivity of the District regarding its provision of services;
- K. Any subject matter referred to or contained within Plaintiff's Complaint.

Technique: Designing a (b)(6) Notice that Is Not Overbroad

In the case of *Hartford Fire Ins. Co. v. P & H Cattle Co.*, the court was asked to determine if the following 30(b)(6) notice was overbroad:

"Topic 8: The document retention policies applicable to any [Heartland] Financial Records, [Heartland] Patient Records, [Heartland] Financial Reports, or [Heartland] Plans and Forecasts."

"Topic 9: The destruction, alteration, or loss of any [Heartland] Financial Records, [Heartland] Patient Records, [Heartland] Financial Reports, or [Heartland] Plans and Forecasts."

"[Heartland] Financial Records" is defined by the notice as "records of Heartland Surgical Specialty Hospital, LLC's income, expenses, assets, liabilities, accounts receivable, accounts payable, profits, losses, or other financial information."

The term "[Heartland] Patient Records" is defined as "records of Heartland Surgical Specialty Hospital, LLC's patient encounters and patient billing, including but not limited to patient names and

13. *Hartford Fire Ins. Co. v. P & H Cattle Co.*, No. CIV.A. 05-2001-DJW, 2009 WL 2951120, at *1 (D. Kan. Sept. 10, 2009).

EXHIBIT

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addresses, admissions, diagnoses, referring physicians, treating physicians, treatments, fees and charges, discounts, invoices, claims submitted to insurers and other third-party payers, amounts collected from patients, and amounts collected from third-party payers."

The term "[Heartland] Financial Reports" is defined as "reports that state, summarize, or analyze information contained in [Heartland] Financial Records or [Heartland] Patient Records, including but not limited to general ledger, income statements, balance sheets, financial statements, reports on uses and sources of capital, reports on changes in financial position, and reports on owners' equity or payments to owners."

The term "Heartland Plans and Forecasts" is defined as "any budget, plan, projection, forecast, or pro forma statement of Heartland Surgical Specialty Hospital, LLC's patient volume, income, expenses, assets, liabilities, accounts receivable, accounts payable, profits, losses, or other financial information."¹⁴

Pursuant to Ark. R. Civ. P. 30(b)(6), Defendant OCMC shall designate and fully prepare one or more officers, directors, managing agents or other persons who consent to testify on behalf of Defendant OCMC and whom Defendant OCMC will fully prepare to testify regarding the following designated matters and as to such information that is known or reasonably available to Defendant OCMC's organization:

1. The process used to determine responses to discovery requests and in particular the location and existence of documents that should be produced pursuant to the discovery requests in this notice.
2. The existence of the documents and electronically stored data requested in the schedule of documents below, pursuant to Ark. R. Civ. P. 34;
3. The systems, processes and purposes for the creation, duplication and storage of the documents and electronically stored data requested in the schedule of documents below, pursuant to Ark. R. Civ. P. 34;
4. Any and all documents and electronically stored data retention and destruction policies that relate to any of the documents and electronically stored data requested in the schedule of documents below, pursuant to Ark. R. Civ. P. 34;
5. The location of the documents and electronically stored data documents requested in the schedule of documents below, pursuant to Ark. R. Civ. P. 34;
6. The organization, indexing, and filing of the documents and electronically stored data requested in the schedule of documents below, pursuant to Ark. R. Civ. P. 34;
7. The method of the search(es) for the documents and electronically stored data requested in the schedule of documents below, pursuant to Ark. R. Civ. P. 34; and
8. The completeness of the documents and electronically stored data requested in the schedule of documents below, pursuant to Ark. R. Civ. P. 34;
9. As to the electronic mail ("e-mail") system, the location, configuration, preservation, archive, disaster recovery, security recovery, account management and IT policies, guidelines, rules, manuals, procedures and protocols as to the following subtopics:
 - a. A description of the e-mail system that is currently used and has been used beginning on January 15, 2015 and continuing until the present date;

1. Electronic surveillance system used at the Big Box store in Moses Lake, WA, on May 4, 2012.
2. The **position/location**¹⁰ of all video cameras at the Big Box store in Moses Lake, WA, on May 4, 2012.
3. The **method of operation** of the video surveillance system at the Big Box store in Moses Lake, WA, on May 4, 2012.
4. The **location and storage** of video or digital images captured by the video surveillance system at the Big Box store in Moses Lake, WA, on May 4, 2012.
5. The identity of all **people** involved in the maintenance and operation of the video/security system at the Big Box store in Moses Lake, WA, on May 4, 2012.
6. The job descriptions and responsibilities of all **people** involved in the maintenance and operation of the video/security system at the Big Box store in Moses Lake, WA, on May 4, 2012.
7. The identity of all people who have **viewed** the video/digital images captured at the Big Box store in Moses Lake, WA, on May 4, 2012.

8. All **policies** regarding the retention of surveillance videos following notice of an incident at the Big Box store in Moses Lake, WA, on May 4, 2012.

9. The role of Claims Management, Inc., in monitoring, reviewing, and **preserving** the images captured on the electronic **surveillance system** used at the Big Box store in Moses Lake, WA, on May 4, 2012.

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

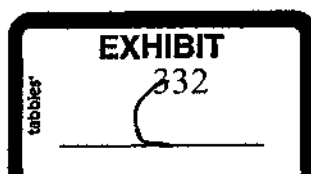
**ANSWERS TO CITY'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Answers to City's First Set of Interrogatories and Requests for Production of Documents, states:

INTERROGATORY NO. 1: Please list any lawsuit(s) and/or administrative proceeding(s) in which you have ever been involved as a party, including, but not limited to, personal injury, bankruptcy, divorce, collection, proceeding for workers' compensation benefits, or a proceeding for social security or disability benefits, giving the

- a. approximate filing date;
- b. the court and/or agency in which it was pending;
- c. the names of all parties involved;
- d. the case number; and
- e. the final disposition of the case.

ANSWER: N/A.



INTERROGATORY NO. 2: Please state, describe, and explain, in full and complete detail, each and every action or inaction taken by the City of Marmaduke that you believe violated your rights or the law; stating with specificity what rights or laws were allegedly violated or will be violated, and how the City's actions or inactions caused those rights or laws to be violated or will cause those rights or laws to be violated, as well as what injuries that you allege you have sustained or will sustain as a result of those alleged violations.

ANSWER: To the extent that this answer calls for legal conclusions, the Plaintiff objects to being required to provide legal conclusions or legal theories as the Plaintiff is not an attorney. However, the Plaintiff states that the facts underlying the legal theories are set forth in the complaint, motion for summary judgment and reply thereto which are incorporated by reference herein.

In addition, the Plaintiff is claiming damages for the sums lost since the City of Marmaduke first refused to cease providing water to the ARI plant (or building) located in the service territory of the Plaintiff. The amount of those damages is not currently known, but will be based upon the amount of water supplied by the City of Marmaduke to the ARI plant (or building) located in the service territory of SFRRWD.

REQUEST FOR PRODUCTION NO. 1: Please provide any documentation or records that you possess that references any part of your response to the preceding interrogatory. If, to your knowledge, someone else possesses such documentation or records, please identify who the possessor is and provide that individual or entity's name, mailing address, and telephone number.

ANSWER: See your answer to the Complaint where most of the facts were admitted. Also, see attached Bates Nos. SFRRWD 000001 through 000069. Finally, most of the records necessary to prove the damages are held by either ARI, the Defendant herein or both of them.

INTERROGATORY NO. 3: State the basis for any claims for compensatory damages, including any amounts expended for any purpose which will be claimed as damages at trial.

ANSWER: The amount of the damages which will be claimed is currently unknown, but will be based upon the amount of water supplied by the City of Marmaduke to the ARI plant (or building) located in the service territory of SFRRWD.

REQUEST FOR PRODUCTION NO. 2: Please provide copies of all bills, receipts or other written documentation relating to the damages information requested in the preceding interrogatory.

ANSWER: N/A. Your client should have in its possession all of the bills showing the amount of water used by ARI during this period of time. Also, ARI should have copies of the bills. At the present time, the Plaintiff does not have copies of these bills. See also Bates Nos. SFRRWD 000001 through 000069.

INTERROGATORY NO. 4: Please identify all persons who have knowledge of any kind regarding the allegations made and the events referred to in your Complaint, and for each identified person, please state the following:

- a. Name, address, and telephone number;
- b. Relationship, if any, to the parties to this lawsuit;
- c. The names and addresses of his or her current employer;
- d. Whether you intend to or anticipate calling that individual as a witness;
- e. A brief summary of his or her testimony or known or presumed knowledge; and
- f. Whether any written or recorded statement by said person exists regarding the events giving rise to this lawsuit, whether formal or informal, sworn or unsworn.

In doing so, provide the following information with respect to each statement:

- i. from whom the statement was obtained;
- ii. who obtained the statement;
- iii. the date the statement was obtained;
- iv. the form in which the statement was obtained;
- v. each individual, organization, or agency, who has possession of the identified statement; and
- vi. If you contend any of these statements are privileged in any manner, please sufficiently identify the nature and location of said statements so that the court may rule on your objections.

ANSWER: See attached Bates Nos. SFRRWD 000001 through 000069. SFRRWD personnel and board members (SFRRWD 000001 through 000002) may have knowledge of the facts set forth in the Complaint. Also, Mayor Steve Dixon and the city council members and employees of the water department of the City of Marmaduke as well as the management of ARI may have knowledge of the facts. The Rules of Civil Procedure Interrogatories do not require the parties to summarize the anticipated testimony as that will be determined at or near the time of trial and may also be shaped by what prior testimony or admissions have been made or provided. Anticipated testimony is unknown at the present time. Further, we believe that all of the persons named in your discovery or identified in any documents provided by you or by us have some knowledge of these matters. Any of the persons named anywhere in any discovery provided by either party or mentioned in depositions may be called as witnesses, but decisions on who will be called have not been made at this time. No written or recorded statements have been taken yet. Finally, the following may also have knowledge of the facts: Bruce Holland, Arkansas Natural Resources Commission ("ANRC"), Executive Director, 501.682.3986; Crystal Phelps, Attorney

Supervisor for the ANRC, 501.682.3905; Mark Bennett, ANRC Water Development Division Manager, 501.682.3978; and Jerome Alford, Bond Consulting Engineers, East 3683 State Highway 77 North, Marion, AR 72364, 870.735.5750. Mr. Alford is the primary engineer on this project from Bond Consulting Engineers who are the engineers for SFRRWD.

REQUEST FOR PRODUCTION NO. 3: Please produce any affidavits or statements, whether oral, written, or otherwise recorded in tangible or electronic form, sworn or unsworn, that have been prepared, completed, acquired, requested, reviewed or adopted concerning the subject matter of this lawsuit, whether said statements are signed, unsigned, written by the witness, or an oral statement recorded by some other person, whether procured by you or otherwise. This request includes all informal, handwritten notes or statements.

ANSWER: No written or recorded statements have been taken at the present time. The only affidavits are those submitted in the Motion for Summary Judgment, Response to Motion for Summary Judgment and Reply thereto which are in your possession.

INTERROGATORY NO. 5: Do you have any knowledge, firsthand or otherwise, of any oral or written statements made by any named Defendant that would be beneficial to Plaintiffs' case or detrimental to a Defendant's case? If the answer is in the affirmative, please identify the following:

- a. who made the statement or who the statement is attributed to;
- b. to whom the statement was made;
- c. the substance of the statement;
- d. when it was said; and
- e. who witnessed or heard the statement.

ANSWER: See answer to Request for Production No. 3. Also, see the affidavits

submitted with the Motion for Summary Judgment, Response to Motion for Summary Judgment and Reply thereto. Finally, see Bates Nos. SFRRWD 000001 through 000069. There are no other written or recorded statements that exist to the Plaintiff's knowledge at this time.

REQUEST FOR PRODUCTION NO. 4: Please provide any documentation or records that you possess that references any part of your response to the preceding interrogatory. If, to your knowledge, someone else possesses such documentation or records, please identify who the possessor is and provide that individual or entity's name, mailing address, and telephone number.

ANSWER: Previously provided herein to the extent that they currently exist.

INTERROGATORY NO. 6: Please state the following regarding any communication you had with any employee or representative of the City of Marmaduke regarding the allegations contained in your Complaint, any matters pertaining to this lawsuit, or any events that led up to this lawsuit or are at issue in this lawsuit:

- a. The name of the individual(s);
- b. The method of communication(s);
- c. The content of the communication(s); and
- d. The date and location of the communication(s).

ANSWER: See attached Bates Nos. SFRRWD 000001 through 000069. Also, see the minutes of the City Council meetings for the City of Marmaduke which are in your possession.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all documents or records that have been obtained by or provided to Plaintiff or Plaintiffs' attorneys which were obtained from any third party, including but not limited to records or documents procured through an open record request(s), Freedom of Information Act request(s), subpoena(s), or consent/authorization(s) for release of records related to any issues, facts, or parties in this case.

If you contend any of these documents or records are privileged in any manner, please sufficiently identify the nature and location of said documents so that the court may rule on your objections.

ANSWER: None.

REQUEST FOR PRODUCTION NO. 6: Please produce any and all documents, photographs, notes, memorandums, calendars, audio tapes, video tapes, or other documents by whatever named called, generated or kept by Plaintiff with respect to the allegations contained in Plaintiff's Complaint or the facts made the basis of the Complaint, whether created at the time of the event or at a later date or in connection with the lawsuit. If you contend any of these documents are privileged in any manner, please sufficiently identify the nature and location of said documents so that the court may rule on your objections.

ANSWER: Please see Bates Nos. SFRRWD 000001 through 000069.

REQUEST FOR PRODUCTION NO. 7: Please produce any and all documents, photographs, audio tapes, video tapes, or other documentation made in connection with this lawsuit, which in any way substantiate or provide support for the allegations made in your complaint.

ANSWER: Please see Bates Nos. SFRRWD 000001 through 000069.

REQUEST FOR PRODUCTION NO. 8: Please produce each and every document or article of demonstrative evidence which you intend to rely on in any way at the trial of this matter. This request encompasses both documentary evidence which you intend to introduce and any other form of tangible evidence which you intend to introduce, or otherwise rely on in any way, at the trial of this matter.

ANSWER: Trial decisions have not been made. However, any and all documents that are

contained in Bates Nos. SFRRWD 000001 through 000069 may be used at trial as well as all documents attached to the Motion for Summary Judgment, Response to Motion for Summary Judgment and Reply thereto along with any and all documents produced by either party during discovery.

REQUEST FOR PRODUCTION NO. 9: Please provide any documentation or records that you possess that references any part of your response to the preceding interrogatory. If, to your knowledge, someone else possesses such documentation or records, please identify who the possessor is and provide that individual or entity's name, mailing address, and telephone number.

ANSWER: See answer to preceding Interrogatory. All other documents known to exist that show any of the damages are in the possession of the Defendant or ARI.

INTERROGATORY NO. 7: Please identify any documents, records, data, or information, that you possess or are aware of that you will or may use during witness examinations, including, but not limited to, any documents, records, data, or information that may be used to impeach any witness, including but not limited to the City of Marmaduke or any of its representatives or employees.

ANSWER: Trial decisions have not been made. Further, attorneys are simply required to disclose documents are intended to be introduced into evidence, but they are not required to disclose how they intend to use them. We will comply with the Arkansas Rules of Civil Procedure and disclose documents as required as they are obtained if they have not already been disclosed.

REQUEST FOR PRODUCTION NO. 10: Please provide any documentation or records that you possess that references any part of your response to the preceding interrogatory, whether written, tape recorded, videotaped, messaged, texted, or otherwise documented. If, to your

knowledge, someone else possesses such documentation or records, please identify who the possessor is and provide that individual or entity's name, mailing address, and telephone number.

ANSWER: N/A.

INTERROGATORY NO. 8: Please identify all members, partners, employees, managers, directors, agents, and representatives of the District.

ANSWER: See Bates Nos. SFRRWD 000001 through 000002.

INTERROGATORY NO. 9: Please identify and describe the District's organizational structure and management structure.

ANSWER: See Bates Nos. SFRRWD 000001 through 000002. Ron Pigue, Brad Nelson, Gerald Eaker, Gregg Garner, Jeramy Richey and Andrew Ritsmon are the members of the Board of Directors of the Plaintiff. Tonya Thompson is the manager of SFRRWD and Michele Toone is her secretary.

INTERROGATORY NO. 10: Please identify and describe the District's bookkeeping and accounting policies and practices, including but not limited to the authority to sign contracts and make payments for work performed on its premises or the premises of any subsidiaries and authorized users of financial and accounting.

ANSWER: We object to this interrogatory on the grounds that it is unknown what the Defendant is seeking. However, we are answering this interrogatory based on our assumption that the information sought is provided by the following answer. The manager can sign certain contracts while the president of the Board signs other contracts. The secretary performs the bookkeeping. Payments require two (2) signatures on every check. The accounting work is performed by Charles Long, CPA, 201 N. 14th St., Paragould, AR 72450, 870.236.6946. If this is not the information sought, please reword this and we will provide the information sought if it is

proper to do so.

INTERROGATORY NO. 11: Please identify any communications (other than with counsel of record) between any agents, representatives, officers, directors, subsidiaries or employees of the District regarding the allegations contained in Plaintiffs Complaint.

ANSWER: See Bates Nos. SFRRWD 000001 through 000069 as well as all documents attached to the Motion for Summary Judgment, Response to the Motion and Reply to the Defendant's Response.

INTERROGATORY NO. 12: Please identify any communications, including but not limited to written communications, emails, text messages, phone calls, or otherwise recorded, between any subsidiaries, agents, members, partners, representatives, officers, directors, or employees of the District regarding the allegations contained in Plaintiff's Complaint and the following:

- a. Mayor Dixon or any other representative, official, or employee of the City of Marmaduke, Arkansas;
- b. Any Greene County official;
- c. Any Arkansas State official, representative, or employee, including but not limited to any official, representative, or employee of the Arkansas Natural Resources Commission or the Arkansas Attorney General's office;
- d. Any official, representative, or employee of the federal government, including but not limited to any official, representative, or employee of the United States Department of Agriculture;
- e. Any official, representative, or employee of American Railcar Industries;
- f. Anyone who has been identified as a potential witness by either Plaintiff or

Defendant.

In doing so, please identify who the communication was between, when it occurred, the method or format of the conversation, i.e., email, phone call, etc., and the substance of the communication.

ANSWER: See Bates Nos. SFRRWD 000001 through 000069.

INTERROGATORY NO. 13: Please identify any efforts, steps, or inquiries made regarding the sale of any property owned by Circle D, as referenced in paragraph seven (7) of Plaintiffs' original Complaint, including but not limited to the identification of persons, entities, or documents involved in, with, or referencing thereto.

ANSWER: We object to this interrogatory as we know nothing about Circle D or their involvement in this matter and Circle D is not mentioned in paragraph 7 of the Complaint.

REQUEST FOR PRODUCTION NO: 11: Please provide any and all financial documents and records for the District, including any audits performed of the District.

ANSWER: The Plaintiff objects to this interrogatory as it seeks information which is protected by law as being confidential and not reasonably calculated to lead to the discovery of admissible evidence. Further, there is no limitation as to time period covered, what specific records are sought and would, thus, require the production of every financial record whatsoever since the inception of the water district some of which are no longer all available. If a portion of this information should be provided and the Court so limits the information to be provided, then as ordered by the Court (preferably with a proper protective order), the Plaintiff will produce such financial information that is reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 14: State whether you, or your attorney, or anyone acting on

your behalf, has asked or engaged an expert witness to render an opinion as to any of the facts relating to the incident in question, and whether you intend to call that person as an expert witness in the trial of this matter. If so, for each such expert witness state his name, address, telephone number, and the substance of his report.

ANSWER: No. No expert has been hired or consulted. Further, no opinion has been sought from any expert for this litigation. However, Bond Consulting Engineers and various persons at ANRC may be used at trial or in a new Motion for Summary Judgment to prove that the Plaintiffs are entitled to supply and can supply the water to the ARI plant in question.

REQUEST FOR PRODUCTION NO. 12: Please provide copies of the Vita or Resume' of each expert witness requested in the preceding Interrogatory, as well as copies of the documents, reports, photographs and any and all written materials requested.

ANSWER: No expert has been hired or consulted for this litigation.

INTERROGATORY NO. 15: To the extent not provided in response to a preceding interrogatory or request for production, please state all witnesses, documents, data, and facts known to you or believed to be known by you, that support the allegations set forth in paragraph seven (7) of Plaintiffs' Original Complaint.

ANSWER: The majority of Paragraph 7 of the Complaint was admitted. However, this interrogatory is believed to pertain again to Circle D as mentioned in Interrogatory No. 13 and is, therefore, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this matter. It appears that this is simply a cut and paste set of interrogatories and requests for production.

INTERROGATORY NO. 16: Please state the names, addresses, and telephone numbers of all persons who provided information used in answering these interrogatories and state in

detail the information provided by each person identified and the number interrogatory(ies) or requests for production to which they provided information.

ANSWER: Along with the attorneys, Brad Nelson, Tonya Thompson and Michele Toone assisted in providing this information.

REQUEST FOR PRODUCTION NO. 13: To the extent not produced in response to any other interrogatory or request for production, please provide any documentation or records that were relied on or used to respond to any interrogatories or requests for production.

ANSWER: N/A.

INTERROGATORY NO. 17: Please treat the foregoing interrogatories and requests for production of documents as continuing and furnish to this Defendant, through its attorney, in writing, any additional information received by you subsequent to the date of your answers hereto that would modify or supplement your answers, such additional information to be furnished as soon as reasonably possible after receipt by you and within a reasonable time prior to the assigned trial date in order to permit appropriate discovery procedure. Will you do so?

ANSWER: We will comply with applicable law and the Arkansas Rules of Civil Procedure.

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jlyons@leclaw.com

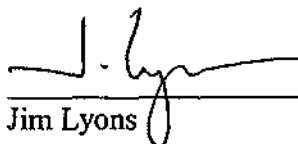
By: 
Jim Lyons State Bar No. 77083
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 13th day of August, 2018.



Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

SEP 18 2018

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

**OBJECTION TO RULE 30(b)(6) NOTICE OF DEPOSITION AND
SUBPOENA AND BRIEF IN SUPPORT THEREOF**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Objection to Rule 30(b)(6) Notice and Subpoena and Brief in Support Thereof, states:

A. INTRODUCTION

The Plaintiff filed its action against the City of Marmaduke on June 21, 2017. Following the filing of numerous pleadings and documents, the Defendant e-mailed a second Notice of Rule 30(b)(6) deposition and a subpoena to Plaintiff. (Attached hereto and incorporated by reference herein as Exhibit A is a true and correct copy of the Rule 30(b)(6) Notice and as Exhibit B is a true and correct copy of the Subpoena).

LAW AND ARGUMENT

B. PRODUCTION OF DOCUMENTS

The Defendant in this case does not cite to either Rule 34 or Rule 45 as the basis for the request to produce documents at the deposition. Assuming that the Defendant is using Rule 34,

then it is required to provide thirty (30) days notice which has not been done. In the alternative, if the Defendant is relying solely upon Rule 45, then the Court must look to Rule 45(e) which provides as follows:

(e) Subpoena for Taking Depositions: Place of Examination. . . . The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of the rule.

The person to whom the subpoena is directed may, within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service, serve upon the attorney causing the subpoena to be issued written objection to inspection or copying of any or all of the designated materials. If objection is made, the party causing the subpoena to be issued shall not be entitled to inspect and copy the materials except pursuant to an order of the court before which the deposition may be used. The party causing the subpoena to be issued may, if objection has been made, move, upon notice to the deponent, for an order at any time before or during the taking of the deposition.

Based upon Rule 45(e), this objection means that the Defendant "shall not be entitled to inspect and copy the materials except pursuant to an order of the court" Therefore, the Plaintiff shall not produce any materials or documents on the scheduled deposition date. Further, if the Court believes that the Defendant is relying upon Rule 34, then such notice is not timely and the Plaintiff is not required to produce any such documents either.

C. RULE 30(b)(6)

The notice as provided to the Plaintiff is improper for a number of reasons and, therefore, the Plaintiff should not be required to appear for the deposition. In this case, the City's notice and subpoena are improper under the Arkansas Rules of Civil Procedure as set forth below.

Rule 30(b)(6) requires that the requesting party describe the matters for examination with reasonable particularity. Clearly, the Defendant has failed to do so in this case. In this case, the

Defendant in most of the requests including D, E, F, G, H, I, J, K, M, R, S, T, V, and AA cover a period of approximately twenty (20) years or an undefined period of time. Thus, these topics are not described with "reasonable particularity" and are unduly burdensome. Because Arkansas, generally, does not allow interlocutory appeals, there are very few cases in the State which describe, define or interpret this portion of the rules of civil procedure. The case of *City of Ft. Smith v. Carter*, 364 Ark. 100, 216 SW3d 954 (2005) provides "based upon the similarities of our rules with the federal rules of civil procedure, we consider the interpretation of these rules by federal courts to be of a significant precedential value". Thus, it is proper to look to federal cases for assistance in interpretation of Rule 30.

In looking to federal court decisions, they are decidedly instructive in this case. The federal courts provide that the topics to be acceptable must be limited in such a manner so that the "burden of the proposed discovery outweighs its likely benefit." *Dusa Pharmaceuticals, Inc. v. New England Compounding Pharmacy, Inc.*, 232 F.R.D. 153, 154 (D. Mass. 2005). In *Dusa*, the Defendant asks for virtually unfettered discretion to cover topics that are unduly burdensome and are not "reasonably calculated to lead to the discovery of admissible evidence". In the instant case, the Defendant requests "the existence and location of any pipes, wells, culverts, building materials or any piece of hardware, equipment or system that facilitates or causes the District's water system to work, run or provide water services to customers or entities located within its geographic boundaries. This request is made for the time period from January 1, 1998 until present."

This request and the others covering approximately twenty (20) years are so broad that it is virtually impossible to provide all of the documents and prepare a witness regarding them because it is unduly burdensome to do so and, thus, improper. This a classic example of the

“burden of the proposed discovery outweigh[ing] its likely benefit.” The other requests listed above fit within the same class, i.e. cover such a period of time or such a broad range of items that it would take weeks, if not months, to properly prepare a representative. For example, to depose the representative on each item of hardware in the entire system that has been put in place in the last twenty (20) years would require many days at best and many weeks at worst. Further, the only issue is whether the Plaintiff can serve ARI today, not whether it could have done so twenty (20) years ago or even five (5) years ago. More importantly, the location of pipe and other facilities on the opposite side of the territory have nothing to do with the Plaintiff’s ability to supply water to the ARI east plant.

There are numerous federal cases on point. For example, use of the terms inspect “‘any documents or electronically stored information’ in the defendants’ possession” was too broad in *Dusa*. The requests herein are so broadly drafted that they encompass documents and information not even related to this litigation and would be highly burdensome to the Plaintiff. On the other hand, the case of *Flick v. Wellpoint, Inc.*, No. 2:08-cv-211, 2009 WL 1564386, at *3 (N.D. Ind. June 2, 2009) found a request for inspection not unduly burdensome because it was described with “reasonable particularity” and was limited to clearly defined areas that were in issue in the litigation involved in *Flick*. Also, see the case of *Bruggeman ex rel. Bruggeman v. Blagojevich*, 219 F.R.D. 430, 436 (N.D. Ill. 2004) where the court describes the “test for reasonable particularity is whether [the] request places [the] party on ‘reasonable notice of what is called for and what is not,’ and overly broad or vague language does not meet the reasonable particularity test.”

Also, the Defendant seeks information from the Plaintiff regarding the City of Marnaduke’s system, ability to supply water, existence of pipes in the ground, the City’s

indebtedness, sewer services, "ability of the City to meet the plant's requirements in the case of a fire or other catastrophic event." Topics T, U, W, X, and Y are improper because they all deal with the City, and many, if not all, of these topics are outside the knowledge of the Plaintiff. The Plaintiff has no knowledge of the City's system and the only way to learn this is from the City. Also, one of these topics covers "other catastrophic event[s]." What good is water in the event of a flood or a tornado? Clearly, this request is one that the Plaintiff has no knowledge of and cannot use any means to determine the City's ability to supply water during a catastrophic event without deposing officers or engineers of the City regarding their water system. The duty to prepare a witness for a deposition pursuant to Rule 30(b)(6) does not include the duty for the Plaintiff to take a deposition of the Defendant to prepare a witness to testify regarding items which can be testified to by the Defendant or its contractors and witnesses. This is simply the epitome of an unduly burdensome discovery request.

An overly broad Rule 30(b)(6) notice subjects the noticed party to an impossible task. "To avoid liability, the noticed party must designate persons knowledgeable in the areas of inquiry listed in the notice Where, as here, the defendant cannot identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible." *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000). Judge Leon Holmes in the case of *RM Dean Farms v. Helena Chemical Co.*, 2012 WL 169889, at *1 (E.D. Ark. 2012) stated "[t]he 30(b)(6) notice would require Helena Chemical Company to produce a corporate representative or corporate representatives to testify on topics so vast in number, so vast in scope, so open ended, and so vague that compliance with the notice would be impossible." This is exactly what the Defendant has sought in this case and, thus, the objection to the 30(b)(6) notice should be sustained.

The responding party (SFRRWD) must prepare its witnesses to provide non-evasive and complete answers for the organization. In fact, the case of *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) states that the organization has the duty "to make a conscientious, good faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unequivocally answer questions about the designated subject matter." Thus, the obligation to prepare is substantial. The so-called "topic designations" which SFRRWD would have to prepare for are simply a waste of time, effort and money. These are clearly not intended to gain knowledge or information necessary for this suit, but are intended to harass the Plaintiff as most of these issues have nothing to do with the matters in question in this case.

Importantly, the failure to properly prepare a witness(es) on all of the topics is subject to sanctions by the Court. Thus, the topics must be ones that the responding party has the ability to prepare for and are at issue in the case. Otherwise, a party could be subject to sanctions for failing to prepare on topics that it is unable to prepare for. Sanctions are available pursuant to ARCP Rule 37(d). In fact, in the case cited above of *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) sanctions were awarded in favor of the party giving the Rule 30(b)(6) notice due to the responding party's failure to properly prepare a witness and for such witness failing to "fully and unequivocally answer questions about the designated subject matter." Thus, it is incumbent upon the party sending such notice to properly designate the topics so that the responding party can properly prepare for the deposition.

D. CONCLUSION

This objection to the Rule 30(b)(6) notice must be sustained as the federal courts of the State of Arkansas have addressed these same questions and have found that notices which are deficient must not be enforced when they are not issued in compliance with the Arkansas Rules of Civil Procedure and the similar Federal Rules of Civil Procedure.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: J. Lyons

State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 18th day of September, 2018.



 Jim Lyons

**IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION**

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

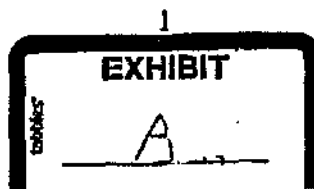
CITY OF MARMADUKE, ARKANSAS

DEFENDANT

NOTICE OF RULE 30(b)(6) DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Arkansas Rules of Civil Procedure, Defendant shall take the deposition of one or more officers, directors, agents, member, employee, or other representative who shall be designated to testify on behalf of St. Francis River Regional Water District ("the District") regarding all information known or reasonably available to the District with respect to the subject matters identified in Schedule 1. Defendant requests that the District provide written notice at least five (5) business days before the deposition of the name(s) and the position(s) of the individual(s) designated to testify on the District's behalf.


Per the parties' agreement, the deposition(s) shall commence on September 25, 2018, beginning at 10:30 a.m. at the Marmaduke Community Center, located at 307 West Mill Street, Marmaduke, Arkansas, and shall be taken before a duly certified court reporter recorded by stenographic means.



Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

BY:


Amanda LaFever, Ark. Bar No. 2012133
Attorney for Defendants
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-978-6117
FACSIMILE: 501-978-6554
EMAIL: alafever@arml.org

CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on September 10, 2018, I provided the foregoing to counsel for Plaintiff, via email, and on September 11, 2018 via Certified Mail, Return Receipt, Restricted Delivery, to the address below:

Jim Lyons
David Tyler
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403


Amanda LaFever, Ark. Bar No. 2012133

SCHEDULE 1

In accordance with Ark. R. Civ. P. 30(b)(6), Defendant designates the matters identified below for examination. In construing these topics, the following instructions and definitions shall apply:

1. All terms shall be construed to encompass as broad a range of information as permitted under the Arkansas Rules of Civil Procedure.
2. "Plaintiff" is defined to mean St. Francis River Regional Water District, and any of its officers, directors, agents, members, employees, or other representative.
3. "The District" is defined to mean St. Francis River Regional Water District, and any of its officers, directors, agents, members, employees, or other representative.
4. "Defendant" is defined to mean the City of Marmaduke, Arkansas.
5. "Complaint" is defined to include the originally filed Complaint as well as any subsequently filed Amended Complaint, unless specified otherwise.
6. "Arkansas Natural Resources Commission" is defined to include any governmental agency that was a predecessor of the Commission in its current iteration.
7. "United States Department of Agriculture" is defined to include any governmental agency that was a processor of the U.S.D.A. in its current iteration.

The deponent(s) shall be prepared to address the following topics:

- A. Any responses served or produced by the District in response to Interrogatories or Requests for Production.
- B. The name, mailing address, phone number, and email address for any custodian of any documents produced by the District in response to Interrogatories or Requests for Production.

- C. The District's administrative structure, organizational structure, operational structure, and management structure.
- D. The existence and location of any pipes, wells, culverts, building materials, or any piece of hardware, equipment, or system that facilitates or causes the District's water system to work, run, or provide water services to customers or entities located within its geographic boundaries. This request is made for the time period from January 1, 1998 until present.
- E. When such infrastructure as referenced in the preceding paragraph was put in place, constructed, installed, created, or built, as well as what funds were used to finance the project.
- F. The existence and location of any maps, blueprints, schematics, databases, documents, or records that set forth the information requested in the two preceding paragraphs.
- G. Policies and/or protocols regarding the District's bookkeeping and accounting practices and how those business practices have been and are carried out and by whom, from January 1, 1998 to present;
- H. From January 1, 1998 to present: The history, degree, and extent of the District's indebtedness to the United States Department of Agriculture, the Arkansas Natural Resources Commission, and the First National Bank of Paragould, to include any entities that were precursors, predecessors, or successors of those three entities.
- I. What, if any, revenues were or are pledged to repay the indebtedness referenced in the preceding paragraph, when the indebtedness arose, the purpose of the loan was procured, and for what the loan has been used, and any exclusivity or rights believed by the District to be provided to the District by virtue of that indebtedness under either federal or state law, and when such rights, if they ever existed, expired.

- J. Any records or communications regarding the District's indebtedness with the Arkansas Natural Resources Commission, the United States Department of Agriculture, or the First National Bank of Paragould, to include any entities that were precursors, predecessors, or successors of those three entities, from January 1, 1998 to present.
- K. The ability, inability, or capacity of the District to provide water services to ARI at any point in time, historically and currently, including when ARI was built in 1999, when the East Plant was built in 2006, when the Refurb Plant was built in 2015, and presently, and what steps, if any, the District took or is taking in order to make known to ARI or the City its ability to provide such water services.
- L. If the District is currently unable to immediately begin providing the requisite water services to ARI's facilities, what must occur before the District does have the capacity, and when the requisite steps will be complete such that the District could meet ARI's water needs.
- M. Any records or communications, regarding the ability, inability, or capacity of the District to provide water services to any portion of the American Railcar Industries campus from January 1, 1998 to present.
- N. The capacity, ability, or inability of the District to meet ARI'S requirements in the case of a fire or other catastrophic event;
- O. The District's capacity, ability, or inability to provide sewer services to ARI;
- P. When and how the District first became aware that the City was providing water services to the West Plant, the East Plant, and the Refurb Plant.
- Q. Any demands made by the District that ARI receive water services from the District or that the City cease providing water services to the District.

- R. Any records, inquiries, or communications regarding the District's Compliance with the Arkansas Natural Resources Water Plan.
- S. Any records or communications, regarding the capacity, ability, or inability of the City to provide water services to any portion of the ARI campus from January 1, 1998 to present.
- T. The City's indebtedness with respect to its water utility, and any exclusivity or rights provided to it by virtue of that indebtedness under either federal or state law;
- U. The existence of any record, Order, document, agreement, or otherwise that provides the City "exclusive" rights to pre-existing customers and customers within so many miles of the City's limits;
- V. The existence of any record, order, document, agreement, or otherwise that provides the District "exclusive" rights to any geographical location contained within the legal description of the District;
- W. The ability of the City to meet the Plant's requirements in the case of a fire or other catastrophic event;
- X. The City's ability to provide sewer services along with water services to ARI; and
- Y. The existence of the City's pipes in the ground currently, such that the City can continue to provide water services to ARI with no cessation of ARI's operations.
- Z. Any records, inquiries, or communications regarding the City's Compliance with the Arkansas Natural Resources Water Plan.
- AA. Identification of any communications via any method (other than with counsel of record), or otherwise recorded, between any agents, representatives, officers, directors, or employees of the District and any other person or entity, regarding the following:

- The District's provision of services to American Railcar Industries ("ARI")—
whether actual or anticipated;
- The geographical limitations or boundaries of the District;
- The District's alleged exclusivity of its provision of services;
- The provisions of water services by the City to ARI; and
- The geographical limitations or boundaries of the City;

In doing so, the deponent should know who the communication was between, when it occurred, the method or format of the conversation, i.e., email, phone call, etc., and the substance of the communication;

CIRCUIT COURT OF GREENE COUNTY, ARKANSAS

**ST. FRANCIS RIVER REGIONAL
WATER DISTRICT**

SUBPOENA IN A CIVIL CASE

VS.

CASE NO. CV 2017-219

**CITY OF MARMADUKE,
ARKANSAS**

TO: St. Francis River Regional Water District

YOU ARE COMMANDED to appear in the _____ Court of _____ County at the place, date, and time specified below to testify in the above case:

PLACE OF TESTIMONY	COURTROOM
	DATE & TIME

YOU ARE COMMANDED to appear at the place, date, and time below to testify at the taking of a deposition in the above case:

PLACE OF DEPOSITION	DATE & TIME
----------------------------	------------------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents):

All documents, records, notes, data, maps, blueprints, and communications that the deponent relied on, read, reviewed, received, or sent in preparation for the 30(b)(6) deposition on behalf of the St. Francis River Regional Water District.	DATE & TIME September 25, 2018, at 10:30 a.m., at the Marmaduke Community Center, 307 West Mill Street, Marmaduke, AR
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YOU ARE COMMANDED to permit inspection for the following premises at the date and time specified below:

PREMISES	DATE & TIME
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Any organization not a part to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Arkansas Rules of Civil Procedure, 30 (b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) **DATE:**
Atty. For Defendant Amanda LaFever 9/10/18

ISSUING OFFICER'S NAME, ADDRESS & PHONE NUMBER **DATE:**
Amanda LaFever, P.O. Box 38, North Little Rock, AR 72115, (501) 978-6117 9/10/18

EXHIBIT
B

PROOF OF SERVICE

PLACE SERVED	DATE
SERVED ON (PRINT NAME OF PERSON SERVED)	
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ **DATE** _____ **SIGNATURE OF SERVER**

P.O. Box 38, North Little Rock, AR 72115
ADDRESS OF SERVER

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the trial or hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Rule 45(d), Ark. R. Civ. P.

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the deposition. Rule 45(e), Ark. R. Civ. P.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Rule 45(b), Ark. R. Civ. P. If the subpoena is issued in connection with a deposition, the person subpoenaed may object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the court. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Rule 45(d), Ark. R. Civ. P.

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) Atty. For Defendant	DATE
ISSUING OFFICER'S NAME, ADDRESS & PHONE NUMBER Amanda LaFever, P.O. Box 38, North Little Rock, AR 72115, (501) 978-6117	DATE

When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the court may issue a warrant for arresting and bringing the witness before the court to give testimony and answer for contempt. Rule 45(g), Ark. R. Civ. P.

LYONS & CONE, P.L.C.
Attorneys at Law
407 S. Main
P. O. Box 7044
Jonesboro, AR 72403

Phone 870/972-5440--Fax 870/972-1270

FACSIMILE TRANSMITTAL COVER SHEET

TO: Jan Griffith
Greene Co. Circuit Clerk

FROM: Jim Lyons

RE: St. Francis River Regional Water District vs. City of Marmaduke, Arkansas;
Greene Co. Circuit Court; Case No. CV-2017-219

DATE: September 18, 2018

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 20

Letter and attachment to follow.

The information contained in this telecopy is intended only for the use of the addressee and may contain information that is confidential, privileged, and/or otherwise exempt from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering this transmittal to the intended recipient, you are not authorized to read this transmittal and are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. This transmission is not intended to waive any attorney-client privilege, or other confidential or privileged relationship. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address.

JIM LYONS**
jlyons@leclaw.com

ANDREW NADZAM
anadzam@leclaw.com

Lyons & Cone, P.L.C.

ATTORNEYS AT LAW
407 SOUTH MAIN
PO BOX 7044
JONESBORO, ARKANSAS 72402-7044
870-972-5440 • FAX: 870-972-1270
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MIKE CONE*
mikecone@leclaw.com

DAVID TYLER*
dtyler@leclaw.com

*Master of Laws in Agricultural Law
**Keenan Ball Trial College Faculty

September 18, 2018

VIA FACSIMILE - (870) 239-3550
AND PRIORITY MAIL

Ms. Jan Griffith
Greene Co. Circuit Clerk
320 W. Court, Suite 124
Paragould, AR 72450

Re: St. Francis River Regional Water District vs. City of
Marmaduke, Arkansas; Greene Co. Circuit Court;
Case No. CV-2017-219

Dear Ms. Griffith:

Please find enclosed an Objection to Rule 30(b)(6) Notice of Deposition and Subpoena and Brief in Support Thereof to be filed in the above-referenced matter. Please return a file-marked copy of the front page to my office by fax at (870) 972-1270. We are placing the original of this document in the mail to your office for placement in the Court file. If you have any questions or problems, please do not hesitate to contact me. Thank you for your cooperation.

Sincerely,

J. Lyons AV

Jim Lyons

JL/ab

Enclosure

cc: Amanda LaFever (w/enc.)

FAWP60\SFRRWD\GreeneCo.SFRRWD3.ltr.wpd

FILED ✓

SEP 18 2018

GREENE CO. CIRCUIT CLERK

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISIONST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

**MOTION TO QUASH DEFENDANT'S
SUBPOENA AND BRIEF IN SUPPORT THEREOF**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Motion to Quash Defendant's Subpoena and Brief in Support Thereof, states:

1. On or about September 10, 2018, Defendant City of Marmaduke, Arkansas emailed Plaintiff a second Notice of Rule 30(b)(6) deposition ("Notice") and a subpoena ("Subpoena") to Plaintiff.
2. On or about September 18, 2018, Plaintiff filed its Objection to Rule 30(b)(6) Notice of Deposition and Subpoena and Brief in Support Thereof. (Attached hereto and incorporated by reference herein as Exhibit 1 is a true and correct copy of Plaintiff's Objection). Also, on or about September 18, 2018, Plaintiff e-mailed Defendant a copy of its Objection to Rule 30(b)(6) Notice of Deposition and Subpoena and Brief in Support Thereof. ("Objection").
3. The Objection outlined numerous ways Defendant's Notice and Subpoena failed to comply with the Arkansas Rules of Civil Procedure.

4. First, the Defendant failed to meet the reasonable particularity standard required by ARCP 30(b)(6) in its Notice and Subpoena. Many of the topics, including D, E, F, G, H, I, J, K, M, R, S, T, V, and AA, cover time periods of approximately twenty (20) years or were for undefined periods of time. Additionally, these topics are unduly burdensome because of the length of time for the topic, and the overly broad nature of the topics.

5. Second, many of the topics, including topics T, U, W, X, and Y are about topics which are outside of the knowledge or control of the Plaintiff, and are instead about matters relating to the Defendant.

6. ARCP Rule 45(b)(2) allows the Court to quash or modify a subpoena if it is unreasonable or oppressive.

7. As explained further in the Objection, Defendant's subpoena is unreasonable and oppressive. The topics in Defendant's subpoena are for an unreasonable amount of time, approximately twenty (20) years or for undefined amounts of time. Further, Defendant's Subpoena is for documents relating to the topics in the Notice. Many of the topics are about things which Plaintiff does not have knowledge of.

8. Defendant's subpoena is also oppressive for the same reasons. Requesting Plaintiff's representative to bring documents covering approximately twenty (20) years, and on topics unrelated to the issues in this litigation is oppressive. Further, asking Plaintiff's representative to bring all documents relating to "the existence and location of any pipes, wells, culverts, building materials or any piece of hardware, equipment or system that facilitates or causes the District's water system to work, run or provide water services to customers or entities located within its geographic boundaries. This request is made for the time period from January 1, 1998 until present." This topic, and all related documents to that topic, is one of the most

oppressive requests one can imagine.

9. Defendant's Subpoena and Notice are unreasonable and oppressive. Plaintiff respectfully requests that this Court quash Defendant's Notice of Rule 30(b)(6) deposition and Subpoena because they are unreasonable and oppressive, and do not conform with the Arkansas Rules of Civil Procedure.

WHEREFORE, Plaintiff, St. Francis River Regional Water District, prays as follows:

- a. that Plaintiff's Motion to Quash Defendant's Subpoena be granted;
- b. that the Court quash Defendant's Notice of Rule 30(b)(6) deposition and Subpoena;
- b. for its costs and attorney's fees; and
- c. for all other proper relief to which this Plaintiff is entitled.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

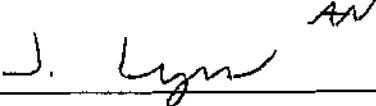
By: J. Lyon ^{AW}
State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 18th day of September, 2018.



Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

**OBJECTION TO RULE 30(b)(6) NOTICE OF DEPOSITION AND
SUBPOENA AND BRIEF IN SUPPORT THEREOF**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRW"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Objection to Rule 30(b)(6) Notice and Subpoena and Brief in Support Thereof, states:

A. INTRODUCTION

The Plaintiff filed its action against the City of Marmaduke on June 21, 2017. Following the filing of numerous pleadings and documents, the Defendant e-mailed a second Notice of Rule 30(b)(6) deposition and a subpoena to Plaintiff. (Attached hereto and incorporated by reference herein as Exhibit A is a true and correct copy of the Rule 30(b)(6) Notice and as Exhibit B is a true and correct copy of the Subpoena).

LAW AND ARGUMENT

B. PRODUCTION OF DOCUMENTS

The Defendant in this case does not cite to either Rule 34 or Rule 45 as the basis for the request to produce documents at the deposition. Assuming that the Defendant is using Rule 34,



then it is required to provide thirty (30) days notice which has not been done. In the alternative, if the Defendant is relying solely upon Rule 45, then the Court must look to Rule 45(e) which provides as follows:

(e) Subpoena for Taking Depositions: Place of Examination. . . . The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of the rule.

The person to whom the subpoena is directed may, within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service, serve upon the attorney causing the subpoena to be issued written objection to inspection or copying of any or all of the designated materials. If objection is made, the party causing the subpoena to be issued shall not be entitled to inspect and copy the materials except pursuant to an order of the court before which the deposition may be used. The party causing the subpoena to be issued may, if objection has been made, move, upon notice to the deponent, for an order at any time before or during the taking of the deposition.

Based upon Rule 45(e), this objection means that the Defendant "shall not be entitled to inspect and copy the materials except pursuant to an order of the court . . ." Therefore, the Plaintiff shall not produce any materials or documents on the scheduled deposition date. Further, if the Court believes that the Defendant is relying upon Rule 34, then such notice is not timely and the Plaintiff is not required to produce any such documents either.

C. RULE 30(b)(6)

The notice as provided to the Plaintiff is improper for a number of reasons and, therefore, the Plaintiff should not be required to appear for the deposition. In this case, the City's notice and subpoena are improper under the Arkansas Rules of Civil Procedure as set forth below.

Rule 30(b)(6) requires that the requesting party describe the matters for examination with reasonable particularity. Clearly, the Defendant has failed to do so in this case. In this case, the

Defendant in most of the requests including D, E, F, G, H, I, J, K, M, R, S, T, V, and AA cover a period of approximately twenty (20) years or an undefined period of time. Thus, these topics are not described with "reasonable particularity" and are unduly burdensome. Because Arkansas, generally, does not allow interlocutory appeals, there are very few cases in the State which describe, define or interpret this portion of the rules of civil procedure. The case of *City of Ft. Smith v. Carter*, 364 Ark. 100, 216 SW3d 954 (2005) provides "based upon the similarities of our rules with the federal rules of civil procedure, we consider the interpretation of these rules by federal courts to be of a significant precedential value". Thus, it is proper to look to federal cases for assistance in interpretation of Rule 30.

In looking to federal court decisions, they are decidedly instructive in this case. The federal courts provide that the topics to be acceptable must be limited in such a manner so that the "burden of the proposed discovery outweighs its likely benefit." *Dusa Pharmaceuticals, Inc. v. New England Compounding Pharmacy, Inc.*, 232 F.R.D. 153, 154 (D. Mass. 2005). In *Dusa*, the Defendant asks for virtually unfettered discretion to cover topics that are unduly burdensome and are not "reasonably calculated to lead to the discovery of admissible evidence". In the instant case, the Defendant requests "the existence and location of any pipes, wells, culverts, building materials or any piece of hardware, equipment or system that facilitates or causes the District's water system to work, run or provide water services to customers or entities located within its geographic boundaries. This request is made for the time period from January 1, 1998 until present."

This request and the others covering approximately twenty (20) years are so broad that it is virtually impossible to provide all of the documents and prepare a witness regarding them because it is unduly burdensome to do so and, thus, improper. This a classic example of the

“burden of the proposed discovery outweigh[ing] its likely benefit.” The other requests listed above fit within the same class, i.e. cover such a period of time or such a broad range of items that it would take weeks, if not months, to properly prepare a representative. For example, to depose the representative on each item of hardware in the entire system that has been put in place in the last twenty (20) years would require many days at best and many weeks at worst. Further, the only issue is whether the Plaintiff can serve ARI today, not whether it could have done so twenty (20) years ago or even five (5) years ago. More importantly, the location of pipe and other facilities on the opposite side of the territory have nothing to do with the Plaintiff’s ability to supply water to the ARI east plant.

There are numerous federal cases on point. For example, use of the terms inspect “‘any documents or electronically stored information’ in the defendants’ possession” was too broad in *Dusa*. The requests herein are so broadly drafted that they encompass documents and information not even related to this litigation and would be highly burdensome to the Plaintiff. On the other hand, the case of *Flick v. Wellpoint, Inc.*, No. 2:08-cv-211, 2009 WL 1564386, at *3 (N.D. Ind. June 2, 2009) found a request for inspection not unduly burdensome because it was described with “reasonable particularity” and was limited to clearly defined areas that were in issue in the litigation involved in *Flick*. Also, see the case of *Bruggeman ex rel. Bruggeman v. Blagojevich*, 219 F.R.D. 430, 436 (N.D. Ill. 2004) where the court describes the “test for reasonable particularity is whether [the] request places [the] party on ‘reasonable notice of what is called for and what is not,’ and overly broad or vague language does not meet the reasonable particularity test.”

Also, the Defendant seeks information from the Plaintiff regarding the City of Marmaduke’s system, ability to supply water, existence of pipes in the ground, the City’s

indebtedness, sewer services, "ability of the City to meet the plant's requirements in the case of a fire or other catastrophic event." Topics T, U, W, X, and Y are improper because they all deal with the City, and many, if not all, of these topics are outside the knowledge of the Plaintiff. The Plaintiff has no knowledge of the City's system and the only way to learn this is from the City. Also, one of these topics covers "other catastrophic event[s]." What good is water in the event of a flood or a tornado? Clearly, this request is one that the Plaintiff has no knowledge of and cannot use any means to determine the City's ability to supply water during a catastrophic event without deposing officers or engineers of the City regarding their water system. The duty to prepare a witness for a deposition pursuant to Rule 30(b)(6) does not include the duty for the Plaintiff to take a deposition of the Defendant to prepare a witness to testify regarding items which can be testified to by the Defendant or its contractors and witnesses. This is simply the epitome of an unduly burdensome discovery request.

An overly broad Rule 30(b)(6) notice subjects the noticed party to an impossible task. "To avoid liability, the noticed party must designate persons knowledgeable in the areas of inquiry listed in the notice Where, as here, the defendant cannot identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible." *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000). Judge Leon Holmes in the case of *RM Dean Farms v. Helena Chemical Co.*, 2012 WL 169889, at *1 (E.D. Ark. 2012) stated "[t]he 30(b)(6) notice would require Helena Chemical Company to produce a corporate representative or corporate representatives to testify on topics so vast in number, so vast in scope, so open ended, and so vague that compliance with the notice would be impossible." This is exactly what the Defendant has sought in this case and, thus, the objection to the 30(b)(6) notice should be sustained.

The responding party (SFRRWD) must prepare its witnesses to provide non-evasive and complete answers for the organization. In fact, the case of *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) states that the organization has the duty "to make a conscientious, good faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unequivocally answer questions about the designated subject matter." Thus, the obligation to prepare is substantial. The so-called "topic designations" which SFRRWD would have to prepare for are simply a waste of time, effort and money. These are clearly not intended to gain knowledge or information necessary for this suit, but are intended to harass the Plaintiff as most of these issues have nothing to do with the matters in question in this case.

Importantly, the failure to properly prepare a witness(es) on all of the topics is subject to sanctions by the Court. Thus, the topics must be ones that the responding party has the ability to prepare for and are at issue in the case. Otherwise, a party could be subject to sanctions for failing to prepare on topics that it is unable to prepare for. Sanctions are available pursuant to ARCP Rule 37(d). In fact, in the case cited above of *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) sanctions were awarded in favor of the party giving the Rule 30(b)(6) notice due to the responding party's failure to properly prepare a witness and for such witness failing to "fully and unequivocally answer questions about the designated subject matter." Thus, it is incumbent upon the party sending such notice to properly designate the topics so that the responding party can properly prepare for the deposition.

D. CONCLUSION

This objection to the Rule 30(b)(6) notice must be sustained as the federal courts of the State of Arkansas have addressed these same questions and have found that notices which are deficient must not be enforced when they are not issued in compliance with the Arkansas Rules of Civil Procedure and the similar Federal Rules of Civil Procedure.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: J. Lyon ^{AV}

State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 18th day of September, 2018.



 Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

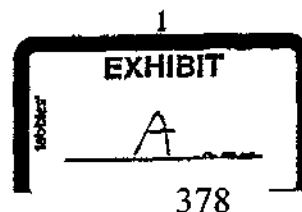
CITY OF MARMADUKE, ARKANSAS

DEFENDANT

NOTICE OF RULE 30(b)(6) DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Arkansas Rules of Civil Procedure, Defendant shall take the deposition of one or more officers, directors, agents, member, employee, or other representative who shall be designated to testify on behalf of St. Francis River Regional Water District ("the District") regarding all information known or reasonably available to the District with respect to the subject matters identified in Schedule 1. Defendant requests that the District provide written notice at least five (5) business days before the deposition of the name(s) and the position(s) of the individual(s) designated to testify on the District's behalf.


Per the parties' agreement, the deposition(s) shall commence on September 25, 2018, beginning at 10:30 a.m. at the Marmaduke Community Center, located at 307 West Mill Street, Marmaduke, Arkansas, and shall be taken before a duly certified court reporter recorded by stenographic means.



Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

BY:


Amanda LaFever, Ark. Bar No. 2012133
Attorney for Defendants
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-978-6117
FACSIMILE: 501-978-6554
EMAIL: alafever@arml.org

CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on September 10, 2018, I provided the foregoing to counsel for Plaintiff, via email, and on September 11, 2018 via Certified Mail, Return Receipt, Restricted Delivery, to the address below:

Jim Lyons
David Tyler
Lyons & Coe, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403


Amanda LaFever, Ark. Bar No. 2012133

SCHEDULE 1

In accordance with Ark. R. Civ. P. 30(b)(6), Defendant designates the matters identified below for examination. In construing these topics, the following instructions and definitions shall apply:

1. All terms shall be construed to encompass as broad a range of information as permitted under the Arkansas Rules of Civil Procedure.
2. "Plaintiff" is defined to mean St. Francis River Regional Water District, and any of its officers, directors, agents, members, employees, or other representative.
3. "The District" is defined to mean St. Francis River Regional Water District, and any of its officers, directors, agents, members, employees, or other representative.
4. "Defendant" is defined to mean the City of Marmaduka, Arkansas.
5. "Complaint" is defined to include the originally filed Complaint as well as any subsequently filed Amended Complaint, unless specified otherwise.
6. "Arkansas Natural Resources Commission" is defined to include any governmental agency that was a predecessor of the Commission in its current iteration.
7. "United States Department of Agriculture" is defined to include any governmental agency that was a processor of the U.S.D.A. in its current iteration.

The deponent(s) shall be prepared to address the following topics:

- A. Any responses served or produced by the District in response to Interrogatories or Requests for Production.
- B. The name, mailing address, phone number, and email address for any custodian of any documents produced by the District in response to Interrogatories or Requests for Production.

- C. The District's administrative structure, organizational structure, operational structure, and management structure.
- D. The existence and location of any pipes, wells, culverts, building materials, or any piece of hardware, equipment, or system that facilitates or causes the District's water system to work, run, or provide water services to customers or entities located within its geographic boundaries. This request is made for the time period from January 1, 1998 until present.
- E. When such infrastructure as referenced in the preceding paragraph was put in place, constructed, installed, created, or built, as well as what funds were used to finance the project.
- F. The existence and location of any maps, blueprints, schematics, databases, documents, or records that set forth the information requested in the two preceding paragraphs.
- G. Policies and/or protocols regarding the District's bookkeeping and accounting practices and how those business practices have been and are carried out and by whom, from January 1, 1998 to present;
- H. From January 1, 1998 to present: The history, degree, and extent of the District's indebtedness to the United States Department of Agriculture, the Arkansas Natural Resources Commission, and the First National Bank of Paragould, to include any entities that were precursors, predecessors, or successors of those three entities.
- I. What, if any, revenues were or are pledged to repay the indebtedness referenced in the preceding paragraph, when the indebtedness arose, the purpose of the loan was procured, and for what the loan has been used, and any exclusivity or rights believed by the District to be provided to the District by virtue of that indebtedness under either federal or state law, and when such rights, if they ever existed, expired.

- J. Any records or communications regarding the District's indebtedness with the Arkansas Natural Resources Commission, the United States Department of Agriculture, or the First National Bank of Paragould, to include any entities that were precursors, predecessors, or successors of those three entities, from January 1, 1998 to present.
- K. The ability, inability, or capacity of the District to provide water services to ARI at any point in time, historically and currently, including when ARI was built in 1999, when the East Plant was built in 2006, when the Refurb Plant was built in 2015, and presently, and what steps, if any, the District took or is taking in order to make known to ARI or the City its ability to provide such water services.
- L. If the District is currently unable to immediately begin providing the requisite water services to ARI's facilities, what must occur before the District does have the capacity, and when the requisite steps will be complete such that the District could meet ARI's water needs.
- M. Any records or communications, regarding the ability, inability, or capacity of the District to provide water services to any portion of the American Railcar Industries campus from January 1, 1998 to present.
- N. The capacity, ability, or inability of the District to meet ARI'S requirements in the case of a fire or other catastrophic event;
- O. The District's capacity, ability, or inability to provide sewer services to ARI;
- P. When and how the District first became aware that the City was providing water services to the West Plant, the East Plant, and the Refurb Plant.
- Q. Any demands made by the District that ARI receive water services from the District or that the City cease providing water services to the District.

- R. Any records, inquiries, or communications regarding the District's Compliance with the Arkansas Natural Resources Water Plan.
- S. Any records or communications, regarding the capacity, ability, or inability of the City to provide water services to any portion of the ARI campus from January 1, 1998 to present.
- T. The City's indebtedness with respect to its water utility, and any exclusivity or rights provided to it by virtue of that indebtedness under either federal or state law;
- U. The existence of any record, Order, document, agreement, or otherwise that provides the City "exclusive" rights to pre-existing customers and customers within so many miles of the City's limits;
- V. The existence of any record, order, document, agreement, or otherwise that provides the District "exclusive" rights to any geographical location contained within the legal description of the District;
- W. The ability of the City to meet the Plant's requirements in the case of a fire or other catastrophic event;
- X. The City's ability to provide sewer services along with water services to ARI; and
- Y. The existence of the City's pipes in the ground currently, such that the City can continue to provide water services to ARI with no cessation of ARI's operations.
- Z. Any records, inquiries, or communications regarding the City's Compliance with the Arkansas Natural Resources Water Plan.
- AA. Identification of any communications via any method (other than with counsel of record), or otherwise recorded, between any agents, representatives, officers, directors, or employees of the District and any other person or entity, regarding the following:

- The District's provision of services to American Railcar Industries ("ARI")—
whether actual or anticipated;
- The geographical limitations or boundaries of the District;
- The District's alleged exclusivity of its provision of services;
- The provisions of water services by the City to ARI; and
- The geographical limitations or boundaries of the City;

In doing so, the deponent should know who the communication was between, when it occurred, the method or format of the conversation, i.e., email, phone call, etc., and the substance of the communication;

CIRCUIT COURT OF GREENE COUNTY, ARKANSAS

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

SUBPOENA IN A CIVIL CASE

VS.

CASE NO. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

TO: St. Francis River Regional Water District

YOU ARE COMMANDED to appear in the Court of County at the place, date, and time specified below to testify in the above case:

PLACE OF TESTIMONY COURTROOM DATE & TIME

YOU ARE COMMANDED to appear at the place, date, and time below to testify at the taking of a deposition in the above case:

PLACE OF DEPOSITION DATE & TIME

X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents):

All documents, records, notes, data, maps, blueprints, and communications that the deponent relied on, read, reviewed, received, or sent in preparation for the 30(b)(6) deposition on behalf of the St. Francis River Regional Water District. DATE & TIME September 25, 2018, at 10:30 a.m., at the Marmaduke Community Center, 307 West Mill Street, Marmaduke, AR

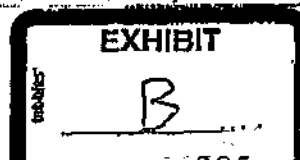
YOU ARE COMMANDED to permit inspection for the following premises at the date and time specified below:

PREMISES DATE & TIME

Any organization not a part to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Arkansas Rules of Civil Procedure, 30 (b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE Atty. For Defendant Amanda LaFever 9/10/18

ISSUING OFFICER'S NAME, ADDRESS & PHONE NUMBER DATE Amanda LaFever, P.O. Box 38, North Little Rock, AR 72115, (501) 978-6117 9/10/18



PROOF OF SERVICE

PLACE SERVED	DATE
SERVED ON (PRINT NAME OF PERSON SERVED)	
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE _____ SIGNATURE OF SERVER _____

P.O. Box 38, North Little Rock, AR 72115
ADDRESS OF SERVER

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the trial or hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the trial or hearing, Rule 45(d), Ark. R. Civ. P.

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the deposition, Rule 45(e), Ark. R. Civ. P.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Rule 45(b), Ark. R. Civ. P. If the subpoena is issued in connection with a deposition, the person subpoenaed may object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the court. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Rule 45(d), Ark. R. Civ. P.

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) _____ **DATE** _____
Atty. For Defendant

ISSUING OFFICERS NAME, ADDRESS & PHONE NUMBER _____ **DATE** _____
Amanda LaFever, P.O. Box 38, North Little Rock, AR 72115, (501) 978-6117

When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the court may issue a warrant for arresting and bringing the witness before the court to give testimony and answer for contempt. Rule 45(g), Ark. R. Civ. P.

LYONS & CONE, P.L.C.
Attorneys at Law
407 S. Main
P. O. Box 7044
Jonesboro, AR 72403

Phone 870/972-5440--Fax 870/972-1270

FACSIMILE TRANSMITTAL COVER SHEET

TO: Jan Griffith
Greene Co. Circuit Clerk

FROM: Jim Lyons

RE: St. Francis River Regional Water District vs. City of Marmaduke, Arkansas;
Greene Co. Circuit Court; Case No. CV-2017-219

DATE: September 18, 2018

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 24

Letter and attachment to follow.

The information contained in this telecopy is intended only for the use of the addressee and may contain information that is confidential, privileged, and/or otherwise exempt from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering this transmittal to the intended recipient, you are not authorized to read this transmittal and are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. This transmission is not intended to waive any attorney-client privilege, or other confidential or privileged relationship. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address.

JIM LYONS**
jlyons@leclaw.com

ANDREW NADZAM
anadzam@leclaw.com

Lyons & Cone, P.L.L.C.

ATTORNEYS AT LAW
407 SOUTH MAIN
PO BOX 7044
JONESBORO, ARKANSAS 72403-7044
870-972-5440 • FAX: 870-972-1270
WEBSITE: WWW.LECLAW.COM

MIKE CONE*
mikecone@leclaw.com

DAVID TYLER*
dtyler@leclaw.com

*Master of Laws in Agricultural Law
**Keenan Ball Trial College Faculty

September 18, 2018

VIA FACSIMILE – (870) 239-3550
AND PRIORITY MAIL

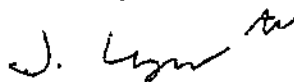
Ms. Jan Griffith
Greene Co. Circuit Clerk
320 W. Court, Suite 124
Paragould, AR 72450

Re: St. Francis River Regional Water District vs. City of
Marmaduke, Arkansas; Greene Co. Circuit Court;
Case No. CV-2017-219

Dear Ms. Griffith:

Please find enclosed a Motion to Quash Defendant's Subpoena and Brief in Support
Thereof to be filed in the above-referenced matter. Please return a file-marked copy of the front
page to my office by fax at (870) 972-1270. We are placing the original of this document in the
mail to your office for placement in the Court file. If you have any questions or problems, please
do not hesitate to contact me. Thank you for your cooperation.

Sincerely,



Jim Lyons

JL/ab

Enclosure

cc: Amanda LaFever (w/enc.)

F:\WP60\SFRRWD\GreeneCo.SFRRWD4.ltr.wpd

LYONS & CONE, P.L.C.
Attorneys at Law
407 S. Main
P. O. Box 7044
Jonesboro, AR 72403

Phone 870/972-5440--Fax 870/972-1270

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JIM LYONS**
jlyons@leclaw.com
ANDREW NADZAM
andzam@leclaw.com

Lyons & Cone, P.L.L.C.

ATTORNEYS AT LAW
407 SOUTH MAIN
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MIKE CONE*
mikecone@leclaw.com
DAVID TYLER*
dtyler@leclaw.com

*Master of Laws in Agricultural Law
**Keenan Ball Trial College Faculty

September 18, 2018

VIA FACSIMILE – (870) 239-3550
AND PRIORITY MAIL

Ms. Jan Griffith
Greene Co. Circuit Clerk
320 W. Court, Suite 124
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Sincerely,



Jim Lyons

JL/ab

Enclosure

cc: Amanda LaFever (w/enc.)

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IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

SEP 19 2018

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

**OBJECTION TO RULE 30(b)(6) NOTICE OF DEPOSITION AND
SUBPOENA AND BRIEF IN SUPPORT THEREOF**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Objection to Rule 30(b)(6) Notice and Subpoena and Brief in Support Thereof, states:

A. INTRODUCTION

The Plaintiff filed its action against the City of Marmaduke on June 21, 2017. Following the filing of numerous pleadings and documents, the Defendant e-mailed a second Notice of Rule 30(b)(6) deposition and a subpoena to Plaintiff. (Attached hereto and incorporated by reference herein as Exhibit A is a true and correct copy of the Rule 30(b)(6) Notice and as Exhibit B is a true and correct copy of the Subpoena).

LAW AND ARGUMENT

B. PRODUCTION OF DOCUMENTS

The Defendant in this case does not cite to either Rule 34 or Rule 45 as the basis for the request to produce documents at the deposition. Assuming that the Defendant is using Rule 34,

then it is required to provide thirty (30) days notice which has not been done. In the alternative, if the Defendant is relying solely upon Rule 45, then the Court must look to Rule 45(e) which provides as follows:

(e) Subpoena for Taking Depositions: Place of Examination. . . . The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of the rule.

The person to whom the subpoena is directed may, within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service, serve upon the attorney causing the subpoena to be issued written objection to inspection or copying of any or all of the designated materials. If objection is made, the party causing the subpoena to be issued shall not be entitled to inspect and copy the materials except pursuant to an order of the court before which the deposition may be used. The party causing the subpoena to be issued may, if objection has been made, move, upon notice to the deponent, for an order at any time before or during the taking of the deposition.

Based upon Rule 45(e), this objection means that the Defendant “shall not be entitled to inspect and copy the materials except pursuant to an order of the court” Therefore, the Plaintiff shall not produce any materials or documents on the scheduled deposition date. Further, if the Court believes that the Defendant is relying upon Rule 34, then such notice is not timely and the Plaintiff is not required to produce any such documents either.

C. RULE 30(b)(6)

The notice as provided to the Plaintiff is improper for a number of reasons and, therefore, the Plaintiff should not be required to appear for the deposition. In this case, the City’s notice and subpoena are improper under the Arkansas Rules of Civil Procedure as set forth below.

Rule 30(b)(6) requires that the requesting party describe the matters for examination with reasonable particularity. Clearly, the Defendant has failed to do so in this case. In this case, the

Defendant in most of the requests including D, E, F, G, H, I, J, K, M, R, S, T, V, and AA cover a period of approximately twenty (20) years or an undefined period of time. Thus, these topics are not described with “reasonable particularity” and are unduly burdensome. Because Arkansas, generally, does not allow interlocutory appeals, there are very few cases in the State which describe, define or interpret this portion of the rules of civil procedure. The case of *City of Ft. Smith v. Carter*, 364 Ark. 100, 216 SW3d 954 (2005) provides “based upon the similarities of our rules with the federal rules of civil procedure, we consider the interpretation of these rules by federal courts to be of a significant precedential value”. Thus, it is proper to look to federal cases for assistance in interpretation of Rule 30.

In looking to federal court decisions, they are decidedly instructive in this case. The federal courts provide that the topics to be acceptable must be limited in such a manner so that the “burden of the proposed discovery outweighs its likely benefit.” *Dusa Pharmaceuticals, Inc. v. New England Compounding Pharmacy, Inc.*, 232 F.R.D. 153, 154 (D. Mass. 2005). In *Dusa*, the Defendant asks for virtually unfettered discretion to cover topics that are unduly burdensome and are not “reasonably calculated to lead to the discovery of admissible evidence”. In the instant case, the Defendant requests “the existence and location of any pipes, wells, culverts, building materials or any piece of hardware, equipment or system that facilitates or causes the District’s water system to work, run or provide water services to customers or entities located within its geographic boundaries. This request is made for the time period from January 1, 1998 until present.”

This request and the others covering approximately twenty (20) years are so broad that it is virtually impossible to provide all of the documents and prepare a witness regarding them because it is unduly burdensome to do so and, thus, improper. This a classic example of the

“burden of the proposed discovery outweigh[ing] its likely benefit.” The other requests listed above fit within the same class, i.e. cover such a period of time or such a broad range of items that it would take weeks, if not months, to properly prepare a representative. For example, to depose the representative on each item of hardware in the entire system that has been put in place in the last twenty (20) years would require many days at best and many weeks at worst. Further, the only issue is whether the Plaintiff can serve ARI today, not whether it could have done so twenty (20) years ago or even five (5) years ago. More importantly, the location of pipe and other facilities on the opposite side of the territory have nothing to do with the Plaintiff’s ability to supply water to the ARI east plant.

There are numerous federal cases on point. For example, use of the terms inspect “‘any documents or electronically stored information’ in the defendants’ possession” was too broad in *Dusa*. The requests herein are so broadly drafted that they encompass documents and information not even related to this litigation and would be highly burdensome to the Plaintiff. On the other hand, the case of *Flick v. Wellpoint, Inc.*, No. 2:08-cv-211, 2009 WL 1564386, at *3 (N.D. Ind. June 2, 2009) found a request for inspection not unduly burdensome because it was described with “reasonable particularity” and was limited to clearly defined areas that were in issue in the litigation involved in *Flick*. Also, see the case of *Bruggeman ex rel. Bruggeman v. Blagojevich*, 219 F.R.D. 430, 436 (N.D. Ill. 2004) where the court describes the “test for reasonable particularity is whether [the] request places [the] party on ‘reasonable notice of what is called for and what is not,’ and overly broad or vague language does not meet the reasonable particularity test.”

Also, the Defendant seeks information from the Plaintiff regarding the City of Marmaduke’s system, ability to supply water, existence of pipes in the ground, the City’s

indebtedness, sewer services, “ability of the City to meet the plant’s requirements in the case of a fire or other catastrophic event.” Topics T, U, W, X, and Y are improper because they all deal with the City, and many, if not all, of these topics are outside the knowledge of the Plaintiff. The Plaintiff has no knowledge of the City’s system and the only way to learn this is from the City. Also, one of these topics covers “other catastrophic event[s].” What good is water in the event of a flood or a tornado? Clearly, this request is one that the Plaintiff has no knowledge of and cannot use any means to determine the City’s ability to supply water during a catastrophic event without deposing officers or engineers of the City regarding their water system. The duty to prepare a witness for a deposition pursuant to Rule 30(b)(6) does not include the duty for the Plaintiff to take a deposition of the Defendant to prepare a witness to testify regarding items which can be testified to by the Defendant or its contractors and witnesses. This is simply the epitome of an unduly burdensome discovery request.

An overly broad Rule 30(b)(6) notice subjects the noticed party to an impossible task. “To avoid liability, the noticed party must designate persons knowledgeable in the areas of inquiry listed in the notice Where, as here, the defendant cannot identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible.” *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000). Judge Leon Holmes in the case of *RM Dean Farms v. Helena Chemical Co.*, 2012 WL 169889, at *1 (E.D. Ark. 2012) stated “[t]he 30(b)(6) notice would require Helena Chemical Company to produce a corporate representative or corporate representatives to testify on topics so vast in number, so vast in scope, so open ended, and so vague that compliance with the notice would be impossible.” This is exactly what the Defendant has sought in this case and, thus, the objection to the 30(b)(6) notice should be sustained.

The responding party (SFRRWD) must prepare its witnesses to provide non-evasive and complete answers for the organization. In fact, the case of *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) states that the organization has the duty “to make a conscientious, good faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unequivocally answer questions about the designated subject matter.” Thus, the obligation to prepare is substantial. The so-called “topic designations” which SFRRWD would have to prepare for are simply a waste of time, effort and money. These are clearly not intended to gain knowledge or information necessary for this suit, but are intended to harass the Plaintiff as most of these issues have nothing to do with the matters in question in this case.

Importantly, the failure to properly prepare a witness(es) on all of the topics is subject to sanctions by the Court. Thus, the topics must be ones that the responding party has the ability to prepare for and are at issue in the case. Otherwise, a party could be subject to sanctions for failing to prepare on topics that it is unable to prepare for. Sanctions are available pursuant to ARCP Rule 37(d). In fact, in the case cited above of *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) sanctions were awarded in favor of the party giving the Rule 30(b)(6) notice due to the responding party’s failure to properly prepare a witness and for such witness failing to “fully and unequivocally answer questions about the designated subject matter.” Thus, it is incumbent upon the party sending such notice to properly designate the topics so that the responding party can properly prepare for the deposition.

D. CONCLUSION

This objection to the Rule 30(b)(6) notice must be sustained as the federal courts of the State of Arkansas have addressed these same questions and have found that notices which are deficient must not be enforced when they are not issued in compliance with the Arkansas Rules of Civil Procedure and the similar Federal Rules of Civil Procedure.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

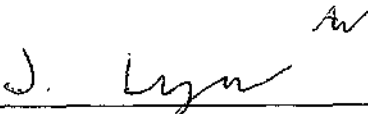
By: J. Lyon ^{Av}
State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 18th day of September, 2018.



Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

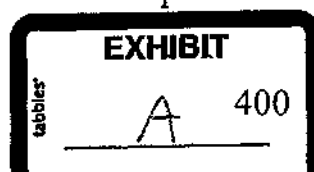
DEFENDANT

NOTICE OF RULE 30(b)(6) DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Arkansas Rules of Civil Procedure, Defendant shall take the deposition of one or more officers, directors, agents, member, employee, or other representative who shall be designated to testify on behalf of St. Francis River Regional Water District ("the District") regarding all information known or reasonably available to the District with respect to the subject matters identified in Schedule 1. Defendant requests that the District provide written notice at least five (5) business days before the deposition of the name(s) and the position(s) of the individual(s) designated to testify on the District's behalf.

Per the parties' agreement, the deposition(s) shall commence on September 25, 2018, beginning at 10:30 a.m. at the Marmaduke Community Center, located at 307 West Mill Street, Marmaduke, Arkansas, and shall be taken before a duly certified court reporter recorded by stenographic means.

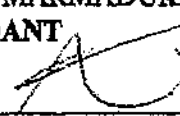
1



Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

BY:


Amanda LaFever, Ark. Bar No. 2012133
Attorney for Defendants
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-978-6117
FACSIMILE: 501-978-6554
EMAIL: alafever@arml.org

CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on September 10, 2018, I provided the foregoing to counsel for Plaintiff, via email, and on September 11, 2018 via Certified Mail, Return Receipt, Restricted Delivery, to the address below:

Jim Lyons
David Tyler
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403


Amanda LaFever, Ark. Bar No. 2012133

SCHEDULE 1

In accordance with Ark. R. Civ. P. 30(b)(6), Defendant designates the matters identified below for examination. In construing these topics, the following instructions and definitions shall apply:

1. All terms shall be construed to encompass as broad a range of information as permitted under the Arkansas Rules of Civil Procedure.
2. "Plaintiff" is defined to mean St. Francis River Regional Water District, and any of its officers, directors, agents, members, employees, or other representative.
3. "The District" is defined to mean St. Francis River Regional Water District, and any of its officers, directors, agents, members, employees, or other representative.
4. "Defendant" is defined to mean the City of Marmaduke, Arkansas.
5. "Complaint" is defined to include the originally filed Complaint as well as any subsequently filed Amended Complaint, unless specified otherwise.
6. "Arkansas Natural Resources Commission" is defined to include any governmental agency that was a predecessor of the Commission in its current iteration.
7. "United States Department of Agriculture" is defined to include any governmental agency that was a processor of the U.S.D.A. in its current iteration.

The deponent(s) shall be prepared to address the following topics:

- A. Any responses served or produced by the District in response to Interrogatories or Requests for Production.
- B. The name, mailing address, phone number, and email address for any custodian of any documents produced by the District in response to Interrogatories or Requests for Production.

- C. The District's administrative structure, organizational structure, operational structure, and management structure.
- D. The existence and location of any pipes, wells, culverts, building materials, or any piece of hardware, equipment, or system that facilitates or causes the District's water system to work, run, or provide water services to customers or entities located within its geographic boundaries. This request is made for the time period from January 1, 1998 until present.
- E. When such infrastructure as referenced in the preceding paragraph was put in place, constructed, installed, created, or built, as well as what funds were used to finance the project.
- F. The existence and location of any maps, blueprints, schematics, databases, documents, or records that set forth the information requested in the two preceding paragraphs.
- G. Policies and/or protocols regarding the District's bookkeeping and accounting practices and how those business practices have been and are carried out and by whom, from January 1, 1998 to present;
- H. From January 1, 1998 to present: The history, degree, and extent of the District's indebtedness to the United States Department of Agriculture, the Arkansas Natural Resources Commission, and the First National Bank of Paragould, to include any entities that were precursors, predecessors, or successors of those three entities.
- I. What, if any, revenues were or are pledged to repay the indebtedness referenced in the preceding paragraph, when the indebtedness arose, the purpose of the loan was procured, and for what the loan has been used, and any exclusivity or rights believed by the District to be provided to the District by virtue of that indebtedness under either federal or state law, and when such rights, if they ever existed, expired.

- J. Any records or communications regarding the District's indebtedness with the Arkansas Natural Resources Commission, the United States Department of Agriculture, or the First National Bank of Paragould, to include any entities that were precursors, predecessors, or successors of those three entities, from January 1, 1998 to present.
- K. The ability, inability, or capacity of the District to provide water services to ARI at any point in time, historically and currently, including when ARI was built in 1999, when the East Plant was built in 2006, when the Refurb Plant was built in 2015, and presently, and what steps, if any, the District took or is taking in order to make known to ARI or the City its ability to provide such water services.
- L. If the District is currently unable to immediately begin providing the requisite water services to ARI's facilities, what must occur before the District does have the capacity, and when the requisite steps will be complete such that the District could meet ARI's water needs.
- M. Any records or communications, regarding the ability, inability, or capacity of the District to provide water services to any portion of the American Railcar Industries campus from January 1, 1998 to present.
- N. The capacity, ability, or inability of the District to meet ARI'S requirements in the case of a fire or other catastrophic event;
- O. The District's capacity, ability, or inability to provide sewer services to ARI;
- P. When and how the District first became aware that the City was providing water services to the West Plant, the East Plant, and the Refurb Plant.
- Q. Any demands made by the District that ARI receive water services from the District or that the City cease providing water services to the District.

- R. Any records, inquiries, or communications regarding the District's Compliance with the Arkansas Natural Resources Water Plan.
- S. Any records or communications, regarding the capacity, ability, or inability of the City to provide water services to any portion of the ARI campus from January 1, 1998 to present.
- T. The City's indebtedness with respect to its water utility, and any exclusivity or rights provided to it by virtue of that indebtedness under either federal or state law;
- U. The existence of any record, Order, document, agreement, or otherwise that provides the City "exclusive" rights to pre-existing customers and customers within so many miles of the City's limits;
- V. The existence of any record, order, document, agreement, or otherwise that provides the District "exclusive" rights to any geographical location contained within the legal description of the District;
- W. The ability of the City to meet the Plant's requirements in the case of a fire or other catastrophic event;
- X. The City's ability to provide sewer services along with water services to ARI; and
- Y. The existence of the City's pipes in the ground currently, such that the City can continue to provide water services to ARI with no cessation of ARI's operations.
- Z. Any records, inquiries, or communications regarding the City's Compliance with the Arkansas Natural Resources Water Plan.
- AA. Identification of any communications via any method (other than with counsel of record), or otherwise recorded, between any agents, representatives, officers, directors, or employees of the District and any other person or entity, regarding the following:

- The District's provision of services to American Railcar Industries ("ARI")—
whether actual or anticipated;
- The geographical limitations or boundaries of the District;
- The District's alleged exclusivity of its provision of services;
- The provisions of water services by the City to ARI; and
- The geographical limitations or boundaries of the City;

In doing so, the deponent should know who the communication was between, when it occurred, the method or format of the conversation, i.e., email, phone call, etc., and the substance of the communication;

CIRCUIT COURT OF GREENE COUNTY, ARKANSAS

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

SUBPOENA IN A CIVIL CASE

VS.

CASE NO. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

TO: St. Francis River Regional Water District

YOU ARE COMMANDED to appear in the Court of County at the place, date, and time specified below to testify in the above case:

PLACE OF TESTIMONY COURTROOM DATE & TIME

YOU ARE COMMANDED to appear at the place, date, and time below to testify at the taking of a deposition in the above case:

PLACE OF DEPOSITION DATE & TIME

X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents):

All documents, records, notes, data, maps, blueprints, and communications that the deponent relied on, read, reviewed, received, or sent in preparation for the 30(b)(6) deposition on behalf of the St. Francis River Regional Water District. DATE & TIME September 25, 2018, at 10:30 a.m., at the Marmaduke Community Center, 307 West Mill Street, Marmaduke, AR

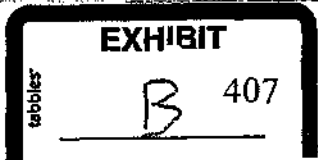
YOU ARE COMMANDED to permit inspection for the following premises at the date and time specified below:

PREMISES DATE & TIME

Any organization not a part to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Arkansas Rules of Civil Procedure, 30 (b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE Atty. For Defendant Amanda LaFever 9/10/18

ISSUING OFFICERS NAME, ADDRESS & PHONE NUMBER DATE Amanda LaFever, P.O. Box 38, North Little Rock, AR 72115, (501) 978-6117 9/10/18



PROOF OF SERVICE

PLACE SERVED	DATE
SERVED ON (PRINT NAME OF PERSON SERVED)	
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

P.O. Box 38, North Little Rock, AR 72115
ADDRESS OF SERVER

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the trial or hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Rule 45(d), Ark. R. Civ. P.

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the deposition. Rule 45(e), Ark. R. Civ. P.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Rule 45(b), Ark. R. Civ. P. If the subpoena is issued in connection with a deposition, the person subpoenaed may object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the court. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Rule 45(d), Ark. R. Civ. P.

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
Atty. For Defendant	

ISSUING OFFICERS NAME, ADDRESS & PHONE NUMBER	DATE
Amanda LaFever, P.O. Box 38, North Little Rock, AR 72115, (501) 978-6117	

When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the court may issue a warrant for arresting and bringing the witness before the court to give testimony and answer for contempt. Rule 45(g), Ark. R. Civ. P.

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

SEP 19 2018

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

**MOTION TO QUASH DEFENDANT'S
SUBPOENA AND BRIEF IN SUPPORT THEREOF**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Motion to Quash Defendant's Subpoena and Brief in Support Thereof, states:

1. On or about September 10, 2018, Defendant City of Marmaduke, Arkansas emailed Plaintiff a second Notice of Rule 30(b)(6) deposition ("Notice") and a subpoena ("Subpoena") to Plaintiff.
2. On or about September 18, 2018, Plaintiff filed its Objection to Rule 30(b)(6) Notice of Deposition and Subpoena and Brief in Support Thereof. (Attached hereto and incorporated by reference herein as Exhibit 1 is a true and correct copy of Plaintiff's Objection). Also, on or about September 18, 2018, Plaintiff e-mailed Defendant a copy of its Objection to Rule 30(b)(6) Notice of Deposition and Subpoena and Brief in Support Thereof. ("Objection").
3. The Objection outlined numerous ways Defendant's Notice and Subpoena failed to comply with the Arkansas Rules of Civil Procedure.

4. First, the Defendant failed to meet the reasonable particularity standard required by ARCP 30(b)(6) in its Notice and Subpoena. Many of the topics, including D, E, F, G, H, I, J, K, M, R, S, T, V, and AA, cover time periods of approximately twenty (20) years or were for undefined periods of time. Additionally, these topics are unduly burdensome because of the length of time for the topic, and the overly broad nature of the topics.

5. Second, many of the topics, including topics T, U, W, X, and Y are about topics which are outside of the knowledge or control of the Plaintiff, and are instead about matters relating to the Defendant.

6. ARCP Rule 45(b)(2) allows the Court to quash or modify a subpoena if it is unreasonable or oppressive.

7. As explained further in the Objection, Defendant's subpoena is unreasonable and oppressive. The topics in Defendant's subpoena are for an unreasonable amount of time, approximately twenty (20) years or for undefined amounts of time. Further, Defendant's Subpoena is for documents relating to the topics in the Notice. Many of the topics are about things which Plaintiff does not have knowledge of.

8. Defendant's subpoena is also oppressive for the same reasons. Requesting Plaintiff's representative to bring documents covering approximately twenty (20) years, and on topics unrelated to the issues in this litigation is oppressive. Further, asking Plaintiff's representative to bring all documents relating to "the existence and location of any pipes, wells, culverts, building materials or any piece of hardware, equipment or system that facilitates or causes the District's water system to work, run or provide water services to customers or entities located within its geographic boundaries. This request is made for the time period from January 1, 1998 until present." This topic, and all related documents to that topic, is one of the most

oppressive requests one can imagine.

9. Defendant's Subpoena and Notice are unreasonable and oppressive. Plaintiff respectfully requests that this Court quash Defendant's Notice of Rule 30(b)(6) deposition and Subpoena because they are unreasonable and oppressive, and do not conform with the Arkansas Rules of Civil Procedure.

WHEREFORE, Plaintiff, St. Francis River Regional Water District, prays as follows:

- a. that Plaintiff's Motion to Quash Defendant's Subpoena be granted;
- b. that the Court quash Defendant's Notice of Rule 30(b)(6) deposition and Subpoena;
- b. for its costs and attorney's fees; and
- c. for all other proper relief to which this Plaintiff is entitled.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

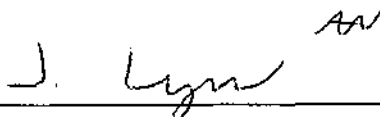
By: J. Lyon ^{AW}
State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 18th day of September, 2018.



Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

**OBJECTION TO RULE 30(b)(6) NOTICE OF DEPOSITION AND
SUBPOENA AND BRIEF IN SUPPORT THEREOF**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Objection to Rule 30(b)(6) Notice and Subpoena and Brief in Support Thereof, states:

A. INTRODUCTION

The Plaintiff filed its action against the City of Marmaduke on June 21, 2017. Following the filing of numerous pleadings and documents, the Defendant e-mailed a second Notice of Rule 30(b)(6) deposition and a subpoena to Plaintiff. (Attached hereto and incorporated by reference herein as Exhibit A is a true and correct copy of the Rule 30(b)(6) Notice and as Exhibit B is a true and correct copy of the Subpoena).

LAW AND ARGUMENT

B. PRODUCTION OF DOCUMENTS

The Defendant in this case does not cite to either Rule 34 or Rule 45 as the basis for the request to produce documents at the deposition. Assuming that the Defendant is using Rule 34,



then it is required to provide thirty (30) days notice which has not been done. In the alternative, if the Defendant is relying solely upon Rule 45, then the Court must look to Rule 45(e) which provides as follows:

(e) Subpoena for Taking Depositions: Place of Examination. . . . The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of the rule.

The person to whom the subpoena is directed may, within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service, serve upon the attorney causing the subpoena to be issued written objection to inspection or copying of any or all of the designated materials. If objection is made, the party causing the subpoena to be issued shall not be entitled to inspect and copy the materials except pursuant to an order of the court before which the deposition may be used. The party causing the subpoena to be issued may, if objection has been made, move, upon notice to the deponent, for an order at any time before or during the taking of the deposition.

Based upon Rule 45(e), this objection means that the Defendant “shall not be entitled to inspect and copy the materials except pursuant to an order of the court” Therefore, the Plaintiff shall not produce any materials or documents on the scheduled deposition date. Further, if the Court believes that the Defendant is relying upon Rule 34, then such notice is not timely and the Plaintiff is not required to produce any such documents either.

C. RULE 30(b)(6)

The notice as provided to the Plaintiff is improper for a number of reasons and, therefore, the Plaintiff should not be required to appear for the deposition. In this case, the City’s notice and subpoena are improper under the Arkansas Rules of Civil Procedure as set forth below.

Rule 30(b)(6) requires that the requesting party describe the matters for examination with reasonable particularity. Clearly, the Defendant has failed to do so in this case. In this case, the

Defendant in most of the requests including D, E, F, G, H, I, J, K, M, R, S, T, V, and AA cover a period of approximately twenty (20) years or an undefined period of time. Thus, these topics are not described with “reasonable particularity” and are unduly burdensome. Because Arkansas, generally, does not allow interlocutory appeals, there are very few cases in the State which describe, define or interpret this portion of the rules of civil procedure. The case of *City of Ft. Smith v. Carter*, 364 Ark. 100, 216 SW3d 954 (2005) provides “based upon the similarities of our rules with the federal rules of civil procedure, we consider the interpretation of these rules by federal courts to be of a significant precedential value”. Thus, it is proper to look to federal cases for assistance in interpretation of Rule 30.

In looking to federal court decisions, they are decidedly instructive in this case. The federal courts provide that the topics to be acceptable must be limited in such a manner so that the “burden of the proposed discovery outweighs its likely benefit.” *Dusa Pharmaceuticals, Inc. v. New England Compounding Pharmacy, Inc.*, 232 F.R.D. 153, 154 (D. Mass. 2005). In *Dusa*, the Defendant asks for virtually unfettered discretion to cover topics that are unduly burdensome and are not “reasonably calculated to lead to the discovery of admissible evidence”. In the instant case, the Defendant requests “the existence and location of any pipes, wells, culverts, building materials or any piece of hardware, equipment or system that facilitates or causes the District’s water system to work, run or provide water services to customers or entities located within its geographic boundaries. This request is made for the time period from January 1, 1998 until present.”

This request and the others covering approximately twenty (20) years are so broad that it is virtually impossible to provide all of the documents and prepare a witness regarding them because it is unduly burdensome to do so and, thus, improper. This a classic example of the

“burden of the proposed discovery outweigh[ing] its likely benefit.” The other requests listed above fit within the same class, i.e. cover such a period of time or such a broad range of items that it would take weeks, if not months, to properly prepare a representative. For example, to depose the representative on each item of hardware in the entire system that has been put in place in the last twenty (20) years would require many days at best and many weeks at worst. Further, the only issue is whether the Plaintiff can serve ARI today, not whether it could have done so twenty (20) years ago or even five (5) years ago. More importantly, the location of pipe and other facilities on the opposite side of the territory have nothing to do with the Plaintiff’s ability to supply water to the ARI east plant.

There are numerous federal cases on point. For example, use of the terms inspect “‘any documents or electronically stored information’ in the defendants’ possession” was too broad in *Dusa*. The requests herein are so broadly drafted that they encompass documents and information not even related to this litigation and would be highly burdensome to the Plaintiff. On the other hand, the case of *Flick v. Wellpoint, Inc.*, No. 2:08-cv-211, 2009 WL 1564386, at *3 (N.D. Ind. June 2, 2009) found a request for inspection not unduly burdensome because it was described with “reasonable particularity” and was limited to clearly defined areas that were in issue in the litigation involved in *Flick*. Also, see the case of *Bruggeman ex rel. Bruggeman v. Blagojevich*, 219 F.R.D. 430, 436 (N.D. Ill. 2004) where the court describes the “test for reasonable particularity is whether [the] request places [the] party on ‘reasonable notice of what is called for and what is not,’ and overly broad or vague language does not meet the reasonable particularity test.”

Also, the Defendant seeks information from the Plaintiff regarding the City of Marmaduke’s system, ability to supply water, existence of pipes in the ground, the City’s

indebtedness, sewer services, “ability of the City to meet the plant’s requirements in the case of a fire or other catastrophic event.” Topics T, U, W, X, and Y are improper because they all deal with the City, and many, if not all, of these topics are outside the knowledge of the Plaintiff. The Plaintiff has no knowledge of the City’s system and the only way to learn this is from the City. Also, one of these topics covers “other catastrophic event[s].” What good is water in the event of a flood or a tornado? Clearly, this request is one that the Plaintiff has no knowledge of and cannot use any means to determine the City’s ability to supply water during a catastrophic event without deposing officers or engineers of the City regarding their water system. The duty to prepare a witness for a deposition pursuant to Rule 30(b)(6) does not include the duty for the Plaintiff to take a deposition of the Defendant to prepare a witness to testify regarding items which can be testified to by the Defendant or its contractors and witnesses. This is simply the epitome of an unduly burdensome discovery request.

An overly broad Rule 30(b)(6) notice subjects the noticed party to an impossible task. “To avoid liability, the noticed party must designate persons knowledgeable in the areas of inquiry listed in the notice Where, as here, the defendant cannot identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible.” *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000). Judge Leon Holmes in the case of *RM Dean Farms v. Helena Chemical Co.*, 2012 WL 169889, at *1 (E.D. Ark. 2012) stated “[t]he 30(b)(6) notice would require Helena Chemical Company to produce a corporate representative or corporate representatives to testify on topics so vast in number, so vast in scope, so open ended, and so vague that compliance with the notice would be impossible.” This is exactly what the Defendant has sought in this case and, thus, the objection to the 30(b)(6) notice should be sustained.

The responding party (SFRRWD) must prepare its witnesses to provide non-evasive and complete answers for the organization. In fact, the case of *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) states that the organization has the duty “to make a conscientious, good faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unequivocally answer questions about the designated subject matter.” Thus, the obligation to prepare is substantial. The so-called “topic designations” which SFRRWD would have to prepare for are simply a waste of time, effort and money. These are clearly not intended to gain knowledge or information necessary for this suit, but are intended to harass the Plaintiff as most of these issues have nothing to do with the matters in question in this case.

Importantly, the failure to properly prepare a witness(es) on all of the topics is subject to sanctions by the Court. Thus, the topics must be ones that the responding party has the ability to prepare for and are at issue in the case. Otherwise, a party could be subject to sanctions for failing to prepare on topics that it is unable to prepare for. Sanctions are available pursuant to ARCP Rule 37(d). In fact, in the case cited above of *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) sanctions were awarded in favor of the party giving the Rule 30(b)(6) notice due to the responding party’s failure to properly prepare a witness and for such witness failing to “fully and unequivocally answer questions about the designated subject matter.” Thus, it is incumbent upon the party sending such notice to properly designate the topics so that the responding party can properly prepare for the deposition.

D. CONCLUSION

This objection to the Rule 30(b)(6) notice must be sustained as the federal courts of the State of Arkansas have addressed these same questions and have found that notices which are deficient must not be enforced when they are not issued in compliance with the Arkansas Rules of Civil Procedure and the similar Federal Rules of Civil Procedure.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

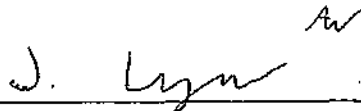
By: J. Lyon ^{AV}
State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 18th day of September, 2018.



Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

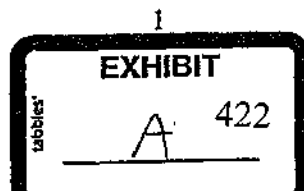
CITY OF MARMADUKE, ARKANSAS

DEFENDANT

NOTICE OF RULE 30(b)(6) DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Arkansas Rules of Civil Procedure, Defendant shall take the deposition of one or more officers, directors, agents, member, employee, or other representative who shall be designated to testify on behalf of St. Francis River Regional Water District ("the District") regarding all information known or reasonably available to the District with respect to the subject matters identified in Schedule I. Defendant requests that the District provide written notice at least five (5) business days before the deposition of the name(s) and the position(s) of the individual(s) designated to testify on the District's behalf.

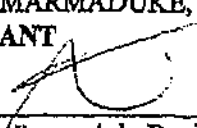
Per the parties' agreement, the deposition(s) shall commence on September 25, 2018, beginning at 10:30 a.m. at the Marmaduke Community Center, located at 307 West Mill Street, Marmaduke, Arkansas, and shall be taken before a duly certified court reporter recorded by stenographic means.



Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

BY:


Amanda LaFever, Ark. Bar No. 2012133
Attorney for Defendants
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-978-6117
FACSIMILE: 501-978-6554
EMAIL: alafever@arml.org

CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on September 10, 2018, I provided the foregoing to counsel for Plaintiff, via email, and on September 11, 2018 via Certified Mail, Return Receipt, Restricted Delivery, to the address below:

Jim Lyons
David Tyler
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403


Amanda LaFever, Ark. Bar No. 2012133

SCHEDULE 1

In accordance with Ark. R. Civ. P. 30(b)(6), Defendant designates the matters identified below for examination. In construing these topics, the following instructions and definitions shall apply:

1. All terms shall be construed to encompass as broad a range of information as permitted under the Arkansas Rules of Civil Procedure.
2. "Plaintiff" is defined to mean St. Francis River Regional Water District, and any of its officers, directors, agents, members, employees, or other representative.
3. "The District" is defined to mean St. Francis River Regional Water District, and any of its officers, directors, agents, members, employees, or other representative.
4. "Defendant" is defined to mean the City of Marmaduke, Arkansas.
5. "Complaint" is defined to include the originally filed Complaint as well as any subsequently filed Amended Complaint, unless specified otherwise.
6. "Arkansas Natural Resources Commission" is defined to include any governmental agency that was a predecessor of the Commission in its current iteration.
7. "United States Department of Agriculture" is defined to include any governmental agency that was a processor of the U.S.D.A. in its current iteration.

The deponent(s) shall be prepared to address the following topics:

- A. Any responses served or produced by the District in response to Interrogatories or Requests for Production.
- B. The name, mailing address, phone number, and email address for any custodian of any documents produced by the District in response to Interrogatories or Requests for Production.

- C. The District's administrative structure, organizational structure, operational structure, and management structure.
- D. The existence and location of any pipes, wells, culverts, building materials, or any piece of hardware, equipment, or system that facilitates or causes the District's water system to work, run, or provide water services to customers or entities located within its geographic boundaries. This request is made for the time period from January 1, 1998 until present.
- E. When such infrastructure as referenced in the preceding paragraph was put in place, constructed, installed, created, or built, as well as what funds were used to finance the project.
- F. The existence and location of any maps, blueprints, schematics, databases, documents, or records that set forth the information requested in the two preceding paragraphs.
- G. Policies and/or protocols regarding the District's bookkeeping and accounting practices and how those business practices have been and are carried out and by whom, from January 1, 1998 to present;
- H. From January 1, 1998 to present: The history, degree, and extent of the District's indebtedness to the United States Department of Agriculture, the Arkansas Natural Resources Commission, and the First National Bank of Paragould, to include any entities that were precursors, predecessors, or successors of those three entities.
- I. What, if any, revenues were or are pledged to repay the indebtedness referenced in the preceding paragraph, when the indebtedness arose, the purpose of the loan was procured, and for what the loan has been used, and any exclusivity or rights believed by the District to be provided to the District by virtue of that indebtedness under either federal or state law, and when such rights, if they ever existed, expired.

- J. Any records or communications regarding the District's indebtedness with the Arkansas Natural Resources Commission, the United States Department of Agriculture, or the First National Bank of Paragould, to include any entities that were precursors, predecessors, or successors of those three entities, from January 1, 1998 to present.
- K. The ability, inability, or capacity of the District to provide water services to ARI at any point in time, historically and currently, including when ARI was built in 1999, when the East Plant was built in 2006, when the Refurb Plant was built in 2015, and presently, and what steps, if any, the District took or is taking in order to make known to ARI or the City its ability to provide such water services.
- L. If the District is currently unable to immediately begin providing the requisite water services to ARI's facilities, what must occur before the District does have the capacity, and when the requisite steps will be complete such that the District could meet ARI's water needs.
- M. Any records or communications, regarding the ability, inability, or capacity of the District to provide water services to any portion of the American Railcar Industries campus from January 1, 1998 to present.
- N. The capacity, ability, or inability of the District to meet ARI'S requirements in the case of a fire or other catastrophic event;
- O. The District's capacity, ability, or inability to provide sewer services to ARI;
- P. When and how the District first became aware that the City was providing water services to the West Plant, the East Plant, and the Refurb Plant.
- Q. Any demands made by the District that ARI receive water services from the District or that the City cease providing water services to the District.

- R. Any records, inquiries, or communications regarding the District's Compliance with the Arkansas Natural Resources Water Plan.
- S. Any records or communications, regarding the capacity, ability, or inability of the City to provide water services to any portion of the ARI campus from January 1, 1998 to present.
- T. The City's indebtedness with respect to its water utility, and any exclusivity or rights provided to it by virtue of that indebtedness under either federal or state law;
- U. The existence of any record, Order, document, agreement, or otherwise that provides the City "exclusive" rights to pre-existing customers and customers within so many miles of the City's limits;
- V. The existence of any record, order, document, agreement, or otherwise that provides the District "exclusive" rights to any geographical location contained within the legal description of the District;
- W. The ability of the City to meet the Plant's requirements in the case of a fire or other catastrophic event;
- X. The City's ability to provide sewer services along with water services to ARI; and
- Y. The existence of the City's pipes in the ground currently, such that the City can continue to provide water services to ARI with no cessation of ARI's operations.
- Z. Any records, inquiries, or communications regarding the City's Compliance with the Arkansas Natural Resources Water Plan.
- AA. Identification of any communications via any method (other than with counsel of record), or otherwise recorded, between any agents, representatives, officers, directors, or employees of the District and any other person or entity, regarding the following:

- The District's provision of services to American Railcar Industries ("ARI")—
whether actual or anticipated;
- The geographical limitations or boundaries of the District;
- The District's alleged exclusivity of its provision of services;
- The provisions of water services by the City to ARI; and
- The geographical limitations or boundaries of the City;

In doing so, the deponent should know who the communication was between, when it occurred, the method or format of the conversation, i.e., email, phone call, etc., and the substance of the communication;

CIRCUIT COURT OF GREENE COUNTY, ARKANSAS

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

SUBPOENA IN A CIVIL CASE

VS.

CASE NO. CV 2017-219

CITY OF MARMADUKE,
ARKANSAS

TO: St. Francis River Regional Water District

YOU ARE COMMANDED to appear in the _____ Court of _____ County at the place, date, and time specified below to testify in the above case:

PLACE OF TESTIMONY	COURTROOM
	DATE & TIME

YOU ARE COMMANDED to appear at the place, date, and time below to testify at the taking of a deposition in the above case:

PLACE OF DEPOSITION	DATE & TIME
---------------------	-------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents):

All documents, records, notes, data, maps, blueprints, and communications that the deponent relied on, read, reviewed, received, or sent in preparation for the 30(b)(6) deposition on behalf of the St. Francis River Regional Water District.	DATE & TIME September 25, 2018, at 10:30 a.m., at the Marmaduke Community Center, 307 West Mill Street, Marmaduke, AR
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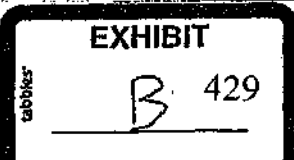
YOU ARE COMMANDED to permit inspection for the following premises at the date and time specified below:

PREMISES	DATE & TIME
----------	-------------

Any organization not a part to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Arkansas Rules of Civil Procedure, 30 (b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
Atty. For Defendant <i>Amanda LaFever</i>	9/10/18

ISSUING OFFICERS NAME, ADDRESS & PHONE NUMBER	DATE
Amanda LaFever, P.O. Box 38, North Little Rock, AR 72115, (501) 978-6117	9/10/18



PROOF OF SERVICE

PLACE SERVED	DATE
SERVED ON (PRINT NAME OF PERSON SERVED)	
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE _____ SIGNATURE OF SERVER _____

P.O. Box 38, North Little Rock, AR 72115
ADDRESS OF SERVER

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the trial or hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Rule 45(d), Ark. R. Civ. P.

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the deposition. Rule 45(e), Ark. R. Civ. P.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Rule 45(b), Ark. R. Civ. P. If the subpoena is issued in connection with a deposition, the person subpoenaed may object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the court. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Rule 45(d), Ark. R. Civ. P.

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
Atty. For Defendant	

ISSUING OFFICERS NAME, ADDRESS & PHONE NUMBER	DATE
Amanda LaFever, P.O. Box 38, North Little Rock, AR 72115, (501) 978-6117	

When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the court may issue a warrant for arresting and bringing the witness before the court to give testimony and answer for contempt. Rule 45(g), Ark. R. Civ. P.

FILED

SEP 21 2018

GREENE CO. CIRCUIT CLERK

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANTS

ENTRY OF APPEARANCE

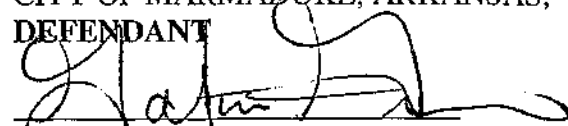
Comes now, Gabrielle Gibson, Attorney at Law, and hereby enters her appearance as an attorney of record for the City of Marmaduke, Arkansas, in the above styled matter.

IT IS SO STATED.

Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

BY:



Gabrielle Gibson, Ark. Bar No. 2018113

Attorney for Defendant

P.O. Box 38

North Little Rock, AR 72115

TELEPHONE: 501-374-3484 ext. 137

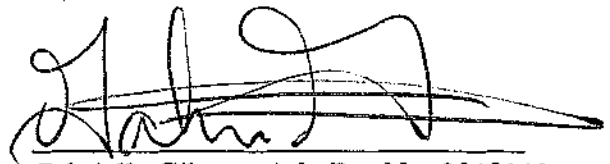
FACSIMILE: 501-978-6554

EMAIL: ggibson@arml.org

CERTIFICATE OF SERVICE

I, Gabrielle Gibson, hereby certify that on September 18 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via U.S. Mail, postage prepaid to the address below:

Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403

A handwritten signature in black ink, appearing to read 'Gibson', written over a horizontal line.

Gabrielle Gibson, Ark. Bar No. 2018113

FILED

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS SEP 24 2018
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFF

VS.

CASE NO.: 28CV-2017-219 (MR)

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

JURY TRIAL AND SCHEDULING ORDER

The above-styled cause is hereby scheduled for a first-out two day jury trial to be heard **April 23 and April 24, 2019 at 9:30 a.m. in the Circuit Court of Greene County, Paragould, Arkansas**, before Judge Melissa Richardson. Counsel should be present in chambers no later than 9:00 a.m. Any objections to this trial date should be made in writing within ten (10) days from the date of this Scheduling Order to Brenda Welch, CCM, Trial Court Administrator, P.O. Box 420, Jonesboro, Arkansas, 72403. Please contact the Court immediately if additional parties/counsel are added to this action. or if any party is of the opinion that this case will take longer than the time allotted.

The parties are directed to comply with the following schedule:

- (1) **A pre-trial hearing shall be held on April 8, 2019, at 9:30 a.m., in the Circuit Court of Greene County, Paragould, Arkansas.**
 - a. Dispositive motions shall be filed no later than forty-five (45) days before the pre-trial hearing, and submitted directly to the Court for review. Responses to any such motions shall be provided directly to the Court for review as well.
 - b. Pre-trial motions, including motions in limine, shall be filed no later than fifteen (15) days before the pre-trial hearing, and submitted directly to the Court for review. Responses to any such motions shall be provided directly to the Court for review as well.
 - c. At least two (2) working days before the pre-trial hearing, all counsel shall submit the following to Brenda Welch and opposing counsel:
 - i. An agreed upon concise statement of the case, no more than one page in length;
 - ii. An agreed upon set of proposed jury instructions;

5

- iii Any jury instructions proposed by counsel that are in dispute, and are not included in the agreed set of proposed instructions. Any disputed instructions shall include a footnote reference to applicable statutory or case law, or the model instruction that the Court should consider; and
 - iv. Witness and exhibit lists, including any deposition designations.
- (2) All discovery, including evidentiary depositions, shall be completed no later than thirty (30) days before trial. By agreement, the parties may conduct additional discovery beyond this deadline, but delays or problems relating to discovery after the deadline may not be a basis for a continuance.
 - (3) At the pre-trial hearing, the Court will hear arguments, and rule upon pending motions, and any other disputed trial issues. If there are no pending motions or pre-trial issues, counsel may advise the Court in writing of there being no such issues, and request to be excused from appearing at the pre-trial hearing. However, even if counsel is excused from appearing at the pre-trial hearing, counsel still must comply with submitting all documents required in paragraph one (1) of this Scheduling Order.
 - (4) The Court encourages counsel to pre-mark exhibits, and introduce them at the commencement of the trial unless objections will be raised.
 - (5) No continuance will be granted except upon a showing of good cause.
 - (6) In the event of settlement, or if you or your client know of any potential conflict concerning this Court presiding over this trial, you should immediately contact Ms. Welch at 870-933-4599.

IT IS SO ORDERED this 20th day of September, 2018.



Honorable Melissa Richardson
Circuit Judge

cc: Mr. Jim Lyons
Ms. Amanda LaFever
Court File



FILED

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

DEC 03 2018

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

MOTION FOR CONTINUANCE

Comes now, the City of Marmaduke, by and through undersigned counsel, and for its Motion for Continuance, states:

1. This case is set for jury trial on April 23-24, 2019, and the pre-trial hearing is set for April 8, 2019.

2. The undersigned counsel began his employment at the Arkansas Municipal League (“AML”) on November 26, 2018. In order to balance the caseload among the AML attorneys, the captioned case was reassigned to me. A Motion for Substitution to be substituted for Amanda LaFever as lead counsel for Defendant along with Ms. Gabrielle Gibson who is also newly assigned to this case and entered her appearance in September. Discovery is currently incomplete. The undersigned has a trip booked to Europe for his 40th wedding anniversary from April 1-16, 2019. The cost of the trip has been prepaid.

3. Due to the recent inheritance of this case and the incomplete discovery status, as well as a planned vacation, undersigned requests a continuance of the pre-trial hearing, trial, and all corresponding deadlines.

4. Undersigned counsel has contacted Plaintiff's counsel regarding the requested continuance as evidenced by the email attached as Exhibit "A." As of the date of this motion, Plaintiff's counsel has not responded. It is therefore assumed that he objects to the requested continuance. Due to the circumstances outlined in this motion, undersigned counsel requests that the Court will look favorably on the request.

Wherefore, Defendant requests this Court grant its Motion for Continuance and for all other just and proper relief to which there is entitlement.

Respectfully submitted,

BY: William C. Mann, III
William C. Mann, III, AR Bar No. 79199
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-374-3484, ext. 231
EMAIL: bmenn@arml.org

Gabrielle Gibson, Ark. Bar No. 2018113
Attorney for Defendant
Post Office Box 38
North Little Rock, AR 72115
TELEPHONE: (501) 537-3783
EMAIL: ggibson@arml.org

CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on November 30, 2018, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
jlyons@leclaw.com

William C. Mann, III
William C. Mann, III, AR Bar No. 79199

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

DEC 03 2018

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

MOTION FOR SUBSTITUTION

Comes now, William C. Mann, III, and for his Motion for Substitution, states:

1. The City of Marmaduke is currently represented by Amanda LaFever and Gabrielle Gibson.

2. William C. Mann, III, recently joined the staff at the Arkansas Municipal League, and to equalize the caseload in the office, he will be taking over the defense of the City of Marmaduke, in place of Ms. LaFever.

3. Gabrielle Gibson should remain a counsel of record.

4. As such, it is respectfully requested that Mr. Mann be substituted as counsel for the City of Marmaduke in place of Ms. LaFever, and Ms. LaFever be terminated as counsel of record in this matter.

Wherefore, undersigned counsel requests his motion be granted and for all other just and proper relief to which there is entitlement.

Respectfully submitted,

BY: William C. Mann, III
William C. Mann, III, AR Bar No. 79199
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-374-3484, ext. 231
EMAIL: bmenn@arml.org

CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on November 30, 2018, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
jlyons@leclaw.com

William C. Mann, III
William C. Mann, III, AR Bar No. 79199

FILED

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

DEC 05 2018

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

**RESPONSE TO MOTION FOR
CONTINUANCE AND BRIEF IN SUPPORT THEREOF**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Response to Motion for Continuance and Brief in Support Thereof, states:

1. On or about November 30, 2018, Defendant City of Marmaduke, Arkansas filed its Motion for Continuance in regard to a jury trial in this matter set for April 23-24, 2019.
2. That this case has been pending since 2017 and due to the unavailability of a court date, the Court was not able to set a date until the April date.
3. Defendant's counsel recently made changes in their office and reassigned cases in order to "balance the caseload among their attorneys". As a result, one of Defendant's counsels was replaced by William C. Mann, III, who is requesting this case be continued because of his recent entry into this case and the fact that he has a trip planned which has already been booked which requires him to be gone from April 1, 2019 through April 16, 2019.
4. Although Plaintiff understands that Mr. Mann may desire more time between his

return from his trip and the trial in this matter, this is insufficient to justify a continuance in light of the circumstances involved in this case.

5. Absent a showing of good cause, a trial court shall not grant a motion for continuance. See, *Smith v. Ark. Dep't of Human Servs.*, 93 Ark. App. 395, 400, 219 S.W.3d 705, 708 (2005).

6. In this case, the following indicate that good cause does not exist for granting Defendant's Motion for Continuance:

- a. This case has been pending since 2017;
- b. The trial date was set months in the future from the time requested due to the unavailability of court dates upon which both counsel were available;
- c. Defendant's counsel recently decided to "balance their caseload among their attorneys' and reassigned the lead attorney in this case either to another case or just reduced the previous attorney's caseload. This was merely a decision made on their part not as a result of any judicial reason or any action on the part of Plaintiff;
- d. the attorney who was not replaced on this case, Ms. Gabrielle Gibson has been working on the case since September [which is more than six (6) months before the trial date]. Thus, she has had sufficient time to prepare for trial;
- e. although Mr. Mann will only have a week after his return from his trip before the trial, he has approximately four and one-half (4-1/2) months to prepare between now and the trial date. Additionally, he has been an attorney since 1979 so he is familiar with the practice of law and this coupled with the time still remaining before trial should be sufficient for him to prepare for trial when he has another


attorney assisting him in this case; and

- f. every day that the Plaintiff's are delayed from providing the water to the customer (who is rightfully that of the Plaintiff) the Defendant is able to collect more money which, arguably, cannot be recovered from Defendant due to sovereign immunity.

WHEREFORE, Plaintiff, St. Francis River Regional Water District, prays as follows:

- a. that Defendant's Motion for Continuance be denied;
- b. for its costs and attorney's fees; and
- c. for all other proper relief to which this Plaintiff is entitled.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: 

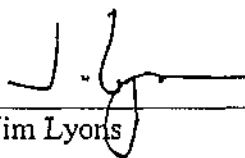
State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 5th December, 2018.



Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

DEC 07 2018

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

**RESPONSE TO MOTION FOR
CONTINUANCE AND BRIEF IN SUPPORT THEREOF**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Response to Motion for Continuance and Brief in Support Thereof, states:

1. On or about November 30, 2018, Defendant City of Marmaduke, Arkansas filed its Motion for Continuance in regard to a jury trial in this matter set for April 23-24, 2019.
2. That this case has been pending since 2017 and due to the unavailability of a court date, the Court was not able to set a date until the April date.
3. Defendant's counsel recently made changes in their office and reassigned cases in order to "balance the caseload among their attorneys". As a result, one of Defendant's counsels was replaced by William C. Mann, III, who is requesting this case be continued because of his recent entry into this case and the fact that he has a trip planned which has already been booked which requires him to be gone from April 1, 2019 through April 16, 2019.
4. Although Plaintiff understands that Mr. Mann may desire more time between his

return from his trip and the trial in this matter, this is insufficient to justify a continuance in light of the circumstances involved in this case.

5. Absent a showing of good cause, a trial court shall not grant a motion for continuance. See, *Smith v. Ark. Dep't of Human Servs.*, 93 Ark. App. 395, 400, 219 S.W.3d 705, 708 (2005).

6. In this case, the following indicate that good cause does not exist for granting Defendant's Motion for Continuance:

- a. This case has been pending since 2017;
- b. The trial date was set months in the future from the time requested due to the unavailability of court dates upon which both counsel were available;
- c. Defendant's counsel recently decided to "balance their caseload among their attorneys' and reassigned the lead attorney in this case either to another case or just reduced the previous attorney's caseload. This was merely a decision made on their part not as a result of any judicial reason or any action on the part of Plaintiff;
- d. the attorney who was not replaced on this case, Ms. Gabrielle Gibson has been working on the case since September [which is more than six (6) months before the trial date]. Thus, she has had sufficient time to prepare for trial;
- e. although Mr. Mann will only have a week after his return from his trip before the trial, he has approximately four and one-half (4-1/2) months to prepare between now and the trial date. Additionally, he has been an attorney since 1979 so he is familiar with the practice of law and this coupled with the time still remaining before trial should be sufficient for him to prepare for trial when he has another

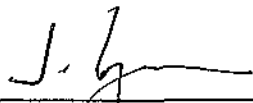
attorney assisting him in this case; and

- f. every day that the Plaintiff's are delayed from providing the water to the customer (who is rightfully that of the Plaintiff) the Defendant is able to collect more money which, arguably, cannot be recovered from Defendant due to sovereign immunity.

WHEREFORE, Plaintiff, St. Francis River Regional Water District, prays as follows:

- a. that Defendant's Motion for Continuance be denied;
- b. for its costs and attorney's fees; and
- c. for all other proper relief to which this Plaintiff is entitled.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: 


State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 5th December, 2018.



Jim Lyons

FILED

DEC 21 2018

9:54

GREENE CO. CIRCUIT CLERK

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR


CITY OF MARMADUKE, ARKANSAS

DEFENDANT

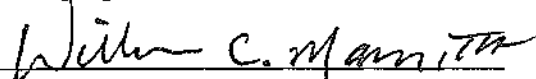
ORDER

William C. Mann, III, has filed a Motion for Substitution in this matter and requested he be substituted for Amanda LaFever as counsel for Defendant. For good cause shown, the Motion to Substitute is hereby granted. William C. Mann, III is hereby substituted for Amanda LaFever as counsel of record for Defendant. Gabrielle Gibson will remain as a counsel of record for Defendant.

It is so ordered this 13 day of December, 2018.


Honorable Melissa Richardson

Order prepared by:


William C. Mann, III, Ark. Bar No. 79199
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-374-3484, ext. 231
EMAIL: bmann@arml.org





JAN 07 2019

GREENE CO. CIRCUIT CLERK

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL WATER DISTRICT PLAINTIFF

vs. No. 4CV-2017-219 MR

CITY OF MARMADUKE, ARKANSAS DEFENDANT

REQUESTS FOR ADMISSION DIRECTED TO PLAINTIFF

Defendant, City of Marmaduke, Arkansas, propounds the following Requests for Admission Directed to Plaintiff to be answered within the time and in the manner provided by Rule 36(a) of the Arkansas Rules of Civil Procedure. Throughout these requests, the abbreviation "SFRRWD" means the Plaintiff, St. Francis River Regional Water District.

REQUEST FOR ADMISSION NO. 1: Admit that SFRRWD was formed on July 27, 1987.

REQUEST FOR ADMISSION NO. 2: Admit that SFRRWD closed a loan with the Arkansas Natural Resources Commission ("ANRC") in 1995 in the amount of \$372,250.

REQUEST FOR ADMISSION NO. 3: Admit that the loan referred to in Request for Admission No. 2 was paid in full on March 26, 2015.

REQUEST FOR ADMISSION NO. 4: Admit that SFRRWD closed a loan with the ANRC in 1998 in the amount of \$128,750.00.

REQUEST FOR ADMISSION NO. 5: Admit that that the loan referred to in Request for Admission No. 4 was paid in full on September 10, 1999.

REQUEST FOR ADMISSION NO. 6: Admit that SFRRWD did not begin selling water to any customers until early in the year 2000.

REQUEST FOR ADMISSION NO. 7: Admit that SFRRWD closed a loan with the ANRC in the amount of \$51,500.00 on January 9, 2017.

REQUEST FOR ADMISSION NO. 8: Admit that Tonya Thompson was notified by letter dated July 27, 2016, that the loan referred to in Request for Admission No. 7 was approved by the ANRC on July 20, 2016.

REQUEST FOR ADMISSION NO. 9: Admit that, between the time it first began providing water services in 2000 and January 9, 2017, SFRRWD did not provide any water services to American Railcar Industries ("ARI") facilities located in Greene County, Arkansas.

REQUEST FOR ADMISSION NO. 10: Admit that, at the time the loan referred to in Request for Admission No. 7 was closed on January 9, 2017, all prior indebtedness owed by SFRRWD to ANRC had been paid in full.

REQUEST FOR ADMISSION NO. 11: Admit that the three loans referred to in Requests for Admission Nos. 2, 4 and 7 are the only loans SFRRWD has received from ANRC since the creation of SFRRWD in 1987.

REQUEST FOR ADMISSION NO. 12: Admit that, at certain times since its formation, SFRRWD has obtained loans from the United States Department of Agriculture ("USDA"), all of which were paid in full by May 2015.

REQUEST FOR ADMISSION NO. 13: Admit that SFRRWD did not have in place the infrastructure, including the necessary pipes in the ground, to provide water services to ARI facilities prior to closing the loan with ANRC on January 9, 2017.

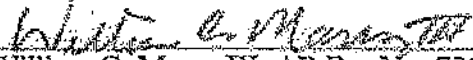
REQUEST FOR ADMISSION NO. 14: Admit that at all times prior to SFRRWD closing the loan with the ANRC on January 9, 2017, as referred to in Request for Admission No. 7, the City of Marmaduke provided all water services to ARI facilities.

REQUEST FOR ADMISSION NO. 15: Admit that the SFWRRD does not possess any document that grants it the exclusive right to provide water services to any building or facility owned by ARI.

Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS
DEFENDANT

BY:


William C. Mann, III, AR Bar No. 79199
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-978-6131
FACSIMILE: 501-978-6561
EMAIL: wmann@arml.org


AND

Gabrielle Gibson, AR Bar No. 2018113
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-537-3783
EMAIL: ggibson@arml.org

CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on December 14, 2018, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

Jim Lyons
jlyons@leclaw.com
David Tyler
dtyler@leclaw.com
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403


William C. Mann, III, AR Bar No. 79199

FILED



JAN 09 2019

**IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION**

GREENE COUNTY CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

vs.

No. 4CV-2017-219 MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

REQUESTS FOR ADMISSION DIRECTED TO PLAINTIFF

Defendant, City of Marmaduke, Arkansas, propounds the following Requests for Admission Directed to Plaintiff to be answered within the time and in the manner provided by Rule 36(a) of the Arkansas Rules of Civil Procedure. Throughout these requests, the abbreviation "SFRRWD" means the Plaintiff, St. Francis River Regional Water District.

REQUEST FOR ADMISSION NO. 1: Admit that SFRRWD was formed on July 27, 1987

REQUEST FOR ADMISSION NO. 2: Admit that SFRRWD closed a loan with the Arkansas Natural Resources Commission ("ANRC") in 1995 in the amount of \$372,250.

REQUEST FOR ADMISSION NO. 3: Admit that the loan referred to in Request for Admission No. 2 was paid in full on March 26, 2015.

REQUEST FOR ADMISSION NO. 4: Admit that SFRRWD closed a loan with the ANRC in 1998 in the amount of \$128,750.00.

REQUEST FOR ADMISSION NO. 5: Admit that that the loan referred to in Request for Admission No. 4 was paid in full on September 10, 1999.

REQUEST FOR ADMISSION NO. 6: Admit that SFRRWD did not begin selling water to any customers until early in the year 2000.

REQUEST FOR ADMISSION NO. 7: Admit that SFRRWD closed a loan with the ANRC in the amount of \$51,500.00 on January 9, 2017.

REQUEST FOR ADMISSION NO. 8: Admit that Tonya Thompson was notified by letter dated July 27, 2016, that the loan referred to in Request for Admission No. 7 was approved by the ANRC on July 20, 2016.

REQUEST FOR ADMISSION NO. 9: Admit that, between the time it first began providing water services in 2000 and January 9, 2017, SFRRWD did not provide any water services to American Railcar Industries (“ARI”) facilities located in Greene County, Arkansas.

REQUEST FOR ADMISSION NO. 10: Admit that, at the time the loan referred to in Request for Admission No. 7 was closed on January 9, 2017, all prior indebtedness owed by SFRRWD to ANRC had been paid in full.

REQUEST FOR ADMISSION NO. 11: Admit that the three loans referred to in Requests for Admission Nos. 2, 4 and 7 are the only loans SFRRWD has received from ANRC since the creation of SFRRWD in 1987.

REQUEST FOR ADMISSION NO. 12: Admit that, at certain times since its formation, SFRRWD has obtained loans from the United States Department of Agriculture (“USDA”), all of which were paid in full by May 2015.

REQUEST FOR ADMISSION NO. 13: Admit that SFRRWD did not have in place the infrastructure, including the necessary pipes in the ground, to provide water services to ARI facilities prior to closing the loan with ANRC on January 9, 2017.

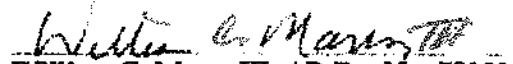
REQUEST FOR ADMISSION NO. 14: Admit that at all times prior to SFRRWD closing the loan with the ANRC on January 9, 2017, as referred to in Request for Admission No, 7, the City of Marmaduke provided all water services to ARI facilities.

REQUEST FOR ADMISSION NO. 15: Admit that the SFWRRD does not possess any document that grants it the exclusive right to provide water services to any building or facility owned by ARI.

Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS
DEFENDANT

BY:


William C. Mann, III, AR Bar No. 79199
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-978-6131
FACSIMILE: 501-978-6561
EMAIL: bmann@arml.org

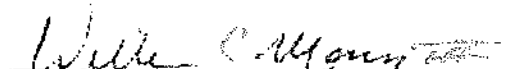
AND

Gabrielle Gibson, AR Bar No. 2018113
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-537-3783
EMAIL: ggibson@arml.org

CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on December 14, 2018, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

Jim Lyons
jlyons@leclaw.com
David Tyler
dtyler@leclaw.com
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403


William C. Mann, III, AR Bar No. 79199

FILED

JAN 10 2019

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
REQUESTS FOR ADMISSION DIRECTED TO PLAINTIFF**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Response to Defendant's Requests for Admission Directed to Plaintiff, states:

REQUEST FOR ADMISSION NO. 1: Admit that SFRRWD was formed on July 27, 1987.

ANSWER: Denied. It is admitted that the order has a typed in date of July 27, 1987. However, it appears on the poor copy that has been obtained that it was not filed of record until July 28, 1987 so it is unknown which date is the effective date. The Plaintiff does admit that it was formed by execution of the Court Order on either July 27 or July 28, 1987.

REQUEST FOR ADMISSION NO. 2: Admit that SFRRWD closed a loan with the Arkansas Natural Resources Commission ("ANRC") in 1995 in the amount of \$372,250.00.

ANSWER: Denied. Any and all loans in 1995 were made by the Arkansas Soil and Water Conservation Commission ("ASWCC"). Further, there was an original loan in the amount

of \$120,000.00, followed by Addendum No. 1 which was dated October 28, 1994 and added the amount of \$97,850.00 to the outstanding loan amount. Next, Addendum No. 2 was executed October 31, 1995 which added \$154,500.00 to the outstanding loan amount. As a result, the outstanding principal on the original loan plus 2 addenda provided for a total loan of \$372,500.00 made by the ASWCC as of October 31, 1995.

REQUEST FOR ADMISSION NO. 3: Admit that the loan referred to in Request for Admission No. 2 was paid in full on March 26, 2015.

ANSWER: Denied. According to the records, the loan with the two addenda totaling \$372,500.00 in principal made by the ASWCC as of October 31, 1995 was paid on March 30, 2015, but it is believed that the check was written on March 26, 2015.

REQUEST FOR ADMISSION NO. 4: Admit that SFRRWD closed a loan with the ANRC in 1998 in the amount of \$128,750.00.

ANSWER: Denied. First, we believe that any loan would be through the ASWCC. Second, the Plaintiff has found no records of a loan in the amount of \$128,750.00 made in 1998.

REQUEST FOR ADMISSION NO. 5: Admit that that the loan referred to in Request for Admission No. 4 was paid in full on September 10, 1999.

ANSWER: Denied. See answer to Request No. 4.

REQUEST FOR ADMISSION NO. 6: Admit that SFRRWD did not begin selling water to any customers until early in the year 2000.

ANSWER: Admitted.

REQUEST FOR ADMISSION NO. 7: Admit that SFRRWD closed a loan with the ANRC in the amount of \$51,500.00 on January 9, 2017.

ANSWER: Admitted.

REQUEST FOR ADMISSION NO. 8: Admit that Tonya Thompson was notified by letter dated July 27, 2016, that the loan referred to in Request for Admission No. 7 was approved by the ANRC on July 20, 2016.

ANSWER: Denied, it is believed that all letters approving any loans were sent to Mr. Ronald Pigue, Sr. as President of the Plaintiff.

REQUEST FOR ADMISSION NO. 9: Admit that, between the time it first began providing water services in 2000 and January 9, 2017, SFRRWD did not provide any water services to American Railcar Industries (“ARI”) facilities located in Greene County, Arkansas.

ANSWER: It is admitted that the City of Marmaduke has interfered with and prevented SFRRWD from providing water to ARI. Further, it is admitted that the Plaintiff has not supplied water to ARI located in Greene County, AR.

REQUEST FOR ADMISSION NO. 10: Admit that, at the time of the loan referred to in Request for Admission No. 7 was closed on January 9, 2017, all prior indebtedness owed by SFRRWD to ANRC had been paid in full.

ANSWER: Admitted.

REQUEST FOR ADMISSION NO. 11: Admit that the three loans referred to in Request for Admission Nos. 2, 4 and 7 are the only loans SFRRWD has received from ANRC since the creation of SFRRWD in 1987.

ANSWER: Denied. The loans mentioned herein were not originally made by ANRC, but were made by ASWCC. Further, there are, at least, 4, loans made by ASWCC and ANRC.

REQUEST FOR ADMISSION NO. 12: Admit that, at certain times since its formation, SFRRWD has obtained loans from the United States Department of Agriculture (“USDA”), all of which were paid in full by May 2015.

ANSWER: Admitted.

REQUEST FOR ADMISSION NO. 13: Admit that SFRRWD did not have in place the infrastructure, including the necessary pipes in the ground, to provide water services to ARI facilities prior to closing the loan with ARNC on January 9, 2017.

ANSWER: Denied.


REQUEST FOR ADMISSION NO. 14: Admit that at all times prior to SFRRWD closing the loan with the ANRC on January 9, 2017, as referred to in Request for Admission No. 7, the City of Marmaduke provided all water services to ARI facilities.

ANSWER: It is admitted that the City of Marmaduke has interfered with and prevented SFRRWD from providing water to ARI. However, it is unknown if the City of Marmaduke provided all water services to ARI as only Marmaduke and ARI have this information.

REQUEST FOR ADMISSION NO. 15: Admit that the SFWRRD (*sic*) does not possess any document that grants it the exclusive right to provide water services to any building or facility owned by ARI.

ANSWER: Denied.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: 

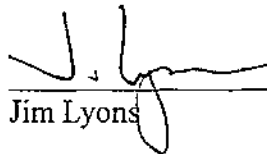
State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 8th January, 2019.



Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

FILED

JAN 18 2019

GREENE CO. CIRCUIT CLERK

NOTICE OF ISSUANCE OF SUBPOENA

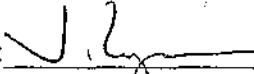
TO: Mr. Bill Mann
Attorney at Law
Arkansas Municipal League
P.O. Box 38
North Little Rock, AR 72115

TO: Ms. Gabrielle Gibson
Attorney at Law
Arkansas Municipal League
P.O. Box 38
North Little Rock, AR 72115

This will notify you that on January 16, 2019, subpoenas were issued for Bruce Holland and Crystal Phelps.

Said subpoenas require said Bruce Holland to appear on February 4, 2019 beginning at 9:30 a.m. on said date and require said Crystal Phelps to appear on February 4, 2019 beginning at 11:00 a.m. on said date at Arkansas Natural Resources Commission, 101 East Capitol Ave., Suite 350, Little Rock, AR 72201, to testify at deposition to be conducted regarding this matter. You are invited to attend and examine said persons if you desire.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: 


State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on the 16th day of January, 2019.



Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

JAN 18 2019

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

GREENE CO. CIRCUIT CLERK

Plaintiff

vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

NOTICE OF DEPOSITION


TO: Mr. Bill Mann
Attorney at Law
Arkansas Municipal League
P.O. Box 38
North Little Rock, AR 72115

TO: Ms. Gabrielle Gibson
Attorney at Law
Arkansas Municipal League
P.O. Box 38
North Little Rock, AR 72115

This will notify you that beginning on February 4, 2019 at 9:30 a.m. at Arkansas Natural Resources Commission, 101 East Capitol Ave., Suite 350, Little Rock, AR 72201, the Plaintiff, by and through their attorneys Lyons & Cone, P.L.C., will take the depositions of Bruce Holland and Crystal Phelps.

This notice is given pursuant to the Arkansas Rules of Civil Procedure, Rule 30. The deposition will be recorded by videographic, sound and/or stenographic means.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: 

State Bar No. 77083
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- placing the same in the courthouse mailbox of the attorneys of record;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on the 16th day of January, 2019.



Jim Lyons

FILED ✓

JAN 24 2019

GREENE CO. CIRCUIT CLERK

**IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION**

**ST. FRANCIS RIVER REGIONAL
WATER DISTRICT**

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

**JOINT MOTION FOR EXTENSION
OF DISPOSITIVE MOTION DEADLINE**

Plaintiff, St. Francis River Regional Water District, and Defendant, the City of Marmaduke, Arkansas, respectfully come before this honorable Court by and through undersigned counsel, and for their Joint Motion for Extension of Dispositive Motion Deadline, state:

1. The Court's Jury Trial and Scheduling Order entered on September 20, 2018, provides that dispositive motions shall be filed no later than forty-five (45) days before the pretrial hearing, currently scheduled for April 8, 2019, and that discovery be completed no later than thirty (30) days before trial. The trial is set for April 23 and 24, 2019. Dispositive motions are therefore due on or before March 9, 2019, and the discovery deadline is March 24.

2. Counsel for the parties have been cooperating in the scheduling of depositions. Due to the schedule of one witness, it is necessary to take the deposition just before the current dispositive motion deadline. Counsel have conferred and agree that it would be helpful to extend the dispositive motion deadline two weeks until March 8. This brief extension will allow the parties some additional time to complete the depositions needed in order to prepare dispositive motions, while not creating a significant imposition on the Court's time to consider the motions.

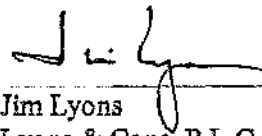
3. The dispositive motions will hopefully be helpful to the Court in the consideration of this case. Even if all issues are not resolved, it is possible that they will be narrowed which will benefit the Court and the parties.

4. The parties do not make this motion for purposes of delay but, rather, to allow two additional weeks to prepare and submit dispositive motions.

WHEREFORE, Plaintiff, St. Francis River Regional Water District, and Defendant, the City of Marmaduke, Arkansas, pray that the Court will grant their Motion for Extension of Dispositive Motion Deadline, and all other relief to which they may be entitled.

Respectfully submitted,

BY:



Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
870-972-5440
jlyons@leclaw.com
Attorney for Plaintiff

William C. Mann, III, AR Bar No. 79199
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-374-3484, ext. 231
EMAIL: bmenn@arml.org

Gabrielle Gibson, Ark. Bar No. 2018113
Attorney for Defendant
Post Office Box 38
North Little Rock, AR 72115
TELEPHONE: (501) 537-3783
EMAIL: ggibson@arml.org

FILED ✓

JAN 24 2019

10:11

GREENE CO. CIRCUIT CLERK

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219


CITY OF MARMADUKE, ARKANSAS

Defendant


ORDER

On this day came on for consideration the Joint Motion for Extension of Dispositive Motion Deadline filed by the parties. The Court finds that the motion is well taken and Dispositive motions are therefore due on or before March 9, 2019 and the discovery deadline is March 24, 2019.

IT IS SO ORDERED.


Hon. Melissa Richardson
Circuit Judge 1/23/19

Approved:


Jim Lyons, AR Bar No. 77083
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
TELEPHONE: 870-972-5440
EMAIL: jlyons@leclaw.com
Attorney for Plaintiff

William C. Mann, III

William C. Mann, III, AR Bar No. 79199

Attorney for Defendant

P. O. Box 38

North Little Rock, AR 72115

TELEPHONE: 501-978-6131

EMAIL: bmann@arml.org

and

Gabrielle Gibson, AR Bar No. 2018113

Attorney for Defendant

P. O. Box 38

North Little Rock, AR 72115

TELEPHONE: 501-537-3783

EMAIL: ggibson@arml.org

FILED



IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

JAN 28 2019

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

NOTICE OF DEPOSITIONS

TO: Jim Lyons, Jr.
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, Arkansas 72403

PLEASE TAKE NOTICE that, pursuant to the Arkansas Rules of Civil Procedure, counsel for Defendants will take the depositions of Ron Pigue, Tonya Thompson and Brad Nelson on Thursday, February 7, 2019, beginning at 8:30 a.m. The depositions, which will be used for all purposes permitted by the Arkansas Rules of Civil Procedure and Arkansas Rules of Evidence, will take place at the office of Lyons & Cone, P.L.C., 407 S Main St, Jonesboro, Arkansas 72206, before a certified court reporter authorized by the Court to administer oaths. The deposition will be recorded by stenographic means, and will continue from day to day until completed.

Dated this 22nd day of January, 2019.

Respectfully submitted,

BY: William C. Mann, III
William C. Mann, III, AR Bar No. 79199
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-374-3484, ext. 231
EMAIL: bmann@arml.org

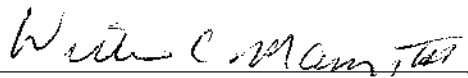
AND

Gabrielle Gibson, Ark. Bar No. 2018113
Attorney for Defendant
Post Office Box 38
North Little Rock, AR 72115
TELEPHONE: (501) 537-3783
EMAIL: ggibson@arml.org

CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on January 22, 2019, that a true and correct copy of the above and foregoing has been served upon the attorney of record as referenced below, via first class mail and e-mail:

Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
jlyons@leclaw.com



William C. Mann, III, AR Bar No. 79199

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

FEB 04 2019

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

NOTICE OF ISSUANCE OF SUBPOENA

TO: Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
jlyons@leclaw.com

PLEASE TAKE NOTICE that a subpoena has been issued to Jerome Alford. Said subpoena requires Mr. Alford to appear for a deposition on February 18, 2019, at 9:00 a.m., at his office located at 3683 AR-77, Marion, AR 72364.

Respectfully submitted,

BY: William C. Mann, III
William C. Mann, III, AR Bar No. 79199
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-374-3484, ext. 231
EMAIL: bmenn@arml.org

AND

Gabrielle Gibson, Ark. Bar No. 2018113
Attorney for Defendant
Post Office Box 38
North Little Rock, AR 72115
TELEPHONE: (501) 537-3783
EMAIL: ggibson@arml.org

CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on January 25, 2019, that a true and correct copy of the above and foregoing has been served upon the attorney of record as referenced below, via first class mail and e-mail:

Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
jlyons@leclaw.com



William C. Mann, III, AR Bar No. 79199

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED
FEB 04 2019

C

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

NOTICE OF DEPOSITION

TO: Jerome Alford
3683 AR-77
Marion, AR 72364

PLEASE TAKE NOTICE that, pursuant to the Arkansas Rules of Civil Procedure, counsel for Defendant will take the deposition of Jerome Alford on February 18, 2019, beginning at 9:00 a.m. The deposition, which will be used for all purposes permitted by the Arkansas Rules of Civil Procedure and Arkansas Rules of Evidence, will take place at Jerome Alford's office located at 3683 AR-77, Marion, AR 72364, before a certified court reporter authorized by the Court to administer oaths. The deposition will be recorded by stenographic means, and will continue from day to day until completed.

Dated this 25th day of January, 2019.

Respectfully submitted,

BY: William C. Mann III
William C. Mann, III, AR Bar No. 79199
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-374-3484, ext. 231
EMAIL: bmann@arnl.org

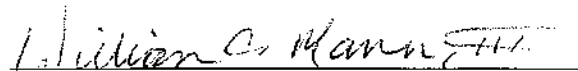
AND

Gabrielle Gibson, Ark. Bar No. 2018113
Attorney for Defendant
Post Office Box 38
North Little Rock, AR 72115
TELEPHONE: (501) 537-3783
EMAIL: ggibson@arml.org

CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on January 25, 2019, that a true and correct copy of the above and foregoing has been served upon the attorney of record as referenced below, via first class mail and e-mail:

Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
jlyons@leclaw.com



William C. Mann, III, AR Bar No. 79199

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS MAR 08 2019
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFF

V.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Comes now, the City of Marmaduke, Arkansas, ("the City"), by and through its attorneys, William C. Mann, III and Gabrielle Gibson, and for its Motion for Summary Judgment, states:

1. Plaintiff, the St. Francis River Regional Water District ("District"), has sued the City of Marmaduke ("City") seeking both monetary damages and equitable relief in the form of an injunction.

2. In Count I of the Complaint, the District claims that it enjoys the exclusive right to provide water services to all persons and entities residing within the geographical boundaries of the District. The District claims that the City has infringed upon this exclusive right by providing water to two facilities owned by American Railcar Industries, Inc. ("ARI"). These facilities are known as the East Plant and Refurbishing Plant ("Refurb Plant").

3. In Count II, the District alleges that it has "pledged or utilizes revenue from services within the area to repay financial assistance provided by the Arkansas Natural Resources Commission ("ANRC")." *See*, ¶ 17. The District claims that the City was required to obtain the approval of the Commission to serve the East Plant and Refurb Plant. It also claims that the City has not received approval to serve these Plants under the Arkansas Water Plan. Because of these

alleged requirements, the District asks the Court to issue an injunction ordering the City to cease providing water services to all ARI facilities that lie within the District's geographical boundaries.


4. The City maintains that Arkansas law does not confer upon the District the exclusive right to sell water to ARI or anyone else that resides in the District. ARI has been a longtime customer of the City and has purchased all of its water from the City since it first opened the West Plant in 1999. Further, while the East Plant and Refurb Plant were originally located outside the City limits and in the District, the issue was resolved when the City annexed the land on which these facilities are situated effective July 19, 2018.

5. The City respectfully submits that the Court may decide this case as a matter of law. There are no material facts in dispute and the case turns on interpreting Arkansas statutes that are discussed in the brief that accompanies the City's motion. In support of its Motion, the City relies upon the following exhibits attached hereto:

- | | |
|------------|--|
| Exhibit 1 | Affidavit of Mayor Steve Dixon |
| Exhibit 2 | 1987 Order Creating the District |
| Exhibit 3 | City's 2017 Annual Report – USDA Loan |
| Exhibit 4 | District's 1994 Loan Agreement with Addenda |
| Exhibit 5 | Presentation of District Board Member Brad Nelson – City Council Meeting – June 21, 2016 |
| Exhibit 6 | Affidavit of Veneta Hargrove |
| Exhibit 7 | Affidavit of James Breznay |
| Exhibit 8 | Excerpts from Deposition of Brad Nelson |
| Exhibit 9 | Excerpts from the Deposition of Ronald Pigue |
| Exhibit 10 | District's 2017 Loan Agreement with ANRC |
| Exhibit 11 | Affidavit of Betty Jackson – Recorder and Treasurer of the City |

- Exhibit 12 Annexation Documents – Arkansas Secretary of State
Exhibit 13 Excerpts from the Deposition of Crystal Phelps
Exhibit 14 Excerpts from the Deposition of Tonya Thompson
Exhibit 15 Excerpts from the Deposition of Jerome Alford
Exhibit 16 Section 601.4 of ANRC Rules
Exhibit 17 Section 605.1 of ANRC Rules

Respectfully submitted,


BY: 
William C. Mann, III, AR Bar No. 79199
Attorney for Defendant
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EMAIL: bmamm@arml.org

Gabrielle Gibson, Ark. Bar No. 2018113
Attorney for Defendant
Post Office Box 38
North Little Rock, AR 72115
TELEPHONE: (501) 537-3783
EMAIL: ggibson@arml.org

CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on March 7, 2019, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
jlyons@leclaw.com


William C. Mann, III, AR Bar No. 79199

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

AFFIDAVIT OF STEVE DIXON

Before me, the undersigned authority, for the county and state aforesaid, personally appeared Steve Dixon, who after being duly sworn, stated as follows:

1. I, Steve Dixon, am of sound mind, capable of making this Affidavit, and over eighteen years of age. References to certain exhibits in my affidavit are to those attached to my affidavit in support of the City's response to the motion for summary judgment that I signed on February 22, 2018. Those exhibits are numbers 3, 4, 5, and 6. I have attached copies of these exhibits for the Court's convenience.

2. I am currently the Mayor of the City of Marmaduke, Arkansas ("the City"), which is located in Greene County, Arkansas.

3. I have been Mayor of the City continuously since 2009.

4. The City has been continually providing water and sewer services to customers since October of 1935. *See City of Marmaduke Ordinance #55*, attached as *Exhibit 3*.

5. In 1987, the St. Francis River Regional Water District ("District") was created, but it provided no services at that time.

6. On October 18, 1989, the City incurred debt for improvements to its water and sewer system by borrowing four hundred and thirty-five thousand dollars and zero cents (\$435,000.00) from the United States Department of Agriculture ("USDA") Rural Development.



See Annual Report for City of Marmaduke's USDA Loan, attached as Exhibit 4.

7. To date, the City still owes the USDA upwards of two hundred thousand dollars and zero cents (\$200,000.00). *See Exhibit 4.*

8. In 1999, American Railcar Industries, Inc. ("ARI"), a corporation authorized to conduct business in Arkansas, built a plant (the "West Plant"), which was ultimately incorporated into the City.

9. When the West Plant was built, the District did not have the ability or infrastructure in place to provide water services to ARI. *See Presentation by District at City Council Meeting, attached and hereinafter referred to as Exhibit 5.*

10. However, the City did have the ability and infrastructure to provide water services to ARI.

11. Based upon information and belief learned through my conversations with Rickey Carter, an Area Specialist for the USDA, the District obtained federal financing through the Farmers Home Administration on September 1, 1999.

12. According to the USDA, the federal agency that succeeded the Farmers Home Administration, as of May 26, 2015, the District no longer had any outstanding debt with the USDA.

13. According to the USDA, the District's USDA loan was paid off when the District refinanced its indebtedness through a local bank, First National Bank headquartered in Paragould with an office in Corning. *See Exhibit 5; June 21, 2016 City Council Meeting Minutes, attached and hereinafter referred to as Exhibit 6.*

14. In 2006, ARI began construction of an additional plant located adjacent to and east of the West Plant (the "East Plant"). The City began providing water to the East Plant that same

year.

15. The City continued to be the sole provider of water and sewer services to both the West Plant and the East Plant.

16. The District raised no issue during the 2006 construction about the City providing water services to ARI; although, it is my understanding that the District was then aware or should have been aware that the East Plant was located in the District's service area and that the City was providing water services to both the West Plant and the East Plant. *See Exhibit 6.*

17. In 2015, ARI expanded its facility by building an additional plant ("Refurb Plant"), which is adjacent to the East Plant.

18. It is my understanding that following the construction of the Refurb Plant, ARI contacted the District about supplying water to just the Refurb Plant, at which point in time, and for the first time, the District claimed that it had the "exclusive" right to supply water to the Refurb Plant and the East Plant.

19. It is also my understanding that due to a number of concerns, ARI determined that it wanted to continue receiving water services from the City.

20. The Refurb Plant began receiving water from the City in April of 2016, and that has continued to the current date. In order to continue the relationship with ARI, the City installed a meter at the Refurb Plant in order to provide it with water services through ARI's industrial water line, at a cost to the City of \$5,300.00 for the meter.

21. In March 2016, the District demanded that the City relinquish the East Plant of ARI as a customer.

22. Prior to March 2016, the District did not once seek to or claim any right to serve any portion of ARI.

23. On June 21, 2016, the City held a City Council meeting, at which a representative of the District stated, "This shouldn't be a legal technicality about who you borrow money from." See Exhibit 5; Exhibit 6.

24. The District is currently indebted to the Arkansas Natural Resources Commission ("the Commission") for approximately \$51,500.00.

25. That particular loan was approved in July 2016, closed on January 9, 2017, and the funds were disbursed sometime after January 9, 2017.

26. The City does not know what "pledges" the District has made to the Commission.

27. The District has never provided water services to any portion of the ARI Plant.

28. The funds that the City has received and continues to receive from ARI are in exchange for the water services provided by the City to the West Plant, East Plant, and Refurb Plant.

29. The City passes an annual budget which includes projected revenues from the sale of water. The projections are based on actual revenues from the previous year. While I have served as Mayor in 2009, this revenue projection has included the sale of water to the ARI facilities. Because the City is indebted to the United States Department of Agriculture ("USDA"), we are required to submit the City's water and sewer budgets to that agency since these revenues are pledged to secure the City's debt.

30. The City was told by representatives of ARI, that ARI intends to use the City for all of its water service needs.

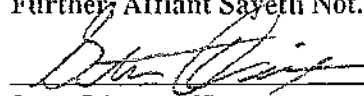
31. As such, in August 2016, after conferring with its legal counsel, the City decided that it would continue providing water services to the West Plant, the East Plant, and the Refurb Plant.

32. On June 19, 2018, the City passed Resolution No. 06918 which confirmed the annexation of the land upon which the ARI East Plant and Refurb Plant are located. Both are now within the City limits. A true and correct copy of the resolution is attached as Exhibit A to my affidavit.

33. To date, by providing water services to the East Plant, the West Plant, and the Refurb Plant, the City is merely continuing to provide services to a longtime and preexisting customer.

34. The City is not indebted to the Arkansas Natural Resources Commission.

Further, Affiant Sayeth Not.



Steve Dixon, Affiant

3-7-2019

Date

ACKNOWLEDGMENT

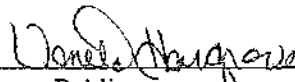
State of Arkansas)
) ss.
County of Pulaski)

Before me the undersigned Notary Public in and for the State of Arkansas at Large, personally appeared, Steve Dixon, and after being first duly sworn, did depose and say that the statements in the foregoing Affidavit are true and correct.

SUBSCRIBED and SWORN to before me on this 7th day of March 2019.

My Commission Expires:

02-25-2025



Notary Public

VENETA HARGROVE
GREENE COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires February 25, 2025
Commission No. 12493259

RESOLUTION NO. 061918

**A RESOLUTION CONFIRMING ANNEXATION OF CERTAIN
TERRITORY TO THE CITY OF MARMADUKE, ARKANSAS,
AND MAKING THE SAME A PART OF THE CITY AND ASSIGN
SUCH LANDS TO WARDS.**

WHEREAS, the County Court of Greene County, Arkansas, has entered its Order granting annexation of the lands hereinafter described to the City of Marmaduke, Arkansas, and 30 days has expired from the making of such Order of Annexation by the County Court and no notice has been given appealing such Order of Annexation;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
MARMADUKE, ARKANSAS:**

SECTION 1. That the following lands and territory contiguous to and adjoining the City of Marmaduke, Arkansas be and the same are hereby accepted and assigned to wards as follows:

That part of the South Half of the Southeast Quarter of Section 13, Township 18 North, Range 6 East, described as follows: Beginning at the Southeast corner of said Section 13, run thence North 40 rods, thence West 96 rods, run thence South 40 rods, thence East 96 rods to the place of beginning, containing 24 acres, more or less.

The land in this annexation is assigned to Ward 2.

SECTION 2. That the following lands and territory contiguous to and adjoining the City of Marmaduke, Arkansas be and the same are hereby accepted and assigned to wards as follows:

That part of the Southwest Quarter of Section 18, Township 18 North, Range 7 East, described as follows: Beginning at the Southwest corner of said Section 18, run thence North 0 degrees 46 minutes West 2414.1 feet to the East right-of-way of Highway 49, run thence North 42 degrees 58 minutes East along said right-of-way 63.2 feet to the centerline of a ditch, run thence along said ditch the following calls: South 32 degrees 18 minutes East 91.0 feet, South 39 degrees 45 minutes East 531.6 feet, South 42



degrees 40 minutes East 437.1 feet, South 66 degrees 55 minutes East 188.9 feet, South 47 degrees 41 minutes East 534.3 feet, South 31 degrees 44 minutes East 90.9 feet, South 1 degree 14 minutes East 446.2 feet, South 0 degrees 58 minutes West 686.8 feet, run thence South 89 degrees 36 minutes West 1310.1 feet to the true point of beginning, containing 53.96 acres, more or less. SUBJECT TO the right-of-way of Highway 34 off the South side thereof, and all utility easements.

The land in this annexation is assigned to Ward 2.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARMADUKE, ARKANSAS, This resolution:

PASSED AND APPROVED THIS 19th DAY OF JUNE, 2018

A handwritten signature in black ink, appearing to read "D. H. [unclear] Sr.", written over a horizontal line.

Mayor

ATTEST:

A handwritten signature in black ink, appearing to read "Betty Jackson Sr.", written over a horizontal line.

City Clerk and Recorder

C E R T I F I C A T E

I, H. E. Jordan, Recorder of The Incorporated Town of Marmaduke, in the County of Greene, State of Arkansas, DO HEREBY CERTIFY as follows:

The foregoing extracts from the minutes of the meeting of the Council of said Town, held on Wednesday, October 16, 1935 have been compared by me with the originals thereof and are a true and correct transcript therefrom and of the whole of said originals so far as the same relate to the matters referred to therein.

The foregoing copy of Ordinance, numbered 137 and entitled:

"An Ordinance providing for the construction and operation of a waterworks system for Marmaduke, Arkansas, providing for the issuance of waterworks revenue bonds for said system; fixing rates for the service to be rendered by the said system; fixing the details in respect of said bonds and providing for the method of payment thereof, and declaring an emergency"

has been compared by me with the original thereof and is a correct transcript therefrom and of the whole of said original.

Said extracts and said Ordinance have been recorded in whole upon the permanent records of said Town appearing in Book 137 pages 137 to 147 inclusive.

A certified copy of said Ordinance has been filed for record in the office of the Clerk of the Circuit and Chancery Courts and ex-officio Recorder within and for Greene County, Arkansas.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town, this 17th day of October, 1935.

H. E. Jordan
Recorder

DEFENDANT'S
EXHIBIT

X ORDINANCE NO. 55

AN ORDINANCE PROVIDING FOR THE CONSTRUCTION AND OPERATION OF A WATERWORKS SYSTEM FOR MARSHVILLE, ARKANSAS; PROVIDING FOR THE ISSUANCE OF WATERWORKS REVENUE BONDS FOR SAID SYSTEM; FIXING RATES FOR THE SERVICE TO BE FURNISHED BY SAID SYSTEM; FIXING THE DETAILS IN RESPECT OF SAID BONDS AND PROVIDING FOR THE METHOD OF PAYMENT THEREOF; AND DECLARING AN EMERGENCY.

WHEREAS, The Incorporated Town of Marshville, Greene County, Arkansas, (hereinafter called the Town) has no adequate waterworks system and the public interest and necessity require that such a system be constructed, and

WHEREAS the Town Council of said Town has caused to be made by a duly qualified engineer plans and specifications for such a waterworks system, an estimate of the cost of the construction of the same and of the real property necessary to be purchased, an estimate of the reasonable rates necessary to be charged to consumers of water furnished by said system, an estimate of the revenues of such system, an estimate of the annual cost of operation and maintenance, and an estimate of the requirement for an adequate depreciation fund to provide for probably replacements, all of which have been heretofore filed with the Town Recorder, and

WHEREAS such plans provide for a complete waterworks system, consisting of a well, an elevated steel tank, pump and powerhouse and a distribution system including the installation of fire hydrants and meters, and all equipment necessary for such system, and also for the purchase of the following-described

real property on which part of said waterworks system will be situated:

Lot 1, Block 2, City's Addition to Laramie, and the one or more lots of Lot 1, Block 1, Grandco's Addition to Laramie, now owned by the Incorporated Town of Laramie.

WHEREAS the Town Council has examined and approved said plans, estimates and computations and finds and declares that it is for the best interest of said Town that said waterworks system be constructed, and

WHEREAS said Town is without funds with which to construct such waterworks system, except from the proceeds of the bonds hereinafter ordered to be issued (hereinafter called the "Bonds"), authorized by Act 131 of the Acts of the Special Session of the General Assembly of the State of Wyoming of the year 1952, an amount, together with certain funds to be furnished by the United States sufficient to complete said project can be provided,

NOW, THEREFORE, BE IT ORDERED by the said Town Council of said Town, as follows:

Section 1. That the estimated cost of the construction of said waterworks system (hereinafter called the "System") and the purchase of said real property, estimated by said engineer, is found and declared to be the sum of \$48,700.

Section 2. That said System be constructed and said real property be purchased according to the plans and specifications heretofore filed with the Town Recorder, and reference to such plans and specifications is hereby made for a more detailed description.

Section 3. That the following be fixed as the maximum rates to be charged for water to be furnished by the System, which the Council finds are the reasonable and necessary minimum rates to be charged:

DOMESTIC RATE

Up to	5,000 gallons per month	\$1.00 per m.
Next	5,000 gallons per month	1.25 per m.
Next	10,000 gallons per month	1.50 per m.
All over	20,000 gallons per month	1.75 per m.
Minimum monthly charge		1.75 per m.
For 1 year hydrant only, \$1.00 per month following 1,000 gallons.		

INDUSTRIAL RATE

Up to	50,000 gallons per month	\$3.00 per m.
Next	50,000 gallons per month	4.00 per m.
Next	50,000 gallons per month	5.00 per m.
Next	100,000 gallons per month	6.00 per m.
All over	200,000 gallons per month	7.00 per m.
Minimum charge	per month	6.00 per m.
With a 10% penalty to be added to charges paid after the 10th of each month.		

and this Council further finds and declares that such rates as above set out will produce a total revenue sufficient to pay the total operation and maintenance expense of the System and provide for the payment of the Bonds, both principal and interest, as the same fall due and are payable, and to create all funds herein provided.

Said rates shall never be reduced until all the Bonds and all coupons thereto attached have been paid in full and shall, when necessary, be increased in an amount sufficient to provide for the maintenance of the funds hereinafter described.

Meters shall be installed in the water connections to all public buildings.

Bills for water service shall be rendered on the first

day of each month following the month during which service was furnished, and if not paid prior to the 15th day of each month, a 10% penalty shall be added to the bill. If bills are not paid within 30 days from rendition, service shall be discontinued.

In the event service is discontinued due to non-payment of bills, the premises shall be disconnected from the waterworks system. Such premises may later be reconnected to said system upon payment of a reconnection charge of \$1.00 plus the payment of any unpaid bill due the Town, such payments to be made at the time service is resumed.

Section 4. None of the facilities or services afforded by the System shall be furnished without a reasonable charge being made therefor. In the event that the Town or any department, agency or instrumentality thereof shall avail itself of the facilities or services afforded by the System, including use of fire hydrants for fire protection and other purposes, the reasonable value of the services or facilities so afforded shall be charged against the Town or such department, agency, or instrumentality and shall be paid for as the charges therefor accrue. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be used and accounted for in the same manner as any other revenues derived from the operation of the System. Provided, however, that nothing herein shall be construed as requiring the Town or any department, agency or instrumentality thereof to avail itself of the facilities or services afforded by the System.

Section 5. The Treasurer of the Town shall be the custodian of the revenues derived from the System and shall give bond

for the faithful discharge of his duties as such custodian (such bond to be fixed and approved by this Council). The Treasurer shall deposit all of the revenues of the System, as collected, into a separate fund (herein called the "Water Fund"). The Water Fund is hereby pledged, mortgaged, and set apart, and shall be administered, as follows:

(a) Bond Fund. There shall be paid into a separate account (herein called the "Bond Fund") during each year in which any of the Bonds are outstanding, the amount required to meet the interest and principal payments falling due on or before the next maturity date of the Bonds, such payments shall begin when the first revenues are collected after the completion of the construction of the System. The amount required to be paid into the Bond Fund in each year shall be paid in substantially equal monthly payments from the revenues of the System before any of the revenues of the System received in each month shall be used for any other purpose. If the revenues of the System in any month are insufficient to make the required payment into the Bond Fund, then the amount of any deficiency in the payment made shall be added to the amount otherwise required to be paid into the Bond Fund in the next month. The monies in the Bond Fund shall be used solely for the purpose of paying the interest on and principal of the Bonds, when the monies held in the Bond Fund are sufficient to pay the principal of and interest on all the Bonds, then remaining outstanding, the Town shall not be obliged to make any further payments into the Bond Fund.

All monies held in said Bond Fund shall be deposited

in a bank in the State of Arkansas, which is a member of the Federal Reserve System and in which deposits are guaranteed by the Federal Deposit Insurance Corporation.

If a surplus shall exist in the Bond Fund the same shall be used in so far as possible for the purchase and retirement of outstanding Bonds at a price not to exceed the face value thereof plus accrued interest.

When all the Bonds have been paid or retired any monies remaining in the Bond Fund may be used in any manner which may be determined by this Council.

(h) Depreciation Fund. After paying the amount provided above into the Bond Fund in any period, ten (10) percentum of the remaining monies received in the Water Fund during such period shall be paid into a separate fund, (herein called "Depreciation Fund"), which proportion is hereby found and declared to be a proper and adequate amount to be applied to the Depreciation Fund. The Depreciation Fund shall be used solely for the purpose of paying the cost of replacements made necessary by the depreciation of the System.

If a surplus shall be accumulated in the Depreciation Fund over and above that which is necessary to defray the cost of the probably replacements during the current and the next ensuing fiscal years, such excess shall be transferred to the Bond Fund; provided, however, that no such transfer from the Depreciation Fund to the Bond Fund shall operate as an abatement of the Bond Fund requirements heretofore set forth.

(i) Operation and Maintenance Fund. After paying the amount provided above into the Bond Fund in any month, then any monies

received in the Water Fund during each month and not required to be paid into the Depreciation Fund shall be paid into a separate account (herein called the "Operation and Maintenance Fund"). The Operation and Maintenance Fund shall be used solely for the purpose of paying the cost of operation and maintenance of the System.

If any surplus shall be accumulated in the Operation and Maintenance Fund over and above that which is necessary to defray the cost of operating and maintaining the System during the current and the next ensuing fiscal years, such surplus shall be transferred to the Bond Fund; provided, that no such transfer from the Operation and Maintenance Fund to the Bond Fund shall operate as an abatement of the Bond Fund requirements as hereinbefore set forth.

Section 4. Nothing herein shall be construed in such manner as preventing the issuance by the Town of additional revenue bonds to finance or pay the cost of constructing any extension, betterment or improvement to the System. Provided, however, that the Town, in order to insure the payment of the interest on and principal of the Bonds, shall issue such additional revenue bonds while any of the Bonds remain outstanding only if, at the time of the passage of an ordinance as provided in Section 10, Act 131, Acts of Arkansas, 1935, as amended, (in which the Council of the Town shall provide, find and declare the value of the contemplated extension, betterment or improvement and the value of the System), the revenues of the System for the fiscal year immediately preceding the passage of said ordinance (in this paragraph called the "Revenue") shall have been sufficient in amount so that, if they be deemed to be the total revenues derived

from the entire system when the contemplated extension, betterment or improvement is completed and are divided in the manner provided in Section 10 for the division of the revenue of such an entire system and the amount of the Revenue which (pursuant to said Section 10) would be deemed to be derived exclusively from such contemplated extension, betterment or improvement is subtracted from the Revenue, the remainder will be at least equal to the maximum amount required to be paid into the Bond Fund in any year while any of the Bonds remain outstanding plus an amount sufficient to pay the cost of operation, maintenance and depreciation of the System for the next ensuing fiscal year.

Section 7. That the System shall be hereafter operated upon a fiscal year basis. The first fiscal year shall commence upon the 1st day of June, 1925 (the estimated date of completion of the construction herein provided for), and shall end one year thereafter.

Section 8. That revenue bonds of the Town (herein called "Bonds") be issued in the total amount of \$87,500 which amount, together with funds to be furnished by the United States of America, is necessary to provide sufficient funds to pay all cost of the herein described contemplated construction, and the purchase price of the said real property, including engineering, legal, and other necessary expenses, together with interest to a date six months subsequent to the estimated date of completion of the System; that said Bonds such be designated "Waterworks Revenue Bond", be dated November 1, 1925, be in the denomination of \$500 each, be numbered from 1 to 50, both inclusive, and mature in numerical order on November in each of the years and in the amount

as follows:

<u>Years</u>	<u>Amounts</u>	<u>Years</u>	<u>Amounts</u>
1939	\$500	1961	\$1,500
1939	500	1962	1,500
1940	500	1963	1,500
		1964	1,500
1941	\$1,000	1965	1,500
1942	1,000	1966	1,500
1943	1,000	1967	1,500
1944	1,000	1968	1,500
1945	1,000	1969	1,500
1946	1,000		
1947	1,000	1960	\$2,500
1948	1,000		
1949	1,000		
1950	1,000		

that the Bonds bear interest at the rate of four per cent. (4%) per annum, payable on May 1, 1936 and semi-annually thereafter on the first days of November and May in each year, that the Bonds be signed by the Mayor and sealed with the corporate seal of the Town and attested by the Recorder of the Town and that the interest upon the Bonds be evidenced by coupons thereto attached, the coupons to be signed by said Mayor and attested by said Recorder their respective signatures; and said Mayor and Recorder shall by the execution of the Bonds adopt as and for their own proper signatures their respective facsimiles appearing on said coupons; that the Bonds and coupons be payable in cash funds so at the time of the respective payments are legal tender for the payment of debts due the United States of America, at the office of the Treasurer of the Incorporated Town of Marsden at Marsden, Arkansas.

The Bonds together with interest thereon shall be payable only out of the Bond Fund as hereinbefore defined and shall be a valid claim of the holder thereof only against the Bond Fund, and the amount of the revenues pledged to said fund, which amount of said revenues is hereby pledged and mortgaged for the equal and

Legal payment of the Bonds and shall be used for no other purpose than to pay the principal and interest of the Bonds on the same terms.

Section 9. That said bonds and coupons be in substantially the following form:

No. _____

\$500

UNITED STATES OF AMERICA
STATE OF ARKANSAS,
THE INCORPORATED TOWN OF MARSHDALE
MARSHDALE WATERWORKS FUND.

KNOW ALL MEN BY THESE PRESENTS: That The Incorporated Town of Marshdale, in the County of Greene, State of Arkansas, hereby acknowledges itself to one and, for value received, promises to pay to bearer, as hereinafter stated, the sum of Five Hundred Dollars on the first day of November, 19____, with interest at the rate of four per cent (4%) per annum, payable on May 1, 19____, and semi-annually thereafter on the first days of November and May of each year, upon presentation and surrender of the annexed coupons as they severally become due. Both principal hereof and interest thereon shall be payable in such funds as at the time of the respective payments are legal tender for the payment of debts due the United States of America, at the office of the Treasurer of The Incorporated Town of Marshdale, at Marshdale, Arkansas.

This bond is issued for the purpose of providing for the payment of the cost of construction of a waterworks system for said town.

This bond is issued in accordance with the provisions of Act 161 of the regular session of the General Assembly of the

State of Arkansas for the year 1933, as amended, and does not constitute an indebtedness of said Town within any constitutional or statutory limitation, and is payable solely from a fixed amount of the gross revenues from the said waterworks system which amount shall be sufficient to pay the principal of and interest on the bonds as the same become due and payable. Said amount has been duly set aside, pledged and mortgaged as a special fund for that purpose and identified as the "Bond Fund", created by the ordinance under which this bond is authorized to be issued, and in said ordinance the Town has covenanted and agreed to fix and maintain rates for water service which shall be sufficient at all times to provide for the payment of the principal of and interest on this bond as the same become due and payable, to provide for the creation of a depreciation fund for necessary replacements to the waterworks system, and to provide for the payment of the reasonable expenses of operation and maintenance thereof.

In and by said Act 121 of the General Assembly of the State of Arkansas for the year 1933, as amended, there is granted and created a statutory mortgage lien on said waterworks system, said bonds and proceeds therefrom, to and in favor of the holders of the coupons evidencing the interest on said bonds; and said waterworks system shall remain subject to such statutory mortgage lien until the payment in full of this bond, both principal and interest, shall have been made.

IT IS HEREBY CERTIFIED, RECITED, and DECLARED that all acts, conditions, and things required to exist, happen and be performed pursuant to and in the issuance of this bond have existed,

have happened, and have been performed in due time, form, and manner, as required by law, and that sufficient of the income and revenue to be derived from the operation of said system has been pledged to and will be set aside into said special fund for the payment of the principal and interest on this bond.

IN WITNESS WHEREOF, the Incorporated Town of Hermandade, by its Town Council, has caused this bond to be signed by the Mayor thereof and sealed with the corporate seal of said Town and attested by its Recorder, and has caused the coupons hereto attached to be authenticated by the genuine signatures of said Mayor and Recorder all as of the first day of November, 1936.

Mayor

(NAME)

ATTORNEY

Recorder

(Form of Coupon)

No. _____

010

On the first day of _____, 19____, the Incorporated Town of Hermandade, Arkansas, promises to pay to bearer the sum of Ten Dollars out of the fund specified in the bond to which this coupon appertains, at the office of the Treasurer of said Town at Hermandade, Arkansas, in such funds or at the time of payment hereof etc legal tender for the payment of debts due the United States of America, being interest then due on its Waterworks Revenue Bond dated the first day of November, 1935.

and numbered _____

Attest

Recorder.

Mayor.

(The signatures of the Mayor and Recorder to the coupons may be lithographed or engraved.)

Section 10. After the Bonds have been executed as herein provided, they shall be delivered by the Treasurer of the Town, all at one time or in blocks from time to time to the United States of America at a price or prices which shall be not less than par and accrued interest, and the proceeds received therefrom shall be used solely for the payment of construction costs of the System and the purchase price of said real property, including engineering, legal, and other necessary expenses, and for payment of interest on the revenue bonds herein authorized during the construction of the System.

Section 11. It is covenanted and agreed by the Town with the holder or holders of the Bonds, or any of them, that it will faithfully and punctually perform all duties with reference to the System required by the Constitution and Statutes of the State of Arkansas, including making and collecting of reasonable and sufficient rates lawfully established for services rendered by the System, segregating the revenues of the System and its application to the respective fund herein created.

Section 12. The Town will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost. So long as any of the Bonds are outstanding, the

Town agrees to maintain insurance on the System of a kind and in an amount which normally would be carried by a private company engaged in a similar type of business. Nothing herein shall be construed as requiring the Town to expend any funds which are derived from sources other than the operation of the System, but nothing herein shall be construed as preventing the Town from doing so.

Section 13. Any holder or holders of twenty-five per centum (25%) in aggregate principal amount of the Bonds at the time then outstanding shall have the right at all reasonable times to inspect the System and all the records, accounts, and data of the Town relating thereto.

Section 14. So long as any of the Bonds are outstanding, the Town will not mortgage, pledge or otherwise encumber the System or any part thereof or any revenues therefrom, except as herein provided, and will not sell, lease or otherwise dispose of any substantial portion of the System.

Section 15. The Town will keep proper books of records and accounts (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the System. The Town shall furnish to any holder or purchaser of any of the Bonds at the time outstanding, at the written request of such holder or purchaser, not more than thirty days after the close of each six months' fiscal period, complete operating and income statements of the System in reasonable detail covering such six months' period, and, not more than sixty days after the close of each fiscal year, complete financial

statements of the System in reasonable detail covering each financial year, certified by the Town auditors.

Section 16. The Town further covenants and agrees that if default is made in the payment of any bond or coupon or if the Town fails to meet any sinking fund requirement, the holder of such bond may declare that bond immediately due and payable, and such bond shall thereupon be immediately due and payable and in default.

Section 17. There shall be a statutory mortgage lien upon the System, as provided in said Act 181, as amended, which shall exist in favor of the holder of the Bonds and each of them, and to and in favor of the holder of the coupons attached to the Bonds, and the System shall remain subject to such statutory mortgage lien until payment in full of the interest on and principal of the Bonds. If there be any default in the payment of either the interest on or principal of any of the Bonds, the holder or holders of any of the Bonds may enforce the statutory mortgage lien upon the System in accordance with the provisions of section 7, of said Act 181, and may by proper suit compel the performance of the duties of the officials of the Town, as set forth in said Act. If there be default in the payment of the principal of or interest on the Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer the System on behalf of the Town, with power to charge and collect rates sufficient to provide for the payment of the Bonds and interest thereon and for the payment of the operating expenses and to apply the income and revenues in conformity with said Act and this ordinance providing for the issuance of such bonds.

Section 18. To the end that a record of the pledge of the revenues and agreement not to mortgage the System may be preserved, the Town Recorder be and is hereby authorized to file with the Recorder of Greene County, Arkansas, a certified copy of this ordinance, acknowledged in the form required for deeds and mortgages, with the directions that the same be recorded in the office of said County Recorder as in the case of deeds and mortgages.

Section 19. There being no newspaper published in the municipality, the Mayor is hereby directed to post in at least three public places therein, a copy of such ordinance, to which is attached a notice signed by him, in substantially the following form:

NOTICE

Notice is hereby given that the Town Council of Harwood, Arkansas, has adopted the ordinance hereinafter set out, that the said Council will consider the merits of the same described in said ordinance, and that any person interested may appear before the said Council upon the 23rd day of October, 1933, at 7:30 P.M., at its usual place of meeting at the Town Hall and present protests. All such hearing all objections and suggestions will be heard and said Council will take such action as it shall deem proper in the premises.

(Signed)

Mayor, the Incorporated City
of Harwood, Arkansas.

(Here copy ordinance in full, including number and title.)

Section 20. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 21. It is ascertained and declared that the lack of an adequate water supply endangers the health of the inhabitants of said town and increases the fire hazard, which endangers the safety of the lives of the inhabitants and of their property.

that by reason of the present economic conditions many citizens of the town are out of work and the improvements herein provided would furnish work for a large number of men and thereby add to the peace and happiness of the town. It is, therefore, declared that an emergency exists, that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and that this ordinance shall take effect and be in force from and after its passage.

PASSED

A. E. Locke October 14, 1935.
Recorder

APPROVED

J. A. Willard
Mayor

ATTEND:

(None)

A. E. Locke
Recorder

Recorded October 14, 1935.

(None)

A. E. Locke
Recorder

On motion and unanimous vote the meeting adjourned.

(None)

A. E. Locke
Recorder

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT
ANNUAL STATEMENT OF LOAN ACCOUNT

SAVE THIS INFORMATION
FOR INCOME TAX PURPOSES

PAGE 001
DATE 123117

DESCRIPTION	ADVANCES	INTEREST	PRINCIPAL	TOTAL	T	INTEREST RATE	EFFECTIVE DATE
CASE NUMBER 03-028-*****2172 FINAL YEAR OF LOAN 2029 FUND CODE 93 LOAN NUMBER 01 DATE OF LOAN 101889 INTEREST RATE 05.0000 AMOUNT OF LOAN 435,000.00							
BEGIN LOAN BALANCE		960.30	233,673.64	234,633.94			010117
PAYMENT		1,280.40	855.60	2,136.00	R	05.0000	011017
PAYMENT		861.11	1,274.89	2,136.00	R	05.0000	020617
PAYMENT		888.11	1,247.89	2,136.00	R	05.0000	030617
PAYMENT		1,356.53	779.47	2,136.00	R	05.0000	041817
PAYMENT		843.21	1,192.79	2,136.00	R	05.0000	051817
PAYMENT		869.60	1,166.40	2,136.00	R	05.0000	061817
PAYMENT		933.51	1,202.49	2,136.00	R	05.0000	071817
PAYMENT		959.53	1,176.47	2,136.00	R	05.0000	081817
PAYMENT		954.53	1,181.47	2,136.00	R	05.0000	091817
PAYMENT		918.89	1,217.11	2,136.00	R	05.0000	101817
PAYMENT		844.35	1,191.65	2,136.00	R	05.0000	111817
PAYMENT		808.89	1,227.01	2,136.00	R	05.0000	121817
TOTAL LOAN PMTS		11,918.76	13,713.24	25,632.00			
TOTAL PAID ON ALL LOANS THIS YEAR		11,918.76	13,713.24	25,632.00			
LOAN ACTIVITY	0.00	11,918.76	13,713.24	25,632.00			
LOAN BALANCE UNPD INTEREST		394.71 **	UNPD PRIN	219,960.40 **			
NXT AMT DUE	2,136.00						DATE DUE 011818
PAYMENT STATUS		ON SCHEDULE					
ALL LOAN ACTIVITY	0.00	11,918.76	13,713.24	25,632.00			
BOVR BAL UNPD INTEREST		394.71	UNPD PRIN	219,960.40			

LOAN ACTIVITY 0.00 11,918.76 13,713.24 25,632.00
 UNPD INTEREST 394.71 ** UNPD PRIN 219,960.40 **
 DATE DUE 011818
 ON SCHEDULE

RECIPIENT'S/LENDER'S Name, Street address, city or town, State or Province, country, ZIP or foreign postal code, and telephone no.
 USDA RURAL DEVELOPMENT
 PHONE#(314)457-4310
 4300 GOODFELLOW BLVD FC-1332
 ST. LOUIS, MO 63120

1 Mortgage interest received from payor(s)/borrower(s) \$ 0.00

2 Outstanding mortgage principal as of 1/1/2017 \$

3 Mortgage origination date

4 Refund of overpaid interest \$

5 Mortgage insurance premiums \$

6 Points paid on purchase of principal residence \$

7 Is address of property securing mortgage same as PAYER'S/BORROWER'S address? If "Yes", box 1c is checked. If "No", see box 8 or 9 below

8 Address of property securing mortgage

9 If property securing mortgage has no address, below is the description of the property

10 Number of mortgaged properties

11 Other

IRS FORM 1098 DOES NOT APPLY TO YOUR LOAN

Account number (see instructions)

DEFENDANT'S EXHIBIT

4

1098

June 21, 2016

Good evening, my name is Brad Nelson and I am a member of the Board of the St. Francis River Regional Water Distribution District.

I would like to thank you for allowing us this time to speak to you.

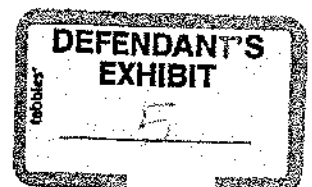
As briefly as possible, I would like to give you some background on our Water District. In the early 1980's, a man and his wife, "Soapy and Eugenia Thompson," from the Neighbor's Corner community, saw a need for our friends and neighbors to have access to Clean, Safe, Reliable and Affordable Drinking water. In 1987, the Circuit Court of Greene County approved the formation of the Water District and its boundaries. On May 28, 1987, the city of Marmaduke, along with other cities and towns that were connected to our legal boundaries, received a letter notifying them of our formation. There was no response from Mayor Taylor of Marmaduke. Thirteen years after the district was formed, which would have been in early 2000, the district started selling water to eager customers.

Our board is made up of seven volunteers, we don't get paid, don't get free water, don't go on any paid trips, we get Ice Cream and Strawberries once a month, that's it. We serve our communities for the same reason you do, we each care about the people who live in our community. We don't have any "Bench Warmers" on this Board. We all work and participate along with our four employees to make this District successful. Our employees are Tonya Thompson, Michele Toone, Allen Froman, all from right here in Marmaduke and Donald Pool Jr, from the Bard Community. Our four employees receive no benefits, insurance, retirement, or overtime. They receive a check every week for providing water 24/7, 365 days a year. They are all very dedicated!

Our original loan was designed for a system with a minimum of 1025 customers to adequately fulfill its debt obligation. We have 971 current customers served by 320 miles of pipe. That's equivalent to 3 customers for every mile of pipe. Water sales are the only means of income we have, no sales tax, no property tax. The gallons of water sold are all we have.

The fact is we need every new customer we can get. You are all aware of our situation in the rural areas, when some dies or moves off, a lot of homes are torn down and destroyed, that revenue is gone. This situation is not just limited to us locally. Small Rural Communities all over America are dying off fast. Those that want to stay and live in those areas are left to bear the cost. We estimate that our water sales to ARI would be like adding fifty houses to our system, which would be a huge help to our district.

We know that mistakes have been made on both sides. You might ask, why we haven't noticed this before. We could ask why you haven't noticed this before. We are not here to point fingers; we are here to simply resolve an issue.



June 21, 2016

Tonight your mayor is going to tell you that on March 15th, this year, when he proposed to you after seeking the advice of your City Attorney and you voted on and approved the agreement between the City of Marmaduke and St. Francis Water District, that maybe that was a "Hasty Decision" on his part.

The fact is, your Mayor is under tremendous political pressure from ARI to try and take away our right to serve water to ARI facilities that are inside our well defined utility boundary. ARI is pressuring your mayor to force our Water District to fight this battle in Court.

Your Mayor is being advised by Attorneys representing ARI as well as the Arkansas Municipal League that since we no longer have a USDA Loan, now we can be encroached upon.

Your Mayor has told me that ARI will provide all funds necessary if the City of Marmaduke will force us to take this to court. Our water district does not have the money necessary to fight the "Big Boys". However, we as a Water Board will have no choice but to do what we can to protect our customers of the Water District. The fact is, we choose to refinance our USDA loan with a local bank, "First National Bank of Paragould" to save our customers money, a lot of money. We went from a forty year loan at 5% interest to 3.5% interest on a loan that had a Three Million Dollar balance with twenty four years of monthly payments remaining. Should the fact that we were being good stewards of our customer's money and trust jeopardize the well being of our district?

June 21, 2016

Two ARI representatives' came and met with our board on January 19th of this year. After that meeting, one of the gentlemen was quoted as saying "that thing is just run by a bunch of Farmers."

We take that as being a Derogatory Statement. We hope you have a different opinion of us and the values we stand for.

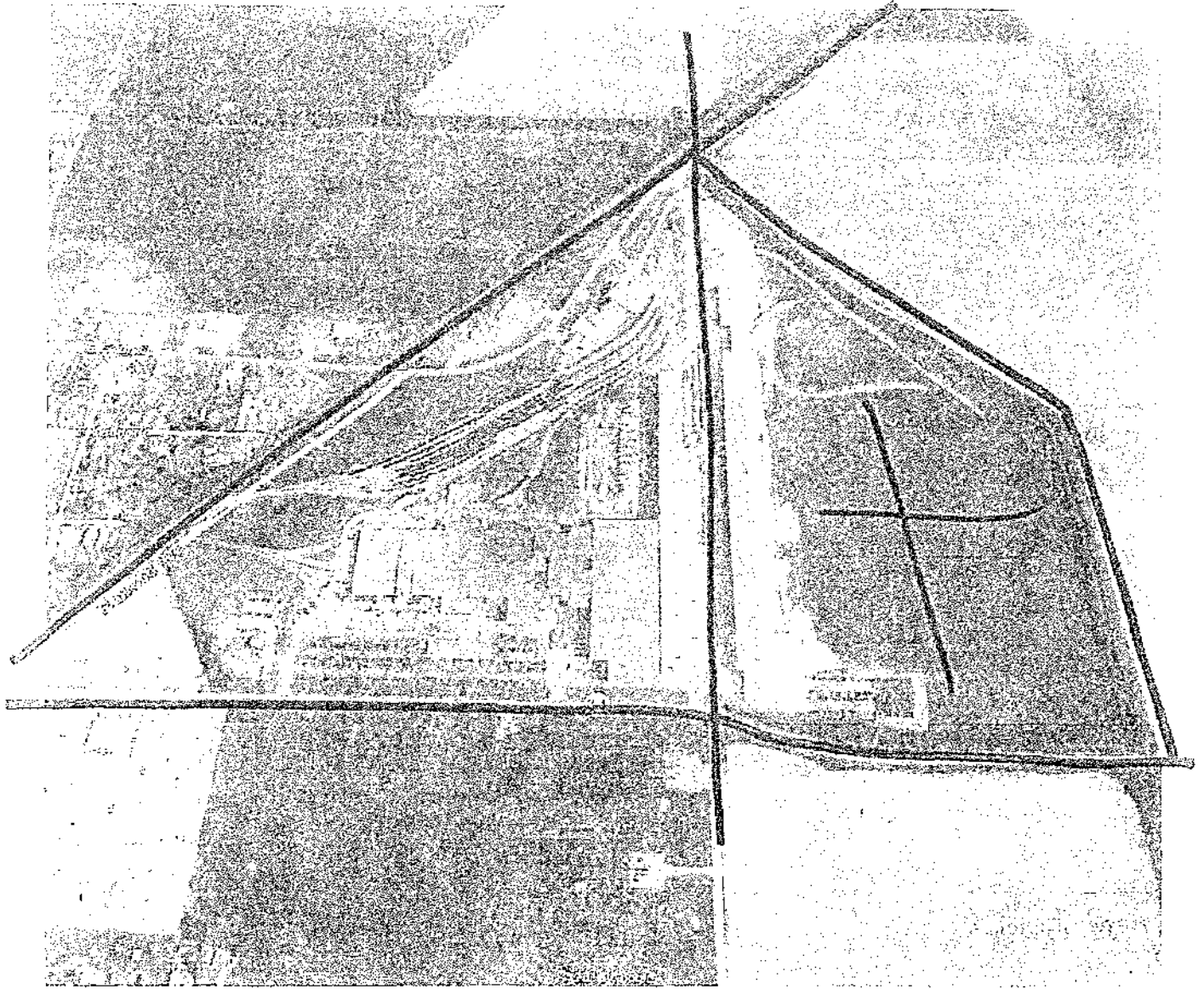
If ARI Bullies this situation into Court, there are going to be two losers, the City of Marmaduke and St. Francis Water District. This couldn't keep from causing hard feelings between friends and neighbors.

I visited with you Mayor last Friday. I explained to him that I hoped this City Council thought the agreement they made in March was the "Right" thing to do then and nothing has changed.

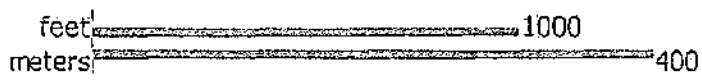
This shouldn't be a legal technicality about who you borrow money from.

This is a "Right or Wrong" issue. This is all about "Values".

We thank you for your time and service to our community.



Google earth



St. Francis River Regional Water District

129 Hwy 135 South
P.O. Box 818
Paragould, Arkansas 72451-0818
Telephone: 870-240-8613
Fax: 870-239-5487

TERMS OF OFFICE

DIRECTOR	TITLE	BEGINNING OF TERM	END OF TERM
Ronald Pigue, Sr.	President	7/27/1987	12/31/2017
Thomas L. Kueter	Vice Pres	7/27/1987	12/31/2017
Danny Dortch	Secretary	2/5/1999	12/31/2018
Gerald Eaker	Member	7/17/1994	12/31/2018
Brad Nelson	Member	3/23/1999	12/31/2016
James Shelton	Member	1/18/1999	12/31/2017
Kelly McGaughey	Member	5/22/1995	12/08/2013 (Resigned)
Gregg Garner	Member	3/17/2014	12/31/2016




Arkansas Soil and Water Conservation Commission

J. Randy Young
Director

One Capitol Mall
Suite 300
Little Rock, Arkansas 72201

Phone 501-221-1611

May 28, 1987

The Honorable Donald Taylor, Mayor
City of Marmaduke
P.O. Box 208
Marmaduke, Arkansas 72443

Dear Mayor Taylor:

One of the responsibilities of the Soil and Water Conservation Commission is to report to the circuit courts on the formation of a regional water distribution district under the Regional Water Distribution District Act.

In reviewing the proposed St. Francis River Regional Water Distribution District, the Commission has learned that your city is not included in the proposed district.

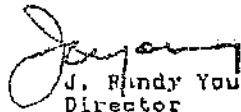
There are certain benefits which can be gained from membership. The District could provide comprehensive planning of water resources in the region. The planning would be beneficial to the region's long term growth. The District could facilitate planning for emergencies such as loss of a well and undertake to provide solutions such as interconnection of systems.

Two powers which a Regional District does not possess are: 1) taxation, and 2) required connection to the regional system.

The Commission strongly supports modification of the district boundaries to create a truly regional entity. I recommend that you have your service area included in the St. Francis River Regional Water Distribution District.

If your city desires more information about the St. Francis Regional Water District, you may contact Mr. H.T. Moore, Attorney for the District, P.O. Box 725, Paragould, Arkansas 72451, 239-2225 or the Soil and Water Conservation.

Very truly yours,


J. Randy Young, P.E.
Director

JRY:ph

An Equal Opportunity Employer

EXHIBIT "A"

June 21, 2016

Marmaduke city council met for regular meeting Tuesday, June 21, 2016 at 6:00 p.m.

Aldermen present: Roy Newsom, Chris Blackshear, Bill Muse, Keith DeFries, Tom Green, Chuck Long

Mayor Steve Dixon, Treasurer/Recorder Betty Jackson, Fire Chief Nicki McDowell, Attorney Alan Warmath, Clay County Representative Jessica Rainwater, Mike Peters, Director of Operations at ARI Ronald Pigue Sr., Brad Nelson, Thomas Kueter, Gerald Baker, James Shelton, Greg Garner

Meeting called to order by Mayor Dixon.

Opening prayer by Keith DeFries

Blackshear made a motion & 2nd by Long to accept treasurer's report as printed. Motion carried.

Green made a motion & 2nd by Long to accept Minutes of regular meeting of May 17, 2016. Motion carried.

Discussion on St. Francis Rural Water Issue

Mr. Nelson was the spokesperson for St. Francis Rural Water District Board. He explained how the district got started serving 971 customers with 320 miles of pipe, equivalent of 3 customers per mile. Marmaduke has been servicing ARI which is in St. Francis' Water District, reason being when ARI began construction in 1998, St. Francis did not have the capacity to serve ARI as a customer so ARI approached Marmaduke & the need was filled. St. Francis Water District could not serve ARI at that time. Marmaduke had no idea about St. Francis' boundaries. There was a line break in 2006 when ARI was doing an expansion & a St. Francis operator moved the line, but no one mentioned this service to the customer until 2015.

Mayor Dixon informed council that he had been in contact with the city attorney & the attorneys from Arkansas Municipal League & we may have the right to sell water to this customer since it is the continuation of service & not a new customer. Mayor said he must do whatever is right for the city.

Attorney Alan Warmath was here to represent the city. Attorney Kimberly Dale was unable to attend.

Muse made a motion & 2nd by Blackshear to table this matter until the advice from our attorney gets back with the city. Motion carried.

Marmaduke Housing

Mayor Dixon read a letter from Rodney Hampton, Executive Director of the Marmaduke Housing, thanking each & every one for their help & support.

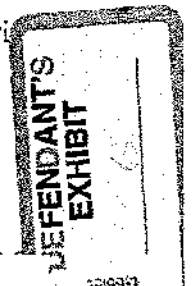
Hampton asked council to reappoint Jimmy Hardin to serve on the Housing Board.

Muse made a motion & 2nd by Long to reappoint Jimmy Hardin for a 5-year term to serve on the Marmaduke Housing Board. Motion carried.

Public Works Truck

Discussion on trading the F-250 Ford public works truck for a 2016 GMC short bed regular cab 4-wheel drive V6 motor, trailer hitch.

Muse made a motion & 2nd by Blackshear to trade the F-250 Ford truck for a 2016 GMC with no money difference. Motion carried.



Discussion on Paving City Hall Parking Lot

Mr. McNally gave an estimate of \$14,000.00. Council is in agreement to wait until next year to do the paving.

Dustin Estes

He is in the academy & doing good. He has six weeks to go.

Fire Department

Fire Chief Nicki McDowell suggested putting Colby Drope on the volunteer fire department.

Long made a motion & 2nd by DeFries to put Colby Drope on the volunteer fire department. Motion carried.

Police Department

Attorney Alan Warmath says Marmaduke Police are doing a good job.

The Marmaduke Police Department has received the 2016 Dodge truck & already has it equipped. It was purchased with GJF Grant of \$25,000.00 & the balance of \$10,000.00 paid out of city funds.

North 1st Street Bridge

The Mayor said work on the bridge on North 1st Street should begin soon.

Committee Reports

- A. Police-None
- B. Street-None
- C. Finance-None
- D. Fire-None

Green made a motion & 2nd by DeFries to adjourn. Motion carried.



Mayor



Treasurer/Recorder

EXH: 11
7/25/87
(13)

COPY
01487-61

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS

IN RE: ST. FRANCIS RIVER REGIONAL
WATER DISTRIBUTION DISTRICT - 70 5 22 88

ORDER ESTABLISHING WATER DISTRICT

On this 27th day of July, 1987, court being in session, there was presented to the court the petition bearing signatures of more than 100 qualified voters residing or owning lands situated within the boundaries of the proposed St. Francis River Regional Water Distribution District, a nonprofit, regional water distribution district, embraced within the territory described as follows:

Lands located in Craighead, Greene and Clay counties, as hereinafter more specifically set forth in Exhibit "A", which is attached hereto and incorporated into this order by reference.

Thereupon, the matter was presented to the court upon the petition as filed herein, the report of the Arkansas Soil and Water Conservation Commission as filed herein, the previous orders of this court setting this date for the hearing on said petition, the warning order as issued by the circuit court clerk herein, the proof of publication of the notice of hearing and warning order as filed herein, the testimony of witnesses, statements of counsel, and other things, facts and matters, from all of which the court does find as follows:

1. This court has jurisdiction over the subject matter of this proceeding pursuant to Ark. Stat. Ann. 21-1401, et. sec.
2. Notice of this hearing was made in the time and in the manner as provided by law and in accordance with this court's order of June 22, 1987, entered at June 23, 1987.
3. No person, entity or organization has filed any objection or opposition to the establishment of this proposed public, nonprofit, regional water distribution district, and no person, entity or organization appeared on the date set for the hearing of this matter and opposition to the establishment, although sufficient

ROBERT HILBERTON
& HOGUE
ATTORNEYS AT LAW
100 N. BROADWAY
FISHERS, MO
64424
PHONE: (417) 255-1121

1



opportunities were given by the court to hear any person with opposition to the granting of said petition.

4. There is a definite need for a water distribution system to service the above described territory and the residents within said territory, due to the overall poor quality and quantity of water which is available to the residents of the district as a whole.

5. Adequate plans have been made and formulated for the financing and construction of the regional water distribution district within the above described territory, and the construction and maintenance of a regional water distribution district within the above described territory will improve the overall standard of living and health and welfare of the residents of the territory, and contribute to the economic development of the territory. The court finds that the establishment of such a district would be in the best interest of the persons residing in or owning lands within the proposed district.

6. The relief as sought by the petitioners herein is hereby granted and a regional water distribution district embracing the lands as hereinabove described and as set forth in Exhibit "A" hereto should be and the same is hereby established, which district shall be known as the "St. Francis River Regional Water Distribution District," with all rights, powers and duties enumerated in Ark. Stats. Ann. 31-1401, et. seq., attendant thereto.

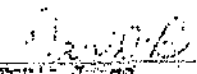
7. It is necessary and desirable that a board of directors for said regional water distribution district be initially established in a number in excess of three due to the large geographic area encompassed by the district. The court does find that in order that a board of directors consisting of seven members shall be established.

8. The following individuals, who are qualified voters residing within the district, are hereby appointed by the court to the board of directors of the St. Francis River Regional Water

COPIED, INDEXED
IN MICROFILM
EDITIONS BY LIT
RES. OF UNIVERSITY
OF MICHIGAN
SERIALS ACQUISITION
DEPARTMENT
300 N ZEEB RD
ANN ARBOR MI 48106
(616) 763-0718

Distribution District: Gerald Craig, John Davis, Bob Ridge, Tommy Kuster, Ronald Figuea, Sr., J. W. "Soapy" Thompson, and Billy Ja Tracer. Upon their organizational meeting, said board of directors shall draw for terms, with initial terms of the board being established as follows: Two terms ending December 31, 1988; two terms ending December 31, 1990; and three terms ending December 31, 1992.

IT IS, THEREFORE, by the court, considered, ordered, adjudged and decreed that the petition as filed herein should be granted and that there hereby is established a regional water distribution district to be known as the "St. Francis River Regional Water Distribution District;" that the initial board of directors shall consist of seven members; that the individuals as hereinabove named and set forth are appointed to the initial board of directors, with the terms to be established upon the organizational meeting of the board.


Circuit Judge

Presented by:

GOODWIN, HAMILTON & MOORE
P. O. Box 726
Faregould, Arkansas 72431-0726
Telephone (501) 239-2225

GOODWIN, HAMILTON
& MOORE
ATTORNEYS AT LAW
P.O. BOX 726
FAREGOULD,
ARKANSAS 72431
TELEPHONE
(501) 239-2225

3

LEGAL DESCRIPTION

ST. FRANCIS RIVER REGIONAL WATER DISTRIBUTION DISTRICT

1.) CRAIGHEAD COUNTY:

A.) TOWNSHIP 13 NORTH, RANGE 6 EAST:

ALL THAT PART OF SECTION 1 LYING WEST OF THE ST. FRANCIS RIVER, ALL OF SECTIONS 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 21, AND 22 AND THAT PART OF SECTIONS 12, 14, 23, 29, AND 33 LYING WEST OF THE ST. FRANCIS RIVER AND THE EAST HALF OF SECTIONS 17, 20, 29, AND 32 ALL IN TOWNSHIP 13 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CRAIGHEAD COUNTY, ARKANSAS.

B.) TOWNSHIP 13 NORTH, RANGE 5 EAST:

ALL OF SECTIONS 1 AND 12 IN TOWNSHIP 13 NORTH, RANGE 5 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CRAIGHEAD COUNTY, ARKANSAS.

C.) TOWNSHIP 14 NORTH, RANGE 6 EAST:

THAT PART OF SECTIONS 4, 9, 16, 22, 27, 28, 25 AND 36 LYING SOUTH AND WEST OF THE ST. FRANCIS RIVER, AND ALL OF SECTIONS 5, 6, 7, 8, 17, 18, 19, 20, 21, 28, 29, 32, 33, 34, AND 35, AND ALL THAT PART OF SECTIONS 30 AND 31 LYING SOUTH AND EAST THE BIG BAY DITCH ALL IN TOWNSHIP 14 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CRAIGHEAD COUNTY, ARKANSAS.

D.) TOWNSHIP 15 NORTH, RANGE 5 EAST:

ALL OF SECTIONS 1, 2, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, AND 36; AND ALL THAT PART OF SECTIONS 3, 10, AND 16 LYING SOUTH AND EAST OF THE ST LOUIS SOUTHWESTERN RAILROAD ALL IN TOWNSHIP 15 NORTH, RANGE 5 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CRAIGHEAD COUNTY, ARKANSAS.

E.) TOWNSHIP 15 NORTH, RANGE 6 EAST:

ALL OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, AND 32; AND ALL THAT PART OF SECTIONS 13, 23, 27, 33, AND 34 LYING WEST OF THE ST FRANCIS RIVER ALL IN TOWNSHIP 15 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CRAIGHEAD COUNTY, ARKANSAS.

PAGE 1 OF 4 PAGES

EXHIBIT "A"

11.) GREENE COUNTY:

A.) TOWNSHIP 16 NORTH, RANGE 6 EAST:

ALL OF SECTIONS 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 25, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, AND 36; AND THE EAST HALF OF SECTIONS 18, 19, 30, AND 31 AND THE SOUTHWEST QUARTER OF 31 ALL IN TOWNSHIP 16 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

B.) TOWNSHIP 16 NORTH, RANGE 7 EAST:

ALL OF SECTIONS 5, 6, 7, AND 18 AND THAT PART OF SECTIONS 4, 8, 17, 19, AND 30 LYING WEST OF THE ST. FRANCIS RIVER ALL IN TOWNSHIP 16 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

C.) TOWNSHIP 17 NORTH, RANGE 6 EAST:

ALL OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, AND 36, AND THAT PART OF THE NORTH ONE-QUARTER OF SECTION 19 LYING NORTH AND EAST OF THE CITY LIMITS OF THE CITY OF PARAGOULD AND THE NORTH ONE-QUARTER OF SECTION 20 AND THE EAST THREE-QUARTERS OF THE SOUTH THREE-QUARTERS OF SECTION 20 AND THE EAST HALF OF SECTION 29 AND ALL OF THAT PART OF THE EAST HALF OF SECTION 33 LYING NORTH OF THE CITY LIMITS OF THE CITY OF PARAGOULD, ARKANSAS, ALL IN TOWNSHIP 17 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

D.) TOWNSHIP 17 NORTH, RANGE 7 EAST:

ALL OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, AND 32 AND ALL THAT PART OF SECTIONS 12, 14, 22, 23, 27, AND 33 LYING NORTH AND WEST OF THE ST. FRANCIS RIVER, ALL IN TOWNSHIP 17 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

E.) TOWNSHIP 17 NORTH, RANGE 8 EAST:

ALL THAT PART OF SECTIONS 5 AND 6 LYING NORTH AND WEST OF THE ST. FRANCIS RIVER, ALL IN TOWNSHIP 17 NORTH, RANGE 8 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

F.) TOWNSHIP 18 NORTH, RANGE 5 EAST:

THE EAST HALF OF SECTIONS 24, 25, AND 36 ALL IN TOWNSHIP 18 NORTH, RANGE 5 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

GREENE COUNTY (CONTINUED)

G.) TOWNSHIP 18 NORTH, RANGE 6 EAST:

ALL THAT PART OF SECTIONS 19, 20, 21, 22, AND 23 LYING SOUTH OF THE NORTH 330 FEET THEREOF AND ALL OF SECTIONS 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, AND 36 AND ALL THAT PART OF SECTION 24 LYING SOUTH AND WEST OF THE CITY LIMITS OF THE CITY OF HAHNADUCKE ALONG THE WEST SIDE OF THE ST. LOUIS SOUTHWESTERN RAILROAD AND ALL THAT PART OF SECTION 24 LYING SOUTH AND EAST OF THE CITY LIMITS OF THE CITY OF HAHNADUCKE ALONG THE EAST SIDE OF THE ST. LOUIS SOUTHWESTERN RAILROAD, ALL IN TOWNSHIP 18 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

H.) TOWNSHIP 18 NORTH, RANGE 7 EAST:

ALL OF SECTIONS 9, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, AND 36 AND THAT PART OF SECTIONS 4, 5, 6, 7, AND 18 LYING SOUTH AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD, ALL IN TOWNSHIP 18 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

I.) TOWNSHIP 18 NORTH, RANGE 8 EAST:

ALL OF SECTIONS 16, 17, 18, 19, 20, 30, AND 31 AND THAT PART OF SECTIONS 15, 21, 29, AND 32 LYING NORTH AND WEST OF THE ST. FRANCIS RIVER ALL IN TOWNSHIP 18 NORTH, RANGE 8 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

J.) TOWNSHIP 19 NORTH, RANGE 7 EAST:

ALL THAT PART OF SECTION 33 LYING SOUTH AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD ALL IN TOWNSHIP 19 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

III.) CLAY COUNTY, ARKANSAS

A.) TOWNSHIP 18 NORTH, RANGE 7 EAST:

ALL OF SECTIONS 1, 2, 3, 10, 11, AND 12 IN TOWNSHIP 18 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CLAY COUNTY, ARKANSAS.

B.) TOWNSHIP 18 NORTH, RANGE 8 EAST:

ALL OF SECTIONS 6, 7, 8, 9, AND 10 AND THAT PART OF SECTIONS 11, AND 12 LYING NORTH AND WEST OF THE ST. FRANCIS RIVER IN CLAY COUNTY, ARKANSAS.

C.) TOWNSHIP 19 NORTH, RANGE 7 EAST:

ALL OF SECTIONS 25, 33, AND 36 AND THAT PART OF SECTION 26 LYING SOUTH OF THE CITY LIMITS OF THE CITY OF RECTOR AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD AND THAT PART OF SECTION 27 LYING SOUTH AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD AND THAT PART OF SECTION 34 LYING SOUTH AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD, ALL IN TOWNSHIP 19 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CLAY COUNTY, ARKANSAS.

PAGE 4 OF 4 PAGES

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT
ANNUAL STATEMENT OF LOAN ACCOUNT

SAVE THIS INFORMATION
FOR INCOME TAX PURPOSES

DESCRIPTION	ADVANCES	INTEREST	PRINCIPAL	TOTAL	T	INTEREST RATE	EFFECTIVE DATE
BEGIN LOAN BALNCE		960.30	233,673.64	234,633.94			010117
PAYMENT		1,280.40	855.60	2,136.00	R	05.0000	011017
PAYMENT		861.11	1,274.89	2,136.00	R	05.0000	020617
PAYMENT		868.11	1,247.89	2,136.00	R	05.0000	030617
PAYMENT		1,356.53	779.47	2,136.00	R	05.0000	041817
PAYMENT		943.21	1,192.79	2,136.00	R	05.0000	051817
PAYMENT		969.60	1,166.40	2,136.00	R	05.0000	061817
PAYMENT		933.51	1,202.49	2,136.00	R	05.0000	071817
PAYMENT		959.53	1,176.47	2,136.00	R	05.0000	081817
PAYMENT		954.53	1,181.47	2,136.00	R	05.0000	091817
PAYMENT		918.89	1,217.11	2,136.00	R	05.0000	101817
PAYMENT		944.95	1,191.68	2,136.00	R	05.0000	111817
PAYMENT		908.99	1,227.01	2,136.00	R	05.0000	121817
TOTAL LOAN PMTS		11,918.76	13,713.24	25,632.00			
TOTAL PAID ON ALL LOANS THIS YEAR		11,918.76	13,713.24	25,632.00			
LOAN ACTIVITY	0.00	11,918.76	13,713.24	25,632.00			
LOAN BALANCE	UNPD INTEREST	391.71 **	UNPD PRIN	219,960.40 **			
NXT AMT DUE	2,136.00		DATE DUE	011818			
PAYMENT STATUS	ON SCHEDULE						
TAXES PAID							
ALL LOAN ACTIVITY	0.00	11,918.76	13,713.24	25,632.00			
BORR BAL	UNPD INTEREST	391.71	UNPD PRIN	219,960.40			

*These unpaid balances may not reflect the total amount due to the Agency at payoff.

RECIPIENT'S/LENDER'S name, Street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. USDA RURAL DEVELOPMENT PHONE#(314)457-4310 4300 GOODFELLOW BLVD FC-1332 ST. LOUIS, MO 63120	CAUTION: The amount shown may not be fully deductible by you. Limits based on the tax amount and the cost and value of the secured property may apply. Also, you may only deduct interest in the extent it was incurred by you, actually paid by you, and not reimbursed by another person.	OMB NO. 1545-0901 2017 (Rev. June 2017) Form 1098	CORRECTED 01 checked Mortgage Interest Statement
1 Mortgage interest received from payor/borrower(s) \$ 0.00	2 Outstanding mortgage principal as of 12/31/2017 \$	3 Mortgage origination date \$	COPY 5 FOR PAYER/BORROWER The information in boxes 1 through 5 is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you overstated a deduction for this mortgage interest or for these points, reported in boxes 1 and 2, or because you didn't report the refund of interest (box 4) or because you claimed a non-deductible item.
4 Refund of overpaid interest \$	5 Mortgage insurance premiums \$	6 Points paid on purchase of principal residence \$	
7 Is address of property securing mortgage same as PAYER'S/BORROWER'S address? If "Yes", box is checked <input checked="" type="checkbox"/> If "No", see box 8 or 9, below	8 Address of property securing mortgage	9 If property securing mortgage has no address, below is the description of the property	
10 Number of mortgaged properties	11 Other IRS FORM 1098 DOES NOT APPLY TO YOUR LOAN		
Account number and instructions			



LOAN AGREEMENT
DL-25-10-WSSW

DATE: March 30, 2015

RECORDED BY: Sharon C. Catefield

WHEREAS, on the January 26, 1987, the ST FRANCIS RIVER REGIONAL WATER DISTRIBUTION DISTRICT ("Applicant"), made application to the ARKANSAS SOIL AND WATER CONSERVATION COMMISSION ("Commission") for the purpose of acquiring necessary financial assistance from the Commission in the form of a loan in the amount of \$120,000.00;

AND WHEREAS, on October 20, 1993, the Commission approved the above-described application for a loan not to exceed \$120,000.00 from the Water, Sewer and Solid Waste Fund, for the construction of three hundred miles of waterlines, two elevated storage tanks and two deep wells to serve eastern Clay and eastern Greene counties and east central Craighead County, to be distributed on an as-needed basis, and resolved to enter into an Agreement with Applicant to provide a loan from the Commission;

NOW THEREFORE: The Commission and the Applicant enter into this Loan Agreement.

Construction Provisions

In consideration of the aforesaid premises and the rendering of financial assistance by the State of Arkansas through the Commission to the Applicant, the Applicant promises to cooperate fully with the Commission in the construction of the above-stated project and shall make its books, records, and materials available to the Commission and/or the authorized representatives of the Commission for inspection and/or investigation at all reasonable times during construction and until completion.

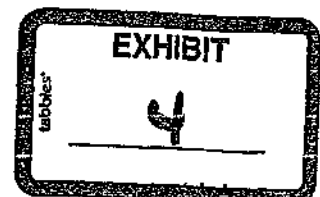
No funds will be disbursed prior to an obligation of funding from the USDA, Rural Development Administration.

Any disbursement of Commission's funds over Commission's cost share of project shall promptly be repaid to Commission.

The Applicant shall furnish the Commission an audit of project funds prepared by a Certified Public Accountant upon completion of the project.

Repayment Provisions

In consideration of the aforesaid premises and the rendering of financial assistance by the State of Arkansas through the Commission to the Applicant, the Applicant hereby promises to repay all sums disbursed the Applicant.



Should the Commission at any time find that the purposes of the Loan or uses of the funds provided thereby are not within the purposes and intents of the project as stated in the application received by the Commission, the entire principal plus interest at five percent (5%) per annum from the effective date of this agreement until date of repayment shall be repaid to the Commission.

The term of the Loan Agreement executed herein is deemed to be thirty (30) years. The interest rate shall be five percent (5%) per annum compounded annually as applied to the outstanding balance. Payments upon principal shall be waived for ten (10) years. The interest shall commence to accrue upon the unpaid balance of the loan ten (10) years from the effective date of this Agreement. An appropriate repayment schedule is attached hereto as Appendix A.

In the event that the project supported by this loan agreement is financed by multiple sources, repayment of the outstanding balance will be due in full at such time as any or all other related debts are restructured, including but not limited to refinancing or retirement. This will be required whether the status of the herein described loan is primary or secondary, and whether it is deferred or currently due.

For good cause the Commission may reduce, defer, suspend, or forgive payments due under the Loan Agreement herein executed. Such resolution may extend the term of the Loan Agreement herein executed. Low service rates by the Applicant are not sufficient cause for Commission resolution.

The Applicant may prepay in full or in part the Loan entered into under this Loan Agreement without penalty.

General Provisions

So long as the herein described loan remains outstanding, the Commission and/or its duly authorized representative shall be entitled to conduct such investigations concerning the construction, operation, maintenance, and management of the project, including but not limited to, all financial and accounting records, as necessary to keep the Commission fully advised of the use of the funds provided hereby and to insure the repayment of the same to the State of Arkansas.

An annual audit of the Applicant conducted by an independent certified public accountant will be required for the life of the Agreement. A copy of the audit report will be submitted to the Commission, as soon as possible, but in no case later than ninety (90) days following the end of the fiscal year covered by the audit. The audit will be prepared on the accrual method and in accordance with generally acceptable accounting principles. It shall include a management letter addressing the Applicant's

compliance with terms of this Agreement as well as stating the current water rate structures, the number of water and/or sewer customers and other requests made by the Commission.

Should the Commission be abolished, its rights and duties, including the right to repayment, under this loan agreement shall be assigned to its legal successor in interest of the State of Arkansas.

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision herein, and each such other provision shall be construed as though the invalid or unenforceable provision were not included herein.

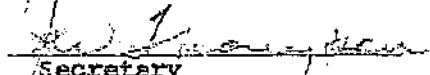
This Agreement supersedes all prior written or verbal understandings or agreements of the parties with respect to funding of this Project, and may not be effectively amended, changed, modified, altered or terminated without the written consent of the Commission and the Applicant. Addenda to reduce the principal amount of the loan may be executed in writing by the Commission Executive Director and the Applicant.

This Agreement shall be effective as of October 1, 1994.

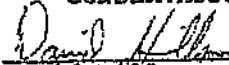
ST. FRANCIS RIVER REGIONAL
WATER DISTRIBUTION DISTRICT


Gerald E. Craig, President

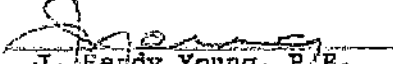
ATTEST:


Secretary

ARKANSAS SOIL AND WATER
CONSERVATION COMMISSION


David Hillman, Chairman

ATTEST:


J. Randy Young, P/E.
Executive Director/
Ex-Officio Secretary

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF Crawford

Before me on the 26 day of October, 1994, appeared GERALD E. CRAIG and J.W. Thompson (name), President and Secretary respectively, of the ST. FRANCIS RIVER REGIONAL WATER DISTRIBUTION DISTRICT, both known to me personally, and being authorized by resolution duly adopted by the District, subscribed the foregoing Loan Agreement DL-25-10-WSSW for all the intents and purposes therein contained.

Arlene Vansett Letic
NOTARY PUBLIC

MY COMMISSION EXPIRES:

12 - - 2002

(S E A L)

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF PULASKI

Before me on the 21st day of October, 1994, appeared DAVID HILLMAN HENDRIX, Chairman, and J. RANDY YOUNG, P.E., Executive Director/Ex-Officio Secretary, of the ARKANSAS SOIL AND WATER CONSERVATION COMMISSION, both known to me personally, and being authorized by resolution duly adopted by the Commission, subscribed the foregoing Loan Agreement DL-25-10-WSSW for all the intents and purposes therein contained.

Dianne Burnett
DIANNE BURNETT, NOTARY PUBLIC

MY COMMISSION EXPIRES:

6-10-2001



APPENDIX A

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LOAN AMORTIZATION CALCULATOR ARKANSAS SOIL AND WATER CONSERVATION COMMISSION

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Name of Project: ST. FRANCIS RIVER RDB Proj. Num. DL-25-10-486W

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Amount of Loan	\$120,000.00	Enter Interest Accrual Date	Day:	1
Amortization Period in Years	20		Month #:	10
Fixed Interest Rate	5.00%		Year:	104
Non-Deferred Annual Payment	\$9,629.11	Int. Begins	01-Oct-2004	
Is Principal Deferred?	Non.Yrs.? 0	1st Pmt. Due	01-Oct-2005	

=====

AMORTIZATION TABLE Deferred Annual Payment \$9.00

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Payment #	Payment	Current	Interest	Principal	Principal	Principal	Interest	
0	Date	Rate	Payment	Portion	Balance	To Date	Accumulated	
1	01-Oct-2005	5.00%	\$9,629.11	\$6,800.00	\$3,829.11	\$116,370.89	\$3,629.11	\$6,800.00
2	01-Oct-2006	5.00%	\$9,629.11	\$6,818.54	\$3,810.57	\$112,560.32	\$7,439.68	\$11,618.54
3	01-Oct-2007	5.00%	\$9,629.11	\$6,838.82	\$4,001.09	\$108,559.23	\$11,440.77	\$17,446.56
4	01-Oct-2008	5.00%	\$9,629.11	\$6,827.96	\$4,261.15	\$104,358.08	\$15,641.92	\$22,874.52
5	01-Oct-2009	5.00%	\$9,629.11	\$6,217.90	\$4,411.21	\$99,946.87	\$20,053.13	\$28,092.43
6	01-Oct-2010	5.00%	\$9,629.11	\$4,997.14	\$4,631.77	\$95,315.11	\$24,584.89	\$33,089.77
7	01-Oct-2011	5.00%	\$9,629.11	\$4,765.76	\$4,863.35	\$90,451.75	\$29,546.25	\$37,855.53
8	01-Oct-2012	5.00%	\$9,629.11	\$4,522.39	\$5,106.72	\$85,345.03	\$34,654.77	\$42,378.11
9	01-Oct-2013	5.00%	\$9,629.11	\$4,267.26	\$5,361.85	\$79,983.18	\$40,016.62	\$46,645.37
10	01-Oct-2014	5.00%	\$9,629.11	\$3,999.17	\$5,629.94	\$74,353.24	\$45,646.96	\$50,644.54
11	01-Oct-2015	5.00%	\$9,629.11	\$3,717.67	\$5,911.44	\$68,442.00	\$51,558.00	\$54,362.22
12	01-Oct-2016	5.00%	\$9,629.11	\$3,422.10	\$6,207.01	\$62,234.99	\$57,765.01	\$57,784.32
13	01-Oct-2017	5.00%	\$9,629.11	\$3,111.75	\$6,517.36	\$55,717.63	\$64,282.37	\$60,896.06
14	01-Oct-2018	5.00%	\$9,629.11	\$2,785.88	\$6,843.23	\$48,874.40	\$71,125.60	\$63,681.95
15	01-Oct-2019	5.00%	\$9,629.11	\$2,443.71	\$7,185.39	\$41,689.01	\$78,310.93	\$66,125.87
16	01-Oct-2020	5.00%	\$9,629.11	\$2,084.45	\$7,544.66	\$34,144.35	\$85,855.45	\$68,210.12
17	01-Oct-2021	5.00%	\$9,629.11	\$1,707.22	\$7,921.89	\$26,222.46	\$93,777.54	\$69,917.33
18	01-Oct-2022	5.00%	\$9,629.11	\$1,311.12	\$8,317.99	\$17,904.47	\$102,095.53	\$71,228.46
19	01-Oct-2023	5.00%	\$9,629.11	\$895.22	\$8,733.89	\$9,170.58	\$110,839.42	\$72,123.68
20	01-Oct-2024	5.00%	\$9,629.11	\$458.53	\$9,170.58	(\$0.00)	\$120,000.00	\$72,582.21

ADDENDUM #1
LOAN AGREEMENT DL-25-10-WSSW

DATE: March 30, 2015

RECORDED BY: Shaunice O'Leary

WHEREAS the Loan Agreement between the ST. FRANCIS RIVER REGIONAL WATER DISTRIBUTION DISTRICT ("Entity") and the ARKANSAS SOIL AND WATER CONSERVATION COMMISSION ("Commission") was executed on October 1, 1994, for a loan in a principal amount not to exceed \$120,000.00.

AND WHEREAS the Commission, at its meeting on October 21, 1994, approved additional funds in the amount of \$97,850.00 for well construction and related costs.

NOW THEREFORE, this Addendum shall establish the principle to be repaid in accordance with the Agreement as \$217,850.00, and the attached amortization schedule as the repayment schedule under the above-referenced Agreement.

In accordance with Arkansas Code Annotated §15-20-209 and Section 506.6 of the Commission rules, this additional loan is subject to a three percent (3%) administrative fee. An administrative fee in the amount of \$2,850.00 will be retained by the Commission at the time of disbursement.

Executed this 28th day of October, 1994.

ST. FRANCIS RIVER REGIONAL
WATER DISTRIBUTION DISTRICT

Gerald E. Craig
Gerald E. Craig, President

ATTEST:

J. W. Thompson
J. W. Thompson, Secretary

ARKANSAS SOIL AND WATER
CONSERVATION COMMISSION

David Hillman
David Hillman, Chairman

ATTEST:

J. Randy Young
J. Randy Young, P.E.
Executive Director/
EX-Officio Secretary

ACKNOWLEDGMENT

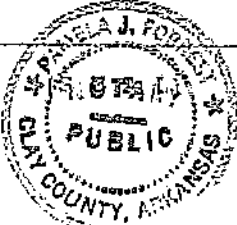
STATE OF ARKANSAS

COUNTY OF Way

Before me on the 28 day of October, 1994, appeared GERALD E. CRAIG and J. W. THOMPSON, President and Secretary respectively, of the ST. FRANCIS RIVER REGIONAL WATER DISTRIBUTION DISTRICT, both known to me personally, and being authorized by resolution duly adopted by the District, subscribed the foregoing Addendum No. 1 to Loan Agreement DL-25-10-WSSW for all the intents and purposes therein contained.

Pamela J. Forrest
NOTARY PUBLIC

MY COMMISSION EXPIRES: 2-9-2003



ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF PULASKI

Before me on the 22nd day of November, 1994, appeared DAVID HILLMAN, Chairman, and J. RANDY YOUNG, P.E., Executive Director/Ex-Officio Secretary, of the ARKANSAS SOIL AND WATER CONSERVATION COMMISSION, both known to me personally, and being authorized by resolution duly adopted by the Commission, subscribed the foregoing Addendum No. 1 to Loan Agreement DL-25-10-WSSW for all the intents and purposes therein contained.

Dianne Burnett
DIANNE BURNETT, NOTARY PUBLIC

MY COMMISSION EXPIRES:



APPENDIX A

LOAN AMORTIZATION CALCULATOR

ARKANSAS SOIL AND WATER CONSERVATION COMMISSION

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=====
Name of Project;   ST. FRANCIS RIVER RDC           Proj. Num.   DL-25-19-NSSM
=====
REVISION #1
Amount of Loan           $217,850.00           Enter Interest Accrual Date
Amortization Period in Years      20           Day:           1
Fixed Interest Rate           5.00%           Month #:      10
Non-Deferred Annual Payment      $17,480.85           Year:         104
Is Principal Deferred?           Yes. Yrs.?      0           Int. Begins   01-Oct-2004
                                           1st Pmt. Due  01-Oct-2005
=====

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AMORTIZATION TABLE		Deferred Annual Payment						
		\$0.00						
Payment #	Date	Current Rate	Interest Portion	Principal Portion	Principal Balance	Principal Paid To Date	Interest Accumulated To Date	
1	01-Oct-2005	5.00%	\$17,480.85	\$10,892.50	\$6,588.35	\$211,261.65	\$6,588.35	\$10,892.50
2	01-Oct-2006	5.00%	\$17,480.85	\$10,563.08	\$6,917.77	\$204,343.89	\$13,506.11	\$21,455.58
3	01-Oct-2007	5.00%	\$17,480.85	\$10,217.19	\$7,263.65	\$197,080.23	\$20,769.77	\$31,672.79
4	01-Oct-2008	5.00%	\$17,480.85	\$9,854.01	\$7,626.84	\$189,453.40	\$28,396.60	\$41,526.79
5	01-Oct-2009	5.00%	\$17,480.85	\$9,472.67	\$8,008.18	\$181,445.22	\$36,404.78	\$50,999.46
6	01-Oct-2010	5.00%	\$17,480.85	\$9,072.26	\$8,408.59	\$173,036.63	\$44,813.37	\$60,071.72
7	01-Oct-2011	5.00%	\$17,480.85	\$8,651.83	\$8,829.02	\$164,207.62	\$53,642.38	\$68,723.55
8	01-Oct-2012	5.00%	\$17,480.85	\$8,210.39	\$9,270.47	\$154,937.15	\$62,912.85	\$76,933.93
9	01-Oct-2013	5.00%	\$17,480.85	\$7,746.86	\$9,733.99	\$145,203.16	\$72,646.84	\$84,680.79
10	01-Oct-2014	5.00%	\$17,480.85	\$7,260.16	\$10,220.69	\$134,982.47	\$82,867.53	\$91,940.95
11	01-Oct-2015	5.00%	\$17,480.85	\$6,749.12	\$10,731.72	\$124,250.75	\$93,599.25	\$98,690.07
12	01-Oct-2016	5.00%	\$17,480.85	\$6,212.54	\$11,268.31	\$112,982.44	\$104,867.56	\$104,902.61
13	01-Oct-2017	5.00%	\$17,480.85	\$5,649.12	\$11,831.73	\$101,150.71	\$116,699.29	\$110,531.73
14	01-Oct-2018	5.00%	\$17,480.85	\$5,057.54	\$12,423.31	\$88,727.40	\$129,122.60	\$115,609.27
15	01-Oct-2019	5.00%	\$17,480.85	\$4,436.37	\$13,044.48	\$75,682.92	\$142,167.08	\$120,043.64
16	01-Oct-2020	5.00%	\$17,480.85	\$3,784.15	\$13,696.70	\$61,986.22	\$155,863.78	\$123,829.78
17	01-Oct-2021	5.00%	\$17,480.85	\$3,099.31	\$14,381.54	\$47,604.68	\$170,245.32	\$126,929.09
18	01-Oct-2022	5.00%	\$17,480.85	\$2,380.23	\$15,100.61	\$32,504.07	\$185,345.93	\$129,389.33
19	01-Oct-2023	5.00%	\$17,480.85	\$1,625.20	\$15,855.64	\$16,648.43	\$201,201.57	\$130,934.53
20	01-Oct-2024	5.00%	\$17,480.85	\$332.42	\$16,648.43	\$0.00	\$217,850.00	\$131,766.95

ADDENDUM #2
LOAN AGREEMENT DL-25-10-788W

DATE: March 30, 2015

RECORDED BY: Sharonica
Outland

WHEREAS the Loan Agreement between the ST. FRANCIS RIVER REGIONAL WATER DISTRIBUTION DISTRICT ("Entity") and the ARKANSAS SOIL AND WATER CONSERVATION COMMISSION ("Commission") was executed on October 1, 1994, for a loan in a principal amount not to exceed \$120,000.00; and

WHEREAS the Commission, at its meeting on October 21, 1994, approved additional funds in the amount of \$97,850.00 for well construction and related costs establishing the principle to be repaid in accordance with the Agreement as \$217,850.00;

AND WHEREAS the Commission, at its meeting on September 20, 1995, approved additional funds in the amount of \$154,500.00 as a deferred loan from the Water, Sewer and Solid Waste Fund for the fourth test well and a production well at the Project site; approval was contingent upon the Entity establishing and maintaining a depreciation reserve fund;

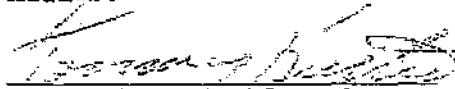
NOW THEREFORE, this Addendum shall establish the principle to be repaid in accordance with the Agreement as \$372,350.00, and the attached amortization schedule as the repayment schedule under the above-referenced Agreement.

In accordance with Arkansas Code Annotated §15-20-209 and Section 506.6 of the Commission rules, this additional loan is subject to a three percent (3%) administrative fee. An administrative fee in the amount of \$4,500.00 will be retained by the Commission at the time of disbursement.

Executed this 21 day of October, 1995.

ST. FRANCIS RIVER REGIONAL
WATER DISTRIBUTION DISTRICT

ATTEST:



Tommy Kuater, Secretary

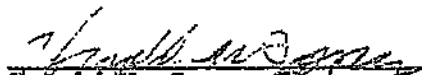
Tommy Kuater, Vice President


Gerald E. Craig, President

ARKANSAS SOIL AND WATER
CONSERVATION COMMISSION

ATTEST:


J. Randy Young, P.E.
Executive Director/
Ex-Officio Secretary


Hafold W. Jones, Chairman

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF Craighead

Before me on the 31 day of October 31, 1995, ~~1995~~ 1995, Kueter appeared GERALD E. CRAIG and ~~J. W. THOMPSON~~, President and Vice-President ~~Secretary~~ respectively of the ^{ETC} ST. FRANCIS RIVER REGIONAL WATER DISTRIBUTION DISTRICT, both known to me personally, and being authorized by resolution duly adopted by the District, subscribed the foregoing Addendum No. 2 to Loan Agreement DL-25-10-WSSW for all the intents and purposes therein contained.

[Handwritten Signature]
NOTARY PUBLIC

Craighead County

MY COMMISSION EXPIRES:

12-1-2002

(S E A L)

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF PULASKI

Before me on the 14th day of November, 1995, appeared HAROLD W. JONES and J. RANDY YOUNG, P.E., Chairman and Executive Director/Ex-Officio Secretary respectively of the ARKANSAS SOIL AND WATER CONSERVATION COMMISSION, both known to me personally, and being authorized by resolution duly adopted by the Commission, subscribed the foregoing Addendum No. 2 to Loan Agreement DL-25-10-WSSW for all the intents and purposes therein contained.

[Handwritten Signature]
DIANNE BURNETT, NOTARY PUBLIC

MY COMMISSION EXPIRES:

6-16-2006

(S E A L)
PULASKI COUNTY, ARK.

APPENDIX A

LOAN AMORTIZATION CALCULATOR ARKANSAS SOIL AND WATER CONSERVATION COMMISSION

Name of Project: ST. FRANCIS RIVER ROO Proj. Num. DL-25-16-WSSM
 Amount of Loan \$372,350.00 Enter Interest Accrual Date
 Amortization Period in Years 20 Day: 1
 Fixed Interest Rate 5.00% Month #: 10
 Non-Deferred Annual Payment \$29,878.33 Year: 104
 Int. Begins 01-Oct-2005
 Is Principal Deferred? No Yrs.? 0 Ist Pmt. Due 01-Oct-2005

AMORTIZATION TABLE Deferred Annual Payment \$0.00

Payment #	Payment Date	Current Rate	Current Payment	Interest Portion	Principal Portion	Principal Balance	Principal Paid To Date	Interest Accumulated To Date
0	01-Oct-2005	5.00%	\$29,878.33	\$18,617.30	\$11,260.83	\$361,089.17	\$11,260.83	\$18,617.30
1	01-Oct-2006	5.00%	\$29,878.33	\$18,054.46	\$11,823.87	\$349,265.30	\$23,084.70	\$36,671.76
2	01-Oct-2007	5.00%	\$29,878.33	\$17,463.27	\$12,415.06	\$336,850.24	\$35,499.76	\$54,135.22
3	01-Oct-2008	5.00%	\$29,878.33	\$16,842.51	\$13,035.82	\$323,814.43	\$48,535.57	\$70,977.74
4	01-Oct-2009	5.00%	\$29,878.33	\$16,190.72	\$13,687.61	\$310,126.82	\$62,223.18	\$87,168.46
5	01-Oct-2010	5.00%	\$29,878.33	\$15,506.34	\$14,371.99	\$295,754.83	\$76,595.17	\$102,674.60
6	01-Oct-2011	5.00%	\$29,878.33	\$14,787.74	\$15,090.59	\$280,664.25	\$91,685.75	\$117,462.54
7	01-Oct-2012	5.00%	\$29,878.33	\$14,033.21	\$15,845.11	\$264,819.13	\$107,530.87	\$131,495.75
8	01-Oct-2013	5.00%	\$29,878.33	\$13,240.96	\$16,637.37	\$249,181.76	\$124,168.24	\$144,736.71
9	01-Oct-2014	5.00%	\$29,878.33	\$12,409.09	\$17,469.24	\$233,712.52	\$141,637.48	\$157,145.80
10	01-Oct-2015	5.00%	\$29,878.33	\$11,535.53	\$18,342.79	\$218,369.72	\$159,980.18	\$168,681.42
11	01-Oct-2016	5.00%	\$29,878.33	\$10,618.49	\$19,259.84	\$203,109.99	\$179,240.01	\$179,299.91
12	01-Oct-2017	5.00%	\$29,878.33	\$9,655.50	\$20,222.83	\$187,887.16	\$199,462.84	\$188,955.41
13	01-Oct-2018	5.00%	\$29,878.33	\$8,644.36	\$21,233.97	\$172,653.19	\$220,696.81	\$197,599.77
14	01-Oct-2019	5.00%	\$29,878.33	\$7,582.66	\$22,295.67	\$157,357.52	\$242,992.48	\$205,152.43
15	01-Oct-2020	5.00%	\$29,878.33	\$6,467.88	\$23,410.45	\$141,947.07	\$266,402.93	\$211,650.31
16	01-Oct-2021	5.00%	\$29,878.33	\$5,297.35	\$24,580.97	\$126,366.10	\$290,983.90	\$216,947.66
17	01-Oct-2022	5.00%	\$29,878.33	\$4,068.30	\$25,810.02	\$110,556.07	\$316,793.93	\$221,015.97
18	01-Oct-2023	5.00%	\$29,878.33	\$2,777.80	\$27,100.52	\$94,455.55	\$343,894.45	\$223,793.77
19	01-Oct-2024	5.00%	\$29,878.33	\$1,422.76	\$28,455.55	\$0.00	\$372,350.00	\$225,216.55

ST. FRANCIS RIVER RWDD						
ASWCC LOAN #			WSSW-28-10-D			
ASWCC PROJECT #			WRD-001-864			
AMORTIZATION SCHEDULE - 20 YEARS - ANNUAL PAYMENTS						
Loan Closing Date	Interest Date	First Payment Date	Loan Term Years	Annual Interest Rate	as of date: Total Principal	Mar 1, 2015 Annual Payment
Oct 1, 1994	Oct 1, 2004	Oct 1, 2003	20	6.00%	\$ 372,350.00	\$ 29,878.33
320	2008	10	1			
Period	Date	Annual Payment Amount	Interest	Principal	Remaining Balance	Date Paid
					\$ 372,350.00	
1	Oct 1, 2005	\$ 29,878.33	\$ 18,617.50	\$ 11,260.83	361,089.17	PD 8/18/2005
2	Oct 1, 2006	29,878.33	18,084.43	11,823.87	349,265.30	PD 9/11/2006
3	Oct 1, 2007	29,878.33	17,463.27	12,415.06	336,850.24	PD 8/10/2007
4	Oct 1, 2008	29,878.33	16,842.61	13,035.72	323,814.52	PD 8/18/2008
5	Oct 1, 2009	29,878.33	16,190.72	13,687.61	310,126.91	PD 8/14/2009
6	Oct 1, 2010	29,878.33	15,525.34	14,371.89	295,754.82	PD 8/13/2010
7	Oct 1, 2011	29,878.33	14,787.74	15,090.59	280,664.23	PD 8/12/2011
8	Oct 1, 2012	29,878.33	14,033.21	15,845.12	264,819.11	PD 10/8/2012
9	Oct 1, 2013	29,878.33	13,240.65	16,637.67	248,181.44	PD 9/27/2013
10	Oct 1, 2014	29,878.33	12,408.09	17,469.24	230,712.60	PD 8/22/2014
11	Mar 30, 2015	238,448.27	8,738.77	239,712.00	-	PD 3/28/2015
TOTALS		\$ 833,231.87	\$ 162,891.67	\$ 372,350.00		

June 21, 2016

Good evening, my name is Brad Nelson and I am a member of the Board of the St. Francis River Regional Water Distribution District.

I would like to thank you for allowing us this time to speak to you.

As briefly as possible, I would like to give you some background on our Water District. In the early 1980's, a man and his wife, "Soapy and Eugenia Thompson," from the Neighbors Corner community, saw a need for our friends and neighbors to have access to Clean, Safe, Reliable and Affordable Drinking water. In 1987, the Circuit Court of Greene County approved the formation of the Water District and its boundaries. On May 28, 1987, the city of Marmaduke, along with other cities and towns that were connected to our legal boundaries, received a letter notifying them of our formation. There was no response from Mayor Taylor of Marmaduke. Thirteen years after the district was formed, which would have been in early 2000, the district started selling water to eager customers.

Our board is made up of seven volunteers, we don't get paid, don't get free water, don't go on any paid trips, we get Ice Cream and Strawberries once a month, that's it. We serve our communities for the same reason you do, we each care about the people who live in our community. We don't have any "Bench Warmers" on this Board. We all work and participate along with our four employees to the make this District successful. Our employees are Tonya Thompson, Michele Toone, Allen Froman, all from right here in Marmaduke and Donald Pool Jr, from the Bard Community. Our four employees receive no benefits, insurance, retirement, or overtime. They receive a check every week for providing water 24/7, 365 days a year. They are all very dedicated!

Our original loan was designed for a system with a minimum of 1025 customers to adequately fulfill its debt obligation. We have 971 current customers served by 320 miles of pipe. That's equivalent to 3 customers for every mile of pipe. Water sales are the only means of income we have, no sales tax, no property tax. The gallons of water sold are all we have.

The fact is we need every new customer we can get. You are all aware of our situation in the rural areas, when some dies or moves off, a lot of homes are torn down and destroyed, that revenue is gone. This situation is not just limited to us locally. Small Rural Communities all over America are dying off fast. Those that want to stay and live in those areas are left to bear the cost. We estimate that our water sales to ARI would be like adding fifty houses to our system, which would be a huge help to our district.

We know that mistakes have been made on both sides. You might ask, why we haven't noticed this before. We could ask why you haven't noticed this before. We are not here to point fingers; we are here to simply resolve an issue.



June 21, 2016

Tonight your mayor is going to tell you that on March 15th, this year, when he proposed to you after seeking the advice of your City Attorney and you voted on and approved the agreement between the City of Marmaduke and St. Francis Water District, that maybe that was a "Hasty Decision" on his part.

The fact is, your Mayor is under tremendous political pressure from ARI to try and take away our right to serve water to ARI facilities that are inside our well defined utility boundary. ARI is pressuring your mayor to force our Water District to fight this battle in Court.

Your Mayor is being advised by Attorneys representing ARI as well as the Arkansas Municipal League that since we no longer have a USDA Loan, now we can be encroached upon.

Your Mayor has told me that ARI will provide all funds necessary if the City of Marmaduke will force us to take this to court. Our water district does not have the money necessary to fight the "Big Boys". However, we as a Water Board will have no choice but to do what we can to protect our customers of the Water District. The fact is, we choose to refinance our USDA loan with a local bank, "First National Bank of Paragould" to save our customers money, a lot of money. We went from a forty year loan at 5% interest to 3.5% interest on a loan that had a Three Million Dollar balance with twenty four years of monthly payments remaining. Should the fact that we were being good stewards of our customer's money and trust jeopardize the well being of our district?

June 21, 2016

Two ARI representatives' came and met with our board on January 19th of this year. After that meeting, one of the gentlemen was quoted as saying "that thing is just run by a bunch of Farmers."

We take that as being a Derogatory Statement. We hope you have a different opinion of us and the values we stand for.

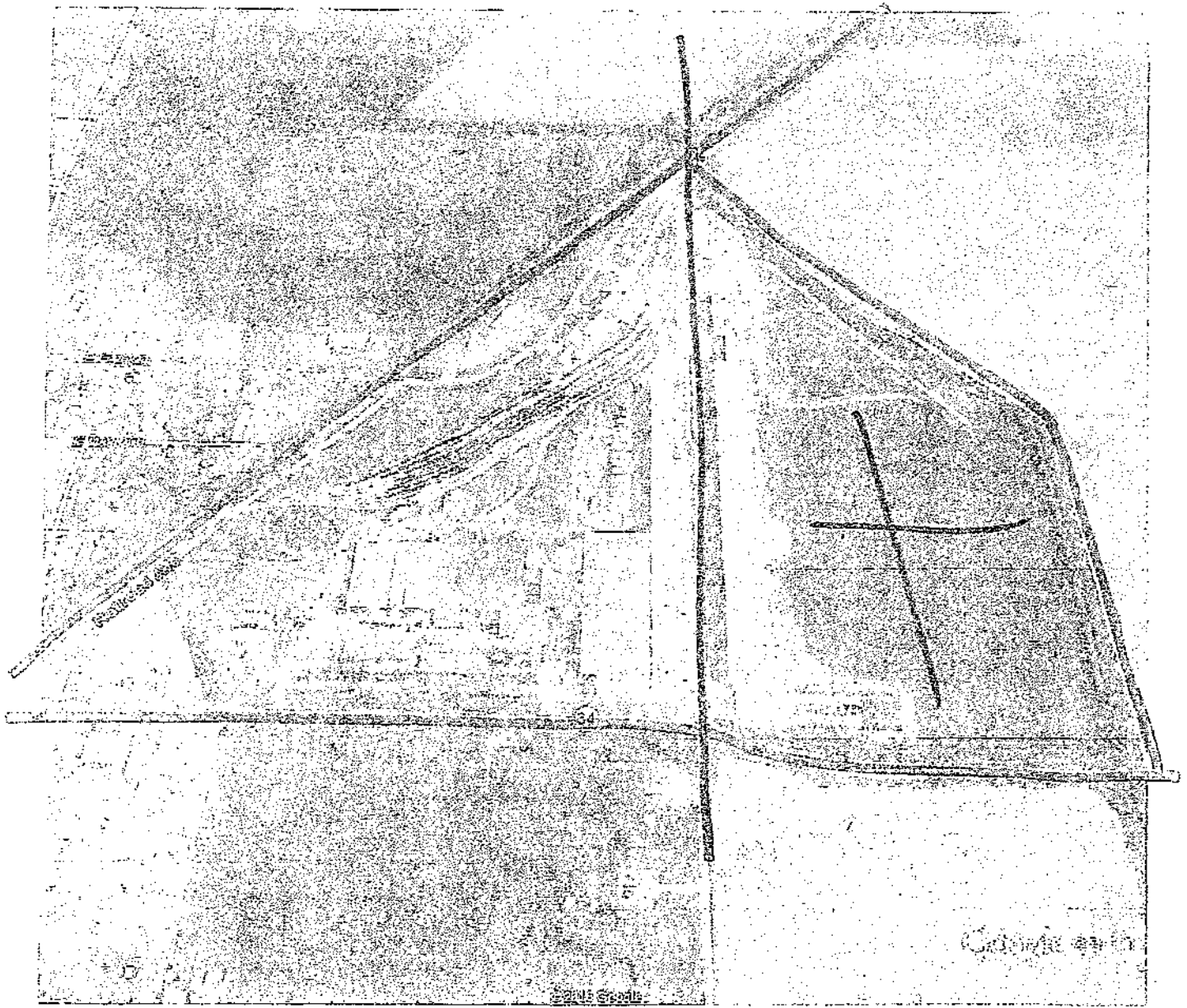
If ARI Bullies this situation into Court, there are going to be two losers, the City of Marmaduke and St. Francis Water District. This couldn't keep from causing hard feelings between friends and neighbors.

I visited with you Mayor last Friday. I explained to him that I hoped this City Council thought the agreement they made in March was the "Right" thing to do then and nothing has changed.

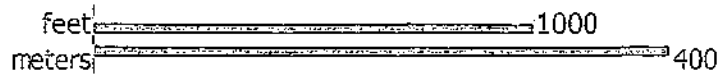
This shouldn't be a legal technicality about who you borrow money from.

This is a "Right or Wrong" issue. This is all about "Values".

We thank you for your time and service to our community.



Google earth



St. Francis River Regional Water District

129 Hwy 135 South
P.O. Box 818
Paragould, Arkansas 72451-0818
Telephone: 870-240-8613
Fax: 870-239-5487

TERMS OF OFFICE

DIRECTOR	TITLE	BEGINNING OF TERM	END OF TERM
Ronald Pigue, Sr.	President	7/27/1987	12/31/2017
Thomas L. Kueter	Vice Pres	7/27/1987	12/31/2017
Danny Dortch	Secretary	2/5/1999	12/31/2018
Gerald Eaker	Member	7/17/1994	12/31/2018
Brad Nelson	Member	3/23/1999	12/31/2016
James Shelton	Member	1/18/1999	12/31/2017
Kelly McGaughey	Member	5/22/1995	12/08/2013 (Resigned)
Gregg Garner	Member	3/17/2014	12/31/2016



Arkansas
Soil and Water
Conservation Commission

J. Randy Young
Director

One Capitol Mall
Suite 30
Little Rock, Arkansas 72201
May 28, 1987

Phone 501-371-1831

*
The Honorable Donald Taylor, Mayor
City of Narmaduke
P.O. Box 208
Narmaduke, Arkansas 72443

Dear Mayor Taylor:

One of the responsibilities of the Soil and Water Conservation Commission is to report to the circuit courts on the formation of a regional water distribution district under the Regional Water Distribution District Act.

In reviewing the proposed St. Francis River Regional Water Distribution District, the Commission has learned that your city is not included in the proposed district.

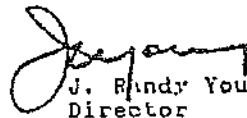
There are certain benefits which can be gained from membership. The District could provide comprehensive planning of water resources in the region. The planning would be beneficial to the region's long term growth. The District could facilitate planning for emergencies such as loss of a well and undertake to provide solutions such as interconnection of systems.

Two powers which a Regional District does not possess are: 1) taxation, and 2) required connection to the regional system.

The Commission strongly supports modification of the district boundaries to create a truly regional entity. I recommend that you have your service area included in the St. Francis River Regional Water Distribution District.

If your city desires more information about the St. Francis Regional Water District, you may contact Mr. H.T. Moore, Attorney for the District, P.O. Box 726, Paragould, Arkansas 72451, 239-2225 or the Soil and Water Conservation.

Very truly yours,


J. Randy Young, P.E.
Director

JRY:ph

An Equal Opportunity Employer

EXHIBIT "A"

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFF

VS.

No. 4CV2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

AFFIDAVIT OF VENETA HARGROVE

Before me, the undersigned authority, personally appeared Veneta Hargrove, who after being duly sworn, stated as follows:

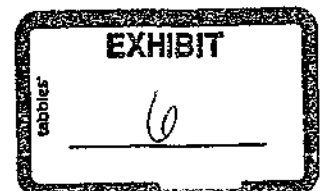
1. My name is Veneta Hargrove and I serve as the Administrative Assistant for the City of Marmaduke, Arkansas. I have held this position since 1999. I am over eighteen years of age and competent to testify in court. The facts contained in this affidavit are based on personal knowledge. attach as exhibits true and correct copies of business records that reflect the water sales. I have reviewed copies of records that are maintained in the ordinary course of business that reflect the number of gallons of water that the City has sold annually, and the records are true and correct.

2. In 2005, the City sold 51,526,322 gallons of water.

3. In 2006, the City began providing water to ARI's East Plant. The City sold 38,787,682 gallons of water that year, resulting in a water usage decrease of 24.7% compared to 2005.

4. In 2015, the City sold 53,469,434 gallons of water.

5. In 2016, the City began providing water to ARI's Refurb Plant. The City sold



A/R Trans List Selectives

Number	BeginPostDate	EndPostDate	BeginTranDate	EndTranDate	Code	Delete Transactions On this report from History Now
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002480	12-16-05	33.33	B	11.96	0.90	7.77	10.21	0.00	0.15	3.00	0.00	2550 00
002485	12-16-05	31.99	B	10.20	0.21	7.02	10.21	0.00	0.15	3.00	0.00	0 00
002490	12-16-05	34.30	B	23.77	1.72	15.33	10.21	0.00	0.15	3.00	0.00	11630 00
002495	12-16-05	31.99	B	10.20	0.21	7.02	10.21	0.00	0.15	3.00	0.00	1210 00
002501	12-16-05	34.32	B	14.50	1.25	10.92	02.25	0.00	0.15	3.00	0.00	1620 00
002503	12-16-05	32.19	B	14.03	1.02	9.35	10.21	0.00	0.15	3.00	0.00	3710 00
002507	12-16-05	32.76	B	14.50	1.25	10.92	20.95	0.00	0.15	3.00	0.00	4750 00
002510	12-16-05	37.51	B	14.03	1.03	5.14	10.21	0.00	0.15	3.00	0.00	3550 00
002520	12-16-05	34.32	B	23.74	1.72	15.44	10.21	0.00	0.15	3.00	0.00	11050 00
002525	12-16-05	33.53	B	28.13	1.92	17.03	10.21	0.00	0.30	3.00	0.00	5150 00
002530	12-16-05	44.24	B	17.50	1.34	11.54	10.21	0.00	0.15	3.00	0.00	5570 00
002575	12-16-05	50.17	B	21.34	1.50	13.87	10.21	0.00	0.15	3.00	0.00	2590 00
002580	12-16-05	33.82	B	14.75	1.11	5.50	10.21	0.00	0.15	3.00	0.00	3250 00
000950	12-29-05	31.42	1	14.80	1.26	10.92	13.35	0.00	0.15	3.00	0.00	0 00
001758	12-29-05	35.00	1	12.59	0.94	8.20	10.13	0.00	0.15	2.35	0.00	0 00
000760	12-29-05	43.13	1	17.23	1.30	11.24	10.21	0.00	0.15	3.00	0.00	0 00
000470	12-29-05	35.24	1	13.03	0.92	6.47	10.21	0.00	0.15	3.00	0.00	0 00
001378	12-29-05	33.22	1	11.90	0.25	7.74	5.70	0.00	0.14	2.25	0.00	0 00
000510	12-29-05	31.95	1	10.80	0.21	7.02	10.21	0.00	0.15	3.00	0.00	0 00
Total	23771.54			774.79		2423.13		0.00	67.05	1033.00	0.00	5152522
		11933.21		7480.32								

A/R Trans List Selectives

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002433	12-19-06	38.61	B	10.20	0.81	8.64	10.21	0.00	0.15	3.00	0.00	1600
002435	12-18-06	45.83	B	17.35	1.30	18.83	10.21	0.00	0.15	3.00	0.00	3210
002460	12-19-06	38.81	B	19.57	1.02	10.86	10.21	0.00	0.15	3.00	0.00	3320
002465	12-18-06	40.32	B	14.41	1.08	11.83	10.21	0.00	0.15	3.00	0.00	3720
002475	12-18-06	43.74	B	16.20	1.22	12.96	10.21	0.00	0.15	3.00	0.00	4570
002480	12-18-06	38.61	B	10.80	0.81	8.64	10.21	0.00	0.15	3.00	0.00	1850
002485	12-18-06	38.61	B	10.80	0.81	8.64	10.21	0.00	0.15	3.00	0.00	700
002490	12-18-06	38.61	B	10.80	0.81	8.64	10.21	0.00	0.15	3.00	0.00	870
002500	12-19-06	38.42	B	11.77	0.88	5.41	10.21	0.00	0.15	3.00	0.00	2480
002501	12-18-06	66.90	B	16.80	1.26	13.44	32.25	0.00	0.15	3.00	0.00	1550
002505	12-18-06	39.80	B	14.10	1.06	11.28	10.21	0.00	0.15	3.00	0.00	3570
002510	12-18-06	35.05	B	13.70	1.03	10.96	10.21	0.00	0.15	3.00	0.00	3320
002520	12-19-06	37.19	B	12.71	0.95	10.17	10.21	0.00	0.15	3.00	0.00	2910
002525	12-18-06	59.03	B	24.31	1.82	19.43	10.21	0.00	0.30	3.00	0.00	5250
002530	12-18-06	38.39	B	14.20	1.07	11.36	10.21	0.00	0.15	3.00	0.00	3620
002575	12-18-06	47.90	B	18.42	1.38	14.74	10.21	0.00	0.15	3.00	0.00	6100
002580	12-18-06	43.96	B	15.32	1.22	13.06	10.21	0.00	0.15	3.00	0.00	4620
000050	12-28-06	34.00-	1	16.80-	1.26-	13.44-	19.88-	0.00	0.15-	3.00-	0.00	0
000615	12-28-06	44.95-	1	18.83-	1.26-	13.47-	10.23-	0.00	0.15-	3.01-	0.00	0
Total	29380.68			13383.60	666.87	11565.82	2206.90	0.00	59.86	399.73	0.00	118211272

Total showing used 118,211,272 gallons

Account # 125 misread – adjustment take off 1,000,850 gallons

Account #80 misread – adjustment take off 69,422,740 gallons

Actual used 38,787,682 gallons

A/R Trans List Selectives

Number	BeginPostDate	EndPostDate	BeginTranDate	EndTranDate	Code	Delete Transactions On this report from History Now							
	010115	123115											
Route	<input checked="" type="checkbox"/> Print From History		<input type="checkbox"/> To Printer	<input type="checkbox"/> Cancel	<input type="checkbox"/> To Screen								
002460	12-17-15	44.88	B	16.96	1.41	14.05	11.66	0.00	0.30	0.00	0.00	3350	00
002465	12-17-15	53.41	B	21.66	2.06	17.73	11.66	0.00	0.30	0.00	0.00	5100	00
002473	12-17-15	37.62	B	13.25	1.28	11.15	11.66	0.00	0.30	0.00	0.00	50	00
002480	12-17-15	43.62	B	13.11	1.22	15.73	11.66	0.00	0.30	0.00	0.00	4130	00
002485	12-17-15	34.42	B	22.12	2.11	12.17	11.66	0.00	0.30	0.00	0.00	5440	00
002490	12-17-15	37.83	B	13.86	1.27	11.24	11.66	0.00	0.30	0.00	0.00	2040	00
002495	12-17-15	37.62	B	13.25	1.26	11.15	11.66	0.00	0.30	0.00	0.00	1760	00
002501	12-17-15	73.64	B	21.27	2.02	17.20	32.85	0.00	0.30	0.00	0.00	1720	00
002510	12-17-15	48.44	B	19.55	1.86	16.07	11.66	0.00	0.30	0.00	0.00	4290	00
002520	12-17-15	41.75	B	15.45	1.47	12.97	11.66	0.00	0.30	0.00	0.00	2900	00
002525	12-17-15	76.43	B	33.35	3.17	27.65	11.66	0.00	0.30	0.00	0.00	6430	00
002530	12-17-15	44.17	B	16.74	1.53	13.88	11.66	0.00	0.30	0.00	0.00	3270	00
002576	12-17-15	58.06	B	22.61	2.14	18.45	11.66	0.00	0.30	0.00	0.00	5650	00
002580	12-17-15	44.84	B	17.10	1.62	14.16	11.66	0.00	0.30	0.00	0.00	3400	00
001857	12-23-15	144.77	1	50.37	4.84	42.25	35.72	0.00	0.32	0.00	10.03	0	00
000795	12-23-15	11.20	3	0.00	0.00	11.20	0.00	0.00	0.00	0.00	0.00	0	00
000550	12-23-15	11.20	3	0.00	0.00	11.20	0.00	0.00	0.00	0.00	0.00	0	00
000623	12-30-15	52.97	1	19.33	1.84	16.12	12.55	0.00	0.32	0.00	2.58	0	00
000978	12-30-15	63.83	1	25.84	2.42	21.43	11.01	0.00	0.14	0.00	2.73	0	00
001750	12-30-15	73.00	1	26.50	2.52	22.30	23.32	0.00	0.60	0.00	3.76	0	00
Total	2768.47			144.23		644.83		15.33		0.00	130.93		53469434
		1196.65			375.76			0.00		0.00			

A/R Trans List Selectives

Number	BeginPostDate	EndPostDate	BeginTranDate	EndTranDate	Code	Delete Transactions On this report from History Now							
	010116	033116											
Route	<input checked="" type="checkbox"/> Print From History		<input type="checkbox"/> To Printer	<input type="checkbox"/> Cancel	<input type="checkbox"/> To Screen								
002450	03-22-16	61.21	B	23.40	2.41	21.44	11.66	0.00	0.30	0.00	0.00	7030	00
002455	03-22-16	32.24	B	13.50	1.23	11.50	11.66	0.00	0.30	0.00	0.00	1420	00
002453	03-22-16	58.41	B	24.00	2.23	20.17	11.66	0.00	0.30	0.00	0.00	6130	00
002460	03-22-16	32.24	B	13.50	1.23	11.50	11.66	0.00	0.30	0.00	0.00	1190	00
002465	03-22-16	53.63	B	21.59	2.04	18.03	11.66	0.00	0.30	0.00	0.00	4540	00
002430	03-22-16	41.17	B	15.04	1.43	12.74	11.66	0.00	0.30	0.00	0.00	2540	00
002435	03-22-16	61.32	B	25.45	2.42	21.43	11.66	0.00	0.30	0.00	0.00	7060	00
002450	03-22-16	44.82	B	16.83	1.60	14.19	11.66	0.00	0.30	0.00	0.00	3170	00
002433	03-22-16	32.24	B	13.50	1.23	11.50	11.66	0.00	0.30	0.00	0.00	690	00
002501	03-22-16	74.85	B	21.91	2.02	17.75	32.85	0.00	0.30	0.00	0.00	2420	00
002510	03-22-16	58.24	B	23.91	2.27	20.10	11.66	0.00	0.30	0.00	0.00	6130	00
002520	03-22-16	43.24	B	17.12	1.63	14.47	11.66	0.00	0.30	0.00	0.00	3250	00
002625	03-22-16	103.87	B	47.93	4.50	33.76	11.66	0.00	0.50	0.00	0.00	11970	00
002530	03-22-16	55.10	B	22.93	2.12	19.67	11.66	0.00	0.30	0.00	0.00	5120	00
002575	03-22-16	59.24	B	23.91	2.27	20.10	11.66	0.00	0.30	0.00	0.00	6130	00
002530	03-22-16	59.00	B	24.29	2.31	20.44	11.66	0.00	0.30	0.00	0.00	6360	00
001361	03-31-16	11.66	1	0.00	0.00	0.00	11.66	0.00	0.00	0.00	0.00	0	00
000144	03-31-16	10.80	1	0.00	0.00	0.00	10.80	0.00	0.00	0.00	0.00	0	00
000144	03-31-16	0.86	1	0.86	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0	00
001240	03-31-16	0.86	1	0.86	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0	00
Total	1315.20			105.05		359.14		0.60		0.72	178.52		5118766
		425.04								3.07			

April 2016-December 2016 New system usage – 33,665,380

Total usage for 2016 – 42,784,166

Reprinted for:

12/31/2016

USAGE SUMMARY

City of Marmaduke

MONTH	TOTAL USAGE	# CUSTOMERS	MONTH AVG	DAILY AVG	% OF YEARLY USAGE	
January	0		0	0	0	0.00
February	0		0	0	0	0.00
March	0		0	0	0	0.00
April	3245880		458	7,087	236	7.80
May	2893060		461	6,276	202	6.95
June	3702210		457	8,101	270	8.90
July	4091470		467	8,761	283	9.83
August	4364840		460	9,489	306	10.49
September	4127290		466	8,857	295	9.92
October	3940550		465	8,474	273	9.47
November	3736000		465	8,034	268	8.98
December	3564080		0	3,564,080	114,970	8.57
Total Usage	33,665,380					
Total Sales		gallons				100.00

Monthly Avg.

3,740,598

All Customers

City of Marmaduke (Historical Print)

YEAR END USAGE

2017

USAGE SUMMARY

TOTAL JANUARY USAGE	4,331,640	10.0%
TOTAL FEBRUARY USAGE	3,843,340	8.9%
TOTAL MARCH USAGE	2,808,650	6.5%
TOTAL APRIL USAGE	4,007,800	9.3%
TOTAL MAY USAGE	3,036,780	7.0%
TOTAL JUNE USAGE	4,172,340	9.7%
TOTAL JULY USAGE	3,948,820	9.1%
TOTAL AUGUST USAGE	4,277,990	9.9%
TOTAL SEPTEMBER USAGE	2,161,730	5.0%
TOTAL OCTOBER USAGE	4,545,950	10.5%
TOTAL NOVEMBER USAGE	2,432,310	5.6%
TOTAL DECEMBER USAGE	3,657,450	8.5%
TOTAL USAGE	43,224,800	
TOTAL SALES	\$361,280.04	

All Customers
City of Marmaduke

Thursday, January 17, 2019

YEAR END USAGE

2018

USAGE SUMMARY

TOTAL JANUARY USAGE	3,161,090	7.6%
TOTAL FEBRUARY USAGE	2,965,940	7.2%
TOTAL MARCH USAGE	3,149,830	7.6%
TOTAL APRIL USAGE	3,720,200	9.0%
TOTAL MAY USAGE	3,317,180	8.0%
TOTAL JUNE USAGE	3,270,280	7.9%
TOTAL JULY USAGE	4,445,220	10.7%
TOTAL AUGUST USAGE	3,716,050	9.0%
TOTAL SEPTEMBER USAGE	4,075,110	9.8%
TOTAL OCTOBER USAGE	3,374,700	8.1%
TOTAL NOVEMBER USAGE	2,856,150	6.9%
TOTAL DECEMBER USAGE	3,420,440	8.2%
TOTAL USAGE	41,472,190	
TOTAL SALES	\$396,750.13	

All Customers
City of Marmaduke

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

AFFIDAVIT OF JAMES V. BREZNAY

Before me, the undersigned authority, personally appeared James V. Breznay, who after being duly sworn, stated as follows:

1. I, James V. Breznay, am of sound mind, capable of making this Affidavit, and over eighteen years of age.

2. I am the Capital Projects Manager of American Railcar Industries, Inc. ("ARI"), a position I have held since 2012, and I am able to speak to the facts set forth in this Affidavit on behalf of ARI.

3. In 1999, American Railcar Industries, Inc. ("ARI"), a North Dakota corporation, authorized to conduct business in Arkansas, built a plant (the "West Plant") in the city of Marmaduke, Arkansas (the "City").

4. During the almost twenty years that ARI has been doing business in the City, ARI has provided thousands of Arkansans with good, factory jobs delivering vital railcar services for carriers across the country.

5. At the time the West Plant was built, the St. Francis River Regional Water District (the "District") did not have the ability or infrastructure in place to provide water services to ARI because there were no pipes in the ground at that time.

6. In conjunction with the construction of the West Plant, the City annexed the real



estate upon which the West Plant was located into the City, at which time, the City began supplying both water and sewer services to ARI.

7. In 2006, ARI began construction of an additional plant located adjacent to the east of the West Plant (the “East Plant”).

8. The City continued to be the sole provider of water and sewer services to both the West Plant and the East Plant.

9. In 2015, ARI expanded its facility by building an additional plant (the “Refurb Plant”), which is located just to the east of the East Plant.

10. ARI contracted with the construction firm Forcum Lannom Contractors, LLC to install a domestic water service line running from the existing service lines in the East Plant directly to the Refurb Plant for plumbing fixtures, such as eye wash stations, commodes, lavatories, and hose valves.

11. That work was complete in April 2016, at which time ARI was able to use the domestic water service line for all of its production needs at that time at the Refurb Plant.

12. Following the construction of the Refurb Plant, ARI contacted the District about supplying water to just the Refurb Plant, at which point in time, and for the first time, the District claimed that it had the “exclusive” right to supply water to the Refurb Plant and the East Plant.

13. After discussions between ARI representatives and District representatives, ARI was concerned about the following issues pertaining to the District’s ability to supply water to ARI (or lack thereof): (1) the ability of the District to meet the ARI’s water requirements in the event of a fire; (2) the ability of the District to meet ARI’s overall water capacity requirements for its operations—the District said it would need to build a new well that could cost as much as \$700,000; (3) the District’s water rates were more than three times the rates charged by the City,

and the District's proposal required a one million gallon/\$6,000 per month minimum regardless of ARI's actual usage; (4) the District was not currently providing ARI any services so ARI's business operation would be interrupted; and (5) the District could not provide sewer services so the City would have to continue providing sewer services to the entirety of the ARI Plant, as it has done since ARI came to Marmaduke.

14. Based on the foregoing issues, ARI would prefer to purchase its water and sewer services from the City.

15. In March 2016, ARI notified the City of its intention to continue purchasing water and sewer services from the City.

16. Prior to March 2016, the District did not once seek to or claim any right to serve any portion of ARI.

17. In September 2016, ARI contracted with the construction firm RGB Mechanical Contractors Inc. to install an industrial water line from City facilities to the Refurb Plant.

18. In conjunction with that project, the City provided a water meter, which was installed at the southwest corner of the East Plant.

19. On September 30, 2016, the industrial service line from the City was activated, providing uninterrupted water service to the Refurb Plant from that date to the present.

20. The District has never provided water services or waste water services to any portion of ARI.

21. ARI has begun the process to annex the East Plant and the Refurb Plant into the city limits of the City.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

Further, Affiant Sayeth Not.

[Handwritten Signature]
James V. Breznay, Affiant
Date 02.23.18

ACKNOWLEDGMENT

STATE OF MISSOURI)
) ss.
COUNTY OF ST. CHARLES)

Before me the undersigned Notary Public in and for the State of Missouri, personally appeared, James V. Breznay, and after being first duly sworn, did depose and say that the statements in the foregoing Affidavit are true and correct.

SUBSCRIBED and **SWORN** to before me on this 23rd day of February 2018.

My Commission Expires:

April 19, 2019

[Handwritten Signature]
Notary Public



DIANA LYNN GOULD
My Commission Expires
April 19, 2019
St. Louis County
Commission #15026855

ORIGINAL

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

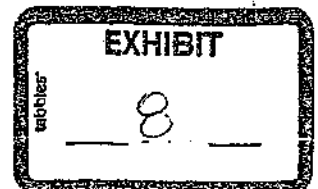
ST. FRANCIS RIVER REGIONAL)
WATER DISTRICT)
PLAINTIFF)
VS. NO. 4CV-2017-219-MR)
CITY OF MARMADUKE, ARKANSAS)
DEFENDANT)

DEPOSITION OF LEONARD "BRAD" NELSON

TAKEN IN JONESBORO, ARKANSAS

FEBRUARY 7, 2019

HENDRIX REPORTING SERVICE
1701 SOUTH ARCH
LITTLE ROCK, ARKANSAS 72206
(501) 372-2748



APPEARANCES:**On Behalf of the Plaintiff:**

JIM LYONS, Esq.
Lyons and Cone Law Firm
407 South Main
Jonesboro, AR 72401

On Behalf of the Defendants:

WILLIAM MANN, III, Esq.
GABRIELLE "BRIE" GIBSON, Esq.
Arkansas Municipal League
Second and Willow
North Little Rock AR 72114

Also Present:

Mayor Steve Dixon
Ron Pigue, Sr.

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LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

Produced, sworn, and examined, pursuant to notice, in the office of Lyons and Cone Law Firm, 407 South Main, Jonesboro, Arkansas, commencing at 11:02 a.m. on February 7, 2019, in the above-entitled cause now pending in the Circuit Court of Greene County, Arkansas; said deposition being taken for all purposes, pursuant to the Arkansas Rules of Civil Procedure.

I N D E X

WITNESS:

LEONARD "BRAD" Nelson

Examination by Mr. Mann page 4

EXHIBITS:

Deposition Exhibit One page 46
6-22-16 Written Statement of Mr. Nelson

Deposition Exhibit Two page 47
Affidavit of Tonya Thompson

Certificate of Reporter page 48

HENDRIX REPORTING SERVICE
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(501) 372-2748

(Witness sworn)

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Thereupon,

LEONARD "BRAD" NELSON,

having been called for examination, and after being first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. MANN:

Q Good morning, sir. Would you please state your full name for the record?

A My full name is Leonard Bradford Nelson.

Q Okay. And you go by Brad?

A I do.

Q Okay. Mr. Nelson, I'm Bill Mann. We met quite some time ago this morning, and I know you've been sitting in here during the deposition of Mr. Pigue, but I still want to go over a couple of the things that I went over with him, and I'll try to be quick with those.

First of all, have you ever given a deposition before?

A No, sir.

Q Well, as you heard me talking with Mr. Pigue, it's very important for you and I to make sure we communicate with each other so that if I ask a question which you don't understand or which perhaps you didn't hear clearly, I want you to please tell me and I'll restate the question, okay?

A Okay.

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1 Q We'll also need to avoid talking at the same time, and that
2 means I need to allow you to finish your answer before I ask
3 another question and vice-versa, so that our court reporter will
4 be able to transcribe everything we say without too much
5 trouble, okay?

6 A Sure.

7 Q And again, as Mr. Pigue did -- and Mr. Pigue did a good
8 job of this -- if he thought of something later on that he
9 needed to add to an answer or to perhaps change it, all you've
10 got to do is tell me and you will be allowed to do that, okay?

11 A Okay.

12 Q I want to make sure we understand each other.
13 Where do you live, sir?

14 A I live at 2063 Greene 517 Road, Marmaduke, Arkansas.

15 Q Tell me a little bit about your background. Were you born
16 and raised in Marmaduke?

17 A No, sir, I was born in Jonesboro, lived in Corning for
18 about 14 years, that was until '78, and then ever since then I've
19 been in Greene County.

20 Q Did you graduate high school in Jonesboro?

21 A No, I graduated in Oak Grove, just north of Paragould.

22 Q All right. And did you go to college after that?

23 A I did not.

24 Q All right. And how are you employed?

25 A I work for Craighead Electric Cooperative out of

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1 much, bathrooms, and that's probably it as far as I know, so
2 yes, we could have served that.

3 Q Okay. And would you agree with me that the East Plant
4 was built in roughly 2006 or '07?

5 A Yes, I would agree with that.

6 Q Okay. And it's the position of the Water District that the
7 Refurb Plant is within the geographical boundaries of the
8 District, correct?

9 A I would agree with that.

10 Q And it's also the District's position that it has the
11 exclusive right to sell water to any entity or person residing
12 within those geographical boundaries, correct?

13 A Yes.

14 Q When do you recall that the Water District first made a
15 demand to Marmaduke that it cease furnishing water to the East
16 Plant?

17 A This is going to be fairly close, probably, but I'm going to
18 say in 2017, probably the end of '17, the first of '18. And I will
19 tell you why I think that's right.

20 Q Okay, that would be good.

21 A We as a Board met with the Mayor, the Mayor come to our
22 Board meeting, and the Mayor agreed. We told him our story,
23 and he agreed with us that that was our service territory. And
24 we also agreed at that time that we would let them go to the
25 first of the year, finish out that year of their billing so that

HENDRIX REPORTING SERVICE

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1 their budget stuff worked out for them. And so I feel pretty
2 certain that that was in the end of 2017.

3 Q Okay. Now, assuming from your earlier testimony that the
4 Water District had the capability of furnishing water to the East
5 Plant in 2006 or '07 when it was built, why did the Water
6 District wait until 2017 to make demand to be able to furnish
7 water to that facility?

8 A Well, we had a manager at the time that obviously wasn't
9 paying close enough attention and let that happen and go on for
10 that long, but then ARI approached us, come to us and asked us
11 for water. I can't tell you the specific date, but they come when
12 they were doing the, building this Refurb Plant, they come to us
13 and asked us to serve them water.

14 We didn't go say, 'Hey, you're in our territory.' That's not
15 how it initiated; they come to us.

16 Q So if I understand your answer to the question I posed,
17 the reason you didn't make some demand to Marmaduke that
18 they stop serving the East Plant until 2017 is that you had a
19 manager who wasn't on top of the situation?

20 A At the time that happened, yes.

21 Q Okay. And who was that manager?

22 A His name was Randy McMillan.

23 Q Okay. Is Mr. McMillan still living in the area?

24 A I don't know.

25 Q Was Mr. McMillan terminated?

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1 A Yes.

2 Q Was part of the reason for his termination this situation
3 with ARI?

4 A There were many, many things.

5 Q And I don't need to go into that.

6 A Right.

7 Q But did the situation with ARI have anything to do with
8 his termination?

9 A I can't speak for the rest of the Board, but my thoughts,
10 yes, I felt that was one of the inadequacies.

11 Q Okay. Did, when he was confronted with that, did he have
12 any response as to why he hadn't brought that up to the Board,
13 the fact that ARI was in the geographical boundary of the
14 District?

15 A Honestly, I don't think that was ever pointed out to him.

16 Q Okay. And who succeeded him?

17 A Tonya Thompson.

18 Q Okay. And she's your current manager?

19 A She is.

20 Q And if I recall something I read, she began as the manager
21 in 2011, would that be correct?

22 A I don't know.

23 Q Okay. Well, assume for me that she did begin as manager
24 in 2011 -- and if I'm proven to be wrong, then I'm not holding
25 you to it.

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1 A Yeah.

2 Q But assuming she did assume the job in 2011, it appears to
3 me an additional six years went by before any demand was
4 made about, from the Water District having the exclusive right
5 to serve these plants, is that correct?

6 A You're correct.

7 Q Do you know why, again, you waited that many years?

8 A No. I mean, you never really think about a huge welding
9 shop like that, I mean, using water other than bathrooms or
10 something, so no.

11 Q Okay. Now I asked Mr. Pigue to identify for me any
12 documents that he relied upon as support for his view that the
13 Water District had the exclusive right to sell water to any
14 person or entity within its geographical boundary. Do you
15 recall me asking him that question?

16 A I do.

17 Q And what he told me was, in response, was Exhibit
18 Number Twenty-six to his deposition, which is the Order from
19 the Greene County Circuit Court establishing the Water District.
20 And I'll put that in front of you.

21 Would you agree with his response?

22 A I would agree with his response.

23 Q Are you aware of any other documents whatsoever other
24 than Exhibit Twenty-six to Mr. Pigue's deposition which would
25 support the position of the Water District that it has the

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1 When you said, "Mistakes have been made on both sides,"
2 tell me what you were talking about.

3 A I feel like the Water District made a mistake by not
4 attempting to serve that East Plant early on, probably when it
5 was built. That's when, in my opinion, that's when we should
6 have said 'Hey, this is in our territory.'

7 I think that, you know, and I don't think Mr. Dixon was
8 even mayor at that time, but I think the mistake was made on
9 their side. I feel like somebody should have said, you know,
10 'Hey, that's not in our territory.'

11 So I think mistakes were made on both sides, and, I mean,
12 we just needed to resolve the issue.

13 Q Did it make any difference in your opinion as to the Water
14 District's right to begin selling to the East Plant that ARI had
15 been an existing customer of Marmaduke?

16 A Rephrase that.

17 Q Sure. You will agree with me that at the time you made
18 demand, you being the Water District, of the right to serve the
19 East Plant, that it was purchasing, "it" being ARI's East Plant,
20 was purchasing water from Marmaduke, right?

21 A I knew that they were.

22 Q Okay. So they had a customer relationship then?

23 A Yes.

24 Q Okay.

25 A But if I may?

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1 Q You may.

2 A They had a customer relationship in this East Plant and
3 the West original plant. We refer to that line that separates
4 them. I call it a line drawn in the sand.

5 So ARI has a relationship with a power company called
6 Entergy on the west side, the West Plant, that they buy power
7 from. The east side where St. Francis is wanting to sell them
8 water, that plant is served by another power company,
9 Craighead Electric. So they have a relationship with two
10 utilities already, it shouldn't be an issue for them to have a
11 relationship with two water utilities, in my opinion.

12 Q Okay. Was there ever a legal dispute involving that
13 situation? For instance did ARI wish to receive its electrical
14 power only from Entergy?

15 A That's correct.

16 Q Okay. Well, tell me about that; what happened?

17 A Well, when they built the East Plant we -- I'm the
18 manager up there out in the field, you know, I knew that was in
19 our service territory, and so they were approached about that
20 and it ended up, it went to court. Well, I'm sorry, it was
21 handled legally.

22 Q Okay. When you say "they" were approached, do you mean
23 ARI was approached?

24 A Yes. Craighead Electric went to them and expressed our
25 concerns that we wanted to serve that load in that new plant.

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1 don't have a USDA loan, that we have no recourse.

2 Q Okay. And in reference to the USDA in that next
3 paragraph four sentences down, you say there, "The fact is, we
4 choose to refinance our USDA loan with a local bank, 'First
5 National Paragould' to save our customers money," is that
6 right?

7 A That's correct.

8 Q Now just to clarify, when I was questioning Mr. Pigue, we
9 looked at a loan agreement, or actually we looked at a
10 Resolution which said that the Water District was going to
11 obtain a loan from First National Corning.

12 A Same bank.

13 Q The same bank?

14 A Different building.

15 Q Okay.

16 A They have them all over. They've got them in Jonesboro,
17 Paragould, yeah.

18 Q All right. They're all the same entity?

19 A All the same, one guy owns it.

20 Q I just wanted to make sure we were right.

21 A Yeah.

22 Q I wish I was him.

23 A Yeah.

24 Q Okay. So the fact is is that at the time that you gave this
25 statement of June of 2016 that the Water District did not have

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1 any debt that it owed to the USDA, is that correct?

2 A That is correct.

3 Q And likewise the Water District did not have any debt that
4 it owned to the Arkansas Natural Resources Commission,
5 correct?

6 A That's correct.

7 Q The only debt that the Water District owed was to the
8 First National Bank of Paragould, is that right?

9 A That's correct.

10 Q Look at the last page of your statement.

11 You refer to the January 19th Board meeting, and I think
12 Mr. Pigue and I discussed this, too, about a couple of ARI
13 representatives coming to the Board. Was that Mr. Pipkins and
14 Mr. Peters?

15 A It was.

16 Q Okay. Do you recall in that Board meeting their
17 presentation to you about ARI's position on the purchase of
18 water?

19 A I do.

20 Q And can you tell me what it was?

21 A It was very short and brief: Mr. Pipkin, the best I
22 remember, Mr. Pipkin done all the talking and just - Actually
23 he was very irritated, because our Board meetings start at 1:00
24 and Mr. Peters was about 30 minutes late and he was new to
25 the company, and when he got there we told him our side of the

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1 Q Okay. And as a result of that line being there in 2006, it
2 was such that water could have been provided to both the East
3 Plant and ultimately the Refurb Plant?

4 A I cannot swear about the Refurb Plant at that time.

5 Q That's fine.

6 A Yeah.

7 Q So for sure 2006 you could have served the East Plant?

8 A Yes.

9 Q And we don't know what date for the Refurb Plant?

10 A No, but we could have served it -- When the Refurb Plant
11 was built, then we had the infrastructure, because we had built,
12 we had put down an additional well, so we had backup, we had
13 the infrastructure to serve it with no problem when that Refurb
14 Plant was built. The quantity of water they needed we had, or
15 have.

16 Q Okay. I'm going to ask you to look at something I used
17 during the deposition of Mr. Pigue, and it's Deposition Exhibit
18 Number Seventeen. I'd ask you to take a look at that and see if
19 you have ever seen that particular email before today (Handing
20 document to witness)?

21 A (Examining document) I can't say that I've seen this from
22 Rickey Carter. No, I wouldn't say that I've seen this.

23 Q Okay. Do you know who Rickey Carter is?

24 A Oh, I do, yes.

25 Q Are y'all personally acquainted?

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1 the deposition of Mr. Pigue, and I'll hand it over there to you
2 (Handing document to witness).

3 I'd ask you if you'd glance over that.

4 A (Examining document) Okay.

5 Q Have you ever seen that particular affidavit before today?

6 A I don't believe I have.

7 Q Okay. I just want to ask you a few questions about it to
8 see if you agree or disagree with him. And I won't take much of
9 your time on this, but if you would look at Paragraph Number
10 12, which is on the second page of that document.

11 A (Examining document)

12 Q And just reading it into the record, Mr. Breznay states in
13 his affidavit that: "Following the construction of the Refurb
14 Plant ARI contacted the District about supplying water to just
15 the Refurb Plant, at which point in time, and for the first time,
16 the District claimed that it had the exclusive right to supply
17 water to the Refurb Plant and the East Plant."

18 Is that, and based upon your knowledge and experience
19 and understanding, is that an accurate statement?

20 A Yes, I think it is. But as far as, you know, in the word
21 there "exclusive," I mean, just to set the tone, it was not -- I
22 wasn't there, but it was not, you know, like, "It's all ours," you
23 know.

24 We talked to them, wanted to serve them water. We even
25 offered to tie our lines to the City's there so if the City was

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1 down or we were down, you know, for a backup. So it was not
2 -- it was trying to be a cordial neighbor to do it.

3 So I wasn't, I mean, yes, that statement, but it was in a
4 nice way.

5 Q Okay. Let's look at Number 13. Mr. Breznay says that,
6 "After discussions between ARI representative and District
7 representatives, ARI was concerned about the following issues
8 pertaining to the District's ability to supply water to ARI (or
9 the lack thereof)."

10 And what Mr. Breznay has done is listed, it looks to be
11 like five separate issues which cause the company concern about
12 the District's ability to supply water, and I wanted to go over
13 those and ask you just a few questions about them.

14 A Sure.

15 Q The first issue that he expresses concern about is the
16 ability of the District to meet ARI's water requirements in the
17 event of a fire.

18 Do you recall any discussion about that in your role as a
19 Board member?

20 A No, not as it pertains to ARI, no.

21 Q Okay. Would you say that the discussions between ARI
22 and the Water District largely were made through Tonya
23 Thompson?

24 A Yes.

25 Q And she would be responsible for reporting back to the

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1 Board any concerns or issues raised by ARI?

2 A Yes.

3 Q Number 2 there, "The ability of the District to meet ARI's
4 overall water capacity requirements for its operations -- the
5 District said it would need to build a new well that could cost
6 as much as \$700,000.00."

7 Do you have any information about that concern?

8 A I really don't know where that comes from. To be honest
9 with you, there were discussions about -- there were
10 discussions about if we would need another well, just amongst
11 ourselves asking do we have the water to do it, and we know
12 what a well costs. That may be --

13 I don't know where -- That's the only place that could
14 come from.

15 Q Do you remember the discussion I had with Mr. Pigue
16 about correspondence that your engineer sent, Mr. Alford?

17 A Uh-huh.

18 Q That he talked about the need for a new well?

19 A Uh-huh.

20 Q You need to say yes or no.

21 A Yes.

22 Q She can't take down uh-huh.

23 A Yes, I'm sorry. Yes. But obviously we disagreed with his
24 conclusion on that --

25 Q Right.

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1 A -- and then, you know, looked at it closer.

2 Q All right. The third concern that ARI had was that the
3 District rates were more than three times those charged by the
4 City. Do you recall ARI expressing a concern to the Board or to
5 yourself about that?

6 A It was expressed through Tonya, yes, or to Tonya.

7 Q Did you think that was a legitimate concern by the
8 company?

9 A Oh, yeah, sure.

10 Q But it didn't make any different, since they -- since the
11 East Plant and the Refurb Plant were within the geographical
12 boundaries of the Water District, ARI didn't have any choice
13 about who they bought water from?

14 A I don't feel like they had a choice, but we were willing to
15 negotiate on price, you know.

16 Q Okay. Over on the next page, the fourth concern raised by
17 Mr. Breznay is: "the District was not currently providing ARI
18 any services, so ARI's business operation would be interrupted."

19 What's your --

20 A That's B-S.

21 Q Okay. I know what that means.

22 A Okay. She does, too.

23 Q You don't have to spell it out.

24 A Yeah.

25 Q So it's your view that at the time, at this particular time

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1 we're talking about now that there would have no delay and no
2 interruption in the business of ARI for the District to begin
3 providing water service?

4 A There was no reason for interruption other than the time
5 it took for their contractor and our contractor to dig
6 simultaneously, tie the line together, because they already had
7 water in the building. So no, that was no issue.

8 Q When you say they already had water in the building, that
9 was water being provided by the City of Marmaduke?

10 A Yes. And you know, the City didn't go in there and run
11 that water line, they done it theirselves. ARI contracted, you
12 know. So it's not like the City was out there doing it, ARI was
13 just tying on to whatever they wanted to tie onto.

14 Q Okay.

15 Look at Number 15 on that affidavit. "In March of 2016
16 ARI notified the City of its intention to continue purchasing
17 water and sewer services from the City."

18 Do you have any information about that?

19 A I do not.

20 Q You couldn't say that's true or not true?

21 A No.

22 Q And Number 16, "Prior to March 2016, the District did not
23 once seek to or claim any right to serve any portion of ARI."

24 Would that be an accurate statement?

25 A That is true, we did not seek, yep.

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1 Q Why would you guys need to discuss it at a Board meeting
2 if it's not a concern?

3 A Well, I mean, in case someone has a question about it. I
4 just like to be, just know, you know.

5 Q Sure. Now the loan that the Water District got, which was
6 finalized I think we decided in January of 2017 for the
7 \$51,500.00, a part of those funds were to make improvements
8 to the system, including the placement of a fire hydrant,
9 looking on Exhibit Number Twenty?

10 A Yes, sir. Yep.

11 Q And that fire hydrant would have been located where, do
12 you know?

13 A I am assuming that it is in our fenced-in area at Rector
14 where our stand tank is and our wells, so they could flush.

15 Q You're saying that's the purpose of the fire hydrants, is to
16 flush your system?

17 A Yeah, yeah. Like I say, you can call it a fire hydrant, I do
18 if I'm in town, but when I'm talking about the Water District, it
19 is a flushing valve.

20 Q Okay.

21 MR. MANN: I think that's all I have for you.

22 THE WITNESS: Thank you very much.

23 MR. MANN: Thank you, sir, for your cooperation for
24 being here.

25 Sorry I had to bring you out on a rainy old day.

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1 THE WITNESS: I'm glad you did.

2

3

(Whereupon, said proceedings were concluded at 12:04

4

p.m.)

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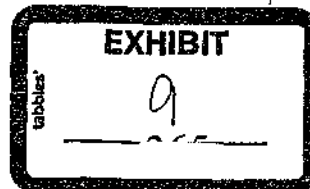
ORIGINAL

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL)
WATER DISTRICT)
PLAINTIFF)
VS. NO. 4CV-2017-219-MR)
CITY OF MARMADUKE, ARKANSAS)
DEFENDANT)

DEPOSITION OF RONALD WESLEY PIGUE, SR.
TAKEN IN JONESBORO, ARKANSAS
FEBRUARY 7, 2019

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APPEARANCES:

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On Behalf of the Defendants:

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GABRIELLE "BRIE" GIBSON, Esq.
Arkansas Municipal League
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Also Present:

Mayor Steve Dixon
Brad Nelson

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Produced, sworn, and examined, pursuant to notice, in the office of Lyons and Cone Law Firm, 407 South Main, Jonesboro, Arkansas, commencing at 8:26 a.m. on February 7, 2019, in the above-entitled cause now pending in the Circuit Court of Greene County, Arkansas; said deposition being taken for all purposes, pursuant to the Arkansas Rules of Civil Procedure.

I N D E X

WITNESS:
RONALD FIGUE

Examination by Mr. Mann page 6

EXHIBITS:

Deposition Exhibit One page 88
Complaint

Deposition Exhibit Two page 89
Answers to Interrogatories

Deposition Exhibit Three page 90
Plaintiff's Response to Request for Admissions

Deposition Exhibit Four page 91
Plaintiff's Response to Second Interrogatories

Deposition Exhibit Five page 92
Proposed Resolution Re: Loan

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Deposition Exhibit Six page 93
3-30-15 Letter of Natural Resources Comm.

Deposition Exhibit Seven page 94
Letter of Bond Consulting Engineers of 7-16-15

Deposition Exhibit Eight page 95
Letter of Bond Consulting Engineers of 9-24-15

Deposition Exhibit Nine page 96
Letter of Bond Consulting Engineers of 10-7-15

Deposition Exhibit Ten page 97
Letter of American Railcar Industries of 12-14-15

Deposition Exhibit Eleven page 98
Letter of Pigue of 12-1-15 to ARI

Deposition Exhibit Twelve page 99
Letter of Jerome Alford to ARI of 1-4-16

Deposition Exhibit Thirteen page 100
Minutes of Board Meeting of 1-19-16 SFRRWDD

Deposition Exhibit Fourteen page 101
Minutes of Special Board Meeting 2-2-16 SFRRWDD

Deposition Exhibit Fifteen page 102
Letter of Pigue to ARI of 2-2-2016

Deposition Exhibit Sixteen page 103
Letter of Pigue to Peters @ ARI of 2-3-16

Deposition Exhibit Seventeen page 104
Email of Rickey Carter of 3-3-2016 to SFRRWDD

Deposition Exhibit Eighteen page 105
Letter of Pigue of 3-10-16 to ARI

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Deposition Exhibit Nineteen page 106
 Minutes of 3-14-16 of SFRRWDD

Deposition Exhibit Twenty page 107
 Letter of Randy Young of 7-27-16 to SFRRWDD

Deposition Exhibit Twenty-one page 108
 Letter of Alford of 8-31-18 to AR. Dept of Health

Deposition Exhibit Twenty-two page 109
 Letter of Deborah Christopher (Nat. Resources)
 Of 12-19-16 to Pigue

Deposition Exhibit Twenty-three page 110
 Letter of Christopher of 7-27-17 to Pigue

Deposition Exhibit Twenty-four page 111
 Letter of Lyons of 4-7-17 to ANRC with attachments

Deposition Exhibit Twenty-five page 112
 Letter of Holland (ANRC) of 5-9-17 to Lyons

Deposition Exhibit Twenty-six page 113
 Order Establishing Water District

Deposition Exhibit Twenty-seven page 114
 Affidavit of James V. Breznay

Deposition Exhibit Twenty-eight page 115
 Letter of Alex Shubert of 1-21-19 to David Perry
 Re: Public Protection Classification

Certificate of Reporter page 116

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1 Q Okay. The last document I want to introduce as an exhibit
2 before we get going in the deposition is number four, and it is
3 the Water District's response to our Second Set of
4 Interrogatories and Requests for Production of Documents.

5 I'll ask you to take a look at it and tell me if you recall
6 having seen it before today (Handing document to witness)?

7 A (Examining document) I have.

8 (Whereupon, the Plaintiff's Response to Defendant's
9 Second Set of Interrogatories and Requests for Production
10 of Documents Directed to Plaintiff was marked as
11 Deposition Exhibit Four and attached at Tab Four.)

12 Q Okay. Thank you.

13 Now, you were one of the original members of the water
14 district Board as it was created in 1987, is that right?

15 A That's correct.

16 Q And you have served continuously on the Board since that
17 time?

18 A That is correct.

19 Q Are you currently the president of the Board?

20 A That's correct.

21 Q How long have you held that office?

22 A Approximately 2002 or '03 or '04. Mr. Gerald Craig was
23 the president, and when Jonesboro got him water he had to
24 resign and then I took over; early 2000s.

25 Q Okay. Just to kind of try to figure out a benchmark, at the

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1 A We don't have a written one that we document that I know
2 of, but we do have -- Fact of the business, we do it every
3 month.

4 Q Okay. Well, I've got a few documents here now I want to
5 ask you some questions about. The first one, which I'll mark as
6 Exhibit Number Five, appears to be a Resolution. It says St.
7 Francis River Regional Water Distribution District Resolution
8 Number 2015 dash and there's a blank.

9 I'd ask you to take a look at that and see if you recognize
10 that document (Handing document to witness)?

11 A (Examining document) Yes.

12 Q Would you identify that document for the record, tell us
13 what it is?

14 A This is the loan that we made with First National Bank in
15 March of 2015 for three million dollars.

16 Q Okay. And that looks to be, down there on the first page
17 about the, where it says Section 1 down there --

18 A Yes, sir.

19 Q -- it looks to be that this loan was given to the District
20 from the First National Bank of Corning, Arkansas, is that right?

21 A That's correct.

22 Q And it's in the amount of three million dollars (3 MM) you
23 said?

24 A Yes.

25 Q And what was the purpose of obtaining this loan?

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1 A The purpose was Mr. Carter had advised me that there were
2 monies available to lower the interest rate on loans. The
3 interest rate that we had with the USDA, and I may be off a
4 little bit, it was either 4 1/2 or 5%, and I checked with First
5 National Bank, they would loan us the money for 3.5%. And in
6 the process we would lower the years it would take to amortize
7 that loan, and that is where this originated from.

8 Q So this document, Exhibit Number Five, was a refinance of
9 existing debt, is that right?

10 A That's correct.

11 Q And the existing debt that you were refinancing was owed
12 to the United States Department of Agriculture, is that right?

13 A One of them was, yes.

14 Q Where else did you have debt?

15 A ANRCS.

16 Q Okay. That would be the Arkansas Natural Resources
17 Commission?

18 A Yes.

19 Q So all the debt that the water district owed at the time of
20 this resolution was being refinanced with this loan from the
21 First National Bank of Corning?

22 A That's correct.

23 Q You said that someone advised you about doing this, a Mr.
24 Carter?

25 A Rickey Carter, who was the head of the Rural Development

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1 A All of the revenue.

2 Q As part of the security?

3 A Yes.

4 Q In addition to the physical infrastructure?

5 A That's correct.

6 Q Would you look over on page number 10 of that document?

7 A Okay.

8 Q I'm looking at the final section, Number 16.

9 A Yes.

10 Q Follow along with me as I read. It states: "It is ascertained
11 and declared that on account of the lack of an adequate water
12 system to serve the District, the health and lives of the
13 inhabitants thereof and the property are daily endangered." And
14 then it shows --

15 That's just the first sentence. There's a second sentence
16 which I'm not reading.

17 And then below that it indicates that this resolution was
18 passed on March 17, 2015. Did I read all that correctly?

19 A What you read is correct, yes.

20 Q Okay. At this time, if you could help me understand, what
21 about the water system was lacking at that time? It says ".... on
22 account of a lack of an adequate water system to serve the
23 district..."

24 What was inadequate about the water system at that time?

25 A I really don't understand that in itself. I don't know -- It

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1 is a situation with rural water, and whether this pertains to that,
2 I'm not sure what that --

3 I really don't understand that, but that's probably a section
4 that was taken out of when we established the District, and the
5 water in the district at that time with the pumps is a health
6 hazard, and that was the reason that we established the rural
7 water system, for health of the community.

8 Q Okay.

9 A And I can honestly say I'm really -- I can't tell you exactly
10 where that fits in this context.

11 Q Well, if you don't know the answer, that's a perfectly
12 acceptable answer. That's fine to say.

13 A But it was a health hazard in the community that
14 established the water district.

15 Q Okay.

16 A That was the cause of the establishment of the water
17 district.

18 Q Okay. And that was back in 1987, correct?

19 A Yes, yes.

20 Q And on that same page 10 that is your signature, Ronald
21 Pigue, Senior?

22 A That is correct.

23 Q Okay.

24 (Whereupon, the St. Francis River Regional Water
25 Distribution District Resolution was marked as Deposition

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1 A Yes. This was, yes.

2 Q In other words, the loans reflected in this letter were some
3 of the loans that you used the loan from First National Bank of
4 Corning to pay off?

5 A That's correct.

6 Q That's what I'm getting at.

7 A Oh, okay.

8 Q So effective March 30, 2015, the water district was not
9 indebted to the Arkansas Natural Resources Commission?

10 A That's correct.

11 Q And you said I think also that you had some existing debt
12 with the Department of Agriculture that you paid off with this
13 loan from the bank in Corning, is that right?

14 A That's correct.

15 Q So as of March 30, 2015 or thereabouts, the only
16 indebtedness the water district had was with the First National
17 Bank of Corning?

18 A Correct.

19 (Whereupon, the March 30, 2015 letter of Randy
20 Young from Arkansas Natural Resources Commission with
21 attachments was marked as Deposition Exhibit Six and
22 attached at Tab Six.)

23 Q Now obviously we're here about a dispute between the
24 water district and the City of Marmaduke over their rights to
25 sell water to two of the facilities owned by the American Railcar

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1 Industries, ARI. We all understand that, right?

2 A Correct.

3 Q Okay. Can you tell me, based upon your best recollection,
4 when the water district made a demand to the City of
5 Marmaduke to stop selling water to what I'll call the ARI East
6 Plant and the Refurb or refurbishing plant?

7 A It would be a guess, I think it would be close, 2015.

8 Q Would it have been after you obtained the loan from
9 Corning or before, because that was also in 2015?

10 A It was after.

11 Q Okay. And was this demand made in writing?

12 A I'm not sure of that.

13 Q Okay. Do you know who made the demand?

14 A I for one by telephone.

15 Q Okay. And who did you speak with?

16 A I spoke with the mayor, I spoke with the water operator, I
17 spoke with ARI personnel.

18 Q Okay. Did you have a particular contact with ARI that you
19 spoke with?

20 A I don't really remember. I don't remember exactly which
21 person personally.

22 Q Now I've seen a name in some of these documents I'm
23 going to throw out to you and ask if you recognize it.

24 A Okay.

25 Q And I may butcher the last name. It's not intentional, but

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1 third well if ARI was going to stay with the number of gallons
2 that they first acknowledged that they needed, but it was shortly
3 after that that they began to drop, and then they dropped again,
4 and then they dropped again the volume that they needed.

5 But we had two wells that was 900 gallons a minute for the
6 two together, which is probably --

7 But anyway, that's where that came from.

8 Q So the number of gallons that are contained in this letter
9 that were estimated, 90,000 gallons, this proposed well number
10 three would have been necessary to serve the two ARI buildings
11 if that estimate held true, is that right?

12 A I'm not -- I don't think so. I think the two wells we had
13 would have done it. This was an anticipation what could
14 happen, not what had to happen.

15 (Whereupon, the Bond Consulting letter of July 16,
16 2015 to SFRRWDD was marked as Deposition Exhibit Seven
17 and attached at Tab Seven.)

18 Q Okay. I'm going to show you now, Mr. Pigue, Deposition
19 Exhibit Number Eight. This one is another letter from Mr
20 Alford, and this one is dated September 24, 2015 and it's
21 directed to your attention regarding service to ARI.

22 I'd ask you to take a look at that and tell me if you
23 remember that letter (Handing document to witness).

24 A (Examining document) I remember this.

25 Q Okay. And again, that's another letter from Mr. Alford

HENDRIX REPORTING SERVICE
1701 SOUTH ARCH
LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

1 letter is about.

2 Q So if I can sum it up in my terms, Mr. Alford was telling
3 you that Mr. Pigue, running a line from that Rector well to ARI
4 won't do it?

5 A Well, no, he didn't say it won't do it, he just says it's just
6 not feasible, it's not practical to do that.

7 Q Okay.

8 A Obviously if it pumps 450 gallons a minute, it will serve
9 ARI all the water they need plus.

10 Q Yes, sir.

11 A But it's not practical.

12 Q Right. Understood.

13 I forgot to tell you that if at any time you want to take a
14 break, you know, a men's room break, water break, whatever,
15 you tell me.

16 A I wouldn't mind to have a sip of water.

17 MR. LYONS: Sure.

18 MR. MANN: Do you want a break?

19 THE WITNESS: No, I'm just -- I've kind of got the
20 cotton mouth here.

21 MR. LYONS: Okay.

22 THE WITNESS: Thank you.

23 (Whereupon, the September 24, 2015 letter of Jerome
24 Alford to SFRRWDD was marked as Deposition Exhibit
25 Eight and attached at Tab Eight.)

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LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

1 is another letter, or is a letter from the Natural Resources
2 Commission dated May 9, 2017. It's directed to Mr. Lyons
3 regarding the water district and ARI, and it's signed off by Mr.
4 Bruce Holland, as executive director for the ANRC.

5 I'd ask you to take a look at Exhibit Number Twenty-five
6 and tell me if you've seen that before (Handing document to
7 witness)?

8 A (Examining document) Yes.

9 Q Was that shared with you when Mr. Lyons -- and again, I
10 don't want to know about any conversations, but did he provide
11 you with a copy of that letter?

12 A We've been in full communication with Mr. Lyons.

13 Q Sure. Okay.

14 After you read that letter, did you yourself personally reach
15 out to the ANRC and ask them about this letter?

16 A I have not had any conversation or any contacts with ANRC
17 personally.

18 Q All right. Now in the lawsuit, the Complaint we looked at
19 earlier, Exhibit Number One, the water district takes the
20 position that it has the exclusive right to sell water to any entity
21 or individual who resides within the geographic boundary of the
22 district, is that correct?

23 A That's correct.

24 Q Are you aware of any document to which you can point me
25 that says that?

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LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

1 A Yes.

2 Q What would that be?

3 A It was in the Circuit Court in 1987, Greene County Circuit
4 Court, signed, and it become a legal entity at that time and the
5 boundaries are expressed and the cities in the surrounding area
6 were advised of it, they had a hearing, there was only one city
7 that came and that was Lafe, and Marmaduke never showed up
8 and never expressed anything.

9 Q Okay.

10 (Whereupon, the May 9, 2017 letter of Bruce Holland
11 to Jim Lyons Re: St. Francis Regional Water Distribution
12 District and American Railroad Industries was marked as
13 Exhibit Twenty-five and attached at Tab Twenty-five.)

14 Q And just so we'll know, the document to which you just
15 referred that you say allows or grants the exclusive authority to
16 sell water within the geographical boundaries of the water
17 district is an Order that was apparently filed of record on July
18 28, 1987 in the Circuit Court of Greene County, Arkansas.

19 I'll hand you what I've marked as Exhibit Number Twenty-
20 six and ask you if that is the Order to which you refer (Handing
21 document to witness)?

22 A (Examining document) Yes.

23 Q Okay. Other than that document, anything else that you
24 can point me to which you would rely on as stating that the
25 water district has the exclusive right to sell water to any person

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LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

1 capability to immediately begin supplying water services to both
2 the Refurb Plant and the East Plant?

3 A Yes.

4 Q It will not require any expansion of your facilities
5 whatsoever in order to provide that service?

6 A It will not other than connecting the line that runs just a
7 few feet from the Refurbishing Plant.

8 Q Okay.

9 (Whereupon, the January 21, 2019 letter of Alex
10 Shubert of Iso to David Perry Re: Northeast Greene Co FD,
11 Greene County, Arkansas was marked as Deposition Exhibit
12 Twenty-eight and attached at Tab Twenty-eight.)

13 MR. MANN: Can we take about a five minute break?

14 MR. LYONS: Sure.

15 MR. MANN: We'll wind it up, okay?

16 MR. LYONS: Okay.

17 (Whereupon, said proceedings were recessed at 10:56 a.m.
18 and resumed at 10:58 a.m. as follows:)

19 MR. MANN: That's all the questions I have for you,
20 sir. Thank you for your time and your attention.

21 MR. FIGUE: Thank you.

22

23 (Whereupon, said proceedings were concluded at 11:00
24 a.m.)

25

HENDRIX REPORTING SERVICE
1701 SOUTH ARCH
LITTLE ROCK, ARKANSAS 72206
(501) 372-2748



Arkansas Natural Resources Commission



J. Randy Young, PE
Executive Director

101 East Capitol, Suite 350
Little Rock, Arkansas 72201
<http://www.anrc.arkansas.gov/>

Phone: (501) 682-1611
Fax: (501) 682-3991
E-mail: anrc@arkansas.gov

Asa Hutchinson
Governor

March 30, 2015

ST FRANCIS RIVER RWDD
Attention: Ronald Pigue, Sr., President
PO BOX 818
PARAGOULD, AR 72451

RE: ST FRANCIS RIVER RWDD- Loan Agreement No. DL-25-10-WSSW

Dear Mr. Pigue:

Enclosed are your copies of the referenced loan agreements stamped "paid in full."

Your repayment of the above referenced debts will help insure the availability of funds for other eligible entities throughout the state.

Should the Arkansas Natural Resources Commission be able to assist you in any of your future endeavors toward quality water, please don't hesitate to contact us.

Sincerely,

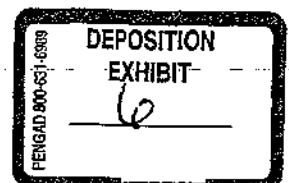
J. Randy Young, P.E.
Executive Director

JRY:skc

Enclosures

587

SFRRWD.000070



LOAN AGREEMENT
01083-WDF-L
PROJECT NO. WRD-004-027

WHEREAS, on April 21, 2016, ST. FRANCIS RIVER REGIONAL WATER DISTRIBUTION DISTRICT, (hereinafter referred to as the "Applicant"), applied to the ARKANSAS NATURAL RESOURCES COMMISSION (hereinafter referred to as "ANRC") for the purpose of acquiring necessary financial assistance from ANRC in the amount of \$50,000.00 to replace PH and add a chlorine system, pump and fire hydrant and repair building, (hereinafter referred to as the "Project");

WHEREAS, on July 20, 2016, ANRC approved the above-described application in the form of a ten (10) year loan not to exceed \$51,500.00 from the Water Development Fund, to be disbursed on an as-needed basis, and resolved to enter into an Agreement with the Applicant to provide a loan from ANRC. Approval was contingent upon the District establishing and maintaining a depreciation reserve fund.

NOW THEREFORE: ANRC and the Applicant enter into this Agreement.

Construction Provisions

In consideration of the aforesaid premises and the rendering of financial assistance by the State of Arkansas through ANRC to the Applicant, the Applicant promises to cooperate fully with ANRC in the construction of the Project and shall make its books, records, and materials available to ANRC and the authorized representatives of ANRC for inspection and/or investigation at all reasonable times during construction and until completion.

Any disbursement of ANRC's money over ANRC's cost-share of the Project shall promptly be repaid to ANRC.

Upon completion of the Project, the Applicant shall furnish ANRC an accounting of Project money acceptable to ANRC.

Repayment Provisions

In consideration of the aforesaid premises and the rendering of financial assistance by the State of Arkansas through ANRC to the Applicant, the Applicant hereby promises to repay all money provided to the Applicant under this Agreement.

Should ANRC at any time find that the purposes of the loan or uses of the money provided thereby are not within the purposes and intents of the Project as stated in the application received by ANRC, the entire principal plus interest at two and three-quarters percent (2.75%) per annum from the effective date of this Agreement until date of repayment shall be repaid to ANRC.



The term of the Agreement executed herein is deemed to be approximately ten (10) years at two and three-quarters percent (2.75%) interest. Payments will be made as stated in the repayment schedule that is attached hereto as Attachment A.

In the event that the Project supported by this Agreement is financed by multiple sources, repayment of the outstanding balance will be due in full at such time as any or all other related debts are refinanced or otherwise retired. This will be required whether the status of the herein described loan is primary or secondary, and whether it is deferred or currently due.

For good cause ANRC may reduce, defer, suspend, or forgive payments due under the Agreement herein executed. Such resolution may extend the term of the Agreement herein executed. Low service rates by Applicant are not sufficient cause for Commission resolution.

The Applicant may prepay in full or in part the loan entered into under this Agreement without penalty.

General Provisions

In accordance with Arkansas Code Annotated §15-20-209 and Section 506.6 of ANRC rules, this loan is subject to a three percent (3%) administrative fee. An administrative fee in the amount of \$1,500.00 will be retained by ANRC at the time of disbursement.

Applicant shall establish and maintain a depreciation reserve fund equal to three percent (3.0%) of the system's gross revenue until the reserve amount exceeds \$50,000.00 and will raise the water rate structure, if necessary, to maintain the depreciation reserve fund. Upon request, the Applicant shall provide ANRC with current financial data indicating that the reserve fund has been established and is being maintained. The fund shall be maintained at the level indicated. The depreciation reserve fund is for the replacement of this Project and shall not be used for any other purpose without prior written approval of ANRC. The Applicant may request an alternate reserve. Any such request shall be approved in writing by ANRC.

So long as the herein described loan remains outstanding, ANRC and its duly authorized representative shall be entitled to conduct such investigations concerning the construction, operation, maintenance, and management of Applicant's system including the Project, but not limited to all financial and accounting records, as necessary to keep ANRC fully advised of the use of the money provided hereby and to ensure the repayment of the same to the State of Arkansas.

The Applicant shall file an annual financial audit prepared by an independent certified public accountant for the life of this Agreement. The audit will be prepared on the accrual basis of accounting and in accordance with generally accepted accounting principles. The report shall be submitted no later than one hundred twenty (120) days following the end of the fiscal year covered by the report. The report will include a

management letter addressing the Applicant's compliance with the terms of this Agreement and stating the current water rate structure, the number of water customers, and any other relevant information requested by ANRC.

Upon failure to submit a timely annual audit/financial statement the applicant may be assessed a penalty of one thousand dollars (\$1,000), which will be added to the outstanding principal balance of the loan.

Failure to file reports with the Division of Legislative Audit as required by Arkansas Code 14-234-119 through 122 shall be a material breach of this Agreement and will make the Applicant ineligible for further financial assistance from the State.

Should ANRC be abolished, its rights and duties, including the right to repayment, under this Agreement shall be assigned to its legal successor in interest.

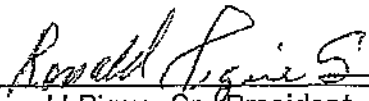
In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision herein, and each such other provision shall be construed as though the invalid or unenforceable provision were not included herein.

This Agreement supersedes all prior written or verbal understandings or agreements of the parties with respect to financing of this Project, and may not be effectively amended, changed, modified, altered or terminated without the written consent of ANRC and the Applicant. Addenda to reduce the principal amount of the loan may be executed in writing by ANRC's Executive Director and the Applicant.

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation or policy adopted pursuant to that Order, shall be a material breach of the terms of this Agreement. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to ANRC.

This Loan Agreement, 01083-WDF-L, shall be effective as of the 9th day of January, 2017.

ST. FRANCIS RIVER REGIONAL WATER
DISTRIBUTION DISTRICT
GREENE COUNTY, ARKANSAS



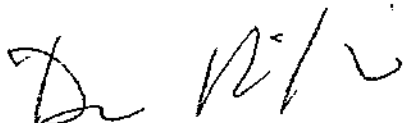
Ronald Pigue, Sr., President

ATTEST:



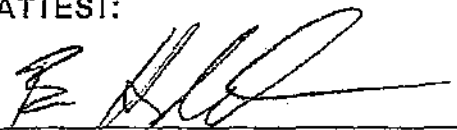
Danny Dortch, Secretary

ARKANSAS NATURAL
RESOURCES COMMISSION



Don Richardson, Chairman

ATTEST:



Bruce Holland
Executive Director/Ex-Officio Secretary

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss
COUNTY OF GREENE)

Before me on the 28th day of December, 2016, appeared RONALD FIGUE, SR. and DANNY DORTCH, President and Secretary respectively of ST. FRANCIS RIVER REGIONAL WATER DISTRIBUTION DISTRICT of Greene County, Arkansas, both known to me personally, and being authorized by resolution duly adopted by St. Francis River Regional Water Distribution District subscribed the foregoing Agreement 01083-WDF-L, for all the intents and purposes therein contained.

Daphia D. Carter
NOTARY PUBLIC



MY COMMISSION EXPIRES: 1-15-2021

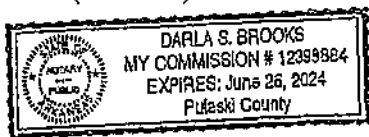
ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss
COUNTY OF PULASKI)

Before me on the 18th day of January, 2017, appeared DON RICHARDSON and BRUCE HOLLAND, Chairman and Executive Director/Ex-Officio Secretary, of the ARKANSAS NATURAL RESOURCES COMMISSION, both known to me personally, and being authorized by resolution duly adopted by ANRC, subscribed the foregoing Agreement, 01083-WDF-L, for all the intents and purposes therein contained.

Darla S. Brooks
DARLA S. BROOKS, NOTARY PUBLIC

MY COMMISSION EXPIRES: June 26, 2024
(S E A L)



IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

AFFIDAVIT OF BETTY JACKSON

Before me, the undersigned authority, for the county and state aforesaid, personally appeared Betty Jackson, who after being duly sworn, stated as follows:

1. I, Betty Jackson, am of sound mind, capable of making this Affidavit, and over eighteen years of age.
2. I am currently the Recorder/Treasurer for the City of Marmaduke, Arkansas ("the City"), which is located in Greene County, Arkansas.
3. The certified copy of Resolution No. 061918 attached hereto is a true and correct copy of the resolution kept on file in my office.
4. Resolution No. 061918 annexes the property where ARI East and the Refurbishing Plants are located into the City of Marmaduke.



Further, Affiant Sayeth Not.

Betty Jackson
Betty Jackson

March 6, 2019
Date

ACKNOWLEDGMENT

State of Arkansas)
) ss.
County of Greene)

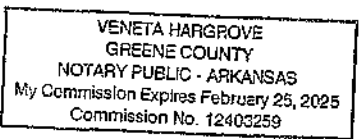
Before me the undersigned Notary Public in and for the State of Arkansas at Large, personally appeared, Betty Jackson, and after being first duly sworn, did depose and say that the statements in the foregoing Affidavit are true and correct.

SUBSCRIBED and **SWORN** to before me on this 1st day of March, 2019.

My Commission Expires:

Veneta Hargrove
Notary Public

02-25-2025



RESOLUTION NO. 061918

**A RESOLUTION CONFIRMING ANNEXATION OF CERTAIN
TERRITORY TO THE CITY OF MARMADUKE, ARKANSAS,
AND MAKING THE SAME A PART OF THE CITY AND ASSIGN
SUCH LANDS TO WARDS.**

WHEREAS, the County Court of Greene County, Arkansas, has entered its Order granting annexation of the lands hereinafter described to the City of Marmaduke, Arkansas, and 30 days has expired from the making of such Order of Annexation by the County Court and no notice has been given appealing such Order of Annexation;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
MARMADUKE, ARKANSAS:**

SECTION 1. That the following lands and territory contiguous to and adjoining the City of Marmaduke, Arkansas be and the same are hereby accepted and assigned to wards as follows:

That part of the South Half of the Southeast Quarter of Section 13, Township 18 North, Range 6 East, described as follows: Beginning at the Southeast corner of said Section 13, run thence North 40 rods, thence West 96 rods, run thence South 40 rods, thence East 96 rods to the place of beginning, containing 24 acres, more or less.

The land in this annexation is assigned to Ward 2.

SECTION 2. That the following lands and territory contiguous to and adjoining the City of Marmaduke, Arkansas be and the same are hereby accepted and assigned to wards as follows:

That part of the Southwest Quarter of Section 18, Township 18 North, Range 7 East, described as follows: Beginning at the Southwest corner of said Section 18, run thence North 0 degrees 46 minutes West 2414.1 feet to the East right-of-way of Highway 49, run thence North 42 degrees 58 minutes East along said right-of-way 63.2 feet to the centerline of a ditch, run thence along said ditch the following calls: South 32 degrees 18 minutes East 91.0 feet, South 39 degrees 45 minutes East 531.6 feet, South 42

degrees 40 minutes East 437.1 feet, South 66 degrees 55 minutes East 188.9 feet, South 47 degrees 41 minutes East 534.3 feet, South 31 degrees 44 minutes East 90.9 feet, South 1 degree 14 minutes East 446.2 feet, South 0 degrees 58 minutes West 686.8 feet, run thence South 89 degrees 36 minutes West 1310.1 feet to the true point of beginning, containing 53.96 acres, more or less. SUBJECT TO the right-of-way of Highway 34 off the South side thereof, and all utility easements.

The land in this annexation is assigned to Ward 2.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARMADUKE, ARKANSAS, This resolution:

PASSED AND APPROVED THIS 19th DAY OF JUNE, 2018

A handwritten signature in black ink, appearing to read "D. H. [unclear] B.F.", written over a horizontal line.

Mayor

ATTEST:

A handwritten signature in black ink, appearing to read "Betty Jackson B.F.", written over a horizontal line.

City Clerk and Recorder



ARKANSAS SECRETARY OF STATE
MARK MARTIN

July 30, 2018

The Honorable Phyllis Rhymes
Greene County Clerk
320 W. Court St, Room 102
Paragotild, AR 72450

Re: City of Marmaduke Annexation Resolution 061918

Dear Ms. Rhymes,

This letter acknowledges receipt and filing of the following notice of municipal boundary change by the Office of the Secretary of State:

Filing Type: Annexation pursuant to A.C.A § 14-40-609 (petition by 100% of the landowners)

Effective Date: 07/19/2018

County: Greene

City: Marmaduke

City Resolution: 061918

Dated: 06/19/2018

County Court Order: CO-2018-21

Date Filed: 04/25/2018 Honorable Rusty A. McMillon, Greene County Judge

A file marked copy of the resolution, Court Order and exhibits submitted to our Office are enclosed. By copy of this letter (and its enclosures), the Secretary of State hereby notifies the appropriate mapping authorities for Arkansas. Please retain these copies as official record of the filing of the municipal boundary change by the Arkansas Secretary of State.

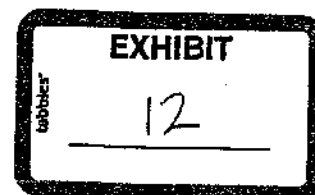
If you have any questions or concerns regarding this pending filing, please contact our office at 501-682-3401.

Sincerely,

Cynthia Fisher
Arkansas Secretary of State Legal Division
500 Woodlane St, Room 256
Little Rock, AR 72201
501-682-3401

cc: Arkansas Geographic Information Systems Office (w/ encl)
Arkansas Highway and Transportation Department Mapping Department (w/ encl)
Department of Finance and Administration (w/encl)
Arkansas Public Service Commission (w.encl)
UALR Institution for Economic Advancement (w/encl)
Tom-Tom (w/encl)
Hon. Steve Dixon, Mayor of Marmaduke (w/encl)

Legal Division • 500 Woodlane Street • Suite 256 • Little Rock, Arkansas 72201-1094
501-682-3401 • Fax: 501-682-1213
e-mail: legal@sos.arkansas.gov • www.sos.arkansas.gov





Arkansas Secretary of State

Mark Martin Arkansas Secretary of State, 500 Woodlane Ave, Little Rock, AR 72201-1094

Municipal Boundary Change Checklist

County: Greene City/Town: Marmaduke

City Ordinance/Resolution No: 06/19/18 Date approved: 06-19-18

County Court Case No: CD-2018-21 Date Order Filed: 04-25-18

Type: Annexation by Petition of all Landowners A.C.A. 14-40-609
(Choose from the list of Arkansas Code Sections located on the back)

Date Change Effective: 06-19-18 Set by: Municipal Ordinance Emergency Clause Court Default
(Required by Act 655 of 2017)

For Circuit Court Challenge: Date Order Filed: _____ Upheld Overturned Other (attach explanation)

Initiating party:

All Landowners Majority Landowners Municipal Governing Body State Other _____

Supporting Documentation attached (check all that apply):

- File marked copy of City Ordinance/Resolution (required)
- File marked copy of County Court Order (required except for island annexation and annexation approved by election)
- Copy of Arkansas GIS approved printed map and certification letter (required)
- Proof of Publication for all Legal Notices (include Hearing, Election, and City Ordinance/Resolution notices)
- File marked copy of Petition Part or File marked copy of the certified special election results (if applicable)
- File marked copy of Complaint and final Circuit Court Order (Court Challenge only)

Municipal Contact:

Name: Steve Dixon Title: Mayor

Street Address: P.O. Box 208

City: Marmaduke St: AR Zip code: 72443

Complete one form per ordinance/resolution, attach it as a cover page to the supporting document set and submit to the County Clerk's Office within 45 days of the Effective Date as required by Act 655 of 2017

County Official:

Signature: Phyllis Rhynes Title: County Clerk

Date: 6-28-18

Pursuant to Act 655 of 2017, County Officials must submit a file-marked copy of municipal boundary change documents within 30 days of receipt to: Arkansas Secretary of State, Attn: Municipal Boundary Filing, 500 Woodlane Ave Suite 256, Little Rock, AR 72201-1094

Office of the Arkansas Secretary of State use only

Received by: Cynthia Fisher

FILED

JUL 30 2018

Arkansas
Secretary of State

*Office of the Greene County Clerk
Phyllis Rhynes, County and Probate Clerk
320 West Court Street, Room 102
Paragould, AR 72450
Phone: (870)239-6311 Fax: (870)239-6320*

June 28, 2018

Arkansas Secretary of State
Attn: Municipal Boundary Filing
500 Woodlane Street, Room 256
Little Rock, AR 72201-1094

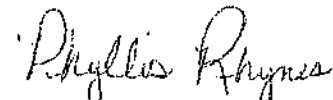
RE: City of Marmaduke—Annexation

Dear Sir:

Enclosed, you will find the Municipal Boundary Change Checklist, a copy of Resolution 061918 from the City of Marmaduke, a copy of the Order Concerning Annexation from CO-2018-21, and a copy of the Arkansas GIS approved printed map and certification letter.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Phyllis Rhynes
Greene County Clerk

RESOLUTION NO. 061918

A RESOLUTION CONFIRMING ANNEXATION OF CERTAIN
TERRITORY TO THE CITY OF MARMADUKE, ARKANSAS,
AND MAKING THE SAME A PART OF THE CITY AND ASSIGN
SUCH LANDS TO WARDS.

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F I L E D

JUL 30 2018

Arkansas
Secretary of State

degrees 40 minutes East 437.1 feet, South 66 degrees 55 minutes East 188.9 feet, South 47 degrees 41 minutes East 534.3 feet, South 31 degrees 44 minutes East 90.9 feet, South 1 degree 14 minutes East 446.2 feet, South 0 degrees 58 minutes West 686.8 feet, run thence South 89 degrees 36 minutes West 1310.1 feet to the true point of beginning, containing 53.96 acres, more or less. SUBJECT TO the right-of-way of Highway 34 off the South side thereof, and all utility easements.

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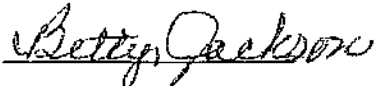
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARMADUKE, ARKANSAS, This resolution:

PASSED AND APPROVED THIS 19th DAY OF JUNE, 2018

A handwritten signature in black ink, appearing to be "D. H. [unclear]", written over a horizontal line.

Mayor

ATTEST:

A handwritten signature in black ink, appearing to be "Betty Jackson", written over a horizontal line.

City Clerk and Recorder

IN THE COUNTY COURT OF GREENE COUNTY, ARKANSAS
IN THE MATTER OF ANNEXING TO THE CITY OF MARMADUKE,
ARKANSAS, CERTAIN TERRITORY CONTIGUOUS TO THE SAID CITY OF
MARMADUKE, ARKANSAS. APR 25 P 3: 29

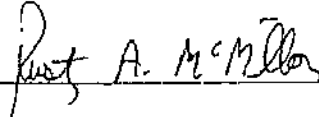
ORDER CONCERNING ANNEXATION
SIVILLI D. BUNNES, CLERK

On this regular day of a regular term of the County Court of Greene County, Arkansas, there is presented to the Court by American Railcar Industries, Inc. a petition desiring the annexation of territory to the City of Marmaduke, Arkansas, more particularly described therein. The court has received the verification of the County Assessor and County clerk required by A.C.A. § 14-40-609. This Court being fully advised of the facts and the law, does hereby find as follows:

1. The petition and verifications are complete and accurate.
2. No enclaves will be created by the annexation.
3. The petition contains a schedule of services.
4. The territory consists of lands that represent the actual growth of the municipality beyond its legal boundary.
5. The territory consists of lands that, although contiguous, may be annexed because none of the facts or circumstances enumerated in A.C.A. § 14-40-302(b)(1) exist, in that (a) the highest and best use of the lands is not for agricultural or horticultural purposes; (b) no new community is to be constructed on the lands with funds guaranteed in whole or in part by the federal government; (c) the lands include the resident petitioner, American Railcar Industries, Inc.; and (d) there are no public road right-of-ways or public road easements within the lands sought to be annexed.

Therefore, the Court hereby ORDERS that the petition and this Order be delivered to the City or of Marmaduke, Arkansas.

SO ORDERED THIS 25 DAY OF APRIL, 2018.


County Judge

F I L E D

JUL 30 2018

Arkansas
Secretary of State



ARKANSAS
GIS OFFICE

March 27, 2018

Mr. Jon Cline
Associate – Armstrong Teasdale LLP
7700 Forsyth Blvd, STE 1800
St. Louis, MO 63105-1847

RE: City of Marmaduke Annexation Coordination Requirement

Mr. Cline,

Thank you for coordinating with our office as you seek to annex property into the City of Marmaduke, AR located in Section 13, Township 18 North, Range 6 East and Section 18, Township 18 North, Range 7 East. This letter represents confirmation that you have properly coordinated with our office (Arkansas GIS Office) as specified in § 14-40-101 (Act 914 of 2015) of the 90th General Assembly.

Our office will wait completion of any additional steps necessary for the proposed boundary change, which normally comes from the Arkansas Secretary of State Elections Division after any appropriate filing by your County Clerk.

Thank you,

Jennifer Wheeler, GIS Analyst
/jjw

Attachments:
GIS Office Map of Proposed Annexation
Legal Description
Secretary of State Municipal Change Checklist

F I L E D

JUL 30 2018

Arkansas
Secretary of State

H:\City_Annexations\Cities\Marmaduke\20180327\Doc\20180327_Marmaduke_Annexation_Coordination_Letter.docx

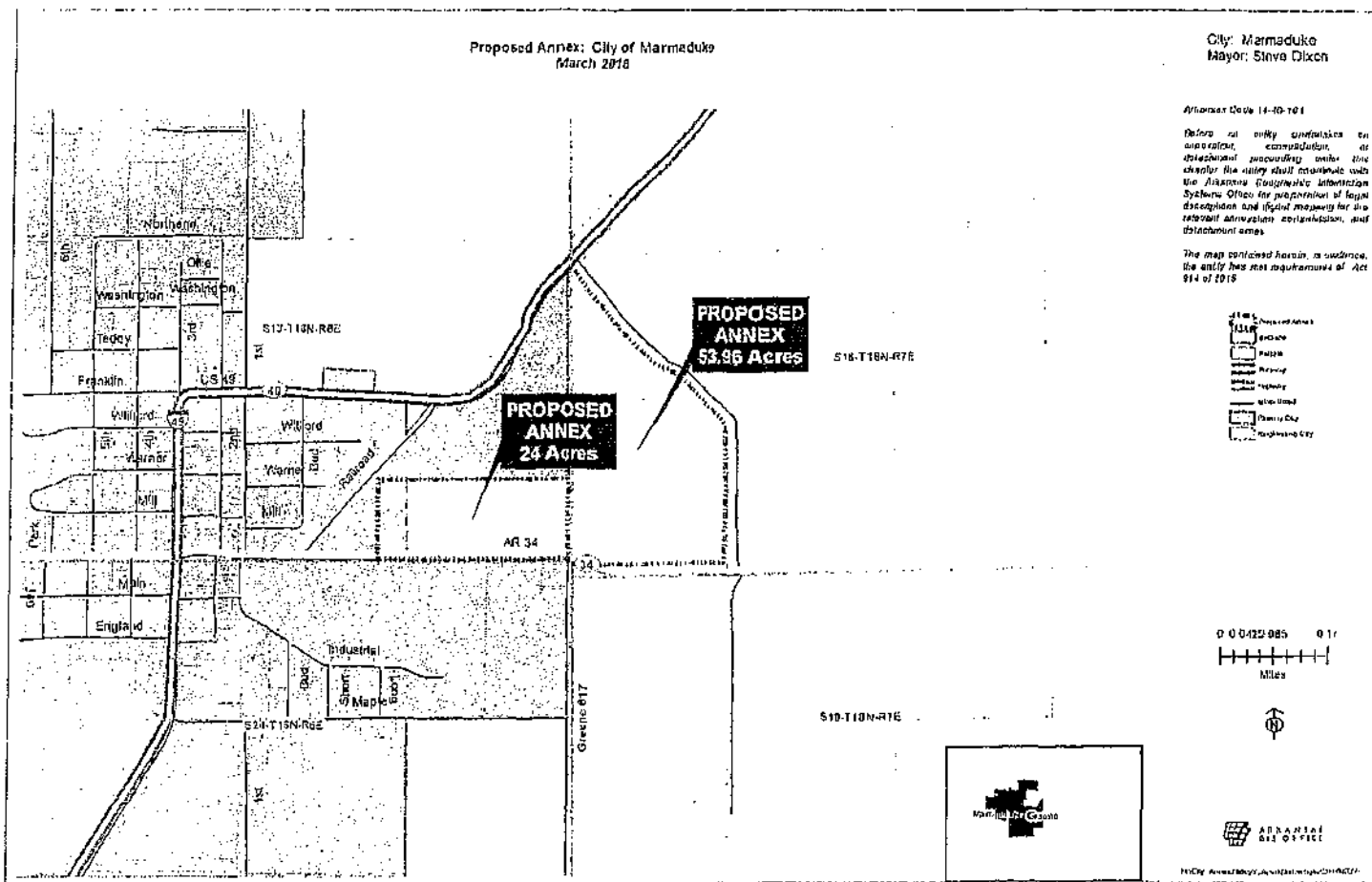
Proposed Annex: City of Marmaduke
March 2018

City: Marmaduke
Mayor: Steve Dixon

Arkansas Code 14-10-101

Before an entity exercises its authority to incorporate, consolidate, or otherwise reorganize, the entity shall consult with the Arkansas Legislative Information Systems Office for the preparation of legal description and fiscal reports for the relevant administrative jurisdiction, and attachment fees.

The map contained herein, in accordance, the entity has met requirements of Act 914 of 2018.



FILED

JUL 30 2018

Arkansas
Secretary of State

West Parcels:

That part of the South Half of the Southeast Quarter of Section 13, Township 18 North, Range 6 East, described as follows: Beginning at the Southeast corner of said Section 13, run thence North 40 rods, thence West 96 rods, run thence South 40 rods, thence East 96 rods to the place of beginning, containing 24 acres, more or less.

East Parcel:

That part of the Southwest Quarter of Section 18, Township 18 North, Range 7 East, described as follows: Beginning at the Southwest corner of said Section 18, run thence North 0 degrees 46 minutes West 2414.1 feet to the East right-of-way of Highway 49, run thence North 42 degrees 58 minutes East along said right-of-way 63.2 feet to the centerline of a ditch, run thence along said ditch the following calls: South 32 degrees 18 minutes East 91.0 feet, South 39 degrees 45 minutes East 531.6 feet, South 42 degrees 40 minutes East 437.1 feet, South 66 degrees 55 minutes East 188.9 feet, South 47 degrees 41 minutes East 534.3 feet, South 31 degrees 44 minutes East 90.9 feet, South 1 degree 14 minutes East 446.2 feet, South 0 degrees 58 minutes West 686.8 feet, run thence South 89 degrees 36 minutes West 1310.1 feet to the true point of beginning, containing 53.96 acres, more or less. SUBJECT TO the right-of-way of Highway 34 off the South side thereof, and all utility easements.

Transcript of the Testimony of

Phelps, Crystal

Date: February 4, 2019

Case: St. Francis River Regional Water District vs. City of
Marmaduke, Arkansas

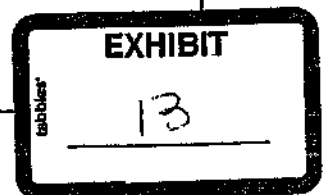
Bushman Court Reporting

Crystal Garrison, CCR

Phone: (501) 372-5115

Fax: (501) 378-0077

<www.bushmanreporting.com>



IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL)	PLAINTIFF
WATER DISTRICT)	
)	
Vs.)	Case No. CV-2017-219
)	
CITY OF MARMADUKE,)	
ARKANSAS)	DEFENDANT.

ORAL DEPOSITION OF

CRYSTAL PHELPS

FEBRUARY 4, 2019

ORAL DEPOSITION OF CRYSTAL PHELPS, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on February 4, 2019, from 10:04 a.m. to 12:22 p.m., before Crystal Garrison, Certified Court Reporter, in and for the State of Arkansas, reported by machine shorthand, at the Arkansas Natural Resources Commission, 101 East Capitol Avenue, Suite 350, Little Rock, Arkansas 72201, pursuant to the Arkansas Rules of Civil Procedure.

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A P P E A R A N C E S

ATTORNEY FOR THE PLAINTIFF:

MR. JIM LYONS
Lyons & Cone
407 South Main Street
Jonesboro, Arkansas 72401
870-972-5440

ATTORNEY FOR THE DEFENDANT:

MR. WILLIAM C. MANN, III
MS. BREE GIBSON
Arkansas Municipal League
310 West Second
North Little Rock, Arkansas 72115
501-978-6131

ALSO PRESENT:

MR. STEVE DIXON

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EXAMINATION INDEX

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CRYSTAL PHELPS

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EXHIBIT INDEX

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1 you see that?

2 A. Yes.

3 Q. It's addressed to a Jerome Alford with Bond
4 Consulting Engineers East, Inc. Are you acquainted with
5 Mr. Alford?

6 A. I have probably met him before, but I don't -- I
7 would not be able to pick him out or even tell you what
8 conversations we've had.

9 Q. Couldn't pick him out of a lineup; huh?

10 A. No.

11 Q. Okay. All right. And it's reflected that there is
12 a cc to the Honorable Ron, I'm going to say Pigue,
13 President of St. Francis River Water District; you see
14 that?

15 A. Yes.

16 Q. Are you acquainted with him?

17 A. I am not.

18 Q. Are you acquainted with anyone whom you know to be a
19 member of the board of directors of the District?

20 A. I am not.

21 Q. Okay. Would you agree with me that one of the
22 purposes of forming a nonprofit water district --
23 regional water district, is to furnish water to persons
24 who desire it?

25 A. Yes.

1 Q. If a entity is serving an existing customer, such as
2 in this case ARI, and ARI then expands its operation
3 across city limits, is it your -- based upon your
4 earlier testimony to Mr. Lyons, is it your testimony
5 that in order for -- in order for Marmaduke to serve
6 this new area at ARI, they've got to come to the ANRC
7 and get some approval?

8 A. It would depend upon whether service to this new
9 entity increased their water usage by more than 20
10 percent, Marmaduke's water usage. I would have to defer
11 to the Title 6 rules for projects.

12 Q. Okay.

13 A. But there's a -- No. 4 talks about increased
14 capacity.

15 Q. Title 6 --

16 A. Title 6. And it's --

17 Q. Let me pull out a copy here for you to --

18 A. Oh, thank you.

19 Q. For you to refer to. And what I'm placing in front
20 of you -- I'm not going to make an exhibit, but it's --
21 if you read along with me, it's entitled: Arkansas
22 Natural Resources Commission Water Plan Compliance
23 Review Procedures, Title 6, Effective 2012?

24 A. Yes.

25 Q. If you can find that for me, I would appreciate it.

1 A. All right. What I was talking about is Section
 2 601.4, Applicability.

3 Q. Okay.

4 A. And this concerns the definition of project.

5 Q. Okay.

6 A. And a project is a system expansion that would
 7 result in an increase of more than 20 percent of the
 8 current average water usage or treatment capacity.

9 And I think that is the particular definition that
 10 would be most likely to apply to Marmaduke. Because I
 11 don't -- I don't think that the ARI expansion would have
 12 been a use of water exceeding 80 percent of Marmaduke's
 13 capacity to produce drinking water.

14 Q. All right.

15 A. So, if one of those were to apply, I think that
 16 would be the one.

17 Q. Okay. So you're saying then, if providing service
 18 to an existing customer, such as ARI, would require an
 19 increase of more than 20 percent of current average
 20 water usage or treatment capacity, they would need to
 21 come and -- to the ANRC?

22 A. Yes.

23 Q. And what would they need to do?

24 A. They would need to apply for Water Plan Compliance
 25 approval.

1 recognize you don't have that in front of you.

2 A. Well --

3 Q. Well, what can you remember about it?

4 A. I think that must have to do with buying out pipes
5 in the ground, transferring of facilities when one
6 entity buys out another. But as an attorney, I rely
7 upon the fact that I can look things up.

8 Q. Sure.

9 A. As opposed to my memory of numbers.

10 Q. Trust me, I understand. I'm not asking you to do it
11 verbatim, just whatever you could remember. Now, I want
12 to show you -- and this is in your -- back to --
13 flipping back to Title 6 of your rules and regs.

14 A. Yes.

15 Q. I'd like to direct your attention to Subtitle 5,
16 Review of Proposed Transfer of Service Area. And
17 Section 605.1, Protection of Service Area. And ask you
18 to take a look at that, if you would.

19 A. Yes.

20 Q. And tell me when you've finished.

21 A. Yes. I am finished.

22 Q. Okay. Does that look like any statute you've ever
23 reviewed?

24 A. Yes.

25 Q. Okay. And what statute might that be?

1 A. 15-22-223.

2 Q. Okay. So I take it that Section 601.5 -- let me say
3 that again. Section 605.1 is simply a restatement of
4 Section -- Arkansas Code Annotated 15-22-223?

5 A. Yes.

6 Q. Okay. Subsection A, I believe, is proper. And it
7 says, as I read it here, "It is unlawful for a person to
8 provide water or wastewater services to an area where
9 said services are being provided by a current provider
10 that has pledged or used revenues derived from services
11 within the area to repay financial assistance provided
12 by the Commission.

13 "Unless approval for such activity has been given by
14 the Commission and the new provider has received
15 approval under Arkansas Water Plan, if applicable." Did
16 I read that correctly?

17 A. Yes.

18 Q. Based upon your knowledge and understanding of the
19 facts and circumstances involved in this dispute between
20 Marmaduke and the District, are you aware of anything
21 Marmaduke has done which you would conclude to be
22 unlawful under that particular section of the
23 Commission's rules?

24 A. No.

25 Q. Bear with me. I'm sorry. I want to refer you to

1 referring to my letter to you asking for assistance?

2 A. I meant that I'm not aware of any avenue that we
3 have other than sending a letter and -- so, perhaps
4 depending upon the conditions of a loan, if we had a
5 borrower that was doing this, then we would be able to
6 condition -- we would be able to talk to the borrower
7 and get the borrower to comply with the other entity's
8 plan.

9 But aside from using our loan as some kind of
10 enforcement tool where the promise of future loans as an
11 enforcement tool, I don't know what else we would have
12 done other than send a letter.

13 Q. Okay. And does Marmaduke have a loan from the
14 Arkansas Natural Resources Commission for their Water
15 Plan?

16 A. I don't know.

17 Q. Okay.

18 MR. LYONS: I don't have a copy of 601. I don't
19 think you made that an exhibit. May I borrow your copy?
20 Thank you.

21 MR. MANN: Uh-huh.

22 Q. (BY MR. LYONS) If you would, read aloud Section
23 601.1, please.

24 A. "The Arkansas Natural Resources Commission is
25 responsible for preparing and overseeing the Arkansas

1 Water Plan. The Plan is the State policy for the
2 orderly development and management of the State's water
3 and related land resources and is prepared in the public
4 interest of the entire State.

5 "All approved water and wastewater development
6 projects shall coordinate the use of water resources
7 within the region in which the project is located and
8 within the State as a whole."

9 Q. And that's a general statement of the purpose of a
10 Water Plan; would you agree with that?

11 A. That is -- yes. That's what the statute says, I
12 believe. I believe we put the statute into this rule.

13 Q. Okay. And if you would, turn to 601.4.

14 A. (Witness complies.)

15 Q. And you were asked about the term "project" as used
16 in this title shall include, and I believe you said that
17 one of the things that you would look at would be B
18 (4)(c); correct?

19 A. Yes.

20 Q. That is development of a new -- "The term "Project"
21 is used in this title shall include the following:
22 Development of a new or different location for water
23 withdrawal or water discharge; an increase --" I'm
24 sorry.

25 "The term "Project" is used in this title shall

1 include the following: System expansion that would
2 result in an increase of more than 20 percent of the
3 current average water usage or treatment capacity"; is
4 that correct?

5 A. Yes.

6 Q. Okay. What about 601.4 (b)(6)?

7 A. What about it?

8 Q. Well, would that fit within the definition of a
9 project?

10 A. Yes.

11 Q. Okay. And what about 601.4 (b)(7): Transfer of
12 service area not receiving service from utility, but
13 included within another political subdivisions's
14 approved service area or within another entity's
15 application for Water Plan Compliance approval.

16 That would constitute a project also; wouldn't it?

17 A. Yes.

18 Q. And that's exactly what we have in this particular
19 situation; isn't it?

20 MR. MANN: Object to the form.

21 A. I'm not sure that the two situations are the same.

22 Q. (BY MR. LYONS) Okay. Well, before -- when ARI
23 built its plan and it didn't have any water yet -- it
24 built the East Plant and it didn't have any water yet,
25 and you agreed with me, based on the earlier review of

1 the letters, that the East Plant is in the Water
2 District's -- St. Francis Water District's service
3 territory; correct?

4 A. It's definitely within the geographic boundaries of
5 the District.

6 Q. Okay. Well, that -- you said -- and you said
7 geographic boundaries meant service area?

8 A. I didn't say that.

9 Q. Well, when you were asked for the definition, it
10 says service geographic -- service area. And then,
11 there was another definition that had --

12 A. Geographic.

13 Q. Geographic in it. And the service area is the
14 geographic boundary; isn't it?

15 A. No, not necessarily.

16 Q. Okay. So, tell me what the difference between the
17 geographic area granted to a water district is and the
18 service area is?

19 A. Service area has to do with areas that have been
20 approved by the Commission for the provision of water or
21 wastewater service. It's -- it's not the legal
22 boundaries of a particular water provider, but it is the
23 boundaries that have been approved for service by the
24 Commission.

25 Q. Well, are those the same thing or are those

1 different?

2 A. I don't know that there has been any clear law on
3 whether those two are the same thing or not.

4 Q. Okay. So, you don't know whether the service area
5 and the geographic boundaries described in the circuit
6 court order and the Water Plan are the same thing?

7 A. I would be hesitant to say they are the same thing.

8 Q. Do you consider them to be different?

9 A. Yes.

10 Q. Okay. What's the difference?

11 A. Well, one would be the boundaries established by the
12 court. It would be a bright line on a map. The other
13 one has to do more with the Commission specifically
14 receiving a plan for development, having something
15 within its file saying we want to provide service.

16 And it would be something that would provide notice
17 to other entities of the fact that this was an area of
18 interest for development.

19 Q. Okay. And did Marmaduke provide any notice to ANRC
20 of its intent to provide water to the East Plant of ARI?

21 A. Not that I'm aware of.

22 Q. Did Marmaduke come to the ANRC and take any action
23 whatsoever to provide or to invade the service area of
24 St. Francis River Regional Water District?

25 MR. MANN: Object to the form of the question.

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REPORTER'S CERTIFICATION
ORAL DEPOSITION OF CRYSTAL PHELPS
FEBRUARY 4, 2019

I, CRYSTAL GARRISON, Certified Shorthand Reporter
in and for the State of Arkansas, hereby certify to the
following:

That the witness was duly sworn by the officer and
that the transcript of the ORAL DEPOSITION is a true
record of the testimony given by the witness;

I further certify that I am neither counsel for,
related to, nor employed by any of the parties or
attorneys in the action in which this proceeding was
taken, and further that I am not financially or
otherwise interested in the outcome of the action.

Certified to by me this ____ day of _____,
2019.

Crystal Garrison, CCR # 613
Bushman Court Reporting
620 West Third Street, Suite 302
Little Rock, Arkansas 72201
(501) 372-5115

ORIGINAL

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

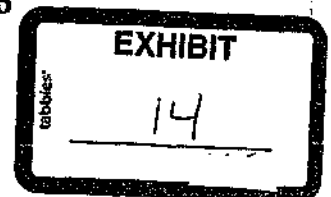
ST. FRANCIS RIVER REGIONAL)
WATER DISTRICT)
PLAINTIFF)
VS. NO. 4CV-2017-219-MR)
CITY OF MARMADUKE, ARKANSAS)
DEFENDANT)

DEPOSITION OF TONYA THOMPSON

TAKEN IN MARION, ARKANSAS

FEBRUARY 18, 2019

HENDRIX REPORTING SERVICE
1701 SOUTH ARCH
LITTLE ROCK, ARKANSAS 72206
(501) 372-2748



APPEARANCES:**On Behalf of the Plaintiff:**

JIM LYONS, Esq.
Lyons and Cone Law Firm
407 South Main
Jonesboro, AR 72401

On Behalf of the Defendants:

WILLIAM MANN, III, Esq.
Arkansas Municipal League
Second and Willow
North Little Rock AR 72114

Also Present:

Mayor Steve Dixon

HENDRIX REPORTING SERVICE

1701 SOUTH ARCH
LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

Produced, sworn, and examined, pursuant to notice, in the office of the Chamber of Commerce, 13 Military Road, Marion, Arkansas, commencing at 10:10 a.m. on February 18, 2019, in the above-entitled cause now pending in the Circuit Court of Greene County, Arkansas; said deposition being taken for all purposes, pursuant to the Arkansas Rules of Civil Procedure.

I N D E X

WITNESS:
TANYA THOMPSON

Examination by Mr. Mann page 6

EXHIBITS:

Deposition Exhibit One page 80
Email from Blake Brasher of 6-19-15

Deposition Exhibit Two page 81
Email from Alford to Thompson of 6-22-15

Deposition Exhibit Three page 82
Email from Breznay to Thompson of 8-4-15

Deposition Exhibit Four page 83
Email from Thompson to SFRRWD of 8-4-15

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(501) 372-2748

Deposition Exhibit Five page 84
 Email from Thompson to Breznay of 10-19-15

Deposition Exhibit Six page 85
 Email from Breznay to Thompson of 12-16-15

Deposition Exhibit Seven page 86
 Email of Breznay to Thompson of 1-11-16

Deposition Exhibit Eight page 87
 Letter of Pigue to ARI of 2-2-16

Deposition Exhibit Nine page 88
 Email of SFRRWD to Pigue of 2-3-16

Deposition Exhibit Ten page 89
 Email of Carter to SFRRWD of 3-3-16

Deposition Exhibit Eleven page 90
 SFRRWD Memo of 3-14-16 to Marmaduke Mayor

Deposition Exhibit Twelve page 91
 First National Bank letter of 4-21-16 to SFRRWD

Deposition Exhibit Thirteen page 92
 ANRC Letter of 7-27-16 to SFRRWD

Deposition Exhibit Fourteen page 93
 ANRC Letter of 8-8-16 to SFRRWD

Deposition Exhibit Fifteen page 94
 Resolution Number 16-10 Re: Resolution for Manager

Deposition Exhibit Sixteen page 95
 Resolution of Intent Re: Intent of SFRRWD

Deposition Exhibit Seventeen page 96
 Certificate of Compliance with 14-234-119

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 1701 SOUTH ARCH
 LITTLE ROCK, ARKANSAS 72206
 (501) 372-2748

Deposition Exhibit Eighteen page 97
 ANRC Minimum Requirements

Deposition Exhibit Nineteen page 98
 Plaintiff's Respondents to Requests for Admission

Deposition Exhibit Twenty page 99
 Lyons Letter of 4-4-17 to ARNC

Deposition Exhibit Twenty-One page 100
 ARNC Letter of 5-9-17 to Lyons

Deposition Exhibit Twenty-Two page 101
 Complaint for Damages

Deposition Exhibit Twenty-Three page 102
 Affidavit of Tonya Thompson

Deposition Exhibit Twenty-Four page 103
 ISO Letter to Perry of 1-21-19

Certificate of Reporter page 104

HENDRIX REPORTING SERVICE
 1701 SOUTH ARCH
 LITTLE ROCK, ARKANSAS 72206
 (501) 372-2748

(Witness sworn)

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Thereupon,

TONYA THOMPSON,

having been called for examination, and after being first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. MANN:

Q Good morning, Ms. Thompson. Would you please state your name for the record?

A Tonya Thompson.

Q And you were here present during the deposition of Mr. Alford, is that correct?

A Yes.

Q You and I met earlier. My name is Bill Mann. I work for the Arkansas Municipal League and I'm here representing the City of Marmaduke in a lawsuit your employer has brought against the City. Do you understand that?

A Yes.

Q And as I suggested to Mr. Alford, if you and I could remember not to talk at the same time, that would be helpful, okay?

A Okay.

Q And I want to offer you the same opportunity; if you think of something during the course of your deposition which you would wish to add to an answer or to change about an answer

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(501) 372-2748

1 you previously gave, if you'd let me know that, I'll allow you to
2 do that, okay?

3 A Okay.

4 Q All right. And please also if I ask a question which you
5 don't understand or perhaps I mumble or talk too fast, be sure
6 and tell me where I can have an opportunity to restate the
7 question, okay?

8 A Yes, sir.

9 Q All right.

10 Where do you live, Ma'am?

11 A Paragould, Arkansas.

12 Q And your current employment?

13 A St. Francis Water.

14 Q And your position there?

15 A Manager.

16 Q Okay. And when did you take that job?

17 A I started in 2011 as a part-time secretary.

18 Q Okay.

19 A Not sure on the year that I took manager.

20 Q Did you go directly from part-time secretary to manager?

21 A No.

22 Q You didn't. You did something in between?

23 A Yes. I learned the outside and took my classes and got my
24 license.

25 Q Okay. What kind of license did you obtain?

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(501) 372-2748

1 Have you ever read a copy of the lawsuit which the District
2 filed against Marmaduke, to your knowledge?

3 A I'm sure I have.

4 Q In order for that lawsuit to be filed, did that decision have
5 to be approved by your Board?

6 A I'm sure. I'm sure.

7 Q Do you recall any?

8 A I don't. I've looked at so many documents I couldn't
9 guarantee that.

10 Q That would not be your decision, though, would it?

11 A No.

12 Q Okay. Do you recall a Board meeting where it was
13 discussed that a lawsuit would be filed by the District against
14 Marmaduke?

15 A Yes.

16 Q Was there a vote taken on that?

17 A Yes.

18 Q Was it a unanimous vote?

19 A Yes.

20 Q Okay. You said you joined the District in 2011 and then
21 how much time went by before you actually became the
22 manager?

23 A Let's see. This is an estimated guess. I would think 2013,
24 '14 maybe.

25 Q Okay.

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LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

1 A I know we went several years with no manager.

2 Q So between the time Mr. McMillan was terminated and the
3 time that you took the job, there was no manager at the District?

4 A No.

5 Q Who ran the day-to-day affairs of the District at that time?

6 A We had one operator outside, Shane Shipley, and I filled in
7 and helped him.

8 Q By "an operator," what do you mean?

9 A Water operator. They do daily duties. He didn't have the
10 required license to carry, so we had I believe Western Green
11 kind of carried us a little while on the license with the Health
12 Department.

13 Q I guess I'm not understanding. What do you mean, they
14 "carried" you on the license?

15 A Well, you are required to have a manager or a licensed, not
16 really management, but licensed to run the Water District. If
17 you for some reason, like they had terminated him, then you
18 have someone that signs the responsibility of our district.

19 Q Okay. Well, who hired you to be manager?

20 A The Board.

21 Q Mr. Pigue was president at that time?

22 A Yes.

23 Q And Mr. Nelson was a member of the Board?

24 A Yes.

25 Q Did you have to apply for that job?

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- 1 Q Is that right?
- 2 A I think so.
- 3 Q And the reason I said that is you can't say uh-huh.
- 4 A Yes, I think so.
- 5 Q I'll do it, too, I'm sure.
- 6 A Yes.
- 7 Q When do you recall there being any discussion between the
8 district and ARI about the District serving water to ARI
9 facilities?
- 10 A 2015.
- 11 Q Never before then to your knowledge?
- 12 A I had asked may, just brought up, you know, some of why,
13 you know, that we had never serviced ARI. But I really didn't
14 know how it was set up, you know, because I was new and
15 there's a lot to learn on the outside on where the little lines are,
16 so it was really about it.
- 17 Q So when do you think you brought that up about why you
18 didn't serve ARI, "you" being the District?
- 19 A It was before I was probably manger, just questioning.
- 20 Q And to whom did you raise those questions?
- 21 A The inside, like the guy that was working with me.
- 22 Q Okay. An operator?
- 23 A Yes.
- 24 Q Who was that operator?
- 25 A Ricky Lee.

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1 Q Ricky Lee. Does Ricky Lee still work for The District?

2 A No.

3 Q And when you raised that question about why The District
4 didn't serve ARI, what did Mr. Lee say?

5 A He was just an employer (sic). He didn't have the same
6 outlook as I did on The District.

7 Q What do you mean?

8 A He was -- he didn't have any interest in going anywhere as
9 a job, basically.

10 Q Okay. Well, did you raise those questions to anyone on the
11 Board?

12 A Not that I'm aware of.

13 Q Okay. You would remember that, wouldn't you?

14 A Yes.

15 Q So 2015, that's the year you recall there being --

16 A Yes.

17 Q -- your questions being raised?

18 A Yes.

19 Q All right. Okay. I want to hand you what I've marked as
20 Exhibit One to your deposition. It looks like an email string.
21 I'd ask you to take a look at it. You can look, I want you to look
22 all you want to, but it appears this was addressed to you among
23 others. I'd ask you to take a look at Exhibit One, please
24 (Handing document to witness).

25 A (Examining document) Yes, I remember this.

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1 working on behalf of ARI?

2 A Yes.

3 Q All right. And that's dated, by the way, the email string is
4 dated June 19, 2015, correct?

5 A Yes.

6 Q And that would be consistent with your memory that the
7 initial discussions that you had about ARI being provided
8 service by the District occurred in 2015?

9 A Yes.

10 Q Okay. I want to stick this one over here to keep from
11 getting lost.

12 (Whereupon, the emails of 6-19-15 between Blake
13 Brasher to Jim Breznay were marked as Deposition Exhibit
14 One and attached at Tab One.)

15 Q Ms. Thompson, I want to show you another email.

16 By the way, was Exhibit One one of the emails you
17 reviewed to prepare for your deposition today?

18 A Yes.

19 Q All right. I want to show you Exhibit Number Two, which
20 is another email. This one appears to be from Jerome Alford to
21 you, and I'll ask you to take a look at that and tell me if you
22 recognize it (Handing document to witness)?

23 A (Examining document) Yes, I do.

24 Q Okay. Is that another one of the emails that you reviewed
25 before today to prepare for your deposition?

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1 A I'm thinking that he's the lawyer that his name is on the
2 1926(b).

3 Q Okay.

4 A I'm not sure about that, though.

5 Q And Mr. Carter says that he encouraged the mayor and the
6 attorney to meet with the District apparently to work out a
7 settlement agreement, correct?

8 A Yes.

9 Q Okay. And also he informs you, or he informs the District
10 in the email that all loans the District had with the USDA were
11 paid in full on March 26, 2015, is that right?

12 A Yes.

13 Q Okay. So between that date, March 26, 2015, and when you
14 got your most recent loan from the ANRC in 2017, between those
15 two dates the District had no debt with the Department of
16 Agriculture or ANRC, is that correct?

17 A That's correct.

18 Q Okay.

19 (Whereupon, the email from Ricky Carter to SFRRWD
20 Re: ARI Marmaduke was marked Deposition Exhibit Ten
21 and attached at Tab 10.)

22 Q I'll show you a document, it's a two-page document that is
23 on District letterhead stationary and ask you to take a look at it.
24 It's Exhibit Number Eleven.

25 I ask you to take a look at it and tell me if you recognize

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1 A Yes.

2 Q But he doesn't, "he" being Mr. Young doesn't refer to that
3 in the letter?

4 A No.

5 Q Okay. And in the second paragraph it says, "Approval is
6 contingent upon the City establishing and maintaining a
7 depreciation reserve fund." I assume that's an error; he must
8 mean the District.

9 A Yes.

10 Q All right.

11 Did you hear Mr. Alford testify earlier that when the
12 District originally applied for this loan they preferred to get the
13 loan proceeds from the Department of Agriculture? Do you
14 recall that?

15 A Yes.

16 Q Who expressed that preference on behalf of the District, do
17 you know?

18 A It would probably -- I really can't say for sure. I don't
19 know.

20 Q But you are aware that that preference had been expressed?

21 A Yes. It would have been probably from the Board.

22 Q Okay.

23 A They don't know a lot about loans, you know, the US --

24 Q Yeah. So you recall that probably was discussed in a
25 Board meeting?

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1 A I'm sure it was.

2 Q Okay. Who actually prepared the application for the loan
3 from the Natural Resources Commission, do you know?

4 A I believe it would be Jerome.

5 Q Jerome Alford handled all that for you?

6 A Yes.

7 Q And then who signed off on it once he prepared it?

8 A It would either have been me or Ron Pigue, I'm not sure.

9 Q All right. Now at the time of this loan, \$51,500 loan from
10 the ANRC, as of that time the District was not receiving any
11 revenue from sale of water to ARI, is that correct?

12 A Yes.

13 (Whereupon, the July 27, 2016 letter from ANRC to
14 Thompson/SFRRWD was marked as Deposition Exhibit
15 Thirteen and attached at Tab Thirteen.)

16 Q Ms. Thompson, I want to show you what I've marked as
17 Exhibit Number Fourteen, which purports to be a letter from the
18 Arkansas Natural Resources Commission dated August 8, 2016
19 addressed to you.

20 I'd ask you to take a look and tell me if you recognize that
21 (Handing document to witness)?

22 A (Examining document) Yes, I do.

23 Q Okay. And looking over the second page, this appears to be
24 from Ms. Deborah Christopher, who is the Project Administrator
25 with the ANRC, is that correct?

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1 I'd ask you if you would take a look at that and tell me if
2 you recognize it (Handing document to witness)?

3 A (Examining document) Yes, I do.

4 Q Okay. Did you review these Requests, or these Responses
5 before they were submitted to me?

6 A I don't know that.

7 Q Did you provide information to use in preparing these
8 responses?

9 A Yes, I did.

10 Q And so did you read over these responses when they were
11 finalized to ensure that everything in them was true and correct,
12 to the best of your knowledge?

13 A I'm not sure about that.

14 Q You're not sure about that. Okay.

15 I want to look for a moment at Request for Admission
16 Number Nine, which is over, the pages aren't numbered, but it
17 would be the third page.

18 A Okay.

19 Q Are you there?

20 A Yes.

21 Q In Request for Admission Number Nine, it is asked to
22 admit that between the time it first began providing water
23 services in 2000 and January 9, 2017, the District did not
24 provide any water services to ARI facilities located in Greene
25 County, Arkansas, do you see that?

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- 1 A Yes.
- 2 Q And in response it said, "It is admitted that the City of
3 Marmaduke has interfered with and prevented" the District
4 "from providing water to ARI," do you see that?
- 5 A Yes.
- 6 Q What has the City of Marmaduke done to interfere and
7 prevent the District from proving water to ARI?
- 8 A Well, just referring back to the Refurb Plant would be the
9 only thing I would know.
- 10 Q Well, what did the District do that prevented you from
11 servicing the Refurb Plant?
- 12 A Well, they denied us, they wouldn't let us hook up to them.
13 They said that they were going to use Marmaduke.
- 14 Q Well, I understand that ARI said that, but what did the
15 City do to interfere with your servicing ARI?
- 16 A Okay.
- 17 Q You said Marmaduke interfered with and prevented the
18 District --
- 19 A I'm not exactly sure about that. I would have to look back.
20 I'm not real sure.
- 21 Q You don't really know?
- 22 A (Shaking head from side to side)
- 23 Q Okay. That's a no?
- 24 A No.
- 25 Q Okay. And looking at Number Seven, Request for

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1 Admission Number Seven -- that would be on the second page
2 down at the bottom -- I asked that the District admit that they
3 closed a loan with ANRC in the amount of \$51,500 on January 9,
4 2017, is that right?

5 A Yes.

6 Q And that was admitted?

7 A Yes.

8 Q So that's when the loan was closed?

9 A Yes.

10 Q Okay.

11 (Whereupon, the Plaintiff's Response to Defendant's
12 Requests for Admission were marked as Deposition Exhibit
13 Nineteen and attached at Tab Nineteen.)

14 Q Do you need a break?

15 A No, I'm good.

16 Q I want to show you Exhibit Number Twenty, which is a
17 letter from Mr. Lyons addressed to Mark Bennett and Crystal
18 Phelps with the Arkansas Natural Resources Commission dated
19 April 7, 2017, and ask you if you've seen that letter before today
20 (Handing document to witness)?

21 A (Examining document) I believe I have. I would not want
22 to say a hundred percent that.

23 Q Okay. You're not a hundred percent sure?

24 A No.

25 Q Okay.

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- 1 A Yes.
- 2 Q I'm sorry, it's me and my hearing problem.
- 3 A I'm sorry.
- 4 Q It's not you, you're okay. That's my fault.
- 5 So after Mr. Lyons sends the letter to the Commission on
- 6 April 7 and after the Response from the Commission is received
- 7 on May 9 of 2017, on June 21 of 2017 the lawsuit is filed, right?
- 8 A Yes.
- 9 Q And in Paragraph Number Four of the Complaint, right
- 10 down there in front of you --
- 11 A Yes.
- 12 Q -- the statement is made that the District was formed on
- 13 July 27, 1987, and at that time this Court, meaning the Greene
- 14 County Circuit Court, approved certain lands as the District's
- 15 exclusive geographical service territory, is that right?
- 16 A Yes.
- 17 Q Is the Order of the Greene County Circuit Court, that
- 18 document, the one upon which the District relies to support the
- 19 claim that it has exclusive rights within its service boundaries?
- 20 A Yes.
- 21 Q That's it?
- 22 A Yes.
- 23 Q Anything else that you know of?
- 24 A No. I mean, they're the ones that stated our boundaries.
- 25 Q All right.

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1 Q Okay. So now let's look back at Paragraph Number Seven
2 of Mr. Breznay's Affidavit. He says in 2006 ARI began
3 construction of an additional plant located to the east of the
4 West Plant which is referred to as the East Plant, and that's
5 Number Three, right?

6 A Yes.

7 Q So Mr. Breznay says they began construction on that in
8 2006. Do you have any reason to disagree with that?

9 A No. I really didn't know for sure.

10 Q All right. And he says the City continued to be the sole
11 water provider to both the West Plant and the East Plant.
12 Would you have any reason to disagree with that?

13 A No.

14 Q Okay. And the City continued to provide water to the East
15 Plant up until 2015 without any objection by the District, is that
16 correct?

17 A Yes, to my knowledge.

18 Q All right. You don't know of any objection the District ever
19 offered prior to 2015, right?

20 A Right.

21 Q Okay. Now, look at Paragraph Number Nine of Mr.
22 Breznay's affidavit. There he says in 2015 ARI expanded its
23 facility by building an additional plant, the Refurb Plant, which
24 he says is located just to the east of the East Plant.

25 Now, looking at the diagram, or looking at the Google

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THE WITNESS: All right. Thank you.

MR. MANN: Thank you, ma'am.

(Whereupon, said proceedings were concluded at 12:05
p.m.)

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CERTIFICATE

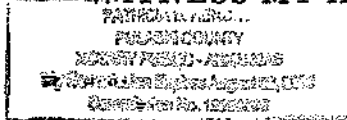
STATE OF ARKANSAS)
) ss
COUNTY OF PULASKI)

I, Patricia B. Hendrix, CVR-CM, CCR, Notary Public and Certified Stenomask Reporter before whom the foregoing testimony was taken, do hereby certify that the witness, TONYA THOMPSON, was duly sworn by me; that the testimony of said witness was taken by me and was thereafter reduced to typewritten form under my supervision; that the deposition is a true and correct record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the outcome of this action.

I further certify that in accordance with Rule 30(e) of the Rules of Civil Procedure, review of the transcript was not requested.

I further certify that I have no contract with any parties within this action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties in the action.

WITNESS MY HAND this 23rd day of February, 2019.



HENDRIX REPORTING SERVICE

Patricia B. Hendrix
Patricia B. Hendrix, CVR-CM, CCR

My Commission Expires:
August 2, 2022
L.S. #209

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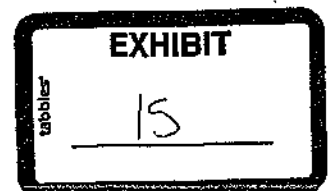
ORIGINAL

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL)
WATER DISTRICT)
PLAINTIFF)
VS. NO. 4CV-2017-219-MR)
CITY OF MARMADUKE, ARKANSAS)
DEFENDANT)

DEPOSITION OF JEROME ALFORD
TAKEN IN MARION, ARKANSAS
FEBRUARY 18, 2019

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APPEARANCES:**On Behalf of the Plaintiff:**

JIM LYONS, Esq.
Lyons and Cone Law Firm
407 South Main
Jonesboro, AR 72401

On Behalf of the Defendants:

WILLIAM MANN, III, Esq.
Arkansas Municipal League
Second and Willow
North Little Rock AR 72114

Also Present:

Mayor Steve Dixon
Tonya Thompson

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Produced, sworn, and examined, pursuant to notice, in the office of the Chamber of Commerce, 13 Military Road, Marion, Arkansas, commencing at 9:56 a.m. on February 18, 2019, in the above-entitled cause now pending in the Circuit Court of Greene County, Arkansas; said deposition being taken for all purposes, pursuant to the Arkansas Rules of Civil Procedure.

I N D E X

WITNESS:
JEROME ALFORD

Examination by Mr. Mann page 5

EXHIBITS:

Deposition Exhibit One page 51
7-16-15 Letter of Alford to SFRRWD

Deposition Exhibit Two page 52
9-24-15 Letter of Alford to SFRRWD

Deposition Exhibit Three page 53
10-7-15 Letter of Alford to ARI (Breznay)

Deposition Exhibit Four page 54
1-4-16 letter of Alford to ARI (Breznay)

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	4
Deposition Exhibit Five	page 55
3-4-16 Letter of Alford to ANRC (Fenter)	
Deposition Exhibit Six	page 56
3-21-17 Letter of Harris (ADH) to Alford	
Deposition Exhibit Seven	page 57
8-25-16 Letter of Dawson (ANRC) to Alford	
Deposition Exhibit Eight	page 58
8-31-16 Letter of Alford to ADH (Greenway	
Deposition Exhibit Nine	page 59
Google Map	
Deposition Exhibit Ten	page 60
Affidavit of James Breznay	
Certificate of Reporter	page 61

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(Witness sworn)

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Thereupon,

JEROME ALFORD,

having been called for examination, and after being first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. MANN:

Q Good morning, Mr. Alford.

A Morning.

Q I'm Bill Mann. We met just a few moments ago. I work for the Arkansas Municipal League. I represent the City of Marmaduke in this lawsuit we have today.

If you would before we get started state your full name for the record.

A Jerome Alford.

Q And Mr. Alford, have you ever given a deposition before today?

A Yes.

Q Okay. How many deposition do you reckon you've given in your lifetime?

A Three.

Q Okay. Well, just as a reminder, and as much for you as for me, as we go along a couple of things if we could remember to do would be helpful. And that would be for you and I not to talk at the same time. And what I mean by that is I don't need

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1 addressed there, plus there is some -- the highway department
2 is doing some planning that's going to impact water lines to the
3 downtown area, and at some point we're going to have to make
4 some changes there, but not anything in the present.

5 Q So would you represent the City in dealing with the
6 Arkansas Department of Environmental Quality?

7 A Yes, sir.

8 Q And when would you think you had first been a client, or
9 excuse me, when did you first acquire the City of Marmaduke as
10 a client?

11 A When ARI moved, started planning their location, we made
12 some major changes in Marmaduke's water supply.

13 Q And when do you recall ARI first came to Marmaduke?

14 A I can't recall. It's been probably -- I don't really
15 remember.

16 Q Okay. Now, at some point in time the District became
17 interested in providing water service to ARI, do you understand
18 that?

19 A Yes, sir.

20 Q When did you first become involved on behalf of the
21 District in that endeavor?

22 A Well, I can't tell you exactly. I do remember --
23 May I speak freely?

24 Q Yes, sir, you may.

25 A I remember when Randy McMillan, who was the previous

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1 manager there of the District, the water line was in the way of
2 ARI's construction. I think it must have been for their second
3 building. But I don't remember at that time whether anything
4 was said about who was going to serve the water, it was a
5 matter of just moving the water line.

6 Q Okay.

7 A Now, it's been in the last few months that there's been
8 conversation about service, probably maybe the last two years
9 about the District trying to serve ARI.

10 Q Okay.

11 A At least the new building.

12 Q Okay. So you say a Mr. Randy McMillan was the
13 predecessor to Ms. Thompson as manager of the District?

14 A That's correct.

15 Q Okay. Do you recall when he left that position? If you
16 can't, you can't.

17 A I just started to say, whenever she went to work is when
18 he left.

19 Q Okay. Well, I'll ask her.

20 A You'll have to ask her.

21 Q Okay. And remember, if you don't know the answer to a
22 question, that is just fine, you just tell me that, okay?

23 A I understand.

24 Q I don't want you to guess.

25 So there was a situation at some point where when ARI

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1 A As far as I know, yes.

2 (Whereupon, the January 4, 2016 letter of Mr. Alford
3 to Mr. Breznay Re: Water service to ARI-Marmaduke was
4 marked Deposition Exhibit Four and attached at Tab
5 Four.)

6 Q All right. I want to show you a letter, this one is a couple
7 months later, March 4, 2016, and this one is on your letterhead
8 stationary and purports to have your signature. It's Exhibit
9 Number Five

10 I'd ask you to take a look at it and tell me if you recognize
11 that letter (Handing document to witness)?

12 A (Examining document) Yes, sir.

13 Q Okay. Do you recall sending this letter?

14 A Yes, sir.

15 Q And it is addressed to the attention of Mr. Dave Fenter
16 with the Arkansas Natural Resource Commission, is that
17 correct?

18 A That's correct.

19 Q And you are advising Mr. Fenter that the letter transmits a
20 WWAC application for improvements proposed at the Water
21 District's original well located just east of Rector, Arkansas, is
22 that correct?

23 A Correct.

24 Q And for the uninformed here, what does WWAC stand for?

25 A That is the Water and Wastewater Advisory Committee.

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- 1 District?
- 2 A Yes, sir.
- 3 Q So you don't know what was being said back and forth --
- 4 A No, sir.
- 5 Q -- correct?
- 6 A That's right.
- 7 Q On that second page, next to last paragraph, you give the
- 8 total estimated construction costs at \$50,000?
- 9 A Yes, sir.
- 10 Q And that the owner prefers approaching USDA Rural
- 11 Development for these funds?
- 12 A Yes, sir.
- 13 Q Okay. So, and you told me earlier that when you make one
- 14 of these WWAC applications you can request those funds from
- 15 either ANRC or the USDA or something called Community-
- 16 something?
- 17 A Unlimited.
- 18 Q Unlimited. Thank you.
- 19 So what would be the rationale for the preference of
- 20 getting the funds from USDA?
- 21 A Primarily to invoke 1926(b).
- 22 Q And that's what's called the Anti-Curtailment Statute?
- 23 A I think so.
- 24 Q All right. Now, ultimately -- Well, when you say the
- 25 owner prefers, who told you that the preference was USDA?

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1 A Probably in our conversations about the protection of
2 these two different statutes.

3 Q Okay. Mr. Pigue would have told you that?

4 A Uh-huh.

5 Q But ultimately the funding for this particular application
6 was not obtained from USDA, was it?

7 A That's correct.

8 Q Do you know why?

9 A Yes, sir.

10 Q Why?

11 A Dealing with a small amount of money, some of the
12 requirements on funding applications to USDA makes it -- it
13 just hardly can be done, to do all the environmental reports and
14 all that they need for that small amount of money.

15 And in fact, line one of my conversations with Lauren
16 Chambers over there, who is the engineer, she said, "You don't
17 want to apply for this small amount of money because the
18 application process would probably cost more than that
19 \$50,000." So that was why we did not.

20 Q So based upon what you're saying, if one wanted to
21 approach the USDA, you want to be applying for a lot more
22 money than \$50,000?

23 A Yes, exactly.

24 Q Okay.

25 (Whereupon, the March 4, 2016 letter of Jerome

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1 East Plant". Is that an accurate statement, the best you know?

2 A Far as I know.

3 Q You recall that ARI built a second building?

4 A Yes, sir.

5 Q And would 2006 be consistent with your memory?

6 A Far as I can remember, yes.

7 Q Okay. With that particular plant, did your engineering
8 firm, was it retained to perform any work either for the City or
9 District?

10 A Not anymore than I guess moving that water line that
11 Randy McMillan called me about.

12 Q So this was at the time you talked about having a water
13 line moved?

14 A Yes, sir.

15 Q Okay. That's what I wanted to ask you.

16 A Yes, sir.

17 Q Now, it goes on down to Paragraph Number 9, where Mr.
18 Breznay makes the statement that in 2015 ARI expanded its
19 facility by building an additional plant, and it was referred to
20 as "the Refurb" or refurbishing plant, which was located just to
21 the east of the East Plant.

22 Are you familiar with that particular plant?

23 A No.

24 You're not?

25 A No.

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1 Q All right.

2 MR. MANN: Sir, I don't think I have any other
3 questions of you. I appreciate your time.

4 MR. ALFORD: Thank you.

5

6 (Whereupon, said deposition was concluded at 10:06 a.m.)

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HENDRIX REPORTING SERVICE
1701 SOUTH ARCH
LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

CERTIFICATE

STATE OF ARKANSAS)
) ss
COUNTY OF PULASKI)

I, Patricia B. Hendrix, CVR-CM, CCR, Notary Public and Certified Stenomask Reporter before whom the foregoing testimony was taken, do hereby certify that the witness, JEROME ALFORD, was duly sworn by me; that the testimony of said witness was taken by me and was thereafter reduced to typewritten form under my supervision; that the deposition is a true and correct record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the outcome of this action.

I further certify that in accordance with Rule 30(e) of the Rules of Civil Procedure, review of the transcript was not requested.

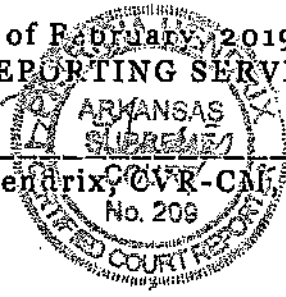
I further certify that I have no contract with any parties within this action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties in the action.

WITNESS MY HAND this 21st day of February, 2019.

PATRICIA B. HENDRIX
PULASKI COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires August 02, 2022
Commission No. 1392997

HENDRIX REPORTING SERVICE

Patricia B. Hendrix
Patricia B. Hendrix, CVR-CM, CCR



My Commission Expires:
August 2, 2022
L.S. #209

HENDRIX REPORTING SERVICE
1701 SOUTH ARCH
LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

J. "Service area" means either an area that is provided water or wastewater service by a system or an area not receiving water or wastewater service that is included within a system's approved Master Plan or water development project as an area where the system will provide service in the near future.

K. "Water plan approval" or "Water plan compliance" or "water plan certification" means authorization from the Commission to construct, operate, manage, or maintain a water development project.

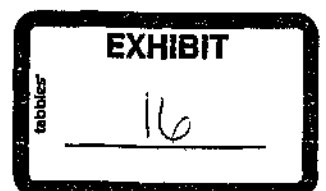
L. "Water development project" means the construction, acquisition, ownership, replacement, operation, and maintenance of facilities, including land, easements, and works of improvement, for the protection, conservation, preservation, development, utilization, and proper disposal of the state's water resources and related land resources. Reference to water development project within this title also includes wastewater development projects.

Section 601.4 Applicability.

A. All political subdivisions must obtain water plan compliance approval prior to construction of a water development project.

B. The term "project" as used in this title shall include the following:

1. Development of a new water supply source or water or wastewater treatment plant;
 2. Development of a new or different location for water withdrawal or wastewater discharge;
 3. Any increase to water or wastewater treatment plant capacity;
 4. System expansion that would result in:
 - a. Use of water exceeding eighty percent (80%) of the drinking water system's capacity to produce drinking water;
 - b. Increasing wastewater flow by greater than eighty percent (80%) of existing treatment capacity; or
 - c. An increase of more than twenty percent (20%) of the current average water usage or treatment capacity;
 5. A project involving flood control or drainage;
 6. Transfer of a service area currently receiving service from one utility to another;
 7. Transfer of a service area not yet receiving service from a utility but included within another political subdivision's approved service area or within another entity's application for water plan compliance approval;
 8. Acquisition of properties, facilities, or customers belonging to another system.
- or
9. Proposal of a master plan for water plan compliance certification.



1. Submit a Master Plan in the same form as applications for approval of other projects, and
 2. Specify a time-frame for constructing each phase of the proposed project.
- B. The Commission:
1. Shall review the Master Plan in the same manner as other projects, and
 2. May approve the Master Plan for a period of ten years following the date of the Final Determination.

Section 604.2 Effect of approval.

- A. If the Executive Director approves the Master Plan, the applicant shall construct the project in the timeframe and manner approved in the Master Plan.
- B. Upon notice to the applicant and opportunity for hearing, the Commission may reconsider the Final Determination of a Master Plan when sufficient progress toward implementing the projects described in the Master Plan has not been made.

Section 604.3 Additional reporting requirements.

- A. As each project listed in a Master Plan is developed for construction, the applicant shall notify the Commission.
- B. If the scope of work represents a significant departure from the Master Plan, the project shall be submitted as a separate project for review.

Subtitle V. Review of proposed transfer of service area

Section 605.1 Protection of service areas.

It is unlawful for a person to provide water or wastewater services to an area where such services are being provided by a current provider that has pledged or uses revenue derived from services within the area to repay financial assistance provided by the Commission, unless approval for such activity has been given by the Commission and the new provider has received approval under the Arkansas Water Plan, if applicable.

Section 605.2 Conditional approval based on partial payment to the Commission.

- A. As a condition of its approval, the Commission may require the payment of an equitable portion of the outstanding financial assistance provided.
- B. Any payment made shall reduce the outstanding balance of the financial assistance provided by the Commission to the current provider.



IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS FILED
CIVIL DIVISION

MAR 08 2019

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

GREENE CO. CIRCUIT CLERK
PLAINTIFF

V. No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

**BRIEF IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

The Court should grant summary judgment for the Defendant, City of Marmaduke, Arkansas ("the City"), on each of the Plaintiff's claims. At its core, this case involves an attempt by the St. Francis River Regional Water District (the "District") to take the City's long-time customer on the basis that the District became an "exclusive" provider when it borrowed taxpayer money before filing suit. As demonstrated below, that is not the law.

American Railcar Industries, Inc. ("ARI") has purchased water and sewer services from the City since ARI began doing business in Greene County in 1999. The District has never provided water or sewer services to ARI and has never pledged revenue earned from ARI to any creditor. Moreover, when the District first demanded that the City stop providing water to ARI—on the purported grounds that it has an "exclusive right" to serve ARI—the District was not even indebted to the Arkansas Natural Resources Commission ("ANRC") or any other public body.

Based on these and other undisputed facts identified in this brief, the City is entitled to judgment as a matter of law.

INTRODUCTION AND FACTUAL BACKGROUND

In order for the Court to gain a complete understanding of this case, Defendant believes that it would be helpful to provide a chronological history of the water service provided by the parties. In 1935, a water system was established by the City of Marmaduke, Arkansas (“City”). Since that time the City has continuously provided water and sewer services to its customers. *Exhibit 1*, ¶ 4. On October 18, 1989, the City borrowed four hundred and thirty-five thousand dollars (\$435,000.00) from the United States Department of Agriculture (“USDA”) for the purpose of making improvements to its water and sewer system, which it still owes to this date. *Exhibit 1*, ¶ 6; *Exhibit 3*.

On July 28, 1987, an Order filed by this Court created the St. Francis River Regional Water District (“District”) and established the geographical boundaries of the District. *Exhibit 2*. The District was created pursuant to the Regional Water Distribution Act (“RWDA”), codified at Ark. Code Ann. §§ 14-116-101- 801.¹ In 1994, the District received a loan from the Arkansas Soil and Water Conservation Commission for the construction of three hundred miles of waterlines, two elevated storage tanks, and two deep wells to serve eastern Clay County, eastern Greene County, and east central Craighead County.² *Exhibit 4*. Furthermore, the District received two addenda on the loan, one in 1994 and one in 1995, for the building of a well. *Exhibit 4*. On September 1, 1999, the District obtained federal financing through the Farmers Home Administration, a predecessor of the USDA. *Exhibit 1*, ¶ 13. The District did not begin providing water services to *any* customers until early in the year 2000. *Exhibit 5*.

In 1999, American Railcar Industries, Inc. (“ARI”), a North Dakota corporation authorized to conduct business in Arkansas, built a plant, the West Plant, which was ultimately incorporated

¹ In 1987 the statutory cite for the Regional Water Distribution Act was Ark. Stat. Ann. § 21-1401, et seq.

² This is the former name of the Arkansas Natural Resources Commission.

into the City. *Exhibit 1*, ¶ 8. The City began providing water and sewer services to the West Plant at the request of ARI. *Exhibit 1*, ¶ 10. In 2006, ARI expanded its operations by constructing the East Plant, which is located just to the east of the West Plant. *Exhibit 7*, ¶ 7. Thereafter, at the request of ARI, the City began providing water and sewer services to the East Plant. *Exhibit 7*, ¶ 17.

The District was aware that the City was providing services to the East Plant, which is located within the District's geographical boundaries, but it did not request that the City cease providing services. This was confirmed by the deposition testimony of District Board Member, Brad Nelson, and District Manager, Tonya Thompson. Mr. Nelson, who has been a member of the District Board for over 20 years, candidly conceded in his deposition that from the time the East Plant was opened in approximately 2006 until the end of 2017, the District had not made a demand to the City to cease providing water service to the East Plant. *Exhibit 8* at 11:3-19. He blamed this on the former District Manager, Randy McMillin. *Id.* at 12:16-22. Mr. McMillan was subsequently terminated from his position. *Id.* at 12:25; 13:1-10.

Ms. Thompson was first employed with the District in a part-time position in 2011. *Exhibit 14* at 7:12-17. Following a period of time when the District did not have a manager subsequent to Mr. McMillan's departure, Ms. Thompson was appointed as the District's manager in either 2013 or 2014 according to her deposition testimony. *Exhibit 14* at 12:20-25; 13:1-4. However, even before Ms. Thompson became manager, she thinks she may have brought up the subject of why the District never served ARI. *Exhibit 14* at 15:7-16. However, she never approached the District Board of Directors about the District's alleged right to provide water to the East Plant, despite being aware that the Plant was in the District's geographical boundaries. She testified that she mentioned it to another District employee, Ricky Lee, but the issue went no further at that time.

Exhibit 14 at 15:7-25; 16:1-12. She testified she would remember if she had mentioned this to the any of the District's Board members. *Exhibit 14* at 16:10-14. The initial discussion she had with ARI about the District providing the company with water service occurred in 2015. *Exhibit 14* at 21:6-9. Ms. Thompson testified that this discussion only related to the Refurb Plant and did not include the East Plant. *Exhibit 14* at 22:8-25; 23:1-3.

Additional evidence that the District was fully aware of the fact that the East Plant was within the geographical boundaries of the District was provided by Jerome Alford who has served as an engineer for the District. Mr. Alford testified that when Mr. McMillan was the District's manager, one of the District's water lines had to be moved to allow for the construction of the ARI East Plant. *Exhibit 15* at 12:25; 13:1-5. Mr. Alford's firm was retained by Mr. McMillan to work on moving the water line. This occurred in 2006. *Exhibit 7*, ¶7; *Exhibit 15*, at 41:3-14. Thus, even before the East Plant was actually built, the District was clearly on notice that the plant was being built on land within the boundary of the District. Yet, no claim to the alleged exclusive right to serve that plant was asserted until 2015 at the earliest according to Mr. Ronald Pigue, the president of the District's Board of Directors. *Exhibit 9* at 23:3-10.

In 2015, ARI again expanded its operations by constructing the Refurbishing Plant ("Refurb Plant"). It was constructed just east of and adjacent to the East Plant. *Exhibit 1*, ¶ 17. Around that same time, on March 30, 2015, the District refinanced its then-existing loans through First National Bank, which ended any and all indebtedness the District had to the ANRC, USDA, or any other federal government agency. *Exhibit 1*, ¶ 12 and ¶ 13; see also *Exhibit 5*; and *Exhibit 8* at 21:3-14. Ms. Thompson confirmed in her deposition that, between March 26, 2015 and when the District obtained a loan from ANRC in 2017, the District had no debt with these agencies. *Exhibit 14* at 37:13-17.

After the construction of the Refurb Plant was completed, during a period in which the District was not indebted to the USDA or the ANRC, the District demanded that the City stop servicing the East Plant and Refurb Plant. *Exhibit 8* at 31:12-20; *Exhibit 9* at 23:8-10. At this time, a series of conversations took place between ARI and the District, including its manager, Ms. Thompson. *Exhibit 8*, at 32:21:24. During these conversations, ARI expressed concern about the District's ability to provide the Plants with adequate services at a reasonable cost. *Exhibit 7*, ¶ 13. Accordingly, ARI decided that it desired to continue receiving its water and sewer services from the City. *Exhibit 7*, ¶ 14.

Mr. Pigue testified in his deposition that he was one of the original members of the District Board and that he served on the Board continuously since that time. He became president sometime between 2002 and 2004. *Exhibit 9* at 14:13-24. Mr. Pigue testified that his best guess as to when the District demanded that the City stop selling water to the East Plant was sometime in 2015. This was after the District refinanced all of its existing debt owed to the USDA and the ANRC but obtaining a loan from the First National Bank.³ *Id.* at 22:8-18; 23:3-10. The demand was not made for between nine and ten years after the East Plant opened despite the fact that Mr. Pigue lived in the area and knew of the plant's existence.

In April of 2016, the existing water service lines from the East Plant were connected with the Refurb Plant to provide for its water needs. *Exhibit 7*, ¶ 10. *Exhibit 1*, ¶ 24. Installation of the line included the City's installation of a water meter, at a cost of \$5,300, which the City has not recouped to date. *Exhibit 1*, ¶ 20.

On January 9, 2017, the District obtained a loan from the ANRC in the amount of \$51,500 for the purpose of replacing PH, adding a chlorine system, pump, and fire hydrant, and repairing

³ The loan documents indicated the loan came from the First National Bank of Corning although Brad Nelson testified that the bank also had a location in Paragould. *Exhibit 8* at 21:2-19.

a building. *Exhibit 10*. Mr. Alford testified in his deposition that the District originally requested that the funding for the loan come from the USDA in order to take advantage of the protection afforded to water providers under 7 U.S.C. § 1926(b), which is the federal anti-curtailment statute. Ms. Thompson testified that she was aware that the preference of the District's Board was to borrow from the USDA. *Exhibit 14 at 44:22-21*. However, because the amount of the loan was so small, Mr. Alford testified that it was not practical to borrow from the USDA. *Exhibit 15 at 30:13-21; 31:5-23*.

Since the filing of the Complaint, the land upon which the East and Refurb Plants are situated has been annexed into the City limits of Marmaduke. A certified copy of the Resolution confirming the annexation is attached to the Affidavit of Betty Jackson, the City's Recorder and Treasurer, as *Exhibit 11*. The annexation documents confirming the annexation are contained in *Exhibit 12*.

The District does not contend that it has ever had the right to provide water services to the West Plant. However, it claims that the City has acted unlawfully by continuing to provide services to its existing customer on the ground that the East Plant and Refurb Plant are located within the District's boundaries. The District believes that it has the exclusive right to provide water service to any person or entity that resides within its boundaries. The City contends that it has a longstanding relationship with its existing customer, ARI, and that neither the 1987 Order nor the RWDA provide that the District's right to furnish water within its geographical boundaries is exclusive. For those reasons, as discussed in more detail below, the City is entitled to judgment as a matter of law.

ARGUMENT

A. Summary Judgment Standard

The law is well settled that summary judgment is to be granted by a trial court only when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *Kolbek v. Truck Ins. Exch.*, 2014 Ark. 108, 431 S.W.3d 900 (2014); *Campbell v. Asbury Auto., Inc.*, 2011 Ark. 157, 381 S.W.3d 21 (2011). Once the moving party has established a prima facie entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Barrows v. City of Fort Smith, et al.*, 2010 Ark. 73, 360 S.W.3d 117 (2010); *K.C. Props. of Nw. Ark., Inc. v. Lowell Inv. Partners, LLC*, 373 Ark. 14, 280 S.W.3d 1 (2008).

Courts have ceased referring to summary judgment as a drastic remedy. It is now regarded simply as one of the tools in a trial court's efficiency arsenal. When there is no material dispute as to the facts, courts will determine whether "reasonable minds" could draw "reasonable" inconsistent hypotheses to render summary judgment inappropriate. In other words, when the facts are not at issue, but possible inferences therefrom are, the court will consider whether those inferences can be reasonably drawn from the undisputed facts and whether reasonable minds might differ on those hypotheses. *Flentje v. First National Bank of Wynne*, 340 Ark. 563, 11 S.W.3d 531 (2000).

Defendant contends that a decision in this case turns on the interpretation of certain Arkansas statutes. Issues that involve the interpretation of Arkansas statutes are matters of law to be decided by this Court and, ultimately, by the Arkansas Supreme Court if there is an appeal. *Board of Trs. of Univ. of Ark. v. Andrews*, 2018 Ark. 12, *8, 535 S.W.3d 616, 621 (2018). In the absence of a showing that the circuit court erred, the Arkansas Supreme Court accepts the Court's interpretation on appeal. *Id.* The primary rule of statutory interpretation is to give effect to the intent of the legislature. *Id.* The Supreme Court construes the statute "just as it reads, giving the

words their ordinary and usually accepted meaning in common language.” *Id.* When the meaning of a statute is not clear, courts look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history and other appropriate means that shed light on the subject. *Alcoa World Alumina, L.L.C. v. Weiss*, 2010 Ark. 94, *3, 377 S.W.3d 164, 166 (2010). Courts seek to reconcile multiple statutory provisions to make them consistent, harmonious and sensible. *Brock v. Townsell*, 2009 Ark. 224, *9, 309 S.W.3d 179, 186 (2009).

For the reasons discussed in more detail below, the City respectfully submits that it is entitled to judgment as a matter of law pursuant to Ark. R. Civ. P. 56.

B. The District does not have the exclusive right to provide water services within its geographical boundaries.

In Count I of the Complaint, the District argues that it enjoys the exclusive right to sell water to any person or entity residing in its alleged exclusive service territory. That argument fails as a matter of law.

The City is a municipal corporation organized and existing under the laws of the State of Arkansas and is a City of the Second Class. Ark. Code Ann. § 14-37-105. Municipal corporations possess the power to “[p]rovide a supply of water by constructing or acquiring, by purchase or otherwise, wells, pumps, cisterns, reservoirs, or other waterworks and to regulate them” Ark. Code Ann. § 14-54-702(a)(1). Further, “[f]or the purpose of establishing and supplying waterworks, any municipal corporation may go beyond its territorial limits.” Ark. Code Ann. § 14-54-702(b). Also, “[a]ny municipality in the State of Arkansas owning and operating a municipal waterworks system or a municipal sewer system or both may extend its service lines beyond its corporate limits for the purpose of giving water service, sewer service, or both, to adjacent areas where the demand

for service is sufficient to produce revenues that will retire the cost of the service lines.” Ark. Code Ann. § 14-234-111(a).

The District has maintained throughout this case that the right to serve customers in one area necessarily precludes the possibility of another entity having the right to serve customers in the same area. The District is incorrect. As stated in the depositions of Mr. Pigue, Mr. Nelson and Ms. Thompson, the District relies solely on the 1987 Court Order that created the District as the basis for its claim that it has the exclusive right to sell water within the boundaries set by the Order. *Exhibit 9* at 74:18-25; 75:1-8; *Exhibit 8* at 14:11-25; 15:1-2; *Exhibit 14* at 62:9-24. However, the Order mentions nothing regarding exclusivity whatsoever. It simply established the District’s existence and location. See *Exhibit 2*.

Furthermore, as cited above, regional water distribution districts are created under the authority of the RWDA, codified at Ark. Code Ann. §§ 14-116-101-801. Public nonprofit regional water distribution districts may be organized for, among other things, “furnishing water to persons desiring it.” Ark. Code Ann. § 14-116-102(4). The plain meaning of this statute is that the District is authorized to furnish water to customers who want to buy water, which is not the case here. ARI desires to continue to buy water from the City, and it should have the choice to decide with whom it does business. Additionally, the RWDA does not provide for a water district to monopolize and hold an entity hostage if the entity has and desires an alternative source to acquire water service. Simply put, the statutory provision that delineates the powers of water districts, Ark. Code Ann. § 14-116-402, does not state that the district’s authority to sell water is reserved exclusively for the district.

When the 1987 Order and the applicable statutory provisions cited above are read jointly, one cannot conclude that the District’s authority to sell water within its geographical boundaries

is absolute and exclusive. The General Assembly could have easily established the exclusive right for water districts to sell water to customers within their geographical boundaries if it so desired.

In further support of Defendant's motion, the City notes that the East Plant and Refurb Plant have now been annexed into the City pursuant to Ark. Code Ann. § 14-40-601. The annexation was approved by this Court on June 19, 2018. *See, Exhibit 11.* Upon approval by the Court, the City passed Resolution No. 061918 confirming the annexation of the land pursuant to Ark. Code Ann. § 14-40-605. *See, Exhibit 11.* Upon passage of the resolution, "the territory shall be deemed and taken to be a part and parcel of the limits of the city or incorporated town, and the inhabitants residing therein shall have and enjoy all the rights and privileges of the inhabitants within the original limits of the city or incorporated town." Ark. Code Ann. § 14-40-606. Assuming *arguendo* the District enjoyed an exclusive right to sell water to the ARI East and Refurb Plants before the annexation, which the City disputes, the annexation certainly allowed ARI to continue its business relationship with the City in order to receive all of its water and sewer needs.

Thus, Count I of the District's Complaint fails, and the City is entitled to judgment as a matter of law.

C. Ark. Code Ann. § 15-22-223 is inapposite to the undisputed material facts of the case.

In Count II of the Complaint, the District contends that Ark. Code Ann. § 15-22-223 prohibits the City from selling water to any customer that has property lying within the geographical boundaries of the District. Subchapter 2 of Article 15 addresses water resources, and one of its stated purposes is to "[p]rotect the rights of all persons equitably and reasonably interested in the use and disposition of water." Ark. Code Ann. § 15-22-201(d)(2).

The District cites § 15-22-223(a) as support for its exclusivity argument, which provides:

It is unlawful for a person to provide water or wastewater services to an area where such services are being provided by the current provider that has pledged or utilizes revenue derived from services within the area to repay financial assistance provided by the Arkansas Natural Resources Commission, unless approval for such activity has been given by the commission and the new provider has received approval under the Arkansas Water Plan established in § 15-22-503, if applicable.

To be an unlawful act under Ark. Code Ann. § 15-22-223, a person must: (1) provide water or wastewater services to an area where such services are being provided by the current provider; and (2) the current provider must have pledged or utilized revenue derived from services within the area to repay financial assistance provided by the ANRC. Based on the undisputed material facts, the District is unable to satisfy both elements of this statute; thus, its claims must fail as a matter of law.

As to the first element, before the District began providing water services to *any* customers in its geographical territory, ARI was already the City's customer. The City is and always has been ARI's current provider. As to the second element, the District was indebted to the ANRC from 1995 to March 30, 2015; then from January 9, 2017 to present. When the District demanded that the City stop providing water to the East and Refurb Plants on the basis that it alleged the exclusive right to serve those Plants pursuant to Ark. Code Ann. § 15-22-223, the District was not indebted to the ANRC, which is necessary for the statute to apply. In fact, the City was serving all three ARI plants at a time when the District was not indebted to the ANRC.

Caselaw regarding water district territories is scant, but a review of federal caselaw that interprets a statute similar to § 15-22-223(a) is instructive. In *Pub. Water Supply Dist. No. 3 of Laclede Cnty, Mo. v. City of Lebanon*, 605 F.3d 511, 514 (8th Cir. 2010), a rural water district alleged that the city was providing water and sewer services to customers within the district's boundaries. The district had obtained a loan from the USDA pursuant to 7 U.S.C. § 1926(b) for

the purpose of extending and improving the district's sewer system. *Id.* As a result, the district was protected from competition by § 1926(b), which provides as follows:

(b) Curtailment or limitation of service prohibited

[t]he 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.

At the time the district closed on the USDA loan, the City of Lebanon was already providing sewer and water services to some customers within the district's boundaries. After the loan closed, the city extended service to additional customers within the district's boundaries who were not already being served by the District, which never occurred here. ARI has always been the City's customer, and no other entity has ever supplied ARI with water and sewer services besides the City.

In *Lebanon*, the Eighth Circuit held that the city did not violate the law by continuing to provide service to customers it began serving before the district was indebted to the USDA. *Id.* at 519.

The following language from the opinion in *City of Lebanon* is relevant to the case before this Court:

[I]f § 1926(b) permitted rural districts to capture customers that a city began serving before a rural district obtained a qualifying federal loan, cities would not be willing to invest in the necessary infrastructure to serve customers within a rural district's boundaries because such investments would be rendered worthless by a rural district that obtains a qualifying federal loan. Creating such a disincentive would undermine the purpose of encouraging rural utility development. Additionally, rural districts can continue to use § 1926(b) to protect their exclusive right to serve their existing customer base during the time of the qualifying federal loan, thereby ensuring the continued security of the loan. In sum, the plain language of the statute,

the rule in favor of giving effect to all terms in the statute, and our analysis of the statute's purposes all confirm that the City did not violate § 1926(b) *merely by continuing to provide service to those customers it began serving before the District obtained the USDA loan.*⁴

Furthermore, the Eighth Circuit also noted that the Sixth Circuit found a distinction between offensive and defensive uses of § 1926(b). In *Le-Ax Water Dist. v. City of Athens*, 345 F.3d 701 (6th Cir. 2003), the court rejected a rural water district's attempt to use § 1926(b) to become the exclusive service provider for a new development it had not previously served. *Id.* at 708. The Court noted that § 1926(b) had always been applied only to situations in which there was an actual encroachment on a water district's existing area or users. *Id.* In the instant case, Ms. Thompson conceded in her deposition that at the time the District obtained a loan from the ANRC, which closed on January 9, 2017, it was not receiving any revenue from the sale of water to ARI. *Exhibit 14 at 45:9-12; 55:21-25; 56:1; 57:1-9.* She also stated that in the loan application with ANRC, the District pledged to repay the loan with revenues received from *existing* customers. *Exhibit 14 at 46:20-25; 47:1-3.*

Here, the District's attempts to gain the protection of Ark. Code Ann. § 15-22-223 have been undeniably offensive. As Mr. Alford testified in his deposition, the District wanted to obtain the loan proceeds from the USDA to obtain the protection of § 1926(b). When that proved impractical, the District sought to use § 15-22-223(a) to take an existing customer from the City. Mr. Alford testified:

Q All right. I want to show you a letter, this one is a couple of months later, March 4, 2016, and this one is on your letterhead stationary and purports to have your signature. It's Exhibit Number Five.

⁴ 605 F.3d at 518 (emphasis added).

I'd ask you to take a look at it and tell me if you recognize that letter?

A Yes, sir.

Q Okay. Do you recall sending this letter?

A Yes, sir.

Q And it is addressed to the attention of Mr. Dave Fenter with the Arkansas Natural Resource Commission, is that correct?

A That's correct.

Q And you are advising Mr. Fenter that the letter transmits a WWAC application for improvements proposed at the Water District's original well located just east of Rector, Arkansas, is that correct?

A Correct.

Q And for the uninformed here, what does WWAAC stand for?

A That is the Waste and Wastewater Advisory Committee.⁵

* * *

Q On that second page, next to last paragraph, you give the total estimated construction costs at \$50,000?

A Yes, sir.

Q And that the owner prefers approaching USDA Rural Development for these funds?

A Yes, sir.

Q Okay. So, and you told me earlier that when you make one of these WWAC applications you can request those funds from

⁵ Exhibit 15 at 26:6-25.

either the ANRC or the USDA or something called
Community-something?

A Unlimited.

Q Unlimited. Thank you. So what would be the rationale for the
preference of getting the funds from USDA?

A Primarily to invoke 1926(b).

Q And that's what's called the Anti-Curtailment Statute?

A I think so.⁶

The District attempts to distinguish § 1926(b) from Ark. Code Ann. § 15-22-223(a) based chiefly on the lack of the words “curtailed” or “limited” in the latter statute. However, the purpose of the statutes remains the same: the protection of interests secured by taxpayer dollars. Like the *City of Lebanon*, the City of Marmaduke has continuously provided water services to the East Plant and Refurb Plant as simply a continuation of its existing customer relationship with ARI. The City has never solicited customers within the District’s territory with whom it did not already have a relationship. Continuing to provide water and sewer services to an existing, interested customer surely qualifies as fitting within the purpose of the state statute. Common knowledge as well as principles of equity and efficiency suggest that the City should remain ARI’s water and sewer services provider.

To adopt the District’s argument would require a finding that the City is guilty of a misdemeanor, which is inconsistent with the remedy sought by the District and the statutory intent.⁷ Moreover, according to Crystal Phelps, general counsel of the ANRC, the City has not

⁶ Id. at 30:7-23.

⁷ Any person who violates any provision of Subchapter 2 “shall be guilty of a misdemeanor and subject to imprisonment not to exceed six (6) months or a fine not to exceed ten thousand dollars (\$10,000), or both.” Ark. Code Ann. § 15-22-204.

acted unlawfully whatsoever under the provisions of ANRC Rule 605.1, which is simply a restatement of § 15-22-223(a). *Exhibit 13* at 63:2-24.; *Exhibit 17*.

D. Providing water services to the East Plant and Refurb Plant does not constitute a water development project such that the City needs approval by the ANRC.

Section 601.4 of the ANRC Water Plan Compliance Review Procedures provides that water plan compliance approval is needed for water development projects. *Exhibit 16*. The only way that the City would be required to submit a plan for water services to the ANRC would be if the proposed work would fit under the definition of “project” under the 601.4. In her deposition, Ms. Phelps testified as follows regarding the situation where the City simply continued serving an existing customer:

Q Okay. Would you agree with me that one of the purposes of forming a nonprofit water district, is to furnish water to persons who desire it?

A Yes.

Q If an entity is serving an existing customer, such as in this case ARI, and ARI then expands its operation across city limits, is it your – based upon your earlier testimony to Mr. Lyons, is it your testimony that in order for – in order for Marmaduke to serve this new area at ARI, they’ve got to come the ANRC and get some approval?

A It would depend upon whether service to this new entity increased their water usage by more than 20 percent, Marmaduke’s water usage. I would have to defer to the Title 6 rules for projects.⁸

⁸ Exhibit 13 at 54:21-25; 55:1-11.

Q . . . And what I'm placing in front of you – I'm not going to make an exhibit, but it's – if you read along with me, it's entitled:

Arkansas Natural Resources Commission Water Plan Compliance Review Procedures, Title 6, Effective 2012?

A Yes.

Q If you can find that for me, I would appreciate it.

A All right. What I was talking about is Section 602.4, Applicability.

Q Okay.

A And this concerns the definition of project.

Q Okay.

A And a project is a system expansion that would result in an increase of more than 20 percent of the current average water usage or treatment capacity.

And I think that is the particular definition that would most likely apply to Marmaduke. Because I don't – think that the ARI expansion would have been a use of water exceeding 80 percent of Marmaduke's capacity to produce drinking water.

Q All right.

A So, if one of those were to apply, I think that would be the one.

Q Okay, so you're saying then, if providing service to an existing customer, such as ARI, would require an increase of more than 20 percent of the current average water usage or treatment capacity, they would need to come and – to the ANRC?

A Yes.

Q And what would they need to do?

A They would need to apply for Water Plan Compliance approval.⁹

As reflected in the affidavit from Veneta Hargrove, the City's water usage never increased by more than 20% when it initially began supplying either the East Plant or the Refurb Plant. *See Exhibit 6*. In fact, in 2006, when the City began serving the East Plant, there was a decrease in water sales. The same is true when the City began serving the Refurb Plant. Ms. Hargrove has provided attachments establishing these facts. Thus, the provision of service to the ARI East and Refurb Plants by the City does not meet the definition of a project for which the City needed to seek permission from the ANRC.

The District has also attempted to classify the City's provision of water to ARI as a water project under another subsection of Section 604.1. Section 604.1 B. (7) defines a project as "[t]ransfer of a service area not yet receiving service from a utility but included within another political subdivision's approved service area or within another entity's application for water plan compliance approval." In his deposition of Ms. Phelps with the ANRC, Plaintiff's counsel asked if this classification of water project was the exact situation involved with the City serving the ARI facilities situated within the geographical boundaries of the District. She responded that she was not sure the two situations were the same. *Exhibit 13* at 74:11-21. Plaintiff's counsel then pressed Ms. Phelps to agree that there is no difference between the terms "geographic boundaries" and "service area." Ms. Phelps did not agree and told counsel the two terms were different. *Exhibit 13* at 75:6-25; 76:1-9.

⁹ Exhibit 13 at 55:19-25; 56:1-25.

When the District moved for summary judgment earlier in this case, the District argued that *Arkansas Soil and Water Conservation Commission v. City of Bentonville*, 351 Ark. 289, 92 S.W.3d 47 (2002) supported its position that the City needed prior approval from the ANRC. In that case, the city argued that it had exclusive jurisdiction over its 5-mile extraterritorial planning area pursuant to Ark. Code Ann. § 14-56-413, such that it could enjoin the nearby City of Centerton from implementing its own water development project. Bentonville was unsurprisingly unsuccessful in this regard because, as the Court ruled, the ANRC retains the ultimate authority to approve water development projects.

Here, in contrast to *City of Bentonville*, the City did not engage or propose to engage in a water development project. Furthermore, at no point did the City attempt to claim any sort of exclusive jurisdiction. Assuming, *arguendo*, the City's actions constitute a water development project, which the City disputes, the appropriate remedy would be through the administrative avenues of the ANRC. Although Section 15-22-223(c) grants allegedly aggrieved parties the power to enforce that statute's provisions by bringing a civil action against offenders, there is no analogous provision for compliance with the Water Plan. Thus, the District's Complaint should be dismissed, and the City is entitled to judgment as a matter of law.

E. Assuming arguendo that the District had the exclusive right to serve the East Plant, the District's claims have been extinguished by the applicable statute of limitations and the doctrine of laches and waiver.

Ark. Code Ann. § 16-56-105 provides for a three-year statute of limitations for all actions founded on any contract or liability, expressed or implied; all actions for trespass on lands; and all actions for taking or injuring any goods or chattels. This action may be fairly described as one of express liability, trespass, or injury to goods. However, if none of these actions are determined to

apply to this case, the maximum time allotted for suit would be five years after the cause of action accrues under Ark. Code Ann. § 16-56-115.

Absent concealment, the statute of limitations begins to run upon the occurrence of the wrong, and not when it is discovered. *Rice v. Ragsdale*, 292 S.W.3d 856, 860 (Ark. App. 2009). Here, the District does not allege any acts of fraud or concealment on the part of the City because none exists.

The District alleges that the City acted unlawfully when it began providing water and sewer services to the East Plant in 2006, which was eleven years before the District filed suit and ten years before the District demanded the City stop providing services to the East Plant and Refurb Plant. Ms. Thompson testified in her deposition that the City provided water service to the East Plant until 2015 without an objection from the District. *Exhibit 14 at 71:7-20*. This is despite the fact that, as noted earlier, the District was clearly on notice of a claim it might have back in 2006. Thus, the maximum time allotted to file suit has long passed.

Furthermore, the District seeks an injunction to prevent the City from furnishing water to the East Plant and Refurb Plant. *See* ¶ 21. This claim is subject to the equitable defense of laches. Laches is based on the equitable principle that an unreasonable delay by the party seeking relief precludes recovery when the circumstances are such as to make it inequitable or unjust for the party to seek relief. *Quarles v. Courtyard Gardens Health and Rehabilitation, LLC*, 2016 Ark. 112, 488 S.W.3d 513 (2016); *Royal Oaks Vista, LLC v. Maddox*, 372 Ark. 119, 271 S.W.3d 479 (2008). The laches defense requires a detrimental change in position of the one asserting the doctrine, as well as an unreasonable delay by the one asserting his rights against whom laches is invoked. *Summit Mall Co., LLC v. Lemond*, 355 Ark. 190, 132 S.W.3d 725 (2003).

While the District sat on its alleged exclusive right to supply water to the East Plant and the Refurb Plant, the City continued to adopt budgets that included the revenue from serving its existing customer and maintaining the infrastructure required to serve the customer. *Exhibit 1*, ¶ 29. Because the District waited a decade to attempt to enforce its alleged right, overlooking that unreasonable delay would greatly prejudice the City and encourage stale claims, rather than diligence, fairness, and judicial efficiency. The District had nine years from 2006 to 2015 to enforce its alleged exclusive right to service the East Plant and Refurb Plant while being indebted to the ANRC. The District waived any alleged right by waiting long after the statute of limitations had passed to issue a demand on the City and subsequently file suit. Requiring the City to stop providing services to its existing customer is not an equitable resolution. Because the District failed to assert its alleged rights in a timely manner, it should be barred from benefitting from said delay by the doctrines of laches, waiver, and the statute of limitations.

CONCLUSION

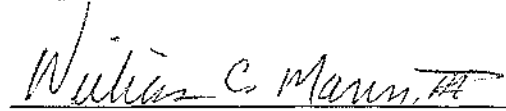
When the law is applied to the undisputed material facts in this case, the Court should decide as a matter of law that the District does not have the exclusive right to supply water service within its geographical boundaries. The District's claims have also been foreclosed by the annexation of the land on which the East and Refurb Plants lie. Furthermore, the undisputed material facts demonstrate that the City of Marmaduke did nothing unlawful under Ark. Code Ann. § 15-22-223(b) in serving the ARI facilities the District claims it has the exclusive right to serve. Finally, any claim that the District may have had was asserted well outside of the most generous statute of limitations of five years. And, with respect to any claim for the equitable relief of an injunction is barred by the doctrine of laches. There is no material fact in dispute in this case. The

City respectfully submits that it is entitled to judgment as a matter of law pursuant to Ark. R. Civ.

P. 56.

Respectfully submitted,

BY:



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Attorney for Defendant

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Gabrielle Gibson, Ark. Bar No. 2018113

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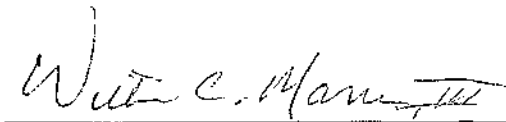
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CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on March 7, 2019, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

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William C. Mann, III, AR Bar No. 79199

FILED

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

MAR 21 2019

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFF

V.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

DEFENDANT'S MOTION IN LIMINE

Comes now, the City of Marmaduke, Arkansas, ("the City"), by and through its attorneys, William C. Mann, III and Gabrielle Gibson, and for its Motion in Limine, states:

1. Defendant anticipates that Plaintiff may attempt to introduce evidence as to Defendant's partial financial coverage under the Arkansas Municipal League's Municipal Legal Defense Program. For the reasons set forth more specifically in the accompanying brief, the above described information is inadmissible under Arkansas Rules of Evidence 401, 402, and 403, and as such, should be excluded.

2. Defendant anticipates that Plaintiff may attempt to introduce to the jury that undersigned counsel are employed by the Arkansas Municipal League Municipal Legal Defense Program and that he should be entitled to inquire of prospective jurors if they have any connection with the Arkansas Municipal League or if any other family members do. For the reasons set forth more specifically in the accompanying brief, the above described information is inadmissible under Arkansas Rules of Evidence 401, 402, and 403.

3. Thus, Defendant respectfully requests that the Court order all parties, their attorneys, and their witnesses to refrain from eliciting testimony, mentioning, or alluding to in any

fashion whatsoever, directly or indirectly, the matters set forth herein. If counsel for any party should be of the opinion at any time during the trial that matters contained herein which the Court has ruled as inadmissible have become admissible or the Court's ruling unclear, it is requested that the Court order counsel to approach the bench for a discussion outside the hearing of the jury prior to mentioning such matter.

4. Defendant also requests that the Court order all counsel to make the Court's ruling on the matters contained herein known to the parties and their witnesses so that the matters which the Court rules are inadmissible will not be inadvertently mentioned at trial.


5. Therefore, Defendant moves this Court *in limine* to exclude all evidence, testimony, or argument, regarding the information in the above enumerated paragraphs for the reasons set forth more fully in the accompanying brief.

6. A Brief in Support has been filed contemporaneously herewith setting out the facts and the conclusions of law regarding these issues.

WHEREFORE, Defendant prays that the Court grant its Motion in Limine and for all other just and proper relief to which it is entitled.

Respectfully submitted,

BY:


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CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on March 21, 2019, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

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William C. Mann, III, AR Bar No. 79199

FILED
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GREENE CO. CIRCUIT CLERK

**ST. FRANCIS RIVER REGIONAL
WATER DISTRICT**

PLAINTIFF

V. No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION IN LIMINE

Comes now, the City of Marmaduke, Arkansas, ("the City"), by and through its attorneys, William C. Mann, III and Gabrielle Gibson, and for its Brief in Support of Motion in Limine, states;

A. DEFENDANT'S PARTIAL MONETARY COVERAGE UNDER THE ARKANSAS MUNICIPAL LEAGUE'S MUNICIPAL LEGAL DEFENSE PROGRAM AND DEFENSE COUNSELS' EMPLOYER.

Defendant anticipates that Plaintiff may attempt to introduce evidence that the Arkansas Municipal League is the administrator of a municipal legal defense program that will be partially responsible for paying any potential judgment, exclusive of any potential punitive damages, rendered against Defendant. Defendant further anticipates that Plaintiff will attempt to introduce to the jury that undersigned counsel is employed by the Arkansas Municipal League Municipal Legal Defense Program, and that he should be entitled to inquire of prospective jurors if they have any connection with the Arkansas Municipal League or if any other family members do.

Arkansas Rule of Evidence 401 states that "[r]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence." Ark. R. Evid. 401. Arkansas Rule of Evidence 402 states, in relevant part, that "[e]vidence which is not relevant is not admissible."

Ark. R. Evid. 402. Arkansas Rule of Evidence 403 states that “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Ark. R. Evid. 403.

While the municipal legal defense program is not insurance, it operates as a risk management pool and should enjoy the same protection that an insurance company does from being named as a responsible party within the hearing of the jury. *Griffin v. Hilke*, 804 F.2d 1052, 1057 (8th Cir. 1986) (reference to evidence of insurance or *other indemnity* generally inadmissible). As such, the jury’s knowledge of a fund responsible for the payment of any damages might induce the jury to render an unduly generous award of damages, *Id.*, or to decide the case on improper grounds. *Higgins v. Hicks Co.*, 756 F.2d 681, 684-85 (8th Cir. 1985); *York v. Young*, 271 Ark. 266, 608 (1980) (as a general rule, it is improper for either party to introduce or elicit evidence of the other party’s insurance coverage); *Younts v. Baldor Elec. Co., Inc.*, 832 S.W.2d 832, 834 (Ark. 1992) (same).

The nature and extent of any funds available to Defendant do not tend to make any fact of consequence to Plaintiff’s claims more or less probable. Moreover, it would be highly prejudicial for the jury to hear that there might be a pool of money available to satisfy any judgment it may award. Therefore, evidence of such would be irrelevant and should be excluded as such. Defendant respectfully requests that this Court exclude evidence of the Arkansas Municipal League’s representation and coverage of Defendant in this case, and that counsel for Defendant are employed by the Arkansas Municipal League.


B. CONCLUSION

Defendant requests that the Court order all parties, their attorneys, and their witnesses to refrain from mentioning or alluding to in any fashion whatsoever, directly or indirectly, the matters set forth herein. If counsel for any party should be of the opinion at any time during the trial that matters contained herein which the Court has ruled as inadmissible have become admissible or the Court's ruling unclear, it is requested that the Court order counsel to approach the bench for a discussion outside the hearing of the jury prior to mentioning such matter. Defendant also requests that the Court order all counsel to make the Court's ruling on the matters contained herein known to the parties and their witnesses so that the matters which the Court rules are inadmissible will not be inadvertently mentioned at trial. Therefore, Defendant moves this Court *in limine* to exclude all evidence, testimony, or argument, regarding the information contained in its motion *in limine* and brief in support for the reasons set forth in this brief.

WHEREFORE, Defendant prays that the Court grant its Motion in Limine and for all other just and proper relief to which it is entitled.

Respectfully submitted,

BY:



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Attorney for Defendant

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CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on March 21, 2019, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

Jim Lyons
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IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

MAR 28 2019

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

RESPONSE TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Response to Defendant's Motion for Summary Judgment, states:

1. That SFRRWD is an Arkansas regional water distribution district subject to the Regional Water Distribution District Act with its principal place of business in Greene County, Arkansas.
2. That Marmaduke is an Arkansas municipal corporation located in Greene County, Arkansas ("City of Marmaduke").
3. That SFRRWD was formed on July 27, 1987 and, at that time, this Court approved certain lands as SFRRWD's exclusive geographical service territory, which included all of Section 18 lying south and east of the St. Louis Southwestern Railroad Line in Township 18 North, Range 7 East. (Attached hereto and incorporated by reference herein as Exhibit A is a of the Order establishing the district which includes a listing of all of SFRRWD's service

territory. Additionally, attached hereto and incorporated by reference herein as Exhibit B is a plat map showing the portion of Section 18 lying south and east of the Railroad Line. Finally, attached hereto and incorporated by reference herein as Exhibit C is an aerial map showing the western boundary of Section 18 marked in red).

4. That American Railcar Industries, Inc. ("ARI") is a foreign corporation authorized to do business in Arkansas with offices located in Marmaduke, Greene County, Arkansas.

5. That a portion of the land which comprises the Marmaduke campus of ARI is located in the SFRRWD water service territory and a portion of the Marmaduke campus is located in the City of Marmaduke's water service territory. Further, the Marmaduke campus of ARI has a separate building located in SFRRWD's water service territory.

6. That as shown on Exhibit C the red line shows the dividing line between two (2) separate buildings located on the ARI campus. The portion labeled as No. 2 on Exhibit C is the western portion of the ARI campus which is located in the City of Marmaduke's territory and the portion labeled as No. 3 on Exhibit C is the eastern portion of the ARI campus which is in the territory of SFRRWD. The buildings marked as No. 3 on Exhibit C are the buildings of ARI that are in the service territory of SFRRWD and are the buildings in question that use such water service.

7. That the City of Marmaduke is providing water service to the buildings shown as No. 3 on Exhibit C even though they are outside the City of Marmaduke's service territory as they were not located in the City limits of the City of Marmaduke until 2018 and have been since 1987 and remain within SFRRWD's service territory.

8. That despite the request by SFRRWD for the City of Marmaduke to discontinue water service to ARI for the buildings shown as No. 3 on Exhibit C located within SFRRWD's

service territory, the City of Marmaduke has failed and refused to do so. Originally, the City of Marmaduke voted in favor of returning the water service of ARI's buildings located within SFRRWD's service area to SFRRWD. (Attached hereto and incorporated by reference herein as Exhibit D is a true and correct copy of the letter by Mayor Dixon which was approved by the City of Marmaduke's City Council Meeting along with an aerial map, which were admitted, respectively, as Exhibits 1 and 2 to Mayor Dixon's Deposition).

9. That the Arkansas Natural Resources Commission (the "Commission") has not approved or otherwise authorized the City of Marmaduke to provide water service in SFRRWD's territory and, specifically, has not approved or otherwise authorized the City of Marmaduke to provide water service to ARI for the building shown as No. 3 on Exhibit C which is located in SFRRWD's territory. Additionally, the City of Marmaduke has not received approval under the Arkansas Water Plan as established in Ark. Code Ann. §15-22-503 or under any other statute, rule or regulation controlling the right to provide water to any certain location. Finally, the City of Marmaduke has not taken any action to seek approval of water service to the ARI buildings located in the SFRRWD's service area to the City of Marmaduke.

10. That SFRRWD has received financial assistance from the Commission and has pledged its revenue from services rendered to repay said financial assistance. (See Page 46, lines 20-25; Page 47, lines 1-3 and Page 66, lines 9-12 of the Deposition of Tonya Thompson. Pertinent pages of the Deposition of Tonya Thompson are attached hereto and incorporated by reference herein, collectively, as Exhibit E.)

11. That pursuant to Ark. Code Ann. § 15-22-223 and Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures, the City of Marmaduke is not entitled to provide water to the portion of ARI which is located in SFRRWD's

territory. Further, the City of Marmaduke has not received approval to provide water to Building No. 3 of the Marmaduke Campus of ARI pursuant to permission or under any applicable legal authority, law or regulation including those listed above. (See Page 30, lines 1-17; Page 70, lines 14-25 and Page 71, lines 1-7 of the Deposition of Crystal Phelps. Pertinent pages of the Deposition of Crystal Phelps are attached hereto and incorporated by reference herein, collectively, as Exhibit F.)

12. That as a result, the City of Marmaduke is not entitled to summary judgment in this matter because such service territory is in the service area of SFRRWD and no approval of such service by the City of Marmaduke has been sought or granted by the Arkansas Natural Resources Commission. Therefore, there are fact questions which remain to be resolved at trial.

WHEREFORE, Plaintiff, St. Francis River Regional Water District, prays as follows:

- a. that Defendant's Motion for Summary Judgment be denied;
- b. for its costs and attorney's fees; and
- c. for all other proper relief to which this Plaintiff is entitled.

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(870) 972-5440

By: 

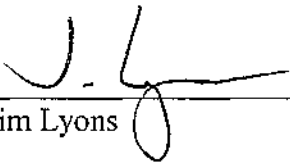
State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 28th day of March, 2019.



Jim Lyons

7/25/87
(5)

COPY
217761

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS

IN RE: ST. FRANCIS RIVER REGIONAL
WATER DISTRIBUTION DISTRICT

ORDER ESTABLISHING WATER DISTRICT

On this 27th day of July, 1987, court being in session, there was presented to the court the petition bearing signatures of more than 100 qualified voters residing or owning lands situated within the boundaries of the proposed St. Francis River Regional Water Distribution District, a nonprofit, regional water distribution district, embraced within the territory described as follows:

Land located in Craighead, Greene and Clay counties, as hereinafter more specifically set forth in Exhibit "A", which is attached hereto and incorporated into this order by reference.

Thereupon, the matter was presented to the court upon the petition as filed herein, the report of the Arkansas Soil and Water Conservation Commission as filed herein, the previous orders of this court setting this date for the hearing on said petition, the warning order as issued by the circuit court clerk herein, the proof of publication of the notice of hearing and warning order as filed herein, the testimony of witnesses, statements of counsel, and other things, facts and matters, from all of which the court does find as follows:

1. This court has jurisdiction over the subject matter of this proceeding pursuant to Ark. Stat. Ann. 21-1401, et. seq.
2. Notice of this hearing was made in the time and in the manner as provided by law and in accordance with this court's order of June 22, 1987, entered at June 23, 1987.
3. No person, entity or organization has filed any objection or opposition to the establishment of this proposed public, nonprofit, regional water distribution district, and no person, entity or organization appeared on the date set for the hearing of this matter and opposition to the establishment, although sufficient

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1

PLAINTIFF'S
EXHIBIT
A

opportunities were given by the court to hear any person with opposition to the granting of said petition.

4. There is a definite need for a water distribution system to service the above described territory and the residents within said territory, due to the overall poor quality and quantity of water which is available to the residents of the district as a whole.

5. Adequate plans have been made and formulated for the financing and construction of the regional water distribution district within the above described territory, and the construction and maintenance of a regional water distribution district within the above described territory will improve the overall standard of living and health and welfare of the residents of the territory, and contribute to the economic development of the territory. The court finds that the establishment of such a district would be in the best interest of the persons residing in or owning lands within the proposed district.

6. The relief as sought by the petitioners herein is hereby granted and a regional water distribution district embracing the lands as hereinabove described and as set forth in Exhibit "A" hereto should be and the same is hereby established, which district shall be known as the "St. Francis River Regional Water Distribution District," with all rights, powers and duties enumerated in Ark. State. Ann. 21-1401, et. seq., attendant thereto.

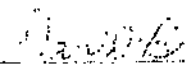
7. It is necessary and desirable that a board of directors for said regional water distribution district be initially established in a number in excess of three due to the large geographic area encompassed by the district. The court does find that in order that a board of directors consisting of seven members shall be established.

8. The following individuals, who are qualified voters residing within the district, are hereby appointed by the court to the board of directors of the St. Francis River Regional Water

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TELEPHONE
1-501-855-4200

Distribution District: Gerald Craig, John Davis, Bob Ridge, Tommy Rueter, Ronald Figuz, Sr., J. W. "Soapy" Thompson, and Billy Ja Tracer. Upon their organizational meeting, said board of directors shall draw for terms, with initial terms of the board being established as follows: Two terms ending December 31, 1988; two terms ending December 31, 1990; and three terms ending December 31, 1992.

IT IS, THEREFORE, by the court, considered, ordered, adjudged and decreed that the petition as filed herein should be granted and that there hereby is established a regional water distribution district to be known as the "St. Francis River Regional Water Distribution District;" that the initial board of directors shall consist of seven members; that the individuals as hereinabove named and set forth are appointed to the initial board of directors, with the terms to be established upon the organizational meeting of the board.


Circuit Judge

Presented by:

GOODWIN, HAMILTON & MOORE
P. O. Box 726
Paragould, Arkansas 72451-0726
Telephone (501) 239-2725

GOODWIN, HAMILTON
& MOORE
ATTORNEYS AT LAW
P.O. BOX 726
PARAGOULD,
ARKANSAS 72451
TELEPHONE
(501) 239-2725

3

LEGAL DESCRIPTION

ST. FRANCIS RIVER REGIONAL WATER DISTRIBUTION DISTRICT

1.) CRAIGHEAD COUNTY:

A.) TOWNSHIP 13 NORTH, RANGE 6 EAST:

ALL THAT PART OF SECTION 1 LYING WEST OF THE ST. FRANCIS RIVER, ALL OF SECTIONS 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 21, AND 28 AND THAT PART OF SECTIONS 12, 14, 22, 29, AND 33 LYING WEST OF THE ST. FRANCIS RIVER AND THE EAST HALF OF SECTIONS 17, 20, 29, AND 32 ALL IN TOWNSHIP 13 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CRAIGHEAD COUNTY, ARKANSAS.

B.) TOWNSHIP 13 NORTH, RANGE 5 EAST:

ALL OF SECTIONS 1 AND 12 IN TOWNSHIP 13 NORTH, RANGE 5 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CRAIGHEAD COUNTY, ARKANSAS.

C.) TOWNSHIP 14 NORTH, RANGE 6 EAST:

THAT PART OF SECTIONS 4, 9, 16, 22, 27, 26, 25 AND 36 LYING SOUTH AND WEST OF THE ST. FRANCIS RIVER, AND ALL OF SECTIONS 5, 6, 7, 8, 17, 18, 19, 20, 21, 28, 29, 32, 33, 34, AND 35, AND ALL THAT PART OF SECTIONS 30 AND 31 LYING SOUTH AND EAST THE BIG BAY DITCH ALL IN TOWNSHIP 14 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CRAIGHEAD COUNTY, ARKANSAS.

D.) TOWNSHIP 15 NORTH, RANGE 5 EAST:

ALL OF SECTIONS 1, 2, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, AND 36; AND ALL THAT PART OF SECTIONS 3, 10, AND 16 LYING SOUTH AND EAST OF THE ST LOUIS SOUTHWESTERN RAILROAD ALL IN TOWNSHIP 15 NORTH, RANGE 5 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CRAIGHEAD COUNTY, ARKANSAS.

E.) TOWNSHIP 15 NORTH, RANGE 6 EAST:

ALL OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, AND 32; AND ALL THAT PART OF SECTIONS 13, 23, 27, 33, AND 34 LYING WEST OF THE ST FRANCIS RIVER ALL IN TOWNSHIP 15 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CRAIGHEAD COUNTY, ARKANSAS.

FILED
RECORDED
COUNTY

II.) GREENE COUNTY:

A.) TOWNSHIP 16 NORTH, RANGE 6 EAST:

ALL OF SECTIONS 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, AND 36; AND THE EAST HALF OF SECTIONS 18, 19, 30, AND 31 AND THE SOUTHWEST QUARTER OF 31 ALL IN TOWNSHIP 16 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

B.) TOWNSHIP 16 NORTH, RANGE 7 EAST:

ALL OF SECTIONS 5, 6, 7, AND 18 AND THAT PART OF SECTIONS 4, 6, 17, 19, AND 30 LYING WEST OF THE ST. FRANCIS RIVER ALL IN TOWNSHIP 16 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

C.) TOWNSHIP 17 NORTH, RANGE 6 EAST:

ALL OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, AND 36, AND THAT PART OF THE NORTH ONE-QUARTER OF SECTION 19 LYING NORTH AND EAST OF THE CITY LIMITS OF THE CITY OF PARAGOULD AND THE NORTH ONE-QUARTER OF SECTION 20 AND THE EAST THREE-QUARTERS OF THE SOUTH THREE-QUARTERS OF SECTION 20 AND THE EAST HALF OF SECTION 29 AND ALL OF THAT PART OF THE EAST HALF OF SECTION 33 LYING NORTH OF THE CITY LIMITS OF THE CITY OF PARAGOULD, ARKANSAS, ALL IN TOWNSHIP 17 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

D.) TOWNSHIP 17 NORTH, RANGE 7 EAST:

ALL OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, AND 32 AND ALL THAT PART OF SECTIONS 12, 14, 22, 23, 27, AND 33 LYING NORTH AND WEST OF THE ST. FRANCIS RIVER, ALL IN TOWNSHIP 17 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

E.) TOWNSHIP 17 NORTH, RANGE 8 EAST:

ALL THAT PART OF SECTIONS 5 AND 6 LYING NORTH AND WEST OF THE ST. FRANCIS RIVER, ALL IN TOWNSHIP 17 NORTH, RANGE 8 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

F.) TOWNSHIP 18 NORTH, RANGE 5 EAST:

THE EAST HALF OF SECTIONS 24, 25, AND 36 ALL IN TOWNSHIP 18 NORTH, RANGE 5 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

GREENE COUNTY (CONTINUED)

G.) TOWNSHIP 18 NORTH, RANGE 6 EAST:

ALL THAT PART OF SECTIONS 19, 20, 21, 22, AND 23 LYING SOUTH OF THE NORTH 330 FEET THEREOF AND ALL OF SECTIONS 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, AND 36 AND ALL THAT PART OF SECTION 24 LYING SOUTH AND WEST OF THE CITY LIMITS OF THE CITY OF HARMADUKE ALONG THE WEST SIDE OF THE ST. LOUIS SOUTHWESTERN RAILROAD AND ALL THAT PART OF SECTION 24 LYING SOUTH AND EAST OF THE CITY LIMITS OF THE CITY OF HARMADUKE ALONG THE EAST SIDE OF THE ST. LOUIS SOUTHWESTERN RAILROAD, ALL IN TOWNSHIP 18 NORTH, RANGE 6 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

H.) TOWNSHIP 18 NORTH, RANGE 7 EAST:

ALL OF SECTIONS 9, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, AND 36 AND THAT PART OF SECTIONS 4, 5, 8, 7, AND 18 LYING SOUTH AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD, ALL IN TOWNSHIP 18 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

Marmaduke

*

I.) TOWNSHIP 18 NORTH, RANGE 8 EAST:

ALL OF SECTIONS 16, 17, 18, 19, 20, 30, AND 31 AND THAT PART OF SECTIONS 15, 21, 29, AND 32 LYING NORTH AND WEST OF THE ST. FRANCIS RIVER ALL IN TOWNSHIP 18 NORTH, RANGE 8 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

J.) TOWNSHIP 19 NORTH, RANGE 7 EAST:

ALL THAT PART OF SECTION 33 LYING SOUTH AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD ALL IN TOWNSHIP 19 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN GREENE COUNTY, ARKANSAS.

III.) CLAY COUNTY, ARKANSAS

A.) TOWNSHIP 18 NORTH, RANGE 7 EAST:

ALL OF SECTIONS 1, 2, 3, 10, 11, AND 12 IN TOWNSHIP 18 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CLAY COUNTY, ARKANSAS.

B.) TOWNSHIP 18 NORTH, RANGE 8 EAST:

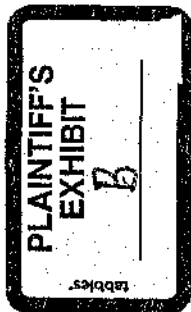
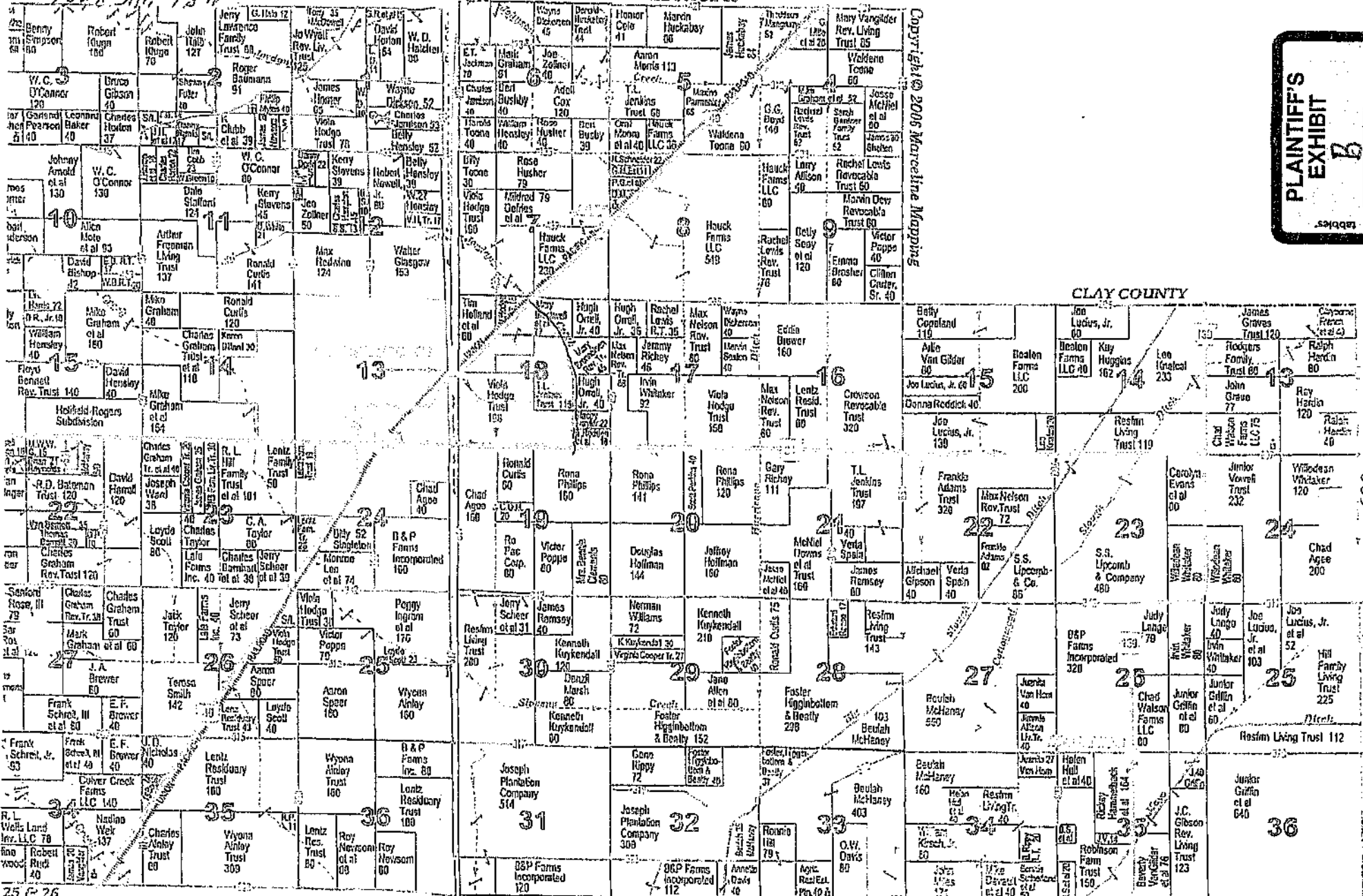
ALL OF SECTIONS 6, 7, 8, 9, AND 10 AND THAT PART OF SECTIONS 11, AND 12 LYING NORTH AND WEST OF THE ST. FRANCIS RIVER IN CLAY COUNTY, ARKANSAS.

C.) TOWNSHIP 19 NORTH, RANGE 7 EAST:

ALL OF SECTIONS 25, 35, AND 36 AND THAT PART OF SECTION 26 LYING SOUTH OF THE CITY LIMITS OF THE CITY OF RECTOR AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD AND THAT PART OF SECTION 27 LYING SOUTH AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD AND THAT PART OF SECTION 34 LYING SOUTH AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD, ALL IN TOWNSHIP 19 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CLAY COUNTY, ARKANSAS.

SEE PAGE 15

Township 18N



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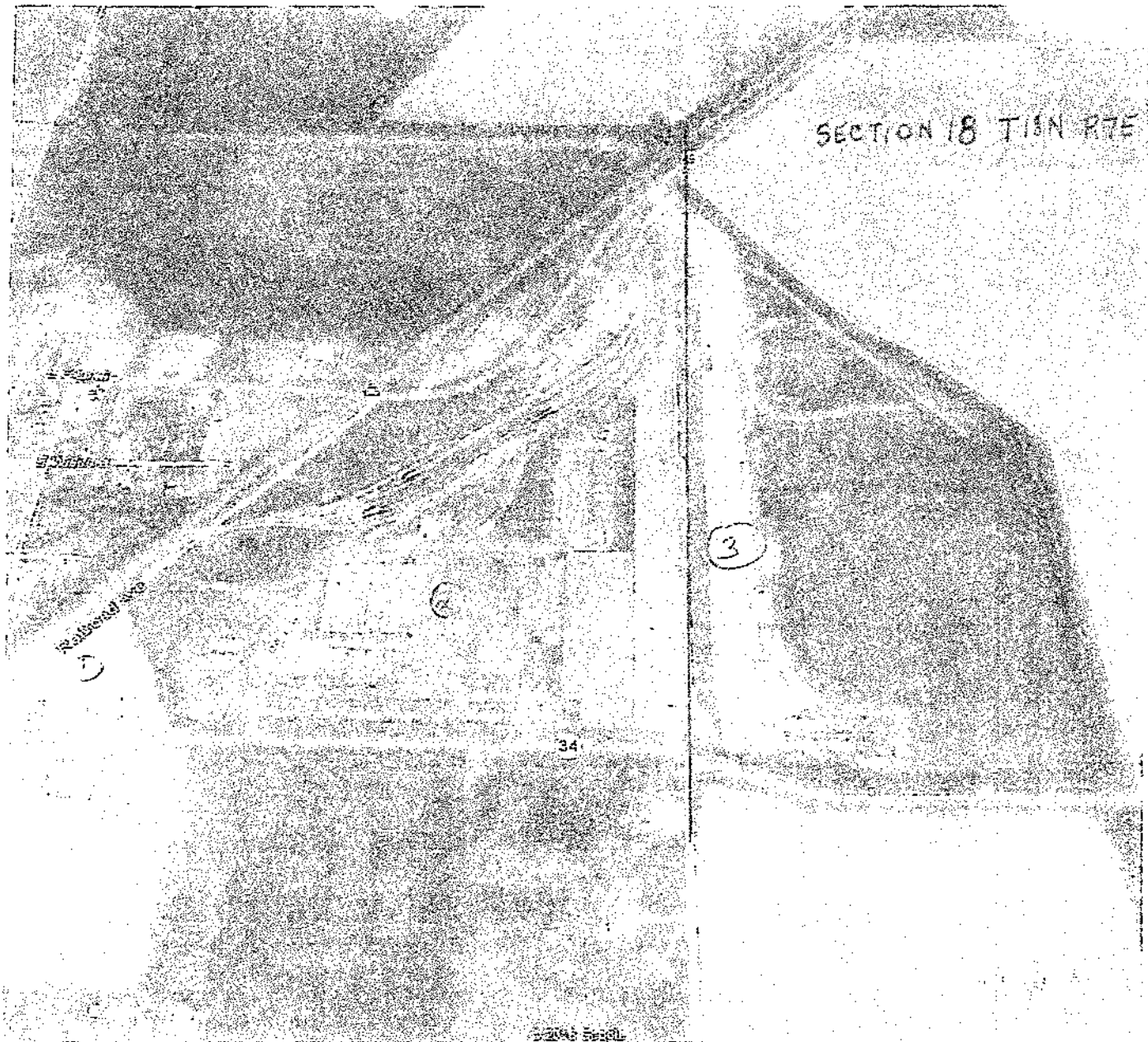
CLAY COUNTY

SEE PAGE 21 699

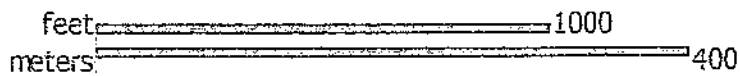
25 & 26

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SEE PAGE 26



Google earth



- 1 - Coop
- 2 - Old ARI - Year 2000
- 3 - New ARI - 2007



City of Marmaduke

307 West Mill * P.O. Box 208
Marmaduke, AR 72443
Phone 870-597-2753 * Fax 870-597-2754

March 15, 2016

Subj: St. Francis River Regional Water District

Council Members,

Based on all the information that I have been able to gather I believe the City Of Marmaduke has been selling water in a neighboring rural water district, specifically, St Francis River Regional Water District. This information has been made aware to me over the past few months. I have been in conversation with our attorneys and our customer in this area extensively concerning this issue, along with St. Francis.

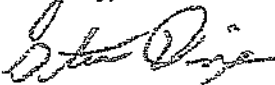
The whole plant of ARI and the gas pumps for Delta Coop are in St Francis Water District. This water district was formed in 1987 when the city limits of Marmaduke only extended to the railroad for the area between State Highways 34 and 49. When the original ARI property was annexed into the city the water district issue was not addressed. At that time St. Francis was not prepared to service this type of customer. Since that time ARI has expanded a couple of different times and are currently in an expansion project. Also St Francis Water District has made improvements in their infrastructure and are capable of servicing this customer at this time and have the legal right to do so.

I have made an agreement with St Francis, pending your approval. This agreement is made upon the advice of our legal counsel, Kimberly Dale.

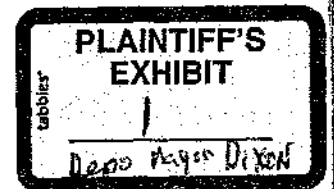
- A. The City of Marmaduke will not connect or sell any new water for any new expansions including the current building project in the St. Francis district.
- B. The City of Marmaduke will discontinue the sale of water to what is considered the "East" plant at the end of fiscal year 2016.
- C. The St Francis District will share billing information with the City for water sold in the "East" plant and all other future water meters on the property for Waste Water Billing purposes.
- D. The St Francis River Regional Water District will relinquish all water rights to the ARI property from the East plant westward between Highway 34 and 49, including the Delta Coop property to the City of Marmaduke. (see attached map)

I ask that you give this your utmost consideration.

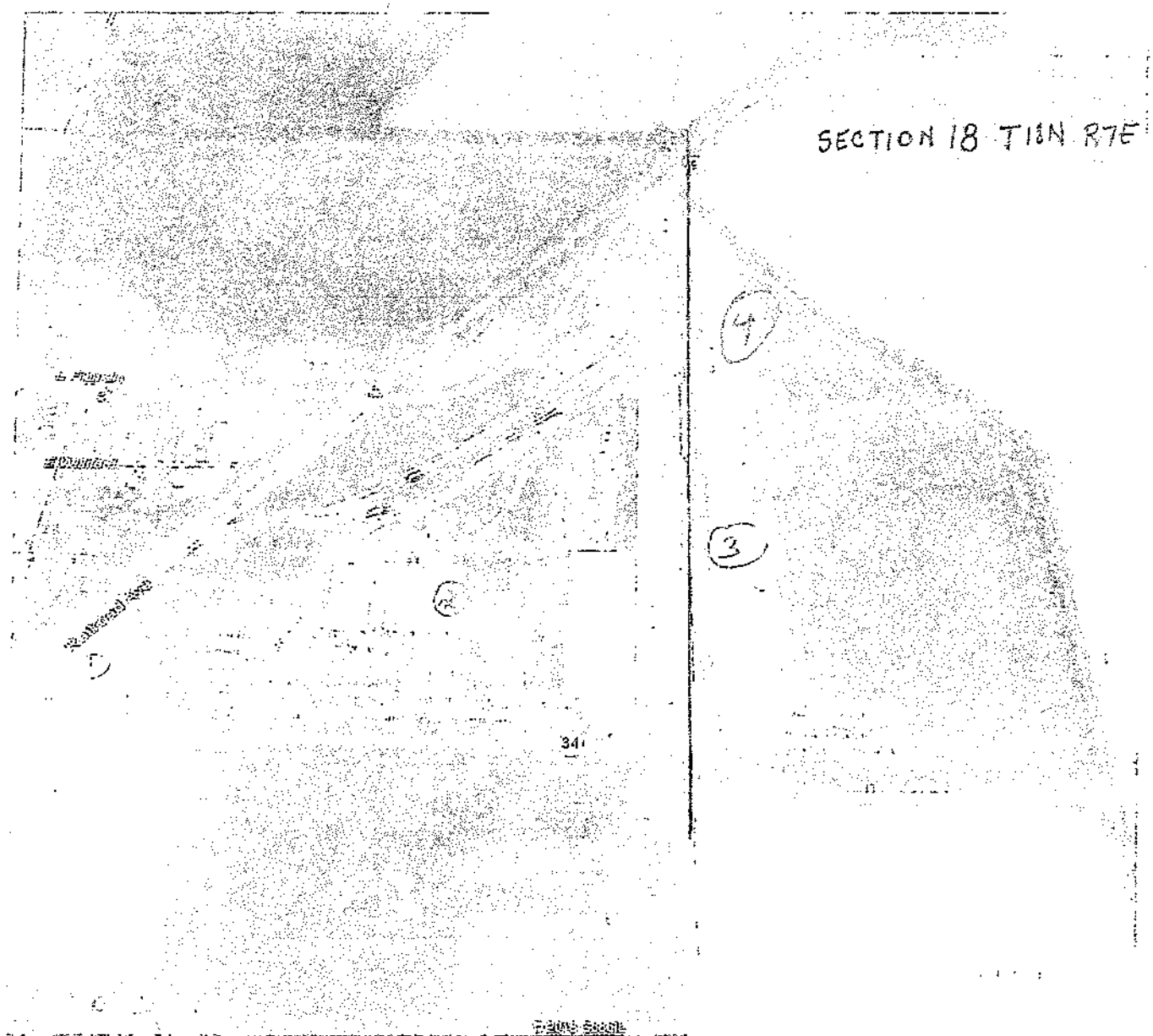
Sincerely,



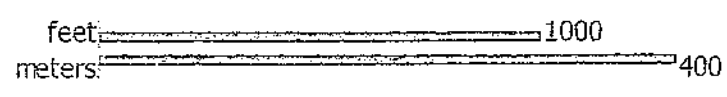
Steve Dixon, Mayor



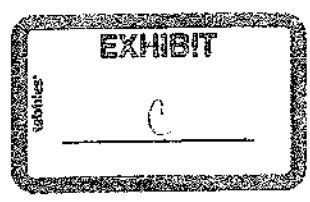
SECTION 18 T18N R7E



30 gte earth



- 1 - COOP
- 2 - Old ARI - Year 2000
- 3 - New ARI - 2007



COPY

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL)
WATER DISTRICT)
PLAINTIFF)
VS. NO. 4CV-2017-219-MR)
CITY OF MARMADUKE, ARKANSAS)
DEFENDANT)

DEPOSITION OF TONYA THOMPSON
TAKEN IN MARION, ARKANSAS
FEBRUARY 18, 2019



HENDRIX REPORTING SERVICE
1701 SOUTH ARCH
LITTLE ROCK, ARKANSAS 72206
(501) 372-2748
703

APPEARANCES:

On Behalf of the Plaintiff:

JIM LYONS, Esq.
Lyons and Cone Law Firm
407 South Main
Jonesboro, AR 72401

On Behalf of the Defendants:

WILLIAM MANN, III, Esq.
Arkansas Municipal League
Second and Willow
North Little Rock AR 72114

Also Present:

Mayor Steve Dixon

HENDRIX REPORTING SERVICE

1701 SOUTH ARCH

LITTLE ROCK, ARKANSAS 72206

704 (501) 372-2748

Produced, sworn, and examined, pursuant to notice, in the office of the Chamber of Commerce, 13 Military Road, Marion, Arkansas, commencing at 10:10 a.m. on February 18, 2019, in the above-entitled cause now pending in the Circuit Court of Greene County, Arkansas; said deposition being taken for all purposes, pursuant to the Arkansas Rules of Civil Procedure.

I N D E X

WITNESS:
TANYA THOMPSON

Examination by Mr. Mann page 6

EXHIBITS:

Deposition Exhibit One page 80
Email from Blake Brasher of 6-19-15

Deposition Exhibit Two page 81
Email from Alford to Thompson of 6-22-15

Deposition Exhibit Three page 82
Email from Breznay to Thompson of 8-4-15

Deposition Exhibit Four page 83
Email from Thompson to SFRRWD of 8-4-15

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LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

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Email from Thompson to Breznay of 10-19-15	
Deposition Exhibit Six	page 85
Email from Breznay to Thompson of 12-16-15	
Deposition Exhibit Seven	page 86
Email of Breznay to Thompson of 1-11-16	
Deposition Exhibit Eight	page 87
Letter of Pigue to ARI of 2-2-16	
Deposition Exhibit Nine	page 88
Email of SFRRWD to Pigue of 2-3-16	
Deposition Exhibit Ten	page 89
Email of Carter to SFRRWD of 3-3-16	
Deposition Exhibit Eleven	page 90
SFRRWD Memo of 3-14-16 to Marmaduke Mayor	
Deposition Exhibit Twelve	page 91
First National Bank letter of 4-21-16 to SFRRWD	
Deposition Exhibit Thirteen	page 92
ANRC Letter of 7-27-16 to SFRRWD	
Deposition Exhibit Fourteen	page 93
ANRC Letter of 8-8-16 to SFRRWD	
Deposition Exhibit Fifteen	page 94
Resolution Number 16-10 Re: Resolution for Manager	
Deposition Exhibit Sixteen	page 95
Resolution of Intent Re: Intent of SFRRWD	
Deposition Exhibit Seventeen	page 96
Certificate of Compliance with 14-234-119	

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LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

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ANRC Minimum Requirements	
Deposition Exhibit Nineteen	page 98
Plaintiff's Respondents to Requests for Admission	
Deposition Exhibit Twenty	page 99
Lyons Letter of 4-4-17 to ARNC	
Deposition Exhibit Twenty-One	page 100
ARNC Letter of 5-9-17 to Lyons	
Deposition Exhibit Twenty-Two	page 101
Complaint for Damages	
Deposition Exhibit Twenty-Three	page 102
Affidavit of Tonya Thompson	
Deposition Exhibit Twenty-Four	page 103
ISO Letter to Perry of 1-21-19	
Certificate of Reporter	page 104

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LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

1 Have you ever read a copy of the lawsuit which the District
2 filed against Marmaduke, to your knowledge?

3 A I'm sure I have.

4 Q In order for that lawsuit to be filed, did that decision have
5 to be approved by your Board?

6 A I'm sure. I'm sure.

7 Q Do you recall any?

8 A I don't. I've looked at so many documents I couldn't
9 guarantee that.

10 Q That would not be your decision, though, would it?

11 A No.

12 Q Okay. Do you recall a Board meeting where it was
13 discussed that a lawsuit would be filed by the District against
14 Marmaduke?

15 A Yes.

16 Q Was there a vote taken on that?

17 A Yes.

18 Q Was it a unanimous vote?

19 A Yes.

20 Q Okay. You said you joined the District in 2011 and then
21 how much time went by before you actually became the
22 manager?

23 A Let's see. This is an estimated guess. I would think 2013,
24 '14 maybe.

25 Q Okay.

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LITTLE ROCK, ARKANSAS 72206

(501) 372-2748

1 Q Is that right?

2 A I think so.

3 Q And the reason I said that is you can't say uh-huh.

4 A Yes, I think so.

5 Q I'll do it, too, I'm sure.

6 A Yes.

7 Q When do you recall there being any discussion between the
8 district and ARI about the District serving water to ARI
9 facilities?

10 A 2015.

11 Q Never before then to your knowledge?

12 A I had asked may, just brought up, you know, some of why,
13 you know, that we had never serviced ARI. But I really didn't
14 know how it was set up, you know, because I was new and
15 there's a lot to learn on the outside on where the little lines are,
16 so it was really about it.

17 Q So when do you think you brought that up about why you
18 didn't serve ARI, "you" being the District?

19 A It was before I was probably manager, just questioning.

20 Q And to whom did you raise those questions?

21 A The inside, like the guy that was working with me.

22 Q Okay. An operator?

23 A Yes.

24 Q Who was that operator?

25 A Ricky Lee.

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LITTLE ROCK, ARKANSAS 72206

(501) 372-2748

1 A Yes.

2 Q And in that first paragraph she is asking for you to provide
3 some information to allow the Commission to, or allow her to
4 perform a financial analysis in connection with your loan, is that
5 correct?

6 A Yes.

7 Q And she asked you to provide certain information, is that
8 right?

9 A Yes.

10 Q And do you recall whether you did provide that information
11 to her?

12 A Yes.

13 Q And on the first page, Item Number 3 is the number of
14 water customers and estimated use or average monthly bill, is
15 that right?

16 A Uh-huh, yes.

17 Q So she is asking you for the number of existing customers
18 that the District had at that time?

19 A Yes.

20 Q Okay. And then in the application for your loan from the
21 Commission, were you representing to the Commission that you
22 would pledge -- "you" being the District -- would pledge to
23 repay the loan from existing revenues you were receiving from
24 customers?

25 A Yes.

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LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

1 Q Or revenues you received from existing customers is a
2 better way to put it, is that right?

3 A Yes.

4 Q Okay.

5 (Whereupon, the August 8, 2016 letter from ANRC to
6 SFRRWD Re: Request for and Transmittal of Information
7 was marked as Deposition Exhibit Fourteen and attached at
8 Tab Fourteen.)

9 Q I'm going to show you what I've marked as Exhibit Fifteen
10 to your deposition and ask you to take a look at it and let me
11 know if you recognize it, ma'am (Handing document to witness)?

12 A (Examining document) Yes, I do.

13 Q And would you identify that for the record, please?

14 A Well, it was giving me permission to sign papers on the
15 ANRC loan, I believe.

16 Q And this is a Resolution of the District Board of Directors?

17 A Yes.

18 Q Okay. And down at the bottom it notes that the resolution
19 was passed on August 16th of 2016, is that right?

20 A Yes.

21 Q And the signatory line under "Approved," that is your
22 signature?

23 A Yes.

24 Q And who is this person who is the District
25 Recorder/Treasurer?

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LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

1 for such water services, and I guess you're referring back to Six,
2 should be paid to the District and is needed by the District to
3 assist in repaying its loan to the Commission, do you see that?

4 A Yes.

5 Q At the time that the District applied for and obtained the
6 loan from the Commission, you were not receiving any revenues
7 from ARI, were you?

8 A No.

9 Q Okay. So at the time you obtained the loan, you were
10 pledging your revenues received from your existing customers as
11 security for that loan, is that right?

12 A Yes. But we also had USDA loans prior to that for many
13 years.

14 Q Which had all been paid off, right?

15 A Well, it's not actually paid off. It's paid off to USDA, but
16 we still owe the money.

17 Q You refinanced it with the First National Bank of either
18 Paragould or Corning, correct?

19 A Yes.

20 Q But you didn't owe it to the USDA?

21 A Right.

22 Q Paragraph Number Ten. There you state that the District is
23 ready, willing and able to connect to Building Number Three and
24 provide water service to Building Number Three within a
25 reasonable period of time following the granting of a judgment

HENDRIX REPORTING SERVICE

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LITTLE ROCK, ARKANSAS 72206

(501) 372-2748

Transcript of the Testimony of

Phelps, Crystal

Date: February 4, 2019

Case: St. Francis River Regional Water District vs. City of
Marmaduke, Arkansas



Bushman Court Reporting

Crystal Garrison, CCR

Phone: (501) 372-5115

Fax: (501) 378-0077

<www.bushmanreporting.com>

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL)	PLAINTIFF
WATER DISTRICT)	
)	
Vs.)	Case No. CV-2017-219
)	
CITY OF MARMADUKE,)	
ARKANSAS)	DEFENDANT.

ORAL DEPOSITION OF
CRYSTAL PHELPS
FEBRUARY 4, 2019

ORAL DEPOSITION OF CRYSTAL PHELPS, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on February 4, 2019, from 10:04 a.m. to 12:22 p.m., before Crystal Garrison, Certified Court Reporter, in and for the State of Arkansas, reported by machine shorthand, at the Arkansas Natural Resources Commission, 101 East Capitol Avenue, Suite 350, Little Rock, Arkansas 72201, pursuant to the Arkansas Rules of Civil Procedure.

A P P E A R A N C E S

ATTORNEY FOR THE PLAINTIFF:

MR. JIM LYONS
Lyons & Cone
407 South Main Street
Jonesboro, Arkansas 72401
870-972-5440

ATTORNEY FOR THE DEFENDANT:

MR. WILLIAM C. MANN, III
MS. BREE GIBSON
Arkansas Municipal League
310 West Second
North Little Rock, Arkansas 72115
501-978-6131

ALSO PRESENT:

MR. STEVE DIXON

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EXAMINATION INDEX

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CRYSTAL PHELPS

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Further Examination by Mr. Lyons.....	68

Reporter's Certificate.....	82
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EXHIBIT INDEX

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1 A. I saw no issues with the formation of the district.

2 Q. Okay. And so, in your legal opinion, was the
3 district properly formed?

4 A. Yes.

5 Q. And based on your letter of Exhibit 2 -- marked as
6 Exhibit 2, not only was the district properly formed,
7 but the East Plant of ARI was located in St. Francis
8 River Regional Water District's territory; is that
9 correct?

10 A. Yes.

11 Q. Okay. Has there been any action taken since 1987 to
12 change those district boundaries, that you've seen?

13 A. No.

14 Q. Okay. Are you familiar with any attempt by either
15 Marmaduke or anyone else to change the boundaries of St.
16 Francis River Regional Water District?

17 A. No.

18 Q. So, as far as you're concerned as we sit here today,
19 the boundaries that were originally granted to St.
20 Francis River Regional Water District, those still
21 remain the boundaries in which they are supposed to be
22 able to serve or provide water; is that correct?

23 MR. MANN: Object to the form.

24 A. The boundaries of the district are the boundaries of
25 the district.

1 A. No.

2 Q. Okay. Marmaduke has not submitted any paperwork or
3 any requests to serve the ARI East Plant located in St.
4 Francis River Regional Water District's territory --

5 A. Not --

6 Q. -- true?

7 A. Yes.

8 Q. Under your rules is that the proper thing to do for
9 -- proper thing for Marmaduke to do if they want to
10 serve something outside their territory?

11 MR. MANN: Object to the form of the question.

12 A. Yes.

13 Q. (BY MR. LYONS) If they want to invade someone
14 else's territory, is it proper for Marmaduke to come to
15 the ANRC before they begin serving that invaded
16 territory?

17 A. Yes.

18 MR. MANN: Object to the form.

19 Q. (BY MR. LYONS) If they don't do that -- if a city
20 does not come to you before they begin serving outside
21 of their territory, what action does the ANRC normally
22 take? Do they have some sort of enforcement action; do
23 they have some enforcement arm that stops that? What
24 does ANRC do, if anything?

25 A. We -- as far as I know, we have no method of

1 Compliance approval, are they currently providing
2 service?

3 Q. No.

4 A. And I'm guessing the one that's trying to take it
5 away is also not providing service?

6 Q. Correct.

7 A. If that -- if the initial entity that receives
8 service, if they had applied to the Arkansas Natural
9 Resources Commission for Water Plan Compliance approval
10 of a master plan containing that area, I think a master
11 plan can extend out to ten years, we would first look at
12 that. If there were no master plan, then we would look
13 at pipes in the ground.

14 Q. Okay. What does the effect of allocation of a
15 territory have in regard to decisions made by the ANRC?

16 A. Are you asking what is the effect of an entity being
17 given Water Plan Compliance approval over a certain
18 service area --

19 Q. Yes.

20 A. -- to ANRC?

21 Q. Yes.

22 A. If that's occurred, then -- well, the effect is that
23 you're in compliance with the Water Plan.

24 Q. Okay.

25 A. The state's water plan.

1 Q. Okay. And somebody who invades that territory is
2 not in compliance with the Water Plan; are they?

3 MR. MANN: Object to the form.

4 A. Somebody who invades a service area that's been
5 approved by ANRC for Water Plan Compliance approval, if
6 it's invaded, then that person is not in compliance with
7 the Water Plan.

8 Q. (BY MR. LYONS) Okay.

9 MR. LYONS: Let me see Exhibit 3, please. Thank
10 you.

11 Q. (BY MR. LYONS) On Exhibit 3, the last paragraph, if
12 you would read that to yourself, please.

13 A. Yes.

14 Q. Okay.

15 A. I've read it.

16 Q. All right. And I believe when Mr. Mann was talking
17 to you, he asked you a question and your response was,
18 "I don't know what we would have done to help." What'd
19 you mean by that?

20 A. I think the question was: What else could you have
21 done other than write this letter? And I responded: I
22 don't know what we could have done to help. Is that
23 what we're talking about?

24 Q. Yeah. You said in response to a question, I don't
25 know what we would have done to help, when he was

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

FILED
MAR 28 2019
GREENE CO. CIRCUIT CLERK

BRIEF IN SUPPORT OF RESPONSE TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Brief in Support of Response to Defendant's Motion for Summary Judgment, states:

I. INTRODUCTION

The Defendant, City of Marmaduke, Arkansas (the "City"), in its Motion for Summary Judgment, raises various arguments for summary judgment. However, the City's primary claim is that it should be allowed to provide water services to that portion of American Railcar Industries, Inc. ("ARI") Plant which lies in SFRRWD's service area because the City initially provided water service to ARI when ARI was located solely in the City's service area. The City cites no authority for its "once a customer always a customer" rule even if that customer has built buildings outside of such territory. Additionally, the City readily admits that the portion of ARI's Plant at issue in this litigation (the East Plant and the Refurb Plant) is located in SFRRWD's service area. [See Page 40, Lines 6-7 (hereafter "p." and "l.") of the Deposition of Steve Dixon. The pertinent pages of the Deposition of Steve Dixon are attached hereto and incorporated by

reference, collectively, herein as Exhibit G]. Further, the City admits that it sought no approval from any state governmental body, agency or authority to provide water service to ARI even though it meant that it was going outside its service area and into SFRRWD's service area. (See Exhibit G, p. 40, l. 9-25). Thus, the City lacks the authority to provide water service to ARI in SFRRWD's service area. That right belongs to SFRRWD. Therefore, the City's Motion for Summary Judgment claiming such invasive rights should be denied.

II. ARGUMENT

A. Summary Judgment Standard

Summary judgment is to be granted by a trial court only when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *Danner v. MBNA America Bank, N.A.*, 369 Ark. 435, 255 S.W.3d 863 (2007). The standard is whether the evidence is sufficient to raise a fact issue, not whether the evidence is sufficient to compel a conclusion. A fact issue exists, even if the facts are not in dispute, if the facts may result in differing conclusions as to whether the moving party is entitled to judgment as a matter of law. In such an instance, summary judgment is inappropriate. *Id.*

The evidence is viewed in a light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. The review focuses not only on the pleadings, but also on the affidavits and other documents filed by the parties. *Id.* The purpose of summary judgment is not to try the issues, but to determine whether there are any issues to be tried. *Lamar Advantage Holding Co., Inc. v. Arkansas State Highway Comm'n*, 369 Ark. 295, 253 S.W.3d 914 (2007).

On June 7, 2018, this Court ruled on a Summary Judgment Motion by SFRRWD and at that time the Court ruled that it had not determined the meaning of §15-22-223(a) and that the

Court was also concerned about the ability of SFRRWD to supply water to ARI who will be impacted by this if the Plaintiff is unable to supply sufficient water to ARI. (Attached hereto and incorporated by reference herein as Exhibit H is a draft of the Court's Order which appears to have been prepared but not entered by the Court). The Court's ruling regarding the ability of SFRRWD to provide the water was based on Mayor Steve Dixon's Affidavit at that time which stated that the "City does not believe that the District [SFRRWD] has sufficient capacity or infrastructure to provide water services to ARI". (See paragraph 34, Exhibit 2 to Defendant's Response to Plaintiff's Motion for Summary Judgment). However, in his deposition on March 5, 2019, Mayor Dixon stated the following:

Mr. Lyons: Do you know anything about the engineering necessary for a city water system, sir?

Mr. Dixon: No.

Mr. Lyons: Do you have knowledge of the district's [SFRRWD] water system, sir?

Mr. Dixon: No.

Mr. Lyons: Do you know of the capacity that the district [SFRRWD] has, sir?

Mr. Dixon: No, sir.

Mr. Lyons: So you have no knowledge of what service, if any, the district could provide to ARI; is that correct?

Mr. Dixon: That would be correct.

(See Exhibit G, p. 11, l. 4-15). Thus, Mayor Steve Dixon made a false statement in his affidavit which was attached to the Response to the Plaintiff's Motion for Summary Judgment filed herein.

At the same time, Ronald Pigue, Sr. and Leonard "Brad" Nelson, both Board Members of

SFRRWD, stated in their depositions that SFRRWD had sufficient facilities and water to supply ARI with its water requirements in a prompt and timely manner. (See Deposition of Ronald Pigue, Sr., p. 27, l. 9-12; p. 30, l. 9-12; p. 86, l. 24-25; p. 87, l. 1-7 and Deposition of Brad Nelson, p. 10, l. 7-18; p. 24, l. 6-13; p. 26, l. 1-15. The pertinent pages of the Deposition of Mr. Pigue are attached hereto and incorporated, collectively, by reference herein as Exhibit I and the pertinent pages of the Deposition of Mr. Nelson are attached as Exhibit J). The above deposition testimony of Mayor Dixon and that of Mr. Pigue and Mr. Nelson shows that a fact question remains. Therefore, Defendant's Motion for Summary Judgment should be denied.

B. SFRRWD Has the Exclusive Right to Provide Water Services in its Service Territory

The City in its argument regarding SFRRWD's right to provide water services to ARI's facilities located in SFRRWD's service territory discusses in detail the powers of a municipality under Arkansas law and how it has provided water service for a number of years to customers including ARI. However, this is of no consequence. The issues raised by the City as to what has occurred in the past do not determine or affect whether under Arkansas law SFRRWD has the right to provide water service to a customer in its designated service area. Thus, the beginning and end of this inquiry is simply who has the authority to serve customers in SFRRWD's service area and that authority lies with SFRRWD and not with the City.

In making its argument, it appears that the City wants the Court to ignore the applicable legal authorities for the matter at issue in this litigation – Ark. Code Ann. § 15-22-223(a) and Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures which provide as follows:

[i]t is unlawful for a person to provide water or wastewater services to an area where such services are being provided by the

current provider that has pledged or utilizes revenue derived from services within the area to repay financial assistance provided by the Arkansas Natural Resources Commission, unless approval for such activity has been given by the commission and the new provider has received approval under the Arkansas Water Plan established in § 15-22-503, if applicable. *Id.*

Additionally, Section 601.3 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures defines “[s]ervice area” as “either an area that is provided water or wastewater service by a system or an area not receiving water or wastewater service that is included within a system’s approved Master Plan or water development project as an area where the system will provide service in the near future.” *Id.* However, based on the statute and the Commission regulations and the fact that SFRRWD has pledged or is utilizing the income derived from its service area which includes where ARI’s East Plant and Refurb Plant are located, SFRRWD is the current provider of water service in this area and it is unlawful for anyone else (including the City) to provide such service in this service area. (See Exhibit E, p. 46, l. 20-25; p. 47, l. 1-3; p. 66, l. 9-12 and Exhibit F).

C. The City Misstates the Meaning of Ark. Code Ann. § 15-22-223

The City argues that Ark. Code Ann. § 15-22-223 is not applicable because the City is ARI’s supplier of water and has not pledged revenue to repay financial assistance provided by the Arkansas Natural Resources Commission (the “Commission”). Both of these arguments are incorrect. The City wants to read Ark. Code Ann. § 15-22-223(a) as if the words, “to an area” are removed from the sentence. However, since these words are in the sentence, the construction of a statute requires that:

[t]he basic rule of statutory construction is to give effect to the intent of the legislature. Where the language of a statute is plain and unambiguous, we determine legislative intent from the ordinary meaning of the language used. In considering the meaning of a statute, we construe it just as it reads, giving the

words their ordinary and usually accepted meaning in common language. **We construe the statute so that no word is left void, superfluous or insignificant, and we give meaning and effect to every word in the statute, if possible.**

Great Great Lakes Chem. Corp. v. Bruner, 368 Ark. 74, 82, 243 S.W.3d 285, 291 (2006) cited in *City of Little Rock v. Rhee*, 375 Ark. 491, 495, 292 S.W.3d 292, 294, (Ark., 2009). [Emphasis supplied].

Instead the City wants to only focus on the words: “where such services are being provided by the current provider”. This is simply incorrect. To give effect to every word, then the City cannot remove the words “to an area” from the statute. SFRRWD is providing water service throughout its service area. Since, SFRRWD is providing water service in that area, then the City is not permitted to provide water service in SFRRWD’s area, including ARI’s East Plant and Refurb Plant. Additionally, SFRRWD is using the income from this service area to repay the Commission. (See Exhibit E, p. 46, l. 20-25; p. 47, l. 1-3; p. 66, l. 9-12). While on the other hand, the City has not obtained approval from the Commission or under the Arkansas Water Plan to serve the area as expressly admitted by Mayor Steve Dixon. (See Exhibit G, p. 28, l. 21-25; p. 29, l. 1-12; p. 31, 5-12, 17-24; p. 33, l. 3-10; p. 34, l. 3-6). As a result, per Ark. Code Ann. § 15-22-223(a), the City is unlawfully providing water service in SFRRWD’s area.

The City also wants the Court to believe that Ark. Code Ann. § 15-22-223(a) is a curtailment statute and compares it to 7 U.S.C.A. § 1926(b) and cites the case of *Pub. Water Supply Dist. No. 3 of Laclede City, Mo. v. City of Lebanon, Mo.*, 605 F.3d 511 (8th Cir. 2010) as support that the City should be able to continue to intrude on SFRRWD’s service area. This is incorrect. First, § 1926(b) provides that a rural district’s service “shall not be curtailed and limited”. Conversely, Ark. Code Ann. § 15-22-223(a) does not use the words “curtailed” or “limited”. As a result, the current holder of the service area per the Arkansas statute not only retains the right to service its area but it does so to the exclusion of anyone else who has not

obtained approval from the Commission or under the Arkansas Water Plan to serve the area.

Additionally, SFRRWD did not have to be indebted to the Commission at the time water was provided by the City to the East Plant and Refurb Plant in order to have the protection under Arkansas law. Ark. Code Ann. §15-22-223(a) does not so state and this Court concluded in its Order dated June 7, 2018 (Exhibit H) that there is no time limit provided by A.C.A. §15-22-223(a). Instead, A.C.A. §15-22-223(a) states, in pertinent part, that SFRRWD must pledge or utilize revenue derived from services within the area to repay the loan provided by the Commission in order to be protected from intrusion by the City. Again, the statute is not tied to a time but to the service area. As SFRRWD is utilizing the revenue it derives from service it provides in its service area to repay the Commission, it has the protection provided by Ark. Code Ann. 15-22-223(a).

D. The City Did Not Obtain Approval from the Commission

The City also selectively reads the Commission's Water Plan Compliance Review Procedures by arguing that its action in supplying water to the East Plant and Refurb Plant was exempt from the Commission's regulations because all that the City did was install a water meter. However, the City conveniently forgets compliance under the Arkansas Water Plan (Ark. Code Ann. § 15-22-503) which states, the following:

No political subdivision or agency of the state shall spend any state funds on or engage in any water development project, excluding any water development project in which game protection funds or federal or state outdoor recreation assistance grant funds are to be spent, provided that such a *project will not diminish the benefits of any existing water development project*, until a preliminary survey and report therefor which sets forth the purpose of the water development project, the benefits to be expected, the general nature of the works of improvement, the geographic area to be served by the water development project, the necessity, feasibility, and the estimated cost thereof is filed with the commission and is approved

by the commission to be in compliance with the plan. Ark. Code Ann. § 15-22-503(e)(1) (Emphasis added).

By supplying water to the East Plant and the Refurb Plant, the City is engaging in a water development project and is diminishing SFRRWD's benefits for its water development project of providing water services to customers in its service area. Further, according to Crystal Phelps, general counsel for the Commission, SFRRWD was properly formed and was allocated its service territory by Court Order and the proper thing for the City to have done if it wanted to serve ARI outside the City's territory and in SFRRWD's territory was to go before the Commission before invading SFRRWD's territory, which the City did not do and, thus, is not in compliance with the Water Plan. In this regard, Ms. Phelps, in her deposition, states the following:

Mr. Lyons: Okay. And so, in your legal opinion, was the district [SFRRWD] properly formed?

Ms. Phelps: Yes.

Mr. Lyons: And based on your letter of Exhibit 2 -- marked as Exhibit 2, not only was the district properly formed, but the East Plant of ARI was located in St. Francis River Regional Water District's territory; is that correct?

Ms. Phelps: Yes.

Mr. Lyons: Okay. Has there been any action taken since 1987 to change those district boundaries, that you've seen?

Ms. Phelps: No.

Mr. Lyons: Okay. Are you familiar with any attempt by either Marmaduke or anyone else to change the boundaries of St. Francis River Regional Water

District?

Ms. Phelps: No.

Mr. Lyons: So, as far as you're concerned as we sit here today, the boundaries that were originally granted to St. Francis River Regional Water District, those still remain the boundaries in which they are supposed to be able to serve or provide water; is that correct?

Mr. Mann: Object to the form.

Ms. Phelps: The boundaries of the district are the boundaries of the district.

(See Exhibit F, p. 20, l. 2-25).

...

Mr. Lyons: Marmaduke has not submitted any paperwork or any requests to serve the ARI East Plant located in St. Francis River Regional Water District's territory --

Ms. Phelps: Not --

Mr. Lyons: -- true?

Ms. Phelps: Yes.

Mr. Lyons: Under your rules is that the proper thing to do for -- proper thing for Marmaduke to do if they want to serve something outside their territory?

Mr. Mann: Object to the form of the question.

Ms. Phelps: Yes.

Mr. Lyons: If they want to invade someone else's territory, is it proper for Marmaduke to come to the ANRC before they begin serving that invaded territory?

Ms. Phelps: Yes.

(See Exhibit F, p. 30, l. 1-17).

...

Mr. Lyons: Okay. What does the effect of allocation of a territory have in regard to decisions made by the ANRC?

Ms. Phelps: Are you asking what is the effect of an entity being given Water Plan Compliance approval over a certain service area --

Mr. Lyons: Yes.

Ms. Phelps: -- to ANRC?

Mr. Lyons: Yes.

Ms. Phelps: If that's occurred, then -- well, the effect is that you're in compliance with the Water Plan.

Mr. Lyons: Okay.

Ms. Phelps: The state's water plan.

Mr. Lyons: Okay. And somebody who invades that territory is not in compliance with the Water Plan; are they?

Mr. Mann: Object to the form.

Ms. Phelps: Somebody who invades a service area that's been approved by ANRC for Water Plan Compliance approval, if it's invaded, then that person is not in compliance with the Water Plan.

(See Exhibit F, p. 70:14 - 25; p. 71, l. 1-7).

Thus, the City is not in compliance with the Water Plan approved by the Commission and therefore, summary judgment should be denied. At the very least, the above testimony raises genuine issues of material fact which precludes granting summary judgment to the City.

Further, the City's actions in this matter are similar to the actions of the City of Bentonville in the case of *Arkansas Soil and Water Conservation Com'n v. City of Bentonville*, 361 Ark. 289, 92 S.W.3d 47 (2002). In that case, the City of Bentonville claimed that it had exclusive territorial jurisdiction of all land lying within five (5) miles of its corporate limits and this jurisdiction trumped the Arkansas Soil and Water Conservation Commission's (n/k/a Arkansas Natural Resources Commission) authority under Ark. Code Ann. § 15-22-503 such that the city was granted the exclusive right to provide utilities to residents in its five-mile extraterritorial planning area. *Id.* at 299, 53. The Arkansas Supreme Court did not agree. In so holding, the Supreme Court stated the following:

Bentonville overstates the power granted to them by section 14-56-413. First, section 15-22-503(e) clearly grants ASWCC power over other political subdivisions, such as municipalities, to approve any water development project for compliance with the state water plan. Ark. Code Ann. § 15-22-503(e). Our case law provides that a Regional Water District, whose water projects also require ASWCC approval, can include municipalities. *City of Fort Smith v. River Valley Regional Water Dist.*, *supra*. Moreover, cities cannot spend state funds on or engage in any water development project until the project is approved by ASWCC. Ark. Code Ann. § 15-22-503(e); *City of Benton v. ASWCC*, *supra*. A municipality clearly does not have absolute power to control water projects within its own boundaries, much less within its five-mile extraterritorial planning area.

Statutes relating to the same subject are said to be in *pari materia* and should be read in a harmonious manner, if possible. *R.N. v. J.M.*, 347 Ark. 203, 61 S.W.3d 149 (2001); *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). Here, we have no difficulty in reading the two statutes at issue in harmony. While a municipality may prepare plans for lands lying within five miles of the city limits, Ark. Code Ann. § 14-56-413, all water development projects must still comply with the Arkansas Water Plan. Ark. Code Ann. § 15-22-503. *Id.* at 299-300, 53-54.

Obviously, the supplying of water by the City to the East Plant and Refurb Plant qualifies as a

project which requires compliance by the City with Arkansas' Water Plan. The testimony of Crystal Phelps shows that the City was required to appear before the Commission and take proper action to comply with the Water Plan prior to providing water service in SFRRWD's territory (Exhibit F) and Mayor Dixon's testimony confirms that it took no action whatsoever before the Commission or any other governmental body, agency or entity before providing water service to ARI in SFRRWD's territory (Exhibit G, p. 28, l. 21-24). Thus, the City is not exempt from the Commission's jurisdiction and is in violation of Arkansas' Water Plan. Summary Judgment should be denied.

E. SFRRWD's Claims Have Not Been Extinguished by the Applicable Statute of Limitations and the Doctrine of Laches and Waiver.

The City claims that "[t]his action may be fairly described as one of express liability, trespass, or injury to goods" without explaining why this action fits in any one of those categories. (See page 19 of the City's Brief). Plaintiff disagrees and believes that the applicable statute of limitations is five years under A.C.A. § 16-56-115. AMI 1107 states that "[a] trespasser is a person who goes upon the premises of another without permission and without an invitation express or implied." Ark. Model Jury Instr., Civil AMI 1107. This action cannot be a trespass as the City has not gone upon the premises of SFRRWD, and SFRRWD has not alleged that the City has committed a trespass anywhere in the Complaint. This action cannot be described as an injury to goods as the City claims, and there has been no testimony, allegation or argument that the City has injured SFRRWD's goods in any manner. The City does not explain why it believes this matter is an express liability, nor does it cite to any Arkansas law about express liability. As the moving party, the City bears the burden of proving that this matter is an express liability which it has not done. Further, the City does not address the fact that its actions

were and are a continuing violation of state law. Thus, this claim by the City fails.

Further, the City misleadingly states that “[t]he District had nine years from 2006 to 2015 to enforce its alleged exclusive right to service the East Plant and Refurb Plant while being indebted to the ANRC.” (See page 21 of the City’s Brief). The City also misleadingly states that “[b]ecause the District waited a decade to attempt to enforce its alleged right” (See page 21 of the City’s Brief). The City repeatedly, incorrectly and misleadingly tries to tie the issue of supplying water to the East Plant and the Refurb Plant to the same timeline. However, the Refurb Plant was not constructed until 2015 as the City admits on page 4 of the City’s Brief. SFRRWD had no ability to enforce its exclusive right to service the Refurb Plant until 2015 when the Refurb Plant was constructed. (See Exhibit G, p. 45, l. 15-23). Any attempt by the City to state that the SFRRWD had nine years, at least eight years of which were prior to construction of the Refurb Plant to enforce its exclusive right to service the Refurb Plant, is simply not true. The Refurb Plant was admittedly constructed in 2015. SFRRWD filed its Complaint on June 21, 2017. This was well within the applicable statute of limitations of five years (and is even well within the time limit if the statute of limitations is found to be three years). Any attempt by the City to argue that SFRRWD’s claims against the City in relation to the Refurb Plant are barred by laches, waiver or the statute of limitations is wrong.

The City claims that the doctrine of laches prevents SFRRWD from seeking an injunction to prevent the City from furnishing water to the East Plant and Refurb Plant. The City then cites the case of *Royal Oaks Vista, L.L.C. v. Maddox*, 372 Ark. 119, 123, 271 S.W.3d 479, 483 (2008). The Supreme Court of Arkansas stated in that case that “the application of the doctrine [of laches] depends on its particular circumstances.” *Id.* at 124. The Court further explained that “[t]he issue of laches is one of fact.” *Id.* Thus, because the application of the doctrine of laches

depends on its particular circumstances and is one of fact, summary judgment is improper. The decision on whether the doctrines of laches applies is one for trial because the issue is one of fact.

The doctrine of laches “requires a detrimental change in the position of the one asserting the doctrine, as well as an unreasonable delay by the one asserting his or her rights against whom laches is invoked.” *Summit Mall Co., LLC, v. Lemond*, 355 Ark. 190, 206, 132 S.W.3d 725, 735 (2003). The City has not shown a detrimental change in its position, and is not entitled to the defense of laches. The City argues that it suffered a detrimental change in position by “adopting budgets that included the revenue from serving its existing customer and maintaining the infrastructure required to serve the customer.” (See page 21 of the City’s Brief). However, this is not a detrimental change because the City actually received a benefit by the increased amount of income from servicing ARI. Additionally, the cases cited in the City’s own brief support SFRRWD’s position.

In *Summit Mall Co., LLC, v. Lemond*, the Court found that the defense of laches was applicable in part because Summit Mall Co., LLC had spent “six-and-a-quarter million dollars” to purchase land and “incurred expenses in the amount of \$576,000.” *Summit Mall Co., LLC*, 355 Ark. 190, 207, 132 S.W.3d 725, 736 (2003). The City has shown no similar detrimental change in position. The most damage that the City alleged it suffered was installation of a water meter, at a cost of \$5,300.00 for the Refurb Plant. (See page 5 of the City’s Brief). The fact that the City has made money servicing the East Plant and Refurb plant for years also cuts against this argument. The City has benefitted from this situation, which is the entire reason the City wants the status quo to continue. Also, no unreasonable delay has occurred in this case. The fact that the Refurb plant was constructed in 2015 and SFRRWD filed suit in 2017 shows that there was no unreasonable delay because suit was filed well within the statute of limitations period.

The City alleges that SFRRWD's claims have been extinguished by the doctrine of waiver but fails to cite to any law in Arkansas on waiver. SFRRWD believes it is improper for the City to allege that SFRRWD's claims have been extinguished by waiver without citing to any law in Arkansas about waiver. However, out of an abundance of caution, SFRRWD will address the City's allegation of waiver that is unsupported by any law in Arkansas. First, "[w]aiver is the voluntary abandonment or surrender by a capable person of a right known by him to exist, with the intent that he shall forever be deprived of its benefits, and it may occur when one, with full knowledge of the material fact, does something that is inconsistent with the right of his intention to rely upon it." *Travelers Cas. & Sur. Co. of Am. v. Cummins Mid-S., LLC*, 2015 Ark. App. 229, 6, 460 S.W.3d 308, 314 (2015). Second, the determination of whether a waiver occurred is a question of intent, which is usually a question of fact. *Id.* Thus, from the outset, the question of SFRRWD's intent is a question of fact which is inappropriate for summary judgment. Waiver is inappropriate in regard to the claim about the Refurb plant because that claim was filed well within the statute of limitations, and SFRRWD did not voluntarily abandon or surrender a right known by it to exist regarding the Refurb Plant.

The Court should deny the Motion because the alleged defenses of statute of limitations, waiver and laches do not apply or there are issues of material fact about whether they apply. Additionally, state law does not allow for the City to provide water service to the East Plant and the Refurb Plant, and so summary judgment is improper.

III. CONCLUSION

For the reasons set forth above, Plaintiff, SFRRWD, respectfully requests that this Court deny Defendant's Motion for Summary Judgment.

Respectfully submitted,

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(870) 972-5440

By:  _____


State Bar No. 77083
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 28th day of March, 2019.



Jim Lyons

Transcript of the Testimony of

Steve Dixon

Date: March 5, 2019

Case:

Bushman Court Reporting

cris brasuell

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I N D E X

1

2 STYLE AND NUMBER. 1

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6 WITNESS: Steve Dixon

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EXHIBITS IDENTIFIED

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13 2. Exhibit C to Complaint. 46

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S T I P U L A T I O N S

IT IS HEREBY AGREED AND STIPULATED by the parties in the above cause, through their attorneys of record, that the testimony of Steve Dixon, produced, sworn, and examined at the offices of Arkansas Municipal League, 301 West Second Street, North Little Rock, Arkansas, commencing on March 5, 2019, at 8:58 a.m., before Cris M. Brasuell, CCR, pursuant to the terms and provisions of the Arkansas Rules of Civil Procedure for use as permitted by the Rules; that the questions and answers so given and propounded shall be transcribed by the reporter.

WHEREUPON, there being no further stipulations, the following proceedings were had and done, to wit:

1 Q Have you done any engineering work for the city's
2 water system?

3 A No, sir.

4 Q Do you know anything about the engineering necessary
5 for a city water system, sir?

6 A No.

7 Q Do you have knowledge of the district's water
8 system, sir?

9 A None.

10 Q Do you know of the capacity that the district has,
11 sir.

12 A No, sir.

13 Q So you have no knowledge of what service, if any,
14 the district could provided to ARI; is that correct?

15 A That would be correct.

16 Q All right. If you would, tell me what portion of
17 the ARI plant is located in, within the city limits of
18 Marmaduke.

19 A All of it.

20 Q And when you took over as mayor, what area where the
21 plant is currently located was within the city limits of
22 Marmaduke?

23 A It would be all of it but what is referred to as the
24 East Plant. There's 53 acres that the East Plant sits on
25 that was not in the city when I became the mayor.

1 Q As a result of this letter, did the City of
2 Marmaduke, City Council, vote to follow the terms of your
3 agreement set out in A, B, C, and D?

4 A They did at the time.

5 Q Do you know when that was in relation to March 15 of
6 2016, sir?

7 A I don't have the calendar in front of me, but I do
8 believe March 15th, 2016, was the City Council meeting
9 night. So it would have been on March 15th, 2016.

10 Q So, to the best of your recollection, this letter
11 was written the date that this matter was taken up by the
12 City Council for Marmaduke; correct?

13 A The best I recall, yes.

14 Q Was that passed unanimously by the City Council?

15 A I don't recall what the vote was.

16 Q But it was passed --

17 A Yes, sir.

18 Q -- to the best of your recollection; is that
19 correct?

20 A Yes, sir.

21 Q Has the City of Marmaduke worked with the Arkansas
22 Natural Resources Commission to get approval for any
23 water or wastewater development projects?

24 A Not since I've been mayor, no.

25 Q Are you aware of whether the City of Marmaduke

1 worked with the Arkansas Natural Resources Commission
2 before you became mayor, sir?

3 A No.

4 Q Have you seen any documentation indicating that
5 Marmaduke worked with the Arkansas Natural Resources
6 Commission?

7 A Not that I recall, I have not.

8 Q So you're not aware of the City of Marmaduke taking
9 any action to obtain approval of the Arkansas Natural
10 Resources Commission for their water or wastewater
11 development projects; would you agree with that?

12 A I am not aware of any.

13 Q Do you know what a service area is for water or
14 wastewater service?

15 A Could you repeat that?

16 Q Yes, sir. Do you know what a service area is for
17 water or wastewater service, sir?

18 A I think so.

19 Q Okay. Tell me of what your understanding of it is.

20 A It's an area that you service with water and
21 wastewater; that's where your customers reside and where
22 you do business.

23 Q And so your position is, is wherever you serve,
24 that's your service territory or service area?

25 A Yes.

1 A I am not aware of it being a requirement for the
2 city to have a master plan for the Refurb Plant because
3 we viewed that as an existing customer.

4 Q I'll ask you again.

5 Are you aware of the city having an approved master
6 plan for a water development project that includes the
7 area encompassed by the Refurb Plant?

8 A No.

9 Q Are you aware of any filing whatsoever made by the
10 city with the Arkansas Natural Resources Commission for
11 the water development project to serve the East Plant or
12 to serve the Refurb Plant?

13 MR. MANN: Object to the form of the
14 question.

15 BY MR. LYONS:

16 Q Go ahead.

17 A No. Because the East Plant was constructed prior to
18 my administration, I can't speak to what was done there.

19 The Refurb Plant, at the time that it was built, I'm
20 not aware of any procedures that took place between the
21 city and Arkansas Natural Resources.

22 Q Well, the Refurb Plant was constructed during your
23 administration. You agree with that; don't you?

24 A Yes.

25 Q And, if you had asked your attorneys to take action

1 Q Transfer of the service area.

2 A No.

3 Q Did the city take any action whatsoever when the
4 Refurb Plant was being discussed to obtain any approval
5 from the Arkansas Natural Resources Commission?

6 A No.

7 Q Do you agree that the East Plant and the Refurb
8 Plant are in the territory encompassed by the court order
9 creating the district?

10 A To my knowledge, yes.

11 Q Did the city file a preliminary engineering report
12 with the Arkansas Natural Resources Commission before the
13 Refurb Plant was connected to the city's waterlines?

14 A I'm not aware of any.

15 Q Are you aware of any approval by the Arkansas
16 Natural Resources Commission approving the project of
17 connecting the Refurb Plant as being in compliance with
18 the Arkansas water plan?

19 MR. MANN: Object to the form of the
20 question.

21 A Can you repeat that, please?

22 BY MR. LYONS:

23 Q Sure. I'd be glad to.

24 Are you aware that the Arkansas Natural Resources
25 Commission has the right to approve water plan projects,

1 sir?

2 A Yes.

3 Q Did the city seek approval of the water plan project
4 for the City of Marmaduke with the Arkansas Natural
5 Resources Commission regarding the Refurb Plant?

6 A To my knowledge, no.

7 Q Did the city seek a determination from its attorneys
8 before the -- well, let me rephrase that.

9 Did the city consult with its attorneys prior to
10 connection of the Refurb Plant?

11 A If you're speaking of Kimberly Dale and Allen
12 Warmath, that is a no.

13 Q Well, you said that the letter dated March 15th of
14 2016 was based upon advice of legal counsel; correct,
15 sir?

16 A That is correct.

17 Q And the purpose of that letter was related to the
18 Refurb Plant; is that correct, sir?

19 A It was actually related to the East Plant; which,
20 that campus included the Refurb Plant.

21 Q Okay. And so there was some discussion, I'm not
22 asking what discussion you had, but there was some
23 discussion with attorneys for the City of Marmaduke
24 regarding connection to either the East Plant or to the
25 Refurb Plant before the Refurb Plant was connected to the

1 servicing an existing customer that we've had for years.

2 Q So the city admits that the East Plant and the
3 Refurb Plant is outside of its service area for water
4 rights; is that correct?

5 MR. MANN: Object to the form.

6 A The city admits that the East Plant and the Refurb
7 Plant lies in the district's service area.

8 BY MR. LYONS:

9 Q And you sought no approval, when I say you, I'm
10 talking about the city, sought no approval to service
11 this service area of the district from ANRC; true?

12 A To my knowledge, no, they did not seek approval.

13 Q So that statement would be true to the best of your
14 knowledge?

15 A To the best of my knowledge, yes.

16 Q Did the city seek any approval from any state
17 governmental body?

18 A Not to my knowledge.

19 Q Did the city seek approval of service to the East
20 Plant and the Refurb Plant from any state agency?

21 A Not to my knowledge.

22 Q Did the City of Marmaduke seek approval of the right
23 to serve water to the East Plant and the Refurb Plant
24 from any governmental authority?

25 A Not that I'm aware of.

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

ORDER DENYING MOTION
FOR SUMMARY JUDGMENT WITHOUT PREJUDICE

On the 7th day of June, 2018, came to be heard, Plaintiff's Motion for Summary Judgment with the Plaintiff appearing by and through their attorneys, Lyons & Cone, P.L.C. and the Defendant appearing by and through their attorney, Amanda LaFever. Based upon the Motion, Response and Reply including Briefs in Support thereof and following argument of counsel, the Court doth find as follows:

1. The building in question in this case is the third American Railcar Industries ("ARI") Building which is also known as the refurbishing plant.
2. The statutes involved herein are Ark. Code Ann. §15-22-223(a) and §15-22-503 and the case of *Arkansas Soil and Water Conservation Commission v. City of Bentonville*, 351 Ark. 289, 92 SW3d 47 (2002).
3. That the Court has not determined the meaning of §15-22-223(a) and is also concerned about the ability of the Plaintiff to supply water to ARI who will be impacted by this if the Plaintiff is unable to supply sufficient water to ARI.



4. The Court determines that there is no time limit on §15-22-223(a) and the parties have not shown approval of any plan by the Arkansas Natural Resources Commission.

5. That the Court believes that it would be error to rule on these issues without the parties fully developing these issues.

6. As a result, the Court hereby denies the Plaintiff's Motion for Summary Judgment without prejudice.

7. That the Court hereby sets a discovery deadline of ninety (90) days from the date of this hearing.

IT IS SO ORDERED this ___ day of July, 2018.

Hon. Melissa Richardson

APPROVED:

LYONS & CONE, P.L.C.

By: _____
Attorneys for the Plaintiffs

By: _____
Attorney for the Defendants
Amanda LaFever, AR Bar No. 2012133
P.O. Box 38
North Little Rock, AR 72115
Telephone: (501) 978-6117

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL)
WATER DISTRICT)
PLAINTIFF)
VS. NO. 4CV-2017-219-MR)
CITY OF MARMADUKE, ARKANSAS)
DEFENDANT)

DEPOSITION OF RONALD WESLEY PIGUE, SR.
TAKEN IN JONESBORO, ARKANSAS
FEBRUARY 7, 2019



HENDRIX REPORTING SERVICE
1701 SOUTH ARCH
LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

APPEARANCES:

On Behalf of the Plaintiff:

JIM LYONS, Esq.
Lyons and Cone Law Firm
407 South Main
Jonesboro, AR 72401

On Behalf of the Defendants:

WILLIAM MANN, III, Esq.
GABRIELLE "BRIE" GIBSON, Esq.
Arkansas Municipal League
Second and Willow
North Little Rock AR 72114

Also Present:

Mayor Steve Dixon
Brad Nelson

HENDRIX REPORTING SERVICE
1701 SOUTH ARCH
LITTLE ROCK, ARKANSAS 72206
(501) 372-2748

Produced, sworn, and examined, pursuant to notice, in the office of Lyons and Cone Law Firm, 407 South Main, Jonesboro, Arkansas, commencing at 8:26 a.m. on February 7, 2019, in the above-entitled cause now pending in the Circuit Court of Greene County, Arkansas; said deposition being taken for all purposes, pursuant to the Arkansas Rules of Civil Procedure.

I N D E X

WITNESS:

RONALD PIGUE

Examination by Mr. Mann page 6

EXHIBITS:

Deposition Exhibit One page 88
Complaint

Deposition Exhibit Two page 89
Answers to Interrogatories

Deposition Exhibit Three page 90
Plaintiff's Response to Request for Admissions

Deposition Exhibit Four page 91
Plaintiff's Response to Second Interrogatories

Deposition Exhibit Five page 92
Proposed Resolution Re: Loan

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	4
Deposition Exhibit Six	page 93
3-30-15 Letter of Natural Resources Comm.	
Deposition Exhibit Seven	page 94
Letter of Bond Consulting Engineers of 7-16-15	
Deposition Exhibit Eight	page 95
Letter of Bond Consulting Engineers of 9-24-15	
Deposition Exhibit Nine	page 96
Letter of Bond Consulting Engineers of 10-7-15	
Deposition Exhibit Ten	page 97
Letter of American Railcar Industries of 12-14-15	
Deposition Exhibit Eleven	page 98
Letter of Pigue of 12-1-15 to ARI	
Deposition Exhibit Twelve	page 99
Letter of Jerome Alford to ARI of 1-4-16	
Deposition Exhibit Thirteen	page 100
Minutes of Board Meeting of 1-19-16 SFRRWDD	
Deposition Exhibit Fourteen	page 101
Minutes of Special Board Meeting 2-2-16 SFRRWDD	
Deposition Exhibit Fifteen	page 102
Letter of Pigue to ARI of 2-2-2016	
Deposition Exhibit Sixteen	page 103
Letter of Pigue to Peters @ ARI of 2-3-16	
Deposition Exhibit Seventeen	page 104
Email of Rickey Carter of 3-3-2016 to SFRRWDD	
Deposition Exhibit Eighteen	page 105
Letter of Pigue of 3-10-16 to ARI	

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Deposition Exhibit Nineteen	page 106
Minutes of 3-14-16 of SFRRWDD	
Deposition Exhibit Twenty	page 107
Letter of Randy Young of 7-27-16 to SFRRWDD	
Deposition Exhibit Twenty-one	page 108
Letter of Alford of 8-31-18 to AR. Dept of Health	
Deposition Exhibit Twenty-two	page 109
Letter of Deborah Christopher (Nat. Resources)	
Of 12-19-16 to Pigue	
Deposition Exhibit Twenty-three	page 110
Letter of Christopher of 7-27-17 to Pigue	
Deposition Exhibit Twenty-four	page 111
Letter of Lyons of 4-7-17 to ANRC with attachments	
Deposition Exhibit Twenty-five	page 112
Letter of Holland (ANRC) of 5-9-17 to Lyons	
Deposition Exhibit Twenty-six	page 113
Order Establishing Water District	
Deposition Exhibit Twenty-seven	page 114
Affidavit of James V. Breznay	
Deposition Exhibit Twenty-eight	page 115
Letter of Alex Shubert of 1-21-19 to David Perry	
Re: Public Protection Classification	
Certificate of Reporter	page 116

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(501) 372-2748

1 A That's correct.

2 Q Had Mr. Alford been retained by the water district to
3 explore what improvements would be needed for the District to
4 serve ARI's East Plant and Refurb plant?

5 A Well, I think a better answer to that is we have enough
6 water to do it. I really don't know where you're going with the
7 question, but --

8 Ask me that question again.

9 Q Sure. Well, are you saying that at the time of this letter,
10 July 16, 2015, that the water district had sufficient capacity and
11 resources to serve the two eastern-most buildings of ARI?

12 A Absolutely.

13 Q Okay. Well, then what was this -- You'll see on the first
14 page of the letter right under your name it says "Regarding
15 proposed well number three." What was that all about?

16 A Well, I'm not familiar with what well number three is,
17 because we have two wells that pumps 450 gallons a minute. I
18 don't know whether that -- We have a transfer pump or a
19 booster pump, but I'm not familiar with what the well number
20 three means, cause we never, to my knowledge, ever considered
21 drilling a third well.

22 Q Okay. Do you recall after you got this letter having any
23 conversations with Mr. Alford about what he put in the letter?

24 A No.

25 Q You can't remember?

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1 directed to your attention, correct?

2 A That's correct.

3 Q And the very first paragraph of the letter Mr. Alford says,
4 "I have had lengthy discussion with Tonya concerning water
5 service to ARI and your desire to provide this with the existing
6 well at Rector."

7 Did I read that correctly?

8 A That's correct.

9 Q Does that sentence accurately reflect your belief at the time
10 that you could serve ARI with your existing wells?

11 A Yes, we could serve, we had plenty of water to serve ARI
12 with the existing well.

13 Q Reading on down to the third paragraph, it says: "Since the
14 Health Department has made a big issue out of pH in the Rector
15 well and the lime feeding equipment is not only messy but
16 beyond repair," he made another recommendation.

17 Do you recall any issues that were raised by the Health
18 Department concerning the Rector well?

19 A They've always had a concern with the Rector well, and
20 then our other wells doesn't have to have any chemicals. The
21 Rector well has a line that it says that it needs some - the pH is
22 a little off.

23 Well, there's two lines of thought on that. Some says it
24 does and some doesn't. We hadn't used this well in a short
25 period of time, and that particular piece of equipment, which is

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1 A No. We've got a six inch line right up to it, got 90 pound
2 pressure, and we've got it.

3 Q Okay. So if a fire breaks out at ARI, they've got to rely
4 upon Marmaduke, is that right?

5 A That wasn't what I said.

6 Q What did --

7 A I said we have a line that runs right, it connects to the city
8 limits, and -- No, it's a four inch line. I'm sorry, it's a four
9 inch line.

10 Q Okay. All right.

11 Would this letter which is Exhibit Number Twenty-eight be
12 something that you, as president of the Board, would want to
13 discuss at a water district board meeting?

14 A We will discuss it.

15 Q Okay. All right.

16 When's the next Board meeting?

17 A The third Tuesday of every month.

18 Q Help me, what's --

19 A 1:00 o'clock, third Tuesday of every month.

20 Q So this past Tuesday would have been -- Well, let's see,
21 today's the 7th, so Tuesday the 19th? February 19th will be your
22 next Board meeting?

23 A Yes, sir.

24 Q Okay. As we sit here today, if this lawsuit is resolved in
25 favor of the water district, does the water district have the

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1 capability to immediately begin supplying water services to both
2 the Refurb Plant and the East Plant?

3 A Yes.

4 Q It will not require any expansion of your facilities
5 whatsoever in order to provide that service?

6 A It will not other than connecting the line that runs just a
7 few feet from the Refurbishing Plant.

8 Q Okay.

9 (Whereupon, the January 21, 2019 letter of Alex
10 Shubert of Iso to David Perry Re: Northeast Greene Co FD,
11 Greene County, Arkansas was marked as Deposition Exhibit
12 Twenty-eight and attached at Tab Twenty-eight.)

13 MR. MANN: Can we take about a five minute break?

14 MR. LYONS: Sure.

15 MR. MANN: We'll wind it up, okay?

16 MR. LYONS: Okay.

17 (Whereupon, said proceedings were recessed at 10:56 a.m.
18 and resumed at 10:58 a.m. as follows:)

19 MR. MANN: That's all the questions I have for you,
20 sir. Thank you for your time and your attention.

21 MR. PIGUE: Thank you.

22

23 (Whereupon, said proceedings were concluded at 11:00
24 a.m.)

25

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IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL)
WATER DISTRICT)
PLAINTIFF)
VS. NO. 4CV-2017-219-MR)
CITY OF MARMADUKE, ARKANSAS)
DEFENDANT)

DEPOSITION OF LEONARD "BRAD" NELSON
TAKEN IN JONESBORO, ARKANSAS
FEBRUARY 7, 2019



HENDRIX REPORTING SERVICE
1701 SOUTH ARCH
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APPEARANCES:

On Behalf of the Plaintiff:

JIM LYONS, Esq.
Lyons and Cone Law Firm
407 South Main
Jonesboro, AR 72401

On Behalf of the Defendants:

WILLIAM MANN, III, Esq.
GABRIELLE "BRIE" GIBSON, Esq.
Arkansas Municipal League
Second and Willow
North Little Rock AR 72114

Also Present:

Mayor Steve Dixon
Ron Pigue, Sr.

HENDRIX REPORTING SERVICE
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Produced, sworn, and examined, pursuant to notice, in the office of Lyons and Cone Law Firm, 407 South Main, Jonesboro, Arkansas, commencing at 11:02 a.m. on February 7, 2019, in the above-entitled cause now pending in the Circuit Court of Greene County, Arkansas; said deposition being taken for all purposes, pursuant to the Arkansas Rules of Civil Procedure.

I N D E X

WITNESS:

LEONARD "BRAD" Nelson

Examination by Mr. Mann page 4

EXHIBITS:

Deposition Exhibit One page 46
6-22-16 Written Statement of Mr. Nelson

Deposition Exhibit Two page 47
Affidavit of Tonya Thompson

Certificate of Reporter page 48

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1 A I can't tell you a specific date.

2 Q Yeah.

3 A I've been on there for over 20 years.

4 Q Okay. So at least going back to 2000 or prior to that?

5 A Yeah, and I was a volunteer before that, so --

6 Q Okay.

7 Based upon your experience over the past 20-plus years as
8 a Board member, when would you say that the Water District
9 had the necessary facilities or pipes in the ground to provide
10 water service to both the Refurb Plant and the East Plant?

11 Let's go with the East Plant first and see what --

12 A Well, at least they were there in 2006 for sure. I can't tell
13 you how long they'd been there before that, but they were there
14 in 2006.

15 Q So based upon your understanding, at least in 2006 the
16 Water District had the necessary pipes in the ground to provide
17 water service to the ARI East Plant?

18 A Yes. Let me clarify also.

19 Q Okay.

20 A Cause I don't want to get into gallons per minute and all
21 that with you.

22 Q I don't either.

23 A Yeah. The East Plant, the initial building that was built
24 on the east side of what we call "the line," I have no idea what
25 their water requirements are. I'm going to say they're not

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1 Q Would you say he had the same sort of attitude about the
2 District Board as Mr. Peters did?

3 A No, Mr. Breznay has always been very cordial, nice. He's
4 never been out of line personally with me at all.

5 Q Okay.

6 A I don't know what his opinion is. I do know when this
7 was all going on he was ready to sign the papers. You've asked
8 us a couple of times or asked Mr. Pigue about how long it was
9 going to take for us to actually serve them water. Their
10 contractor had run a pipe to a position that they're about 20
11 feet apart, and ours, and that's all we lack. And that was
12 supposed to happen like tomorrow, and then they called and
13 said, "We're not going to do it."

14 So they had, not on paper, but they had committed for us
15 to tie these lines together, and then at the last minute Mr.
16 Breznay said no, we're not going to, we gotta back up.

17 Q Let me pin you down there.

18 A Okay.

19 Q When you said all you had to do was hook the line up --

20 A Yes.

21 Q -- that was to serve the East Plant?

22 A That was to serve the Refurb Plant and to -- I'm not an
23 engineer, but to the best of my knowledge, they were already
24 getting water in the Refurb Plant from the East Plant. The city
25 was serving them water throughout the plant. So they already

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LITTLE ROCK, ARKANSAS 72206

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1 Q Okay. And as a result of that line being there in 2006, it
2 was such that water could have been provided to both the East
3 Plant and ultimately the Refurb Plant?

4 A I cannot swear about the Refurb Plant at that time.

5 Q That's fine.

6 A Yeah.

7 Q So for sure 2006 you could have served the East Plant?

8 A Yes.

9 Q And we don't know what date for the Refurb Plant?

10 A No, but we could have served it -- When the Refurb Plant
11 was built, then we had the infrastructure, because we had built,
12 we had put down an additional well, so we had backup, we had
13 the infrastructure to serve it with no problem when that Refurb
14 Plant was built. The quantity of water they needed we had, or
15 have.

16 Q Okay. I'm going to ask you to look at something I used
17 during the deposition of Mr. Pigue, and it's Deposition Exhibit
18 Number Seventeen. I'd ask you to take a look at that and see if
19 you have ever seen that particular email before today (Handing
20 document to witness)?

21 A (Examining document) I can't say that I've seen this from
22 Rickey Carter. No, I wouldn't say that I've seen this.

23 Q Okay. Do you know who Rickey Carter is?

24 A Oh, I do, yes.

25 Q Are y'all personally acquainted?

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IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

APR 02 2019

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

RESPONSE TO DEFENDANT'S
MOTION IN LIMINE

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Response to Defendant's Motion in Limine, states:

1. Defendant filed its Motion in Limine seeking to exclude evidence as to the Defendant's partial financial coverage under the Arkansas Municipal League's Municipal Legal Defense Program.
2. Defendant also seeks to prevent Plaintiff from informing the jury that Defendant's counsel are employed by the Arkansas Municipal League's Municipal Legal Defense Program and to prevent Plaintiff from inquiring of prospective jurors if they or any of their family members have any connection with the Arkansas Municipal League.
3. Plaintiff does not intend to introduce evidence as to Defendant's alleged partial financial coverage under the Arkansas Municipal League's Municipal Legal Defense Program during the case in chief of this matter.

4. Plaintiff intends to inform the potential jurors during voir dire about the fact that Defendant is being represented in this matter by the Arkansas Municipal League's Municipal Legal Defense Program in order to determine any potential bias of jurors regarding the Arkansas Municipal League. Plaintiff also intends on inquiring of prospective jurors if they or any of their family members have any connection with the Arkansas Municipal League.

5. Ark. R. Civ. P. Rule 47(a) and A.C.A. § 16-31-102(b)(5) allow Plaintiff to question the potential jurors about the fact that Defendant is being represented in this matter by the Arkansas Municipal League Municipal Legal Defense Program in order to determine any bias of jurors regarding the Arkansas Municipal League.

6. For the reasons listed above and in the accompanying Brief in Support of Response to Defendant's Motion in Limine, Defendant's Motion in Limine should be denied.

WHEREFORE, Plaintiff, St. Francis River Regional Water District, prays as follows:

- a. that Defendant's Motion in Limine be denied;
- b. for its costs and attorney's fees; and
- c. for all other proper relief to which this Plaintiff is entitled.

LYONS & CONE, P.L.C.
 P. O. Box 7044
 Jonesboro, AR 72403
 (870) 972-5440

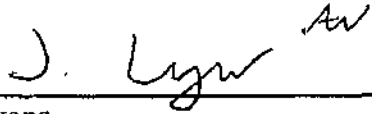
By: J. Lyons ^{AV}
 State Bar No. 77083
 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
- placing same properly addressed via certified mail, return receipt requested in the United States mail with sufficient postage affixed;
- placing same properly addressed via express mail in the United States mail with sufficient postage affixed;
- delivering the same to FED EX or UPS for overnight delivery properly addressed;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 2nd day of April, 2019.



Jim Lyons



IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

FILED

APR 02 2019

CITY OF MARMADUKE, ARKANSAS

GREENE CO. CIRCUIT CLERK

Defendant

BRIEF IN SUPPORT OF RESPONSE TO
DEFENDANT'S MOTION IN LIMINE

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Brief in Support of Response to Defendant's Motion in Limine, states:

I. INTRODUCTION

Defendant has filed its Motion in Limine and supporting Brief seeking to prevent Plaintiff from mentioning in any manner that Defendant has partial financial coverage under the Arkansas Municipal League's Municipal Legal Defense Program and that the Arkansas Municipal League's Municipal Legal Defense Program employs Defendant's counsel. Defendant also seeks to prevent Plaintiff from inquiring of prospective jurors if they or any of their family members have any connection with the Arkansas Municipal League.

II. ARGUMENT

Plaintiff is entitled to examine prospective jurors as to their impartiality and inquire as to their potential biases and prejudices. In this regard, Ark. R. Civ. P. 47(a) states as follows:

The Court shall either permit the parties or their attorneys to conduct the

examination of prospective jurors or itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper.

Without consent of all the parties, no person shall serve as a petit juror in any case who “[i]s biased or prejudiced for or against any party to the cause or is prevented by any relationship or circumstance from acting impartially” or “[m]ay have a material interest in the outcome of the case.” Ark. Code Ann. § 16-31-102(b)(6) and (b)(5). The Arkansas Supreme Court has stated that “the proper test the court must employ when sorting through these juror-bias issues is whether the prospective juror can lay aside his impression or opinion and render a verdict based upon the evidence in court.” *Randolph v. ER Arkansas, P.A.*, 325 Ark. 373, 375, 925 S.W.2d 160, 162 (1996).

Defendant states that it believes that Plaintiff will attempt to introduce evidence to the jury that Defendant’s counsel is employed by the Arkansas Municipal League’s Municipal Legal Defense Program, and inquire of prospective jurors if they or their family members have any connection with the Arkansas Municipal League. Plaintiff does anticipate discussing during voir dire that Defendant’s counsel is employed by the Arkansas Municipal League’s Municipal Legal Defense Program, and inquiring whether prospective jurors, or their family members, have any connection with the Arkansas Municipal League or the Arkansas Municipal League’s Municipal Legal Defense Program.

Plaintiff has the right under Ark. R. Civ. P. Rule 47 and Ark. Code Ann. § 16-31-102(b) to make these inquiries. Specifically, pursuant to A.C.A. § 16-31-102(b), Plaintiff has the right to question prospective jurors about whether they are biased or prejudiced for or against the Arkansas Municipal League because they represent Defendant in this matter. A limited inquiry on the topic of any connections between the Arkansas Municipal League and prospective jurors

or their families is necessary for Plaintiff to determine any potential conflicts or biases. If Plaintiff is not able to inquire of prospective jurors on this topic, then Plaintiff will be prejudiced and will not have all the information it needs during voir dire to make its peremptory strikes or to have a juror stricken for cause.

Defendant states that it anticipates that Plaintiff may attempt to introduce evidence that the Arkansas Municipal League is the administrator of a municipal legal defense program that will be partially responsible for paying any potential judgment. (See page 1 of Defendant's Brief). Plaintiff does not intend to introduce evidence that the municipal legal defense program will be partially responsible for paying any potential judgment against Defendant. Plaintiff has not conducted discovery on this issue, and does not believe that it is relevant to the issues to be tried in this case.

The reason behind the rule with regard to insurance or other indemnity is to prevent "an unduly generous award of damages by the jury." *Griffin v. Hilke*, 804 F.2d 1052, 1057 (8th Cir. 1986). It is highly doubtful that any of the potential jurors will know that the Arkansas Municipal League's Municipal Legal Defense Program will be responsible for a portion of any judgment rendered against Defendant. The concerns relating to preventing mentioning insurance simply do not exist in regard to the Arkansas Municipal League's Municipal Legal Defense Program.

Plaintiff believes that inquiring of prospective jurors if they have any connection with the Arkansas Municipal League or if any family members do will assist both parties and the Court in determining whether potential jurors have any bias regarding the Arkansas Municipal League or their attorneys. Plaintiff has the right under Ark. R. Civ. P. Rule 47 and Ark. Code Ann. § 16-31-102(b) to so inquire and should not be barred from doing so.

III. CONCLUSION

For the reasons set forth above, Plaintiff, SFRRWD, respectfully requests that this Court deny Defendant's Motion in Limine to the extent set forth herein.

Respectfully submitted,

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: J. Lyon ^{AL}
State Bar No. 77083
Attorneys for Plaintiff

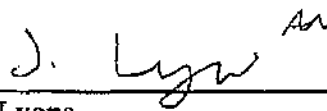
(16) 07/03/21270 P.0107010

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has served a copy of the foregoing pleading to the attorneys of record for all other parties in this action by each of the means checked below:

- placing same properly addressed in the United States mail with sufficient postage affixed;
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Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

APR 04 2019

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

RESPONSE TO DEFENDANT'S
MOTION IN LIMINE

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Response to Defendant's Motion in Limine, states:

1. Defendant filed its Motion in Limine seeking to exclude evidence as to the Defendant's partial financial coverage under the Arkansas Municipal League's Municipal Legal Defense Program.
2. Defendant also seeks to prevent Plaintiff from informing the jury that Defendant's counsel are employed by the Arkansas Municipal League's Municipal Legal Defense Program and to prevent Plaintiff from inquiring of prospective jurors if they or any of their family members have any connection with the Arkansas Municipal League.
3. Plaintiff does not intend to introduce evidence as to Defendant's alleged partial financial coverage under the Arkansas Municipal League's Municipal Legal Defense Program during the case in chief of this matter.

4. Plaintiff intends to inform the potential jurors during voir dire about the fact that Defendant is being represented in this matter by the Arkansas Municipal League's Municipal Legal Defense Program in order to determine any potential bias of jurors regarding the Arkansas Municipal League. Plaintiff also intends on inquiring of prospective jurors if they or any of their family members have any connection with the Arkansas Municipal League.

5. Ark. R. Civ. P. Rule 47(a) and A.C.A. § 16-31-102(b)(5) allow Plaintiff to question the potential jurors about the fact that Defendant is being represented in this matter by the Arkansas Municipal League Municipal Legal Defense Program in order to determine any bias of jurors regarding the Arkansas Municipal League.

6. For the reasons listed above and in the accompanying Brief in Support of Response to Defendant's Motion in Limine, Defendant's Motion in Limine should be denied.

WHEREFORE, Plaintiff, St. Francis River Regional Water District, prays as follows:

- a. that Defendant's Motion in Limine be denied;
- b. for its costs and attorney's fees; and
- c. for all other proper relief to which this Plaintiff is entitled.

LYONS & CONE, P.L.C.
P. O. Box 7044
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(870) 972-5440

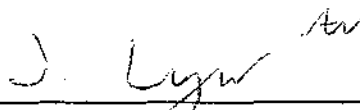
By: J. Lyons ^{AV}
State Bar No. 77083
Attorneys for Plaintiff

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ST. FRANCIS RIVER REGIONAL
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Plaintiff

Vs.

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CITY OF MARMADUKE, ARKANSAS

Defendant

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DEFENDANT'S MOTION IN LIMINE**

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Brief in Support of Response to Defendant's Motion in Limine, states:

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Plaintiff has the right under Ark. R. Civ. P. Rule 47 and Ark. Code Ann. § 16-31-102(b) to make these inquiries. Specifically, pursuant to A.C.A. § 16-31-102(b), Plaintiff has the right to question prospective jurors about whether they are biased or prejudiced for or against the Arkansas Municipal League because they represent Defendant in this matter. A limited inquiry on the topic of any connections between the Arkansas Municipal League and prospective jurors

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Defendant states that it anticipates that Plaintiff may attempt to introduce evidence that the Arkansas Municipal League is the administrator of a municipal legal defense program that will be partially responsible for paying any potential judgment. (See page 1 of Defendant's Brief). Plaintiff does not intend to introduce evidence that the municipal legal defense program will be partially responsible for paying any potential judgment against Defendant. Plaintiff has not conducted discovery on this issue, and does not believe that it is relevant to the issues to be tried in this case.

The reason behind the rule with regard to insurance or other indemnity is to prevent "an unduly generous award of damages by the jury." *Griffin v. Hilke*, 804 F.2d 1052, 1057 (8th Cir. 1986). It is highly doubtful that any of the potential jurors will know that the Arkansas Municipal League's Municipal Legal Defense Program will be responsible for a portion of any judgment rendered against Defendant. The concerns relating to preventing mentioning insurance simply do not exist in regard to the Arkansas Municipal League's Municipal Legal Defense Program.

Plaintiff believes that inquiring of prospective jurors if they have any connection with the Arkansas Municipal League or if any family members do will assist both parties and the Court in determining whether potential jurors have any bias regarding the Arkansas Municipal League or their attorneys. Plaintiff has the right under Ark. R. Civ. P. Rule 47 and Ark. Code Ann. § 16-31-102(b) to so inquire and should not be barred from doing so.

III. CONCLUSION

For the reasons set forth above, Plaintiff, SFRRWD, respectfully requests that this Court deny Defendant's Motion in Limine to the extent set forth herein.

Respectfully submitted,

LYONS & CONE, P.L.C.
P. O. Box 7044
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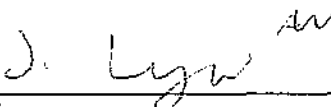
By: J. Lyons ^{AW}
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IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
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ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFF

V.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

REPLY TO PLAINTIFF'S REPSONSE TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The City maintains that it is entitled to summary judgment because the District does not have the exclusive right to sell water within its geographical boundaries as set by the 1987 Order establishing the District's existence and location.

- I. Because it is undisputed as a matter of law that the District does not have an exclusive right to sell water within its geographical boundaries, this alone supports summary judgment in favor of the City.

The District has continuously claimed exclusivity, yet it cannot point to any authority that actually gives it exclusivity. As stated in the depositions of Mr. Pigue, Mr. Nelson, and Ms. Thompson, the District relies solely on the 1987 Order as the basis for its claim that it has the exclusive right to sell water within the boundaries set by the Order; however, the Order is silent in that regard-- there is no mention of exclusivity whatsoever. *Exhibit 9* at 74:18-25; 75:1-8; *Exhibit 8* at 14:11-25; 15:1-2; *Exhibit 14* at 62:9-24. In fact, even the statutory provision that delineates the powers of a water district does not provide a district with exclusive authority to sell water within its geographical boundaries. *See*, Ark. Code Ann. § 14-116-402.

Moreover, the District's argument that the City has acted unlawfully under Ark. Code Ann. § 15-22-223(a) and Section 605.1 of the ANRC's Water Plan Compliance Review Procedures by

providing water to ARI's East Plant and Refurb Plant has been gutted by Ms. Phelps's testimony. As general counsel of the ANRC, Ms. Phelps is well-versed on the ANRC's rules, specifically § 605.1, which is a restatement of Ark. Code Ann. § 15-22-223(a), and she stated that she is unaware of *any* document, statute, or the like that would support the District's contention that its service territory is exclusive. *Exhibit 13* at 60:6-10. Furthermore, she expressly stated that she unaware of *anything* that the City has done that she would consider to be unlawful. *Exhibit 13* at 63:18-24.

Thus, regardless of the parties' disagreement regarding the interpretation of § 15-22-223, the District's alleged right to exclusively provide water within its geographical boundaries simply does not exist. Therefore, the District's claims fail as a matter of law.

II. The City's provision of water to the ARI's East and Refurb Plants does not constitute a project under the ANRC's rules; thus, the City is not required to seek approval from the ANRC.

The District contends that the City was required to seek approval from the ANRC before providing water to the East Plant and Refurb Plant. However, once again, the District's argument is gutted by Ms. Phelps's testimony. Although the District attempts to classify the City's provision of water to ARI as a water project under § 604.1(B)(7), Ms. Phelps made clear that the only way that the City would be required to seek Water Plan Compliance approval from the ANRC before providing water to ARI's East Plant and Refurb Plant would be if service to the Plants increased the City's water usage by more than twenty percent, which falls under § 601.4. *Exhibit 13* at 55:1-11; 56:9-25; 74:11-21. However, the City set forth undisputed evidence that no such increase occurred. *See, Exhibit 6.*

Furthermore, the District relies heavily on *Arkansas Soil and Water Conservation Commission v. City of Bentonville*, 351 Ark. 289, 92 S.W.3d 47 (2002) to argue that the City is required to seek approval from the ANRC. However, this case, which cites to Ark. Code Ann. §

15-22-503, involves a factually different scenario than what this case presents. In *City of Bentonville*, the City of Bentonville argued that it had exclusive planning jurisdiction over a five-mile area surrounding the city pursuant to a statutory provision that trumped any approval made by the (now) ANRC. *Id.* at 299. The City of Centerton sought approval for a water project from the ANRC that included a portion of the City of Bentonville's planning area. *Id.* at 294. The Supreme Court of Arkansas held that the City of Bentonville did *not* have *exclusive* jurisdiction over water projects in said area, and the ANRC acted within its statutory authority when it approved the water project plan. *Id.* at 304.

In contrast to that case, here, the City is not arguing that it has exclusive jurisdiction, rather that is the District's contention. Furthermore, the City does not contend that the ANRC does not have statutory authority to approve water projects. Instead, the City merely contends that providing water service to the East Plant and Refurb Plant does not constitute a water project, as supported by Ms. Phelps's testimony. When discussing Arkansas Water Plan approval pursuant to Ark. Code Ann. § 15-22-503, Ms. Phelps stated that there is *no* reason for the ANRC to have taken enforcement action against the City. *Exhibit 13* at 60:23-25, 61:1-13.

The City has provided undisputed evidence that service to the East and Refurb Plants did *not* increase the City's water usage by more than twenty percent; thus, the City's provision of water to said Plants is *not* considered a water project within the meaning of Title 6 of the ANRC Water Plan Compliance Review Procedures. *See, Exhibit 6*. Therefore, the City is not required to obtain approval from the ANRC, and the District's claims fail as a matter of law.

III. ARI desires to continue to buy water from the City, and as a public policy consideration and practical matter, it should have a choice to decide with whom it does business.

As a red herring, the District accuses Mayor Dixon of making a false statement in his previous Affidavit that was filed with the City's Response to the District's Motion for Summary Judgment on February 23, 2018. This is completely disingenuous. Before discovery was conducted in this case, Mayor Dixon, based on information that he was given, was under the impression that the District did not have sufficient capacity or infrastructure to provide water services to ARI. Since that time, Mayor Dixon has learned that the District could have served ARI, but it would not have had reserves for its existing customers without the construction of another well. *Exhibit 15* at 28:17-25, 29:1-19. Based on this additional information, Mayor Dixon updated his Affidavit before it was attached to the City's Motion for Summary Judgment, which, as it should be noted, is silent as to that matter altogether, making the District's false accusation completely irresponsible and irrelevant.

Under Arkansas law, water distribution districts may be organized for, among other things, "furnishing water to persons desiring it." Ark. Code Ann. § 14-116-102(4). Clearly, the legislature's intent, through the plain meaning of this statute, is that a District is authorized to furnish water to customers who want to buy water, which is not the case here. ARI desires to continue purchasing water from the City based on the following concerns: (1) the ability of the District to meet the ARI's water requirements in the event of a fire; (2) the District said it would need to build a new well that could cost as much as \$700,000; (3) the District's water rates were more than three times the rates charged by the City; (4) the District's proposal required a one million gallon/\$6,000 per month minimum purchase regardless of ARI's actual usage; and (5) the District does not provide sewer services. *Exhibit 7*, ¶13.

ARI's desire to continue to buy water and obtain sewer services from the City based on the foregoing reasons should carry significant weight, especially considering the RWDA, pursuant to which the District was created, does not provide for a water district to monopolize and hold an entity hostage if the entity has and desires an alternative source to acquire water service. See Ark. Code Ann. §§ 14-116-101 - 801.

Regardless of whether the District has the ability to provide services to said Plants, as previously mentioned, the District does not have an exclusive right to serve said Plants, and ARI does not desire to buy water from the District. Therefore, the District's claims fail as a matter of law.

IV. Even if laches and waiver defenses are an issue of fact, the District's claims still fail as a matter of law because the Plants are now a part of the City's limits.

Rightfully so, the District does not dispute that the East Plant is barred by the statute of limitations. Because the maximum statute of limitations is five years, the District's demand on the City to stop providing water to the East Plant was made four years too late; thus, the District's claims with respect to the East Plant are barred as untimely.

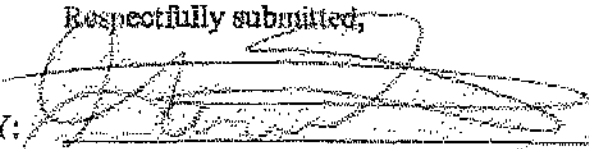
As for both the Refurb Plant and the East Plant, the District's claims must fail as a matter of law because the Plants are now annexed into the City. See, *Exhibit 12*. As soon as the resolution declaring the annexation has been adopted, the territory shall be deemed a part of the city limits, and the inhabitants residing therein shall have and enjoy all rights and privileges of the inhabitants within the original city limits. Ark. Code Ann. § 14-40-606. The District had the opportunity to file a complaint under Ark. Code Ann. § 14-40-604 in an attempt to prevent the annexation, but it did not do so. Thus, because both the East and Refurb Plants are now a part of the city limits, ARI is entitled to have and enjoy its right to continue to buy water from the City. Therefore, the District's claims fail as a matter of law, and the City is entitled to summary judgment.

V. Conclusion

The Court should decide that the City is entitled to summary judgment for the following reasons: (1) The District does not have an exclusive right to provide water service within its geographical boundaries; (2) The City of Marmaduke did nothing unlawful under Ark. Code Ann. § 15-22-223(a) in providing water and sewer services to the East and Refurb Plants; (3) Any claim that the District may have had was asserted well outside of the most generous statute of limitations of five years; and (4) The District's claims are completely foreclosed by the annexation of both the East and Refurb Plants into the City limits. The City respectfully submits that it is entitled to judgment as a matter of law pursuant to Ark. R. Civ. P. 56.

Respectfully submitted,

BY:



Gabrielle Gibson, Ark. Bar No. 2018113
Attorney for Defendant
Post Office Box 38
North Little Rock, AR 72115
TELEPHONE: (501) 537-3783
EMAIL: ggibson@crml.org

William C. Mann, III, AR Bar No. 79199
Attorney for Defendant
P.O. Box 38
North Little Rock, AR 72115
TELEPHONE: 501-374-3484, ext. 231
EMAIL: wcmann@crml.org

CERTIFICATE OF SERVICE

I, Gabrielle Gibson, hereby certify that on April 5, 2019, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
jlyons@lcolaw.com



Gabrielle Gibson, Ark. Bar No. 2018113

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ST. FRANCIS RIVER REGIONAL
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CITY OF MARMADUKE, ARKANSAS

DEFENDANT

DEFENDANT'S MOTION IN LIMINE

Comes now, the City of Marmaduke, Arkansas, ("the City"), by and through its attorneys, William C. Mann, III and Gabrielle Gibson, and for its Motion in Limine, states:

1. Defendant anticipates that Plaintiff may attempt to introduce evidence as to Defendant's partial financial coverage under the Arkansas Municipal League's Municipal Legal Defense Program. For the reasons set forth more specifically in the accompanying brief, the above described information is inadmissible under Arkansas Rules of Evidence 401, 402, and 403, and as such, should be excluded.

2. Defendant anticipates that Plaintiff may attempt to introduce to the jury that undersigned counsel are employed by the Arkansas Municipal League Municipal Legal Defense Program and that he should be entitled to inquire of prospective jurors if they have any connection with the Arkansas Municipal League or if any other family members do. For the reasons set forth more specifically in the accompanying brief, the above described information is inadmissible under Arkansas Rules of Evidence 401, 402, and 403.

3. Thus, Defendant respectfully requests that the Court order all parties, their attorneys, and their witnesses to refrain from eliciting testimony, mentioning, or alluding to in any

fashion whatsoever, directly or indirectly, the matters set forth herein. If counsel for any party should be of the opinion at any time during the trial that matters contained herein which the Court has ruled as inadmissible have become admissible or the Court's ruling unclear, it is requested that the Court order counsel to approach the bench for a discussion outside the hearing of the jury prior to mentioning such matter.


4. Defendant also requests that the Court order all counsel to make the Court's ruling on the matters contained herein known to the parties and their witnesses so that the matters which the Court rules are inadmissible will not be inadvertently mentioned at trial.

5. Therefore, Defendant moves this Court *in limine* to exclude all evidence, testimony, or argument, regarding the information in the above enumerated paragraphs for the reasons set forth more fully in the accompanying brief.

6. A Brief in Support has been filed contemporaneously herewith setting out the facts and the conclusions of law regarding these issues.

WHEREFORE, Defendant prays that the Court grant its Motion in Limine and for all other just and proper relief to which it is entitled.

Respectfully submitted,

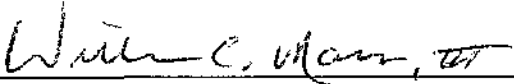
BY: 
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Gabrielle Gibson, Ark. Bar No. 2018113
Attorney for Defendant
Post Office Box 38
North Little Rock, AR 72115
TELEPHONE: (501) 537-3783
EMAIL: ggibson@arml.org

CERTIFICATE OF SERVICE

I, William C. Mann, III, hereby certify that on March 21, 2019, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
jlyons@leclaw.com



William C. Mann, III, AR Bar No. 79199

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DEFENDANT

**REPLY TO PLAINTIFF'S RESPONSE TO
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The City maintains that it is entitled to summary judgment because the District does not have the exclusive right to sell water within its geographical boundaries as set by the 1987 Order establishing the District's existence and location.

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The District has continuously claimed exclusivity, yet it cannot point to any authority that actually gives it exclusivity. As stated in the depositions of Mr. Pigue, Mr. Nelson, and Ms. Thompson, the District relies solely on the 1987 Order as the basis for its claim that it has the exclusive right to sell water within the boundaries set by the Order; however, the Order is silent in that regard— there is no mention of exclusivity whatsoever. *Exhibit 9* at 74:18-25; 75:1-8; *Exhibit 8* at 14:11-25; 15:1-2; *Exhibit 14* at 62:9-24. In fact, even the statutory provision that delineates the powers of a water district does not provide a district with exclusive authority to sell water within its geographical boundaries. *See*, Ark. Code Ann. § 14-116-402.

Moreover, the District's argument that the City has acted unlawfully under Ark. Code Ann. § 15-22-223(a) and Section 605.1 of the ANRC's Water Plan Compliance Review Procedures by

providing water to ARI's East Plant and Refurb Plant has been gutted by Ms. Phelps's testimony. As general counsel of the ANRC, Ms. Phelps is well-versed on the ANRC's rules, specifically § 605.1, which is a restatement of Ark. Code Ann. § 15-22-223(a), and she stated that she is unaware of *any* document, statute, or the like that would support the District's contention that its service territory is exclusive. *Exhibit 13* at 60:6-10. Furthermore, she expressly stated that she unaware of *anything* that the City has done that she would consider to be unlawful. *Exhibit 13* at 63:18-24.

Thus, regardless of the parties' disagreement regarding the interpretation of § 15-22-223, the District's alleged right to exclusively provide water within its geographical boundaries simply does not exist. Therefore, the District's claims fail as a matter of law.

II. The City's provision of water to the ARI's East and Refurb Plants does not constitute a project under the ANRC's rules; thus, the City is not required to seek approval from the ANRC.

The District contends that the City was required to seek approval from the ANRC before providing water to the East Plant and Refurb Plant. However, once again, the District's argument is gutted by Ms. Phelps's testimony. Although the District attempts to classify the City's provision of water to ARI as a water project under § 604.1(B)(7), Ms. Phelps made clear that the only way that the City would be required to seek Water Plan Compliance approval from the ANRC before providing water to ARI's East Plant and Refurb Plant would be if service to the Plants increased the City's water usage by more than twenty percent, which falls under § 601.4. *Exhibit 13* at 55:1-11; 56:9-25; 74:11-21. However, the City set forth undisputed evidence that no such increase occurred. *See, Exhibit 6.*

Furthermore, the District relies heavily on *Arkansas Soil and Water Conservation Commission v. City of Bentonville*, 351 Ark. 289, 92 S.W.3d 47 (2002) to argue that the City is required to seek approval from the ANRC. However, this case, which cites to Ark. Code Ann. §

15-22-503, involves a factually different scenario than what this case presents. In *City of Bentonville*, the City of Bentonville argued that it had exclusive planning jurisdiction over a five-mile area surrounding the city pursuant to a statutory provision that trumped any approval made by the (now) ANRC. *Id.* at 299. The City of Centerton sought approval for a water project from the ANRC that included a portion of the City of Bentonville's planning area. *Id.* at 294. The Supreme Court of Arkansas held that the City of Bentonville did *not* have *exclusive* jurisdiction over water projects in said area, and the ANRC acted within its statutory authority when it approved the water project plan. *Id.* at 304.

In contrast to that case, here, the City is not arguing that it has exclusive jurisdiction, rather that is the District's contention. Furthermore, the City does not contend that the ANRC does not have statutory authority to approve water projects. Instead, the City merely contends that providing water service to the East Plant and Refurb Plant does not constitute a water project, as supported by Ms. Phelps's testimony. When discussing Arkansas Water Plan approval pursuant to Ark. Code Ann. § 15-22-503, Ms. Phelps stated that there is *no* reason for the ANRC to have taken enforcement action against the City. *Exhibit 13* at 60:23-25, 61:1-13.

The City has provided undisputed evidence that service to the East and Refurb Plants did *not* increase the City's water usage by more than twenty percent; thus, the City's provision of water to said Plants is *not* considered a water project within the meaning of Title 6 of the ANRC Water Plan Compliance Review Procedures. *See, Exhibit 6*. Therefore, the City is not required to obtain approval from the ANRC, and the District's claims fail as a matter of law.

III. ARI desires to continue to buy water from the City, and as a public policy consideration and practical matter, it should have a choice to decide with whom it does business.

As a red herring, the District accuses Mayor Dixon of making a false statement in his previous Affidavit that was filed with the City's Response to the District's Motion for Summary Judgment on February 23, 2018. This is completely disingenuous. Before discovery was conducted in this case, Mayor Dixon, based on information that he was given, was under the impression that the District did not have sufficient capacity or infrastructure to provide water services to ARI. Since that time, Mayor Dixon has learned that the District could have served ARI, but it would not have had reserves for its existing customers without the construction of another well. *Exhibit 15* at 28:17-25, 29:1-19. Based on this additional information, Mayor Dixon updated his Affidavit before it was attached to the City's Motion for Summary Judgment, which, as it should be noted, is silent as to that matter altogether, making the District's false accusation completely unresponsive and irrelevant.

Under Arkansas law, water distribution districts may be organized for, among other things, "furnishing water to persons desiring it." Ark. Code Ann. § 14-116-102(4). Clearly, the legislature's intent, through the plain meaning of this statute, is that a District is authorized to furnish water to customers who want to buy water, which is not the case here. ARI desires to continue purchasing water from the City based on the following concerns: (1) the ability of the District to meet the ARI's water requirements in the event of a fire; (2) the District said it would need to build a new well that could cost as much as \$700,000; (3) the District's water rates were more than three times the rates charged by the City; (4) the District's proposal required a one million gallon/\$6,000 per month minimum purchase regardless of ARI's actual usage; and (5) the District does not provide sewer services. *Exhibit 7, ¶13*.

ARI's desire to continue to buy water and obtain sewer services from the City based on the foregoing reasons should carry significant weight, especially considering the RWDA, pursuant to which the District was created, does not provide for a water district to monopolize and hold an entity hostage if the entity has and desires an alternative source to acquire water service. *See Ark. Code Ann. §§ 14-116-101 – 801.*

Regardless of whether the District has the ability to provide services to said Plants, as previously mentioned, the District does not have an exclusive right to serve said Plants, and ARI does *not* desire to buy water from the District. Therefore, the District's claims fail as a matter of law.

IV. Even if laches and waiver defenses are an issue of fact, the District's claims still fail as a matter of law because the Plants are now a part of the City's limits.

Rightfully so, the District does not dispute that the East Plant is barred by the statute of limitations. Because the maximum statute of limitations is five years, the District's demand on the City to stop providing water to the East Plant was made four years too late; thus, the District's claims with respect to the East Plant are barred as untimely.

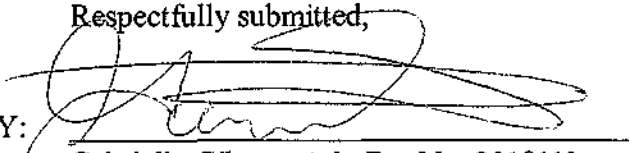
As for both the Refurb Plant and the East Plant, the District's claims must fail as a matter of law because the Plants are now annexed into the City. *See, Exhibit 12.* As soon as the resolution declaring the annexation has been adopted, the territory shall be deemed a part of the city limits, and the inhabitants residing therein shall have and enjoy all rights and privileges of the inhabitants within the original city limits. Ark. Code Ann. § 14-40-606. The District had the opportunity to file a complaint under Ark. Code Ann. § 14-40-604 in an attempt to prevent the annexation, but it did not do so. Thus, because both the East and Refurb Plants are now a part of the city limits, ARI is entitled to have and enjoy its right to continue to buy water from the City. Therefore, the District's claims fail as a matter of law, and the City is entitled to summary judgment.

V. Conclusion

The Court should decide that the City is entitled to summary judgment for the following reasons: (1) The District does not have an exclusive right to provide water service within its geographical boundaries; (2) The City of Marmaduke did nothing unlawful under Ark. Code Ann. § 15-22-223(a) in providing water and sewer services to the East and Refurb Plants; (3) Any claim that the District may have had was asserted well outside of the most generous statute of limitations of five years; and (4) The District's claims are completely foreclosed by the annexation of both the East and Refurb Plants into the City limits. The City respectfully submits that it is entitled to judgment as a matter of law pursuant to Ark. R. Civ. P. 56.

Respectfully submitted,

BY:



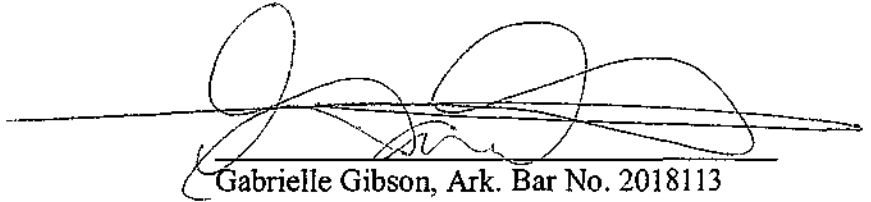
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CERTIFICATE OF SERVICE

I, Gabrielle Gibson, hereby certify that on April 5, 2019, that a true and correct copy of the above and foregoing has been served upon the attorney(s) of record as referenced below, via first class mail and e-mail:

Jim Lyons
Lyons & Cone, P.L.C.
P.O. Box 7044
Jonesboro, AR 72403
jlyons@leclaw.com



Gabrielle Gibson, Ark. Bar No. 2018113



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 Craighead
 Crittenden
 Greene
 Mississippi
 Poinsett

Melissa B. Richardson
 Circuit Judge, Division 9
 Second Judicial District
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FILED

APR 22 2019

GREENE CO. CIRCUIT CLERK.

April 17, 2019

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Mr. Jim Lyons
 Mr. Andrew Nadzam
 Ms. Amanda LaFever
 Ms. Gabrielle Gibson

Re: St. Francis Water District vs. City of Marmaduke
 Greene Circuit No.: 28CV-2017-219

Dear Counsel:

Both parties seek summary judgment in the above-captioned matter. The Court agrees that there are no genuine issues of material fact and summary judgment is an appropriate disposition. Having fully considered this matter, the Court hereby grants summary judgment in favor of the Defendant, City of Marmaduke.

St. Francis River Regional Water District (District) filed suit against the City of Marmaduke (City) for injunctive relief and money damages. The District premises this suit on its claim that it has exclusive rights to provide water service within its geographical boundaries. ARI, a business operating in Marmaduke, expanded its facilities in 2006 (East Plant) and 2015 (Refurb Plant). In so doing, ARI expanded into areas that are within the geographical boundary of the District. ARI receives water from the City and has since its construction in 1999, and its expansions likewise receive water from the City. In July, 2018, the City annexed the land that the expanded facilities are situated on, so they are now within the City limits as well. The District seeks to stop City from providing water to these expanded ARI facilities, in addition to money damages.

The Court agrees with the City that applicable law does not support a finding that the District has unfettered exclusive rights to provide water within its geographical boundaries. The applicable statute—cited by both parties—reads as follows:

It is unlawful for a person to provide water or wastewater services to an area where such services are being provided by the current provider that has pledged or utilizes revenue derived from services within the area to repay financial assistance provided by the Arkansas Natural Resources Commission, unless approval for such activity has been given by the commission and the new provider has received approval from the Arkansas Water Plan established in 15-2-503 if applicable.

Mr. Jim Lyons
Mr. Andrew Nadzam
Ms. Amanda LaFever
Ms. Gabrielle Gibson
April 17, 2019
Page -2-

A.C.A. 15-22-223. First, there is no dispute that City has been the provider of water services to ARI, from 1999 to present date. The District does not claim that it had the right to provide water services to ARI's main plant, and the instant dispute solely involves the area where ARI expanded its facilities. The Court declines to read this statute to characterize the District as a "current provider" for ARI's expanded facilities. Under a plain reading of the statute, the "current provider" is the provider that is currently providing services, and there is no dispute that ARI is a longstanding customer of the City. Further, there is no evidence that the District was indebted to ANRC during all applicable timeframes, as required by this statute.

It seems clear that the purpose of A.C.A. 15-22-223 is to protect water providers with existing customers in order to safeguard the entity indebted to ANRC and its ability to repay the loan with income derived from the service provided. Here, to accept the District's position, the Court would be disrupting ARI's water service from its provider of the last twenty years, a scenario which is neither fair nor contemplated by this statute. Put another way, while the District would use this statute as a sword to eliminate a current service relationship between the City and ARI, it strikes the Court that the statute's true purpose is to serve as a shield for existing providers, such as the City.

The District maintains that the City had to obtain approval from ANRC in order to provide water to the new facilities. The District maintains that such approval is required even though the City has since annexed the land that the new facilities are situated on into the city limits. The Court finds, however, that the evidence of record supports the City's argument that the provision of water to ARI's expanded facilities does not constitute a water development project.

In summary, the Court grants summary judgment in favor of City of Marmaduke and directs counsel for the City to prepare a precedent reflecting such decision, circulate same for approval as to form, and then submit to my office for signature.

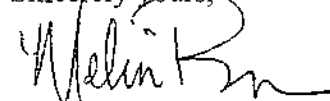
I am removing this matter from my jury trial docket next week.

Mr. Jim Lyons
Mr. Andrew Nadzam
Ms. Amanda LaFever
Ms. Gabrielle Gibson
April 17, 2019
Page -3-

My thanks to all attorneys for the thorough and well researched briefing as well as the impressive oral arguments advanced at the pretrial hearing.

With best regards I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Melissa B. Richardson". The signature is fluid and cursive, with a large initial "M" and "R".

Melissa B. Richardson
Circuit Judge

Cc: Greene County Circuit Clerk (for filing of record)

FILED

APR 30 2019

4:30
GREENE CO. CIRCUIT CLERK

**IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION**

**ST. FRANCIS RIVER REGIONAL
WATER DISTRICT**

PLAINTIFF

V.

No. 4CV-2017-319-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

JUDGMENT

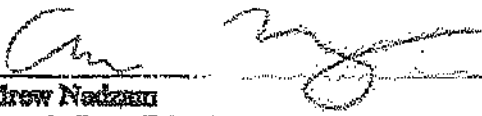
Consistent with the letter opinion issued by this Court on April 17, 2019, the above-mentioned case is hereby dismissed with prejudice.

Melissa Richardson
The Honorable Melissa B. Richardson 4/24/19
Circuit Judge

Approved as to form:



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FILED

MAY 08 2019

GREENE CO. CIRCUIT CLERK

**IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION**

**ST. FRANCIS RIVER REGIONAL
WATER DISTRICT**

PLAINTIFF

V.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS


DEFENDANT

JUDGMENT

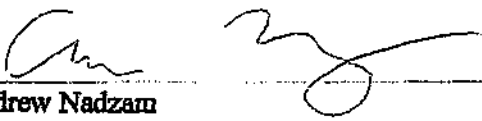
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The Honorable Melissa B. Richardson 4/24/19
Circuit Judge

Approved as to form:



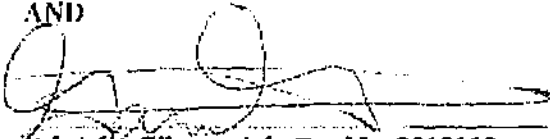
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Attorneys for Defendant

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

MAY 09 2019

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

NOTICE OF APPEAL AND
DESIGNATION OF RECORD

Notice is hereby given that the Plaintiff, St. Francis River Regional Water District, appeals from the judgment in favor of the Defendant, City of Marmaduke, Arkansas, filed herein on April 30, 2019.

The Plaintiff appeals on the grounds that the judgment entered by the Circuit Court of Greene County, Arkansas, is contrary to the law and the evidence.

The Plaintiff hereby designates the entire record, and all proceedings, exhibits, evidence, arguments and documents introduced in evidence to be contained in the record on appeal.

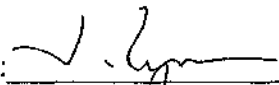
The undersigned attorney certifies that a transcript of the proceedings has been ordered from Dana Beck, court reporter of the proceedings whose address is 291 CR 312, Jonesboro, AR 72401. In addition, the undersigned attorney certifies that he has made sufficient financial arrangements with the court reporter for the preparation of the

trial/hearing transcripts.

That this appeal is made to the Arkansas Court of Appeals.

DATED this 8th day of May, 2019.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: 

State Bar No. 77083
Attorneys for Plaintiff

Certificate of Service

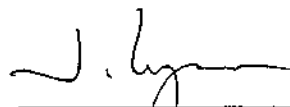
I, Jim Lyons, hereby certify that a copy of the foregoing pleading has been sent certified mail, return receipt requested, to the following:

Mr. William C. Mann, III
Arkansas Municipal League
P. O. Box 38
North Little Rock, AR 72115

Ms. Dana Beck
Court Reporter
291 CR 312
Jonesboro, AR 72401

Hon. Melissa Richardson
Circuit Judge
P. O. Box 420
Jonesboro, AR 72403

this 8th day of May, 2019.



Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

MAY 28 2019

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

AMENDED
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DESIGNATION OF RECORD

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The Plaintiff hereby designates the entire record, and all proceedings, exhibits, evidence, arguments and documents introduced in evidence to be contained in the record on appeal.

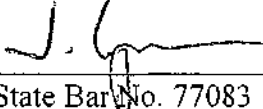
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trial/hearing transcripts.

That this appeal is made to the Arkansas Court of Appeals. Further, Plaintiff, St. Francis River Regional Water District hereby abandons any pending but unresolved claim or claims.

DATED this 28th day of May, 2019.

LYONS & CONE, P.L.C.
P. O. Box 7044
Jonesboro, AR 72403
(870) 972-5440

By: 

State Bar No. 77083
Attorneys for Plaintiff

Certificate of Service

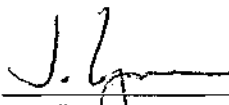
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Mr. William C. Mann, III
Arkansas Municipal League
P. O. Box 38
North Little Rock, AR 72115

Ms. Dana Beck
Court Reporter
291 CR 312
Jonesboro, AR 72401

Hon. Melissa Richardson
Circuit Judge
P. O. Box 420
Jonesboro, AR 72403

this 28th day of May, 2019.



Jim Lyons

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFFS

VS

28CV17-219 (MR)

CITY OF MARMADUKE

DEFENDANTS

STATEMENT AS TO ISSUANCE OF SUMMONS/SUBPOENA

ISSUED TO	DATE ISSUED	DATE SERVED
City of Marmaduke Mayor Steve Dixon	06/21/17	06/21/17
Arkansas Municipal League Re: Mr. Bruce Holland	01/16/19	01/16/19
Arkansas Municipal League Re: Ms. Crystal Phelps	01/16/19	01/16/19
Jim Lyons, Plaintiff's Attorney Re: Mr. Jerome Alford	01/25/19	01/25/19

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFFS

VS

28CV17-219 (MR)

CITY OF MARMADUKE

DEFENDANTS

CIRCUIT CLERK'S CERTIFICATE OF COSTS

I, Jan Griffith, Clerk of the Circuit Court in and for the County of Greene, State of Arkansas, do hereby certify that the costs in the above styled cause, are as follows:

Costs of Clerks Transcript: \$1,665.25

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my official seal
this 22nd day of July, 2019.




Jan Griffith, Clerk

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

PLAINTIFFS

VS

28CV17-219 (MR)

CITY OF MARMADUKE

DEFENDANTS

CIRCUIT CLERK'S CERTIFICATE

I, Jan Griffith, Clerk of the Circuit Court in and for the County of Greene, State of Arkansas, do hereby certify that the foregoing materials contain a true and complete record and proceedings in the Circuit Court of said County, in the cause therein stated.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my official seal
this 22nd day of July, 2019.



Jan Griffith, Circuit Clerk



*** (Court Reporter's Transcript has not been made a part of the Circuit Clerk's record, and therefore is not Certified by the Circuit Clerk.)