

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

BEFORE THE HONORABLE JUDGE MELISSA RICHARDSON

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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

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NO OF CASE	NAMES OF PARTIES	ATTORNEYS	DATE OF FILING		
			MONTH	DAY	YEAR
2017-219	ST. FRANCIS RIVER REGIONAL WATER DISTRICT	JIM LYONS PLAINTIFF	6	21	2017
	VS		KIND OF ACTION		
	CITY OF MARMADUKE	AMANDA LAFEVER DEFENDANT	CONTRACT		
DATE OF ORDERS	ORDER AND PLEADINGS OF COURT				
6/21/17	Complaint for Damages & Petition for Injunctive Relief (Exhibits A-C)				
6/21/17	Summons Issued (COM)				
6/23/17	Summons Served 6/21/17				
7/20/17	Entry of Appearance (Fax)				
7/20/17	Defendant's Unopposed Motion for Extension of Time to File a Responsive Pleading (Fax)				
7/24/17	Defendant's Unopposed Motion for Extension of Time to File a Responsive Pleading (Original)				
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8/4/17	Answer (Fax)				
8/7/17	Answer (Original)				
8/14/17	Order (Extension of Time)				
1/5/18	Motion for Summary Judgment(Exhibits A-E)				
1/5/18	Brief in Support of Motion for Summary Judgment				

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1/25/18	Parties Joint Motion for Extension of Time for Defendant to File a Response to Plaintiff's Summary Judgment Motion and for Plaintiff to File a Reply to Defendant's Response (Fax)
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2/23/18	First Amended Answer (Fax)
2/26/18	Defendant's Response to Plaintiff's Motion for Summary Judgment (Original)
2/26/18	Defendant's Brief in Support of Its' Response to Plaintiff's Motion for Summary Judgment (Original)
2/26/18	First Amended Answer (Original)
3/7/18	Reply to Response to Plaintiff's Motion for Summary Judgment (Fax)
3/7/18	Brief in Support of Reply to Response to Plaintiff's Motion for Summary Judgment (Fax)
3/14/18	Reply to Response to Plaintiff's Motion for Summary Judgment (Original)

DATE OF ORDERS	ORDER AND PLEADINGS OF COURT
3/14/18	Brief in Support of Reply to Response to Plaintiff's Motion for Summary Judgment (Original)
5/7/18	Notice of Setting (5/23/18) (Judge)
5/23/18	Notice of Setting (6/7/18) (Judge)
8/17/18	Objection to Rule 30(b)(6) Notice of Deposition and Notice of Deposition Duces Tecum (Fax) (Exhibit A-C)
8/20/18	Objection to Rule 30(b)(6) Notice of Deposition and Notice of Deposition Duces Tecum (Original) (Exhibit A-C)
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9/21/18	Entry of Appearance
9/24/18	Jury Trial and Scheduling Order
12/3/18	Motion for Continuance
12/3/18	Motion for Substitution
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12/7/18	Response to Motion for Continuance and Brief in Support Thereof (Original)

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12/21/18	Order (Substitution of Counsel)
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1/18/19	Notice of Issuance of Subpoena (Mann/Gibson)
1/18/19	Notice of Disposition (Mann/Gibson)
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1/24/19	Order
1/28/19	Notice of Deposition (J. Lyons)
2/4/19	Notice of Issuance of Subpoena (J. Lyons)
2/4/19	Notice of Deposition (Jerome Alford)
3/8/19	Defendant's Motion for Summary Judgment (Exhibits 1-17)
3/8/19	Brief in Support of Defendant's Motion for Summary Judgment
3/21/19	Defendant's Motion in Limine (Fax)
3/21/19	Brief in Support of Its Motion in Limine (fax)
3/28/19	Response to Defendant's Motion for Summary Judgment (Exhibits A-F)

DATE OF ORDERS	ORDER AND PLEADINGS OF COURT
3/28/19	Brief in Support of Response to Defendant's Motion for Summary Judgment Exhibits (G-J)
4/2/19	Response to Defendant's Motion in Limine (Fax)
4/2/19	Brief in Support of Response to Defendant's Motion in Limine (Fax)
4/4/19	Response to Defendant's Motion in Limine (Original)
4/4/19	Brief in Support of Response to Defendant's Motion in Limine (Original)
4/8/19	Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment (Fax)
4/8/19	Defendant's Motion in Limine (Original)
4/10/19	Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment (Original)
4/22/19	Letter from Judge Melissa Richardson
4/30/19	Judgment (Fax)
5/3/19	Judgment (Original)
5/9/19	Notice of Appeal and Designation of Record
5/28/19	Amended Notice of Appeal and Designation of Record

FILED ✓

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

JUN 21 2017
9:10
GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017- 219 MR

CITY OF MARMADUKE, ARKANSAS

Defendant

COMPLAINT FOR DAMAGES
AND PETITION FOR INJUNCTIVE RELIEF

Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its cause of action against the City of Marmaduke, Arkansas ("Marmaduke"), states:

COUNT I

1. That SFRRWD is an Arkansas regional water distribution district under the Regional Water Distribution District Act with its principal place of business in Greene County, Arkansas.
2. That Marmaduke is an Arkansas municipal corporation with its principal place of business in Marmaduke, Greene County, Arkansas ("City of Marmaduke").
3. That this Court has jurisdiction over this cause of action and the parties hereto and venue is proper herein.
4. 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 listing of all of SFRRWD's service territory with the territory in question described in paragraph H of Exhibit A. 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).

5. That this case involves the right to serve a customer within SFRRWD's service territory.

6. That American Railcar Industries, Inc. ("ARI") is a foreign corporation authorized to do business in Arkansas with offices located in Marmaduke, Greene County, Arkansas.

7. That ARI at its manufacturing facility in Marmaduke, Arkansas manufactures pressurized and non-pressurized tank railcars for use throughout North America.

8. That the land which comprises the Marmaduke campus of ARI is located with a portion of this Marmaduke campus being located in the SFRRWD water service territory and a portion of this Marmaduke campus being located in the City of Marmaduke's water service territory.

9. The Marmaduke campus of ARI has a building or buildings 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.

10. 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 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 building marked as No. 3 on Exhibit C is the building of ARI that is in the service territory of SFRRWD and is the building in question.

11. That at the time the City of Marmaduke initially provided water service to ARI, the ARI campus was located solely in the water service territory of the City of Marmaduke.

12. That later ARI completed the construction of a new separate building (No. 3) on its City of Marmaduke location with this new separate building (No. 3) all being located in SFRRWD's service territory. However, the City of Marmaduke began to provide water service to the building (No. 3) even though it is outside the City of Marmaduke's service territory and within SFRRWD's service territory.

13. That despite the request by SFRRWD for City of Marmaduke to discontinue water service to ARI for the building (No. 3) located within SFRRWD's service territory, the City of Marmaduke has failed and refused to do so.

14. That as a result, SFRRWD has suffered damages in an amount to be determined which amount is greater than the amount for federal diversity jurisdiction for City of Marmaduke's intrusion into SFRRWD's service territory.

15. That SFRRWD is entitled to judgment from and against the City of Marmaduke in an amount to be determined which amount is greater than the amount for federal diversity jurisdiction.

COUNT II

16. That SFRRWD restates and realleges any and all allegations set forth in this Complaint.

17. That SFRRWD has pledged or utilizes revenue derived from services within the

area to repay financial assistance provided by the Arkansas Natural Resources Commission (the “Commission”).

18. That the Commission has not approved or otherwise authorized the City of Marmaduke to provide water service in SFRRWD’s territory, including the building of ARI (No. 3) which is located in SFRRWD’s territory. Further, 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.

19. That pursuant to Ark. Code Ann. § 15-22-223(c), SFRRWD may institute a civil action to restrain the action and activity taken by City of Marmaduke.

20. That SFRRWD will continue to suffer harm in an unknown and incalculable amount if the City of Marmaduke is not ordered to immediately cease and desist from providing water service to ARI.

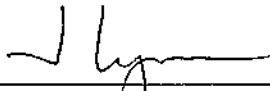
21. That as a result, this Court should enjoin the City of Marmaduke from supplying such service to ARI in SFRRWD’s service territory and should order City of Marmaduke to cease and desist in providing water service to ARI within SFRRWD’s service territory.

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

- a. judgment from and against the City of Marmaduke in an amount to be determined which amount is greater than the amount for federal diversity jurisdiction;
- b. for injunctive relief ordering the City of Marmaduke to immediately cease and desist in providing water service to ARI within SFRRWD’s service territory;

- c. for its costs and attorney's fees; and
- d. 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

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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.

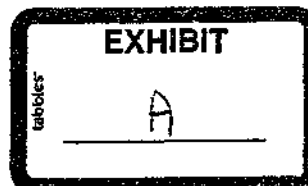
D.) TOWNSHIP 15 NORTH, RANGE 5 EAST:

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.

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COUNTY OF CRAIGHEAD
STATE OF ARKANSAS



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, 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 MARMADUKE 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 MARMADUKE 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:

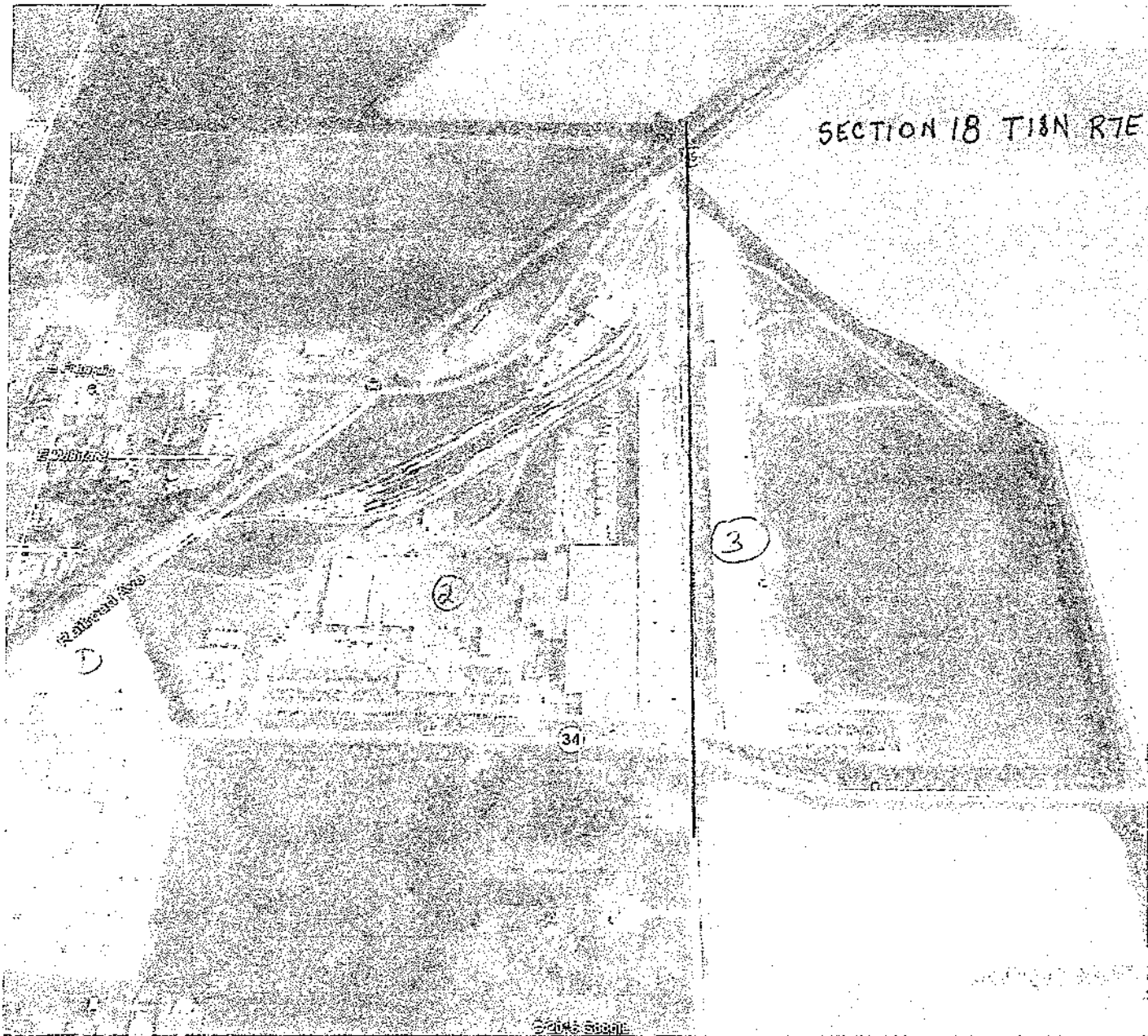
ALL OF SECTIONS 1, 2, 3, 10, 11, AND 12 IN TOWNSHIP 18 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CLAY COUNTY, ARKANSAS.

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.



Google earth

feet 1000
meters 400



1 - Coop

2 - Old ARI - Year 2000

3 - New ARI - 2007



FILED

JUL 20 2017

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, Amanda LaFever, Attorney at Law, and hereby enters her appearance as 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: _____


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 July 10 2017, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via Certified Mail, Return Receipt, postage prepaid to the address below:

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



Amanda LaFever, Ark. Bar No. 2012133

FILED

JUL 20 2017

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANTS

**DEFENDANTS' UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE A
RESPONSIVE PLEADING**

Comes now, the City of Marmaduke, Arkansas, ("City"), by and through its attorney, Amanda LaFever, and for its Motion for Extension of Time to file a Responsive Pleading, states:

1. Plaintiff filed his Complaint on June 21, 2017, and same was served on the City of Marmaduke on or about June 21, 2017.

2. By Undersigned Counsel's calculations, a response to said Complaint is due on or about July 21, 2017.

3. Undersigned counsel was recently assigned to represent the City.

4. Counsel for the City has a number of pre-existing obligations both professional and personal, and she will not be able to adequately investigate the facts and the underlying legal issues or meet with her client before July 21, 2017.

7. The City respectfully requests that the deadline for filing a responsive pleading be extended 14 days, making said response due on or before August 4, 2017.

8. Plaintiff's counsel, Jim Lyon, has been consulted, and there are no objections to the requested extension.


9. No undue delay or inconvenience will be experienced by the granting of this request, and none of the parties herein will be prejudiced if the City's request is granted.

WHEREFORE, the City respectfully requests that this Court grant its Motion for Extension of Time to Respond to Plaintiff's Complaint up to and including August 4, 2017, and for all other just and proper relief to which they are entitled.

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
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Amanda LaFever, Ark. Bar No. 2012133

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

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

FILED

PLAINTIFF

VS.

No. 4CV-2017-219-MR

AUG 04 2017

CITY OF MARMADUKE, ARKANSAS

GREENE CO. CIRCUIT CLERK

DEFENDANT

ANSWER

Comes now, the City of Marmaduke, Arkansas, ("the City"), by and through its attorney, Amanda LaFever, and for its Answer to Plaintiff's Complaint, states:

1. Regarding the allegations contained in paragraph one (1) of Plaintiff's Complaint, upon information and belief, the City admits that the St. Francis River Regional Water District ("the District") is an Arkansas regional water distribution district under the Regional Water Distribution Act with its principal place of business in Greene County, Arkansas.

2. Regarding the allegations contained in paragraph two (2) of Plaintiff's Complaint, the City admits that Marmaduke is an Arkansas municipal corporation with its principal place of business in Marmaduke, Greene County, Arkansas.

3. Paragraph three (3) of Plaintiff's Complaint is jurisdictional in nature, and as such, no response is required; however, should a response be deemed necessary, the City denies same due to their full and complete denial of any and all wrongdoing alleged.

4. Regarding the allegations contained in paragraph four (4) of Plaintiff's Complaint, upon information and belief, the City admits that the District was formed on or about July 27, 1987, and that the Circuit Court of Green County established the District, and that the District embraced the lands as set forth in the Exhibit attached to the 1987 Order approving the District, identified as "Exhibit A" as the District's geographical service territory, which was also attached

to Plaintiff's Complaint as Exhibit A. The City affirmatively states that both the Order and Exhibit A speak for themselves. The City further recognizes that Plaintiff as attached an Exhibit B and an Exhibit C to its Complaint, purporting to be a plat map and an aerial map. The City affirmatively states that the maps, to the degree that they are complete, current, and accurate, speak for themselves.

5. Regarding the allegations contained in paragraph five (5) of Plaintiff's Complaint, the City recognizes that Plaintiff is alleging that this case involves the right to serve an entity whose real property is partially located within the District's service territory as set forth by legal description. To the extent the allegation contained in paragraph five (5) is meant to imply or state that the City is wrongful or in violation of any law or regulation by continuing to provide water service to a pre-existing customer, that allegation is denied.

6. Regarding the allegations contained in paragraph six (6) of Plaintiff's Complaint, the City admits that American Railcar Industries, Inc. ("ARI") is a foreign corporation authorized to do business in Arkansas with offices located in Marmaduke, Greene County, Arkansas.

7. Regarding the allegations contained in paragraph seven (7) of Plaintiff's Complaint, upon information and belief, the City admits that ARI has its manufacturing facility in Marmaduke, Arkansas, and manufactures tank railcars. The City is without sufficient information to admit or deny whether the tank railcars are pressurized or non-pressurized or where the tank railcars are ultimately used; therefore, those allegations are denied.

8. Regarding the allegations contained in paragraph eight (8) of Plaintiff's Complaint, the City admits that the ARI's physical facilities are partially located within the City of Marmaduke and outside of the City of Marmaduke. The City further admits that according to Plaintiff's Exhibits, it appears as though the portion of ARI's physical facility that is outside of the City of

Marmaduke is located within the legal description of the real property described in Exhibit A, which was attached to the Order establishing the District, and meant to describe the lands embraced by the District.

9. Regarding the allegations contained in paragraph nine (9) of Plaintiff's Complaint, the City admits that the ARI's physical facilities are partially located within the City of Marmaduke and outside of the City of Marmaduke. The City further admits that according to Plaintiff's Exhibits, it appears as though the portion of ARI's physical facility that is outside of the City of Marmaduke is located within the legal description of the real property described in Exhibit A, which was attached to the Order establishing the District, and meant to describe the lands embraced by the District.

10. Regarding the allegations contained in paragraph ten (10) of Plaintiff's Complaint, the City admits that the Exhibit attached and identified as Exhibit C is marked and labeled as set forth in paragraph ten (10), and recognizes that Plaintiff is taking issue with the City providing water services to the building marked as No. 3 on Exhibit C. Regarding any remaining allegations, see the City's responses to paragraphs eight (8) and nine (9).

11. Regarding the allegations contained in paragraph eleven (11) of Plaintiff's Complaint, the City admits that at the time it began providing water services to ARI, no portion of ARI was physically located anywhere other than within the City's limits and water service territory.

12. Regarding the allegations contained in paragraph twelve (12) of Plaintiff's Complaint, the City admits that it continued providing water services to a preexisting customer when it began providing water services to the building identified as No. 3 on Plaintiff's Exhibit C.

13. Regarding the allegations contained in paragraph thirteen (13) of Plaintiff's Complaint, the City admits that the District has requested that the City stop providing water services to the City's customer, ARI. The City further admits that it continues to provide water services to its customer, ARI.

14. Regarding the allegations contained in paragraph fourteen (14) of Plaintiff's Complaint, they are denied.

15. Regarding the allegations contained in paragraph fifteen (15) of Plaintiff's Complaint, they are denied.

16. Paragraph number sixteen (16) of Plaintiff's Complaint incorporates paragraph numbers one through fifteen (1-15) of the Complaint. The City herein incorporates its responses to said paragraphs as if set forth word for word.

17. Regarding the allegations contained in paragraph seventeen (17) of Plaintiff's Complaint, the City is without sufficient information to admit or deny the allegations therein; therefore, they are denied.

18. Regarding the allegations contained in paragraph eighteen (18) of Plaintiff's Complaint, upon information and belief, the City admits that it has had no dealings with the Arkansas Natural Resources Commission ("the Commission").

19. Regarding the allegations contained in paragraph nineteen (19) of Plaintiff's Complaint, they are denied.

20. Regarding the allegations contained in paragraph twenty (20) of Plaintiff's Complaint, they are denied.

21. Regarding the allegations contained in paragraph twenty-one (21) of Plaintiff's Complaint, they are denied.

22. The City denies that Plaintiff is entitled to any of the relief requested in the "Wherefore" paragraph, including but not limited to any subparagraphs set forth.

23. The City denies any and all factual allegations in the Complaint not specifically admitted herein.

24. The City reserves the right to plead further upon additional investigation and discovery, to include a counter-complaint or amended answer.

AFFIRMATIVE DEFENSES

1. The allegations of the Complaint fail to state facts or a claim upon which relief may be granted.

2. The City asserts that it did not violate any of Plaintiff's rights.

3. The City is entitled to tort, qualified, good faith, and punitive damages immunity under all applicable doctrines of immunity pursuant to state and federal law, including but not limited to Ark. Code Ann. § 21-9-301.

4. The City is entitled to any defenses as set forth in Ark. Code Ann. § 15-22-201 et seq.

5. The City affirmatively states that it has and continues to provide water services to a pre-existing customer.

6. The City asserts the defenses of privilege and justification.

7. To the extent applicable, the City asserts the affirmative defenses of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel, consent, statute of limitations, and any and all defenses found in Arkansas Rule of Civil Procedure 8(c).

8. To the extent it may apply, the City asserts that Plaintiff has failed to exhaust its administrative remedies or satisfactory prerequisites to this action.

9. The City asserts that it has police powers pursuant to Arkansas Code Annotated §§ 14-54-601, 14-54-602.

10. The City reserves the right to amend or supplement their affirmative defenses as defenses become apparent or available during the course of litigation.

WHEREFORE, the City requests this Court dismiss Plaintiff's Complaint and for all other just and proper relief to which it is entitled.

Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

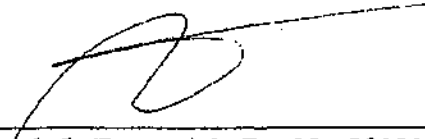
BY: 

Amanda LaFever, Ark. Bar No. 2012133
Attorney for Defendants
P.O. Box 38
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TELEPHONE: 501-978-6117
FACSIMILE: 501-978-6554
EMAIL: ALaFever@arml.org

CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on August 4, 2017, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via Certified Mail, Return Receipt, postage prepaid to the address below:

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



Amanda LaFever, Ark. Bar No. 2012133

FILED

JUL 24 2017

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

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CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

BY: _____


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Amanda LaFever, Ark. Bar No. 2012133

FILED
JUL 24 2017
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

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IT IS SO STATED.

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**CITY OF MARMADUKE, ARKANSAS,
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AUG 07 2017

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

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CITY OF MARMADUKE, ARKANSAS

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4. Regarding the allegations contained in paragraph four (4) of Plaintiff's Complaint, upon information and belief, the City admits that the District was formed on or about July 27, 1987, and that the Circuit Court of Green County established the District, and that the District embraced the lands as set forth in the Exhibit attached to the 1987 Order approving the District, identified as "Exhibit A" as the District's geographical service territory, which was also attached

to Plaintiff's Complaint as Exhibit A. The City affirmatively states that both the Order and Exhibit A speak for themselves. The City further recognizes that Plaintiff as attached an Exhibit B and an Exhibit C to its Complaint, purporting to be a plat map and an aerial map. The City affirmatively states that the maps, to the degree that they are complete, current, and accurate, speak for themselves.

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Marmaduke is located within the legal description of the real property described in Exhibit A, which was attached to the Order establishing the District, and meant to describe the lands embraced by the District.

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10. Regarding the allegations contained in paragraph ten (10) of Plaintiff's Complaint, the City admits that the Exhibit attached and identified as Exhibit C is marked and labeled as set forth in paragraph ten (10), and recognizes that Plaintiff is taking issue with the City providing water services to the building marked as No. 3 on Exhibit C. Regarding any remaining allegations, see the City's responses to paragraphs eight (8) and nine (9).

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Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

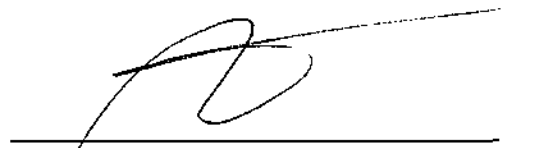
BY: 

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P.O. Box 7044
Jonesboro, AR 72403



Amanda LaFever, Ark. Bar No. 2012133

FILED ✓
AUG 14 2017
10:58
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

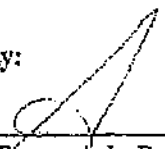
ORDER

Before the Court is Defendant's unopposed Motion for Extension of Time to File a Responsive Pleading. For good cause, Defendant's motion is granted.

IT IS SO ORDERED this 7 day of ^{Aug}~~July~~ 2017.

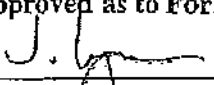

Honorable Melissa Richardson

Prepared by:


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

And

Approved as to Form:


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

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FILED

JAN 05 2018

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

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 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 listing of all of SFRRWD's service territory with the territory in question described in paragraph H of Exhibit A. 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 the land which comprises the Marmaduke campus of ARI is located with a portion of the Marmaduke campus being located in the SFRRWD water service territory and a portion of the Marmaduke campus being 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 is 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 building marked as No. 3 on Exhibit C is the building of ARI that is in the service territory of SFRRWD and is the building in question that uses such water service.

7. That the City of Marmaduke is providing water service to the building shown as No. 3 on Exhibit C even though it is outside the City of Marmaduke's service territory and 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 building shown as No. 3 on Exhibit C located within SFRRWD's service territory, the City of Marmaduke has failed and refused to do so.

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.

10. That the City of Marmaduke has admitted all of the above facts and thus, there are no material factual issues in dispute. (See Answer to Complaint, paragraphs 1, 2, 4, 6, 8, 9, 10, 12, 13 and 18 which is attached hereto and incorporated by reference herein as Exhibit D. Also, see the affidavit of Tonya Thompson, Manager of SFRRWD which is attached hereto as Exhibit E.)

11. That SFRRWD has received financial assistance from the Commission and has pledged its revenue from services rendered to repay said financial assistance. (See Exhibit E.)


12. 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.

13. That as a result, SFRRWD is entitled to summary judgment in this matter.

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

- a. that its Motion for Summary Judgment be granted;
- 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: 

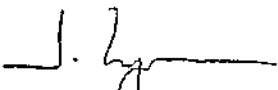
State Bar No. 77083
Attorneys for Plaintiff

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;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 4th day of January, 2018.



Jim Lyons

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.

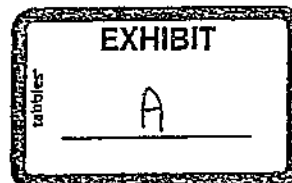
D.) TOWNSHIP 15 NORTH, RANGE 5 EAST:

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.

Page 1 of 4
SECTION 1, RANGE 6
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, 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 MARMADUKE 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 MARMADUKE 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.

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:

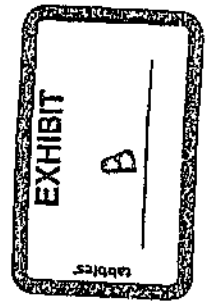
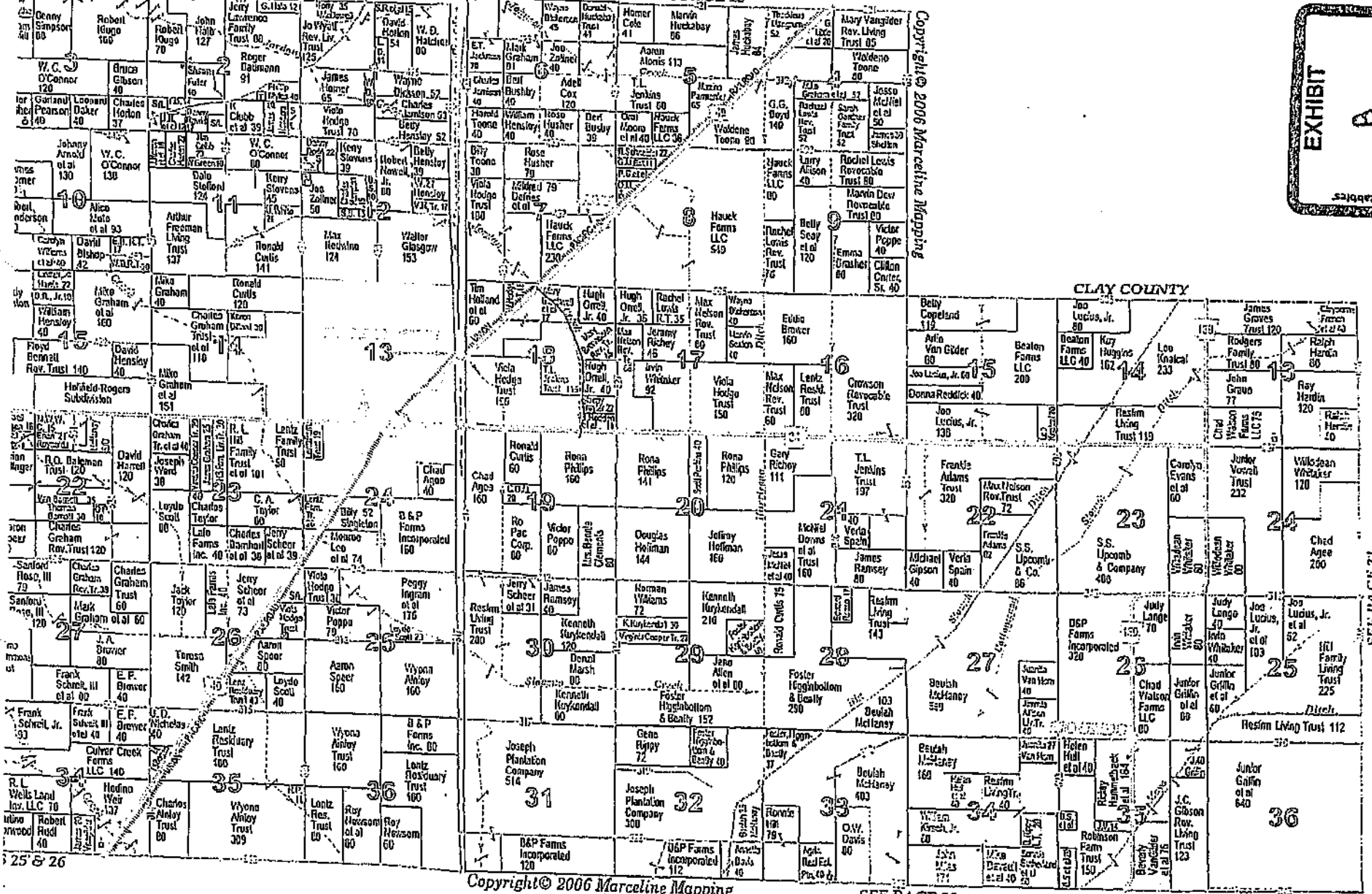
ALL OF SECTIONS 25, 35, AND 36 AND THAT PART OF SECTION 26 LYING SOUTH OF THE CITY LIMITS OF THE CITY OF RECTOR AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD AND THAT PART OF SECTION 27 LYING SOUTH AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD AND THAT PART OF SECTION 34 LYING SOUTH AND EAST OF THE ST. LOUIS SOUTHWESTERN RAILROAD, ALL IN TOWNSHIP 19 NORTH, RANGE 7 EAST OF THE 5TH PRINCIPAL MERIDIAN IN CLAY COUNTY, ARKANSAS.

J • RANGE 6E

TOWNSHIP 18N • RANGE 7E

15 Township 18N

SEE PAGE 15

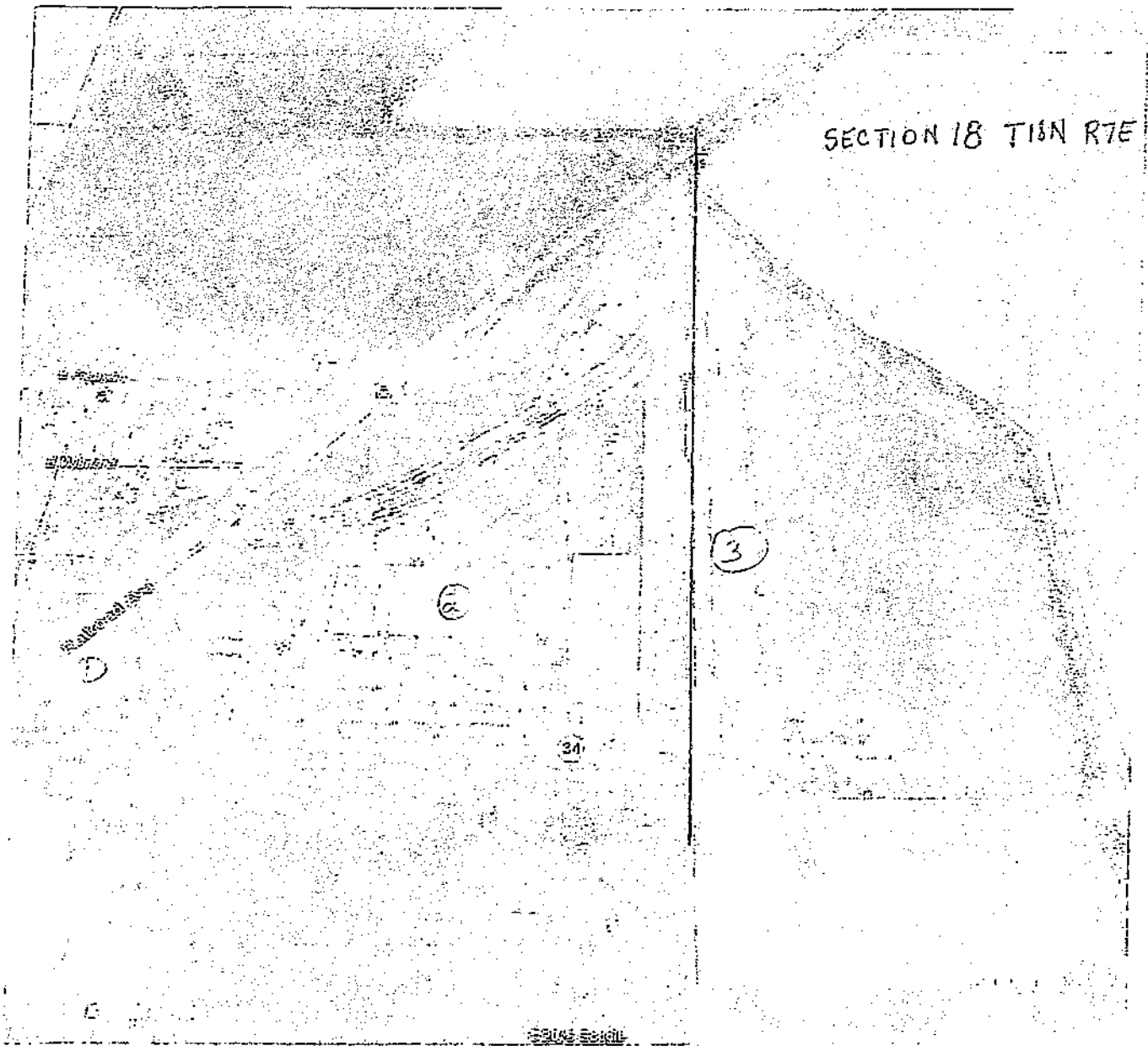


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SEE PAGE 27

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SEE PAGE 26



30 gls earth

- 1 - Coop
- 2 - Old ARI - Year 2000
- 3 - New ARI - 2007



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

ANSWER

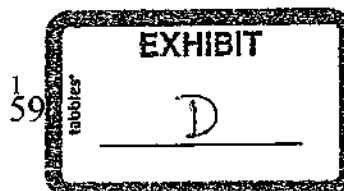
Comes now, the City of Marmaduke, Arkansas, ("the City"), by and through its attorney, Amanda LaFever, and for its Answer to Plaintiff's Complaint, states:

1. Regarding the allegations contained in paragraph one (1) of Plaintiff's Complaint, upon information and belief, the City admits that the St. Francis River Regional Water District ("the District") is an Arkansas regional water distribution district under the Regional Water Distribution Act with its principal place of business in Greene County, Arkansas.

2. Regarding the allegations contained in paragraph two (2) of Plaintiff's Complaint, the City admits that Marmaduke is an Arkansas municipal corporation with its principal place of business in Marmaduke, Greene County, Arkansas.

3. Paragraph three (3) of Plaintiff's Complaint is jurisdictional in nature, and as such, no response is required; however, should a response be deemed necessary, the City denies same due to their full and complete denial of any and all wrongdoing alleged.

4. Regarding the allegations contained in paragraph four (4) of Plaintiff's Complaint, upon information and belief, the City admits that the District was formed on or about July 27, 1987, and that the Circuit Court of Green County established the District, and that the District embraced the lands as set forth in the Exhibit attached to the 1987 Order approving the District, identified as "Exhibit A" as the District's geographical service territory, which was also attached



to Plaintiff's Complaint as Exhibit A. The City affirmatively states that both the Order and Exhibit A speak for themselves. The City further recognizes that Plaintiff as attached an Exhibit B and an Exhibit C to its Complaint, purporting to be a plat map and an aerial map. The City affirmatively states that the maps, to the degree that they are complete, current, and accurate, speak for themselves.

5. Regarding the allegations contained in paragraph five (5) of Plaintiff's Complaint, the City recognizes that Plaintiff is alleging that this case involves the right to serve an entity whose real property is partially located within the District's service territory as set forth by legal description. To the extent the allegation contained in paragraph five (5) is meant to imply or state that the City is wrongful or in violation of any law or regulation by continuing to provide water service to a pre-existing customer, that allegation is denied.

6. Regarding the allegations contained in paragraph six (6) of Plaintiff's Complaint, the City admits that American Railcar Industries, Inc. ("ARI") is a foreign corporation authorized to do business in Arkansas with offices located in Marmaduke, Greene County, Arkansas.

7. Regarding the allegations contained in paragraph seven (7) of Plaintiff's Complaint, upon information and belief, the City admits that ARI has its manufacturing facility in Marmaduke, Arkansas, and manufactures tank railcars. The City is without sufficient information to admit or deny whether the tank railcars are pressurized or non-pressurized or where the tank railcars are ultimately used; therefore, those allegations are denied.

8. Regarding the allegations contained in paragraph eight (8) of Plaintiff's Complaint, the City admits that the ARI's physical facilities are partially located within the City of Marmaduke and outside of the City of Marmaduke. The City further admits that according to Plaintiff's Exhibits, it appears as though the portion of ARI's physical facility that is outside of the City of

Marmaduke is located within the legal description of the real property described in Exhibit A, which was attached to the Order establishing the District, and meant to describe the lands embraced by the District.

9. Regarding the allegations contained in paragraph nine (9) of Plaintiff's Complaint, the City admits that the ARI's physical facilities are partially located within the City of Marmaduke and outside of the City of Marmaduke. The City further admits that according to Plaintiff's Exhibits, it appears as though the portion of ARI's physical facility that is outside of the City of Marmaduke is located within the legal description of the real property described in Exhibit A, which was attached to the Order establishing the District, and meant to describe the lands embraced by the District.

10. Regarding the allegations contained in paragraph ten (10) of Plaintiff's Complaint, the City admits that the Exhibit attached and identified as Exhibit C is marked and labeled as set forth in paragraph ten (10), and recognizes that Plaintiff is taking issue with the City providing water services to the building marked as No. 3 on Exhibit C. Regarding any remaining allegations, see the City's responses to paragraphs eight (8) and nine (9).

11. Regarding the allegations contained in paragraph eleven (11) of Plaintiff's Complaint, the City admits that at the time it began providing water services to ARI, no portion of ARI was physically located anywhere other than within the City's limits and water service territory.

12. Regarding the allegations contained in paragraph twelve (12) of Plaintiff's Complaint, the City admits that it continued providing water services to a preexisting customer when it began providing water services to the building identified as No. 3 on Plaintiff's Exhibit C.

13. Regarding the allegations contained in paragraph thirteen (13) of Plaintiff's Complaint, the City admits that the District has requested that the City stop providing water services to the City's customer, ARI. The City further admits that it continues to provide water services to its customer, ARI.

14. Regarding the allegations contained in paragraph fourteen (14) of Plaintiff's Complaint, they are denied.

15. Regarding the allegations contained in paragraph fifteen (15) of Plaintiff's Complaint, they are denied.

16. Paragraph number sixteen (16) of Plaintiff's Complaint incorporates paragraph numbers one through fifteen (1-15) of the Complaint. The City herein incorporates its responses to said paragraphs as if set forth word for word.

17. Regarding the allegations contained in paragraph seventeen (17) of Plaintiff's Complaint, the City is without sufficient information to admit or deny the allegations therein; therefore, they are denied.

18. Regarding the allegations contained in paragraph eighteen (18) of Plaintiff's Complaint, upon information and belief, the City admits that it has had no dealings with the Arkansas Natural Resources Commission ("the Commission").

19. Regarding the allegations contained in paragraph nineteen (19) of Plaintiff's Complaint, they are denied.

20. Regarding the allegations contained in paragraph twenty (20) of Plaintiff's Complaint, they are denied.

21. Regarding the allegations contained in paragraph twenty-one (21) of Plaintiff's Complaint, they are denied.

22. The City denies that Plaintiff is entitled to any of the relief requested in the "Wherefore" paragraph, including but not limited to any subparagraphs set forth.

23. The City denies any and all factual allegations in the Complaint not specifically admitted herein.

24. The City reserves the right to plead further upon additional investigation and discovery, to include a counter-complaint or amended answer.

AFFIRMATIVE DEFENSES

1. The allegations of the Complaint fail to state facts or a claim upon which relief may be granted.

2. The City asserts that it did not violate any of Plaintiff's rights.

3. The City is entitled to tort, qualified, good faith, and punitive damages immunity under all applicable doctrines of immunity pursuant to state and federal law, including but not limited to Ark. Code Ann. § 21-9-301.

4. The City is entitled to any defenses as set forth in Ark. Code Ann. § 15-22-201 et seq.

5. The City affirmatively states that it has and continues to provide water services to a pre-existing customer.

6. The City asserts the defenses of privilege and justification.

7. To the extent applicable, the City asserts the affirmative defenses of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel, consent, statute of limitations, and any and all defenses found in Arkansas Rule of Civil Procedure 8(c).

8. To the extent it may apply, the City asserts that Plaintiff has failed to exhaust its administrative remedies or satisfactory prerequisites to this action.

9. The City asserts that it has police powers pursuant to Arkansas Code Annotated §§ 14-54-601, 14-54-602.

10. The City reserves the right to amend or supplement their affirmative defenses as defenses become apparent or available during the course of litigation.

WHEREFORE, the City requests this Court dismiss Plaintiff's Complaint and for all other just and proper relief to which it is entitled.

Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

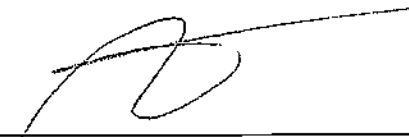
BY: 

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 August 4, 2017, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via Certified Mail, Return Receipt, postage prepaid to the address below:

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



Amanda LaFever, Ark. Bar No. 2012133

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

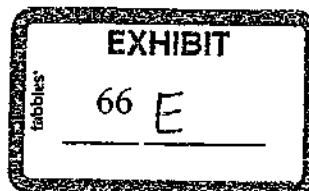
Defendant

AFFIDAVIT

STATE OF ARKANSAS)
) ss
COUNTY OF GREENE)

Comes Tonya Thompson, and after first being duly sworn, states upon oath as follows:

1. My name is Tonya Thompson and I am the Manager for St. Francis River Regional Water District ("SFRRWD").
2. That I have personal knowledge of the facts in this matter. I am above the age of eighteen (18) years and I am of sound mind.
3. That I am competent to testify concerning the facts of which I have personal knowledge which are set forth herein.
4. That SFRRWD is indebted to the Arkansas Natural Resources Commission (the "Commission") by virtue of a loan by the Commission to SFRRWD and the income derived therefrom is pledged to the Arkansas Natural Resources Commission to repay such loan.
5. That the City of Marmaduke provides water service to an area of SFRRWD's territory without our permission or the approval of any governmental authority.



6. That revenue derived from water provided to American Railcar Industries, Inc. ("ARI") is being paid to the City of Marmaduke without our permission or the approval of any governmental authority.

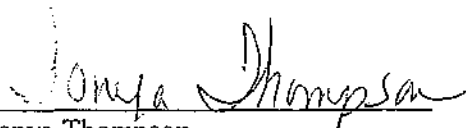
7. That the revenue for such water services should be paid to SFRRWD and is needed by SFRRWD to assist in repaying its loan to the Commission.

8. That the City of Marmaduke is providing water to the eastern portion of the ARI campus which includes Building No. 3 as shown on Exhibit C attached to the Motion for Summary Judgment. Such Building No. 3 is located in the territory of SFRRWD.

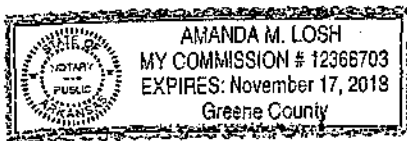
9. That despite demand by SFRRWD for the City of Marmaduke to stop providing water service to a Building No. 3 on ARI's campus, which is located within SFRRWD's exclusive service territory, the City of Marmaduke has refused to discontinue such service.

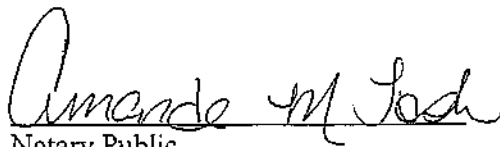
10. That the SFRRWD is ready, willing and able to connect to Building No. 3 and provide water service to ARI's Building No. 3 within a reasonable period of time following the granting of a judgment in its favor.

11. The statements set forth herein are true and correct to the best of my knowledge, information and belief.


Tonya Thompson

SUBSCRIBED and SWORN to before me, the undersigned Notary Public, this 4 day of January, 2018.




Notary Public

JAN 05 2018

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

BRIEF IN SUPPORT OF
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 Motion for Summary Judgment, states:

I. INTRODUCTION

In its Answer to Plaintiff's Complaint which is attached to the Motion, the Defendant admitted the allegations set forth in paragraphs 1, 2, 4, 6, 8, 9, 10, 12, 13 and 18 of the Complaint. As a result, the following facts are not in dispute in this litigation:

1. That SFRRWD is an Arkansas regional water distribution district under the Regional Water Distribution District Act with its principal place of business in Greene County, Arkansas.
2. That Marmaduke is an Arkansas municipal corporation with its principal place of business in Marmaduke, 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.

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 the land which comprises the Marmaduke campus of ARI is located with a portion of the Marmaduke campus being located in the SFRRWD water service territory and a portion of this Marmaduke campus being 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 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 building marked as No. 3 on Exhibit C is the building of ARI that is in the service territory of SFRRWD and is the building in question.

7. That the City of Marmaduke is providing water service to the building (No. 3) even though it is outside the City of Marmaduke's service territory and within SFRRWD's service territory.

8. That despite the request by SFRRWD for City of Marmaduke to discontinue water service to ARI for the building (No. 3) located within SFRRWD's service territory, the City of Marmaduke has failed and refused to do so.

9. That the Commission has not approved or otherwise authorized the City of Marmaduke to provide water service in SFRRWD's territory, including the building of ARI (No.

3) 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. (See Exhibit D paragraphs 1, 2, 4, 6, 8, 9, 10, 12, 13 and 18).

Further, SFRRWD has received financial assistance from the Arkansas Natural Resources Commission (the "Commission") and has pledged its revenue from services rendered to repay said financial assistance. (See Exhibit E). As a result, no material facts are in dispute. Thus, this case should be decided as a matter of law.

II. ARGUMENT

Summary judgment is proper in this matter as no material questions of fact exist. In summary judgment cases, the court only needs to decide if the granting of summary judgment is appropriate based upon whether the evidentiary items presented by the moving party in support of the motion leaves a material question of fact unanswered. *Inge v. Walker*, 70 Ark. App. 114, 15 S.W.3d 348 (2000). Summary judgment is no longer considered a drastic remedy but is regarded simply as one of the tools in the trial court's efficiency arsenal. See *Wallace v. Broyles*, 332 Ark. 189, 961 S.W.2d 712 (1998). On a summary judgment motion, once the moving party establishes a prima facie entitlement to summary judgment by affidavits or other supporting documents, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Welch Foods, Inc. v. Chicago Title Ins. Co.*, 341 Ark. 515, 17 S.W.3d 467 (2000).

In the case at hand, the City of Marmaduke admits that SFRRWD is an Arkansas regional water distribution district with an exclusive geographical service territory which includes a portion of ARI's Marmaduke campus to which the City of Marmaduke is supplying water

service. Further, the City of Marmaduke admits that SFRRWD has demanded that the City of Marmaduke stop supplying water to that portion of ARI's Marmaduke campus which is in SFRRWD's service territory. However, the City of Marmaduke has refused to do so. (See Exhibit D paragraphs 1, 2, 4, 6, 8, 9, 10, 12, 13 and 18). Additionally, SFRRWD has received financial assistance from the Arkansas Natural Resources Commission and has pledged its revenue from services rendered to repay said financial assistance. (See Exhibit E).

Ark. Code Ann. § 15-22-223(a) and Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures 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.

SFRRWD is providing water service in the area at issue in this matter and has pledged its revenues to repay its loan with the Commission. Further, the City of Marmaduke has admitted in its Answer that the Commission has not approved or otherwise authorized the City of Marmaduke to provide water service in SFRRWD's territory, including Building No. 3 of ARI's Marmaduke Campus 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. (See Exhibit D, paragraph 18). Therefore, the City of Marmaduke is unlawfully providing water service to ARI in SFRRWD's territory and is not entitled to provide such water service to ARI. As a result, SFRRWD is entitled to summary

judgment.

III. CONCLUSION

For the reasons set forth above, Plaintiff, SFRRWD, respectfully requests that this Court grant its Motion for Summary Judgment and order that SFRRWD is entitled to provide the water to ARI and that the City of Marmaduke must cease providing such service.

Respectfully submitted,

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;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 4th day of January, 2018.



Jim Lyons

FILED

JAN 25 2018

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK
PLAINTIFF

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

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

CITY OF MARMADUKE, ARKANSAS DEFENDANTS

PARTIES' JOINT MOTION FOR EXTENSION OF TIME FOR DEFENDANT TO FILE
A RESPONSE TO PLAINTIFF'S SUMMARY JUDGMENT MOTION AND FOR
PLAINTIFF TO FILE A REPLY TO DEFENDANT'S RESPONSE

Comes now, the parties, by and through their respective counsel, and for their Joint Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment and for Plaintiff to File a Reply to Defendant's Response, state:

1. Plaintiff filed his Motion for Summary Judgment on January 5, 2018.
2. By Undersigned Counsel's calculations, a response to said Motion is due on or before January 26, 2018.
3. Counsel for Defendant has had and will continue to have a number of obligations both professional and personal, for example, in the past two weeks: an oral argument at the United States Court of Appeals for the Eighth Circuit in St. Louis, snow and ice weather related delays, and family sickness, and moving forward over the next three weeks: three days of previously scheduled out of town depositions, two Motions for Summary Judgments due in employment matters where she is sole defense counsel, a response due to a Motion for Summary Judgment in a use of force case where she is sole defense counsel, as well as a variety of written discovery obligations and out of town meetings.

4. Defendant respectfully requests that the deadline for filing a response to Plaintiff's Motion for Summary Judgment be extended 21 days, making said response due on or before February 16, 2018.

5. Plaintiff's counsel, Jim Lyon, has been consulted, and there are no objections to the requested extension by Defendant.

6. Plaintiff respectfully requests that it be permitted 14 days to file its Reply to Defendant's Response, said 14 days to begin running upon receipt of Defendant's Response when served via email to Plaintiff's counsel and attorney David Tyler of Plaintiff's counsel's firm.

7. Defendant's counsel, Amanda LaFever, has been consulted, and there are no objections to the requested extension by Plaintiff.

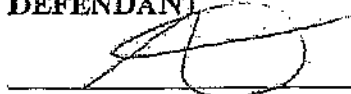
8. No undue delay or inconvenience will be experienced by the granting of this request, and none of the parties herein will be prejudiced if the parties' respective requests are granted.

WHEREFORE, the parties respectfully request that this Court grant their Joint Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment and for Plaintiff to File a Reply to Defendant's Response.

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: alafeyer@armml.org

CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on January 25, 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via email and via Certified Mail, Return Receipt, postage prepaid to the addresses below:

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

David Tyler
dtyler@leclaw.com



Amanda LaFever, Ark. Bar No. 2012133

FILED

JAN 29 2018

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANTS

**PARTIES' JOINT MOTION FOR EXTENSION OF TIME FOR DEFENDANT TO FILE
A RESPONSE TO PLAINTIFF'S SUMMARY JUDGMENT MOTION AND FOR
PLAINTIFF TO FILE A REPLY TO DEFENDANT'S RESPONSE**

Comes now, the parties, by and through their respective counsel, and for their Joint Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment and for Plaintiff to File a Reply to Defendant's Response, state:

1. Plaintiff filed his Motion for Summary Judgment on January 5, 2018.
2. By Undersigned Counsel's calculations, a response to said Motion is due on or before January 26, 2018.
3. Counsel for Defendant has had and will continue to have a number of obligations both professional and personal, for example, in the past two weeks: an oral argument at the United States Court of Appeals for the Eighth Circuit in St. Louis, snow and ice weather related delays, and family sickness, and moving forward over the next three weeks: three days of previously scheduled out of town depositions, two Motions for Summary Judgments due in employment matters where she is sole defense counsel, a response due to a Motion for Summary Judgment in a use of force case where she is sole defense counsel, as well as a variety of written discovery obligations and out of town meetings.

4. Defendant respectfully requests that the deadline for filing a response to Plaintiff's Motion for Summary Judgment be extended 21 days, making said response due on or before February 16, 2018.

5. Plaintiff's counsel, Jim Lyon, has been consulted, and there are no objections to the requested extension by Defendant.

6. Plaintiff respectfully requests that it be permitted 14 days to file its Reply to Defendant's Response, said 14 days to begin running upon receipt of Defendant's Response when served via email to Plaintiff's counsel and attorney David Tyler of Plaintiff's counsel's firm.

7. Defendant's counsel, Amanda LaFever, has been consulted, and there are no objections to the requested extension by Plaintiff.

8. No undue delay or inconvenience will be experienced by the granting of this request, and none of the parties herein will be prejudiced if the parties' respective requests are granted.

WHEREFORE, the parties respectfully request that this Court grant their Joint Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment and for Plaintiff to File a Reply to Defendant's Response.

Respectfully submitted,

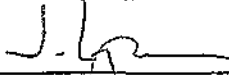
CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

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

And ST. FRANCIS RIVER REGIONAL
WATER DISTRICT,
PLAINTIFF

By:




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

CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on January 25, 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via email and via Certified Mail, Return Receipt, postage prepaid to the addresses below:

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

David Tyler
dtyler@leclaw.com



Amanda LaFever, Ark. Bar No. 2012133

FILED ✓

FEB 09 2018

10:17

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

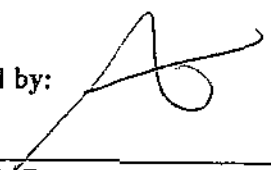
ORDER

Before the Court is the parties' Joint Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment and for Plaintiff to File a Reply to Defendant's Response. For good cause, the motion is granted. Defendant's Response to Plaintiff's Motion for Summary Judgment is due on or before February 16, 2018. Plaintiff's Reply to Defendant's Response will be due 14 days from receipt of Defendant's Response via email as set forth in paragraph six (6) of the referenced Motion.

IT IS SO ORDERED this 1 day of ^{Feb}~~January~~ 2018.

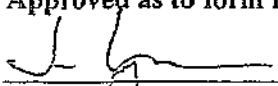

Honorable Melissa Richardson

Prepared by:



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

Approved as to form by:



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

FILED

FEB 15 2018

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANTS

**DEFENDANTS' UNOPPOSED MOTION FOR EXTENSION OF TIME FOR
DEFENDANT TO FILE A RESPONSE TO PLAINTIFF'S SUMMARY JUDGMENT
MOTION**

Comes now, Defendant, by and through its respective counsel, and for its Unopposed Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment, states:

1. Plaintiff filed his Motion for Summary Judgment on January 5, 2018.
2. Per Order, Defendants were given until February 16, 2018 to file a Response, with Plaintiff being given 14 days from receipt of Defendant's Response through service of such pleading by undersigned counsel on Plaintiff's counsel via email.
3. Defendant has been working on the Response, but, no discovery having been conducted in this matter, must necessarily investigate certain relevant matters in order to formulate the Response.
4. Moreover, defense counsel has had a number of obligations both professional and personal, as well as a variety of written discovery obligations, and out of town meetings depositions and meetings.
5. Defendant respectfully requests that the deadline for filing a response to Plaintiff's Motion for Summary Judgment be extended seven (7) days, making said response due on or before February 23, 2018.

6. Plaintiff's counsel, Jim Lyon, has been consulted, and there are no objections to the requested extension by Defendant.

7. Defendant further respectfully requests that Plaintiff be allotted the same number of days to Reply as it had been previously granted, i.e., fourteen (14) days to file its Reply to Defendant's Response, said fourteen (14) days to begin running upon receipt of Defendant's Response when served via email to Plaintiff's counsel and attorney David Tyler of Plaintiff's counsel's firm by undersigned counsel.

8. No undue delay or inconvenience will be experienced by the granting of this request, and none of the parties herein will be prejudiced if the parties' respective requests are granted.

WHEREFORE, Defendant respectfully requests that this Court grant its Unopposed Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

By: 

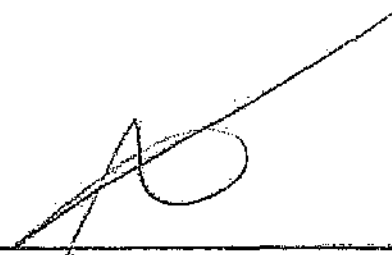
Amanda LaFever, Ark. Bar No. 2012133
Attorney for Defendants
P.O. Box 38
North Little Rock, AR 72115
Telephone: 501-978-6117
Facsimile: 501-978-6554
Email: alafever@arml.org

CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on February 15, 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via email and via Certified Mail, Return Receipt, postage prepaid to the addresses below:

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

David Tyler
dtyler@leclaw.com



Amanda LaFever, Ark. Bar No. 2012133

FILED ✓

FEB 16 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

DEFENDANT

ORDER

Before the Court is Defendant's Unopposed Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment. For good cause, the motion is granted. Defendant's Response to Plaintiff's Motion for Summary Judgment is due on or before February 23, 2018. Plaintiff's Reply to Defendant's Response will be due 14 days from receipt of Defendant's Response via email as set forth in paragraph six (6) of the referenced Motion.

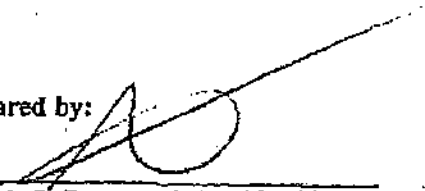
IT IS SO ORDERED this 16 day of February 2018.



Honorable Melissa Richardson

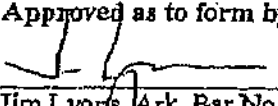
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Prepared by:



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

Approved as to form by:



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

FILED ✓

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

FEB 20 2018

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANTS

**DEFENDANTS' UNOPPOSED MOTION FOR EXTENSION OF TIME FOR
DEFENDANT TO FILE A RESPONSE TO PLAINTIFF'S SUMMARY JUDGMENT
MOTION**

Comes now, Defendant, by and through its respective counsel, and for its Unopposed Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment, states:

1. Plaintiff filed his Motion for Summary Judgment on January 5, 2018.
2. Per Order, Defendants were given until February 16, 2018 to file a Response, with Plaintiff being given 14 days from receipt of Defendant's Response through service of such pleading by undersigned counsel on Plaintiff's counsel via email.
3. Defendant has been working on the Response, but, no discovery having been conducted in this matter, must necessarily investigate certain relevant matters in order to formulate the Response.
4. Moreover, defense counsel has had a number of obligations both professional and personal, as well as a variety of written discovery obligations, and out of town meetings depositions and meetings.
5. Defendant respectfully requests that the deadline for filing a response to Plaintiff's Motion for Summary Judgment be extended seven (7) days, making said response due on or before February 23, 2018.

6. Plaintiff's counsel, Jim Lyon, has been consulted, and there are no objections to the requested extension by Defendant.

7. Defendant further respectfully requests that Plaintiff be allotted the same number of days to Reply as it had been previously granted, i.e., fourteen (14) days to file its Reply to Defendant's Response, said fourteen (14) days to begin running upon receipt of Defendant's Response when served via email to Plaintiff's counsel and attorney David Tyler of Plaintiff's counsel's firm by undersigned counsel.

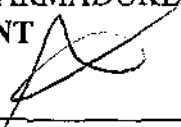
8. No undue delay or inconvenience will be experienced by the granting of this request, and none of the parties herein will be prejudiced if the parties' respective requests are granted.

WHEREFORE, Defendant respectfully requests that this Court grant its Unopposed Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment.

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 February 15, 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via email and via Certified Mail, Return Receipt, postage prepaid to the addresses below:

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

David Tyler
dtyler@leclaw.com



Amanda LaFever, Ark. Bar No. 2012133

FILED

FEB 20 2018

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

ORDER

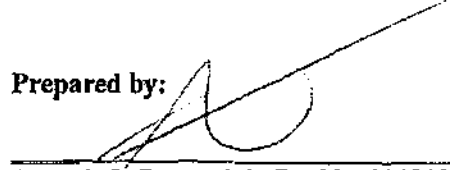
Before the Court is Defendant's Unopposed Motion for Extension of Time for Defendant to File a Response to Plaintiff's Motion for Summary Judgment. For good cause, the motion is granted. Defendant's Response to Plaintiff's Motion for Summary Judgment is due on or before February 23, 2018. Plaintiff's Reply to Defendant's Response will be due 14 days from receipt of Defendant's Response via email as set forth in paragraph six (6) of the referenced Motion.

IT IS SO ORDERED this 16 day of February 2018.



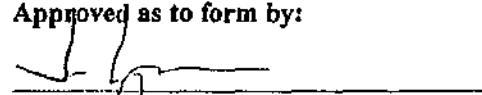
Honorable Melissa Richardson

Prepared by:



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

Approved as to form by:



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

FEB 23 2018

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

DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Comes now, the City of Marmaduke, Arkansas, defendant herein ("the City"), by and through its attorney, Amanda LaFever, and for its Response to Plaintiff's Motion for Summary Judgment, states:

1. Regarding paragraph one (1) of Plaintiff's Motion for Summary Judgment, the City admits that the St. Francis River Regional Water District ("District") 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. Regarding paragraph two (2) of Plaintiff's Motion for Summary Judgment, the City admits that Marmaduke is an Arkansas municipal corporation located in Greene County, Arkansas.

3. Regarding paragraph three (3) of Plaintiff's Motion for Summary Judgment, the City admits that the District was formed on July 27, 1987 pursuant to an Order the Circuit Court of Greene County, Arkansas, which Order sets forth the geographic boundaries in which the District may provide water services, the legal description for which is attached as *Exhibit A* to Plaintiff's Motion. The City denies that any document or record grants to the District the *exclusive* right to provide water service within its geographic boundaries; on the contrary, the Order of July 27, 1987 defines the geographic boundaries within which the District *may* provide water service. The Court's Order speaks for itself, and the City denies the correctness of Exhibits B and C to the

Complaint to the extent that they vary from the legal descriptions in the exhibit attached to the Court's Order. The City's continued provision of water service to its long-time and pre-existing customer is legal.

4. Regarding paragraph four (4) of Plaintiff's Motion for Summary Judgment, the City admits 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. Regarding paragraph five (5) of Plaintiff's Motion for Summary Judgment, the City admits that the majority of the real property upon which the ARI Plant is located is within the city limits of Marmaduke. The City admits that the real property upon which the easternmost portion of the ARI Plant is located is within the geographical boundaries of the District as set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. The City admits that ARI has a separate building located within those geographical boundaries set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. The City affirmatively states that the District does not have the "exclusive" right to provide water services to ARI, nor has it set forth sufficient evidence, proof, or law establishing such.

6. Regarding paragraph six (6) of Plaintiff's Motion for Summary Judgment, the City admits that there appears to be a line on the google map identified as *Exhibit C*, that the portion of the map labeled "2" is within the Marmaduke city limits, and within the territory serviced by the City water utility. The City admits that the area labeled number "3" contains the entire eastern portion of the Plant, which is in the geographical boundaries set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. The City affirmatively states that the majority of the eastern portion of the Plant was built in 2006, and the City began providing water services to that portion of the Plant in 2006, due to the District's inability to do so. ARI expanded the eastern

portion of its Plant in 2015, when it built the Refurb Plant, which is located within the area of the East Plant. It is the Refurb Plant that is at issue.

7. Regarding paragraph seven (7) of Plaintiff's Motion for Summary Judgment, the City admits that it is providing both water and sewer services to the entire ARI Plant, a portion of which is included within the geographical boundaries set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. The City denies that the ARI Plant is outside of its own service territory.

8. Regarding paragraph eight (8) of Plaintiff's Motion for Summary Judgment, the City admits that the District requested that the City discontinue providing water services to a portion of the ARI Plant which is included within the geographical service territory set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion, and further admits that it has declined to do so. The City affirmatively states that it has been and continues to provide water services to its longtime customer, ARI.

9. Regarding paragraph nine (9) of Plaintiff's Motion for Summary Judgment, the City admits that it did not seek approval, authorization, or permission to continue providing water services to its preexisting customer, ARI, and affirmatively states that it was not required to do so.

10. Regarding paragraph ten (10) of Plaintiff's Motion for Summary Judgment, the City denies that it has admitted all material facts such that Plaintiff should be granted summary judgment, and further denies that it has admitted such in its Answer to Plaintiff's Complaint in any paragraph. Regarding the Tonya Thompson Affidavit, please see attached *Exhibit I* for the City's Response to the allegations made therein.

11. Regarding paragraph eleven (11) of Plaintiff's Motion for Summary Judgment, upon information and belief, the City admits that the only outstanding indebtedness that the District

has to the Arkansas Natural Resources Commission (“Commission”) is a loan for approximately \$51,500.00, which was approved in July 2016, and closed on January 9, 2017. However, no discovery has been conducted, and the City does not know what, if any, “pledges” the District has made to the Commission, whether the District specifically pledged revenue from services provided to ARI to repay financial assistance provided by the Arkansas Natural Resources Commission, why the loan was obtained, or what the proceeds were or are being used for.

12. Regarding paragraph twelve (12) of Plaintiff’s Motion for Summary Judgment, the City admits that Ark. Code Ann. § 15-22-223 states as follows:

(a) 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.

(b) (1) As a condition of its approval, the commission may require the payment of an equitable portion of the outstanding financial assistance provided.

(2) (A) Any payment made shall reduce the outstanding balance of the financial assistance provided by the commission to the current provider.

(B) To determine the amount of payment, the commission shall base its approval on the following factors:

(i) The impact of the transfer of the area on the current provider’s existing indebtedness and its ability to repay the debt;

(ii) The value, including depreciation, of the current provider’s facilities in the area to be transferred;

(iii) The amount of any expenditures by the current provider for planning, design, or construction of service facilities outside the area, including without limitation treatment, transmission, and storage facilities, that are directly and reasonably allocable to the area to be transferred;

(iv) Any demonstrated impairment of service or increase in cost, including without limitation operation and maintenance, to consumers of the current provider remaining after the transfer of the area;

(v) The impact of future lost revenues from the current provider’s existing consumers in the area to be transferred, but only until the indebtedness is retired;

- (vi) Necessary and reasonable legal expenses and professional fees; and
 - (vii) Other relevant factors as determined by the commission.
- (3) Upon enactment of this section, financial assistance provided by the commission for potable water or wastewater projects shall be provided only to:
- (A) The state, counties, cities, towns, or their agencies or instrumentalities; and
 - (B) Nonprofit corporations existing on August 1, 1997.
- (c) The commission or other parties may institute a civil action in the circuit court of the county where the unlawful activities have or will likely occur to:
- (1) Restrain such activities;
 - (2) Compel compliance with the provisions of this section; and
 - (3) Recover all costs and expenses incurred as a result of violations of this section.
- (d) Nothing in this subchapter limits the applicable federal law.
- (e)(1) The state may require that if a borrower of water loans or wastewater loans is able to refinance the amount of the indebtedness to any government lender then outstanding, in whole or in part, by obtaining a loan for the same purpose from a responsible cooperative or private source at a reasonable rate and under reasonable terms for similar loans, then the borrower shall:
- (A) Apply for and accept the loan in sufficient amount to repay the government lender; and
 - (B) Take all actions required in connection with the loan.
- (2) Subdivision (e)(1) of this section shall also apply if a borrower seeks financing from the state for any water project or wastewater project that is not currently funded by a government lender. (emphasis added).

The City admits that Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures states as follows:

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 revenues 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*.

(Emphasis added). However, the City denies that either of those provisions precludes the City from continuing to provide water services to its pre-existing customer, ARI, or provides that the District has the *exclusive* right to provide water within its District. The City admits that it did not seek

permission to continue providing water services to its preexisting customer, ARI, and affirmatively states that it was not required to.

13. Regarding paragraph thirteen (13) of Plaintiff's Motion for Summary Judgment, the City denies that Plaintiff is entitled to summary judgment.

14. Regarding the "WHEREFORE" paragraph of Plaintiff's Motion for Summary Judgment, the City denies that Plaintiff is entitled to any relief whatsoever, including the specific relief delineated in subparagraphs a., b., and c.

15. The City affirmatively states that Plaintiff's motion is premature, and there are a number of issues that must be resolved prior to any adjudication in this matter—issues that can be explored during the discovery process. To date, no discovery has been conducted by either the City or Plaintiff.

16. Issues of disputed material fact that must be explored and/or resolved prior to an adjudication of this matter include, but are not limited to the following:

- a. The ability and capacity of the District to provide water services to ARI at any point in time, historically and currently, including but not limited to when ARI was built in 1999, when the eastern expansion was built in 2006, when the Refurb Plant was built in 2015, and presently;
- b. 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 attached as *Exhibit A* to Plaintiff's Motion;
- c. The ability or inability of the District to meet the Plant's requirements in the case of a fire or other catastrophic event;

- d. The District's ability or inability to provide sewer services along with water services to ARI;
- e. The existence of pipes in the ground currently, such that the District could provide water services to ARI with no cessation of ARI's operations;
- f. Whether the District has ever provided or made available water services to ARI;
- g. The degree and extent of the District's indebtedness, what, if any, revenues are pledged to repay the indebtedness, when the indebtedness arose, the purpose of the loan and what the proceeds have been used for, and any exclusivity or rights provided to it by virtue of that indebtedness under either federal or state law, and when such rights, if they ever existed, expired;
- h. The point in time the District first became aware or should have been on notice that the City was providing water services to the portions of the ARI Plant that the District now claims are within its exclusive jurisdiction;
- i. The ability and capacity of the City to provide water services to ARI, historically and currently, including but not limited to when ARI was built in 1999, when the eastern expansion was built in 2006, when the Refurb Plant was built in 2015, and presently;
- j. 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;
- k. The existence of any record, Order, document, agreement, or otherwise in any other case or matter that provides a municipality "exclusive" rights to pre-existing customers and customers within so many miles of the City's limits;

- l. The ability of the City to meet the Plant's requirements in the case of a fire or other catastrophic event;
- m. The City's ability to provide sewer services along with water services to ARI; and
- n. The existence of pipes in the ground currently, such that the City can continue to provide water services to ARI with no cessation of ARI's operations.

17. For the reasons set forth herein, as well as those more fully set forth in the Brief in Support filed contemporaneously herewith, Plaintiff's Motion for Summary Judgment should be denied.

18. In support of this Response and its Brief in Support, the City attaches the following exhibits:

- D's Exhibit 1: Response to Thompson Affidavit;
- D's Exhibit 2: Mayor Dixon's Affidavit;
- D's Exhibit 3-Ordinance #55 Creating City Water System-October 1935;
- D's Exhibit 4-Annual Report for City of Marmaduke's USDA Loan-2017;
- D's Exhibit 5-Presentation by District at City Council Meeting; and
- D's Exhibit 6-June 21, 2016 City Council Meeting Minutes.

19. Moreover, in addition to denying Plaintiff's Motion for Summary Judgment, the City respectfully requests that the Court issue a scheduling order setting forth a deadline by which all discovery should be completed, and a deadline by which dispositive motions, including motions for summary judgment, should be filed.

WHEREFORE, Defendant requests this Court deny Plaintiff's Motion, issue a scheduling Order, and for all other just and proper relief to which it is entitled.

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 February 23, 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via Certified Mail, Return Receipt, postage prepaid to the address below:

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



Amanda LaFever, Ark. Bar No. 2012133

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

DEFENDANT'S RESPONSE TO TONYA THOMPSON AFFIDAVIT

Comes now, the City of Marmaduke, Arkansas, defendant herein ("the City"), by and through its attorney, Amanda LaFever, and for its Response to Tonya Thompson's Affidavit, states:

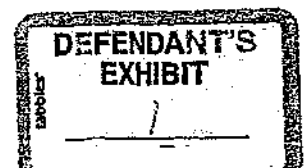
1. My name is Tonya Thompson and I am the Manager for St. Francis River Regional Water District ("SFRRWD").

Response: Admitted. For ease, the City will refer to the St. Francis River Regional Water District as "the District." See *Mayor Dixon Affidavit*, attached to Defendant's Response to Plaintiff's Motion for Summary Judgment and hereinafter referred to as *D's Exhibit 2*, ¶ 41.¹

2. That I have personal knowledge of the facts in this matter. I am above the age of eighteen (18) years and I am of sound mind.

Response: The City is without sufficient information or knowledge to admit or deny Ms. Thompson's age or mental status; but have no reason to dispute either. At this juncture, the City admits that as the manager of the District, Ms. Thompson might have some personal knowledge of the facts at issue in this matter. *D's Exhibit 2*, ¶ 42.

¹ For ease, all remaining *Exhibit* references will simply say "*D's Exhibit*" with the applicable number.



3. That I am competent to testify concerning the facts of which I have personal knowledge which are set forth herein.

Response: The City is without sufficient information or knowledge to admit or deny Ms. Thompson's competency; but have no reason at this juncture to dispute it. *D's Exhibit 2, ¶42.*

4. That SFRRWD is indebted to the Arkansas Natural Resources Commission (the "Commission") by virtue of a loan by the Commission to SFRRWD and the income derived therefrom is pledged to the Arkansas Natural Resources Commission to repay such loan.

Response: The City admits that the only outstanding indebtedness that the District has to the Arkansas Natural Resources Commission ("Commission") is a loan for approximately \$51,500.00, which, upon information and belief, was approved in July 2016, and closed January 9, 2017. However, no discovery having been conducted, and the City does not know what "pledges" the District has made to the Commission. *D's Exhibit 2, ¶¶ 30, 31.*

5. That the City of Marmaduke provides water service to an area of SFRRWD's territory without our permission or the approval of any governmental authority.

Response: Admitted and denied. The area in dispute is not the District's "exclusive" territory, and the City is not required to seek either the District's authority or any other governmental entities authority to continue providing water services to its long-time and pre-existing customer. The City is providing water service to a portion of the ARI Plant that is physically located within the geographical service territory of the District as set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. *D's Exhibit 2, passim.*

6. That the revenue derived from water provided to American Railcar Industries, Inc. ("ARI") is being paid to the City of Marmaduke without our permission or the approval of any governmental authority.

Response: Admitted and Denied. The City is receiving revenue from ARI from the water services the City provides to the entirety of the ARI Plant. The City denies that either it or ARI was required to seek either the District's authority or any other governmental entities authority to continue providing and receiving water services. The City further states that having provided water to its long time and pre-existing customer, ARI, ARI is obligated to pay the City for the water provided. *D's Exhibit 2, passim.*

7. That the revenue for such water services should paid to SFRRWD and is needed by SFRRWD to assist in repaying its loan to the Commission.

Response: Denied. Whether the revenue for such water services should be paid to the District is a legal opinion and conclusion that Ms. Thompson is not qualified to render. Moreover, the City further states that having provided water to its long time and pre-existing customer, ARI, ARI is obligated to pay the City for the water provided. Whether the revenue for such services is needed by the District to assist in repaying its loans to the Commission is an issue of fact that needs to be and should further be explored through the discovery process. *D's Exhibit 2, ¶ 35.*

8. That the City of Marmaduke is providing water to the eastern portion of the ARI campus which includes Building No. 3 as shown on Exhibit C attached to the Motion for Summary Judgment. Such Building No. 3 is located in the territory of SFRRWD.

Response: The City admits that it is providing water services to the entirety of the ARI Plant, a portion of which is physically located within the geographical service territory set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. *D's Exhibit 2, passim.*

9. That despite demand by SFRRWD for the City of Marmaduke to stop providing water service to a Building No. 3 on ARI's campus, which is located within SFRRWD's exclusive service territory, the City of Marmaduke has refused to discontinue such service.

Response: The City admits that the District requested that the City discontinue providing water services to a portion of the ARI Plant which is included within the geographical service territory set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion, and further admit that it has declined to do so. The City affirmatively states that it has been and continues to provide water services to its longtime customer, ARI. The City denies that the District has the "exclusive" right to provide water to the portion of the ARI Plant at issue. *D's Exhibit 2, passim.*

10. That the SFRRWD is ready, willing and able to connect to Building No. 3 and provide water service to ARI's Building No. 3 within a reasonable period of time following the granting of a judgment in its favor.

Response: Denied. *D's Exhibit 2, ¶ 34.*

11. The statements set forth herein are true and correct to the best of my knowledge, information and belief.

Response: The City is without sufficient information to admit or deny the veracity of Ms. Thompson's statements, as no discovery having been conducted, and no deposition of Ms. Thompson having been taken; therefore, paragraph eleven is denied.

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.

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.

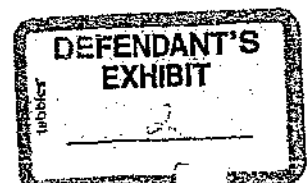
4. My current term expires on December 31, 2018.

5. 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*.

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

7. 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*.

8. To date, the City still owes the USDA upwards of two hundred thousand dollars



and zero cents (\$200,000.00). *See Exhibit 4.*

9. 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 into the City.

10. 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.*

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

12. In conjunction with the construction of the West Plant, the City annexed all of the real property upon which the West Plant was located into the City, at which time, the City began supplying both water and sewer services to ARI.

13. Upon information and belief, on September 1, 1999, the District obtained federal financing through the Farmers Home Administration.

14. 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.

15. The District's USDA loan was paid off when the District refinanced its indebtedness through a local bank, First National Bank of Paragould. *See Exhibit 5; June 21, 2016 City Council Meeting Minutes, attached and hereinafter referred to as Exhibit 6.*

16. The District did not begin providing water services to customers until early 2000. *See Exhibit 5.*

17. In 2006, ARI began construction of an additional plant located adjacent to and east

of the West Plant (the "East Plant").

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

19. 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.*

20. In 2015, ARI expanded its facility by building an additional plant ("Refurb Plant"), which is located just to the east of the East Plant.

21. 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.

22. 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.

23. The City has provided over a million gallons of water to the Refurb Plant at a cost of approximately \$2000.00.

24. The Refurb Plant began receiving water from the City in April of 2016.

25. In the fall of 2016, 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.

26. To date, the City has not yet recouped the cost of the water meter.

27. In March 2016, the District demanded that the City relinquish the East Plant of ARI

as a customer.

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

29. 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.*

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

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

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

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

34. The City does not believe that the District has sufficient capacity or infrastructure to provide water services to ARI.

35. 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.

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

37. 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.

38. ARI has begun the process to annex the East Plant and the Refurb Plant into the

city limits of the City.

39. 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.

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

41. I am aware that Tonya Thompson is the Manager for the District, and as such, I would assume that she had some personal knowledge about the workings of the District, but to what extent, I do not know.

42. I do not know how old Ms. Thompson is, or what her mental status or competency is, but at this juncture, I have no reason to dispute that she is over the age of 18 and of sound mental capacity.

Further, Affiant Sayeth Not.

Steve Dixon
Steve Dixon, Affiant

2-22-2018
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, 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 22 th day of February 2018.

My Commission Expires:

03-10-2025

Betty Jackson
Notary Public

BETTY JACKSON
GREENS COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires March 10, 2025
Commission No. 12555920

C E R T I F I C A T E

I, R. 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 36 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 11 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 fixed the seal of said Town, this 17th day of October, 1935.

DEFENDANT'S EXHIBIT

X ORDINANCE NO. 55

AN ORDINANCE PROVIDING FOR THE CONSTRUCTION AND OPERATION OF A WATERWORKS SYSTEM FOR MARSHALL, 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 Marshall, Green 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 amount of 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 pump-house 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, Kelly's Addition to Kermaduck, and the one of East Half of Lot 1, Block 1, Glasscock's Addition to Kermaduck, now owned by the Incorporated Town of Kermaduck.

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 Regular Session of the General Assembly of the State of Arkansas of the year 1933, as amended, together with certain funds to be furnished by the United States sufficient to construct said project and to provide,

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 \$45,700.

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 5. That the following be fixed as the minimum 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

1st	5,000 gallons per month	\$.50 per M.
Next	5,000 gallons per month	.25 per M.
Next	10,000 gallons per month	.15 per M.
All over	20,000 gallons per month	.10 per M.
Minimum monthly charge		1.75 per M.
For 1 year hydrant only, \$1.50 per month allowing 1,500 gallons.		

INDUSTRIAL RATE

1st	20,000 gallons per month	\$.50 per M.
Next	20,000 gallons per month	.15 per M.
Next	40,000 gallons per month	.10 per M.
Next	100,000 gallons per month	.10 per M.
All over	200,000 gallons per month	.05 per M.
Minimum charge	per month	\$.50 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 expenses 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 service 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 Funds.

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.

(b) Depreciation Fund. After paying the amount provided above into the Bond Fund in any period, ten (10) per centum of the remaining monies received in the Salar Fund during such period shall be paid into a separate fund, (herein called "Depreciation Fund"), which provision 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 hereinbefore set forth.

(c) 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 such 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 excess 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 6. 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 151, Acts of Arkansas, 1933, 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 revenues 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, 1926 (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 \$27,500 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 may be designated "Waterworks Revenue Bond", be dated November 1, 1925, be in the denomination of \$500 each, be numbered from 1 to 55, both inclusive, and matere in numerical order on November in each of the years and in the amounts

as follows:

<u>Years</u>	<u>Amounts</u>	<u>Years</u>	<u>Amounts</u>
1929	500	1951	1,500
1930	500	1952	1,500
1931	500	1953	1,500
1941	1,000	1954	1,500
1942	1,000	1955	1,500
1943	1,000	1956	1,500
1944	1,000	1957	1,500
1945	1,000	1958	1,500
1946	1,000	1959	1,500
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 signatures appearing on said coupons; that the Bonds and coupons 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 Herndon at Herndon, 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 revenue pledged to said fund, which amount of said revenue is hereby pledged and mortgaged for the equal and

regular payment of the bonds and shall be used for no other purpose than to pay the principal and interest of the bonds as the same accrue.

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 MARSHALL
WATERWORKS IMPROVEMENT BOND.

KNOW ALL MEN BY THESE PRESENTS: That The Incorporated Town of Marshall, 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 hereon 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 Marshall, at Marshall, 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 181 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 151 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 coupons thereof, and in favor of the holders of to and in favor of the holders of each 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 expended, 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 Harwood, 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 facsimile signatures of said Mayor and Recorder all as of the first day of November, 1935.

(SEAL)
ATTENT)

Mayor

Recorder

(Town of Coupon)

No. _____

\$10

On the first day of _____, 19____, the Incorporated Town of Harwood, 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 of Harwood, Arkansas, in such funds as at the time of payment hereof are 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, aggregating the revenue of the System and its application to the respective funds 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 15. 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 16. 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 17. 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 fiscal 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 121, 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 121, and may by proper writ 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 or 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. In the case that a record of the receipt of the revenues and agreement not to mortgage the system may be preserved, the Town Recorder is and is hereby authorized to file with the Recorder of Deeds 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 Marsden, Arkansas, has adopted the ordinance hereinafter set out; that the said Council contemplates the issuance of the bonds described in said ordinance; and that any person interested may appear before the said Council upon the 20th day of October, 1938, 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 Town
of Marsden, 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

P. E. Jordan October 14, 1935.
Recorder

APPROVED:

J. A. Bullard
Mayor

PRESENT:

(NAME)

P. E. Jordan
Recorder

Recorded October 15, 1935.

(NAME) P. E. Jordan
Recorder

On motion and unanimous vote the meeting adjourned.

(NAME) P. E. Jordan
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
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		888.11	1,247.89	2,136.00	R	05.0000	030617
PAYMENT		1,356.63	778.47	2,136.00	R	05.0000	041817
PAYMENT		949.21	1,192.79	2,136.00	R	05.0000	051817
PAYMENT		869.80	1,166.40	2,136.00	R	05.0000	061817
PAYMENT		933.51	1,202.43	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		908.98	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						

ALL LOAN ACTIVITY	UNPD INTEREST	UNPD PRIN	TOTAL
0.00	11,918.76	13,713.24	25,632.00
BORR BAL	UNPD INTEREST	UNPD PRIN	TOTAL
	391.71	219,960.40	219,960.40

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
 4800 GOODFELLOW BLVD FC-1332
 ST. LOUIS, MO 63120

RECIPIENT'S/LENDER'S federal identification number: **431757115**

PAYER'S/BORROWER'S taxpayer identification no.: *******2172**

PAYER'S/BORROWER'S name, street address (including apt. no.), city or town, state or province, country, and ZIP or foreign postal code
MARMADUKE, CITY OF 09-702
P O BOX 20B
MARMADUKE, AR 72443

10 Number of mortgaged properties: **11 Other**

IRS FORM 1098 DOES NOT APPLY TO YOUR LOAN

Account number (see instructions)

1 Mortgage interest received from payer/borrower: \$ **0.00**

2 Outstanding mortgage principal as of 12/31/2017: \$

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 is checked. If "No", see box 8 or 9 below.

8 Address of property securing mortgage: \$

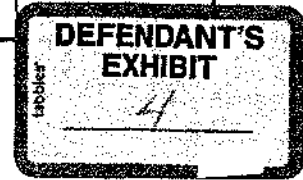
9 If property securing mortgage has no address, below is the description of the property: \$

OMB NO. 1545-0901
2017
 (Rev. June 2017)
 Form 1098

CORRECTED PI checked
Mortgage Interest Statement

COPY B FOR PAYER/BORROWER

The information in boxes 1 through 10 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, premiums (in boxes 1 and 5) or because you didn't report the refund of interest (box 4) or because you claimed a non-deductible item.



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.

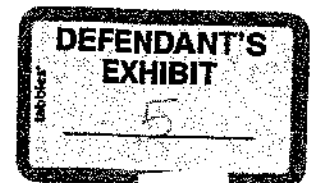
As briefly as possible, I would like to give you some background on our Water District. In the early 1980's, a man and his wife, "Soapy and Eugenia Thompson," from the Neighbors Corner community, saw a need for our friends and neighbors to have access to Clean, Safe, Reliable and Affordable Drinking 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 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.

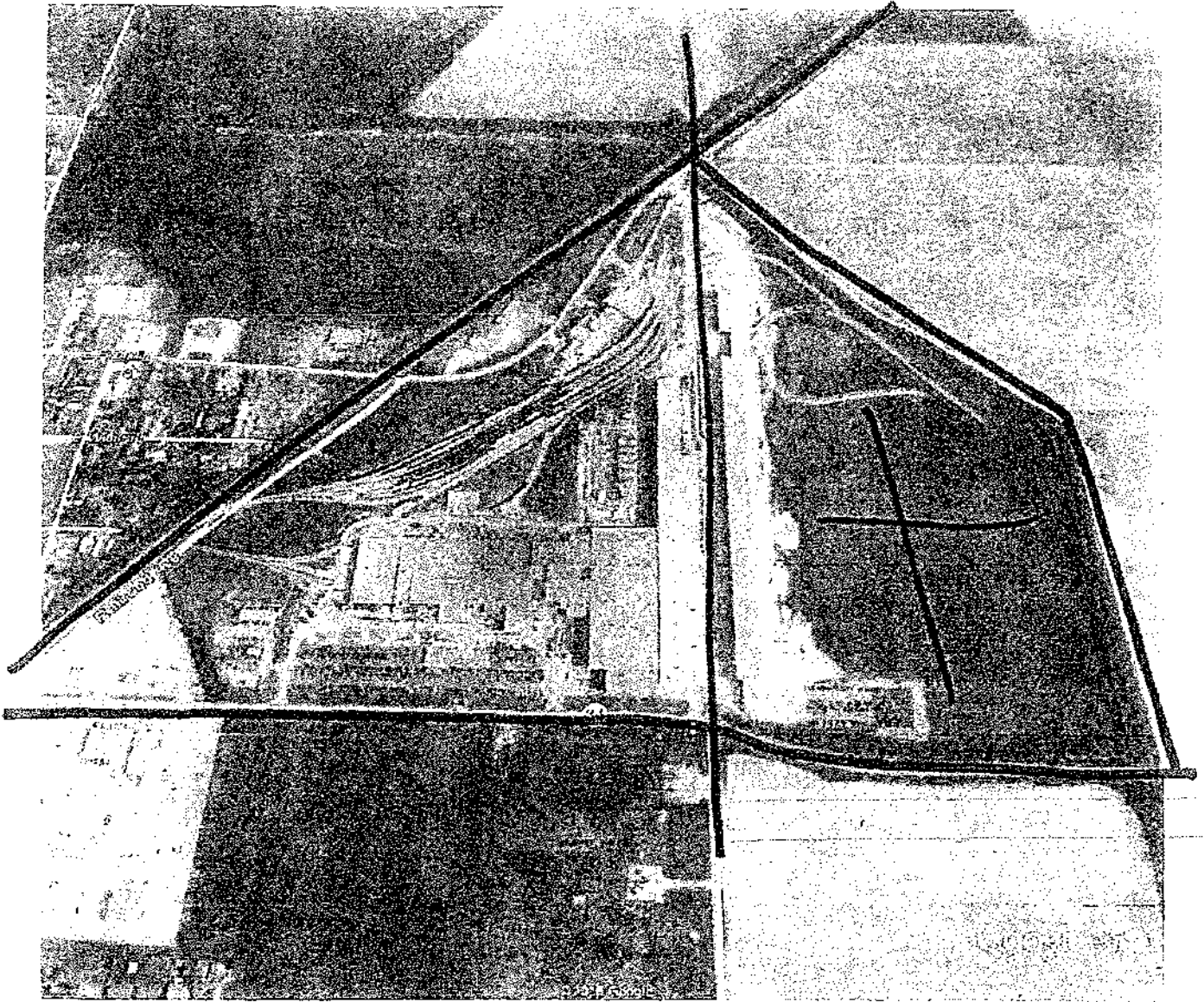
If ARI Bullies this situation into Court, there are going to be two losers, the City of Marmaduke and St. Francis Water District. This couldn't keep from causing hard feelings between friends and neighbors.

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 70
Little Rock, Arkansas 72201
May 28, 1987

Phone 501-324-1611

*
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.

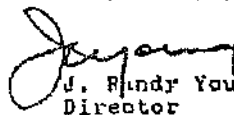
There are certain benefits which can be gained from membership. The District could provide comprehensive planning of water resources in the region. The planning would be beneficial to the region's long term growth. The District could facilitate planning for emergencies such as loss of a well and undertake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

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 Warnath, Clay County Representative Jessica Rainwater, Mike Peters, Director of Operations at ARI Ronald Pigue Sr., Brad Nelson, Thomas Kueter, Gerald Eaker, 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 Warnath 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 GIF 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

**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.

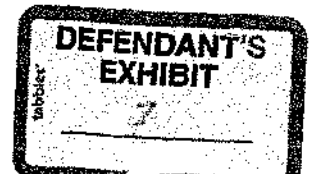
2. I am the Capital Projects Manager of American Railcar Industries, Inc. ("ARI"), a position I have held since 2012, and I am able to speak to the facts set forth in this Affidavit on behalf of ARI.

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 02.22.18

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 #15028655

COPY¹

1 IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
2 GREENWOOD DIVISION
3 CIVIL DIVISION VI

4 CITY OF FORT SMITH, ARKANSAS,
5 Plaintiff,

6 vs. CASE NO. CIV-2003-156-G

7 SOUTH SEBASTIAN COUNTY WATER USERS ASSOCIATION, A
8 PUBLIC FACILITIES BOARD,
9 Defendant.

10 ORAL DEPOSITION OF DAVID FENTER

11 APPEARANCES:

12 MR. JERRY L. CANFIELD, Attorney at Law
13 Daily & Woods
14 623 Garrison Avenue, Suite 600
15 Post Office Box 1446
16 Fort Smith, Arkansas 72902

17 *** For the Plaintiff ***

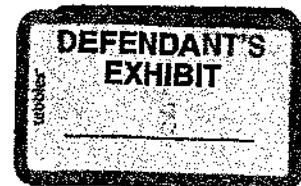
18 MR. PETER G. KUMPE, Attorney at Law
19 Williams & Anderson
20 111 Center Street, 22nd Floor
21 Little Rock, Arkansas 72201

22 *** For the Defendant ***

23 MR. EDWARD C. SWAIM, Attorney at Law
24 Soil & Water Conservation Commission
25 101 East Capitol Avenue, Suite 350
Little Rock, Arkansas 72201

*** For the Witness ***

21 TAKEN BEFORE Garold W. Pritsch, Certified Court
22 Reporter, LS Certificate No. 329, Bushman Court
23 Reporting, 620 West Third Street, Suite 201, Little
24 Rock, Arkansas 72201 on August 3rd, 2004 at the
25 Arkansas Soil and Water Conservation Commission, 101
East Capitol Avenue, Suite 350, Little Rock, Arkansas
commencing at 1:39 p.m.



GAROLD W. PRITSCH, CCR
BUSHMAN COURT REPORTING
(501) 372-5115

1 Is Exhibit 2 the documentary record in the
2 Commission that describes the protected area as
3 prescribed by the General Assembly in that statute?

4 MR. CANFIELD: Object to the form of the
5 question.

6 BY MR. KUMPE (CONT.):

7 Q. You can answer.

8 A. I don't know that I'm qualified to answer. I
9 guess I would say it's two separate matters.

10 Q. What are two separate matters?

11 A. This map was submitted for Water Plan
12 Compliance. It wasn't submitted as part of the
13 financing and talking about what assets are protected
14 by this statute.

15 Q. Well, what is the service area? What is the
16 service area of South Sebastian?

17 MR. CANFIELD: Object to the form of the
18 question in that it calls for an
19 interpretation of the statute. You can go
20 ahead and answer.

21 MR. FENTER: What I've been told since
22 I've been in Soil & Water, that as far as the
23 service area is to be protected, what we
24 would look at is physical assets in the
25 ground, pipes, and customers served as the

GAROLD W. PRITSCH, CCR
BUSHMAN COURT REPORTING
(501) 372-5115

1 service area. It wouldn't necessarily be a
2 map or a drawing of boundaries.

3 Basically, I was told this statute was
4 meant to protect, in effect, revenue
5 streams.

6 BY MR. KUMPE (CONT.):

7 Q. Which is the customer base?

8 A. Which is the customer base.

9 Q. Okay. Fair enough.

10 That file has a tape of the hearing, and that's
11 the Water Plan Compliance hearing, doesn't it?

12 A. That's true.

13 Q. Have you listened to that tape?

14 A. I've not listened to it all the way through. We
15 were asked to make copies of it and stuff, and I
16 listened to, like, the beginning and stuff to make sure
17 that it was still a good copy -- or not a copy, but a
18 good quality so that we could make copies of it.

19 Q. I'm going to hand you a transcription of that
20 tape, and you remember that Steve Lute presided?

21 A. Yeah, I think I saw that in the file.

22 Q. Do you remember that Danny Byrd was the engineer
23 that represented South Sebastian at the meeting?

24 A. I didn't remember that.

25 Q. Well, let me just ask you when you listened to

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

2

3 I, GAROLD W. PRITSCH, LS No. 329, Certified
4 Court Reporter in the State of Arkansas, certify that
5 the foregoing pages 1 through 66 constitute a true
6 and
7 correct copy of the original deposition of DAVID
8 FENTER
9 taken on August 3rd, 2004.

8 I declare under penalty of perjury under the
9 laws of the State of Arkansas that the foregoing is
10 true and correct.

11 Dated this 11th day of August, 2004.

12

13

14 Garold W. Pritsch, CCR, LS No. 329, Notary
15 Public in and for Garland County, Arkansas

16

My Commission expires February 27, 2010.

17

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FILED

FEB 23 2018

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

**DEFENDANT'S BRIEF IN SUPPORT OF ITS RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Comes now, the City of Marmaduke, Arkansas ("the City"), by and through its attorney, Amanda LaFever, and for its Brief in Support of its Response to Plaintiff's Motion for Summary Judgment, states:

I. INTRODUCTION

In filing its motion for summary judgment, the St. Francis River Regional Water District ("the District") has taken on the burden to establish that the absence of any genuine dispute that it is the "current provider" to the property at issue under the anti-curtailment statute on which its cause of action is premised. The District also must show there are no triable issues as to its alleged commitment of revenue from that property to repay certain indebtedness. The District has not come close to carrying those burdens. Its conclusory assertion that the City is unlawfully providing water service to portions of American Railcar Industries, Inc.'s Marmaduke facility ignores the rights of the City and contradicts the facts of the case. Multiple factual issues remain that require discovery—as no discovery has been conducted—and for that reason alone, the District's motion is premature and should be denied. Moreover, on the facts as they stand, the District's reliance on Ark. Code Ann. § 15-22-223(a) and Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures is misplaced for the reasons set forth more fully below. As such, this Court should deny the District's motion.

II. FACTS

Marmaduke is an incorporated municipality and is a City of the Second Class. Ark. Code Ann. § 14-34-102; 14-37-105. Cities such as Marmaduke are able to, generally,

- (1) Sue and be sued;
- (2) Contract and be contracted with;
- (3) Acquire, hold, and possess real and personal property;
- (4) Associate with other municipalities for the promotion of their general welfare;
- (5) Join with other municipalities in the purchase of equipment, supplies, or services;
- (6) Have a common seal and change and alter it at pleasure; and
- (7) Exercise such other powers and have such other privileges as are incident to other corporations of like character or degree, not inconsistent with the provisions of this subtitle or the general laws of this state.

Ark. Code Ann. § 14-54-101 (West). Moreover, municipal corporations shall have power to:

- (1) Provide a supply of water by constructing or acquiring, by purchase or otherwise, wells, pumps, cisterns, reservoirs, or other waterworks and to regulate them;
- (2) Prevent unnecessary waste of water; and
- (3) Prevent pollution of water or injury to waterworks.

Ark. Code Ann. § 14-54-702(a) (West). However, more importantly, “for the purpose of establishing and supplying waterworks, *any municipal corporation may go beyond its territorial limits.*” Ark. Code Ann. § 14-54-702(b) (West) (emphasis added); *see also City of Little Rock v. Chartwell Valley Ltd. Partnership*, 299 Ark. 542, 545, 772 S.W.2d 616, 618 (1989) (setting forth the Supreme Court of Arkansas’s belief that “it is beyond question that the General Assembly fully intended to empower municipalities with the authority to extend water and sewer services beyond their boundaries.”).

“A municipality constructing a waterworks system may sell the water to private consumers.” *Davis v. City of Blytheville*, 2015 Ark. 482, 6, 478 S.W.3d 214, 218 (2015) (citing Ark. Code Ann. § 14-234-203(d)). “The municipality may fix rates for the consumers.” *Id.* (citing Ark. Code Ann. § 14-234-214(a)). “Because it is necessary for the public health, safety, and

welfare, these statutes are liberally construed to effectuate the purposes of the statutes.” *Id.* (citing Ark. Code Ann. § 14-234-102). “Municipalities are also authorized and empowered to own, acquire, construct, equip, operate, and maintain a sewage collection system or a sewage treatment plant.” *Id.* (citing Ark. Code Ann. § 14-235-203(c)(1)). “Again, being necessary for the public health, safety, and welfare, these statutes are liberally construed to effectuate the purposes of the statutes.” *Id.* (citing Ark. Code Ann. § 14-235-202).

The City has been continually providing water and sewer services to customers since October of 1935. *Exhibit 2*, ¶ 5; *see also*, *City of Marmaduke Ordinance #55*, attached as *Exhibit 3*. In 1987, the St. Francis River Regional Water District (“District”) was created, but it provided no services at that time. *Exhibit 2*, ¶ 6. The District is organized under the Regional Water Distribution Act, codified at Ark. Code Ann. § 14-116-101 *et seq.*, which is not applicable to municipalities. Ark. Code Ann. § 14-116-107.

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. *Exhibit 2*, ¶ 7; *see also*, *Annual Report for City of Marmaduke's USDA Loan*, attached as *Exhibit 4*. To date, the City still owes the USDA upwards of two hundred thousand dollars and zero cents (\$200,000.00). *Exhibit 2*, ¶ 8; *see also*, *Exhibit 4*.

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 into the City. *Exhibit 2*, ¶ 9; *Exhibit 7*, ¶ 3. 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. *Exhibit 7*, ¶ 4.

When the West Plant was built, 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. *Exhibit 2*, ¶ 11; *see also, Presentation by District at City Council Meeting*, attached and hereinafter referred to as *Exhibit 5*; *Exhibit 7*, ¶ 5. However, the City *did* have the ability and infrastructure to provide water services to ARI. *Exhibit 2*, ¶ 10. In conjunction with the construction of the West Plant, the City annexed all of the real property upon which the West Plant was located into the City, at which time, the City began supplying both water and sewer services to ARI. *Exhibit 2*, ¶ 12; *Exhibit 7*, ¶ 6.

On September 1, 1999, the District obtained federal financing through the Farmers Home Administration. *Exhibit 2*, ¶ 13. According to the USDA, which is 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 or to any other federal government agency. *Exhibit 2*, ¶ 14. The District's USDA loan was paid off when the District refinanced its indebtedness through a local bank, First National Bank of Paragould. *Exhibit 2*, ¶ 15; *see also, Exhibit 5*; and *June 21, 2016 City Council Meeting Minutes*, attached and hereinafter referred to as *Exhibit 6*.

In early 2000, the District began providing water services to customers. *Exhibit 2*, ¶ 16; *see Exhibit 5*. In 2006, ARI began construction of an additional plant located adjacent to and east of the West Plant (the "East Plant"). *Exhibit 2*, ¶ 17; *Exhibit 7*, ¶ 7. The City continued to be the sole provider of water and sewer services to both the West Plant and the East Plant. *Exhibit 2*, ¶ 18; *Exhibit 7*, ¶ 8. The District raised no issue during the 2006 construction about the City providing water services to ARI; although, there is evidence 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. *Exhibit 2*, ¶ 19; *see Exhibit 6*.

In 2015, ARI expanded its facility by building an additional plant (“Refurb Plant”), which is located just to the east of the East Plant. *Exhibit 2*, ¶ 20; *Exhibit 7*, ¶ 9. 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. *Exhibit 7*, ¶ 10.

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. *Exhibit 2*, ¶ 21; *Exhibit 7*, ¶ 12. 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 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 operations 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. *Exhibit 7*, ¶ 13. Based on the foregoing concerns, ARI determined that it wanted to continue receiving water services from the City. *Exhibit 7*, ¶ 14; *Exhibit 2*, ¶ 22.

In March 2016, the District demanded that the City relinquish the East Plant of ARI as a customer, and ARI notified the City of its intention to continue purchasing water and sewer

services from the City. *Exhibit 2*, ¶ 26; *Exhibit 7*, ¶ 15. Prior to March 2016, the District did not once seek to or claim any right to serve any portion of ARI. *Exhibit 2*, ¶ 27; *Exhibit 7*, ¶ 16.

The work being done by Forcum Lannom Contractors, LLC 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, and the Refurb Plant began receiving water from the City. *Exhibit 2*, ¶ 24; *Exhibit 7*, ¶ 11. 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.” *Exhibit 2*, ¶ 29; *see Exhibit 5; Exhibit 6*.

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. *Exhibit 7*, ¶ 17. In conjunction with that project, the City provided a water meter, which was installed at the southwest corner of the East Plant. *Exhibit 2*, ¶ 25; *Exhibit 7*, ¶ 18. The meter cost the City \$5,300.00, which to date, the City has not yet recouped. *Exhibit 2*, ¶¶ 25, 26. 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. *Exhibit 7*, ¶ 19.

The District is currently indebted to the Arkansas Natural Resources Commission (“the Commission”) for approximately \$51,500.00. *Exhibit 2*, ¶ 29. That particular loan was approved in July 2016, closed on January 9, 2017, and the funds were disbursed sometime after January 9, 2017. *Exhibit 2*, ¶ 30. The District has never provided water services or waste water services to any portion of ARI. *Exhibit 2*, ¶ 30; *Exhibit 7*, ¶ 20.

The City has provided over a million gallons of water to the Refurb Plant at a cost of approximately \$2000.00. *Exhibit 2*, ¶ 23. 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. *Exhibit 2*, ¶ 32. The City does not believe that the District has sufficient capacity or infrastructure to provide water services to ARI. *Exhibit 2*, ¶ 31. The City was told by representatives of ARI that ARI intends to use the City for all of its water service needs. *Exhibit 2*, ¶ 33. ARI has begun the process to annex the East Plant and the Refurb Plant into the city limits of the City. *Exhibit 2*, ¶ 34; *Exhibit 7*, ¶ 21.

III. SUMMARY JUDGMENT STANDARD

“Summary judgment is a remedy that should only be granted when there are no genuine issues of material fact and when the case can be decided as a matter of law.” *Hamilton v. Gen. Ins. Co. of Am.*, 71 Ark. App. 353, 356, 32 S.W.3d 16, 18 (2000). “The standard is whether the evidence is sufficient to raise a fact issue, not whether the evidence is sufficient to compel a conclusion.” *City of Lowell v. City of Rogers*, 345 Ark. 33, 39, 43 S.W.3d 742, 745–46 (2001) (internal citations omitted). “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.” *City of Lowell*, 345 Ark. at 39, 43 S.W.3d at 746 (internal quotations marks and citations omitted).

“The burden of sustaining a motion for summary judgment is always the responsibility of the moving party.” *Hamilton*, at 357, 32 S.W.3d at 18. “All proof submitted must be viewed in a light most favorable to the party resisting the motion, and any doubts and inferences must be resolved against the moving party.” *Id.*, 32 S.W.3d at 18.

“The object of summary-judgment proceedings is not to try the issues, but to determine whether there are any issues to be tried, and if there is any doubt whatsoever, the motion should be denied.” *City of Lowell*, 345 Ark. at 39, 43 S.W.3d at 746 (internal citations omitted). “Summary judgment is not proper . . . where evidence, although in no material dispute as to actuality, reveals aspects from which inconsistent hypothesis might reasonably be drawn and reasonable minds

might differ.” *Town of Lead Hill v. Ozark Mountain Reg’l Pub. Water Auth. of State*, 2015 Ark. 360, 3, 472 S.W.3d 118, 121–22 (2015).

IV. ARGUMENT

A. Because Issues of Unknown Material Fact Exist, The District’s Motion Should Be Denied.

The District’s motion is premature, and there are a number of unknown facts that must be known prior to any adjudication in this matter—facts that can and should be explored during the discovery process. To date, no discovery has been conducted by either the City or the District. And the City filed an Amended Answer prior to filing its response to the District’s motion.

Issues of unknown material fact that must be explored and/or resolved prior to an adjudication of this matter include, but are not limited to the following:

- a. The ability and capacity of the District to provide water services to ARI at any point in time, historically and currently, including but not limited to when ARI was built in 1999, when the East Plant was built in 2006, when the Refurb Plant was built in 2015, and presently;
- b. 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 attached as *Exhibit A* to Plaintiff’s Motion;
- c. The ability of the District to provide water service to ARI to be used in ARI’s ordinary business operation and in the event of a fire or any other catastrophic event requiring water.
- d. Whether the District has sufficient infrastructure to provide water service to ARI;
- e. Whether the District has ever provided or made available water services to ARI;

- f. Whether the District is indebted to the Commission, the USDA or any other government body or agency;
- g. The time period that the District first became aware or should have been on notice that the City was providing water services to the East Plant and Refurb Plant;
- h. Whether the District has obtained approval from the Commission to provide water services to ARI.

These questions must be answered in order to analyze this matter under the law cited below.

In asserting that it has the “exclusive right” to provide water to a specific geographic area, the District relies on Arkansas’s anti-curtailment statute, Ark. Code Ann. § 15-22-223(a), which provides 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 under the Arkansas Water Plan established in § 15-22-503, *if applicable*.

Ark. Code Ann. § 15-22-223(a) (emphasis added). Here, it is not unlawful for the City to provide water to ARI because such services are not being provided by a current provider (i.e. the District) who is indebted to the Commission. The purpose of this statute is to protect the revenue stream of existing customers, which serves as collateral for the repayment of a loan from the Commission. Since the City was never a customer of the District, the District has no exclusive right to service ARI.

While Arkansas law is sparse in this regard,¹ 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) is instructive. In *City of Lebanon*, the Court was tasked with interpreting the federal anti-curtailment statute, 7 U.S.C.A. § 1926(b), which is similar in thrust and purpose to the statute that the District attempts to rely on in this matter. There, a rural water district brought action against a nearby city, alleging that the city was illegally providing water and sewer services to customers within the district's boundaries, in violation of §1926(b) – just as is the case at issue.

Section 1926(b) provides protection to rural water districts which are indebted to the USDA. Specifically, section 1926(b) provides:

[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.

Id. at 514.

In *City of Lebanon*, “at the time the water district closed on the USDA loan, Lebanon was already providing sewer and water services to some customers within the water district’s

¹ So sparse, in fact, that when Ark. Code Ann. § 15-22-223(a) is keycited through Westlaw, there are exactly twelve citing references: 2 statutes, and 1 law review article, 2 appellate court documents filed by parties to the litigation, 7 trial court documents filed by parties to the litigation, and zero cases.

boundaries. After the water district closed on the USDA loan [the loan was made to extend and improve only the water district's sewer system], Lebanon extended service to additional customers within the water district's boundaries, though not to any customers being served by the water district." *Id.* The water district claimed that because of an anti-curtailment statute, it was entitled to be the "exclusive" water and sewer service provider within its geographical area, including customers to whom Lebanon already provided those services. *Id.* at 514–515.

The Court provided that under the "pipes in the ground" test used in water service cases under statute protecting rural water district's service area from certain incursions by nearby cities, courts examine whether a water district has adequate facilities within or adjacent to the area to provide service to the area within a reasonable amount of time after a request for service is made. *Id.* at 511.

The "pipes-in-the-ground" test for determining whether federally indebted water service association meets service element of test for statutory protection from competitive encroachment on service area under Consolidated Farm and Rural Development Act is satisfied by a showing that water association has adequate facilities within or adjacent to the area to provide service to the area within a reasonable time after a request for service is made, and amounts to asking whether the water association has the capacity to provide water service to a given customer. *Moongate Water Co., Inc. v. Butterfield Park Mut. Domestic Water Ass'n, C.A.10 (N.M.) 2002, 291 F.3d 1262.* Courts have recognized that a rural district's proposed method of providing service, if unreasonably costly or unreasonably delayed, can constitute a constructive denial of service, *see Rural Water District No. 1 v. City of Wilson, 243 F.3d 1263, 1271 (10th Cir.2001)*

Here, the District has not provided any evidence that it has sufficient capacity to provide water to ARI, and even if there is such evidence, Ark. Code Ann. § 15-22-223(a) does not grant

the District exclusivity because the District is and never was a “current provider” of water to ARI, as more fully analyzed below.

B. The District’s reliance on Ark. Code Ann. § 15-22-223(a) and Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures is misplaced.

The District’s reliance on Ark. Code Ann. § 15-22-223(a) is misplaced. “As with any question of statutory interpretation, our analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 129 S.Ct. 681, 685, 172 L.Ed.2d 475 (2009). Pursuant to the plain language of this statute, there are two elements that must be achieved before a water district may claim an exclusive right to provide water.

First and most importantly, the water district must provide that it is the current provider of water services to the person or entity to which it seeks exclusivity. Here, not only is the District not the current provider of water service to ARI, but the District has never been a provider of any amount of water to any portion of ARI’s plant.

Second, in order to claim exclusivity, the District must have pledged or utilized revenue derived from providing water service to repay financial assistance provided by the Commission. But the District was not indebted to the Commission at the time that the City began providing water services to the East Plant and to the Refurb Plant.

The District further attempts to rely on Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures for the proposition that it has an “exclusive” “right” to provide water to ARI’s East Plant and Refurb Plant. Section 605.1 states as follows:

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 revenues 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*.

However, the District's reliance on 605.1 is subject to the same fallacies as its reliance on Ark. Code Ann. § 15-22-223(a). The District further argues that the City should have received approval under the Arkansas Water Plan in order to continue providing water services to ARI, specifically to the East Plant and the Refurb Plant. However, in order to provide those services, all the City did was install a meter. *See D's Exhibit 2, ¶ 25; D's Exhibit 7, ¶ 18.* And, while section 601.6 of the Arkansas Natural Resources Commission Water Plan, states as follows:

601.6 Unless exempt, projects must comply with the Plan

- A. No political subdivision or agency of the state shall spend any state funds on or engage in any water development project until the political subdivision or agency files a preliminary engineering report describing the project with the Commission, and the Commission approves the project as being in compliance with the Arkansas Water Plan.
- B. No political subdivision or agency designated by the Commission as having responsibility for constructing, operating, managing, and maintaining a project shall be dissolved, merged, abolished, or otherwise changed during the life of the water development project approved under the Plan without prior approval of the Commission.

Section 601.7 states in relevant part:

601.7 Projects exempt from review

The following projects are exempt from Water Plan compliance review:

- A. Local drainage facilities for recreational developments of less than five acres;
- B. Drainage facilities associated with street construction or improvements;
- C. *Installation of new meters or connections from existing mains;*
- D. Any project in which game protection funds, or federal or state outdoor recreation assistance grant funds, are to be spent provided such project will not diminish the benefits of any existing water development project; and
- E. Projects that do not meet the applicability requirements of Section 601.4.

As such, the City's installation of the meter is exempt from Water Plan compliance review.

C. Without waiving any of the foregoing arguments, the District lacks infrastructure and resources to serve ARI's Marmaduke Facility such that it has constructively denied service.

When ARI discussed the possibility of receiving water service from the District (the District has never provided waste water service) to a portion of ARI's Marmaduke Facility, the District said that it would need to construct a new well costing as much as \$700,000 and pass that expense onto ARI, tripling the water rates provided to ARI by the City. *See D's Exhibit 7, passim.*

In addition to the overall capacity issue, based on its discussions with the District, ARI was also concerned that the District could not meet ARI's water requirements in the event of a fire; that the District was not currently providing ARI any services so ARI's business operation would be interrupted; and that the District could not provide sewer services so the City would have to continue providing sewer services to the entirety of ARI's Marmaduke Facility. *Id.* The foregoing amounts to a constructive denial of service to ARI that cuts off whatever curtailment rights the District would have under Ark. Code Ann. § 15-22-223 to the extent the District could otherwise satisfy the conditions of that statute. *See City of Lebanon*, 605 F.3d at 522.

V. CONCLUSION

In sum, since (i) there are many factual matters that have yet to be discovered, and (ii) the District does not have exclusivity under Ark. Code Ann. § 15-22-223(a), the District's Motion for Summary Judgment should be denied.

WHEREFORE, the City respectfully requests that the Court grant the relief requested herein, deny the District's Motion for Summary Judgment and issue a scheduling Order setting forth a discovery deadline and a dispositive motions deadline, and for all just and proper relief to which there is entitlement.

Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

BY: 

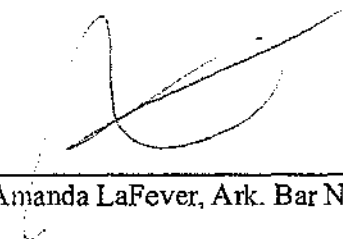
Amanda LaFever, Ark. Bar No. 2012133
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North Little Rock, AR 72115
TELEPHONE: 501-978-6117
FACSIMILE: 501-978-6554
EMAIL: ALaFever@arml.org

CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on February 23, 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via email and via Certified Mail, Return Receipt, postage prepaid to the addresses below:

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

David Tyler
dt@leclaw.com



Amanda LaFever, Ark. Bar No. 2012133

from the legal descriptions in the exhibit attached to the Court's Order. The City denies the remainder of the District's allegations contained in paragraph four (4) of the Complaint, and affirmatively pleads that the City's continued provision of water service to its longstanding customer is legal.

5. Regarding the allegations contained in paragraph five (5) of the Complaint, the City admits that it claims a right to provide water service to its longstanding customer. The City denies the remainder of the District's allegations contained in paragraph five (5) of the Complaint.

6. Regarding the allegations contained in paragraph six (6) of the Complaint, the City admits that American Railcar Industries, Inc. ("ARI") is a foreign corporation authorized to do business in Arkansas with offices located in Marmaduke, Greene County, Arkansas.

7. Regarding the allegations contained in paragraph seven (7) of the Complaint, upon information and belief, the City admits that ARI has railcar production and repair facility in Marmaduke, Arkansas ("ARI's Marmaduke Facility"). The City is without sufficient information to admit or deny whether the railcars are pressurized or non-pressurized or where the railcars are ultimately used and, therefore, denies the same.

8. Regarding the allegations contained in paragraph eight (8) of the Complaint, the City admits that ARI's Marmaduke Facility partially lies within the City of Marmaduke and outside of the City of Marmaduke. The City is without sufficient information to admit or deny whether any particular portion of ARI's Marmaduke Facility lies within the legal descriptions set forth in Exhibit A to the Court's Order establishing the District and, therefore, denies the same. The City denies the remainder of the District's allegations contained in paragraph eight (8) of the Complaint.

9. Regarding the allegations contained in paragraph nine (9) of the Complaint, the City admits that ARI's Marmaduke Facility partially lies within the City of Marmaduke and outside of the City of Marmaduke. The City is without sufficient information to admit or deny whether any particular portion of ARI's Marmaduke Facility lies within the legal descriptions set forth in Exhibit A to the Court's Order establishing the District and, therefore, denies the same. The City denies the remainder of the District's allegations contained in paragraph nine (9) of the Complaint.

10. Regarding the allegations contained in paragraph ten (10) of the Complaint, the City admits that Exhibit C to the Complaint is marked and labeled as described therein and that ARI's Marmaduke Facility lies partially within the City of Marmaduke and outside of the City of Marmaduke. The City is without sufficient information to admit or deny whether any particular portion of ARI's Marmaduke Facility lies within the legal descriptions set forth in Exhibit A to the Court's Order establishing the District and, therefore, denies the same. The City denies the remainder of the District's allegations contained in paragraph ten (10) of the Complaint.

11. Regarding the allegations contained in paragraph eleven (11) of the Complaint, the City admits that when it began providing water services to ARI, no portion of ARI's Marmaduke Facility was outside of the City of Marmaduke. Pleading affirmatively, the City's continued provision of water service to its longstanding customer is legal, and to the extent the allegations, inferences, or innuendo in paragraph eleven (11) of the Complaint suggest otherwise, the City denies the same.

12. Regarding the allegations contained in paragraph twelve (12) of the Complaint, the City admits that it continued providing water services to its preexisting customer when it began providing water services to the portion of ARI's Marmaduke Facility at issue in this lawsuit and

affirmatively pleads that the City's continued provision of water service to its longstanding customer is legal. The City denies the remainder of the District's allegations contained in paragraph twelve (12) of the Complaint.

13. Regarding the allegations contained in paragraph thirteen (13) of the Complaint, the City admits that the District has improperly demanded that the City stop providing water services to ARI and affirmatively pleads that the City's continued provision of water service to its longstanding customer is legal.

14. Regarding the allegations contained in paragraph fourteen (14) of the Complaint, they are denied.

15. Regarding the allegations contained in paragraph fifteen (15) of the Complaint, they are denied.

16. Paragraph number sixteen (16) of the Complaint incorporates paragraph numbers one through fifteen (1-15) of the Complaint. The City herein incorporates its responses to said paragraphs as if set forth word for word.

17. Regarding the allegations contained in paragraph seventeen (17) of the Complaint, the City is without sufficient information to admit or deny the allegations therein; therefore, they are denied.

18. Regarding the allegations contained in paragraph eighteen (18) of the Complaint, upon information and belief, the City admits that it has had no dealings with the Arkansas Natural Resources Commission ("the Commission"). Pleading affirmatively, the City's continued provision of water service to its longstanding customer is legal, and any allegation, inference, or innuendo that the City needs permission from the Commission to do so is denied, as are the remainder of the allegations contained in paragraph eighteen (18) of the Complaint.

19. Regarding the allegations contained in paragraph nineteen (19) of the Complaint, they are denied.

20. Regarding the allegations contained in paragraph twenty (20) of the Complaint, they are denied.

21. Regarding the allegations contained in paragraph twenty-one (21) of the Complaint, they are denied.

22. The City denies that the District is entitled to any of the relief requested in the “Wherefore” paragraph, including but not limited to any subparagraphs set forth therein.

23. The City denies any and all factual allegations in the Complaint not specifically admitted herein.

24. The City reserves the right to plead further upon additional investigation and discovery, to include a counter-complaint or amended answer.

ADDITIONAL AND AFFIRMATIVE DEFENSES

1. The Complaint fails to state a cause of action upon which relief may be granted because it does not allege facts showing that the District is entitled to relief. Specifically, the claim that a portion of ARI’s Marmaduke Facility lies within the District’s geographic boundaries does not establish that the District is the “current provider” to ARI’s Marmaduke Facility, as required by Ark. Code Ann. § 15-22-223.

2. The City asserts that it did not violate any of the District’s rights.

3. The City is entitled to tort, qualified, good faith, and punitive damages immunity under all applicable doctrines of immunity pursuant to state and federal law, including but not limited to Ark. Code Ann. § 21-9-301.

4. The City is entitled to all defenses set forth in Ark. Code Ann. § 15-22-201 *et seq.*

5. The City affirmatively pleads that it has and continues to provide water services to a pre-existing and longstanding customer and that City is legally justified in doing so. The Order of June 27, 1987, merely provides for the creation of the District and the geographic boundaries in which it may provide water services. It does not grant to the District the *exclusive* right to provide water service within its geographic boundaries; on the contrary, it defines the geographic boundaries within which the District *may* provide water service. Indeed, the very statute invoked by the District in this lawsuit, Ark. Code Ann. § 15-22-223—which arguably provides protection upon the pledge of certain revenues from a water district’s customers to service or retire certain types of indebtedness—would be a nullity if water districts were the exclusive provider solely by virtue of their existence and their geographic boundaries.

6. The City affirmatively pleads that it has and continues to provide water services to a pre-existing and longstanding customer and that City is legally justified in doing so. The statute invoked by the District in this lawsuit, Ark. Code Ann. § 15-22-223, is defensive, not offensive, in nature. By its terms, the statute protects the existing revenue stream of water and waste water districts from encroachment by new providers when their revenue stream—which is necessarily derived from their existing customer base—is pledged to service or retire certain types of debt, thereby providing a measure of security for that debt.

7. Without waiving the foregoing, and in the alternative, the District lacks adequate infrastructure and resources to serve ARI’s Marmaduke Facility such that it has constructively denied service. When ARI discussed the possibility of receiving water service from the District (the District has never provided waste water service) to a portion of ARI’s Marmaduke Facility, the District said that it would need to construct a new well costing as much as \$700,000 and pass that expense onto ARI, tripling the water rates provided to ARI by the City. In addition to the

overall capacity issue, based on its discussions with the District, ARI was also concerned that the District could not meet ARI's water requirements in the event of a fire; that the nearest connecting point to the District was three miles away; that the District was not currently providing ARI any services so ARI's business operation would be interrupted; and that the District could not provide sewer services so the City would have to continue providing sewer services to the entirety of ARI's Marmaduke Facility. The foregoing amounts to a constructive denial of service to ARI that cuts off whatever curtailment rights the District would have under Ark. Code Ann. § 15-22-223 to the extent the District could otherwise satisfy the conditions of that statute.

8. The City asserts the defenses of privilege and justification.

9. To the extent applicable, the City asserts the affirmative defenses of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel, consent, statute of limitations, laches, and any and all defenses found in Arkansas Rule of Civil Procedure 8(c).

10. To the extent it may apply, the City asserts that the District has failed to exhaust its administrative remedies or satisfactory prerequisites to this action.

11. The City asserts that it has police powers pursuant to Arkansas Code Annotated §§ 14-54-601, 14-54-602.

12. The City reserves the right to amend or supplement these defenses as additional defenses become apparent or available during the course of litigation.

WHEREFORE, the City requests this Court dismiss the District's Complaint and for all other just and proper relief to which it is entitled.

Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

BY: 

Amanda LaFever, Ark. Bar No. 2012133

Attorney for Defendants

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CERTIFICATE OF SERVICE

I, Amanda LaFever, hereby certify that on February 23, 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via email and via Certified Mail, Return Receipt, postage prepaid to the addresses below:

Jim Lyons
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David Tyler
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Amanda LaFever, Ark. Bar No. 2012133

FILED

FEB 26 2018

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANTS

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Comes now, the City of Marmaduke, Arkansas, defendant herein ("the City"), by and through its attorney, Amanda LaFever, and for its Response to Plaintiff's Motion for Summary Judgment, states:

1. Regarding paragraph one (1) of Plaintiff's Motion for Summary Judgment, the City admits that the St. Francis River Regional Water District ("District") 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. Regarding paragraph two (2) of Plaintiff's Motion for Summary Judgment, the City admits that Marmaduke is an Arkansas municipal corporation located in Greene County, Arkansas.

3. Regarding paragraph three (3) of Plaintiff's Motion for Summary Judgment, the City admits that the District was formed on July 27, 1987 pursuant to an Order the Circuit Court of Greene County, Arkansas, which Order sets forth the geographic boundaries in which the District may provide water services, the legal description for which is attached as *Exhibit A* to Plaintiff's Motion. The City denies that any document or record grants to the District the *exclusive* right to provide water service within its geographic boundaries; on the contrary, the Order of July 27, 1987 defines the geographic boundaries within which the District *may* provide water service. The Court's Order speaks for itself, and the City denies the correctness of Exhibits B and C to the

Complaint to the extent that they vary from the legal descriptions in the exhibit attached to the Court's Order. The City's continued provision of water service to its long-time and pre-existing customer is legal.

4. Regarding paragraph four (4) of Plaintiff's Motion for Summary Judgment, the City admits 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. Regarding paragraph five (5) of Plaintiff's Motion for Summary Judgment, the City admits that the majority of the real property upon which the ARI Plant is located is within the city limits of Marmaduke. The City admits that the real property upon which the easternmost portion of the ARI Plant is located is within the geographical boundaries of the District as set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. The City admits that ARI has a separate building located within those geographical boundaries set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. The City affirmatively states that the District does not have the "exclusive" right to provide water services to ARI, nor has it set forth sufficient evidence, proof, or law establishing such.

6. Regarding paragraph six (6) of Plaintiff's Motion for Summary Judgment, the City admits that there appears to be a line on the google map identified as *Exhibit C*, that the portion of the map labeled "2" is within the Marmaduke city limits, and within the territory serviced by the City water utility. The City admits that the area labeled number "3" contains the entire eastern portion of the Plant, which is in the geographical boundaries set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. The City affirmatively states that the majority of the eastern portion of the Plant was built in 2006, and the City began providing water services to that portion of the Plant in 2006, due to the District's inability to do so. ARI expanded the eastern

portion of its Plant in 2015, when it built the Refurb Plant, which is located within the area of the East Plant. It is the Refurb Plant that is at issue.

7. Regarding paragraph seven (7) of Plaintiff's Motion for Summary Judgment, the City admits that it is providing both water and sewer services to the entire ARI Plant, a portion of which is included within the geographical boundaries set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. The City denies that the ARI Plant is outside of its own service territory.

8. Regarding paragraph eight (8) of Plaintiff's Motion for Summary Judgment, the City admits that the District requested that the City discontinue providing water services to a portion of the ARI Plant which is included within the geographical service territory set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion, and further admits that it has declined to do so. The City affirmatively states that it has been and continues to provide water services to its longtime customer, ARI.

9. Regarding paragraph nine (9) of Plaintiff's Motion for Summary Judgment, the City admits that it did not seek approval, authorization, or permission to continue providing water services to its preexisting customer, ARI, and affirmatively states that it was not required to do so.

10. Regarding paragraph ten (10) of Plaintiff's Motion for Summary Judgment, the City denies that it has admitted all material facts such that Plaintiff should be granted summary judgment, and further denies that it has admitted such in its Answer to Plaintiff's Complaint in any paragraph. Regarding the Tonya Thompson Affidavit, please see attached *Exhibit 1* for the City's Response to the allegations made therein.

11. Regarding paragraph eleven (11) of Plaintiff's Motion for Summary Judgment, upon information and belief, the City admits that the only outstanding indebtedness that the District

has to the Arkansas Natural Resources Commission (“Commission”) is a loan for approximately \$51,500.00, which was approved in July 2016, and closed on January 9, 2017. However, no discovery has been conducted, and the City does not know what, if any, “pledges” the District has made to the Commission, whether the District specifically pledged revenue from services provided to ARI to repay financial assistance provided by the Arkansas Natural Resources Commission, why the loan was obtained, or what the proceeds were or are being used for.

12. Regarding paragraph twelve (12) of Plaintiff’s Motion for Summary Judgment, the City admits that Ark. Code Ann. § 15-22-223 states as follows:

(a) 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.

(b) (1) As a condition of its approval, the commission may require the payment of an equitable portion of the outstanding financial assistance provided.

(2) (A) Any payment made shall reduce the outstanding balance of the financial assistance provided by the commission to the current provider.

(B) To determine the amount of payment, the commission shall base its approval on the following factors:

(i) The impact of the transfer of the area on the current provider’s existing indebtedness and its ability to repay the debt;

(ii) The value, including depreciation, of the current provider’s facilities in the area to be transferred;

(iii) The amount of any expenditures by the current provider for planning, design, or construction of service facilities outside the area, including without limitation treatment, transmission, and storage facilities, that are directly and reasonably allocable to the area to be transferred;

(iv) Any demonstrated impairment of service or increase in cost, including without limitation operation and maintenance, to consumers of the current provider remaining after the transfer of the area;

(v) The impact of future lost revenues from the current provider’s existing consumers in the area to be transferred, but only until the indebtedness is retired;

- (vi) Necessary and reasonable legal expenses and professional fees; and
- (vii) Other relevant factors as determined by the commission.

(3) Upon enactment of this section, financial assistance provided by the commission for potable water or wastewater projects shall be provided only to:

(A) The state, counties, cities, towns, or their agencies or instrumentalities; and

(B) Nonprofit corporations existing on August 1, 1997.

(c) The commission or other parties may institute a civil action in the circuit court of the county where the unlawful activities have or will likely occur to:

(1) Restrain such activities;

(2) Compel compliance with the provisions of this section; and

(3) Recover all costs and expenses incurred as a result of violations of this section.

(d) Nothing in this subchapter limits the applicable federal law.

(e)(1) The state may require that if a borrower of water loans or wastewater loans is able to refinance the amount of the indebtedness to any government lender then outstanding, in whole or in part, by obtaining a loan for the same purpose from a responsible cooperative or private source at a reasonable rate and under reasonable terms for similar loans, then the borrower shall:

(A) Apply for and accept the loan in sufficient amount to repay the government lender; and

(B) Take all actions required in connection with the loan.

(2) Subdivision (e)(1) of this section shall also apply if a borrower seeks financing from the state for any water project or wastewater project that is not currently funded by a government lender. (emphasis added).

The City admits that Section 605.1 of the Arkansas Natural Resources Commission Water Plan

Compliance Review Procedures states as follows:

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 revenues 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*.

(Emphasis added). However, the City denies that either of those provisions precludes the City from continuing to provide water services to its pre-existing customer, ARI, or provides that the District has the *exclusive* right to provide water within its District. The City admits that it did not seek

permission to continue providing water services to its preexisting customer, ARI, and affirmatively states that it was not required to.

13. Regarding paragraph thirteen (13) of Plaintiff's Motion for Summary Judgment, the City denies that Plaintiff is entitled to summary judgment.

14. Regarding the "WHEREFORE" paragraph of Plaintiff's Motion for Summary Judgment, the City denies that Plaintiff is entitled to any relief whatsoever, including the specific relief delineated in subparagraphs a., b., and c.

15. The City affirmatively states that Plaintiff's motion is premature, and there are a number of issues that must be resolved prior to any adjudication in this matter—issues that can be explored during the discovery process. To date, no discovery has been conducted by either the City or Plaintiff.

16. Issues of disputed material fact that must be explored and/or resolved prior to an adjudication of this matter include, but are not limited to the following:

- a. The ability and capacity of the District to provide water services to ARI at any point in time, historically and currently, including but not limited to when ARI was built in 1999, when the eastern expansion was built in 2006, when the Refurb Plant was built in 2015, and presently;
- b. 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 attached as *Exhibit A* to Plaintiff's Motion;
- c. The ability or inability of the District to meet the Plant's requirements in the case of a fire or other catastrophic event;

- d. The District's ability or inability to provide sewer services along with water services to ARI;
- e. The existence of pipes in the ground currently, such that the District could provide water services to ARI with no cessation of ARI's operations;
- f. Whether the District has ever provided or made available water services to ARI;
- g. The degree and extent of the District's indebtedness, what, if any, revenues are pledged to repay the indebtedness, when the indebtedness arose, the purpose of the loan and what the proceeds have been used for, and any exclusivity or rights provided to it by virtue of that indebtedness under either federal or state law, and when such rights, if they ever existed, expired;
- h. The point in time the District first became aware or should have been on notice that the City was providing water services to the portions of the ARI Plant that the District now claims are within its exclusive jurisdiction;
- i. The ability and capacity of the City to provide water services to ARI, historically and currently, including but not limited to when ARI was built in 1999, when the eastern expansion was built in 2006, when the Refurb Plant was built in 2015, and presently;
- j. 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;
- k. The existence of any record, Order, document, agreement, or otherwise in any other case or matter that provides a municipality "exclusive" rights to pre-existing customers and customers within so many miles of the City's limits;

- l. The ability of the City to meet the Plant's requirements in the case of a fire or other catastrophic event;
- m. The City's ability to provide sewer services along with water services to ARI; and
- n. The existence of pipes in the ground currently, such that the City can continue to provide water services to ARI with no cessation of ARI's operations.

17. For the reasons set forth herein, as well as those more fully set forth in the Brief in Support filed contemporaneously herewith, Plaintiff's Motion for Summary Judgment should be denied.

18. In support of this Response and its Brief in Support, the City attaches the following exhibits:

- D's Exhibit 1: Response to Thompson Affidavit;
- D's Exhibit 2: Mayor Dixon's Affidavit;
- D's Exhibit 3-Ordinance #55 Creating City Water System-October 1935;
- D's Exhibit 4-Annual Report for City of Marmaduke's USDA Loan-2017;
- D's Exhibit 5-Presentation by District at City Council Meeting; and
- D's Exhibit 6-June 21, 2016 City Council Meeting Minutes.

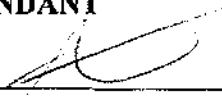
19. Moreover, in addition to denying Plaintiff's Motion for Summary Judgment, the City respectfully requests that the Court issue a scheduling order setting forth a deadline by which all discovery should be completed, and a deadline by which dispositive motions, including motions for summary judgment, should be filed.

WHEREFORE, Defendant requests this Court deny Plaintiff's Motion, issue a scheduling Order, and for all other just and proper relief to which it is entitled.

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 February 23, 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via Certified Mail, Return Receipt, postage prepaid to the address below:

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



Amanda LaFever, Ark. Bar No. 2012133

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

DEFENDANT'S RESPONSE TO TONYA THOMPSON AFFIDAVIT

Comes now, the City of Marmaduke, Arkansas, defendant herein ("the City"), by and through its attorney, Amanda LaFever, and for its Response to Tonya Thompson's Affidavit, states:

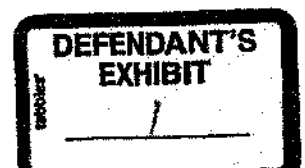
1. My name is Tonya Thompson and I am the Manager for St. Francis River Regional Water District ("SFRRWD").

Response: Admitted. For ease, the City will refer to the St. Francis River Regional Water District as "the District." *See Mayor Dixon Affidavit*, attached to Defendant's Response to Plaintiff's Motion for Summary Judgment and hereinafter referred to as *D's Exhibit 2, ¶ 41*.¹

2. That I have personal knowledge of the facts in this matter. I am above the age of eighteen (18) years and I am of sound mind.

Response: The City is without sufficient information or knowledge to admit or deny Ms. Thompson's age or mental status; but have no reason to dispute either. At this juncture, the City admits that as the manager of the District, Ms. Thompson might have some personal knowledge of the facts at issue in this matter. *D's Exhibit 2, ¶ 42*.

¹ For ease, all remaining *Exhibit* references will simply say "*D's Exhibit*" with the applicable number.



3. That I am competent to testify concerning the facts of which I have personal knowledge which are set forth herein.

Response: The City is without sufficient information or knowledge to admit or deny Ms. Thompson's competency; but have no reason at this juncture to dispute it. *D's Exhibit 2, ¶ 42.*

4. That SFRRWD is indebted to the Arkansas Natural Resources Commission (the "Commission") by virtue of a loan by the Commission to SFRRWD and the income derived therefrom is pledged to the Arkansas Natural Resources Commission to repay such loan.

Response: The City admits that the only outstanding indebtedness that the District has to the Arkansas Natural Resources Commission ("Commission") is a loan for approximately \$51,500.00, which, upon information and belief, was approved in July 2016, and closed January 9, 2017. However, no discovery having been conducted, and the City does not know what "pledges" the District has made to the Commission. *D's Exhibit 2, ¶ 30, 31.*

5. That the City of Marmaduke provides water service to an area of SFRRWD's territory without our permission or the approval of any governmental authority.

Response: Admitted and denied. The area in dispute is not the District's "exclusive" territory, and the City is not required to seek either the District's authority or any other governmental entities authority to continue providing water services to its long-time and pre-existing customer. The City is providing water service to a portion of the ARI Plant that is physically located within the geographical service territory of the District as set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. *D's Exhibit 2, passim.*

6. That the revenue derived from water provided to American Railcar Industries, Inc. ("ARI") is being paid to the City of Marmaduke without our permission or the approval of any governmental authority.

Response: Admitted and Denied. The City is receiving revenue from ARI from the water services the City provides to the entirety of the ARI Plant. The City denies that either it or ARI was required to seek either the District's authority or any other governmental entities authority to continue providing and receiving water services. The City further states that having provided water to its long time and pre-existing customer, ARI, ARI is obligated to pay the City for the water provided. *D's Exhibit 2, passim.*

7. That the revenue for such water services should be paid to SFRRWD and is needed by SFRRWD to assist in repaying its loan to the Commission.

Response: Denied. Whether the revenue for such water services should be paid to the District is a legal opinion and conclusion that Ms. Thompson is not qualified to render. Moreover, the City further states that having provided water to its long time and pre-existing customer, ARI, ARI is obligated to pay the City for the water provided. Whether the revenue for such services is needed by the District to assist in repaying its loans to the Commission is an issue of fact that needs to be and should further be explored through the discovery process. *D's Exhibit 2, ¶ 35.*

8. That the City of Marmaduke is providing water to the eastern portion of the ARI campus which includes Building No. 3 as shown on Exhibit C attached to the Motion for Summary Judgment. Such Building No. 3 is located in the territory of SFRRWD.

Response: The City admits that it is providing water services to the entirety of the ARI Plant, a portion of which is physically located within the geographical service territory set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion. *D's Exhibit 2, passim.*

9. That despite demand by SFRRWD for the City of Marmaduke to stop providing water service to a Building No. 3 on ARI's campus, which is located within SFRRWD's exclusive service territory, the City of Marmaduke has refused to discontinue such service.

Response: The City admits that the District requested that the City discontinue providing water services to a portion of the ARI Plant which is included within the geographical service territory set forth in the legal description attached as *Exhibit A* to Plaintiff's Motion, and further admit that it has declined to do so. The City affirmatively states that it has been and continues to provide water services to its longtime customer, ARI. The City denies that the District has the "exclusive" right to provide water to the portion of the ARI Plant at issue. *D's Exhibit 2, passim.*

10. That the SFRRWD is ready, willing and able to connect to Building No. 3 and provide water service to ARI's Building No. 3 within a reasonable period of time following the granting of a judgment in its favor.

Response: Denied. *D's Exhibit 2, ¶ 34.*

11. The statements set forth herein are true and correct to the best of my knowledge, information and belief.

Response: The City is without sufficient information to admit or deny the veracity of Ms. Thompson's statements, as no discovery has been conducted, and no deposition of Ms. Thompson has been taken; therefore, paragraph eleven is denied.

**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.

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.

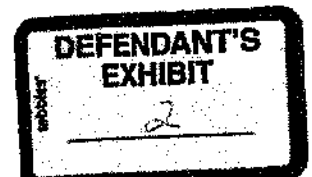
4. My current term expires on December 31, 2018.

5. 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*.

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

7. 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*.

8. To date, the City still owes the USDA upwards of two hundred thousand dollars



and zero cents (\$200,000.00). *See Exhibit 4.*

9. 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 into the City.

10. 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.*

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

12. In conjunction with the construction of the West Plant, the City annexed all of the real property upon which the West Plant was located into the City, at which time, the City began supplying both water and sewer services to ARI.

13. Upon information and belief, on September 1, 1999, the District obtained federal financing through the Farmers Home Administration.

14. 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.

15. The District's USDA loan was paid off when the District refinanced its indebtedness through a local bank, First National Bank of Paragould. *See Exhibit 5; June 21, 2016 City Council Meeting Minutes, attached and hereinafter referred to as Exhibit 6.*

16. The District did not begin providing water services to customers until early 2000. *See Exhibit 5.*

17. In 2006, ARI began construction of an additional plant located adjacent to and east

of the West Plant (the “East Plant”).

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

19. 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.*

20. In 2015, ARI expanded its facility by building an additional plant (“Refurb Plant”), which is located just to the east of the East Plant.

21. 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.

22. 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.

23. The City has provided over a million gallons of water to the Refurb Plant at a cost of approximately \$2000.00.

24. The Refurb Plant began receiving water from the City in April of 2016.

25. In the fall of 2016, 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.

26. To date, the City has not yet recouped the cost of the water meter.

27. In March 2016, the District demanded that the City relinquish the East Plant of ARI

as a customer.

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

29. 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.*

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

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

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

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

34. The City does not believe that the District has sufficient capacity or infrastructure to provide water services to ARI.

35. 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.

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

37. 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.

38. ARI has begun the process to annex the East Plant and the Refurb Plant into the

city limits of the City.

39. 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.

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

41. I am aware that Tonya Thompson is the Manager for the District, and as such, I would assume that she had some personal knowledge about the workings of the District, but to what extent, I do not know.

42. I do not know how old Ms. Thompson is, or what her mental status or competency is, but at this juncture, I have no reason to dispute that she is over the age of 18 and of sound mental capacity.

Further, Affiant Sayeth Not.

Steve Dixon

Steve Dixon, Affiant

2-22-2018

Date

ACKNOWLEDGMENT

State of Arkansas)
)
County of Greene) ss.

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 22 th day of February 2018.

My Commission Expires:

03-10-2025

Betty Jackson
Notary Public

BETTY JACKSON
GREENE COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires March 10, 2025
Commission No. 12886330

C E R T I F I C A T E

I, E. 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 14, 1936, 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 interest and principal in 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 referred in whole upon the permanent records of said Town appearing as book 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 filed the same this 14th day of October, 1936.

DEFENDANT'S
EXHIBIT

X ORDINANCE NO. 55

AN ORDINANCE PROVIDING FOR THE CONSTRUCTION AND OPERATION OF A WATERWORKS SYSTEM FOR MARSHALL, 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 Marshall, 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 amount of 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 pump-house 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 in which part of said waterworks system will be situated.

That 1. Plans 2, Kelly's Addition to Wernersville, and the site of said part of lot 1, Block 1, Glasgow's Addition to Wernersville, now owned by the Incorporated Town of Wernersville,

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 said waterworks system, except from the proceeds of the bonds hereinafter ordered to be issued (hereinafter called the "bonds"), authorized by Act 121 of the acts of the General Assembly of the General Assembly of the State of Arkansas at the year 1902, as amended, together with certain funds to be furnished by the United States sufficient funds to construct said project and be provided,

NOW, ENACTED, BE IT ENACTED 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 \$45,700.

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

DOMESTIC RATE

1st	5,000 gallons per month	\$1.50 per m.
Next	5,000 gallons per month	.25 per m.
Next	10,000 gallons per month	.15 per m.
All over	20,000 gallons per month	.10 per m.
Minimum monthly charge		1.75 per m.
For 1 yard hydrant only, \$1.00 per month allowing 1,500 gallons.		

INDUSTRIAL RATE

1st	50,000 gallons per month	\$4.00 per m.
Next	50,000 gallons per month	1.25 per m.
Next	50,000 gallons per month	1.10 per m.
Next	100,000 gallons per month	1.00 per m.
All over	200,000 gallons per month	.80 per m.
Minimum charge	per month	\$2.00 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 expenses 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 fund 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 Funds.

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 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.

(b) Depreciation Fund. After paying the amount provided above into the Bond Fund in any period, ten (10) per centum of the remaining monies received in the Water Fund during such period shall be paid into a separate fund, (herein called "Depreciation Fund"), which provision 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 hereinbefore set forth.

(c) 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 excess 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 6. 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 121, Acts of Arkansas, 1935, as amended, (in which the Council of the Town shall provide, find and declare the wise 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 "Revenues") 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 revenues of such an entire system and the amount of the revenues which (pursuant to said Section 10) would be deemed to be derived exclusively from such contemplated extension, betterment or improvement is subtracted from the revenues, 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, 1926 (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 \$27,500 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 "Interworks Revenue Bonds", be dated November 1, 1925, be in the denomination of \$500 each, be numbered from 1 to 55, both inclusive, and mature in numerical order on November 1 in each of the years and in the amount

as follows:

<u>Years</u>	<u>Amounts</u>	<u>Years</u>	<u>Amounts</u>
1922	\$200	1921	\$1,500
1939	200	1922	1,500
1940	200	1923	1,500
1941	\$1,000	1924	1,500
1942	1,000	1925	1,500
1943	1,000	1926	1,500
1944	1,000	1927	1,500
1945	1,000	1928	1,500
1946	1,000	1929	1,500
1947	1,000	1930	\$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, 1926 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 families appearing on said coupons; that the Bonds and coupons be payable in such funds as at the time of the respective payments are legal tender for the payment of debts in the United States of America, at the office of the Treasurer of The Incorporated Town of Harrodake at Harrodake, Arkansas.

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

regular payment of the Bonds and shall be used for no other purpose than to pay the principal and interest of the Bonds as the same accrue.

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

No. _____

\$500

UNITED STATES OF AMERICA
COUNTY OF ARKANSAS,
AND INCORPORATED TOWN OF MARSDUKA
WATERWORKS REVENUE BOND.

KNOW ALL MEN BY THESE PRESENTS: That The Incorporated Town of Marsduka, in the County of Greene, State of Arkansas, hereby acknowledges itself to owe 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 hereon 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 Marsduka, at Marsduka, 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 181 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 151 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, to and in favor of the holders of each 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 Marmaduke, 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 facsimile signatures of said Mayor and Recorder all as of the first day of November, 1935.

Mayor

(SEAL)

ATTEST:

Recorder

(Form of Coupon)

No. _____

010

On the first day of _____, 19____, The Incorporated Town of Marmaduke, 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 of Marmaduke, Arkansas, in such funds as at the time of payment hereof are legal tender for the payment of debts due the United States of America, being interest then due on its Marmaduke 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 the, 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, aggregating the revenue 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 supplied 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 fiscal 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 121, 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 121, and may by proper writ 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 16. 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 17. 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 Marsden, Arkansas, has adopted the ordinance hereinafter set forth, that the said Council shall consider the issuance of the bonds described in said ordinance, and that any person interested may appear before the said Council upon the 25th day of October, 1926, at 7:00 p.m., at its usual place of meeting at the Town Hall and present protests. All such hearing and 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 Town
of Marsden, Arkansas.

(Have 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 to be 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

P. E. Jordan October 14, 1935.
Recorder

APPROVED

J. A. Willard
Mayor

UNION

(SEAL)

P. E. Jordan
Recorder

Approved October 15, 1935,

(SEAL) P. E. Jordan
Recorder

On motion and unanimous vote the meeting adjourned.

(SEAL) P. E. Jordan
Recorder

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

SAVE THIS INFORMATION
FOR INCOME TAX PURPOSES

PAGE 001
DATE 12/11/17

DESCRIPTION	ADVANCES	INTEREST	PRINCIPAL	TOTAL	T	INTEREST RATE	EFFECTIVE DATE
BEGIN LOAN BALNCE		960.30	233,673.64	234,633.94			01/11/17
PAYMENT		1,280.40	865.60	2,136.00	R	05.0000	01/10/17
PAYMENT		861.11	1,274.89	2,136.00	R	05.0000	02/06/17
PAYMENT		888.11	1,247.89	2,136.00	R	05.0000	03/06/17
PAYMENT		1,356.63	778.47	2,136.00	R	06.0000	04/18/17
PAYMENT		843.21	1,192.79	2,136.00	R	05.0000	05/18/17
PAYMENT		869.80	1,166.40	2,136.00	R	05.0000	06/18/17
PAYMENT		933.51	1,202.49	2,136.00	R	05.0000	07/18/17
PAYMENT		859.53	1,176.47	2,136.00	R	05.0000	08/18/17
PAYMENT		954.53	1,181.47	2,136.00	R	05.0000	09/18/17
PAYMENT		918.89	1,217.11	2,136.00	R	05.0000	10/18/17
PAYMENT		844.35	1,191.65	2,136.00	R	05.0000	11/18/17
PAYMENT		906.98	1,227.01	2,136.00	R	05.0000	12/18/17
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	01/18/18	
PAYMENT STATUS	ON SCHEDULE			

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

RECIPIENT'S/LANDERS name, street address, city or town, state or province, county, ZIP or foreign postal code, and telephone no.

USDA RURAL DEVELOPMENT
PHONE#(314)497-4910
4900 GOODFELLOW BLVD FC-1332
ST. LOUIS, MO 63120

PAYER'S/BORROWER'S taxpayer identification no.
*****2172

RECIPIENT'S/LANDERS name, street address (including apt. no.), city or town, state or province, county, and ZIP or foreign postal code

MARMADUKE, CITY OF 03-702
P O BOX 20B
MARMADUKE, AR 72443

10 Number of mortgaged properties: 11 Other

IRS FORM 1098 DOES NOT APPLY TO YOUR LOAN

Account number (see instructions)

03028*****217293 01

CAUTION: The amount shown may not be fully deductible by you. Limit based on the loan amount and the cost and value of the secured property may apply. Also, you may only deduct interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.

OMB NO. 1545-0001
2017
(Rev. June 2017)
Form 1098

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

2 Outstanding mortgages 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 is checked.
If "No", see box 8 or 9, below

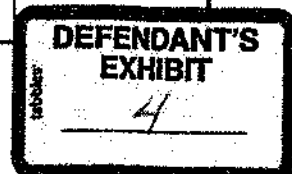
8 Address of property securing mortgage

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

CORRECTED if checked
Mortgage Interest Statement

COPY B FOR PAYER/BORROWER

The information in boxes 1 through 10 is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a recipient penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you overclaimed a deduction for this mortgage interest or for item paid, 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.



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.

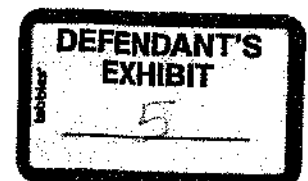
As briefly as possible, I would like to give you some background on our Water District. In the early 1980's, a man and his wife, "Soapy and Eugenia Thompson," from the Neighbors Corner community, saw a need for our friends and neighbors to have access to Clean, Safe, Reliable and Affordable Drinking 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 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.

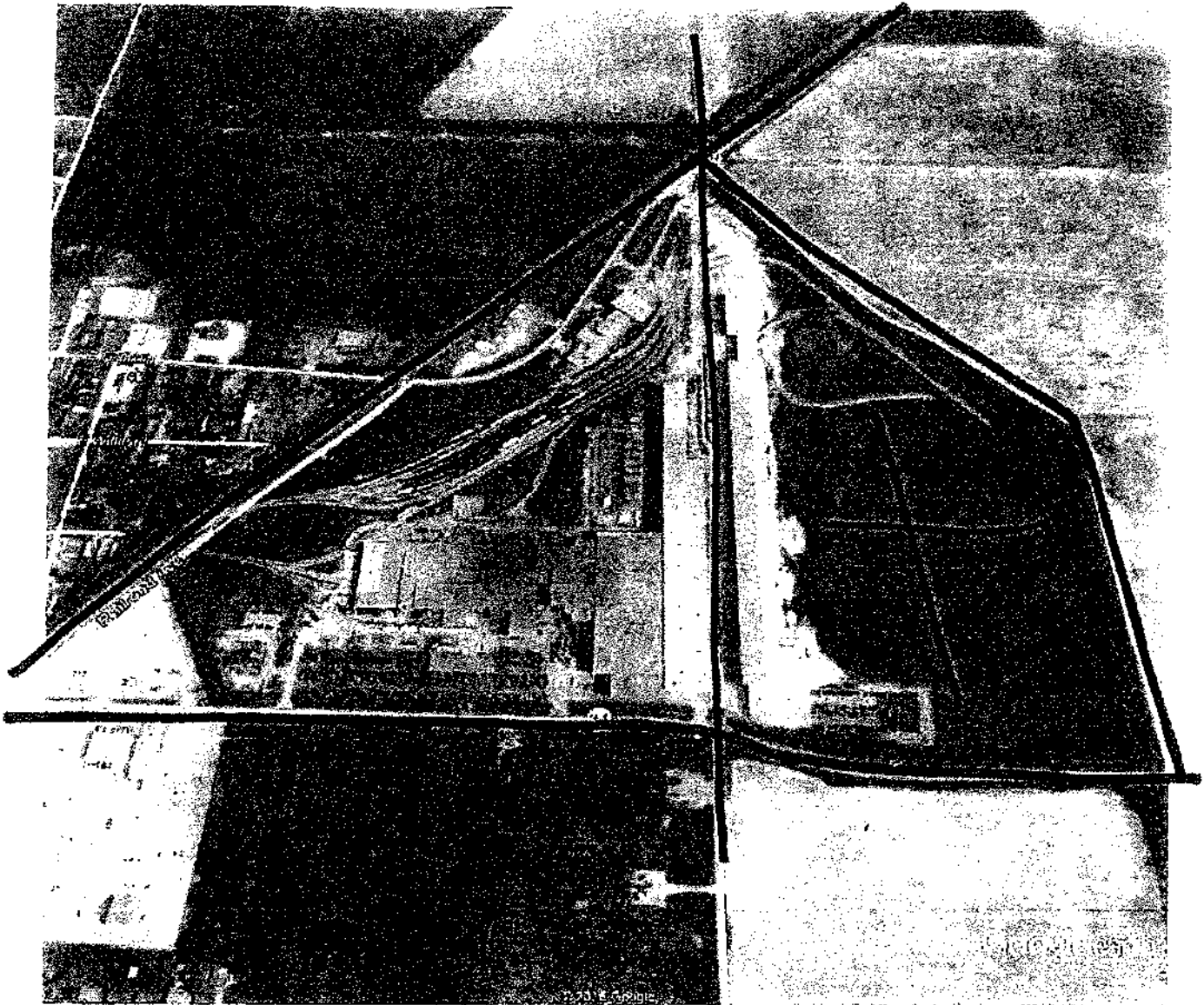
If ARI Bullies this situation into Court, there are going to be two losers, the City of Marmaduke and St. Francis Water District. This couldn't keep from causing hard feelings between friends and neighbors.

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.

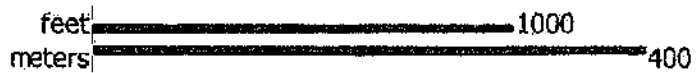
This shouldn't be a legal technicality about who you borrow money from.

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 Dörtch	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 501-271-1611

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.

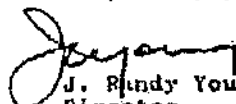
There are certain benefits which can be gained from membership. The District could provide comprehensive planning of water resources in the region. The planning would be beneficial to the region's long term growth. The District could facilitate planning for emergencies such as loss of a well and undertake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

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 GIF 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.

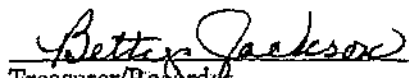
Committee Reports

- 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

**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.

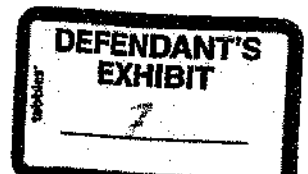
2. I am the Capital Projects Manager of American Railcar Industries, Inc. ("ARI"), a position I have held since 2012, and I am able to speak to the facts set forth in this Affidavit on behalf of ARI.

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

02.23.18
Date

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 #15026655

COPY¹

1 IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
2 GREENWOOD DIVISION
3 CIVIL DIVISION VI

4 CITY OF FORT SMITH, ARKANSAS,
5 Plaintiff,

6 vs. CASE NO. CIV-2003-156-G

7 SOUTH SEBASTIAN COUNTY WATER USERS ASSOCIATION, A
8 PUBLIC FACILITIES BOARD,
9 Defendant..

10 ORAL DEPOSITION OF DAVID FENTER

11 APPEARANCES:

12 MR. JERRY L. CANFIELD, Attorney at Law
13 Daily & Woods
14 623 Garrison Avenue, Suite 600
15 Post Office Box 1446
16 Fort Smith, Arkansas 72902

17 *** For the Plaintiff ***

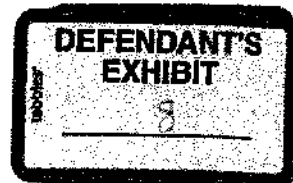
18 MR. PETER G. KUMPE, Attorney at Law
19 Williams & Anderson
20 111 Center Street, 22nd Floor
21 Little Rock, Arkansas 72201

22 *** For the Defendant ***

23 MR. EDWARD C. SWAIM, Attorney at Law
24 Soil & Water Conservation Commission
25 101 East Capitol Avenue, Suite 350
Little Rock, Arkansas 72201

*** For the Witness ***

21 TAKEN BEFORE Garold W. Pritsch, Certified Court
22 Reporter, LS Certificate No. 329, Bushman Court
23 Reporting, 620 West Third Street, Suite 201, Little
24 Rock, Arkansas 72201 on August 3rd, 2004 at the
25 Arkansas Soil and Water Conservation Commission, 101
East Capitol Avenue, Suite 350, Little Rock, Arkansas
commencing at 1:39 p.m.



GAROLD W. PRITSCH, CCR
BUSHMAN COURT REPORTING
(501) 372-5115

1 Is Exhibit 2 the documentary record in the
2 Commission that describes the protected area as
3 prescribed by the General Assembly in that statute?

4 MR. CANFIELD: Object to the form of the
5 question.

6 BY MR. KUMPE (CONT.):

7 Q. You can answer.

8 A. I don't know that I'm qualified to answer. I
9 guess I would say it's two separate matters.

10 Q. What are two separate matters?

11 A. This map was submitted for Water Plan
12 Compliance. It wasn't submitted as part of the
13 financing and talking about what assets are protected
14 by this statute.

15 Q. Well, what is the service area? What is the
16 service area of South Sebastian?

17 MR. CANFIELD: Object to the form of the
18 question in that it calls for an
19 interpretation of the statute. You can go
20 ahead and answer.

21 MR. FENTER: What I've been told since
22 I've been in Soil & Water, that as far as the
23 service area is to be protected, what we
24 would look at is physical assets in the
25 ground, pipes, and customers served as the

1 service area. It wouldn't necessarily be a
2 map or a drawing of boundaries.

3 Basically, I was told this statute was
4 meant to protect, in effect, revenue
5 streams.

6 BY MR. KUMPE (CONT.):

7 Q. Which is the customer base?

8 A. Which is the customer base.

9 Q. Okay. Fair enough.

10 That file has a tape of the hearing, and that's
11 the Water Plan Compliance hearing, doesn't it?

12 A. That's true.

13 Q. Have you listened to that tape?

14 A. I've not listened to it all the way through. We
15 were asked to make copies of it and stuff, and I
16 listened to, like, the beginning and stuff to make sure
17 that it was still a good copy -- or not a copy, but a
18 good quality so that we could make copies of it.

19 Q. I'm going to hand you a transcription of that
20 tape, and you remember that Steve Lute presided?

21 A. Yeah, I think I saw that in the file.

22 Q. Do you remember that Danny Byrd was the engineer
23 that represented South Sebastian at the meeting?

24 A. I didn't remember that.

25 Q. Well, let me just ask you when you listened to

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

2

3 I, GAROLD W. PRITSCH, LS No. 329, Certified
4 Court Reporter in the State of Arkansas, certify that
5 the foregoing pages 1 through 66 constitute a true
6 and
7 correct copy of the original deposition of DAVID
8 FENTER
9 taken on August 3rd, 2004.

10 I declare under penalty of perjury under the
11 laws of the State of Arkansas that the foregoing is
12 true and correct.

13 Dated this 11th day of August, 2004.

14

15

16 Garold W. Pritsch, CCR, LS No. 329, Notary
17 Public in and for Garland County, Arkansas

18

19 My Commission expires February 27, 2010.

20

21

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FILED

FEB 26 2018

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

**DEFENDANT'S BRIEF IN SUPPORT OF ITS RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Comes now, the City of Marmaduke, Arkansas ("the City"), by and through its attorney, Amanda LaFever, and for its Brief in Support of its Response to Plaintiff's Motion for Summary Judgment, states:

I. INTRODUCTION

In filing its motion for summary judgment, the St. Francis River Regional Water District ("the District") has taken on the burden to establish that the absence of any genuine dispute that it is the "current provider" to the property at issue under the anti-curtailment statute on which its cause of action is premised. The District also must show there are no triable issues as to its alleged commitment of revenue from that property to repay certain indebtedness. The District has not come close to carrying those burdens. Its conclusory assertion that the City is unlawfully providing water service to portions of American Railcar Industries, Inc.'s Marmaduke facility ignores the rights of the City and contradicts the facts of the case. Multiple factual issues remain that require discovery—as no discovery has been conducted—and for that reason alone, the District's motion is premature and should be denied. Moreover, on the facts as they stand, the District's reliance on Ark. Code Ann. § 15-22-223(a) and Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures is misplaced for the reasons set forth more fully below. As such, this Court should deny the District's motion.

II. FACTS

Marmaduke is an incorporated municipality and is a City of the Second Class. Ark. Code Ann. § 14-34-102; 14-37-105. Cities such as Marmaduke are able to, generally,

- (1) Sue and be sued;
- (2) Contract and be contracted with;
- (3) Acquire, hold, and possess real and personal property;
- (4) Associate with other municipalities for the promotion of their general welfare;
- (5) Join with other municipalities in the purchase of equipment, supplies, or services;
- (6) Have a common seal and change and alter it at pleasure; and
- (7) Exercise such other powers and have such other privileges as are incident to other corporations of like character or degree, not inconsistent with the provisions of this subtitle or the general laws of this state.

Ark. Code Ann. § 14-54-101 (West). Moreover, municipal corporations shall have power to:

- (1) Provide a supply of water by constructing or acquiring, by purchase or otherwise, wells, pumps, cisterns, reservoirs, or other waterworks and to regulate them;
- (2) Prevent unnecessary waste of water; and
- (3) Prevent pollution of water or injury to waterworks.

Ark. Code Ann. § 14-54-702(a) (West). However, more importantly, “for the purpose of establishing and supplying waterworks, *any municipal corporation may go beyond its territorial limits.*” Ark. Code Ann. § 14-54-702(b) (West) (emphasis added); *see also City of Little Rock v. Chartwell Valley Ltd. Partnership*, 299 Ark. 542, 545, 772 S.W.2d 616, 618 (1989) (setting forth the Supreme Court of Arkansas’s belief that “it is beyond question that the General Assembly fully intended to empower municipalities with the authority to extend water and sewer services beyond their boundaries.”).

“A municipality constructing a waterworks system may sell the water to private consumers.” *Davis v. City of Blytheville*, 2015 Ark. 482, 6, 478 S.W.3d 214, 218 (2015) (citing Ark. Code Ann. § 14-234-203(d)). “The municipality may fix rates for the consumers.” *Id.* (citing Ark. Code Ann. § 14-234-214(a)). “Because it is necessary for the public health, safety, and

welfare, these statutes are liberally construed to effectuate the purposes of the statutes.” *Id.* (citing Ark. Code Ann. § 14-234-102). “Municipalities are also authorized and empowered to own, acquire, construct, equip, operate, and maintain a sewage collection system or a sewage treatment plant.” *Id.* (citing Ark. Code Ann. § 14-235-203(c)(1)). “Again, being necessary for the public health, safety, and welfare, these statutes are liberally construed to effectuate the purposes of the statutes.” *Id.* (citing Ark. Code Ann. § 14-235-202).

The City has been continually providing water and sewer services to customers since October of 1935. *Exhibit 2*, ¶ 5; *see also*, *City of Marmaduke Ordinance #55*, attached as *Exhibit 3*. In 1987, the St. Francis River Regional Water District (“District”) was created, but it provided no services at that time. *Exhibit 2*, ¶ 6. The District is organized under the Regional Water Distribution Act, codified at Ark. Code Ann. § 14-116-101 *et seq.*, which is not applicable to municipalities. Ark. Code Ann. § 14-116-107.

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. *Exhibit 2*, ¶ 7; *see also*, *Annual Report for City of Marmaduke’s USDA Loan*, attached as *Exhibit 4*. To date, the City still owes the USDA upwards of two hundred thousand dollars and zero cents (\$200,000.00). *Exhibit 2*, ¶ 8; *see also*, *Exhibit 4*.

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 into the City. *Exhibit 2*, ¶ 9; *Exhibit 7*, ¶ 3. 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. *Exhibit 7*, ¶ 4.

When the West Plant was built, 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. *Exhibit 2*, ¶ 11; *see also, Presentation by District at City Council Meeting*, attached and hereinafter referred to as *Exhibit 5*; *Exhibit 7*, ¶ 5. However, the City *did* have the ability and infrastructure to provide water services to ARI. *Exhibit 2*, ¶ 10. In conjunction with the construction of the West Plant, the City annexed all of the real property upon which the West Plant was located into the City, at which time, the City began supplying both water and sewer services to ARI. *Exhibit 2*, ¶ 12; *Exhibit 7*, ¶ 6.

On September 1, 1999, the District obtained federal financing through the Farmers Home Administration. *Exhibit 2*, ¶ 13. According to the USDA, which is 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 or to any other federal government agency. *Exhibit 2*, ¶ 14. The District's USDA loan was paid off when the District refinanced its indebtedness through a local bank, First National Bank of Paragould. *Exhibit 2*, ¶ 15; *see also, Exhibit 5*; and *June 21, 2016 City Council Meeting Minutes*, attached and hereinafter referred to as *Exhibit 6*.

In early 2000, the District began providing water services to customers. *Exhibit 2*, ¶ 16; *see Exhibit 5*. In 2006, ARI began construction of an additional plant located adjacent to and east of the West Plant (the "East Plant"). *Exhibit 2*, ¶ 17; *Exhibit 7*, ¶ 7. The City continued to be the sole provider of water and sewer services to both the West Plant and the East Plant. *Exhibit 2*, ¶ 18; *Exhibit 7*, ¶ 8. The District raised no issue during the 2006 construction about the City providing water services to ARI; although, there is evidence 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. *Exhibit 2*, ¶ 19; *see Exhibit 6*.

In 2015, ARI expanded its facility by building an additional plant (“Refurb Plant”), which is located just to the east of the East Plant. *Exhibit 2*, ¶ 20; *Exhibit 7*, ¶ 9. 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. *Exhibit 7*, ¶ 10.

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. *Exhibit 2*, ¶ 21; *Exhibit 7*, ¶ 12. 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 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 operations 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. *Exhibit 7*, ¶ 13. Based on the foregoing concerns, ARI determined that it wanted to continue receiving water services from the City. *Exhibit 7*, ¶ 14; *Exhibit 2*, ¶ 22.

In March 2016, the District demanded that the City relinquish the East Plant of ARI as a customer, and ARI notified the City of its intention to continue purchasing water and sewer

services from the City. *Exhibit 2*, ¶ 26; *Exhibit 7*, ¶ 15. Prior to March 2016, the District did not once seek to or claim any right to serve any portion of ARI. *Exhibit 2*, ¶ 27; *Exhibit 7*, ¶ 16.

The work being done by Forcum Lannom Contractors, LLC 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, and the Refurb Plant began receiving water from the City. *Exhibit 2*, ¶ 24; *Exhibit 7*, ¶ 11. 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.” *Exhibit 2*, ¶ 29; *see Exhibit 5; Exhibit 6*.

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. *Exhibit 7*, ¶ 17. In conjunction with that project, the City provided a water meter, which was installed at the southwest corner of the East Plant. *Exhibit 2*, ¶ 25; *Exhibit 7*, ¶ 18. The meter cost the City \$5,300.00, which to date, the City has not yet recouped. *Exhibit 2*, ¶¶ 25, 26. 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. *Exhibit 7*, ¶ 19.

The District is currently indebted to the Arkansas Natural Resources Commission (“the Commission”) for approximately \$51,500.00. *Exhibit 2*, ¶ 29. That particular loan was approved in July 2016, closed on January 9, 2017, and the funds were disbursed sometime after January 9, 2017. *Exhibit 2*, ¶ 30. The District has never provided water services or waste water services to any portion of ARI. *Exhibit 2*, ¶ 30; *Exhibit 7*, ¶ 20.

The City has provided over a million gallons of water to the Refurb Plant at a cost of approximately \$2000.00. *Exhibit 2*, ¶ 23. 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. *Exhibit 2*, ¶ 32. The City does not believe that the District has sufficient capacity or infrastructure to provide water services to ARI. *Exhibit 2*, ¶ 31. The City was told by representatives of ARI that ARI intends to use the City for all of its water service needs. *Exhibit 2*, ¶ 33. ARI has begun the process to annex the East Plant and the Refurb Plant into the city limits of the City. *Exhibit 2*, ¶ 34; *Exhibit 7*, ¶ 21.

III. SUMMARY JUDGMENT STANDARD

“Summary judgment is a remedy that should only be granted when there are no genuine issues of material fact and when the case can be decided as a matter of law.” *Hamilton v. Gen. Ins. Co. of Am.*, 71 Ark. App. 353, 356, 32 S.W.3d 16, 18 (2000). “The standard is whether the evidence is sufficient to raise a fact issue, not whether the evidence is sufficient to compel a conclusion.” *City of Lowell v. City of Rogers*, 345 Ark. 33, 39, 43 S.W.3d 742, 745–46 (2001) (internal citations omitted). “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.” *City of Lowell*, 345 Ark. at 39, 43 S.W.3d at 746 (internal quotations marks and citations omitted).

“The burden of sustaining a motion for summary judgment is always the responsibility of the moving party.” *Hamilton*, at 357, 32 S.W.3d at 18. “All proof submitted must be viewed in a light most favorable to the party resisting the motion, and any doubts and inferences must be resolved against the moving party.” *Id.*, 32 S.W.3d at 18.

“The object of summary-judgment proceedings is not to try the issues, but to determine whether there are any issues to be tried, and if there is any doubt whatsoever, the motion should be denied.” *City of Lowell*, 345 Ark. at 39, 43 S.W.3d at 746 (internal citations omitted). “Summary judgment is not proper . . . where evidence, although in no material dispute as to actuality, reveals aspects from which inconsistent hypothesis might reasonably be drawn and reasonable minds

might differ.” *Town of Lead Hill v. Ozark Mountain Reg’l Pub. Water Auth. of State*, 2015 Ark. 360, 3, 472 S.W.3d 118, 121–22 (2015).

IV. ARGUMENT

A. Because Issues of Unknown Material Fact Exist, The District’s Motion Should Be Denied.

The District’s motion is premature, and there are a number of unknown facts that must be known prior to any adjudication in this matter—facts that can and should be explored during the discovery process. To date, no discovery has been conducted by either the City or the District. And the City filed an Amended Answer prior to filing its response to the District’s motion.

Issues of unknown material fact that must be explored and/or resolved prior to an adjudication of this matter include, but are not limited to the following:

- a. The ability and capacity of the District to provide water services to ARI at any point in time, historically and currently, including but not limited to when ARI was built in 1999, when the East Plant was built in 2006, when the Refurb Plant was built in 2015, and presently;
- b. 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 attached as *Exhibit A* to Plaintiff’s Motion;
- c. The ability of the District to provide water service to ARI to be used in ARI’s ordinary business operation and in the event of a fire or any other catastrophic event requiring water.
- d. Whether the District has sufficient infrastructure to provide water service to ARI;
- e. Whether the District has ever provided or made available water services to ARI;

- f. Whether the District is indebted to the Commission, the USDA or any other government body or agency;
- g. The time period that the District first became aware or should have been on notice that the City was providing water services to the East Plant and Refurb Plant;
- h. Whether the District has obtained approval from the Commission to provide water services to ARI.

These questions must be answered in order to analyze this matter under the law cited below.

In asserting that it has the “exclusive right” to provide water to a specific geographic area, the District relies on Arkansas’s anti-curtailment statute, Ark. Code Ann. § 15-22-223(a), which provides 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 under the Arkansas Water Plan established in § 15-22-503, *if applicable*.

Ark. Code Ann. § 15-22-223(a) (emphasis added). Here, it is not unlawful for the City to provide water to ARI because such services are not being provided by a current provider (i.e. the District) who is indebted to the Commission. The purpose of this statute is to protect the revenue stream of existing customers, which serves as collateral for the repayment of a loan from the Commission. Since the City was never a customer of the District, the District has no exclusive right to service ARI.

While Arkansas law is sparse in this regard,¹ 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) is instructive. In *City of Lebanon*, the Court was tasked with interpreting the federal anti-curtailment statute, 7 U.S.C.A. § 1926(b), which is similar in thrust and purpose to the statute that the District attempts to rely on in this matter. There, a rural water district brought action against a nearby city, alleging that the city was illegally providing water and sewer services to customers within the district's boundaries, in violation of §1926(b) – just as is the case at issue.

Section 1926(b) provides protection to rural water districts which are indebted to the USDA. Specifically, section 1926(b) provides:

[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.

Id. at 514.

In *City of Lebanon*, “at the time the water district closed on the USDA loan, Lebanon was already providing sewer and water services to some customers within the water district’s

¹ So sparse, in fact, that when Ark. Code Ann. § 15-22-223(a) is keycited through Westlaw, there are exactly twelve citing references: 2 statutes, and 1 law review article, 2 appellate court documents filed by parties to the litigation, 7 trial court documents filed by parties to the litigation, and zero cases.

boundaries. After the water district closed on the USDA loan [the loan was made to extend and improve only the water district's sewer system], Lebanon extended service to additional customers within the water district's boundaries, though not to any customers being served by the water district." *Id.* The water district claimed that because of an anti-curtalement statute, it was entitled to be the "exclusive" water and sewer service provider within its geographical area, including customers to whom Lebanon already provided those services. *Id.* at 514–515.

The Court provided that under the "pipes in the ground" test used in water service cases under statute protecting rural water district's service area from certain incursions by nearby cities, courts examine whether a water district has adequate facilities within or adjacent to the area to provide service to the area within a reasonable amount of time after a request for service is made. *Id.* at 511.

The "pipes-in-the-ground" test for determining whether federally indebted water service association meets service element of test for statutory protection from competitive encroachment on service area under Consolidated Farm and Rural Development Act is satisfied by a showing that water association has adequate facilities within or adjacent to the area to provide service to the area within a reasonable time after a request for service is made, and amounts to asking whether the water association has the capacity to provide water service to a given customer. *Moongate Water Co., Inc. v. Butterfield Park Mut. Domestic Water Ass'n, C.A.10 (N.M.) 2002, 291 F.3d 1262.* Courts have recognized that a rural district's proposed method of providing service, if unreasonably costly or unreasonably delayed, can constitute a constructive denial of service, *see Rural Water District No. 1 v. City of Wilson, 243 F.3d 1263, 1271 (10th Cir.2001)*

Here, the District has not provided any evidence that it has sufficient capacity to provide water to ARI, and even if there is such evidence, Ark. Code Ann. § 15-22-223(a) does not grant

the District exclusivity because the District is and never was a “current provider” of water to ARI, as more fully analyzed below.

B. The District’s reliance on Ark. Code Ann. § 15-22-223(a) and Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures is misplaced.

The District’s reliance on Ark. Code Ann. § 15-22-223(a) is misplaced. “As with any question of statutory interpretation, our analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 129 S.Ct. 681, 685, 172 L.Ed.2d 475 (2009). Pursuant to the plain language of this statute, there are two elements that must be achieved before a water district may claim an exclusive right to provide water.

First and most importantly, the water district must provide that it is the current provider of water services to the person or entity to which it seeks exclusivity. Here, not only is the District not the current provider of water service to ARI, but the District has never been a provider of any amount of water to any portion of ARI’s plant.

Second, in order to claim exclusivity, the District must have pledged or utilized revenue derived from providing water service to repay financial assistance provided by the Commission. But the District was not indebted to the Commission at the time that the City began providing water services to the East Plant and to the Refurb Plant.

The District further attempts to rely on Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures for the proposition that it has an “exclusive” “right” to provide water to ARI’s East Plant and Refurb Plant. Section 605.1 states as follows:

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 revenues 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*.

However, the District's reliance on 605.1 is subject to the same fallacies as its reliance on Ark. Code Ann. § 15-22-223(a). The District further argues that the City should have received approval under the Arkansas Water Plan in order to continue providing water services to ARI, specifically to the East Plant and the Refurb Plant. However, in order to provide those services, all the City did was install a meter. *See D's Exhibit 2, ¶ 25; D's Exhibit 7, ¶ 18*. And, while section 601.6 of the Arkansas Natural Resources Commission Water Plan, states as follows:

601.6 Unless exempt, projects must comply with the Plan

- A. No political subdivision or agency of the state shall spend any state funds on or engage in any water development project until the political subdivision or agency files a preliminary engineering report describing the project with the Commission, and the Commission approves the project as being in compliance with the Arkansas Water Plan.
- B. No political subdivision or agency designated by the Commission as having responsibility for constructing, operating, managing, and maintaining a project shall be dissolved, merged, abolished, or otherwise changed during the life of the water development project approved under the Plan without prior approval of the Commission.

Section 601.7 states in relevant part:

601.7 Projects exempt from review

The following projects are exempt from Water Plan compliance review:

- A. Local drainage facilities for recreational developments of less than five acres;
- B. Drainage facilities associated with street construction or improvements;
- C. *Installation of new meters or connections from existing mains;*
- D. Any project in which game protection funds, or federal or state outdoor recreation assistance grant funds, are to be spent provided such project will not diminish the benefits of any existing water development project; and
- E. Projects that do not meet the applicability requirements of Section 601.4.

As such, the City's installation of the meter is exempt from Water Plan compliance review.

C. Without waiving any of the foregoing arguments, the District lacks infrastructure and resources to serve ARI's Marmaduke Facility such that it has constructively denied service.

When ARI discussed the possibility of receiving water service from the District (the District has never provided waste water service) to a portion of ARI's Marmaduke Facility, the District said that it would need to construct a new well costing as much as \$700,000 and pass that expense onto ARI, tripling the water rates provided to ARI by the City. *See D's Exhibit 7, passim.*

In addition to the overall capacity issue, based on its discussions with the District, ARI was also concerned that the District could not meet ARI's water requirements in the event of a fire; that the District was not currently providing ARI any services so ARI's business operation would be interrupted; and that the District could not provide sewer services so the City would have to continue providing sewer services to the entirety of ARI's Marmaduke Facility. *Id.* The foregoing amounts to a constructive denial of service to ARI that cuts off whatever curtailment rights the District would have under Ark. Code Ann. § 15-22-223 to the extent the District could otherwise satisfy the conditions of that statute. *See City of Lebanon, 605 F.3d at 522.*

V. CONCLUSION

In sum, since (i) there are many factual matters that have yet to be discovered, and (ii) the District does not have exclusivity under Ark. Code Ann. § 15-22-223(a), the District's Motion for Summary Judgment should be denied.

WHEREFORE, the City respectfully requests that the Court grant the relief requested herein, deny the District's Motion for Summary Judgment and issue a scheduling Order setting forth a discovery deadline and a dispositive motions deadline, and for all just and proper relief to which there is entitlement.

Respectfully submitted,

CITY OF MARMADUKE, ARKANSAS,
DEFENDANT

BY: 

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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 February 23, 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via email and via Certified Mail, Return Receipt, postage prepaid to the addresses below:

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

David Tyler
dtyler@leclaw.com



Amanda LaFever, Ark. Bar No. 2012133

FILED

FEB 26 2018

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL WATER DISTRICT

PLAINTIFF

VS.

No. 4CV-2017-219-MR

CITY OF MARMADUKE, ARKANSAS

DEFENDANT

FIRST AMENDED ANSWER

Comes now, the City of Marmaduke, Arkansas, ("the City"), by and through its attorney, Amanda LaFever, and for its First Amended Answer to Plaintiff's Complaint, states:

1. Regarding the allegations contained in paragraph one (1) of the Complaint, upon information and belief, the City admits that the St. Francis River Regional Water District ("the District") is an Arkansas regional water distribution district under the Regional Water Distribution Act with its principal place of business in Greene County, Arkansas.

2. Regarding the allegations contained in paragraph two (2) of the Complaint, the City admits that Marmaduke is an Arkansas municipal corporation with its principal place of business in Marmaduke, Greene County, Arkansas.

3. Paragraph three (3) of the Complaint is jurisdictional in nature, and as such, no response is required; however, should a response be deemed necessary, the City denies the same in light of its full and complete denial of any and all wrongdoing alleged.

4. Regarding the allegations contained in paragraph four (4) of the Complaint, the City admits that the District was formed on or about July 27, 1987, that the Circuit Court of Green County established the District, and that the District embraces the lands as set forth in the exhibit attached to the Court's Order approving the District, which was omitted from the Complaint and is attached to this First Amended Answer as *Exhibit 1*. The Court's Order speaks for itself, and the City denies the correctness of Exhibits B and C to the Complaint to the extent that they vary

from the legal descriptions in the exhibit attached to the Court's Order. The City denies the remainder of the District's allegations contained in paragraph four (4) of the Complaint, and affirmatively pleads that the City's continued provision of water service to its longstanding customer is legal.

5. Regarding the allegations contained in paragraph five (5) of the Complaint, the City admits that it claims a right to provide water service to its longstanding customer. The City denies the remainder of the District's allegations contained in paragraph five (5) of the Complaint.

6. Regarding the allegations contained in paragraph six (6) of the Complaint, the City admits that American Railcar Industries, Inc. ("ARI") is a foreign corporation authorized to do business in Arkansas with offices located in Marmaduke, Greene County, Arkansas.

7. Regarding the allegations contained in paragraph seven (7) of the Complaint, upon information and belief, the City admits that ARI has railcar production and repair facility in Marmaduke, Arkansas ("ARI's Marmaduke Facility"). The City is without sufficient information to admit or deny whether the railcars are pressurized or non-pressurized or where the railcars are ultimately used and, therefore, denies the same.

8. Regarding the allegations contained in paragraph eight (8) of the Complaint, the City admits that ARI's Marmaduke Facility partially lies within the City of Marmaduke and outside of the City of Marmaduke. The City is without sufficient information to admit or deny whether any particular portion of ARI's Marmaduke Facility lies within the legal descriptions set forth in Exhibit A to the Court's Order establishing the District and, therefore, denies the same. The City denies the remainder of the District's allegations contained in paragraph eight (8) of the Complaint.

9. Regarding the allegations contained in paragraph nine (9) of the Complaint, the City admits that ARI's Marmaduke Facility partially lies within the City of Marmaduke and outside of the City of Marmaduke. The City is without sufficient information to admit or deny whether any particular portion of ARI's Marmaduke Facility lies within the legal descriptions set forth in Exhibit A to the Court's Order establishing the District and, therefore, denies the same. The City denies the remainder of the District's allegations contained in paragraph nine (9) of the Complaint.

10. Regarding the allegations contained in paragraph ten (10) of the Complaint, the City admits that Exhibit C to the Complaint is marked and labeled as described therein and that ARI's Marmaduke Facility lies partially within the City of Marmaduke and outside of the City of Marmaduke. The City is without sufficient information to admit or deny whether any particular portion of ARI's Marmaduke Facility lies within the legal descriptions set forth in Exhibit A to the Court's Order establishing the District and, therefore, denies the same. The City denies the remainder of the District's allegations contained in paragraph ten (10) of the Complaint.

11. Regarding the allegations contained in paragraph eleven (11) of the Complaint, the City admits that when it began providing water services to ARI, no portion of ARI's Marmaduke Facility was outside of the City of Marmaduke. Pleading affirmatively, the City's continued provision of water service to its longstanding customer is legal, and to the extent the allegations, inferences, or innuendo in paragraph eleven (11) of the Complaint suggest otherwise, the City denies the same.

12. Regarding the allegations contained in paragraph twelve (12) of the Complaint, the City admits that it continued providing water services to its preexisting customer when it began providing water services to the portion of ARI's Marmaduke Facility at issue in this lawsuit and

affirmatively pleads that the City's continued provision of water service to its longstanding customer is legal. The City denies the remainder of the District's allegations contained in paragraph twelve (12) of the Complaint.

13. Regarding the allegations contained in paragraph thirteen (13) of the Complaint, the City admits that the District has improperly demanded that the City stop providing water services to ARI and affirmatively pleads that the City's continued provision of water service to its longstanding customer is legal.

14. Regarding the allegations contained in paragraph fourteen (14) of the Complaint, they are denied.

15. Regarding the allegations contained in paragraph fifteen (15) of the Complaint, they are denied.

16. Paragraph number sixteen (16) of the Complaint incorporates paragraph numbers one through fifteen (1-15) of the Complaint. The City herein incorporates its responses to said paragraphs as if set forth word for word.

17. Regarding the allegations contained in paragraph seventeen (17) of the Complaint, the City is without sufficient information to admit or deny the allegations therein; therefore, they are denied.

18. Regarding the allegations contained in paragraph eighteen (18) of the Complaint, upon information and belief, the City admits that it has had no dealings with the Arkansas Natural Resources Commission ("the Commission"). Pleading affirmatively, the City's continued provision of water service to its longstanding customer is legal, and any allegation, inference, or innuendo that the City needs permission from the Commission to do so is denied, as are the remainder of the allegations contained in paragraph eighteen (18) of the Complaint.

19. Regarding the allegations contained in paragraph nineteen (19) of the Complaint, they are denied.

20. Regarding the allegations contained in paragraph twenty (20) of the Complaint, they are denied.

21. Regarding the allegations contained in paragraph twenty-one (21) of the Complaint, they are denied.

22. The City denies that the District is entitled to any of the relief requested in the “Wherefore” paragraph, including but not limited to any subparagraphs set forth therein.

23. The City denies any and all factual allegations in the Complaint not specifically admitted herein.

24. The City reserves the right to plead further upon additional investigation and discovery, to include a counter-complaint or amended answer.

ADDITIONAL AND AFFIRMATIVE DEFENSES

1. The Complaint fails to state a cause of action upon which relief may be granted because it does not allege facts showing that the District is entitled to relief. Specifically, the claim that a portion of ARI’s Marmaduke Facility lies within the District’s geographic boundaries does not establish that the District is the “current provider” to ARI’s Marmaduke Facility, as required by Ark. Code Ann. § 15-22-223.

2. The City asserts that it did not violate any of the District’s rights.

3. The City is entitled to tort, qualified, good faith, and punitive damages immunity under all applicable doctrines of immunity pursuant to state and federal law, including but not limited to Ark. Code Ann. § 21-9-301.

4. The City is entitled to all defenses set forth in Ark. Code Ann. § 15-22-201 *et seq.*

5. The City affirmatively pleads that it has and continues to provide water services to a pre-existing and longstanding customer and that City is legally justified in doing so. The Order of June 27, 1987, merely provides for the creation of the District and the geographic boundaries in which it may provide water services. It does not grant to the District the *exclusive* right to provide water service within its geographic boundaries; on the contrary, it defines the geographic boundaries within which the District *may* provide water service. Indeed, the very statute invoked by the District in this lawsuit, Ark. Code Ann. § 15-22-223—which arguably provides protection upon the pledge of certain revenues from a water district’s customers to service or retire certain types of indebtedness—would be a nullity if water districts were the exclusive provider solely by virtue of their existence and their geographic boundaries.

6. The City affirmatively pleads that it has and continues to provide water services to a pre-existing and longstanding customer and that City is legally justified in doing so. The statute invoked by the District in this lawsuit, Ark. Code Ann. § 15-22-223, is defensive, not offensive, in nature. By its terms, the statute protects the existing revenue stream of water and waste water districts from encroachment by new providers when their revenue stream—which is necessarily derived from their existing customer base—is pledged to service or retire certain types of debt, thereby providing a measure of security for that debt.

7. Without waiving the foregoing, and in the alternative, the District lacks adequate infrastructure and resources to serve ARI’s Marmaduke Facility such that it has constructively denied service. When ARI discussed the possibility of receiving water service from the District (the District has never provided waste water service) to a portion of ARI’s Marmaduke Facility, the District said that it would need to construct a new well costing as much as \$700,000 and pass that expense onto ARI, tripling the water rates provided to ARI by the City. In addition to the

overall capacity issue, based on its discussions with the District, ARI was also concerned that the District could not meet ARI's water requirements in the event of a fire; that the nearest connecting point to the District was three miles away; that the District was not currently providing ARI any services so ARI's business operation would be interrupted; and that the District could not provide sewer services so the City would have to continue providing sewer services to the entirety of ARI's Marmaduke Facility. The foregoing amounts to a constructive denial of service to ARI that cuts off whatever curtailment rights the District would have under Ark. Code Ann. § 15-22-223 to the extent the District could otherwise satisfy the conditions of that statute.

8. The City asserts the defenses of privilege and justification.

9. To the extent applicable, the City asserts the affirmative defenses of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel, consent, statute of limitations, laches, and any and all defenses found in Arkansas Rule of Civil Procedure 8(c).

10. To the extent it may apply, the City asserts that the District has failed to exhaust its administrative remedies or satisfactory prerequisites to this action.

11. The City asserts that it has police powers pursuant to Arkansas Code Annotated §§ 14-54-601, 14-54-602.

12. The City reserves the right to amend or supplement these defenses as additional defenses become apparent or available during the course of litigation.

WHEREFORE, the City requests this Court dismiss the District's Complaint and for all other just and proper relief to which it is entitled.

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 February 23, 2018, I filed the foregoing with the Clerk of the Court, and provided the same to the Plaintiff, via email and via Certified Mail, Return Receipt, postage prepaid to the addresses below:

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

David Tyler
dtvler@leclaw.com


Amanda LaFever, Ark. Bar No. 2012133

FILED

MAR 07 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

REPLY TO RESPONSE TO
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 Reply to Response to Motion for Summary Judgment, states:

1. Contrary to the City of Marmaduke's (sometimes the "City") claim, SFRRWD meets the provisions of Ark. Code Ann. § 15-22-223(a) and the City's incorrect reading of the statute does not change the meaning of the statute.

2. Further, SFRRWD has adequate facilities within or adjacent to the area which encompasses the East Plant and Refurb Plant of ARI in order to provide service to the area within a reasonable period of time.

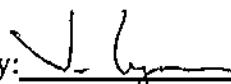
3. No material issues of fact exist that prevent this Court for granting summary judgment to SFRRWD.

4. That for these reasons and the reasons set forth in the Brief accompanying this Reply, SFRRWD's Motion for Summary Judgment should be granted.

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

- a. that its Motion for Summary Judgment be granted;
- 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

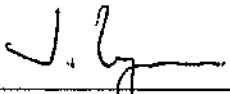
By:  _____
State Bar No. 77083
Attorneys for Plaintiff

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;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 7th day of March, 2018.



Jim Lyons

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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

BRIEF IN SUPPORT OF REPLY TO
RESPONSE TO 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 Reply to Response to Motion for Summary Judgment, states:

The issue before the Court is whether SFRRWD has the exclusive right to provide water service to customers in its service area and in particular to American Railcar Industries, Inc.'s ("ARI") East Plant and Refurb Plant and whether this can be decided as a matter of law. ARI's East Plant and Refurb Plant are located in SFRRWD's service area. (See Affidavit of Tonya Thompson which is attached hereto and incorporated by reference herein as Exhibit A). Further, SFRRWD is indebted to the Arkansas Natural Resources Commission (the "Commission") by virtue of a loan by the Commission to SFRRWD and the income derived therefrom is pledged to or utilized by SFRRWD to repay the Commission for loan.

The City 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 to this case. Additionally, the City claims that certain items must be

“explored and/or resolved” before summary judgment can be granted. The issues that Marmaduke want to explore and resolve are not facts which relate to the issue before the Court and are not necessary for the Court’s determination regarding summary judgment. Instead, these issues relate to what has occurred in the past and do not determine or affect whether under Arkansas law SFRRWD has the right to provide water service to a customer in the service area of SFRRWD. Thus, the beginning and end of this inquiry is simply who have the authority to serve customers in SFRRWD’s service area and that is SFRRWD and not the City.

Ark. Code Ann. § 15-22-223(a) and Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures 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 A).

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 limit the reading to a phrase of their choice which removes the words “to an area”. SFRRWD is providing water service throughout its service area. (See Exhibit A). 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 and the City has not obtained approval from the Commission or under the Arkansas Water Plan to serve the area. (See Exhibit A and paragraph 19 of the City’s First Amended Answer). 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 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.

Further, there is a split of authority on this point. The Tenth Circuit has addressed this question twice before and taken a contrary approach in both cases. *Pittsburg County Rural Water Dist. No. 7 v. City of McAlester*, 358 F.3d 694 (10th Cir. 2004); *Sequoyah County Rural Water Dist. No. 7 v. Town of Muldrow*, 191 F.3d 1192 (10th Cir. 1999). After the cities started providing service to these customers, the rural water districts acquired new qualifying federal loans under § 1926(a). Thus, "all § 1926 claims based on service by [a city] to customers within the limitations period were not otherwise barred by the fact that [the city] was serving those customers prior to the [subsequent] loan." Therefore, the City's argument in this regard fails.

Likewise, the City's argument regarding "pipes in the ground" based on *City of Lebanon* and other federal court cases examining § 1926(b) also fails. Even if this is not the case, the "pipes in the ground" merely equates to the water provider having adequate facilities either within or adjacent to an area in order to provide water service within a reasonable period of time. SFRRWD has adequate water facilities within or adjacent to the area where ARI's East Plant and Refurb Plant is located and SFRRWD is ready, willing and able to provide water service to ARI's East Plant and Refurb Plant within a reasonable period of time. (See Exhibit A). The City has not presented any evidence that SFRRWD cannot provide water supply to the East Plant and Refurb Plant within a reasonable period of time. In fact, the only thing presented by the City is its Mayor's Affidavit which states that the "City does not believe that the District [SFRRWD]

has sufficient capacity or infrastructure to provide water services to ARJ". (See paragraph 34, Exhibit 2 to Defendant's Response to Motion for Summary Judgment). A "belief" is not fact. Simply, the City has not met proof with proof. Thus, this argument by the City (as with its other arguments) fails.

Further, the City's argument that SFRRWD must have been 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 is incorrect. Ark. Code Ann.15-22-223(a) does not so state. Instead, it states, in pertinent part, that SFRRWD must pledge or utilize revenue derived from services within the area to repay financial assistance 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).

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. Although the City does not state how much water it has supplied or is currently supplying to the East Plant, the Mayor in his Affidavit indicates that over a "million of gallons of water" has been supplied to the Refurb Plant since the fall of 2016. (See paragraphs 23 and 25, Exhibit 2 to Defendant's Response to Motion for Summary Judgment).

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 Marmaduke to the East Plant and Refurb Plant qualifies as a project which requires compliance by Marmaduke with Arkansas' Water Plan. Marmaduke readily admits that it "has had no dealings with the Arkansas Natural Resources Commission" and denies that it "needs permission from the Commission" to provide water service to ARI's East Plant and Refurb Plant. (See paragraph 18, First Amended Answer of the City). The City's argument that it is exempt from the Commission's jurisdiction and does not have to comply with the Water Plan is incorrect.

Lastly, in a final ditch effort, Marmaduke argues that ARI would have to pay more for its water from SFRRWD; that ARI was concerned that SFRRWD may not be able to provide all of the water it needed and that ARI would still have to receive sewer service from the City. All of these arguments are red herrings as the City provides no authority for such claims to be grounds for denying SFRRWD its right to provide water service to ARI's facilities in its service area as provided under Arkansas law. Further, these statements are hearsay, inadmissible and fail to meet proof with proof. The issue of whether SFRRWD has the right to provide water service to its customer in its service area (which includes ARI's East Plant and Refurb Plant) should be

decided as a matter of law. As a matter of law, SFRRWD' Motion for Summary Judgment will properly be granted.

III. CONCLUSION

For the reasons set forth above, Plaintiff, SFRRWD, respectfully requests that this Court grant its Motion for Summary Judgment and order that SFRRWD is entitled to provide the water to ARI's East Plant and Refurb Plant which is located in SFRRWD's service area and that the City of Marmaduke must cease providing such service.

Respectfully submitted,

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

By: 

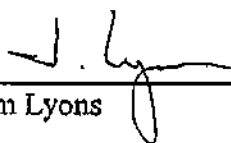
State Bar No. 77083
Attorneys for Plaintiff

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;
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- 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 17th day of March, 2018.



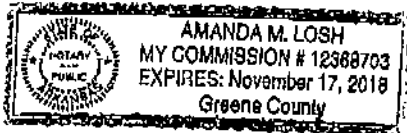
 Jim Lyons

ARI's East Plant and Refurb Plant is located and SFRRWD is ready, willing and able to provide water service to ARI's East Plant and Refurb Plant within a reasonable period of time following the granting of a judgment in its favor.

7. The statements set forth herein are true and correct to the best of my knowledge, information and belief.

Tonya Thompson
Tonya Thompson

SUBSCRIBED and SWORN to before me, the undersigned Notary Public, this 7 day of March, 2018.



Amanda M Losh
Notary Public

F:\WP60\SPRRWD\Thompson.Affidavit.wpd

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

REPLY TO RESPONSE TO
MOTION FOR SUMMARY JUDGMENT

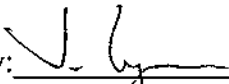
Comes the Plaintiff, St. Francis River Regional Water District ("SFRRWD"), by and through its attorneys, Lyons & Cone, P.L.C., and for its Reply to Response to Motion for Summary Judgment, states:

1. Contrary to the City of Marmaduke's (sometimes the "City") claim, SFRRWD meets the provisions of Ark. Code Ann. § 15-22-223(a) and the City's incorrect reading of the statute does not change the meaning of the statute.
2. Further, SFRRWD has adequate facilities within or adjacent to the area which encompasses the East Plant and Refurb Plant of ARI in order to provide service to the area within a reasonable period of time.
3. No material issues of fact exist that prevent this Court from granting summary judgment to SFRRWD.
4. That for these reasons and the reasons set forth in the Brief accompanying this Reply, SFRRWD's Motion for Summary Judgment should be granted.

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

- a. that its Motion for Summary Judgment be granted;
- 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

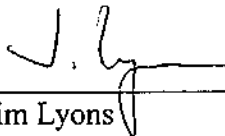
By:  _____
State Bar No. 77083
Attorneys for Plaintiff

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;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 7th day of March, 2018.



Jim Lyons

MAR 14 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

BRIEF IN SUPPORT OF REPLY TO
RESPONSE TO 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 Reply to Response to Motion for Summary Judgment, states:

The issue before the Court is whether SFRRWD has the exclusive right to provide water service to customers in its service area and in particular to American Railcar Industries, Inc.'s ("ARI") East Plant and Refurb Plant and whether this can be decided as a matter of law. ARI's East Plant and Refurb Plant are located in SFRRWD's service area. (See Affidavit of Tonya Thompson which is attached hereto and incorporated by reference herein as Exhibit A). Further, SFRRWD is indebted to the Arkansas Natural Resources Commission (the "Commission") by virtue of a loan by the Commission to SFRRWD and the income derived therefrom is pledged to or utilized by SFRRWD to repay the Commission for loan.

The City 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 to this case. Additionally, the City claims that certain items must be

“explored and/or resolved” before summary judgment can be granted. The issues that Marmaduke want to explore and resolve are not facts which relate to the issue before the Court and are not necessary for the Court’s determination regarding summary judgment. Instead, these issues relate to what has occurred in the past and do not determine or affect whether under Arkansas law SFRRWD has the right to provide water service to a customer in the service area of SFRRWD. Thus, the beginning and end of this inquiry is simply who have the authority to serve customers in SFRRWD’s service area and that is SFRRWD and not the City.

Ark. Code Ann. § 15-22-223(a) and Section 605.1 of the Arkansas Natural Resources Commission Water Plan Compliance Review Procedures 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 A).

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 limit the reading to a phrase of their choice which removes the words “to an area”. SFRRWD is providing water service throughout its service area. (See Exhibit A). 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 and the City has not obtained approval from the Commission or under the Arkansas Water Plan to serve the area. (See Exhibit A and paragraph 19 of the City’s First Amended Answer). 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 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.

Further, there is a split of authority on this point. The Tenth Circuit has addressed this question twice before and taken a contrary approach in both cases. *Pittsburg County Rural Water Dist. No. 7 v. City of McAlester*, 358 F.3d 694 (10th Cir. 2004); *Sequoyah County Rural Water Dist. No. 7 v. Town of Muldrow*, 191 F.3d 1192 (10th Cir. 1999). After the cities started providing service to these customers, the rural water districts acquired new qualifying federal loans under § 1926(a). Thus, "all § 1926 claims based on service by [a city] to customers within the limitations period were not otherwise barred by the fact that [the city] was serving those customers prior to the [subsequent] loan." Therefore, the City's argument in this regard fails.

Likewise, the City's argument regarding "pipes in the ground" based on *City of Lebanon* and other federal court cases examining § 1926(b) also fails. Even if this is not the case, the "pipes in the ground" merely equates to the water provider having adequate facilities either within or adjacent to an area in order to provide water service within a reasonable period of time. SFRRWD has adequate water facilities within or adjacent to the area where ARI's East Plant and Refurb Plant is located and SFRRWD is ready, willing and able to provide water service to ARI's East Plant and Refurb Plant within a reasonable period of time. (See Exhibit A). The City has not presented any evidence that SFRRWD cannot provide water supply to the East Plant and Refurb Plant within a reasonable period of time. In fact, the only thing presented by the City is its Mayor's Affidavit which states 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 Motion for Summary Judgment). A "belief" is not fact. Simply, the City has not met proof with proof. Thus, this argument by the City (as with its other arguments) fails.

Further, the City's argument that SFRRWD must have been 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 is incorrect. Ark. Code Ann. 15-22-223(a) does not so state. Instead, it states, in pertinent part, that SFRRWD must pledge or utilize revenue derived from services within the area to repay financial assistance 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).

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. Although the City does not state how much water it has supplied or is currently supplying to the East Plant, the Mayor in his Affidavit indicates that over a "million of gallons of water" has been supplied to the Refurb Plant since the fall of 2016. (See paragraphs 23 and 25, Exhibit 2 to Defendant's Response to Motion for Summary Judgment).

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 Marmaduke to the East Plant and Refurb Plant qualifies as a project which requires compliance by Marmaduke with Arkansas' Water Plan. Marmaduke readily admits that it "has had no dealings with the Arkansas Natural Resources Commission" and denies that it "needs permission from the Commission" to provide water service to ARI's East Plant and Refurb Plant. (See paragraph 18, First Amended Answer of the City). The City's argument that it is exempt from the Commission's jurisdiction and does not have to comply with the Water Plan is incorrect.

Lastly, in a final ditch effort, Marmaduke argues that ARI would have to pay more for its water from SFRRWD; that ARI was concerned that SFRRWD may not be able to provide all of the water it needed and that ARI would still have to receive sewer service from the City. All of these arguments are red herrings as the City provides no authority for such claims to be grounds for denying SFRRWD its right to provide water service to ARI's facilities in its service area as provided under Arkansas law. Further, these statements are hearsay, inadmissible and fail to meet proof with proof. The issue of whether SFRRWD has the right to provide water service to its customer in its service area (which includes ARI's East Plant and Refurb Plant) should be

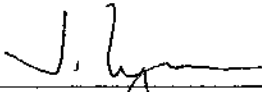
decided as a matter of law. As a matter of law, SFRRWD' Motion for Summary Judgment will properly be granted.

III. CONCLUSION

For the reasons set forth above, Plaintiff, SFRRWD, respectfully requests that this Court grant its Motion for Summary Judgment and order that SFRRWD is entitled to provide the water to ARI's East Plant and Refurb Plant which is located in SFRRWD's service area and that the City of Marmaduke must cease providing such service.

Respectfully submitted,

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

By: 

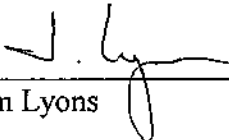
State Bar No. 77083
Attorneys for Plaintiff

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;
- via facsimile;
- via hand delivery; and/or
- via e-mail.

on this 17th day of March, 2018.



Jim Lyons

MAR 14 2018

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
CIVIL DIVISION

GREENE CO. CIRCUIT CLERK

ST. FRANCIS RIVER REGIONAL
WATER DISTRICT

Plaintiff

Vs.

Case No. CV 2017-219

CITY OF MARMADUKE, ARKANSAS

Defendant

AFFIDAVIT


STATE OF ARKANSAS)
) ss
COUNTY OF GREENE)

Comes Tonya Thompson, and after first being duly sworn, states upon oath as follows:

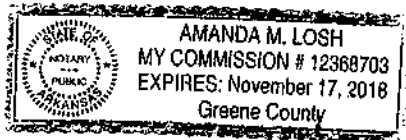
1. My name is Tonya Thompson and I am the Manager for St. Francis River Regional Water District ("SFRRWD").
2. That I have personal knowledge of the facts in this matter. I am above the age of eighteen (18) years and I am of sound mind.
3. That I am competent to testify concerning the facts of which I have personal knowledge which are set forth herein.
4. ARI's East Plant and Refurb Plant are located in SFRRWD's service area.
5. That SFRRWD is indebted to the Arkansas Natural Resources Commission (the "Commission") by virtue of a loan by the Commission to SFRRWD and the income derived therefrom is pledged or utilized by SFRRWD to repay the Commission for such loan.
6. That SFRRWD has adequate water facilities within or adjacent to the area where

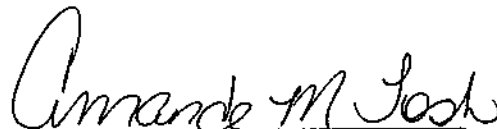
ARI's East Plant and Refurb Plant is located and SFRRWD is ready, willing and able to provide water service to ARI's East Plant and Refurb Plant within a reasonable period of time following the granting of a judgment in its favor.

7. The statements set forth herein are true and correct to the best of my knowledge, information and belief.


Tonya Thompson

SUBSCRIBED and SWORN to before me, the undersigned Notary Public, this 7 day of March, 2018.




Notary Public

FAWP60\SFRWD\Thompson.Affidavit.wpd

MAY 07 2018



GREENE CO. CIRCUIT CLERK

Counties
Clay
Craighead
Crittenden
Greene
Mississippi
Poinsett

Melissa B. Richardson
Circuit Judge, Division 9
Second Judicial District
P.O. Box 420
Jonesboro, AR 72403
(870) 933-4599
judgemrichardson@gmail.com

Trial Court Administrator
Brenda Welch, PLS
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FAX: (870) 933-7707
bwelch@2ndjudicial.org

Court Reporter
Dana Beck, CCR
291 County Road 312
Jonesboro, AR 72401
(870) 882-3502
Fax: 888-799-8792
beckreporting@gmail.com

NOTICE OF SETTING

May 4, 2018

Mr. Jim Lyons
Ms. Amanda LaFever

Re: St. Francis River Regional Water District vs. City of Marmaduke, Arkansas
Greene Circuit No.: 28CV-2017-219

Dear Counsel:

Please be advised the above matter has been scheduled for a motion for summary hearing to be heard on **May 21, 2018 at 1:30 p.m., or as soon thereafter 1:30 p.m. as possible, in Greene County, Paragould, Arkansas**, before Judge Melissa Richardson.

Any objection to the above date should be made to me immediately upon receipt of this notice. Please contact me should this matter resolve.

Please provide a copy of all pleadings for Judge Richardson's review no later than May 16, 2018.

Brenda J. Welch, CCM
Trial Court Administrator

cc: Court File



FILED

MAY 23 2018 ✓

Counties
Clay
Craighead
Crittenden
Greene
Mississippi
Poinsett

Melissa B. Richardson
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Second Judicial District
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beckreporting@gmail.com

NOTICE OF SETTING

May 18, 2018

Ms. Amanda LaFever
Mr. Jim Lyons

Re: St. Francis River Regional Water v. City of Marmaduke, AR
Greene Circuit No.: 28CV-2017-219

Dear Counsel:

Pursuant to Ms. LaFever's request, the above matter has been removed from the May 21, 2018 docket.

This matter has been rescheduled for a Motion for Summary Judgment hearing to be heard on **June 7, 2018 at 9:30 a.m. , or as soon thereafter 9:30 a.m. as possible, in Craighead County, Jonesboro, Arkansas**, before Judge Melissa Richardson.

Any objection to the above date and place should be sent to me immediately upon receipt of this notice. Please contact me immediately should this matter resolve.

If you have not already done so, please provide a copy of your pleadings for Judge Richardson's review.

Brenda J. Welch, CCM
Trial Court Administrator

cc: Court File

FILED

AUG 17 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 unevasively 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.

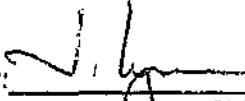
"NOTICE DUCES TECUM"

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.

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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 30(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

B

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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;

Crafting the 30(b)(6) Notice 141

1. Electronic surveillance system used at the Big Box store in Moses Lake, WA, on May 4, 2012.
2. The position/location¹⁹ 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.

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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, Jeremy 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.

LYONS & CONE, P.L.C.
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By: 

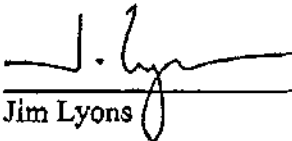
Jim Lyons State Bar No. 77083
Attorneys for Plaintiffs

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