

February 5, 2010

LEGISLATIVE ALERT
IMMEDIATE ACTION REQUESTED

Dear Rural Water District:

The National League of Cities (NLC) is aggressively working to amend the 1926(b) Rural Development Loan protection, which forbids municipalities from serving customers inside the District's area during the term of a Rural Development Loan. They have hired lobbyists in Washington, D.C. just to work on this issue.

The amendments proposed by the NLC would limit 1926(b) protection to only that portion of the system that is identified in the loan document as collateral for the district's loan. Additionally, it would allow a city to purchase the district's Rural Development loan and extend service to new development arising after the loan is purchased.

Attached is a Resolution that ORWA has adopted "Opposing" the municipals' proposed Amendment to 1926(b). ORWA is asking **each** Rural Water District to participate by **acting now**.

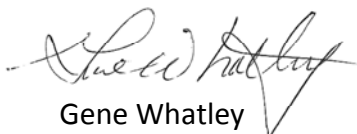
ORWA is asking each District to:

- 1.)** **Send** a letter adopting the ORWA Resolution to both Oklahoma U.S. Senators and its U.S. Representative. A sample letter is Attached.
- 2.)** **Attach a copy of the ORWA Resolution** to each of your letters.
- 3.)** **Send** the enclosed sample water customer letter **to each of your members**, and ask each of them to also write to the Senators and their Representative asking them to oppose any amendment to 1926(b).
- 4.)** **Fax or e-mail your letters** to assure timely delivery.

Please attempt to get a count of the number of letters sent by your members, so that ORWA can verify that Congress is being inundated by concerned rural Oklahomans.

Thank you for your prompt participation in this **very urgent and important matter.**

Sincerely,



Gene Whatley
Executive Director
Oklahoma Rural Water Association

James M. Inhofe
453 Russell Senate Office Building
Washington, D.C. 20510
202-224-4721
202-228-0380 fax
www.inhofe.senate.gov

Tom Coburn
172 Russell Senate Office Building
Washington, D.C. 20510
202-224-5754
202-224-6008 fax
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John Sullivan
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Frank D. Lucas
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Tom Cole
2458 Rayburn House Office Building
Washington, D.C. 20515
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**RESOLUTION OF THE
OKLAHOMA RURAL WATER ASSOCIATION
OPPOSING
AMENDMENTS TO 7 U.S.C. Section 1926(b)**

WHEREAS, the Oklahoma Rural Water Association (“ORWA”) consists of four hundred fifty six (456) member Rural Water Districts, Rural Water Corporations and small communities with populations of 10,000 persons or less, which serve approximately 800,000 water consumers; and

WHEREAS, United States Department of Agriculture Rural Development Loans positively affect the lives and livelihood of innumerable Rural Oklahomans, including rural businesses, farms and farm families, ranchers, and cities and towns with populations of 10,000 persons or less; and

WHEREAS, Rural Development Loans are available only in rural areas which do not have adequate water and/or waste water supply facilities to serve rural families, farms, ranches, rural business, *etc.*; and

WHEREAS, without 7 U.S.C. Section 1926(b), as it is currently enacted, rural Oklahoman’s could soon be, or in some cases would continue to be, without an adequate water supply; and

WHEREAS, the purpose of 7 U.S.C. Section 1926(b) is Rural Economic Development:

- “Eligible projects” for Rural Development Loans must serve a rural area “which is **not likely to decline** in population; must be...constructed...to serve the reasonably **foreseeable growth needs** of **the area**; and must be necessary for orderly **community development** and consistent with a current comprehensive community water, waste disposal, or other **current development plan for the rural area...**” (Rural Utilities Service Instructions, Section 1780.7 (c)(1)(2)(3))
- All facilities financed by a Rural Development Loan “must be installed so as to serve **any potential user within the service area** who desires service and can feasibly and legally served.” (RUS Instructions, Section 1780.11(a))
- The purpose of a Rural Development Loan is to “provide funds for water and waste projects serving the most financially needy communities. Financial assistance should result in **reasonable user costs** for rural residents, rural businesses and other rural users.” (RUS Instructions, Section 1780.2)

WHEREAS, when water supply facilities are constructed, using USDA Rural Development Loan funds, communities in rural areas sometimes do, as anticipated, “develop.” New rural businesses, additional rural families, *etc.* build and/or develop as communities in areas which were formerly without an adequate supply of water. After a Borrower’s rural community begins to “develop,” *then* municipalities often desire to sell water to the newly developed areas. In applying 7 U.S.C. Section 1926(b), Courts refer to a municipal’s desire to provide water sales to only the higher

populated rural areas as “cherry picking.” The result is that the cost to provide water, to the few and far between rural water consumers which are left behind, is exorbitant and prohibitively high. The Courts have determined that this is what Congress intended to avoid; and

WHEREAS, 7 U.S.C. Section 1926(b) does not harm municipalities as cities claim. Municipalities may annex rural areas where Rural Development Loan Facilities exist, and municipalities may tax those citizens, businesses, *etc.* Municipalities may also sell waste and waste water services, electric services, gas services, fire services, and/or any other services which are not collateral for the Rural Development Loan. Moreover, a municipal may sell water in the Borrower’s developed area, **if** the Borrower cannot adequately serve the potential customer. The legal test is “whether the [Rural Development Borrower] has proximate and adequate pipes in the ground with which it has served or can serve the disputed customers within a reasonable time.” *Pittsburg Co. RWD No. 7 v. City of McAlester*, 358 F.3d 694 (10th Cir. Cert. Denied, 543 U.S. 810 (2004)); and

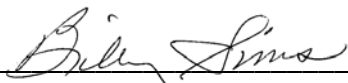
WHEREAS, 7 U.S.C. Section 1926(b) serves an invaluable public purpose, and

WHEREAS, large municipalities are asking Congress to amend 7 U.S.C. Section 1926(b) to give municipalities Statutory authority to “cherry pick” rural water customers, even though the result can only be an exorbitantly high water rate for the rural water consumers which are left behind in the low density areas, by asking that 7 U.S.C. Section 1926(b) protection be limited “to the customers...in existence at the time of the loan or financed by the loan,” thereby **eliminating any “economies of scale”** in rural areas which are **intended to “result in reasonable user costs** for rural residents, rural businesses and other rural users”; and

WHEREAS, the municipals’ proposed statutory amendment would devastate rural Oklahoma and defeat the very purposes for which the Rural Development Loan Program is in existence; and

NOW THEREFORE, BE IT HEREBY RESOLVED, that the Oklahoma Rural Water Association on behalf of each of its four hundred and fifty six (456) Members, and each of their Members’ water users urgently plead that you **OPPOSE** the municipalities’ proposed amendment to 7 U.S.C. Section 1926(b).

APPROVED THIS 25th day of January, 2010



Bill Sims, President
Oklahoma Rural Water Association

SAMPLE LETTER

The Honorable Tom Coburn
United States Senate
172 Russell Senate Office Building
Washington, D.C. 20510
FAX: 202-224-6008

RE: **OPPOSE** AMENDMENTS TO 7 U.S.C. SEC. 1926(b)

Dear Senator Coburn:

Rural Water District No. _____. _____ County, Oklahoma, which serves _____ rural water users, hereby adopts and approves the "Resolution of the Oklahoma Rural Water Association **Opposing** Amendments to 7 U.S.C. Sec. 1926(b)."

This statute, as it is written, is vital to rural Oklahomans in our attempt to obtain and keep an adequate water supply at a reasonable water rate.

Respectfully,

Chairman of RWD # ____, _____ County, Oklahoma

Attachment: Resolution of ORWA

SAMPLE LETTER

February __ , 2010

The Honorable Tom Coburn
United States Senate
172 Russell Senate Office Building
Washington, D.C. 20510
FAX: 202-224-6008

RE: **OPPOSE** AMENDMENTS TO 7 U.S.C. SEC. 1926(b)

Dear Senator Coburn:

I purchase my water from Rural Water District No. _____. _____ County,
Oklahoma.

Please **oppose** any amendment to 7 U.S.C. Sec. 1926(b). Rural Oklahomans must
have affordable water.

Respectfully,
