

February 12, 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 Utility 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 TAUD has adopted "Opposing" the municipals' proposed Amendment to 1926(b). TAUD is asking **each** Utility District to participate by **acting now.**

TAUD is asking each Utility District to:

- 1.) **Send** a letter adopting the TAUD Resolution to both Tennessee U.S. Senators and its U.S. Representative. A sample letter is attached.
- 2.) **Attach a copy of the TAUD 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 U. S. Senators and their U. S. 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 TAUD can verify that Congress is being inundated by concerned rural Tennesseans.

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

Sincerely,



Bob Freudenthal
Executive Director
Tennessee Association of Utility Districts

United States Representatives

1st District

David P. Roe , (R)

Tennessee-1st, Republican
419 Cannon HOB
Washington, DC 20515-4201
Phone: 202-225-6356

2nd District

John J. Duncan, Jr., (R)

800 Market Street, Suite 110
Knoxville, TN 37902
Phone 423-523-3772

2207 Rayburn House Office
Building
Washington, DC 20515-4202
Phone 202-225-5435
Fax 202-225-6440

3rd District

Zach Wamp, (R)

900 Georgia Avenue
Suite 126
Chattanooga, TN 37402
Phone 423-756-2342
Fax 423-756-6613

200 Administration Road
Federal Building Suite 100
Oak Ridge, TN 37830
Phone 865-576-1976
Fax 865-576-3221
Toll free 800-883-2369

4th District

Lincoln Davis (D)

410 Cannon House Office
Building
Washington, DC 20515-4204
Phone 202-225-6831
Fax 202-225-3272

5th District

Jim Cooper, (D)

605 Church Street
Nashville, TN 37219
Phone 615-736-5295
Fax 615-736-7479

1536 Longworth House Office
Building
Washington, DC 20515
Phone: 202-225-4311
Fax: 202-226-1035

6th District

Bart Gordon, (D)

P.O. Box 1986
106 South Maple Street
Murfreesboro, TN 37133
Phone 615-896-1986

2306 Rayburn House Office
Building
Washington, DC 20515-4206
Phone 202-225-4231
Fax 202-225-6887

7th District

Marsha Blackburn, (R)

217 Cannon House Office
Building
Washington, DC 20515-4207
Phone 202-225-2811
Fax 202-225-3004

8th District

John Tanner, (D)

203 West Church Street
Union City, TN 38261
Phone 901-885-7070

1226 Longworth House Office
Building
Washington, DC 20515-4208
Phone 202-225-4714
Fax 202-225-1765

9th District

Steve Cohen, (D)

Clifford Davis Federal Building
167 N. Main, Suite 369
Memphis, TN 38103
Phone: 901-544-4131
Fax: 901-544-4329

1005 Longworth House Office
Building
Washington, DC 20515-4209
Phone 202-225-3265
Fax 202-225-5663

**RESOLUTION OF THE
TENNESSEE ASSOCIATION OF UTILITY DISTRICTS
OPPOSING
AMENDMENTS TO 7 U.S.C. Section 1926(b)**

WHEREAS, the Tennessee Association of Utility Districts (“TAUD”) consists of over one hundred and eighty (180) member Rural Water Districts, Rural Water Corporations and small communities with populations of 10,000 persons or less, which serve approximately 3 million water consumers; and

WHEREAS, United States Department of Agriculture Rural Development Loans positively affect the lives and livelihood of innumerable Rural Tennesseans, 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 Tennesseans 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 Tennessee and defeat the very purposes for which the Rural Development Loan Program is in existence; and

NOW THEREFORE, BE IT HEREBY RESOLVED, that the Tennessee Association of Utility Districts on behalf of each of its four hundred plus 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 17th day of February, 2010



Grey Scott, President
Tennessee Association of Utility Districts

SAMPLE LETTER

February ____, 2010

The Honorable _____
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 _____:

_____ Utility District of _____ County, Tennessee, which serves _____ rural water users, hereby adopts and approves the "Resolution of the Tennessee Association of Utility Districts **Opposing** Amendments to 7 U.S.C. Sec. 1926(b)."

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

Respectfully,

Chairman of the _____ Utility District of _____ County, Tennessee

Attachment: Resolution of TAUD

SAMPLE LETTER

February __ , 2010

The Honorable _____
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 _____:

I purchase my water from the _____ Utility District, of
_____ County, Tennessee.

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

Respectfully,
