Exhibit B

Order Denying Plaintiff's Motion to Alter or Amend Judgment

THE STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOURTH JUDICIAL CIRCUIT**
COUNTY OF CHESTERFIELD	)	
	)	**2015-CP-13-379**
Town of McBee,	)	
	)	
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S
versus	)	MOTION TO ALTER OR AMEND
	)	JUDGMENT
	)	
Alligator Rural Water & Sewer Company, Inc., Alligator Rural Water Company, Inc.,	)	
	)	
Defendants.	)	
	)	
And	)	
	)	
A.O. Smith Corporation,	)	
	)	
Intervenor-Defendant.	)	

This matter came before the Court for a hearing on May 24, 2016 on the Plaintiff's motion for an order amending or vacating this Court's order entered April 12, 2016 enjoining the Town of McBee from providing water to its customers from any source other than purchased from Alligator Rural Water & Sewer Company, Inc. Present at the hearing were William O. Spencer, Jr., attorney for Defendant and Belton T. Zeigler and Martin S. Driggers, Jr., attorneys for Plaintiff. Also present was Marguerite S. Willis, attorney for Defendant, A.O. Smith Corporation.

After considering Plaintiff's and Defendant's arguments, the Court denies Plaintiff's motion.

The purpose of the equitable remedy of a temporary injunction is to maintain the status quo. *County of Richland v Simpkins* 560 S.E. 2d. 902, 348 S.C. 664 (SC Ct. App. 2002). By the issuance of the temporary injunction in this case, it is this Court's intention to maintain what has

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been the status quo between these parties since 1999 until such time as this case may be heard on the merits. I find that Plaintiff has purchased all of its potable water from Alligator since 1999 pursuant to a 40 year Water Purchase Agreement that is pledged to the United States of America, acting through the United States Department of Agriculture as part of security for a loan to the Purchaser (Town of McBee) and Seller (Alligator) from USDA, Rural Development.

While an injunction is a drastic remedy, it is necessary in this case to preserve the status quo and avoid possible irreparable injury to the Defendant pending a full hearing on the merits. South Carolina's courts have found that an injunction may issue where the requesting party meets three elements: (1) it will suffer an "irreparable harm" in the absence of an injunction, (2) it is likely to succeed on the merits of the case; and (3) there is an inadequate remedy at law." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.e.2d 905, 908 (2004).

I find that Alligator is likely to succeed on the merits of the case. Alligator is a not-for-profit corporation financed in whole or in part by federal or state loans. The Town of McBee has purchased all of its water from Alligator since 1999 pursuant to a 40 year water purchase agreement that was required by USDA, Rural Development. The Town of McBee has not operated its own wells since 1999. Prior to 1999, the Town of McBee had serious problems with its water system and was not in compliance with DHEC sanitary water standards. In order to remedy the problem, Alligator agreed, at the Town's request, to provide the Town with all of the water that it needed to service its customers and the Town would no longer operate its wells. In order to accomplish this, Alligator had to install wells, run lines to connect McBee to Alligator' system, install booster pumps and a pump station. Both Alligator and the Town made loan

applications to Rural Development seeking the necessary funds for this expensive project. The approximate cost of Alligator's portion of the project was $1,100,000.00. After deducting grants, Alligator borrowed $674,500.00 from Rural Development. Alligator's payment on this project is $3,522.00 per month for a 40 year term. The revenue from the Town would allow Alligator to meet its monthly obligation to Rural Development. The Water Purchase Agreement between the Town and Alligator was a loan requirement and was pledged as security for the loan. Item 9 of the Agreement states "This Agreement is pledged to the United States of America, acting through the United States Department of Agriculture as part of security for a loan to the Purchaser and the Seller from USDA, Rural Development." Based upon this longstanding contractual relationship with the Town of McBee to supply its potable water and based upon the fact that this contract was a requirement for Alligator's Rural Development loan for this project, I find that Alligator is likely to succeed on the merits of the case.

Alligator asserts protection under Title 7 Section 1926(b) of the United States Code which provides "The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan". "All of the courts that have reviewed §1926(b) acknowledge that its provisions should be given a liberal interpretation that protects water associations indebted to the [Farmers Home Administration] from municipal encroachment." *Bluefield Water Ass'n v. City of Starkville, Minn.*, 577 F3d 250 (5th. Cir., 2009) citing *Bell Arthur Water Corp. v Greenville Util. Comm'n*, 972 F. Supp. 951, 959 (E.D.N.N.C.1997). "The statute unambiguously prohibits any curtailment or limitation of an

FMHA-indebted water association's services resulting from municipal annexation or inclusion. This language indicates a congressional mandate that local governments not encroach upon the services provided by such associations, be that encroachment in the form of competing franchises, new or additional permit requirements, or similar means." *City of Madison, Miss v. Bear Creek Water Ass'n, Inc.* 816 F.2d 1057 (C.A.5 (Miss.), 1987.

Plaintiff argues that Alligator is not likely to prevail at trial, relying on a 7th Cir. case, *CSL Utilities, Inc. v. Jennings Water, Inc.*, 16 F.3d 130, (7th Cir. 1993), *as modified on denial of reh'g* (Feb. 25, 1994) and further arguing that nothing in the water purchase contract restricts McBee from producing its own water during the term of the contract. The Court in *Jennings* held that 7 U.S.C.A. §1926(b) did not apply to improvement by a wholesale customer of its own facilities so as to reduce the amount of water it must purchase at wholesale, but would only apply to curtailments resulting from the "granting of any private franchise for similar service.". While the *Jennings* case does appear to have similar facts, I find that the distinguishing fact is that in the present case, Rural Development loaned Alligator significant funds for the sole purpose of providing Plaintiff with the water necessary to supply all of its customers. Further, the water purchase agreement was pledged as security for the loan. It seems clear that the intention at the time of the contract was that Alligator would provide the Town with all of its required potable water for the term of the contract which coincides with the term of the USDA loan. In light of the RD loan for this specific purpose, I find that Plaintiff's operation of its own wells to provide water to its existing water customers is a curtailment of the services provided by Alligator and is likely a violation of §1926(b). I find that there is a substantial likelihood that Alligator's claim under the water purchase contract and §1926(b) will prevail.

I further find that Alligator will suffer immediate and irreparable injury, loss, and/or damages unless Plaintiff is restrained from taking actions to obtain water from any source other than continuing to purchase the same from Alligator until a full and final resolution of the present litigation. I find that the irreparable harm to Alligator is the loss of revenue and the ability to service its debt to USDA Rural Development. Given the long service by Alligator to the Town of McBee of all of its potable water since 1999, I find that the harm suffered between the time of suit and the time of ultimate decision in this case would seriously prejudice Alligator's opportunity for full recovery. Without this injunction, Plaintiff would be able to stop purchasing water from Alligator immediately. This action would inevitably cause Alligator to default on its Rural Development loan that would, in turn, jeopardize Alligator's ability to continue operating its entire water system and would ultimately impact Alligator's remaining customers.

I further find that there is no adequate remedy at law for Alligator. Plaintiff argues that Alligator asserted a counterclaim for money damages (Ans. & Countercls. Of Alligator Defendants ¶¶55-69). However, this counterclaim is not related to Alligator's lost revenue resulting from the Town's use of its own wells, but rather appears to be damages sought by virtue of Plaintiff's failure to pay Alligator's current water rates.

Plaintiff argues that any potential harm that Alligator may suffer by allowing the Plaintiff to operate its own wells would be "reparable" through a monetary award. I disagree. Given the progression of this case thus far, a monetary award at the conclusion of the case is not an adequate remedy. This case was filed over a year ago; however, Plaintiff just recently amended its complaint alleging causes of action in tort against two new parties. Given the slow pace of

this case, an injunction is absolutely necessary to maintain the status quo among these parties until this case may be resolved. Should an injunction not issue, Plaintiff could continue to prolong this case and the harm to Alligator caused by the default on its Rural Development loan could no longer be remedied with an award of money damages. Alligator could potentially lose its entire water system in foreclosure before an ultimate decision is made in this case. I therefore find that a preliminary injunction is necessary in this matter to preserve the status quo.

Regarding the issue of the posting of a bond by Alligator, the Court finds that Alligator is not required to post a bond pursuant to Rule 65(c), SCRCP, "No such security shall be required of the State or of an officer or agency thereof." I find that the Defendant is a Not-for-Profit corporation organized pursuant to §33-36-10 et.seq., South Carolina Code of Laws, as amended. In accordance with the provisions of Chapter 36 of Title 33, Alligator is to be treated as a Special Purpose District authorized to provide the governmental function of water service. These not-for-profit corporations exist for a public purpose. Corporations not-for profit, like Alligator, participate in the State Retirement System, the State Health Insurance System, and are protected by the South Carolina Tort Claims Act. By implication, I find that Alligator is also to be treated as a state entity for purposes of Rule 65(c) and is therefore not required to post bond before a temporary injunction may be issued in this matter.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Plaintiff's motion is denied and the Court's Order entered April 12, 2016 is hereby supplemented with the above findings of fact and conclusions of law.

AND IT IS SO ORDERED.

The Honorable Roger E. Henderson
Fourth Judicial Circuit

Chesterfield, South Carolina.
July 12, 2016.

PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) hereinbelow specified by depositing a copy of it in the United States Mail, postage prepaid, to the following address(es):

PLEADING: Notice of Appeal

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August 1, 2016
Columbia, South Carolina