

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

RURAL WATER DISTRICT NO. 4,	§	
DOUGLAS COUNTY, KANSAS,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Case No. 07-2463-JAR
	§	
CITY OF EUDORA, KANSAS,	§	
	§	
Defendant.	§	

**MOTION FOR JUDGMENT AS A MATTER OF LAW UNDER RULE 50(B)**  
**OR IN THE ALTERNATIVE FOR A NEW TRIAL UNDER RULE 59**

Pursuant to Rules 50(b) and 59 of the Federal Rules of Civil Procedure, Defendant City of Eudora, Kansas (“the City”), hereby moves the Court for entry of judgment in the City’s favor on Plaintiff Rural Water District No. 4 of Douglas County, Kansas’s (“Douglas-4”) claims under 7 U.S.C. §1926(b) and 42 U.S.C. §1983. In the alternative, the City respectfully requests a new jury trial on both of these claims in which this Court: (a) properly instructs the jury that Douglas-4 must prove that its federal loan guaranty was “necessary” under K.S.A. 82a-619(g); (b) properly instructs the jury that Douglas-4 bears the burden of showing that its water prices at the time Doug Garber first requested water in the affected area were non-confiscatory; and (c) excludes from evidence all letters from the City’s attorneys and testimony regarding the former City Administrator’s comments to Doug Garber on the potential for de-annexation. The City incorporates its Memorandum in Support of this Motion filed contemporaneously herein.

Respectfully submitted:

LATHROP & GAGE LLP

/s/ Curtis L. Tideman

Curtis L. Tideman, KS# 13433

David R. Frye, KS# 18133

Jeffrey R. King, KS# 20735

10851 Mastin Blvd., Suite 1000

Overland Park, KS 66210-1669

913-451-5100 FAX: 913-451-0875

[ctideman@lathropgage.com](mailto:ctideman@lathropgage.com)

[dfrye@lathropgage.com](mailto:dfrye@lathropgage.com)

[jeff@thekingslaw.com](mailto:jeff@thekingslaw.com)

ATTORNEYS FOR DEFENDANT  
CITY OF EUDORA, KANSAS

**CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2010, I sent the following document to the following counsel of record by electronic mail:

John W. Nitcher  
Riling, Burkhead & Nitcher, Chartered  
808 Massachusetts Street  
PO Box B  
Lawrence, KS 66044  
[jnitcher@rilinglaw.com](mailto:jnitcher@rilinglaw.com)

Steven M. Harris  
Michael D. Davis  
Doyle Harris Davis & Haughey  
1350 South Boulder, Suite 700  
Tulsa, OK 74119-3216  
[steve.harris@1926blaw.com](mailto:steve.harris@1926blaw.com)  
[mike.davis@1926blaw.com](mailto:mike.davis@1926blaw.com)

Michael C. Kirkham  
Sanders, Conkright & Warren, LLP  
9401 Indian Creek Parkway, Suite 1250  
Overland Park, KS 66210  
[m.kirkham@sanconwar.com](mailto:m.kirkham@sanconwar.com)

/s/ Curtis Tideman

Curtis Tideman