

BEFORE THE IOWA SUPREME COURT

No. 20-1027

XENIA RURAL WATER DISTRICT,

Plaintiff-Appellant,

vs.

CITY OF JOHNSTON, IOWA,

Defendant-Appellee.

CERTIFIED QUESTIONS FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
THE HONORABLE JAMES E. GRITZNER

BRIEF OF THE ASSOCIATION OF REGIONAL WATER
ASSOCIATIONS, IOWA REGIONAL UTILITIES ASSOCIATION,
AND IOWA LAKES REGIONAL WATER,
AS AMICI CURIAE

Stephen H. Locher
BELIN McCORMICK, P.C.
666 Walnut Street Suite 2000
Des Moines, IA 50309-3989
Telephone: (515) 283-4610
Facsimile: (515) 558-0610
shlocher@belinmccormick.com

ATTORNEY FOR PROPOSED AMICI
CURIAE

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	4
STATEMENT OF THE IDENTITY OF THE AMICI CURIAE AND THEIR INTEREST IN THE CASE	6
ARGUMENT	8
I. THE PROPER INTERPRETATION OF IOWA CODE § 357A.2 REQUIRES FIRST AN UNDERSTANDING OF FEDERAL LAW FAVORING RURAL WATER ORGANIZATIONS.	8
A. <i>7 U.S.C. § 1926(b) Provides Strong Protections for Rural Water Districts Like Xenia.</i>	8
B. <i>The 2014 Amendments to Iowa Code § 357A.2, if Properly Interpreted, Help Ameliorate Conflicts Between State and Federal Law.</i>	11
II. AT ALL RELEVANT TIMES, IOWA CODE § 357A.2 GAVE RURAL WATER DISTRICTS THE LEGAL RIGHT TO SERVE THE AREA DESCRIBED IN THE COUNTY BOARD OF SUPERVISORS RESOLUTION EVEN WHEN PART OF THE AREA WAS WITHIN TWO MILES OF A CITY LIMIT.	13
III. RURAL WATER DISTRICTS ARE EXEMPT FROM NOTICE-OF-INTENT PROCEDURES WHEN THEY EXPAND SERVICE WITHIN THEIR EXISTING SERVICE AREA EVEN IF THE EXPANSION OCCURS WITHIN TWO MILES OF CITY LIMITS.	16

<i>A. The Plain Language of the Statute Allows Rural Water Districts to Expand Service Within Existing Service Areas Without Following the Notice-of-Intent Process.</i>	16
<i>B. Amici’s Interpretation of Iowa Code § 357A.2(4), as Amended, Provides Certainty for Rural Water Districts Across the State and Protects Against Federal Preemption Problems.</i>	20
CONCLUSION.....	24
CERTIFICATE OF FILING/SERVICE.....	26
CERTIFICATE OF COMPLIANCE.....	27

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<i>Des Moines Flying Serv., Inc. v. Aerial Servs., Inc.</i> , 880 N.W.2d 212 (Iowa 2016).....	18
<i>Glenpool Utility Servs. Auth. v. Creek Cnty Rural Water Dist.</i> No. 2, 861 F.2d 1211 (10th Cir. 1988)	9, 11
<i>Jennings Water, Inc. v. City of North Vernon, Ind.</i> , 895 F.2d 311 (7th Cir. 1989)	8, 11
<i>Moore Bayou Water Ass’n v. Town of Jonestown</i> , 628 F. Supp. 1367 (N.D. Miss. 1986)	10
<i>North Alamo Water Supply Corp. v. City of San Juan, Tex.</i> , 90 F.3d 910 (5th Cir. 1996)	9, 22
<i>Pinehurst Enters. v. Town of S. Pines</i> , 690 F. Supp. 444 (M.D.N.C. 1988).....	10
<i>Roth v. Evangelical Lutheran Good Samaritan So.</i> , 886 N.W.2d 601 (Iowa 2016).....	8, 23
<i>Rural Water Sys. No. 1 v. City of Sioux Ctr.</i> , 202 F.3d 1035 (8th Cir. 2000)	9, 11, 12, 15, 22
<i>Rural Water System No. 1 v. City of Sioux Center</i> , 967 F. Supp. 1483 (N.D. Iowa 1997)	11, 12, 24
<i>Sequoyah Cnty Rural Water Dist. No. 7 v. Town of Muldrow</i> , 191 F.3d 1192 (10th Cir. 1999).....	9, 22
<u>Statutes</u>	
7 U.S.C. § 1926(b)	8, 9, 10, 11, 12, 15, 22, 23, 24
Iowa Code Chapter 357A	7, 14, 20, 22, 23
Iowa Code § 357A.2	7, 8, 11, 12, 13, 15, 17, 20, 21, 22, 24

Iowa Code § 357A.2(1)	7
Iowa Code § 357A.2(1) and (2).....	13, 22
Iowa Code § 357A.2(2)(a).....	16
Iowa Code § 357A.2(3)	11, 12, 18, 23
Iowa Code § 357A.2(4)	12, 13, 16, 17, 19, 20, 23, 24
Iowa Code § 357A.11	13
Iowa Code § 357A.24(3)	23

STATEMENT OF THE IDENTITY OF THE AMICI CURIAE AND
THEIR INTEREST IN THE CASE

The Association of Regional Water Organizations (“ARWO”) is a not-for-profit trade organization dedicated to supporting regional water and wastewater systems throughout the country through education and advocacy. ARWO has dozens of members and affiliates in Iowa and other states. Iowa Regional Utilities Association (“IRUA”) is an Iowa not-for-profit corporation responsible for providing a safe, dependable source of potable water to residents in eighteen counties in Central Iowa. Iowa Lakes Regional Water (“ILRW”) is a regional utility organization whose purpose is to provide a safe, reliable source of water to homes and farms in Northwest Iowa and Southwest Minnesota.

Collectively, *Amici* exemplify or represent rural water utilities across Iowa and the United States who have invested hundreds of millions (if not billions) of dollars in infrastructure, personnel, technology, and other tangible and intangible assets necessary to ensure safe and reliable sources of water to citizens. IRUA alone, for example, has invested more than \$200 million in infrastructure to provide water service to tens of thousands of Iowans. Rural water utilities like IRUA make this investment in part through substantial loans from the United States Department of Agriculture, which are then repaid from revenues generated from the utilities’ customers.

The level of investment by IRUA, ILRW, and other rural water utilities is determined in large part by the size of their service areas, as determined in the first instance by county boards of supervisors. Rural water utilities governed by Chapter 357A of the Iowa Code must apply to the board of supervisors in each county where they intend to provide service. *See* Iowa Code § 357A.2(1). Generally speaking, the larger the service area, the greater the investment. These investments – and the economic viability of the rural water utilities themselves – are threatened when cities encroach on the utilities’ service areas. Such encroachment, if permitted, causes customer revenue to fall or expected new sources of revenue not to materialize.

ARWO, IRUA, and ILRW submit this Brief of *Amici Curiae* in support of the positions articulated by Plaintiff-Appellant Xenia Rural Water District (“Xenia”). *Amici* respectfully submit that their Brief will help the Court understand the context and implications of the various possible interpretations of Iowa Code § 357A.2, including how to avoid conflict with federal law and ensure the economic viability of rural water utilities across the State. No party’s counsel authored this Brief in whole or part, nor did any party, party’s counsel, or person other than *Amici* contribute money to fund the preparation and submission of this Brief.

ARGUMENT

I. THE PROPER INTERPRETATION OF IOWA CODE § 357A.2 REQUIRES FIRST AN UNDERSTANDING OF FEDERAL LAW FAVORING RURAL WATER ORGANIZATIONS.

A. *7 U.S.C. § 1926(b) Provides Strong Protections for Rural Water Districts Like Xenia.*

Although the questions certified to this Court seek guidance regarding the proper interpretation of state law, *Amici* respectfully submit that this Court should not attempt to answer those questions without first taking into account relevant provisions of federal law granting favored status to rural water organizations like Xenia, IRUA, and ILRW. As this Court has recognized, the Iowa Code should be interpreted when possible to avoid conflict with federal law. *See, e.g., Roth v. Evangelical Lutheran Good Samaritan So.*, 886 N.W.2d 601, 611-13 (Iowa 2016). Xenia’s proposed interpretation of Iowa Code § 357A.2 gives effect to this canon of construction, while the interpretation proffered by Defendant-Appellee City of Johnston, Iowa (the “City”), threatens to violate it.

Federal law, including, especially, 7 U.S.C. § 1926(b), recognizes that rural water utilities like Xenia, IRUA, and ILRW provide “essential community services” to residents of rural areas, are indispensable to rural economies, and therefore must be protected if the utilities have borrowed federal funds to develop or expand their operations. *Jennings Water, Inc. v.*

City of North Vernon, Ind., 895 F.2d 311, 314-15 (7th Cir. 1989); *see also* *Glenpool Utility Servs. Auth. v. Creek Cnty Rural Water Dist. No. 2*, 861 F.2d 1211, 1214 (10th Cir. 1988) (“Congress enacted 7 U.S.C. § 1926(b) as part of a federal statutory scheme to extend loans and grants to certain associations providing . . . water service or management, . . . or essential community facilities to farmers, ranchers, and other rural residents.”). Section 1926(b) is a “mandate that local governments not encroach upon the services provided by such [water] associations, be that encroachment in the form of competing franchises, new or additional permit requirements, or similar means.” *North Alamo Water Supply Corp. v. City of San Juan, Tex.*, 90 F.3d 910, 915 (5th Cir. 1996) (citing S. Rep. No. 566, at 65 (1961)). To put it more succinctly: “[t]he service area of a federally indebted water association is sacrosanct.” *Id.* at 915.

“Doubts about whether a water association is entitled to protection from competition under § 1926(b) should be resolved in favor of the FmHA-indebted party seeking protection for its territory.” *Rural Water Sys. No. 1 v. City of Sioux Ctr.*, 202 F.3d 1035, 1038 (8th Cir. 2000) (citing *Sequoyah Cnty Rural Water Dist. No. 7 v. Town of Muldrow*, 191 F.3d 1192, 1197 (10th Cir. 1999)). Section 1926(b) must be “liberally interpreted” to protect such an association’s rights. *Alamo Water Supply*, 90 F.3d at 913 (“Every federal court

to have interpreted § 1926(b) has concluded that the statute should be liberally interpreted to protect FmHA-indebted rural water associations from municipal encroachments.”); *see also Moore Bayou Water Ass’n v. Town of Jonestown*, 628 F. Supp. 1367, 1369070 (N.D. Miss. 1986) (rejecting a municipality’s encroachment on a rural association’s service by means of eminent domain and similarly construing section 1926(b) as broad and absolute). Any “curtailment or limitation” of these rights is “unambiguously prohibited.” *Pinehurst Enters. v. Town of S. Pines*, 690 F. Supp. 444, 451 (M.D.N.C. 1988).

The U.S. Congress mandated favorable treatment for rural water utilities because of the complicated economics of their operations. Rural water districts like Xenia, IRUA, and ILRW must invest tens or hundreds of millions of dollars in infrastructure to provide service for a relatively small number of customers. If cities are given *carte blanche* to encroach on those customers or limit a district’s service area, the investments might never be made in the first place, thus depriving rural customers of access to affordable water. Accordingly, § 1926(b) was designed to “(1) encourage rural water development by expanding the number of potential users of such systems, thereby decreasing the per-user cost, and (2) to safeguard the viability and financial security of such associations (and FmHA’s loans) by protecting them

from the expansion of nearby cities and towns.” *Id.*; see also *Rural Water Sys. No. 1*, 202 F.3d at 1038 (same); *Glenpool Utility Servs.*, 861 F.2d at 1215 (same). The “primary beneficiaries of section 1926(b)’s ban on association service curtailment are . . . the FmHA and the individual rural consumers who would not have inexpensive and reliable water service without FmHA-supported rural water associations.” *Rural Water System No. 1 v. City of Sioux Center*, 967 F. Supp. 1483, 1521 (N.D. Iowa 1997) (citing *Jennings Water*, 895 F.2d at 317).

B. The 2014 Amendments to Iowa Code § 357A.2, if Properly Interpreted, Help Ameliorate Conflicts Between State and Federal Law.

Notwithstanding the strong federal mandate in favor of rural water utilities, Iowa Code § 357A.2(3), which was originally enacted in 1987, purports to limit the ability of a rural water district to provide service “within two miles of the limits of a city . . . except as provided in this section.” Prior to being amended in 2014, § 357A.2(3) required a rural water district to provide notice to a city if the district wanted to expand water service within two miles of city limits even if the expansion occurred within the district’s existing service area. The city could then exercise, in effect, a right of first refusal over the expansion and provide the water service itself.

There is significant tension between Iowa Code § 357A.2(3) and 7 U.S.C. § 1926(b): the latter is designed to protect rural water utilities from encroachment, while the former purports to give cities a superior right to provide water service in areas within two miles of city limits. This tension led the United States District Court for the Northern District of Iowa to conclude in 1997 that § 1926(b) would preempt § 357A.2(3) at least to the extent the latter was used to justify a city's encroachment in an area where a rural water district already had the legal and physical ability to provide service. *See Rural Water Sys. No. 1*, 967 F. Supp. at 1529 (“express and conflict preemption” would arise in such circumstances).

If correctly interpreted, the amendments made by the Iowa Legislature in 2014 to Iowa Code § 357A.2 help ameliorate the tension between state and federal law. In particular, Iowa Code § 357A.2(4), as amended, restores to rural water utilities the superior right to provide water service within two miles of city limits as long as the utilities are “extending service to new customers or improving existing facilities within existing district or association service areas or existing district or association agreements.” *Id.* In such circumstances, there is no notice process and cities do not have a right of first refusal. Instead, the strong federal mandate in favor of rural water utilities is honored.

II. AT ALL RELEVANT TIMES, IOWA CODE § 357A.2 GAVE RURAL WATER DISTRICTS THE LEGAL RIGHT TO SERVE THE AREA DESCRIBED IN THE COUNTY BOARD OF SUPERVISORS RESOLUTION EVEN WHEN PART OF THE AREA WAS WITHIN TWO MILES OF A CITY LIMIT.

The first certified question, whether a rural water district had a legal right prior to the 2014 amendments to Iowa Code § 357A.2(4) to provide water service to areas described in the county board of supervisors resolution but also within two miles of a city, should be answered in the affirmative.

As clearly set forth in Iowa Code § 357A.2(1) and (2), and as reflected in the Polk County Board of Supervisors resolution (“PCBOS”) in this case, the purpose of a board of supervisors resolution is to incorporate and organize a rural water district and establish its service area. *See id.* at § 357A.2(2)(a) (requiring a petition for the creation of a rural water district to identify the “area to be served”). This is literally a defining moment in the existence of a rural water district and helps to determine, among other things, the level of infrastructure the district will need to develop and amount of federal indebtedness it may decide to incur.

It would make little sense to conclude that a county board of supervisors resolution authorizes the creation of a rural water district and defines the area it will serve yet somehow does not also give the district the right to serve that area. Indeed, Iowa Code § 357A.11, which describes the powers vested in the

board of a rural water district court, refers repeatedly to the “district’s right to provide service to an area” (or similar terminology) and the circumstances in which the “right” can be relinquished. Similarly, the PCBOS resolution at issue here specifically vested Xenia with the “**rights**, powers, and duties specified in Chapter 357A” (emphasis added) immediately before identifying Xenia’s service area. It follows that Xenia – and all other rural water districts created through a board of supervisors resolution – has the right to provide service within the area identified in that resolution.

The PCBOS resolution clearly intended to include areas within two miles of city limits in Xenia’s service area. The resolution identified several portions of Polk County as the service area, with the specific exception of “that portion lying within the boundary of any incorporated city on the date hereof.” Had the resolution also intended to exclude portions lying within two miles of such boundary, it surely would have said so.¹

¹ The District Court concluded that the inclusion of the word “duties” in the PCBOS resolution served, in effect, to incorporate the two-mile rule. This conclusion fails to explain why the PCBOS resolution would have expressly excepted any “portion lying within the boundary of any incorporated city” from the service area. After all, under the District Court’s logic, Xenia had the same “duty” not to provide service within city boundaries as it did not to provide service in the two-mile area, yet the PCBOS resolution expressly excluded only the former from the defined service area. The only logical conclusion is that the PCBOS intended to *include* the two-mile area in Xenia’s service area.

Interpreting Iowa Code § 357A.2 as giving a rural water district the “right” to serve the area defined in the board of supervisors resolution is important to help avoid federal preemption issues under 7 U.S.C. § 1926(b). Here, for example, Xenia first incurred federal debt from the United States Department of Agriculture (“USDA”) in 1982 and has remained continually indebted to the USDA ever since. Accordingly, Xenia fit squarely within the protections of § 1926(b) when the PCBOS resolution was adopted in 1990 and at all other relevant times. Interpreting § 357A.2 as nonetheless not giving Xenia the “right” to serve all parts of the service area identified in the PCBOS resolution would violate the federal mandate that “[d]oubts about whether a water association is entitled to protection from competition under § 1926(b) should be resolved in favor of the FmHA-indebted party seeking protection for its territory” and lead to serious preemption issues. *Rural Water Sys. No. 1*, 202 F.3d at 1038. Such an interpretation should be avoided not just for purposes of this case, but in any future instance where a rural water district followed the process set forth in Iowa Code Chapter 357A for establishing its “service area.” Clearly such a rural water district has the “right” to provide service in that area.²

² Whether Xenia’s right to serve areas within two miles of city limits was subject prior to 2014 to a city’s *superior* right to provide service within the

III. RURAL WATER DISTRICTS ARE EXEMPT FROM NOTICE-OF-INTENT PROCEDURES WHEN THEY EXPAND SERVICE WITHIN THEIR EXISTING SERVICE AREA EVEN IF THE EXPANSION OCCURS WITHIN TWO MILES OF CITY LIMITS.

The second certified question, whether Iowa Code § 357A.2(4), as amended in 2014, exempts a rural water district from following the notice-of-intent process if it wants to serve customers within the service area defined in the board of supervisors resolution even if those customers are also within two miles of city limits, also should be answered in the affirmative.

A. The Plain Language of the Statute Allows Rural Water Districts to Expand Service Within Existing Service Areas Without Following the Notice-of-Intent Process.

The language of Iowa Code § 357A.2(4), as amended in 2014, speaks for itself in answering the second certified question: the notice-of-intent procedures “shall not apply” when a district is “extending service to new customers or improving existing facilities **within existing district or association service areas** or existing district or association agreements” (emphasis added). As explained above, the “existing district . . . service area” is the area identified in the board of supervisors resolution. *See* Iowa Code § 357A.2(2)(a) (requiring petition to board of supervisors for creation of rural

same areas is a different question that this Court need not address. It is enough to say that the answer to the certified question is “yes.”

water district to identify the “area to be served”). Thus, if Xenia wants to extend service to new customers within the existing service area as defined by the PCBOS resolution, it is not required to provide notice to the City, nor does the City have any preemptive right to provide service to the same customers.³

The District Court interpreted § 357A.2(4), as amended, as “creating an exception to th[e] notice-of-intent requirement, not the two-mile rule,” and thus as not giving Xenia a superior right to serve customers in the two-mile area. This interpretation cannot be squared with the language or context of the amendment. Prior to the amendment, the notice-of-intent requirement was designed to enforce the two-mile rule by giving cities, in essence, a right of first refusal against rural water utilities who wanted to provide service within the two-mile area. *See* § 357A.2(4)(d). The Iowa Legislature’s decision to free rural water utilities from the notice requirement in certain circumstances

³ The second certified question also contains a subpart asking whether the 2014 amendment “had retroactive effect.” *Amici* supports Xenia’s position that the answer is “yes” but respectfully submits that this is irrelevant. The “existing district . . . service area” was *already* defined in the PCBOS resolution *in 1990* to include areas within two miles of city limits. Whether or not the 2014 amendment applies retroactively does not change this. Instead, the amendment simply confirms that Xenia (and any other similarly-situated area water district) has the ability *today* to provide service within the “existing district . . . service area” without following the notice-of-intent process even if there was a period *previously* where § 357A.2 required adherence to that process for areas within two miles of city limits.

therefore must also free them from the two-mile rule itself in those circumstances; otherwise, the amendment will have served no purpose. *See Des Moines Flying Serv., Inc. v. Aerial Servs., Inc.*, 880 N.W.2d 212, 220 (Iowa 2016) (“[A] statute should not be interpreted to read out what is in a statute as a matter of clear English and should not render terms superfluous or meaningless.”) (internal punctuation omitted).

The City argued that the amendment, as interpreted by the District Court, is not rendered superfluous because it allows a “district to serve a new customer within the area in which it was already agreed they could serve without repeating the procedure mandated by 357A.2.” (City’s Br. in Opp. to Mtn. to Reconsider at 8.) This interpretation fails to give effect to the full language of the amendment, which allows for notice-free extensions of service to new customers “within existing district or association service areas **or** existing district or association agreements” (emphasis added). Agreements are only half the story. Clearly the amendment gives rights to the districts in situations other than when a city “agree[s]” to allow the district to provide service within the two-mile area.

Moreover, the City’s proffered interpretation fails to explain *how* a district would be permitted to “serve a new customer within the area.” Iowa Code § 357A.2(3) states that water service “shall not be provided” by rural

water districts in the two-mile area “except as provided in this section. Subjection (4), in turn, contains the relevant exception. But the exception in the amended version of subsection (4), by its plain language, “shall not apply” in the case of expansions of service to new customers or within existing areas or agreements. Thus, the City’s proffered interpretation not only means that the two-mile rule still applies in such circumstances, but also removes the only process through which the utilities otherwise could avoid it.

Stated differently, the City’s interpretation leaves rural water districts *worse off* than before Iowa Code § 357A.2(4) was amended. Previously, a rural water district whose service area came within two miles of city limits had a path for expanding service to new customers within that area, albeit one that, absent federal preemption, gave the city the power to prevent such expansion. Under the City’s interpretation, however, the path would be closed. According to the City, subsection (3) provides an absolute two-mile rule, and subsection (4)’s opportunity for relief from that rule “shall not apply” to a rural water district seeking to expand its existing service area within that two-mile area.

The language and context of the amendment make clear this was not the Iowa Legislature’s intent. By removing the notice-of-intent requirement for rural water utilities who are “extending service to new customers or

improving existing facilities within existing district or association service areas or existing district or association agreements,” the Legislature obviously wanted to *protect* rural water utilities from the two-mile rule in those circumstances, not *bind them to it without exception*. The better interpretation of the statute is therefore that cities cannot prevent rural water districts from expanding service to new customers within existing service areas even if the expansion comes within two miles of city limits. *Amici* respectfully request that the Court adopt this interpretation.

B. Amici’s Interpretation of Iowa Code § 357A.2(4), as Amended, Provides Certainty for Rural Water Districts Across the State and Protects Against Federal Preemption Problems.

Amici’s interpretation not only correctly harmonizes the language of the amended version of subsections (3) and (4) of Iowa Code § 357A.2, it also gives proper effect to the PCBOS resolution that established Xenia’s service area in the first place. This is an issue of crucial importance to rural water districts across the state, all of whom are subject to similar resolutions from county supervisors.

The District Court recognized, correctly, that Xenia complied with the requirements of Iowa Code Chapter 357A in applying for and obtaining recognition of its service area from the PCBOS. The District Court diverged from Xenia’s position, however, by concluding that the phrase “existing

district . . . service area” in Iowa Code § 357A.2(4) is not coterminous with the service area as defined in the PCBOS resolution. This conclusion is contrary to the language of § 357A.2 and will create uncertainty for rural water districts (and municipalities and courts) across the state.

The two-mile rule, on its face, does not purport to define a rural water district’s “service area.” Indeed, no variant of the phrase “service area” is found in subsection (3) of Iowa Code § 357A.2. By contrast, subsections (1) and (2) give county supervisors the authority to establish water districts upon the filing of a petition identifying the “area to be served” – i.e., the *service area*. The statute is therefore properly interpreted as giving county supervisors the authority to define the “service area” in the resolution creating the district—exactly as the PCBOS did here.

There are important benefits to this interpretation beyond its faithfulness to the statutory language giving county supervisors the authority to determine the “area to be served” by a rural water district (although that, of course, is reason enough to adopt it). *First*, interpreting “existing . . . service area” through reference to the board of supervisors’ resolution provides certainty to water districts and municipalities alike as to the geographic boundaries of the service area. There is no need for complicated analyses of maps or pipes; interested parties can simply review the resolution. By

contrast, the City’s proposed interpretation of “existing . . . service area” is largely anchorless and requires fact-intensive court decisions on a case-by-case basis.

Second, tying “existing . . . service area” to the board of supervisors’ resolution complies with the strong federal mandate that “[d]oubts about whether a water association is entitled to protection from competition under § 1926(b) should be resolved in favor of the FmHA-indebted party seeking protection for its territory.” *Rural Water Sys. No. 1*, 202 F.3d at 1038; *see also Sequoyah Cnty Rural Water Dist. No. 7*, 191 F.3d at 1197; *Alamo Water Supply*, 90 F.3d at 913 (“Every federal court to have interpreted § 1926(b) has concluded that the statute should be liberally interpreted to protect FmHA-indebted rural water associations from municipal encroachments.”). In fact, although the City complains that Xenia’s proposed interpretation of “existing . . . service area” renders the two-mile rule superfluous, the Eighth Circuit has literally concluded that treating portions of Chapter 357A as surplusage may be necessary to enforce the language and purpose of 7 U.S.C. § 1926(b). *See Rural Water Sys. No. 1*, 202 F.3d at 1038 (excising the words “or chapter

504A” from Iowa Code § 357A.2 due to an internal conflict in the statute and the strong policy underlying 7 U.S.C. § 1926(b)).⁴

Third, and similarly, tying “existing . . . service area” to the board of supervisors’ resolution helps avoid a conflict between federal and state law. *See Roth v. Evangelical Lutheran Good Samaritan Soc.*, 886 N.W.2d 601, 611-13 (Iowa 2016) (courts should avoid interpreting state statutes in a manner that creates conflict with federal law). As interpreted by the City, the conflict is palpable: 7 U.S.C. § 1926(b) prohibits curtailment of a district’s service area, yet Iowa Code § 357A.2(3) would *require* curtailment of that service area if it falls within two miles of city limits. This is impermissible in the context of a district like Xenia that has continuously qualified for protected status under § 1926(b) since taking out federal loans for the first time in 1982. *Amici’s* interpretation of § 357A.2(4) avoids this curtailment and therefore protects against any “constitutional infirmity.” *See Roth*, 886 N.W.2d at 612.

⁴ The City’s argument about the two-mile rule being rendered superfluous is, in any event, not correct. The service area of a rural water district as established pursuant to Iowa Code § 357A.2(1) and (2) will not necessarily include any areas within two miles of city limits. To the extent a district later attempts to attach new areas within the two-mile limit to its service area, *see* Iowa Code § 357A.24(3), the attempt should be rejected unless the district complies with Iowa Code § 357A.2(4).

The Court’s resolution of this case will have far-reaching effects. By definition, every Chapter 357A rural water district in the State came into existence as a result of a resolution by county supervisors identifying the “area to be served.” If the “area to be served” in the resolution is not the “existing . . . service area” referenced in § 357A.2(4), it will create uncertainty for all of these rural water districts and put them at far greater risk of curtailment than 7 U.S.C. § 1926(b) permits. The districts may, in turn, struggle to repay existing indebtedness or become more reluctant to make future investments in infrastructure, notwithstanding their favored status under federal law. The result will be less access by rural customers to “inexpensive and reliable water service” – exactly the opposite result the U.S. Congress wanted. *Rural Water System No. 1*, 967 F. Supp. at 1521.

CONCLUSION⁵

The plain language of Iowa Code § 357A.2 compels the conclusion that a rural water district like Xenia: (1) had the right at all relevant times to provide water service in the area defined in the board of supervisors resolution authorizing the district’s creation; and (2) is entitled, in light of the 2014

⁵ *Amici* supports Xenia’s position on the third certified question, involving the rights of a § 504A nonprofit corporation, but will not address that question in this Brief.

amendments to Iowa Code § 357A.2(4), to extend water service to new customers in the existing service area without following a notice-of-intent process. This Court therefore should answer the certified questions in the affirmative.

BELIN McCORMICK, P.C.

By/s/ Stephen H. Locher

Stephen H. Locher

666 Walnut Street Suite 2000
Des Moines, IA 50309-3989
Telephone: (515) 283-4610
Facsimile: (515) 558-0610
shlocher@belinmccormick.com

ATTORNEYS FOR AMICUS CURIAE
IOWA INSURANCE INSTITUTE,
IOWA DEFENSE COUNSEL
ASSOCIATION, AND MUTUAL
INSURANCE ASSOCIATION OF
IOWA

CERTIFICATE OF FILING/SERVICE

I hereby certify that on October 20, 2020, I electronically filed the foregoing Brief of Association of Regional Water Organizations, Iowa Regional Utilities Association, and Iowa Lakes Regional Water, as Amicus Curiae, in Support of Appellant with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Per Rule 16.317(1) (a), this constitutes service of the document on the following for purposes of the Iowa Court Rules.

/s/ Stephen H. Locher

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.906(4) because this brief contains 4,466 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Times New Roman 14 pt.

Dated: October 20, 2020

/s/ Stephen H. Locher

10477\0001\3628712