

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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| The Staff of the Missouri Public Service Commission, |) |
| |) |
| |) |
| Complainant, |) |
| |) |
| v. |) |
| |) |
| Osage Water Company, |) |
| Respondent. |) |

Case No. WC-2006-

COMPLAINT AND MOTION FOR EXPEDITED TREATMENT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and initiates its Complaint and Motion for Expedited Treatment pursuant to Section 393.145.1 RSMo. (2000) and 4 CSR 240-2.070 against Osage Water Company. In support of its complaint, Staff states the following:

GENERAL ALLEGATIONS

1. Osage Water Company (“OWC” or “Company”) is a “public utility,” a “water corporation,” and a “sewer corporation,” as defined in Section 386.020 RSMo.¹ OWC is subject to the jurisdiction of the Missouri Public Service Commission pursuant to Section 386.250 RSMo. OWC regularly provides service to fewer than eight thousand customers. OWC’s business mailing address of record is: P.O. Box 650, Sunrise Beach, MO 65079.
2. OWC is a Missouri general business corporation in good standing. Its registered agent is William P. Mitchell, whose office address is: 328 S. Frontage Rd., Osage Beach, MO

65065. According to the most recent Annual Registration Report that the Company filed with the Missouri Secretary of State (filed on June 30, 2005), the only officer of the Company is William P. Mitchell, president and secretary, and the sole director of the Company is William P. Mitchell. Based on the Staff's information and belief, the owners of OWC are William P. Mitchell and Greg Williams. Mr. Williams is a shareholder, but is not believed to be active in running the daily operations of the Company.

3. This Complaint contains new allegations that arose after and are separate from any allegations that were the subject of Staff's previous complaint case, WC-2003-0134, as filed with the Commission on October 7, 2002. The previous complaint is the subject of the Commission's petition for the court-appointment of a receiver, which is now pending before the Circuit Court of Camden County in case number CV102-965CC. However, this Complaint, based entirely on new allegations, is filed pursuant to the newly amended and currently effective Section 393.145.

4. Senate Bill No. 462 amended Section 393.145, RSMo 2000. The bill had an emergency clause, and became effective upon signature by Governor Blunt on June 29, 2005. A copy of S.B. 462 is attached as Exhibit A.

5. Section 393.145 provides for the appointment of a receiver for a water or sewer corporation in certain circumstances. Section 393.145.1, as amended and currently effective, provides in full as follows:

If after hearing, the commission determines that any sewer or water corporation that regularly provides service to eight thousand or fewer customer connections is unable or unwilling to provide safe and adequate service, or has been actually or effectively abandoned by its owners, or has defaulted on a bond, note or loan issued or guaranteed by any department, office, commission, board, authority or other unit of state government, the commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control

¹ All statutory citations are to RSMo 2000, as currently supplemented, unless otherwise noted.

and responsibility of a receiver. The venue of such cases shall, at the option of the commission, be in the circuit court of Cole County or in the circuit court of the county in which the utility company has its principal place of business. (*Emphasis added.*)

6. OWC's conduct since the October 7, 2002 filing date of the previous complaint case (WC-2003-0134) satisfies each of the bases for the appointment of a receiver that are set forth in *italics* above in Section 393.145.1. OWC has failed to provide safe and adequate service to its customers; it is unable or unwilling to take the steps that are necessary to provide safe and adequate service to its customers; and its only known owners, officer, director, and agent have actually or effectively abandoned the Company.

7. On July 29, 2005, the Missouri Attorney General filed a petition in the Camden County Circuit Court against OWC on the behalf of the Missouri Department of Natural Resources ("DNR"), the Safe Drinking Water Commission, and the Clean Water Commission. According to the petition, OWC was cited on August 6, 2004 for violating four state and four federal drinking water regulations in the Cimarron Bay Subdivision and has not corrected any of them, according to DNR inspectors. In February 2004, DNR inspectors cited OWC for violating clean water regulations by allowing untreated water to bypass its KK Sewage Treatment Plant, which serves the Eagle Woods subdivision. In June 2005, DNR inspectors again cited OWC for violating clean water regulations by allowing untreated water to bypass the KK Sewage Treatment Plant and flow into the Lake of the Ozarks. OWC has failed to correct these violations. The Attorney General has alleged that unless the violations in relation to the Cimarron Bay public water supply system and the KK Wastewater Treatment Plant are corrected and the plant is properly operated and maintained, the people of Missouri "...will suffer substantial and irreparable harm and damage in the amounts incapable of being ascertained..."

(See Exhibit B, *Petition For Statutory Penalties And For A Preliminary And A Permanent Injunction*, State ex rel. vs. Osage Water Company, case no. CV105-617CC).

8. OWC is not defending itself against lawsuits. Cedar Glen Construction, Inc. won a default judgment against OWC in the amount of \$137,820 together with interest at the rate of 9% per annum, in the Camden County Circuit Court on September 20, 2004 in case number CV104-533CC. (See attached Exhibit C, *Default Judgment*). This default judgment garnished all monthly sewer and water service account revenue that is derived from the Cedar Glen Condominium Project served by OWC and assigned this revenue for collection by plaintiff Cedar Glen Construction until the awarded amount is paid in full. Based upon information obtained by the Staff, Cedar Glen Construction is collecting in excess of \$9,000 per month from OWC's Cedar Glen customers, funds that are not now available for the operation and maintenance of OWC's public utility facilities.

9. In the joint application case WO-2005-0086², the Missouri Attorney General, on behalf of intervenors the Missouri Clean Water Commission and the Department of Natural Resources, filed its *Filing Of Exhibits In Support Of Claim* ("Filing") on November 15, 2004 for the purpose of notifying the Commission of its claim against OWC. (See attached Exhibit D). In its *Filing*, the Attorney General provided the following:

(1) a copy of a default judgment against OWC in the amount of \$47,076 which also required OWC to pay court costs in case number CV104-39CC, Circuit Court of Camden County;

² Case number WO-2005-0086 is styled "In the Matter of the Joint Application of Missouri-American Water Company and Both Osage Water Company and Environmental Utilities, L.L.C. for Authority for Missouri-American Water Company to Acquire the Water and Sewer Utility Assets of Both Entities, and for the Transfer to Missouri-American Water Company of Certificates of Convenience and Necessity to Continue Operation of Such Assets as Water and Sewer Corporations Regulated by the Missouri Public Service Commission." The Commission issued its *Order Dismissing Joint Application* on June 9, 2005 and its *Order Denying Motion For Rehearing* on July 14, 2005.

(2) an invoice for \$2,800 for DNR permit fees and penalties of \$300 for nonpayment of the fees owed by OWC for the Cedar Glen Condominiums Waste Water Treatment Facility; and,

(3) an invoice for \$222.25 in fees still due for OWC's Route KK Waste Water Treatment Plant.

10. OWC has two open complaint cases before the Commission for its failure to comply with Missouri statutes and Commission rules regarding the filing of annual reports and payment of assessments:

(1) Complaint case no. WC-2004-0336 was filed by Staff on February 3, 2004, for OWC's failure to file its 2002 Annual Report and failure to pay its Fiscal Years 2003 and 2004 annual assessments; and,

(2) Complaint case no. WC-2006-0031 was filed by Staff on July 22, 2005, for OWC's failure to file its 2004 Annual Report and failure to pay its Fiscal Year 2005 annual assessment.

OWC's failures to file its annual reports and to pay its annual assessments are additional evidence of the effective abandonment by its owners.

CONCLUSION AND RECOMMENDED RELIEF

11. The foregoing paragraphs demonstrate that OWC is unable or unwilling to provide safe and adequate service and that its owners have actually or effectively abandoned the Company. In summary, OWC has:

(1) failed to correct the conditions that led to its August 2004 notice of violation of federal and state clean water drinking regulations in the Cimarron Bay Subdivision as enumerated in the Attorney General's *Petition* (Exhibit B);

(2) failed to correct the conditions that led to its February 2004 notice of violation of clean water regulations in that OWC allowed untreated water

to bypass its KK Treatment Plant serving the Eagle Woods subdivision and again in June 2005 when untreated water bypassed the plant and flowed into the Lake of the Ozarks as enumerated in the Attorney General's *Petition* (Exhibit B);

(3) twice failed to defend itself in Camden County Circuit Court allowing default judgments to be ordered against the Company in amounts of \$137,820 and \$47,076 (Exhibits C and D);

(4) failed to pay fees and penalties related to its waste water operations at Cedar Glen Condominiums and KK treatment plants (Exhibit D);

(5) failed to file its 2000, 2001, 2002, 2003, and 2004 Annual Reports with the Commission; and,

(6) failed to pay its 2003, 2004, and 2005 annual assessments to the Commission.

12. Accordingly, OWC's conduct meets the conditions specified in Section 393.145.1 that authorize the Commission to seek the appointment of a receiver. The Commission should direct its General Counsel to petition the circuit court for an order attaching the assets of the Company, and placing the Company under the control and responsibility of a receiver.

13. The Staff knows of other qualified water and sewer companies or other persons that would be willing and able to serve as a receiver for OWC.

14. Section 393.145.7, as amended and currently effective, provides in full as follows:

Control of and responsibility for the utility shall remain in the receiver until the utility can, in the best interests of its customers, be returned to the owners. However, if the commission or another interested party petitions and the court determines, after hearing that control of and responsibility for the utility should not, in the best interests of its customers, be returned to the owners, the court shall direct the receiver to transfer by sale or liquidate the assets of the utility in the manner provide by law.

15. In view of the actions set forth above, the Staff believes that return of control of OWC to its current owners will never be in the best interests of its customers. Therefore, the Commission should also direct its General Counsel to seek a finding from the circuit court that control of OWC should not be returned to the owners of the Company.

16. Section 393.145.2, as amended and currently effective, provides in full as follows:

If the commission orders its general counsel to petition the circuit court for the appointment of a receiver under subsection 1 of this section, it may in the same order appoint an interim receiver for the sewer or water corporation. The interim receiver shall have the authority generally granted to a receiver under subsection 6 of this section, except that the commission cannot authorize the interim receiver to transfer by sale or liquidate the assets of the utility. The interim receiver shall be compensated in an amount to be determined by the commission. The interim receiver shall serve until a judgment on a petition for writ of review of the commission's order, if any, is final and unappealable, and until the circuit court thereafter determines under subsection 5 of this section whether to grant the commission's petition for appointment of a receiver. [*emphasis added*]

17. OWC is in immediate need of a receiver in order to insure that customers of the Company receive safe and adequate service and that the public is protected from the bypass of untreated water from OWC's sewage treatment facilities. The Commission cannot be assured that it will achieve these objectives if it must await a decision by the circuit court appointing a receiver pursuant to the provisions of Section 393.145.1. Therefore, the Commission should appoint an interim receiver pursuant to the provisions of Section 393.145.2.

MOTION FOR EXPEDITED TREATMENT

18. Rule 4 CSR 240.2.070 (7) provides, in part, that upon the filing of a formal complaint, the Secretary of the Commission shall notify the respondent of the complaint by certified mail, and that the respondent shall answer the complaint with 30 days, unless otherwise ordered.

19. Because OWC's owners have actually or effectively abandoned the Company, it is unable or unwilling to provide safe and adequate service to its customers. The customers of OWC are therefore in danger of losing their water and/or sewer service. As a result, the Staff believes that OWC should be directed to file its answer to this Complaint on or before August

19, 2005, and that the case should be scheduled for an evidentiary hearing as soon as September 12 and 13, 2005.

20. In order to further expedite the processing of this Complaint, the Staff suggests that all testimony in this case be presented live, instead of following the Commission's usual custom of using pre-filed testimony. Additionally, in lieu of ordering the submission of written briefs, the Staff suggests that the Commission direct the parties to present oral arguments at the conclusion of the evidentiary hearing. The Staff further suggests that the Commission schedule an evidentiary hearing in this case on or before September 12 and 13, 2005, but not later than September 15 and 16, 2005. Additionally, the Staff submits that two days should be sufficient for the evidentiary hearing in this case.

WHEREFORE, the Staff respectfully requests that the Commission issue an order:

- (1) directing its General Counsel to petition the Circuit Court of Cole County for an order attaching the assets of Osage Water Company and placing Osage Water Company under the control and responsibility of a receiver;
- (2) directing its General Counsel to seek a finding from the Circuit Court of Cole County that the control and responsibility for Osage Water Company should not, in the best interest of the Company's customers, be returned to the owners of the Company, and an order from the circuit court directing the receiver to proceed to liquidate the assets of the Company in the manner provided by law;
- (3) appointing an interim receiver for Osage Water Company pursuant to the provisions of Section 393.145.2; and,
- (4) expediting the processing of this case as suggested in the motion herein.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Robert S. Berlin

Robert S. Berlin
Associate General Counsel
Missouri Bar No. 51709

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record and/or parties of record this 5th day of August 2005.

/s/ Robert S. Berlin

Mr. William P. Mitchell
President and Registered Agent for
Osage Water Company
328 S. Frontage Rd.
Osage Beach, MO 65065

Lewis Mills, Esq.
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Mat Blunt

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 462
93RD GENERAL ASSEMBLY
2005

1848L.04T

AN ACT

To repeal sections 8.255, 8.260, 8.270, 393.145, and 432.070, RSMo, and to enact in lieu thereof six new sections relating to receivership of certain sewer and water corporations, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 8.255, 8.260, 8.270, 393.145, and 432.070, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections
3 8.255, 8.260, 8.270, 393.145, 393.146, and 432.070, to read as follows:

8.255. 1. The director may authorize any agency of the state to establish
2 standing contracts for the purpose of accomplishing construction, renovation,
3 maintenance and repair projects not exceeding [twenty-five] **one hundred**
4 thousand dollars. Such contracts shall be advertised and bid in the same manner
5 as contracts for work which exceeds [twenty-five] **one hundred** thousand
6 dollars, except that each contract shall allow for multiple projects, the cost of each
7 of which does not exceed [twenty-five] **one hundred** thousand dollars. Each
8 contract shall be of a stated duration and shall have a stated maximum total
9 expenditure.

10 2. The director, with full documentation, shall have the authority to
11 authorize any agency to contract for any design or construction, renovation,
12 maintenance, or repair work which in his judgment can best be procured directly
13 by such agency. The director shall establish, by rule, the procedures which the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Exhibit A

14 agencies must follow to procure contracts for design, construction, renovation,
15 maintenance or repair work. Each agency which procures such contracts
16 pursuant to a delegation shall file an annual report as required by rule. The
17 director shall provide general supervision over the process. The director may
18 establish procedures by which such contracts are to be procured, either generally
19 or in accordance with each authorization.

20 3. The director, in his sole discretion, may with full documentation
21 approve a recommendation from a project designer that a material, product or
22 system within a specification for construction, renovation or repair work be
23 designated by brand, trade name or individual mark, when it is determined to be
24 in the best interest of the state. The specification may include a preestablished
25 price for purchase of the material, product or system where required by the
26 director.

8.260. All appropriations made by the general assembly amounting to
2 [twenty-five] **one hundred** thousand dollars or more for the construction,
3 renovation, or repair of facilities shall be expended in the following manner:

4 (1) The agency requesting payment shall provide the commissioner of
5 administration with satisfactory evidence that a bona fide contract, procured in
6 accordance with all applicable procedures, exists for the work for which payment
7 is requested;

8 (2) All requests for payment shall be approved by the architect or engineer
9 registered to practice in the state of Missouri who designed the project or who has
10 been assigned to oversee it;

11 (3) In order to guarantee completion of the contract, the agency or officer
12 shall retain a portion of the contract value in accordance with the provisions of
13 section 34.057, RSMo;

14 (4) A contractor may be paid for materials delivered to the site or to a
15 storage facility approved by the director of the division of design and construction
16 as having adequate safeguards against loss, theft or conversion.

17 In no case shall the amount contracted for exceed the amount appropriated by the
18 general assembly for the purpose.

8.270. If the amount appropriated is less than [twenty-five] **one hundred**
2 thousand dollars for constructing, renovating or for repairing, or for both building
3 and repairing, no warrant shall be drawn on the state treasury payable out of the
4 appropriation for any part thereof, until satisfactory evidence is furnished to the

5 commissioner of administration that the work has been completed according to
6 the contract, and not in excess of the amount appropriated therefor.

393.145. 1. If, **after hearing**, the commission [shall determine]
2 **determines** that any sewer or water corporation [having one thousand or fewer
3 customers] **that regularly provides service to eight thousand or fewer**
4 **customer connections** is unable or unwilling to provide safe and adequate
5 service [or], has been actually or effectively abandoned by its owners, or has
6 defaulted on a bond, note or loan issued or guaranteed by any department, office,
7 commission, board, authority or other unit of state government, the commission
8 may petition the circuit court for an order attaching the assets of the utility and
9 placing the utility under the control and responsibility of a receiver. **The venue**
10 **of such cases shall, at the option of the commission, be in the circuit**
11 **court of Cole County or in the circuit court of the county in which the**
12 **utility company has its principal place of business.**

13 2. If the commission orders its general counsel to petition the
14 circuit court for the appointment of a receiver under subsection 1 of
15 this section, it may in the same order appoint an interim receiver for
16 the sewer or water corporation. The interim receiver shall have the
17 authority generally granted to a receiver under subsection 6 of this
18 section, except that the commission cannot authorize the interim
19 receiver to transfer by sale or liquidate the assets of the utility. The
20 interim receiver shall be compensated in an amount to be determined
21 by the commission. The interim receiver shall serve until a judgment
22 on a petition for writ of review of the commission's order, if any, is
23 final and unappealable, and until the circuit court thereafter
24 determines under subsection 5 of this section whether to grant the
25 commission's petition for appointment of receiver.

26 3. When the commission files its petition for appointment of
27 receiver in the circuit court, it shall attach to its petition an official
28 copy of its determination under subsection 1 of this section. The
29 commission shall not file such action until its determination under
30 subsection 1 of this section is final and unappealable.

31 4. The summons and petition for an order attaching the assets of the
32 utility and appointing a receiver shall be served as in other civil cases at least
33 five days before the return date of the summons. In addition to attempted

34 personal service, upon request of the commission, the judge before whom the
35 proceeding is commenced shall make an order directing that the officer or other
36 person empowered to execute the summons shall also serve the same by securely
37 affixing a copy of the summons and petition in a conspicuous place on the utility
38 system in question at least ten days before the return date of the summons, and
39 by also mailing a copy of the summons and petition to the defendant at its last
40 known address by ordinary mail and by certified mail, return receipt requested,
41 deliver to addressee only, at least ten days before the return date. If the officer
42 or other person empowered to execute the summons makes return that personal
43 service cannot be obtained on the defendant, and if proof be made by affidavit of
44 the posting and of the mailing of a copy of the summons and petition, the judge
45 shall, at the request of the commission, proceed to hear the case as if there had
46 been personal service, and judgment shall be rendered and proceedings had as in
47 other cases. If the commission does not request service of the original summons
48 by posting and mailing, and if the officer or other person empowered to execute
49 the summons makes return that personal service cannot be obtained on the
50 defendant, the commission may request the issuance of an alias summons and
51 service of the same by posting and mailing in the time and manner provided in
52 this subsection. Upon proof by affidavit of the posting and of the mailing of a
53 copy of the alias summons and the petition, the judge shall proceed to hear the
54 case as if there had been personal service, and judgment shall be rendered and
55 proceedings had as in other cases.

56 [3.] 5. The court [shall], after hearing [determine whether to], **may**
57 grant the **commission's** petition for **appointment of a receiver**. Where the
58 defendant is in default, the court shall mail to the defendant at its last known
59 address by certified mail with a request for return receipt and with directions to
60 deliver to the addressee only, a notice informing the defendant of the judgment
61 and the date it was entered. A receiver appointed pursuant to this section shall
62 be a responsible person, partnership, or corporation knowledgeable in the
63 operation of utilities.

64 [4.] 6. The receiver shall give bond, and have the same powers and be
65 subject to all the provisions, as far as they may be applicable, enjoined upon a
66 receiver appointed by virtue of the law providing for suits by attachment. The
67 receiver shall operate the utility so as to preserve the assets of the utility and to
68 serve the best interests of its customers. The receiver shall be compensated from

69 the assets of the utility in an amount to be determined by the court **with the**
70 **assistance of the commission staff. Any receiver or interim receiver**
71 **appointed under this section shall be immune from personal liability**
72 **for any civil damages arising from acts performed in his or her official**
73 **capacity for actions for which the receiver or interim receiver would**
74 **not otherwise be liable except for his or her affiliation with the**
75 **utility. This immunity shall not, however, apply to intentional conduct,**
76 **wanton or willful conduct, or gross negligence. Nothing in this**
77 **subsection shall be construed to create or abolish an immunity in favor**
78 **of the utility itself.**

79 [5.] 7. Control of and responsibility for the utility shall remain in the
80 receiver until the utility can, in the best interests of its customers, be returned
81 to the owners. [If] **However, if the commission or another interested**
82 **party petitions and the court determines, after hearing, that control of and**
83 **responsibility for the utility should not, in the best interests of its customers, be**
84 **returned to the owners, [the receiver shall proceed to] the court shall direct**
85 **the receiver to transfer by sale or liquidate the assets of the utility in the**
86 **manner provided by law.**

87 [6.] 8. The appointment of a receiver **or an interim receiver** shall be
88 in addition to any other remedies provided by law.

89 9. Notwithstanding the requirement of section 386.600, RSMo, to
90 **the contrary, penalties for violations of the public service commission**
91 **law or related commission regulations that are collected from a sewer**
92 **or water corporation that has been placed in receivership under the**
93 **provisions of this section or for which the commission has appointed**
94 **an interim receiver under the provisions of this section may, upon the**
95 **order of the court that imposed the penalties, be used to support the**
96 **operation of the subject small sewer or water corporation while it is**
97 **under the control of the receiver.**

393.146. 1. As used in this section the following terms shall
2 mean:

3 (1) "Capable public utility", a public utility that regularly
4 provides the same type of service as a small water corporation or a
5 small sewer corporation to more than eight thousand customer
6 connections, that is not an affiliate of a small water corporation or a

7 small sewer corporation, and that provides safe and adequate service;
8 and shall not include a sewer district established pursuant to article
9 IV, section 30(a) of the Missouri Constitution, sewer districts
10 established under the provisions of chapters 204, 249 or 250, RSMo,
11 public water supply districts established under the provisions of
12 chapter 247, RSMo, or municipalities that own and operate water or
13 sewer systems;

14 (2) "Department", the department of natural resources;

15 (3) "Small sewer corporation", a public utility that regularly
16 provides sewer service to eight thousand or fewer customer
17 connections;

18 (4) "Small water corporation", a public utility that regularly
19 provides water service to eight thousand or fewer customer
20 connections.

21 2. The commission may order a capable public utility to acquire
22 a small water or sewer corporation if, after providing notice and an
23 opportunity to be heard, the commission determines:

24 (1) That the small water or sewer corporation is in violation of
25 statutory or regulatory standards that affect the safety and adequacy
26 of the service provided by the small water or sewer corporation,
27 including but not limited to the public service commission law, the
28 federal clean water law, the federal Safe Drinking Water Act, as
29 amended, and the regulations adopted under these laws; or

30 (2) That the small water or sewer corporation has failed to
31 comply, within a reasonable period of time, with any order of the
32 department or the commission concerning the safety and adequacy of
33 service, including but not limited to the availability of water, the
34 potability of water, the palatability of water, the provision of water at
35 adequate volume and pressure, the prevention of discharge of
36 untreated or inadequately treated sewage to the waters of the state,
37 and the prevention of environmental damage; or

38 (3) That it is not reasonable to expect that the small water or
39 sewer corporation will furnish and maintain safe and adequate service
40 and facilities in the future; and

41 (4) That the commission has considered alternatives to

42 acquisition in accordance with subsection 3 of this section and has
43 determined that they are impractical or not economically feasible; and

44 (5) That the acquiring capable public utility is financially,
45 managerially, and technically capable of acquiring and operating the
46 small water or sewer corporation in compliance with applicable
47 statutory and regulatory standards.

48 3. Except when there is an imminent threat of serious harm to
49 life or property, before the commission may order the acquisition of a
50 small water or sewer corporation in accordance with subsection 2 of
51 this section, the commission shall discuss alternatives to acquisition
52 with the small water or sewer corporation and shall give such small
53 water or sewer corporation thirty days to investigate alternatives to
54 acquisition, including:

55 (1) The reorganization of the small water or sewer corporation
56 under new management;

57 (2) The entering of a contract with another public utility or a
58 management or service company to operate the small water or sewer
59 corporation;

60 (3) The merger of the small water or sewer corporation with one
61 or more other public utilities; and

62 (4) The acquisition of the small water or sewer corporation by
63 a municipality, a municipal authority, a public water supply district,
64 a public sewer district, or a cooperative.

65 4. When the commission determines that there is an imminent
66 threat of serious harm to life or property, the commission may appoint
67 an interim receiver prior to the opportunity for hearing, provided that
68 the commission shall provide opportunity for hearing as soon as
69 practicable after the issuance of such order.

70 5. In making a determination under subsection 2 of this section,
71 the commission shall consider:

72 (1) The financial, managerial, and technical ability of the small
73 water or sewer corporation;

74 (2) The financial, managerial, and technical ability of all
75 proximate public utilities that provide the same type of service and
76 constitute an alternative to acquisition;

77 (3) The expenditures that are needed to improve the facilities of
78 the small water or sewer corporation to assure compliance with
79 applicable statutory and regulatory standards concerning the
80 adequacy, efficiency, safety, and reasonableness of utility service, and
81 to sufficiently provide safe and adequate service to the customers of
82 the small water or sewer corporation;

83 (4) The potential for expansion of the certificated service area
84 of the small water or sewer corporation; and

85 (5) The opinion and advice, if any, of the department as to what
86 steps may be necessary to assure compliance with applicable statutory
87 or regulatory standards concerning the safety and adequacy of utility
88 service.

89 6. Subsequent to the determination required under subsection
90 2 of this section, the commission shall issue an order for the acquisition
91 of a small water or sewer corporation by a capable public utility. Such
92 order shall include granting a certificate of public convenience and
93 necessity to the acquiring capable public utility for the small water or
94 sewer corporation's established service area.

95 7. The price for the acquisition of a small water or sewer
96 corporation shall be determined by agreement between the small water
97 or sewer corporation and the acquiring capable public utility, subject
98 to a determination by the commission that the price is reasonable. If
99 the small water or sewer corporation and the acquiring capable public
100 utility are unable to agree on the acquisition price, or the commission
101 disapproves the acquisition price to which the utilities agreed, the
102 commission shall issue an order directing the acquiring capable public
103 utility to acquire the small water or sewer corporation at an
104 acquisition price that is equal to the ratemaking rate base as
105 determined by the commission after notice and hearing, or providing
106 that the acquiring capable public utility will not be allowed to earn a
107 rate of return on the portion of the purchase price that is in excess of
108 the ratemaking rate base determined by the commission after notice
109 and hearing. The burden of establishing the ratemaking rate base shall
110 be upon the small water or sewer corporation.

111 8. Any capable public utility that is ordered by the commission

112 to acquire a small water or sewer corporation shall, within thirty days
113 after acquisition, submit a plan, including a timetable, for bringing the
114 small water or sewer corporation into compliance with applicable
115 statutory and regulatory standards to the commission for
116 approval. The capable public utility shall also provide a copy of the
117 plan to the department and such other state or local agency as the
118 commission may direct. The commission shall give the department
119 adequate opportunity to comment on the plan and shall consider any
120 comments submitted by the department and shall expeditiously decide
121 whether to approve the plan.

122 9. Upon the acquisition of a small water or sewer corporation by
123 a capable public utility, and approval by the commission of a plan for
124 improvements submitted under subsection 8 of this section, the
125 acquiring capable public utility shall not be liable for any damages if
126 the cause of those damages is proximately related to violations of
127 applicable statutes or regulations by the small water or sewer
128 corporation and the acquiring capable public utility remains in
129 compliance with the plan for improvements submitted under subsection
130 8 of this section. This subsection shall not apply:

131 (1) Beyond the end of the timetable in the plan for
132 improvements;

133 (2) Whenever the acquiring capable public utility is not in
134 compliance with the plan for improvements; or

135 (3) If, within sixty days after receipt of notice of the proposed
136 plan for improvements, the department submitted written objections
137 to the commission and those objections have not subsequently been
138 withdrawn.

139 10. Upon approval by the commission of a plan for improvements
140 submitted under subsection 8 of this section, and the acquisition of a
141 small water or sewer corporation by a capable public utility, the
142 acquiring capable utility shall not be subject to any enforcement
143 actions by state or local agencies that had notice of the plan, if the
144 basis of such enforcement action is proximately related to violations of
145 applicable statutes or regulations by the small water or sewer
146 corporation. This subsection shall not apply:

147 (1) Beyond the end of the timetable in the plan for
148 improvements;

149 (2) Whenever the acquiring capable public utility is not in
150 compliance with the plan for improvements;

151 (3) If, within sixty days of having received notice of the proposed
152 plan for improvements, the department submitted written objections
153 to the commission and those objections have not subsequently been
154 withdrawn; or

155 (4) To emergency interim actions of the commission or the
156 department, including but not limited to the ordering of boil-water
157 advisories or other water supply warnings, of emergency treatment, or
158 of temporary alternate supplies of water or sewer services.

159 11. If the commission orders the acquisition of a small water or
160 sewer corporation, the commission shall authorize the acquiring
161 capable public utility to utilize the commission's small company rate
162 case procedure for establishing the rates to be applicable to the system
163 being acquired. Such rates may be designed to recover the costs of
164 operating the acquired system and to recover one hundred percent of
165 the revenues necessary to provide a net after-tax return on the
166 ratemaking rate base value of the small water or sewer corporation's
167 facilities acquired by the capable public utility, and the ratemaking
168 rate base value of any improvements made to the facilities by the
169 acquiring capable public utility subsequent to the acquisition, at a rate
170 of return equivalent to one hundred basis points above the rate of
171 return authorized for the acquiring capable public utility in its last
172 general rate proceeding. The acquiring capable public utility may
173 utilize the commission's small company rate case procedure for the
174 purposes stated in this section until such time that a determination is
175 made on the acquiring utility's next company-wide general rate
176 increase, but not in excess of three years from the date of the
177 acquisition of the subject small water or sewer corporation.

178 12. Proceedings under this section may be initiated by complaint
179 filed by the staff of the commission, the office of the public counsel, the
180 mayor, or the president or chair of the board of aldermen, or a majority
181 of the council, commission, or other legislative body of any city, town,

182 village, or county within which the alleged unsafe or inadequate
183 service is provided, or by not less than twenty-five consumers or
184 purchasers, or prospective consumers or purchasers, of the utility
185 service provided by a small water or sewer corporation. The
186 complainant shall have the burden of proving that the acquisition of
187 the small water or sewer corporation would be in the public interest
188 and in compliance with the provisions of this section.

189 13. The notice required by subsection 2 of this section, or any
190 other provision of this section, shall be served upon the small water or
191 sewer corporation affected, the office of the public counsel, the
192 department, all proximate public utilities providing the same type of
193 service as the small water or sewer corporation, all proximate
194 municipalities and municipal authorities providing the same type of
195 service as the small water or sewer corporation, and the municipalities
196 served by the small water or sewer corporation. The commission shall
197 order the affected small water or sewer corporation to provide notice
198 to its customers of the initiation of proceedings under this section in
199 the same manner in which the utility is required to notify its customers
200 of proposed general rate increases.

201 14. A public utility that would otherwise be a capable public
202 utility except for the fact that it has fewer than eight thousand
203 customer connections may petition the commission to be designated a
204 capable public utility for the purposes of this section regardless of the
205 number of its customer connections and regardless of whether it is
206 proximate to the small water corporation or small water corporation
207 to be acquired. The commission may grant such a petition upon finding
208 that designating the petitioning public utility as a capable public
209 utility is not detrimental to the public interest.

210 15. Notwithstanding the requirement of section 386.600, RSMo,
211 to the contrary, penalties for violations of the public service
212 commission law or related commission regulations that have been
213 imposed on a small sewer or water corporation that has been placed in
214 receivership under the provisions of section 393.145 may, upon the
215 order of the court that imposed the penalties, be used to reduce the
216 purchase price paid by a capable public utility for the acquisition of

217 the assets of the subject small sewer or water corporation. In such a
218 case, the commission shall make a corresponding reduction to the
219 ratemaking rate base value of the subject assets for purposes of future
220 ratemaking activities.

221 16. The commission shall, no later than the effective date of this
222 section, initiate a rulemaking, pursuant to the provisions of its internal
223 rulemaking procedures, to promulgate rules to carry out the purposes
224 of this section. Any rule or portion of a rule, as that term is defined in
225 section 536.010, RSMo, that is created under the authority delegated in
226 this section shall become effective only if it complies with and is
227 subject to all of the provisions of chapter 536, RSMo, and, if applicable,
228 section 536.028, RSMo. This section and chapter 536, RSMo, are
229 nonseverable and if any of the powers vested with the general assembly
230 pursuant to chapter 536, RSMo, to review, to delay the effective date,
231 or to disapprove and annul a rule are subsequently held
232 unconstitutional, then the grant of rulemaking authority and any rule
233 proposed or adopted after August 28, 2005, shall be invalid and void.

432.070. No county, city, town, village, school township, school district or
2 other municipal corporation shall make any contract, unless the same shall be
3 within the scope of its powers or be expressly authorized by law, nor unless such
4 contract be made upon a consideration wholly to be performed or executed
5 subsequent to the making of the contract; and such contract, including the
6 consideration, shall be in writing and dated when made, and shall be subscribed
7 by the parties thereto, or their agents authorized by law and duly appointed and
8 authorized in writing. Notwithstanding the foregoing, any home rule city
9 with more than sixty thousand three hundred but fewer than sixty
10 thousand four hundred inhabitants which after January 1, 2003, has
11 committed or agreed in writing to provide sewer service or has in fact
12 directly or indirectly provided such service to any homes within a
13 subdivision shall give its customers two years prior written notice of
14 its intent to discontinue service and during such two-year period shall
15 continue to connect and provide sanitary sewer service to all homes
16 constructed in such subdivision. In no event shall any sewer service
17 connected prior to the expiration of such two-year period be
18 discontinued.

Section B. Because immediate action is necessary to bring certain sewer
2 and water corporations into compliance with applicable statutory and regulatory
3 standards, section A of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace, and safety, and is hereby
5 declared to be an emergency act within the meaning of the constitution, and
6 section A of this act shall be in full force and effect upon its passage and
7 approval.

✓

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
JEREMIAH W. (JAY) NIXON, Attorney)
General, DOYLE CHILDERS, Director,)
Missouri Department of Natural Resources,)
and the MISSOURI SAFE DRINKING)
WATER COMMISSION, and the MISSOURI)
CLEAN WATER COMMISSION,)

Plaintiff,)

vs.)

OSAGE WATER COMPANY,)

Defendant.)

Serve:)

William P. Mitchell)

Registered Agent)

Osage Water Company)

328 South Frontage Road)

Osage Beach, Missouri 65065)

Case No. CX105-617CC

FILED
JUL 29 2005
JO MACLEWEE
CIRCUIT CLERK

RECEIVED

AUG 04 2005

MO. ATTORNEY GENERAL

PETITION FOR STATUTORY PENALTIES AND
FOR A PRELIMINARY AND A PERMANENT INJUNCTION

The State of Missouri, at the relation of the Missouri Attorney General, the Department of Natural Resources, the Safe Drinking Water Commission, and the Clean Water Commission, petitions the Court as follows:

Allegations Common to All Counts

1. Jeremiah W. ("Jay") Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

2. The Missouri Safe Drinking Water Commission, created by § 640.105, RSMo, has promulgated rules to implement §§ 640.100 through 640.140, RSMo, and federal drinking water regulations.

3. The Missouri Clean Water Commission, created by § 644.021, RSMo, has promulgated rules to implement the Missouri Clean Water Law, Chapter 644, RSMo.

4. Doyle Childers is the duly appointed, qualified and acting director of the Missouri Department of Natural Resources, a state agency created under § 640.010, RSMo, that is authorized, under § 640.130, RSMo, to request the attorney general to bring an appropriate action to enforce §§ 640.100 through 640.140, RSMo, and the related rules promulgated by the Commission. He is also authorized by § 644.076.1, RSMo, to request the attorney general to bring an action to enforce the Missouri Clean Water Law.

5. Osage Water Company is a for-profit, Missouri corporation in good standing. The company's principal place of business is Camden County, where it operates facilities and provides sewer and drinking water services to customers. Osage Water Company's facilities and services are regulated by the Department of Natural Resources, the Safe Drinking Water Commission, and the Clean Water Commission.

Violations of Drinking Water Regulations

6. Osage Water Company owns and operates the public water supply system for Cimarron Bay Subdivision, identified by the Department as PWS ID# MO3031290, is located at Section 39, Township 40 North, Range 16 West, Camden County.

7. The company does not consistently comply with rules that protect public drinking water supplies. For example, on August 6, 2004, the Department of Natural Resources issued to Osage Water Company a notice of violation, # 10772SW, citing the company's noncompliance with four federal rules and four state rules, in relation to the Cimarron Bay Subdivision public water supply. The violations, which the company has not corrected, are described below.

- A. The company has failed to obtain a permit to dispense water in violation of 40 CFR 142.10(b)(5) and 10 CSR 60-3.010(1)(D).
- B. The company has failed to submit a sample for bacteriological analysis for the month of March, 2003, in violation of 40 CFR 141.21(a) and 10 CSR 60-4.020(1)(B).
- C. The company has failed to develop and deliver to its customers a Consumer Confidence Report for the calendar years 2001 and 2002, in violation of 40 CFR 141.151(a) and 10 CSR 60-8.030(1).
- D. The company has failed to submit samples for lead and copper analysis during the January through June 2002 sampling period, in violation of 40 CFR 141.80 and 10 CSR 60-15.070.

8. The company has not submitted samples for lead and copper analysis which were due June 30, 2005, for the Cimarron Bay Subdivision public water supply, in violation of 40 CFR 141.80 and 10 CSR 60-15.070.

9. The Department has attempted to informally resolve ongoing violations, but the company has not corrected them.

Violations of the Clean Water Law and Regulations

10. Osage Water Company owns and operates a facility known as the KK Wastewater Treatment Plant under Missouri State Operating Permit #MO 0123170, issued by the Department of Natural Resources. The facility is located in the Southeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 6, Township 39 North, Range 16 West, Camden County. The permit issued by the Department for the facility imposes liability upon the defendant for the system that collects wastewater from the Eagle Woods Subdivision and conveys it to the facility.

11. On February 19, 2004, the Department issued a notice of violation (#10138SW) because on February 3, 2004, the company allowed, without a permit, untreated wastewater to bypass the KK Wastewater Treatment Plant because a pump station that is part of the defendant's wastewater collection system for the Eagle Woods Subdivision was not operating properly and was discharging untreated wastewater onto the ground. Accordingly, the company was in violation of §§ 644.050.1(1), (3), 644.051.2, and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

12. Despite notice of the problem on February 3, 2004, the Department's inspector observed that the defendant had failed to repair the pump station and that the bypass was continuing on February 9, 2004.

13. On June 24, 2005, the Department issued a notice of violation (#11202SW) after investigating a complaint and finding that on June 9, 2005, the company allowed, without a permit, untreated wastewater to bypass the KK Wastewater Treatment Plant and flow to an unnamed tributary to the Lake of the Ozarks, waters of the state. The notice cites violation of §§ 644.051.2 and 644.076.1, RSMo, and of 10 CSR 20-6.010(1)(A) and (5)(A). The inspector observed two places where a bypass was occurring.

A. One bypass was occurring where a septic tank within the Eagles Woods Subdivision, located just southwest of 6422 Eagle Crossing, was overflowing onto the ground.

B. The other bypass was located at a lift station just west of the pond dam. The lift station pumps were not working.

14. On July 21, 2005, the inspector revisited where he had seen the bypasses on June 9, 2005. The septic tank was no longer overflowing because the defendant's operator had removed a filter. The lift station bypass was worse and the pumps, which were set to run automatically, were not working.

15. The Department has attempted to informally resolve these violations of the Clean Water Law and regulations without success.

Count I – Claim for Statutory Penalties

16. This court has jurisdiction to assess penalties for the above described violations of the state and federal regulations in relation to the public water supply system

for Cimarron Bay Subdivision, under § 640.130.4, RSMo, and plaintiff asks the court to assess the maximum penalties allowed by law against the defendant.

17. This court has jurisdiction to assess penalties for the above described violations of the Clean Water Law and implementing regulations in relation to the KK Wastewater Treatment Plant under § 644.076.1, RSMo, and plaintiff asks the court to assess the maximum penalties allowed by law against the defendant.

Count II – Request for Preliminary and Permanent Injunctive Relief

18. This court has jurisdiction to provide injunctive relief to enforce state and federal regulations applicable to the public water supply system for Cimarron Bay Subdivision, under § 640.130.2, RSMo.

19. Plaintiff has no adequate remedy of law and the people of the State of Missouri will suffer substantial and irreparable harm and damage in amounts incapable of being ascertained unless the violations in relation to the Cimarron Bay public water supply system are corrected. Plaintiff believes that the defendant, unless enjoined, will not operate the public water supply in compliance with the law.

20. This court has jurisdiction to provide injunctive relief to enforce state laws and regulations applicable to the collection system connected to the KK Wastewater Treatment Plant, under § 644.076.1, RSMo.

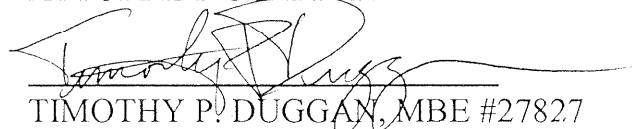
21. Plaintiff has no adequate remedy of law and the people of the State of Missouri will suffer substantial and irreparable harm and damage in the amounts

incapable of being ascertained unless the violations in relation to the collection system connected to the KK Wastewater Treatment Plant are corrected and the facility is properly operated and maintained in the future. Plaintiff believes that, unless enjoined, the defendant will fail to maintain the collection system for that facility in compliance with the law.

WHEREFORE, plaintiff prays for a judgment ordering the defendant to pay to the benefit of the Camden County School Fund penalties appropriate for the company's violations, and an injunction ordering defendant, subject to contempt for violating it in the future, to both correct ongoing violations and remain in compliance at all times in the future.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL



TIMOTHY P. DUGGAN, MBE #27827

Assistant Attorney General

P. O. Box 899

Jefferson City, Missouri 65102

Phone: (573) 751-9802

TELEFAX No. (573) 751-8464

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

CEDAR GLEN CONSTRUCTION, INC.

Plaintiff,

vs.

OSAGE WATER COMAPANY,
A Missouri Public Utility Company,

Defendant.

Case No. CV104-533CC

*Filed
7/14/04
JH*

DEFAULT JUDGMENT

Now on this 14 day of Septmeber, 2004, comes Plaintiff, Cedar Glen Construction, Inc., by and through it's attorney, and presents it's Motion for Default Judgment. The Court determines that it has jurisdiction over the parties and subject matter.

After being fully advised in the premises, the Court finds as follows:

1. That Plaintiff filed it's Verified Petition for relief on or about the 2nd day of July, 2004, against Defendant Osage Water Company.
2. That Defendant was served on or about the 13th day of July, 2004.
3. That Defendant was required to file an answer or respond to said service within 30 days of the date of service.
4. That as of the 20th day of August, 2004, that date being more than 30 days after service of process on Defendant, Defendant had failed to answer or respond to the Plaintiff's Petition as required by law.
5. That Defendant is in default.

Exhibit C

6. Plaintiff presents it's evidence and rests.
7. No evidence is presented on behalf of Defendant.

The Court, after hearing all the evidence, finds the issues in favor of Plaintiff and against Defendant.

NOW THEREFORE, it is hereby Ordered, Adjudged and Decreed by the Court as follows:

- A. That Plaintiff have judgment against Defendant in the amount of ONE HUNDRED THIRTY SEVEN THOUSAND EIGHT HUNDRED TWENTY DOLLARS AND NO/100 (\$137,820.00), together with interest thereon from and after the date of judgment at the rate of nine percent (9%) per annum;
- B. That this Judgment shall act as an assignment to Plaintiff of the Cedar Glen Condominium Project sewer and water accounts from which Plaintiff will collect the monthly revenue derived by Defendant from the water and sewer utility service provided to residents of the Cedar Glen Condominium Project. Plaintiff shall deduct any sums collected from said monthly revenue from the amounts awarded by this judgment until all amounts owed to Plaintiff are paid in full at which time this assignment shall automatically terminate.
- C. That Plaintiff have judgment for all costs incurred in this action.

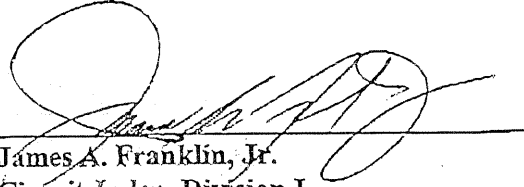
CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

DATE 9.20.04

CLERK OF CIRCUIT COURT
CAMDEN COUNTY, MO.

BY _____ CLERK

BY Tricia McCollum DEPUTY
Elkins-Swyers Co., Springfield, Mo. - Y-9952


James A. Franklin, Jr.
Circuit Judge, Division I
Camden County, Missouri

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

NOV 15 2004

In the matter of:

The joint application of
Missouri-American Water Company
and both Osage Water Company and
Environmental Utilities, L.L.C.

)
)
)
)

Case No. WO-2005-0086

Missouri Public
Service Commission

FILING OF EXHIBITS IN SUPPORT OF CLAIM

Come now intervenors, the Missouri Clean Water Commission and the Department of Natural Resources, to file and share with the other parties the following exhibits in support of their claims:

1. Exhibit 1 is a copy of a default judgment (copy attached) in the amount of \$47,076.00, in case number CV104-39CC, Circuit Court of Camden County. The judgment also requires Osage Water to pay the court costs.
2. Exhibit 2 is an invoice for \$2,800.00 for fees and penalties of \$300.00 for nonpayment owed for the Cedar Glen Condominiums Waste Water Treatment Facility.
3. Exhibit 3 is an invoice for \$222.25 in fees still due for the Osage Water Company's Route KK Waste Water Treatment Plant.

Respectfully submitted,
JEREMIAH W. (JAY) NIXON
Attorney General



TIMOTHY P. DUGGAN, MBE #27827
Assistant Attorney General
8th Floor, Broadway Building
P. O. Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-9802
TELEFAX No. (573) 751-8464

Exhibit D

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of foregoing to be delivered by the method indicated below:

United States mail, postage prepaid,

this 2nd day of November, 2004, to

The Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102

Dean L. Cooper, c/o Missouri American Water Co.
Richard C. Ciottone
Brydon, Swearingen & England P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102

Gregory D. Williams, c/o Osage Water Co.
P.O. Box 431
Sunrise Beach, MO 65079

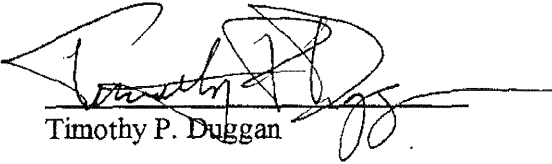
Mark Comley, c/o Cedar Glen Condominium Owners Ass'n, Inc.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102

Terry Allen c/o Hancock Construction
314 Monroe St.
P.O. Box 1702
Jefferson City, MO 65102

Secretary of the Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Dana K. Joyce
Cliff Snodgrass
P.O. Box 360
200 Madison St., Suite 800
Jefferson City, MO 65102

John B. Coffman P.O. Box 7800
200 Madison St., Suite 640
Jefferson City, MO 65102



Timothy P. Duggan

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
JEREMIAH W. (JAY) NIXON, Attorney)
General, and the MISSOURI CLEAN)
WATER COMMISSION,)

Plaintiff,)

v.)

OSAGE WATER COMPANY,)

Defendant.)

RECEIVED

OCT 28 2004

JO - MISSOURI
ATTORNEY GENERAL

Case No. CV104-39CC

Filed 10-15-2004

INTERLOCUTORY DEFAULT ORDER AND
FINAL DEFAULT DECISION, JUDGMENT AND ORDER

Now on this 15th Day of October, 2004, the Court takes up plaintiff's motion for default judgment. The Court finds and concludes:

1. Plaintiff's petition in the above captioned case was filed on January 15, 2004. Service of summons was made on defendant on January 21, 2004, and a return has been filed.
2. The defendant has failed to file and serve an answer within 30 days of receipt of summons as required by Supreme Court Rule 55.25.
3. Supreme Court Rule 74.05 authorizes this Court to issue an Interlocutory Order of Default because the defendant has failed to plead or otherwise defend.
4. Supreme Court rule 74.05 authorizes this Court, upon issuing an interlocutory order of default, to immediately hold a hearing to assess unliquidated damages and other relief requested by the petition. The hearing may be held without further notice to the

EXHIBIT

defendant because once a defendant is served with summons and petition he is put on notice of every stage of the proceeding. *Barney v. Suggs*, 688 S.W.2d 356, 359-360 (Mo. banc 1985); *Citizens Nat. Bank v. Boatmen's Nat. Bank*, 934 S.W.2d 6, 9 (Mo. App. E.D. 1996).

WHEREFORE, the Court hereby issues its interlocutory order that defendant is in default and plaintiff is entitled to an immediate hearing to assess relief, without further notice.

FINAL DECISION, JUDGMENT AND ORDER

The Court, having determined that the defendant, after being duly served the petition, is in default for having failed to answer the same, deems the allegations in the petition to be admitted. The allegations of the petition are fully incorporated as though fully set forth herein. The Court, having heard plaintiff's evidence establishing appropriate relief, issues a final decision, judgment and order as follows:

1. Defendant is the owner or operating authority for the State Operating Permit MO-0111104 for the Chelsea Rose Subdivision and is required by § 644.052, RSMo, to pay an annual operating permit fee for discharges from water contaminant sources. The fee is due on the anniversary date of the permit, or May 10 of each year. According to the Department of Natural Resources, the annual fee for this facility is \$800.00, based upon the facility's design flow. The 2003 fee of \$800.00 has not been paid. The 2004 fee of \$800.00 has not been paid. Penalties owed for nonpayment of

these fees is \$416.00, calculated at 2% for each month that the fee is delinquent, pursuant to § 644.055, RSMo. The defendant, as of the day of the hearing, owes \$2,016.00 for said unpaid fees and penalties for the Chelsea Rose facility. The Court orders defendant to pay this amount, by separate check, to the State of Missouri within thirty days of this judgment.

2. Defendant is the owner or operating authority for the State Operating Permit MO-0116921 for the Cimarron Bay Subdivision and is required by § 644.052, RSMo, to pay an annual operating permit fee for discharges from water contaminant sources. The fee is due on the anniversary date of the permit, or September 10 of each year. According to the Department of Natural Resources, the annual fee for this facility is \$150.00, based upon the facility's design flow. The 2002 fee of \$150.00 has not been paid. The 2003 fee of \$150.00 has not been paid. The 2004 fee of \$150.00 has not been paid. Penalties owed for nonpayment of these fees is \$110.00, calculated at 2% for each month that the fee is delinquent, pursuant to § 644.055, RSMo. The defendant, as of the day of the hearing, owes \$560.00 for said unpaid fees and penalties for the Cimarron Bay facility. The Court orders defendant to pay this amount, by separate check, to the State of Missouri within thirty days of this judgment.

3. For violations of Chapter 644, RSMo, and the regulations promulgated pursuant thereto, at the Chelsea Rose facility, the Court hereby assesses against the defendant a penalty of \$ 22,250 to the benefit of the Camden County School

Fund. The Court orders the defendant to pay this amount, by separate check, to the State of Missouri (Camden County) within thirty days of this judgment.

4. For violations of Chapter 644, RSMo, and the regulations promulgated pursuant thereto, at the Cimarron Bay subdivision facility, the Court hereby assesses a penalty of \$ 22,250 against the defendant to the benefit of the Camden County School Fund. The Court orders the defendant to pay this amount, by separate check, to the State of Missouri (Camden County) within thirty days of this judgment.

5. The checks in the amounts ordered to be paid shall be sent to the Office of the Attorney General, to the attention of Jo Ann Horvath, Collections Specialist, P.O. Box 899, Jefferson City, MO 65102.

6. The defendant is ordered to pay all court costs.

7. The defendant is permanently enjoined from committing any further violations of Chapter 644, RSMo, and the regulations promulgated pursuant thereto, subject to the contempt powers of this Court.


Judge, Camden County Circuit Court

The clerk shall serve a certified copy of this judgment upon:

William P. Mitchell
Registered Agent
Osage Water Company
328 South Frontage Road
Osage Beach, Missouri 65065

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

DATE 10-27-04

CLERK OF CIRCUIT COURT
CAMDEN COUNTY, MO.

BY _____ CLERK

BY  DEPUTY

MISSOURI DEPARTMENT OF NATURAL RESOURCES
WATER PROTECTION AND SOIL CONSERVATION DIVISION
WATER PROTECTION BRANCH

October 21, 2004

ANNUAL OPERATING PERMIT INVOICE

TO: OSAGE WATER COMPANY
328 SOUTH FRONTAGE
OSAGE BEACH, MO 65065

RECEIVED
OCT 25 2004
JC - MISSOURI
ATTORNEY GENERAL

Dear Permittee:

Our records show that you are the owner or operating authority for the State Operating Permit MO-0120936 for CEDAR GLEN CONDO WWTF. The Missouri Clean Water Law, Section 644.052, effective October 1, 1990, requires paying an annual operating permit fee for discharges from water contaminant sources. This fee is due on the anniversary date of your permit. The fees cannot be prorated and are due in full on the due date.

The fee history for permit MO-0120936 is as follows:

Date of Fee = April 7, 2004 Fee Amount Due = \$2,500.00

Total Fees Due with Adjustments = \$2,500.00
Total Outstanding Penalties = \$ 300.00
Less Payments Received - \$ 0.00
Total Amount Now Due = \$2,800.00

Please make your check or money order payable to the "State of Missouri". To ensure proper credit to your account, return the enclosed remittance form with your payment. Payment must be made within thirty (30) days to avoid paying penalty charges. If the fees are not paid within the required thirty (30) days, they shall be subject to a penalty of the amount of interest accrued on the unpaid fees. That rate is two percent for each month that the fee is delinquent.

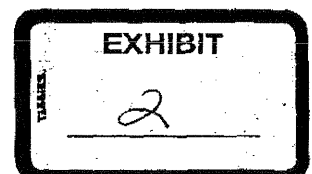
Thank you for protecting the environment. If you have any questions about this fee, please contact Catherine Engelmeyer at 573-751-6723 or call 1-800-361-4827 and ask for Water Protection Branch.

Sincerely,

WATER PROTECTION BRANCH

Catherine Engelmeyer
Catherine Engelmeyer
Executive I

Enclosures



WATER PROTECTION BRANCH
ANNUAL OPERATING PERMIT FEE
(This Page Must Be Returned With Your Payment)

Date: October 21, 2004

Fee Date: 4/07

Permit No.: MO-0120936

Facility Name: CEDAR GLEN CONDO WWTF

2004 Total Fees Due (4461-1130-01) = \$2,500.00

Penalty Charge (4461-1621-04) = \$ 300.00

Total Fees Due = \$2,800.00

Billing Name: OSAGE WATER COMPANY

Address: 328 SOUTH FRONTAGE

City, State, Zip: OSAGE BEACH, MO 65065

(If address shown is incorrect, please correct and return.)

-----FOR AGENCY USE ONLY-----

Permit #: MO-0120936

Name: CEDAR GLEN CONDO WWTF

Fee Date: 4/07

2004 Total Fees Due (4461-1130-01) = \$2,500.00

Penalty Charge (4461-1621-04) = \$ 300.00

Total Fees Due = \$2,800.00

Date Received _____

Received By _____

Please make your payment payable to the "State of Missouri" and mail to :

MISSOURI DEPARTMENT OF NATURAL RESOURCES
DAS, RECEIPTS AND REPORTING
P. O. BOX 477
JEFFERSON CITY, MO 65102

MISSOURI DEPARTMENT OF NATURAL RESOURCES
WATER PROTECTION AND SOIL CONSERVATION DIVISION
WATER PROTECTION BRANCH

October 21, 2004

ANNUAL OPERATING PERMIT INVOICE

TO: OSAGE WATER COMPANY
PO BOX 650
SUNRISE BEACH, MO 65079

Dear Permittee:

Our records show that you are the owner or operating authority for the State Operating Permit MO-0123170 for OSAGE WATER COMPANY, KK WWTP. The Missouri Clean Water Law, Section 644.052, effective October 1, 1990, requires paying an annual operating permit fee for discharges from water contaminant sources. This fee is due on the anniversary date of your permit. The fees cannot be prorated and are due in full on the due date.

The fee history for permit MO-0123170 is as follows:

| | |
|-----------------------------------|---------------------------|
| Date of Fee = Oct 13, 2004 | Fee Amount Due = \$500.00 |
| Total Fees Due with Adjustments = | \$222.25 |
| Total Outstanding Penalties = | \$ 0.00 |
| Less Payments Received - | \$ 0.00 |
| Total Amount Now Due = | \$222.25 |

Please make your check or money order payable to the "State of Missouri". To ensure proper credit to your account, return the enclosed remittance form with your payment. Payment must be made within thirty (30) days to avoid paying penalty charges. If the fees are not paid within the required thirty (30) days, they shall be subject to a penalty of the amount of interest accrued on the unpaid fees. That rate is two percent for each month that the fee is delinquent.

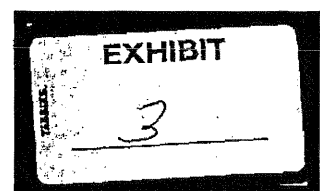
Thank you for protecting the environment. If you have any questions about this fee, please contact Catherine Engelmeyer at 573-751-6723 or call 1-800-361-4827 and ask for Water Protection Branch.

Sincerely,

WATER PROTECTION BRANCH

Catherine Engelmeyer
Catherine Engelmeyer
Executive I

Enclosures



WATER PROTECTION BRANCH
ANNUAL OPERATING PERMIT FEE
(This Page Must Be Returned With Your Payment)

Date: October 21, 2004

Fee Date: 10/13

Permit No.: MO-0123170

Facility Name: OSAGE WATER COMPANY, KK WWTP

2004 Total Fees Due (4461-1130-01) = \$222.25

Penalty Charge (4461-1621-04) = \$ 0.00

Total Fees Due = \$222.25

Billing Name: OSAGE WATER COMPANY

Address: PO BOX 650

City, State, Zip: SUNRISE BEACH, MO 65079

(If address shown is incorrect, please correct and return.)

-----FOR AGENCY USE ONLY-----

Permit #: MO-0123170

Name: OSAGE WATER COMPANY, KK WWTP

Fee Date: 10/13

2004 Total Fees Due (4461-1130-01) = \$222.25

Penalty Charge (4461-1621-04) = \$ 0.00

Total Fees Due = \$222.25

Date Received _____

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