

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

SUMMIT INVESTMENT, LLC,)	
)	
Complainant,)	
)	
vs.)	File No.: SC-2014-0214
)	
OSAGE WATER COMPANY,)	File No.: WC-2014-0215
)	
Respondent.)	

PARTIAL STIPULATION OF FACTS

COME NOW the Complainant, Summit Investments, L.L.C. (hereinafter, "Summit"), the Respondent, Osage Water Company ("Osage"), the Staff of the Missouri Public Service Commission ("Staff"), and the Office of Public Counsel ("OPC"), by and through counsel, and submit the following Partial Stipulation of Facts.

1. Summit is the developer of the Eagle Woods Subdivision in Camden County, Missouri ("Eagle Woods").
2. Osage is a Missouri corporation authorized by the Public Service Commission ("Commission") to provide water and sewer service to a service territory that includes Eagle Woods and the Golden Glade Subdivision ("Golden Glade"), also in Camden County, Missouri.
3. Summit and Osage entered into a Water and Sewer Supply Contract ("the Contract") on January 12, 1999. By the terms of the Contract, Osage agreed to provide water and sewer services to Eagle Woods. A true copy of the Contract (excluding the exhibits) is attached hereto as Exhibit A.
4. In 1998 the Missouri Department of Natural Resources ("MDNR") issued a Certificate of Need and Convenience for Eagle Woods Subdivision for 53 Lots.

5. On January 13, 1999, the Missouri Department of Natural Resources ("MDNR") issued Construction Permit No. 26-3075 to Eagle Woods, L.L.C. This permit authorized Eagle Woods, L.L.C. to construct sewers, septic tanks, a recirculating sand filter, and appurtenant facilities to serve 25 lots in the Eagle Woods Subdivision. A true copy of said construction permit is attached hereto as Exhibit B.
6. On September 21, 1999, MDNR issued Construction Permit No. 26-3075a to Eagle Woods Homeowners Association, Inc. This permit is substantially the same as Permit No. 26-3075, except that it changed the name of the permittee and it changed the description of facilities to be constructed by adding a length of 4" PVC pipe. The permit stated that the facilities were to serve 25 lots in Eagle Woods. A true copy of said construction permit is attached as Exhibit C.
7. Also on September 21, 1999, MDNR issued Construction Permit 26-3273 to Golden Glade Homeowners Association for a sewer extension in Golden Glade. The permit specifically stated that it did not permit operation of the sewer until an approved wastewater treatment facility was operational, and that the treatment plant then under construction was designed only for the 25 lots in Eagle Woods. A true copy of this permit is attached hereto as Exhibit D.
8. On February 10, 2000, the Commission issued its initial Report and Order in Case No. WA-99-437, authorizing Osage to provide water and sewer service to Eagle Woods. On September 28, 2000, the Cole County Circuit Court reversed the Commission's initial Report and Order, thereby nullifying it. On January 5, 2001, the Commission issued its Second Report and Order in the same case, again

authorizing Osage to provide water and sewer service to Eagle Woods. A true copy of said Second Report and Order is attached hereto as Exhibit E.

9. On October 13, 2000, MDNR issued State Operating Permit No. MO-0123170 to Osage. This permit authorized Osage to operate the facilities that were constructed pursuant to Construction Permit No. 26-3075a, for the period from October 13, 2000 through October 12, 2005. As requested by Osage, this permit did not identify the subdivision to be served by the facilities. A true copy of the first page of said operating permit is attached hereto as Exhibit F.
10. Osage did not receive or treat any sewage from Eagle Woods prior to January 5, 2001. During 1999 and 2000, and until January 5, 2001, Summit contracted with Amos Septic Service to pump and haul the sewage from Eagle Woods, at a total cost of approximately \$73,000.00.
11. On January 25, 2001, MDNR issued Construction Permit No. 26-3467 to Osage. This permit authorized Osage to complete the sewer extension authorized by Construction Permit No. 26-3273 and to construct a second recirculating sand filter and appurtenant facilities. The "expanded facility" was to serve 25 lots in Eagle Woods, Phases 1 and 2, and 25 lots in Golden Glade, Phases I and 2. A true copy of said construction permit is attached as Exhibit G.
12. On July 18, 2001, MDNR issued Construction Permit No. 26-3571 to Osage. This permit authorized Osage to expand its wastewater treatment facility by constructing two additional recirculating sand filters and appurtenant structures. The expanded facility was to serve all 53 lots in Eagle Woods, Phases I, II, III, and IV, and 47 lots

in Golden Glade, Phases I, II, III and IV. A certified copy of said construction permit is attached as Exhibit H.

13. The expansion described in Paragraph 12, above, was never built. Osage has never constructed any other expansion of the wastewater treatment plant that serves Eagle Woods and Golden Glade.
14. On December 10, 2002, the Commission issued its Report and Order in Case No. WC-2003-0134, in which it found, among other things, that Osage had been effectively abandoned by its owners, and that it was unable or unwilling to provide safe and adequate service to its customers. The Commission further directed its general counsel to file a petition in Camden County Circuit Court, seeking the appointment of a receiver for Osage, because Osage was unable or unwilling to provide safe and adequate service to its customers. A copy of the said Report and Order is attached hereto as Exhibit I.
15. On February 17, 2003, Eagle Woods Homeowner's Association filed with MDNR an application for a construction permit for the expansion of the wastewater treatment system for Eagle Woods, together with an Engineer's Report regarding the proposed construction. The Engineer's Report stated that the homeowner's association proposed to build a treatment system to serve 28 residential lots, and that the project was being developed by Summit Investment Co., LLC, because there was no municipality, public sewer district, or sewer company regulated by the Commission with adequate capacity in the area to treat the wastewater. Copies of the letter from the engineer and the Engineer's Report are attached hereto as Exhibits J and K, respectively.

16. On July 9, 2003, MDNR revised Operating Permit MO-0123170, previously issued to Osage. This permit authorized Osage to operate the expanded facilities that were constructed pursuant to Construction Permit No. 26-3075a, from July 9, 2003 through October 12, 2005. The permit specified that the treatment plant was to serve 14 specific lots in Eagles Woods I and II, 11 specific lots in Eagle Woods III and IV, and any 25 lots in Golden Glade. A true copy of said permit is attached hereto as Exhibit L.
17. On February 2, 2004, MDNR denied the Eagle Woods Homeowner's Association's application for a construction permit that was described in Paragraph 15, above. A true copy of the MDNR's letter (handwritten notes excepted) is attached hereto as Exhibit M.
18. On October 21, 2005, the Camden County Circuit Court issued its judgment in Case No. CV102-965CC, in which it found that Osage failed to provide safe and adequate service to its customers as required by Section 393.130.1, RSMo., and appointed Gary V. Cover as receiver for Osage. A true copy of the said judgment is attached hereto as Exhibit N.
19. On July 14, 2006, MDNR issued State Operating Permit No. MO-0123170 to Osage. This permit authorized Osage Water Company to operate the facilities that were constructed pursuant to Construction Permit No. 26-3075a, from July 14, 2006 through July 13, 2011. The permit specified that service was to be limited to any 50 lots platted in Eagle Woods I, II, III, and IV and Golden Glade, and that the addition of lots in excess of 50 would require an expansion of the wastewater treatment plant. A true copy of said operating permit is attached hereto as Exhibit O.

20. Osage currently provides water and sewer service to 33 residential customers in Eagle Woods and sewer service to 23 residential sewer customers in Golden Glade.

See Paragraph 7 of the Staff Investigation Report in this case.

21. Summit's manager, Ron Westenhaver ("Westenhaver"), will testify that:

- a. Osage failed from 2001-2 to make water connections to all lots in Eagle Woods as required by the Contract.
- b. On at least a half dozen occasions prior to the appointment of Gary V. Cover as receiver, Summit had to provide meter settings in order to obtain water service to Eagle Woods.
- c. Prior to the appointment of Gary V. Cover as receiver, Osage's agent, Greg Williams, told Westenhaver that Osage did not have the money it needed to install water lines to Eagle Woods in accordance with the Contract.
- d. Prior to 2006, one-third of the residences in Eagle Woods were not connected to Osage's water system, which Westenhaver constructed and paid for.
- e. Westenhaver installed all water mains in Eagle Woods and repaired water lines to Eagle Woods on many occasions between 1999 and 2005, when Gary V. Cover was appointed receiver for Osage, because Osage said it did not have the manpower or the desire to repair the lines.
- f. Prior to 2006, 38% of the residences in Eagle Woods were not connected to Osage's sewage treatment system.
- g. Westenhaver installed all sewer mains and lift stations in Eagle Woods and paid for same.

- h. Osage failed to provide adequate service to Eagle Woods since the Contract between Osage and Summit was executed.
 - i. Between 1999 and 2006, Summit wrote numerous letters to public officials because he was very dissatisfied with Osage's performance of the Contract and the water and sewer service Osage provided at Eagle Woods. These letters included: a letter dated March 10, 2001, to Rep. Luetkemeyer and others, complaining about "illegal" actions of Greg Williams, Osage and Susan Flanegin; a letter dated January 2, 2001, to senators and representatives requesting help in resolving issues at Eagle Woods with the MDNR and the Public Service Commission; a letter dated July 30, 2003, to senators and representatives explaining events and facts and requesting resolution of problems at Eagle Woods; a letter to MDNR and the Public Service Commission about an unequal playing field and selective enforcement of rules at Eagle Woods; a letter to senators and representatives with an overview of the situation at Eagle Woods; a letter or fax to representatives and senators requesting help with the ownership issues and capacity of the KK wastewater treatment plant; and a letter to Sen. Cooper requesting help with the capacity issues at Eagle Woods.
22. Osage is not now able to offer evidence to refute any of Westenhaver's allegations as set forth in Paragraph 21, above.
23. On April 21, 2006, Summit's attorney, Faye Coultas, wrote a letter to Osage complaining about the water and sewer service that Osage provided to the residents

at Eagle Woods, and stating that Osage failed to provide the services for which it was paid. A copy of the said letter is attached hereto as Exhibit P.

24. On July 10, 2006, Summit filed a Petition for Damages against Osage in Camden County Circuit Court in Case No. 06CM-CC00225.¹ In said Petition, Summit alleged that Osage breached the Contract by failing to provide to Eagle Woods the water and sewer services described in the Contract. A true copy of said Petition (without the exhibits referenced therein) is attached hereto as Exhibit Q.

25. The Camden County Circuit Court dismissed Case No. 06C-CC00225 without prejudice on September 17, 2009.

26. On April 29, 2011, Summit filed a Petition for Damages against Osage in Camden County Circuit Court, in Case No. 11CM-CC00113. The said Petition was substantially identical to the Petition that Summit filed on July 10, 2006, which is described in Paragraph 24, above. A copy of the said Petition is attached hereto as Exhibit R.

KAY, GREEN & ASSOCIATES, L.L.C.



JEFFREY E. GREEN #41379
P.O. Box 1157
Osage Beach, MO 65065
(573) 348-0122
(573) 348-0124 fax
Attorney for Complainant

COVER & WEAVER, L.L.C.



GARY V. COVER #28854
137 West Franklin, P.O. Box 506
Clinton, MO 64735
(660) 885-6914
(660) 885-6780 fax
Attorney for Respondent

¹ The Case Number shown on the attached copy of the Petition (06CMCC0025) is apparently in error. From Case.Net, it appears that the correct Case Number is 06CM-CC00225.

Exhibits

A	Contract without attachments
B	DNR Construction Permit #26-3075
C	DNR Construction Permit #26-3075a
D	DNR Construction Permit #26-3273
E	Commission Second Report & Order
F & O	DNR Operating Permit MO-0123170
G	DNR Construction Permit #26-3467
H	DNR Construction Permit #26-3571
I	Commission Report & Order WC-2003-0134
J & K	Letter from engineer and engineer's report
L	DNR Operating Permit Revised MO-0123170 without handwritten notes
M	DNR letter of 2-2-04 without handwritten notes
N	Camden County Judgment CV102-965CC
P	Letter from Faye Coultas 4-21-06
Q	Petition for Damages filed 7-10-06 in 06CM-CC00225 without Exhibits
R	Petition for Damages filed 4-29-11 in 11CM-CC00113

1

Osage Water Company Water Supply Contract Page 1

WATER AND SEWER SUPPLY CONTRACT

THIS CONTRACT is made and entered into this 12 day of January, 1998 by and between Osage Water Company, a Missouri Public Utility Corporation, "OWC", and Summit Investments, LLC, A Missouri Limited Liability Company, referred to herein as the "Developer".

Whereas, OWC is a Missouri Corporation authorized by the Missouri Public Service Commission to provide water and sewer service and Developer is the owner of property located off of State Route KK near Osage Beach, Missouri, which property is known as Eagle Woods Subdivision (the "Project"); and

Whereas, Developer has prepared and desires to implement a plan for the overall development of its land into residential housing and other facilities compatible therewith that contemplates the construction of 53 residential houses and other facilities over a period of one or more years; and

Whereas, Developer desires to obtain the benefit of public water and sewer utility service for the present and future residents of its property and desires to contract with OWC for said public water and sewer utility service.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, the undersigned do hereby covenant, contract, and agree as follows.

1. Request for Service. Developer does hereby request public water and sewer service from OWC for its property, and requests that the Missouri Public Service Commission ("PSC") grant to OWC a certificate of convenience and necessity to provide such service to its property. OWC shall be solely responsible for the cost of preparing and filing such applications, feasibility studies, engineering plans, and other documentation that may be required by the PSC for the processing and approval of service by OWC to Developer.

2. Water Supply. OWC agrees to construct and install a water main from OWC's water well site located in Golden Glade Subdivision on Lake Road KK-33 to the northwest property line of Developer's property, at OWC's expense.

OWC agrees to make such additional water main extensions as may be required to extend water utility service to building sites located within Developer's project in accordance with the main extension rules set forth in OWC's Water Tariff on file with the Missouri Public Service Commission.

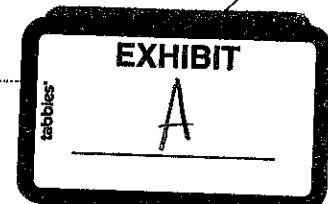
OWC shall pay the first \$250 of the cost of connecting each residential dwelling to the water distribution system, which shall consist, in the absence of a specific written agreement to the contrary, of the provision of a meter pit, lid, loop, and water meter for each such residential dwelling.

Developer agrees to convey to OWC its existing non-community drinking water supply presently serving Eagle Woods Subdivision, together with all water mains and easements for same, pumps, storage tanks, well control panels, electrical service, pump-house, and other fixtures and equipment associated therewith. Developer shall provide OWC with complete documentation of all costs incurred by Developer in the construction of said non-community drinking water supply.

GREGORY D. WILLIAMS, ATTORNEY AT LAW, HIGHWAY 5 AT LAKE ROAD 5-33, P.O. BOX 431, SUNRISE BEACH, MO 64079
TELEPHONE (573) 374-8761 FAX (573) 374-4432

1

EXHIBIT 1



In the event that existing water lines installed by Developer prior to the date of this Contract are of a smaller diameter than specified by OWC or its engineer, OWC shall be solely responsible for replacing such existing water lines with a water line of a diameter acceptable to OWC, and Developer shall bear no part of the cost of such water line replacement.

Developer shall construct all water lines after the date of this Contract in conformance with OWC's Water Tariff Rule 14(A)(7).

3. Water for Fire Protection. Developer acknowledges that OWC does not propose to provide water for fire protection purposes to Developer's project, and has advised Developer to consult with applicable local governmental entities, including, but not limited to, the Osage Beach Fire Protection District, to determine whether Developer is required to provide water for fire protection purposes within the Project, and that Developer has made such inquiries as Developer deems necessary prior to executing this Contract. In the event that Developer desires or is required to provide water for fire protection purposes within the Project, Developer shall be solely responsible for the cost of construction of all facilities required by the Osage Beach Fire Protection District or any other government entity for the purpose of furnishing water for fire protection, including, but not limited to, additional sprinkler storage facilities in excess of that necessary to meet Missouri Department of Natural Resources requirements for potable drinking water, fire hydrants, dry hydrants, standpipes connected to the Lake of the Ozarks or other non-potable water sources, fire pumps, and any other water facilities not customarily utilized in the provision of potable drinking water by OWC. If such additional fire protection water supply is provided by or through OWC's water system, Developer shall pay to OWC the actual cost of construction incurred by OWC for the provision of such additional capacity or facilities.

4. Sewer System. OWC agrees to construct and install an effluent collection sewer from OWC's sewage treatment facility site located in the Southeast corner of Section 6, Township 39 North, Range 16 West to the northwest corner of Developer's property, at OWC's expense. OWC shall provide the necessary engineering plans and DNR permits for the construction of said effluent collection sewer.

OWC agrees to make such additional effluent collection sewer extensions as may be required to extend sewer utility service to building sites located within Developer's project in accordance with the main extension rules set forth in OWC's Sewer Tariff on file with the Missouri Public Service Commission.

Developer agrees to pay to OWC the sum of Thirty Thousand Dollars (\$30,000.00) as a Contribution In Aid of Construction for the construction of a sewage treatment facility with sufficient capacity to serve the fifty-three (53) single family residential homes presently contemplated by Developer within the Eagle Woods project, and to transfer and convey to OWC all engineering plans, specifications, and Department of Natural Resources permits presently owned by Developer for such sewage treatment facility. OWC agrees to commence construction of said sewage treatment facility immediately upon issuance of a permit therefore by the Missouri Department of Natural Resources.

Developer acknowledges that said CIAC is not refundable and that Developer will not receive any future credits or rebates of said sum, in that said CIAC represents the "net cost" of constructing said sewage treatment facility after application of OWC's customary sewer investment of \$500 per single family residential dwelling.

Said CIAC shall be paid as follows: the sum of \$5,000.00 shall be due and payable at the time of execution of this Contract. The balance shall be due and payable in construction draws as construction on the sewage treatment facility progresses, provided, however, that the final balance of \$5,000.00 shall be due upon final certification of completion of said sewage treatment facility by OWC's engineer.

OWC shall take all necessary steps to apply for a permit from the Missouri Department of Natural Resources for the construction of the sewage treatment facility, and to promptly proceed with construction of such sewage treatment facility upon receipt of a MDNR construction permit therefor.

4. Easements to be Conveyed. Developer agrees to convey to OWC such easements for the construction, operation, maintenance, and repair of all water distribution and sewer collection lines, including an easement of access to repair all meters and remote reading devices installed within individual residential units, as are necessary for the proper operation, maintenance, and expansion of said Water System and Sewer System, including specifically a water main easement running along State Route KK across the Project, and a sewer transmission easement running along State Route KK and parallel to and 10 feet from said water main easement across the Project. Said water and sewer transmission easements shall consist of a temporary construction easement twenty feet in width, and a permanent easement ten feet in width lying five feet on either side of said water or sewer main as actually constructed.

5. Required Equipment. OWC agrees that will furnish to Developer, at its cost, all equipment, specifically including but not limited to, water meters, remote readers, interior shutoff valves, and other equipment which OWC requires be of a specific type or manufacture, so that OWC may insure uniformity of such equipment throughout its utility systems.

6. Existing Rates. Developer acknowledges that OWC's current rates for water service are \$7.75 per month base rate which includes 1,000 gallons, plus \$2.07 for each additional 1,000 gallons used each month. OWC's current rates for sewer service are \$23.90 per month flat rate for residential users, and \$23.90 per month base which includes 6,000 gallons plus \$3.98 per month for each additional 1,000 gallons of water consumption for commercial users. Developers further acknowledge that said rates are subject to adjustment under the ratemaking procedures of the PSC.

7. Existing Tariffs. Developer acknowledges that water and sewer service is provided by OWC in accordance with the terms and provisions of its existing tariffs on file with the Missouri Public Service Commission, and that the terms and conditions of those tariffs are incorporated herein by reference.

In witness whereof, the parties have set their hands the day and year first above written.

Osage Water Company

By Gregory D. Williams
Gregory D. Williams, President

Sunbelt Investments, LLC

By Donald J. Westenhaver
President Manager

GREGORY D. WILLIAMS, ATTORNEY AT LAW, HIGHWAY 5 AT LAKE ROAD 5-35, P.O. BOX 431, RICHMOND BEACH, MO 65079
TELEPHONE (573) 374-8761 FAX (573) 374-4432

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

MISSOURI CLEAN WATER COMMISSION

WPC - Camden
Eagle Woods
ID NO 2169

Construction Permit No. 26-3075
River Reach No: 10290109-09-00



CONSTRUCTION PERMIT

The Missouri Department of Natural Resources hereby issues a permit to: Eagle Woods, L.L.C.
ATTN: Ron Westenhaver
435 Cherokee Road
Lake Ozark, MO 65049

for the construction of (describe facilities):

1724.63 linear feet of six-inch PVC pipe, four pairs of 1500 gallon septic tanks - each second tank has two .5 horsepower pumps with each pump designed for 10 gallons per minute at 41.9 feet of total dynamic head, 1278.59 linear feet of two-inch PVC pressure pipe, two air release valves, 5203.1 gallon duplex recirculation tank with each .7 horsepower pump designed for 38.8 gallons per minute at 50.5 feet of total dynamic head, 32 feet by 44 feet

Permit Conditions: (NONE)

Construction of such proposed facilities shall be in accordance with the provisions of the Missouri Clean Water Law, Chapter 644, RSMo, and regulations promulgated thereunder, or this permit may be revoked by the Department of Natural Resources.

As the Department of Natural Resources does not examine structural features of design or the efficiency of mechanical equipment, the issuance of this permit does not include approval of these features.

A representative of the Department may inspect the work covered by this permit periodically during construction. Issuance of an operating permit by the Department will be contingent on the work substantially adhering to the approved plans and specifications.

This permit applies only to the construction of wastewater treatment facilities; it does not apply to other environmentally regulated areas.

January 13, 1999 *WBF*

Effective Date

John A. Young
Director, Division of Environmental Quality

January 13, 2000

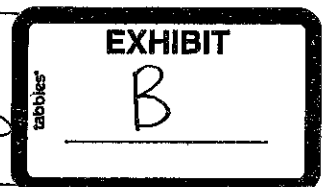
Expiration Date

[Signature]
Director of Staff, Clean Water Commission or Designee

\$500.00 Rec'd.

Check No. 2591

MO 780-1151 (10-94)



Eagle Woods
January 13, 1999
Page Two

FACILITY DESCRIPTION (CONTINUED):
recirculating sand filter bed, 290 gallons of chlorine contact volume, and all the necessary appurtenances to make the facilities complete and usable. This facility is to serve twenty-five lots in Eagle Woods Subdivision with a design flow of 6937.5 gallons per day. Legal Description: NE1/4, NW1/4, NE1/4, Sec. 8, T39N, R16W, Camden County, Missouri.

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

MISSOURI CLEAN WATER COMMISSION

WPC - Camden
Eagle Woods
ID NO 2169

Construction Permit No. 26-3075a
River Reach No. 10290109-09-00



CONSTRUCTION PERMIT

The Missouri Department of Natural Resources hereby issues a permit to:

Eagle Woods Homeowners Assoc.
ATTN: Ron Westenhaver
P.O. Box 496
Onage Beach, MO 65065

for the construction of (describe facilities):

1724.63 linear feet of six-inch PVC pipe, four pairs of 1500 gallon septic tanks - each second tank has two .5 horsepower pumps with each pump designed for 10 gallons per minute at 41.9 feet of total dynamic head, 1278.59 linear feet of two-inch PVC pressure pipe, two air release valves, 1133 linear feet of four-inch PVC pipe, 5203.1 gallon duplex recirculation tank with each .7 horsepower pump designed for 38.8 gallons per minutes at 50.5 feet of total

Permit Conditions:

(NONE)

Construction of such proposed facilities shall be in accordance with the provisions of the Missouri Clean Water Law, Chapter 644, RSMo, and regulations promulgated thereunder, or this permit may be revoked by the Department of Natural Resources.

As the Department of Natural Resources does not examine structural features of design or the efficiency of mechanical equipment, the issuance of this permit does not include approval of these features.

A representative of the Department may inspect the work covered by this permit periodically during construction. Issuance of an operating permit by the Department will be contingent on the work substantially adhering to the approved plans and specifications.

This permit applies only to the construction of wastewater treatment facilities; it does not apply to other environmentally regulated areas.

September 21, 1999
Effective Date

January 13, 2000
Expiration Date

John A. Young
Director, Division of Environmental Quality

[Signature]
Director of Staff, Clean Water Commission or Designee

EXHIBIT

C

WPC - Camden
Eagle Woods & Golden Glade Subd. - CP
Golden Glade Sewer Line
ID NO 2169

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Mel Carnahan, Governor • Stephen M. Haddad, Director

DIVISION OF ENVIRONMENTAL QUALITY

Jefferson City Regional Office
210 Hoover Road P.O. Box 176 Jefferson City, MO 65102-0176
(573) 751-2729
FAX (573) 751-0014

September 21, 1999

Golden Glade Homeowners Association
ATTN: Greg Williams, President
P.O. Box 431
Sunrise Beach, MO 65079

Dear Applicant:

Your application for wastewater works to serve the Golden Glade Sewer Line has been approved by the Department of Natural Resources as evidenced by Construction Permit Number 26-3273 which is enclosed.

This permit will expire one year from the date of issuance unless justification for extension is presented thirty (30) days prior to expiration. The applicant must show that there have been no substantial changes in the project.

Finally, be aware that any land disturbance activities of five acres or more require a Missouri State Operating Permit to discharge storm water (10 CSR 20-6.200). The permit requires best management storm water practices. To obtain this permit, submit Forms E and G and a permit fee of \$150 to the Permits Unit Chief, Department of Natural Resources, Water Pollution Control Program, P.O. Box 176, Jefferson City, Missouri 65102.

Note that condition number two of the permit requires written certification that the sewer has been properly constructed. The enclosed form entitled "Application for Letter of Authorization" can be used to satisfy this condition.

If you have any questions, please contact Keith Forck at the Jefferson City Regional Office at (573) 751-2729.

Sincerely,

JEFFERSON CITY REGIONAL OFFICE


Robert H. Hentges
Regional Director

RHH:kfl

Enclosures

c: Jackson Engineering, Inc.
Scott Williams, Water Pollution Control Program, Enforcement Section

EXHIBIT

D

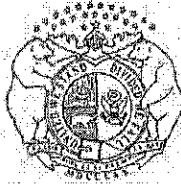
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STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

MISSOURI CLEAN WATER COMMISSION

WPC - Camden
Eagle Woods & Golden Glade Subd.
Golden Glade Sewer Line
ID NO 2169

Construction Permit No. 26-3273



CONSTRUCTION PERMIT

The Missouri Department of Natural Resources hereby issues a permit to: Golden Glade Homeowners Assoc.
ATTN: Greg Williams
P.O. Box 431
Sunrise Beach, MO 65079

for the construction of (describe facilities):

Thirteen 1000-gallon septic tanks, 3514 linear feet of four-inch PVC pipe with cleanouts and all the necessary appurtenances to make the facilities complete and usable. This sewer is to serve 13 lots in Golden Glade Subdivision with a design flow of 3608 gallons per day and is a tributary to the proposed Eagle Woods and Golden Glade Subdivisions Wastewater Treatment Facility.

Permit Conditions:

This sewer extension construction permit does not permit operation of the sewer until an approved wastewater treatment facility is operational. This permit does not assure that a wastewater treatment plant expansion will be approved. Note that the treatment plant, as of today, is designed only for the 25 lots in Eagle Woods.

Construction of such proposed facilities shall be in accordance with the provisions of the Missouri Clean Water Law, Chapter 644, RSMo, and regulations promulgated thereunder, or this permit may be revoked by the Department of Natural Resources.

As the Department of Natural Resources does not examine structural features of design or the efficiency of mechanical equipment, the issuance of this permit does not include approval of these features.

A representative of the Department may inspect the work covered by this permit periodically during construction. Issuance of an operating permit by the Department will be contingent on the work substantially adhering to the approved plans and specifications.

This permit applies only to the construction of wastewater treatment facilities; it does not apply to other environmentally regulated areas.

September 21, 1999

Effective Date

John A. Young
Director, Division of Environmental Quality

September 21, 2000

Expiration Date

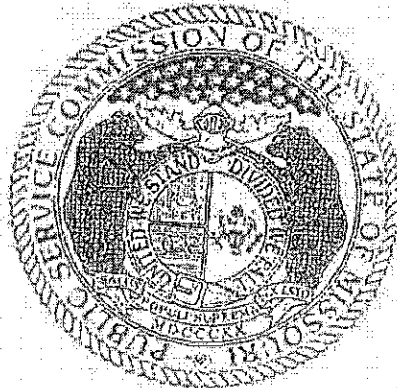
[Signature]
Director of Staff, Clean Water Commission or Designer

\$200.00 Rec'd.
MO 780-1151 (10-94)

Check No. 2530

WOP 3.34
Rev. 10-94

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI



In the Matter of the Application of Osage
Water Company for Permission, Approval, and a
Certificate of Convenience and Necessity
Authorizing It to Construct, Install, Own,
Operate, Control, Manage and Maintain a Water
and Sewer System for the Public Located in an
Unincorporated Portion of Camden County,
Missouri, Known as Eagle Woods.

Case No. WA-99-437

SECOND REPORT AND ORDER

Issue Date: December 26, 2000

Effective Date: January 5, 2001

¹ The Commission's initial Report and Order, issued February 10, 2000, was appealed by the City of Osage Beach to the Cole County Circuit Court. On September 28, 2000, the Cole County Circuit Court reversed the Commission's initial Report and Order. The effect of this reversal is to "nullify the [initial Report and Order] and to leave the case standing as if no such [Report and Order] had ever been rendered." State ex rel. Hoffman v. Public Service Commission, 530 S.W.2d 434, at 437 (Mo.App. 1975). Accordingly, the Commission now issues this Second Report and Order.

EXHIBIT

E

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Osage
Water Company for Permission, Approval, and a
Certificate of Convenience and Necessity
Authorizing It to Construct, Install, Own,
Operate, Control, Manage and Maintain a Water
and Sewer System for the Public Located in an
Unincorporated Portion of Camden County,
Missouri, Known as Eagle Woods.

Case No. WA-99-437

APPEARANCES

Gregory D. Williams, Attorney at Law, Highway 5 at 5-33, P.O. Box 431,
Sunrise Beach, Missouri 65079, for Osage Water Company.

Gary W. Duffy, Brydon, Swearingen and England, P.C., 312 East Capitol
Avenue, P.O. Box 456, Jefferson City, Missouri, 65101, for City of Osage
Beach.

Shannon Cook, Assistant Public Counsel, P.O. Box 7800, Jefferson City,
Missouri 65102, for the Office of the Public Counsel.

Keith R. Krueger, Deputy General Counsel, Missouri Public Service
Commission, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of
the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Lewis Mills, Deputy Chief Regulatory Law Judge

REPORT AND ORDER

I. Procedural History

On April 5, 1999, Osage Water Company (Osage) filed an application pursuant to Section 393.170, RSMo 1994², requesting that the Missouri Public Service Commission (Commission) grant it a certificate of convenience and necessity to construct, install, own, operate, control, manage and maintain a water and sewer system for the public located in an unincorporated portion of Camden County known as Eagle Woods.

On April 12, 1999, the Commission issued an order and notice of application, directing interested parties to file applications to intervene no later than April 29, 1999. On April 28, 1999, the City of Osage Beach (City) filed a timely application to intervene and also filed motions to consolidate this case with case number SA-99-268, to cancel the procedural schedule in SA-99-268, to set a prehearing conference to establish a new procedural schedule in the consolidated cases, and for expedited treatment. On May 3, 1999, Osage filed its response to the application to intervene by the City, stating that it opposed the intervention of the City and also filed a response to the City's motions to consolidate this case with case number SA-99-268, to cancel the procedural schedule in SA-99-268, to set a prehearing conference to establish a new procedural schedule in the consolidated cases, and for expedited treatment. On May 5, 1999, the City filed its replies to Osage's responses to the City's motions. On May 10, 1999, the Staff of the Commission (Staff) filed its response to the

² All references herein to sections of the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of 1994.

application to intervene filed by the City and also filed its response to the motions to consolidate this case with case number SA-99-268, to cancel the procedural schedule in SA-99-268, to set a prehearing conference to establish a new procedural schedule in the consolidated cases, and for expedited treatment.

On May 10, 1999, Osage filed its response to a motion to compel filed by the City. However, the official case filings do not reflect such a motion by the City being filed.

The City's application to intervene was granted by order of the Commission entered on May 11, 1999, which order also set a prehearing conference for June 11, 1999, which was held as scheduled. The order also denied the City's motions to consolidate this case with case number SA-99-268, to cancel the procedural schedule in SA-99-268, to set a prehearing conference to establish a new procedural schedule in the consolidated cases, and for expedited treatment, and instead set a deadline for the parties to file a procedural schedule no later than June 21, 1999. On May 14, 1999, the City filed its application for a rehearing on the order denying consolidation. On May 17, 1999, Staff filed its motion to reconsider the order denying the motion to reconsider (sic) and a "motion to compel".³ On May 26, 1999, Osage filed its response to the motion for rehearing by City and to the motion to reconsider by Staff. On June 21, 1999, Office of the Public Counsel (Public Counsel) filed its clarification of its position, stating that it had decided to oppose Osage's application.

On June 22, 1999, the Commission entered its order denying the City's application for rehearing filed on May 14, 1999, and also denying the

³ Although the caption of the motion filed by Staff indicated that it was, *inter alia*, a "motion to compel," there was nothing in the body of the motion which consisted of a motion to compel.

Staff's response to the City's motions to consolidate this case with case number SA-99-268, to cancel the procedural schedule in SA-99-268, to set a prehearing conference to establish a new procedural schedule in the consolidated cases, and for expedited treatment, filed on May 10, 1999, and Staff's motion to reconsider order denying motion to reconsider (sic) and motion to compel, filed on May 17, 1999.

On June 23, 1999, Osage filed a motion to establish a procedural schedule. Osage stated that all parties agreed on the procedural schedule set forth. On June 24, 1999, the Commission entered its order adopting procedural schedule which, *inter alia*, set an evidentiary hearing for December 2 and 3, 1999. The Commission filed a notice of correction of the order adopting procedural schedule on June 30, 1999, which corrected a date for rebuttal testimony to be filed. On August 12, 1999, the Commission entered its order scheduling a local public hearing for September 16, 1999, which was held as scheduled.

On November 1, 1999, Staff filed its proposed list of issues, order of witnesses, and order of cross-examination, which Staff stated that all parties agreed upon. On the same date, both Staff and City each filed its statement of position on the issues. Osage filed its statement of position on November 5, 1999. Included in that statement was also an objection by Osage to that part of Staff's proposed list of issues, order of witnesses, and order of cross-examination which indicated that Public Counsel possibly intended to call unidentified "public witnesses." On November 19, 1999, the Commission entered its order partially granting Osage's objection to public witnesses. The Commission ordered that the objection to the proposed order of witnesses filed by Osage was granted insofar as to prohibit the introduction of the testimony of any witness which did not comply with applicable rules of the Commission or statutes of the State of Missouri.

On November 9, 1999, the Commission issued a notice changing the dates for the evidentiary hearing to December 1 and 2, 1999. On November 16, 1999, Staff, City and Public Counsel filed a joint motion to strike portions of the prepared testimony of William P. Mitchell (Mitchell), Osage's engineering witness. On November 24, 1999, Public Counsel filed its statement of position and its motion for leave to file its statement of position out of time.

On November 29, 1999, the Commission filed its notice of official notice, stating that it had taken official notice of Osage's 1998 annual report.

An evidentiary hearing was held on December 1 and 2, 1999. All the parties were represented. On December 17, 1999, the Commission entered its order adopting a briefing schedule. Also on December 17, 1999, the Commission filed its notice regarding motions and notice of ex parte contact. The notice stated, *inter alia*, that at the evidentiary hearing, the joint motion to strike portions of the prepared surrebuttal testimony of Mitchell was denied on the record. The motion filed by Public Counsel for leave to file its statement of position out of time was granted on the record. Also at that hearing, the Commission notified the parties of an ex parte contact made with the Commission on November 30, 1999, by way of a letter sent from and signed by Linda Hulett.

At the hearing, the Commission also took official notice of the following: Department of Natural Resources rule 10 CSR 20.610, a copy of the recorded restrictions on Eagle Woods subdivision, small water company rate cases (2000-345 and 2000-346), and Section 644.141, RSMo. At the hearing, Exhibit Number 9 was reserved for accounting documents, Exhibit Number 11 was reserved for copies of restrictions on Eagle Woods, and Exhibit Number 12 was reserved for a copy of a Department of Natural

Resources sewer construction permit. All of the late-filed exhibits were filed by Osage on December 16, 1999, and are received and made a part of the record of this matter.

II. Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

As discussed below, the Commission has determined that Osage has met its burden of proof under the legal standards articulated by the Commission and the courts for the grant of a certificate of public convenience and necessity. For the reasons stated herein, the Commission will grant Osage's application for a certificate of public convenience and necessity.

A. Osage Water Company Proposal

Osage is a Missouri corporation duly organized and existing under the laws of the State of Missouri with its principal office and place of business located at Highway 54 West, Osage Beach, Missouri 65065. It is a public utility proposing to render water and sewer service to the public under the jurisdiction of the Commission in the proposed service area. Osage is currently certificated to provide water and sewer utility services to the public in various portions of Camden County, Missouri.

The proposed service area is legally described as all of Eagle Woods Subdivision and all of Eagle Woods Subdivision II, which consists of part of Section 7, Township 39 North, Range 16 West, County of Camden, State of

Missouri. The service area consists of two new subdivisions located on Turkey Bend, which is an unincorporated portion of Camden County located on State Route KK, near Tan-Tar-A resort. The project is designed to contain 53 lots and, at the time evidence was presented, around 12 lots had been improved and sold. The first phase consists of 25 lots, all of which, at the time evidence was presented, were basically complete. The second phase consists of an additional 28 lots that were, at the time evidence was presented, under construction by the developer.

In its application and feasibility study, Osage proposed a recirculating sand filter system which will be constructed in treatment modules designed to serve approximately 30 single family homes each. Each resident in the subdivision would be connected to a septic tank, and each septic tank would be connected to a gravity effluent collection sewer which would transmit the effluent to the sand filter. The current water system in Eagle Woods consists of two multi-family wells permitted to serve eight houses each. The system would be constructed with an initial investment of \$500 per customer for the sewer service and \$250 per customer for the water service.

The following issues generally follow the factors outlined in In Re Tartan Energy, 3 Mo.P.S.C.3d 173, 177 (Sept. 16, 1994) (the Tartan Energy Case).

B. Is there a need for service?

In their statements of position, Osage, City, and the Public Counsel all agreed that there was a public need for water service and sanitary sewer service in the proposed service area. Staff, in its statement of position, did not address this issue. Instead, Staff stated that Osage "has not demonstrated that there is a need for service that will not be

adequately met by other providers, such as the City of Osage Beach or the homeowners association for the Eagle Woods Subdivision."

All parties except Staff agreed on this issue. The Commission finds that there is a public need for water and sewer service in the proposed service area.

C. Is Osage qualified to provide the service?

In their statements of position, Osage stated that it was qualified to provide water and sewer service to the public in the Eagle Woods Subdivision, while Staff, City and Public Counsel all agreed that Osage was not qualified to provide water and sewer service to the public in the Eagle Woods Subdivision.

Osage presented evidence as to its experience in the water and sewer utility industry along with its technical experience and knowledge regarding engineering and safety. Osage also showed that it had the ability to properly construct and operate a water and sewer system for the proposed service area. This evidence was substantial and unrefuted.

Osage witness Mitchell testified extensively concerning Osage's qualifications. Mitchell has been operating water and sewer utilities since 1981, and has been with Osage since 1987 when it was originally formed by his parents and him to provide regulated water utility service in the Lake of the Ozarks area. He is a member of the Board of Directors of Osage and participates in all meetings that affect the policies and management of Osage, and is involved in the day-to-day operations of Osage. Mitchell is the vice-president of operations for Osage and is the principal of Jackson Engineering and Water Laboratory Company. He holds a Class A license, the highest type of license available, from the Missouri Department of Natural Resources (MDNR) for both water and wastewater.

Osage's president is an attorney whose practice includes real estate, taxation, and public utilities. Osage employs a construction foreman and various individuals from time to time as construction laborers for the purpose of performing construction of new water and sewer main extensions, service connections, and repairs to water and sewer lines and systems. Osage owns a mini-excavator and a bobcat for use in new construction and repairs. Osage therefore possesses the necessary technical expertise with which to operate not only the physical facilities needed for the proposed service area, but also the necessary general overhead and support staff required to conduct its water and sewer utility operations.

Osage has an operation contract with both Jackson Engineering and Water Laboratory Company under the terms of which those companies provide regular operation, maintenance, and testing of all of Osage's water supplies and sewage treatment facilities. The two companies also provide basic office operations for Osage, including secretarial support, telephone, meter reading, and billing.

Osage has both a water and sewer tariff on file with the Commission, and currently operates a number of other water and sewer systems under the Commission's regulation. Osage owns three sewage treatment facilities of the same recirculating sand filter design as that proposed for the Eagle Woods service area, and one of those is of the extended aeration type. Mitchell has experience operating both kinds of systems as well as numerous other sewage treatment systems. Mitchell testified regarding the history, workings and development of recirculating sand filters, including the fact that MDNR has been promoting the use of that technology.

Osage has also constructed, owns, and operates several water systems, including large capacity public drinking water supplies. These systems serve both small subdivisions comparable to Eagle Woods, as well as large commercial districts, such as downtown Osage Beach.

P. 11

Mitchell's testimony more than adequately displayed his knowledge of water and sewer systems, plus his knowledge of the operation of the equipment needed to run a water and sewer system. This experience is valuable to the operation of any water and sewer system. Osage and its principals have substantial knowledge regarding engineering, safety, and the technical ability and equipment to provide the service needed for the proposed water and sewer system.

Osage has the burden of proof to demonstrate that it is qualified to provide the service and has presented sufficient evidence on that issue; thus the Commission concludes that Osage has demonstrated that it is qualified to provide the service.

D. Does Osage have the financial ability to provide the service?

In their statements of position, Osage stated that it had the financial ability to provide the water and sewer service, while Staff, Public Counsel, and City all agreed that Osage did not have the financial ability to provide the service.

Osage is required to show that it has the financial ability to provide the proposed service. Both Osage's application and its testimony reflect that the project developer has and is willing to make contributions in aid of construction of either cash or water systems and sewer collection systems; Osage need only provide the labor and equipment to assemble the necessary components for the sewage treatment plant, which is substantially complete. Osage does not require any additional capital beyond that offered by the project developer in order to have the financial ability to provide water and sewer utility service to Eagle Woods. The proposed capital structure for the project leaves the risk of the success of the development with the project developer, rather than requiring a level of

investment by Osage that would not be supported by an established customer base.

Concerning the water system, the Eagle Woods developer has agreed to contribute an existing well and distribution system to Osage, and to construct or pay the cost of construction of any distribution system expansions. Mitchell also pointed out that Osage has constructed public water systems similar to that proposed for Eagle Woods. For example, Osage constructed the water well at Shoney's Restaurant in its Osage Beach North service area in 1993, the water well at the Super 8 motel in 1995, the water well at Parkview Bay in 1997, and Osage is currently completing construction of a new water well at Chelsea Rosa.

Osage has the burden of proof to demonstrate that it has the financial ability for completing this proposal and has presented sufficient evidence on that issue; thus the Commission concludes that Osage has demonstrated that it has the financial ability for completing this proposal.

E. Is Osage's proposal economically feasible?

In their statements of position, Osage stated that its proposal was economically feasible, while Staff, Public Counsel, and City all agreed that Osage's proposal was not economically feasible.

Osage prepared and attached a feasibility study to its Application, which calculated the anticipated financial impact on Osage of the extension of water and sewer service to Eagle Woods. Osage anticipated using its current sewer tariff rate of \$23.90 per customer per month for the service rate in the proposed service area. Also, Osage anticipated using its current metered water tariff rate of \$7.75 per customer per month, plus \$2.07 for each 1,000 gallons used in excess of 1,000 gallons per month for all new residences in Eagle Woods. The financial analysis in its

feasibility study indicated that the proposed service is economically feasible at Osage's current tariff rates.

The proposal in this case places the principal burden on the subdivision developer, as he is contributing the bulk of the necessary capital in the form of cash and completed systems. Osage's shareholders also bear some risk as a result of Osage's injection of capital in the form of labor and equipment used to construct the sewage treatment facility. The feasibility study indicates a positive net marginal revenue should be derived from both the water and sewer systems, with a positive net cash flow generated after the payment of a return on invested capital. If Osage has underestimated the economic feasibility of the project, the loss will be borne by Osage and the project developer (i.e., the investors) and not by Osage's ratepayers.

Osage has the burden of proof to demonstrate the economic feasibility of this proposal and has presented sufficient evidence on that issue; thus the Commission concludes that Osage has demonstrated that the proposal is economically feasible.

F. Does Osage's proposal promote the public interest?

In their statements of position, Osage stated that its proposal was in the public interest, while Staff, Public Counsel, and City all agreed that Osage's proposal was not in the public interest.

The Tartan Energy Case stands for the proposition that a positive finding for the first four standards will, in most cases, support a finding that granting an application for a certificate promotes the public interest.

Because there is a need for the service, because Osage is qualified to fill that need, and because its plan to fill that need appears feasible,

the Commission concludes that granting Osage a certificate is in the public interest.

G. Could the service be provided by another entity?

The Cole County Circuit found the initial Report and Order to be unlawful because the Commission professed itself unable to consider alternate suppliers of sewer service.⁴ Accordingly, in this case the Commission will examine the evidence and make findings as to the possibility of sewer service being provided by another entity.

The Commission finds that, at the time the record was closed, there was not a functional sewer main across Highway KK from Eagle Woods. However, even if there were a main across Highway KK from Eagle Woods, the existing system would have to be substantially redesigned to allow it to pump sewage to it. The Commission finds that moving sewage from Eagle Woods to the proposed City force main is not just a simple matter of installing a short length of sewer pipe; it would require construction of a collection sewer system and at least one lift station that would transmit both solids and liquids to the north end of Eagle Woods⁵, and into a sewer main located across Highway KK from Eagle Woods, and at least one length of sewer main installed under Highway KK. Osage witness Mitchell testified, and the Commission finds, that it would be more expensive to treat the sewage at the regional treatment plant than at Osage's treatment plant. Furthermore, the discharge from Osage's treatment plant will be of a higher quality than would be the discharge from the regional treatment plant.

⁴ No party has contended that there are alternate suppliers of water service that the Commission should consider.

⁵ Staff witness Hummel speculated at the hearing about another possible alternative to move sewage from Eagle Woods to the proposed City force main across Highway KK. Staff witness Hummel stated that this possible alternative "hasn't had any evaluation much at all." There was almost no competent and substantial evidence presented on the cost, or the economic or engineering feasibility, of this alternative.

in Section 393.170, RSMo. Subsection 1 of that statute states in part, that no "... water corporation or sewer corporation shall begin construction of ... a water system or sewer system without first having obtained the permission and approval of the commission." Subsection 3 of that statute states in part, "The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction ... is necessary or convenient for the public service."

The courts have held that "necessity," as used in the term "convenience and necessity," does not mean essential or absolutely indispensable, but rather that an additional service would be an improvement justifying the cost and that the inconvenience to the public occasioned by the lack of a utility is so sufficiently great as to amount to a necessity. See State ex rel. Public Water Supply District No. 8 v. Public Service Commission, 600 S.W.2d 147, 154 (Mo. App. 1980); State ex rel. Intercon Gas v. Public Service Commission, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993) (*Intercon*); and State ex rel. Beaufort Transfer Co. v. Clark, 504 S.W.2d 216, 219 (Mo. App. 1973).

As noted in Footnote 1, on September 28, 2000, the Cole County Circuit Court reversed the Commission's initial Report and Order. In the Circuit Court's order it stated, "It is therefore suggested that since its order is being reversed by this Judgment, the Commission may wish to take additional evidence on this matter before issuing another Report and Order." The Circuit Court clearly contemplated that the Commission would issue another Report and Order, and suggested that the Commission could, if it wished, take additional evidence before doing so. By issuing this Second Report and Order, the Commission is following the direction of the Circuit Court.

In addition, the Commission has the authority to consider alternate providers of service. State ex rel. Public Water Supply District No. 8 v. Public Service Commission, 600 S.W.2d 147 (Mo.App. 1980). The Commission has considered the merits of the City as an alternate supplier. The Commission's findings with respect to the City as an alternate supplier support the conclusion that granting the requested certificates is necessary or convenient for the public service.

The Commission has found that Osage, and its proposed plan to serve Eagle Woods, meet the requirements of the Tartan Energy case, concludes that granting the requested certificates is necessary or convenient for the public service, and will grant the requested certificates.

IT IS THEREFORE ORDERED:

1. That late-filed Exhibits 9, 11, and 12 are hereby received into the record.
2. That the certificate of convenience and necessity referenced in ordered paragraph 7 shall become effective simultaneous with the effective date of the tariff sheets required to be filed and approved pursuant to ordered paragraph 3.
3. That, if necessary, Osage Water Company shall file with the Commission revised tariff sheets modifying its water and sewer service areas to reflect the additional service area granted herein.
4. That nothing in this order shall be considered a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed on said property.
5. That the Commission reserves the right to consider the ratemaking treatment to be afforded the properties herein involved, and the resulting cost of capital, in any later proceeding.

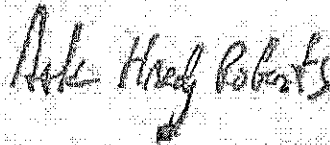
6. That any motions which have not been previously ruled upon, if any, are hereby denied.

7. That the Application filed by Osage Water Company for a certificate of public convenience and necessity authorizing Osage to construct, own, operate, control, manage, and maintain a water and sewer system for the public located in an unincorporated area of Camden County, Missouri, as more fully described in its Application, is hereby granted.

8. This Report and Order shall become effective on January 5, 2001.

9. That this case may be closed on January 6, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer and Simmons,
CC., concur;
Murray, C., dissents, with dissenting
opinion attached;
certify compliance with the
provisions of Section 536.080, RSMo 1994.
Schemenauer, C., not participating

Dated at Jefferson City, Missouri,
on this 26th day of December, 2000.

From: JACKSON ENG

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P. 02

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

MISSOURI CLEAN WATER COMMISSION



MISSOURI STATE OPERATING PERMIT

In compliance with the Missouri Clean Water Law (Chapter 644 R.S. Mo. as amended, hereinafter, the Law), and the Federal Water Pollution Control Act (Public Law 92-500, 92nd Congress) as amended.

Permit No. MO-0123170

Owner: Onaga Water Company
Address: P.O. Box 777, Camdenon, MO 65020

Continuing Authority: Same as above
Address: Same as above

Facility Name: Onaga Water Company, KK Treatment Plant
Facility Address: Lake Road KK-25, Onaga Beach, MO 65065

Legal Description: SE 1/4, SE 1/4, SE 1/4, Sec. 6, T39N, R16W, Camden County
County Longitude: +3808305/-09242561

Receiving Stream: Unnamed Tributary to Woods Hollow Cove (U)
First Classified Stream and ID: Lake of the Ozarks (L2) (07205)
USGS Basin & Sub-watershed No.: (10290109-080004)

is authorized to discharge from the facility described herein, in accordance with the effluent limitations and monitoring requirements set forth herein.

FACILITY DESCRIPTION

Outfall #001 - Subdivision - SIC #4902
Septic tank/recirculating sand filter/chlorination/sludge disposal is by contract hauler.
Design population equivalent is 93.
Design flow is 4,937.5 gallons per day.
Design sludge production is 0.65 dry tons/year.

This permit authorizes only wastewater discharges under the Missouri Clean Water Law and the National Pollutant Discharge Elimination System; it does not apply to other regulated areas. This permit may be appealed in accordance with Section 644.051.6 of the Law.

October 12, 2000
Effective Date

Stephen M. Mahford, Director, Department of Natural Resources
Executive Secretary, Clean Water Commission

Director of Staff, Clean Water Commission

October 12, 2000
Expiration Date

EXHIBIT

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EXHIBIT

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STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION

WPC - Camden
Osage Water Company -
KK Treatment Plant
ID No. 2169



Construction Permit No. 26-3467
River Reach No. 10290109-09-00

CONSTRUCTION PERMIT

The Missouri Department of Natural Resources hereby issues a permit to:

Osage Water Company
ATTN: William K. Mitchell
PO Box 777
Camdenton, MO 65020

for the construction of (described facilities):

Completion of sewer extension construction permit 26-3273 and 3386-gallon expansion to the recirculation tank (total volume is 12,566 gallons) with four pumps - each .75 horsepower pump designed for 50 gallons per minute at 41 feet of total dynamic head; construction of a second 32-foot by 44-foot recirculating sand filter bed, with connection to the existing 330-gallon chlorine contact tank, and all the necessary appurtenances to make the facilities complete and usable. This expanded facility is to serve 25 lots in Eagle Woods Phase 1 & 2 and 25 lots in Golden Glades Phase 1 & 2 with a total design flow of 15,475 gallons per day. Legal Description: SE1/4, SE1/4, Sec. 6, T12N, R12W, Camden County, Missouri.

Permit Conditions:

Sewer extension construction permit will be required for the twelve lots in Golden Glade Phase 2.

Construction of such proposed facilities shall be in accordance with the provisions of the Missouri Clean Water Law, Chapter 644, RSMo, and regulation promulgated thereunder, or this permit may be revoked by the Department of Natural Resources.

As the Department of Natural Resources does not examine structural features of design or the efficiency of mechanical equipment, the issuance of this permit does not include approval of these features.

A representative of the department may inspect the work covered by this permit during construction. Issuance of a permit to operate by the department will be contingent on the work substantially adhering to the approved plans and specifications.

This permit applies only to the construction of water pollution control components; it does not apply to other environmentally regulated areas.

January 25, 2001
Effective Date

January 25, 2002
Expiration Date

Stephen M. Mahood, Director, Department of Natural Resources
Executive Secretary, Clean Water Commission

Director of Solid, Clean Water Commission or Designee

NOI 20010109-09-00

\$ 500.00

Rec'd June 7, 2000 Check No. 2059

WQP 114
Rev 02/99

TOT

EXHIBIT

G-1

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION

WPC - Camden
Osage Water Company -
KK Treatment Plant
ID No. 2169



Construction Permit No. 26-3467
River Reach No. 10290109-09-00

CONSTRUCTION PERMIT

The Missouri Department of Natural Resources hereby issues a permit to:

Osage Water Company
ATTN: William F. Mitchell
PO Box 777
Camden, MO 65020

for the construction of (described facilities):

Completion of sewer extension construction permit 26-3271 and 5386-gallon expansion to the recirculation tank (total volume is 12,568 gallons) with four pumps - each .75 horsepower pump designed for 50 gallons per minute at 41 feet of total dynamic head; construction of a second - 32-feet by 44-feet recirculating sand filter bed, with connection to the existing 560-gallon chlorine contact tank, and all the necessary appurtenances to make the facilities complete and usable. This expanded facility is to serve 25 lots in Eagle Woods Phase 1 & 2 and 25 lots in Golden Glades Phase 1 & 2 with a total design flow of 13,475 gallons per day. Legal Description: SE1/4, SE1/4, Sec. 6, T32N, R10E, Camden County, Missouri.

Permit Conditions:

Sewer extension construction permit will be required for the twelve lots in Golden Glade Phase 2.

Construction of such proposed facilities shall be in accordance with the provisions of the Missouri Clean Water Law, Chapter 644, RSMo, and regulation promulgated thereunder, or this permit may be revoked by the Department of Natural Resources.

As the Department of Natural Resources does not examine structural features of design or the efficiency of mechanical equipment, the issuance of this permit does not include approval of these features.

A representative of the department may inspect the work covered by this permit during construction. Issuance of a permit to Operate by the department will be contingent on the work substantially adhering to the approved plans and specifications.

This permit applies only to the construction of water pollution control components; it does not apply to other environmentally regulated activities.

January 25, 2001
Effective Date

January 25, 2002
Expiration Date

NOI DNR-111-00-001

\$ 500.00

Rec'd June 7, 2000 Check No. 2059

Stephen M. Mahford, Director, Department of Natural Resources
Executive Secretary, Clean Water Commission

Director of State Clean Water Commission or Designee

This language negates the Modified Operating Permit for Eagle Woods 3 & 4 - why -

TOT

EXHIBIT

G-2

tabbles

*1st Extension
Date
1-6-02
we need to
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w/ TOTTEN
on CAPACIT
ISSUES
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STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION

WPC - Camden
Osage Water Company
KK Treatment Plant



Construction Permit No. 26-3571
River Reach No. 10290109-080004

CONSTRUCTION PERMIT

The Missouri Department of Natural Resources hereby issues a permit to:
Osage Water Company
PO Box 650
Sunrise Beach, MO 65079

for the construction of (described facilities):

Expansion of existing wastewater treatment facility to: 24,000 gallon recirculation tank volume (two new tanks) with two duplex pump chambers - each .5 horsepower pump designed for 37.5 gallons per minute at 22.2 feet of total dynamic head, 4 - 32 foot by 44 foot recirculating sand filter beds (two new beds), 900 gallon chlorine contact basin, and all the necessary appurtenances to make the facilities complete and usable. This expanded facility is to serve 53 lots in Eagle Woods I - IV and 47 lots in Golden Glade I - IV developments with a total design flow of 27,750 gallons per day.

Permit Conditions:

None

Construction of such proposed facilities shall be in accordance with the provisions of the Missouri Clean Water Law: Chapter 644, RSMo. and regulation promulgated thereunder, or this permit may be revoked by the Department of Natural Resources.

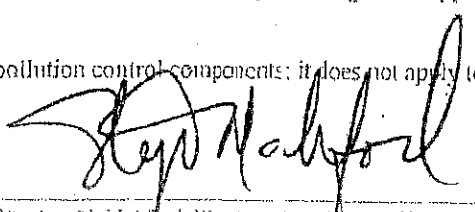
As the Department of Natural Resources does not examine structural features of design or the efficiency of mechanical equipment, the issuance of this permit does not include approval of these features.

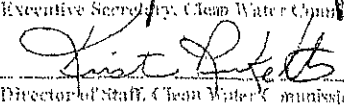
A representative of the department may inspect the work covered by this permit during construction. Issuance of a permit to Operate by the department will be contingent on the work substantially adhering to the approved plans and specifications.

This permit applies only to the construction of water pollution control components; it does not apply to other environmentally regulated areas.

July 18, 2001
Effective Date

Dec. 31, 2001
Expiration Date


Stephen M. Mahford, Director, Department of Natural Resources
Executive Secretary, Clean Water Commission


Kristi L. Leferts
Director of Staff, Clean Water Commission

PERMIT FEE

\$750.00

Rec'd 3/15/2001 Check No. 1162

3/15/01
10:00

never Built

EXHIBIT

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12 Mo. P.S.C. 11

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PSC STAFF

That except for Ordered Paragraph No. 1, this order shall become effective on
 December 10, 2002.

Barry, Lumpis, and Forbis, CC., concur.
 Thompson, Ch., and Gaw, C., dissent.

High Senior Regulatory Law Judge

The Staff of the Missouri Public Service Commission, Com-
 plainant, v. Osage Water Company, Respondent.

Case No. WC-2003-0134
 Decided December 10, 2002

Section 393.145.1, RSMo 2000 provides that "If the commission shall determine
 that any water or sewer corporation having one thousand or fewer customers is unable or
 unwilling to provide safe and adequate service or has been actually or effectively abandoned
 by its owners, the commission may petition the circuit court for an order attaching the assets
 of the utility and placing the utility under the control and responsibility of a receiver."

The Commission directed its Staff to seek appointment of a receiver after it found
 that a small water and sewer company had been effectively abandoned by its owners, where
 there was a lack of available capital, poor management practices, and conflict between the owners,
 and it unlikely that the company could continue to provide service to its customers.

The Commission directed its Staff to seek appointment of a receiver after it found
 that a small water and sewer company was unable or unwilling to provide safe and adequate
 service because of its desperate financial situation.

Practices, Procedure and Procedure §24. The Commission permitted the part owner of a
 small water and sewer company to appear both as a witness and as attorney for the company
 where the need to expedite the hearing did not allow enough time to permit the company to
 obtain alternative legal counsel and where it would be manifestly unjust to deny the company
 legal representation.

APPEARANCES

Gregory D. Williams, Attorney at Law, Highway 5 at 5-33, Post Office Box 431,
 Osage Beach, Missouri 65079, for Osage Water Company.

Thomas E. Loraine, Attorney at Law, Loraine and Associates, 4075 Highway
 300, Osage Beach, Missouri 65065, for Hancock Construction Company.

M. Ruth O'Neill, Legal Counsel, Office of the Public Counsel, Post Office Box
 7400, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the
 public.

Kath R. Krueger, Deputy Counsel, Missouri Public Service Commission, Post
 Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public
 Service Commission.

REGULATORY LAW JUDGE: Morris L. Woodruff

EXHIBIT

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REPORT AND ORDERSUMMARY

The Commission determines that Osage Water Company has been effectively abandoned by its owners and that it is unable or unwilling to provide safe and adequate service to its customers. The Commission directs its Staff to file a petition in circuit court seeking an order attaching the assets of Osage Water and appointing a receiver to take control and responsibility of the company. The Commission also directs its Staff to seek a determination from the circuit court that Osage Water Company should not be returned to its owners but rather should be liquidated by the receiver, acting in the best interest of the company's customers.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On October 7, 2002, the Staff of the Commission filed a complaint against Osage Water Company. Staff alleged that Osage Water is unable or unwilling to provide safe and adequate service. Staff further alleged that Osage Water has been abandoned by its owners. Staff's complaint asks the Commission to direct Staff to file a petition in circuit court to attach the assets of Osage Water and place Osage Water under the control and responsibility of a receiver. Staff further requests that the Commission direct Staff to seek a finding from the circuit court that control and responsibility for Osage Water should not be returned to the owners of Osage Water and that instead the assets of the company should be liquidated.

Along with its complaint, Staff filed a motion requesting that the Commission expedite its consideration of the complaint. As the basis for this motion, Staff alleged that there was an imminent danger that the customers of Osage Water would lose their water or sewer service. Staff requested that Osage Water be required to answer the complaint on or before October 18, and that the case be scheduled for an evidentiary hearing as soon as possible. Staff further requested that the Commission expedite its consideration of the complaint by modifying its customary procedures to not accept prefiled testimony and instead hear all testimony live at the hearing. Staff requested that the hearing be scheduled on or before November 1.

In response to Staff's complaint and motion for expedited treatment, on October 7, the Commission issued a notice informing Osage Water of the complaint and an order directing Osage Water to file its answer to the complaint no later than October 18. On October 8, the Office of the Public Counsel filed a pleading indicating that it joined in the complaint filed by Staff and also requested expedited consid-

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eration. On October 10, it indicated that it wished to intervene. The Commission

On October 11, in keeping with its expedited schedule, the Commission on October 24. That on October 24, the Commission indicated that the parties were directed to file their pleadings.

On October 17, Osage Water admitted that it was expedited that it was expedient for a receiver was appointed to order its Staff to file its pleadings.

Along with its answer, Staff requested that the Commission to strike the hearing for the purpose of the expedited hearing. On October 21, Staff and the Commission agreed to strike the expedited hearing and to follow the expedited schedule. The Commission

The day before the hearing, the Commission disqualified the representative of Osage Water, Williams, as having been subpoenaed, therefore, be disqualified. Williams would be a witness. Williams filed a written motion for the Commission to allow Osage Water to proceed to hear the hearing, and for that reason, the Commission allowed Osage Water to proceed to hear the hearing while also allowing Williams, as half owner of Osage Water, to participate in the hearing. The Commission also allowed Osage Water to obtain a subpoena to deny Osage Water the right to disqualify Osage Water from appearing before the Commission.

Excerpt Page 5, Lines 4-21

Excerpt Page 6, Lines 2-11

Excerpt Page 22, Lines 8-

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er Company has been effectively or unwilling to provide safe and on directs its Staff to file a petition of Osage Water and appointing company. The Commission also circuit court that Osage Water it rather should be liquidated by npany's customers.

ving considered all of the com- e record, makes the following s decision has considered the e to specifically address a piece s not indicate that the Commis- indicates rather that the omitted

sion filed a complaint against Water is unable or unwilling to ed that Osage Water has been he Commission to direct Staff Osage Water and place Osage er. Staff further requests that e circuit court that control and e to the owners of Osage Water be liquidated.

uesting that the Commission a basis for this motion, Staff customers of Osage Water ested that Osage Water be er 18, and that the case be sible. Staff further requested e complaint by modifying its mony and instead hear all hearing be scheduled on or

adited treatment, on October Water of the complaint and the complaint no later than self filed a pleading indicating requested expedited consid-

12 Mo. P.S.C. 3d

(In October 10, Hancock Construction Company filed a pleading in which indicated that it wished to join in the complaint and requested permission to intervene. The Commission granted Hancock's application to intervene on October

On October 11, in keeping with Staff's request that consideration of its complaint be expedited, the Commission issued an order setting the complaint for hearing on October 24. That order also directed that all testimony be presented live at the hearing and indicated that post-hearing briefs would not be permitted. Instead, the parties were directed to present oral arguments at the conclusion of the evidentiary hearing.

On October 17, Osage Water filed its answer to the complaint. Osage Water admitted that it was experiencing financial difficulties but denied that the appointment of a receiver was necessary or appropriate and instead asked the Commission to order its Staff to commence a rate case to afford a rate increase for the company.

Along with its answer, Osage Water filed a motion arguing that an expedited hearing on Staff's complaint was unnecessary and unfair. Osage Water urged the Commission to strike the expedited hearing and to instead schedule a prehearing conference for the purpose of discussing a more extended procedural schedule. On October 21, Staff and Public Counsel filed responses to Osage Water's motion to strike the expedited hearing. Both urged the Commission to proceed with the expedited schedule. The Commission denied Osage Water's motion on October

The day before the hearing, on October 23, Staff filed a motion asking the Commission to disqualify Osage Water's legal counsel, Gregory D. Williams, from representing Osage Water at the hearing. Staff's motion indicated that Greg Williams had been subpoenaed to testify at the hearing, and suggested that he should, therefore, be disqualified from appearing as counsel in a matter in which he would be a witness. When the hearing began on October 24, Greg Williams presented a written motion recognizing that he would be required to appear as a witness and for that reason requesting that the hearing be continued for at least several days to allow Osage Water to obtain other legal counsel.¹ As an alternative, Greg Williams requested that the Commission recognize that to require Osage Water to proceed to hearing without legal counsel would result in an undue hardship, and for that reason, permit Greg Williams to serve as legal counsel for Osage Water while also appearing as a witness.² The presiding judge ruled that Greg Williams, as half owner of Osage Water, needed to testify. However, given the nature of the allegations, the matter could not be continued for long enough to permit Osage Water to obtain alternative counsel. It would, however, be manifestly unfair to deny Osage Water legal representation at the hearing. Therefore, Staff's motion to disqualify Osage Water's legal counsel was denied, and Greg Williams was permitted to appear both as a witness and as legal counsel for Osage Water.³

¹ Transcript Page 5, Lines 4-25, Page 6, Line 1.

² Transcript Page 6, Lines 2-12.

³ Transcript Page 22, Lines 8-13.

Osage Water also filed a motion objecting to the expedited nature of the hearing, arguing that the short notice denied it a fair opportunity to prepare a defense against the allegations made in Staff's complaint. That motion was denied by the presiding judge.⁴ The Commission proceeded to hear evidence regarding Staff's complaint. The hearing was not finished on October 24, and was continued on October 29, 30, and 31. The hearing again resumed on November 14, and concluded on November 15. Staff, Public Counsel, Hancock, and Osage Water presented evidence.

Osage Water Company

Osage Water Company is a Missouri corporation that serves as a regulated water and sewer utility, providing water and sewer services to the public in part of Osage Beach, as well as in other developments on the shores of the Lake of the Ozarks in Camden County, Missouri. It currently serves approximately 300 water customers, of which, approximately 250 are also sewer customers.⁵

William P. (Pat) Mitchell and Gregory D. Williams each own fifty percent of the voting stock of Osage Water. Pat Mitchell and Greg Williams have been in the water and sewer business together since 1992. At that time, in exchange for water and sewer systems that he owned, Greg Williams obtained a share of the company that had been founded by Pat Mitchell and his parents, Bill and Martha Mitchell, in the late 1980s.⁶ David L. Hancock, owner of Hancock Construction, an intervenor in this case, also gained a share of Osage Water in 1992, but surrendered his voting shares in the company in 1996.⁷ He continues to own preferred stock in Osage Water.

Prior to September of 2002, Pat Mitchell, Greg Williams, and Debra Williams served as officers and directors of Osage Water. On September 3, 2002, Greg Williams and Debra Williams submitted a letter to Pat Mitchell, as president of Osage Water, in which they resigned as directors of the company. Greg Williams also resigned as registered agent and Debra Williams resigned as secretary of Osage Water.⁸ Greg Williams' term as an officer of Osage Water had previously expired.⁹ By resigning their corporate offices, Greg and Debra Williams hoped to disassociate themselves from Osage Water because they did not want to continue sharing ownership of a company with Pat Mitchell.¹⁰ Greg Williams does, however, continue to own 50 percent of the common stock in the company. Pat Mitchell remains president of Osage Water and owns the other 50 percent of the common stock in the company.¹¹

⁴ Transcript Page 23, Lines 6-7.

⁵ Transcript Page 450, Lines 22-24.

⁶ Transcript 271, Lines 18-25.

⁷ Transcript page 1181, Line 1.

⁸ Exhibit 9.

⁹ Transcript Page 269, Lines 22-23.

¹⁰ Transcript, Page 89-90, Lines 16-25, 1-10.

¹¹ Transcript, Page 905, Lines 16-17.

On September 3, 2002, the Missouri Secretary of State indicates that the resignation of Greg Williams and Debra Williams from Osage Water, in its corporate status, is not a dissolution. In a letter to the Secretary of State, Greg Williams, as Secretary of State, when questioned, stated that the resignation of Greg Williams and Debra Williams from Osage Water did not constitute a dissolution of the company and has no effect on the company's status. Later the Secretary of State revealed that the resignation of Greg Williams and Debra Williams from Osage Water was not a dissolution of the company.

The Operation of

For most of the time that Osage Water was handled by Pat Mitchell, the company was operated by Pat Mitchell. Pat Mitchell served as president of the company and was also the registered agent and secretary of the company. In addition, Pat Mitchell was the owner of the company. On July 7, 2002, all the company's records were transferred to Pat Mitchell and he became the owner of the company. Pat Mitchell was the owner of the company and was the president of the company.

¹² Exhibit 11.

¹³ Transcript, Page 1.

¹⁴ Transcript, Page 1.

¹⁵ Transcript, Page 1.

¹⁶ Transcript, Page 1.

¹⁷ Transcript, Page 1.

¹⁸ Transcript, Page 1.

¹⁹ Transcript, Page 1.

²⁰ Exhibit 12.

jecting to the expedited nature of the hearing, fair opportunity to prepare a defense against it. That motion was denied by the presiding judge. The hearing on the complaint began on October 24, and was continued on October 29, 30, and November 14, and concluded on November 14. Osage Water presented evidence.

Osage Water is a corporation that serves as a regulated utility providing water and sewer services to the public in part of the Lake of the Osage. Osage Water currently serves approximately 300 water customers and also sewer customers.⁵

D. Williams each own fifty percent of the company. Greg Williams and Debra Williams have been in the water industry for many years. At that time, in exchange for water and sewer services, the company obtained a share of the company that was owned by Hancock Construction, an intervenor in the case. Hancock Construction, an intervenor in the case, surrendered his voting rights to own preferred stock in Osage Water.

Greg Williams, and Debra Williams, owned all of the common stock in Osage Water. On September 3, 2002, Greg Williams resigned as president of the company. Greg Williams resigned as secretary of the company. Debra Williams had previously been the president of the company. Greg and Debra Williams hoped to continue to own the company because they did not want to continue to own the company. Pat Mitchell, who owned the other 50 percent of the common stock in the company, Pat Mitchell, resigned as president of the company.

On September 4, 2002, Osage Water was administratively dissolved by the Missouri Secretary of State. The notice of dissolution issued by the Secretary of State indicates that the corporation was dissolved for "failing to file a correct annual report to the Secretary of State."¹² Greg Williams testified that, as the attorney for Osage Water, he has taken steps to seek reinstatement of Osage Water's corporate status.¹³ However, exactly what Osage Water needs to do to obtain reinstatement is not clear. When first asked why Osage Water was administratively dissolved, Greg Williams testified that it was dissolved because of a mistake by the Secretary of State's office and implied that it could be reinstated at any time.¹⁴ Later, when questioned further on the subject by a Commissioner, Greg Williams testified that the underlying cause of the administrative dissolution was Osage Water's failure to file a franchise tax report. Greg Williams also testified that Osage Water did not owe a franchise tax and should not have been required to file a franchise tax report.¹⁵ He indicated that the company has requested a tax clearance letter and has prepared the required annual report and tendered it to the Secretary of State. Later the same day, when further questioned by the presiding judge, Greg Williams revealed that Osage Water owes approximately \$3,000 in state withholding taxes that must be paid before Osage Water can be cleared for reinstatement by the Secretary of State.¹⁶

The Operation of Osage Water Company

For most of the time, until July 2001, the water and sewer operations of Osage Water were handled by Water Laboratory Company through a contractual arrangement.¹⁷ Water Laboratory Company is a corporation controlled by Pat Mitchell, and Pat Mitchell served as the licensed water and sewer operator for Osage Water. That meant that Pat Mitchell controlled the day-to-day operations of the water and sewer systems, in addition to controlling the record keeping, bookkeeping, billing, and customer-relations activities of Osage Water.¹⁸

On July 7, 2001, Pat Mitchell, who was also serving as president of Osage Water, left all the company's records in boxes on the front porch of Greg Williams' law office. The records were accompanied by a letter, addressed to Greg Williams, that began "I am fired and broke. You want all of assets you get all of the headaches", and ended with "Good luck - you will need it." In between, the letter advised Greg Williams of various tasks that needed to be performed to keep the company operating. The letter was signed "William P. Mitchell, on vacation."¹⁹

⁵ Exhibit 21.

¹² Transcript, Page 492, Lines 12-14.

¹³ Transcript, Page 283, Lines 6-17.

¹⁴ Transcript, Page 494, Lines 8-16.

¹⁵ Transcript, Page 574, Lines 17-24.

¹⁶ Transcript, Page 272, Lines 5-6.

¹⁷ Transcript, Page 907, Lines 2-21.

¹⁸ Exhibit 22.

If George W. Adams of his debt was unwilling, he insisted that he would unless I insisted that he sign on such terms. Adams finally consented into the deal on the condition that I would place Adams in put in the office of the National Bank of the City of New York, and that I would try to connect Adams with the Water gas works in Cambridge. I made no note of this deal that O'Connell's company.

On August 1, 1991, the company took over the operation of the plant. The company is now the sole owner and operator of the plant.

Ultimately, the American Court has not attained this image of judicial autonomy.

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their doorstep, Greg Williams and his operations of Osage Water, with Debra Williams.²⁰ Debra Williams continued in 2002, when Pat Mitchell, acting as Operation and Maintenance Agreement with Environmental Utilities, a company, was appointed as the agent for installing, and repairing the water and sewer systems. Environmental Utilities is authorized to use those assets of the water and sewer systems to pay the debt owed by Osage Water to Environmental Utilities.²¹ Environmental Utilities and in that capacity over Osage Water's water and sewer systems are now employees of Environmental Utilities in the management of Environmental Utilities water and sewer customers.

Insolvent. Greg Williams testified that Osage Water has no assets with which to pay its debts as they come due, but it is unable to pay its expenses, but it is unable to pay its expenses, but it is unable to pay its expenses. Pat Mitchell also testified that Osage Water has approximately \$15,000. Debra Williams testified that Osage Water has approximately \$15,000. She also testified that Osage Water has approximately \$12,000 to \$13,000 net assets each month.²² That leaves Osage Water's substantial debt. Environmental Utilities, who are the last 8-10 years, claims in that capacity, who also provided services to Osage Water, an owner of preferred stock in Osage Water for approximately \$210,000, for the past due federal withholding tax on the dividends paid to various other suppliers of Osage Water exceed 1.13 million dollars.²³

Osage Water is to survive and pay its existing debts it must either extinguish some of its debts or obtain additional capital.²⁷ The current owners of Osage Water are unwilling, or unable to pump more cash into the company. Greg Williams testified that he was unwilling to make any additional capital contributions to Osage Water unless he could be assured of earning a return on that capital. He also testified that he was "quite certain the company does not have rates sufficient to pay for its capital, since it can't pay a return on its existing capital."²⁸ Debra Williams testified that neither she nor her husband were willing to infuse new capital into Osage Water.²⁹ Pat Mitchell simply testified that he has no cash that he could place in Osage Water and that he did not know of anyone else that was willing to put additional cash into the company.³⁰

Rather than infuse more capital into Osage Water, Greg Williams has taken steps to try to collect the debt that he is owed by Osage Water. On February 15, 2001, Osage Water gave Greg Williams a future advance deed of trust on all the property it owns in Camden County.³¹ The purpose of the deed of trust was to secure a promissory note that the company gave Greg Williams on the same day to cover the debt that Osage Water owed Greg Williams for his legal work in representing the company.³²

On August 14, 2002, Greg Williams assigned the note and deed of trust to Environmental Utilities,³³ a company that Greg and Debra Williams formed with the intent to take over the operation of Osage Water after Pat Mitchell abruptly ceased operating that company in July of 2001. Thereafter, Debra Williams, as trustee on the deed of trust, instituted a foreclosure action to sell the assets of Osage Water on September 13, 2002, at the East front door of the Camden County Courthouse.³⁴ At the same time, Environmental Utilities filed an application with the Commission seeking permission to operate the water and sewer systems of Osage Water if it were the successful bidder at the foreclosure auction.³⁵ Pat Mitchell did not oppose the foreclosure action against Osage Water's assets because he did not believe that the company has any positive value.³⁶

Ultimately, the Staff of the Commission obtained an order from the Circuit Court of Camden County that blocked the foreclosure action. As a result, Environmental Utilities has not been able to acquire the assets of Osage Water, although it does operate Osage Water through the previously described Operation and Maintenance Agreement.³⁷

²⁰ Transcript, Page 262, Lines 14-18.

²¹ Transcript, Page 263, Lines 11-14.

²² Transcript, Page 74, Lines 5-10.

²³ Transcript, Page 924, Lines 9-14.

²⁴ Exhibit 7.

²⁵ Exhibit 8.

²⁶ Exhibit 24.

²⁷ Exhibit 17.

²⁸ Exhibit 1.

²⁹ Transcript, Page 1102, Lines 9-24.

³⁰ Exhibit 30.

How did Osage Water get into such a cash starved position that it faced foreclosure? Greg Williams and Pat Mitchell testified that Osage Water ran into financial difficulty because the City of Osage Beach has overbuilt Osage Water's existing water distribution and sewer collection systems. As a result, Osage Water has lost some 220 customers to competition from the City of Osage Beach.³⁹ Many of the lost customers were among Osage Water's largest commercial customers and Osage Water has had to try to replace them with less lucrative residential customers.⁴⁰

While Osage Water has certainly suffered from its loss of customers to the City of Osage Beach, that is not the only reason that Osage Water is having financial difficulties. Testimony established that Osage Water has a history of non-compliance with the Commission's regulatory requirements. In particular, Osage Water has been totally unable to keep its books and records in the manner required by the Commission's regulations. Osage Water has not followed the uniform system of accounts prescribed by the National Association of Regulatory Commissioners (NARUC) as required by the Commission's regulations. Even Pat Mitchell testified that Osage Water has not kept its books in the appropriate manner.⁴¹

Osage Water's inability to keep its books and records in a proper manner has also caused it to fail to comply with the requirement that it file an annual report with the Commission. Osage Water has not yet filed its 2001 annual report that was due on April 15, 2002. It has not filed its 2000 annual report. The 1999 annual report was filed a year and a half late. In fact, all of Osage Water's annual reports after 1992 have been filed significantly late.⁴²

Failure to keep its books in proper order is not just a technical violation of the Commission's rules. Without good records, the Commission is not able to perform a good audit that would verify the company's expenses and revenues.⁴³ Osage Water's failure to keep good records has kept it from recovering the rates it might have otherwise received in previous rate cases and it would make it difficult for Osage Water to support an application for increased rates in the future.

In addition, Osage Water has mismanaged its relationship with its customers. Staff's witness, James Merciel, offered credible testimony establishing that Osage Water has failed to maintain a good relationship with its customers.⁴⁴ Mr. Merciel also established that Osage Water has a history of poor relations with housing developers.⁴⁵ Yet another example of Osage Water's problems in dealing with a developer came to the Commission's attention during the course of the hearing when a dispute with the developer of the Eagle Woods subdivision threatened to interrupt service to Osage Water's customers in that subdivision.

³⁹ Transcript, Page 981, Lines 6-8.

⁴⁰ Transcript, Page 1088-1089, Lines 17-25, 1-15.

⁴¹ Transcript, Pages 1262-1263, Lines 23-25, 1.

⁴² Transcript, Pages 628-630.

⁴³ Transcript, Page 1164, Lines 3-16. see also, Transcript, Page 1238, Lines 6-10.

⁴⁴ Transcript, Page 730, Lines 14-19.

⁴⁵ Transcript, Page 742, Lines 16-21.

Although Osage Water's financial problems took a toll on the community, the legacy of the current owners to the City of Osage Beach is a disaster.

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Transcript, Page 856, Line
145.1, RSMo 1

Transcript, Pages 549-550

Transcript, Page 919, Line

Transcript, Pages 91-92, L

Transcript, Page 980, Line

approximately \$180,000 in additional revenue each year in order to pay its operating expenses and its accumulated debts, roughly doubling its current revenue.⁵¹ The Company is currently spending all of its revenue on operation and maintenance expenses, leaving nothing to be set aside in reserve for surplus or contingencies.⁵² If Osage Water is unable to pay Environmental Utilities for its services under the management agreement, then Environmental Utilities might well cancel that agreement, leaving no one willing or able to operate Osage Water's utility systems and provide water and sewer service to its customers.⁵³

Yet, given the poor state of its record keeping, the continued conflicts between its owners, and its inability to pay its legal counsel, it is highly unlikely that Osage Water will be able to successfully bring a rate case before the Commission. There is also no hope that any additional money will be invested in Osage Water since there is little possibility that such an investment would ever be returned. Osage Water has been sued by its creditors and one creditor, David Hancock, has obtained a judgment for \$216,000.⁵⁴ The company also owes substantial sums of money to both federal and state tax authorities.⁵⁵ Osage Water does not even have a bank account so that it can avoid having its account seized by its creditors.⁵⁶ Under the circumstances, there is little reason to believe that Osage Water will be able to continue to provide service in the future.

Is Osage Water unable or unwilling to provide safe and adequate service?

In addition to having been effectively abandoned by its owners, Osage Water, because of its financial difficulties and the conflict between its owners, is unable to provide safe and adequate service to its utility customers. When questioned about the company's ability to provide safe and adequate service, Pat Mitchell repeatedly indicated that the service provided by the Osage Water was "barely safe and barely adequate."⁵⁷ That assessment, while perhaps accurate, is not reassuring to the Commission.

Osage Water is teetering on the edge of an abyss. It has no money set aside to pay for major repairs to its system and no one is willing or able to put more money into the company in the event that such repairs are needed. Furthermore, Osage Water's systems are not in good repair and it already has at least one major leak in a water main that it has not been able to repair.⁵⁸ Martin Hummel, an engineer for the Staff, testified that such a leak could cause future problems with the operation of the company's well and other equipment if it is not repaired.⁵⁹ Mr. Hummel also testified that because of a lack of money, Osage Water has been performing only minimal maintenance on its systems.⁶⁰

⁵¹ Transcript, Page 1084, Lines 10-20.

⁵² Transcript, Page 1087, Lines 12-14.

⁵³ Transcript, Pages 995-996, Lines 18-25, 1-15.

⁵⁴ Transcript, Page 1184, Lines 7-15.

⁵⁵ Exhibit 29.

⁵⁶ Transcript, Pages 929-930, Lines 23-25, 1-5.

⁵⁷ Transcript, Page 921, Line 8, Page 1103, Lines 21, & Page 1153, Lines 17-18.

⁵⁸ Transcript, Pages 1281-1283, Lines 16-25, 1-25, & 1-20.

⁵⁹ Transcript, Page 643, Lines 16-23.

⁶⁰ Transcript, Page 659, Lines 17-24.

The combination of:
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At August of 2002, a
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The Commission is ver
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The Missouri Public Ser
vice of Law

Osage Water is a public u
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12 Mo. P.S.C. 3d 200.030 requi
the company's system of accou

Transcript, Pages 724-729.

Transcript, Page 213, Lines 2-4

Transcript, Page 215, Lines 22

due each year in order to pay its operating costs, thereby doubling its current revenue.⁵¹ The revenue on operation and maintenance is in reserve for surplus or contingencies.⁵² The potential Utilities for its services under the potential Utilities might well cancel that to operate Osage Water's utility systems its customers.⁵³

Keeping, the continued conflicts between counsel, it is highly unlikely that Osage Water will be invested in Osage Water since the investment would ever be returned. Osage Water's creditor, David Hancock, has obtained also owes substantial sums of money from Osage Water does not even have a bank account seized by its creditors.⁵⁴ Under the circumstances, it is highly unlikely that Osage Water will be able to

Can Osage Water provide safe and adequate service?

Abandoned by its owners, Osage Water, in conflict between its owners, is unable to provide safe and adequate service. When questioned by the Osage Water was "barely safe" while perhaps accurate, is not reassuring.

an abyss. It has no money set aside and is willing or able to put more money where repairs are needed. Furthermore, Osage Water already has at least one major leak pair.⁵⁵ Martin Hummel, an engineer, sees future problems with the operation of the system is not repaired.⁵⁶ Mr. Hummel also says Osage Water has been performing only

The combination of systems in poor repair and the lack of money to pay for major, essential repairs to those systems indicates a very grave danger that Osage Water's customers could suddenly find themselves without water or sewer service, and with limited prospects for timely restoration of that service. Some of Osage Water's customers have already had a foretaste of that scenario.

In August of 2002, a pump burned out in Osage Water's well serving the Broadwater Bay subdivision in Osage Beach. For a time the City of Osage Beach could not get water to Osage Water for the use of its customers but that emergency supply was shut off after ten days when Osage Water and the city were unable to agree upon the price to be paid for the water. Thereafter, Osage Water's customers in the Broadwater Bay subdivision were without water.⁵⁷ The water shutoff lasted for three days and water service was restored only after Osage Water discovered that it had insurance coverage that would pay for repairs to the well pump. If insurance coverage had not been discovered, the water shutoff might have lasted much longer. As Greg Williams testified that Osage Water did not have the money needed to either make repairs to the well or to continue to purchase water from the city.⁵⁸ When asked whether Osage Water would have restored service to its customers if there had been no insurance money, Debra Williams, manager of Osage Water at the time of the outage, testified "I don't know how we could have. We had no money."⁵⁹

The Commission is very concerned that an outage similar to the Broadwater Bay outage could be repeated at any time. If there is another major outage, Osage Water clearly will not have the financial resources required to make the needed repairs. Although Greg Williams testified that Osage Water does have very broad mechanical failure and casualty insurance coverage, the Commission was not provided with the details of that coverage and is not willing to accept possible insurance coverage as a substitute for financial viability. If Osage Water is again unable to make essential repairs to its system, its customers could be without essential services for an extended period. Obviously, absence of service is neither safe nor adequate service. Because of its desperate financial situation and the continuing conflict between its owners, Osage Water simply is not able to assure continued safe and adequate service to its customers.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law.

Osage Water is a public utility, a sewer corporation, and a water corporation as those terms are defined in Section 386.020(42), (48) and (58), RSMo 2000. As such, Osage Water is subject to the Commission's jurisdiction pursuant to Section 386.020(3) & (4), RSMo 2000.

4 CSR 240.50.030 requires water companies to maintain their records using the uniform system of accounts issued by the National Association of Regulatory

⁵¹ & Page 1153, Lines 17-18.
⁵² & 1-20.

⁵³ Transcript, Pages 724-729.

⁵⁴ Transcript, Page 213, Lines 2-6.

⁵⁵ Transcript, Page 215, Lines 22-25.

No. 14 C. 5d

It also requests that it control and responsibility for the same, be returned to its owner and be liquidated.

The Commission has demonstrated by its owners and its service. The Commission and that its owners have no credible evidence regarding the ability to return the company, liquidation of Osa

One of the duties of a record-keeper is to appoint the public service to the utility board to do so. Section 393.

14. It would be contrary to public policy to allow the assets of a utility to be used to receive utility service without the receiver to liquidate the interest of all of the custo-

The Commission is partic-
ularly concerned that the
large Water might be more e-
conomically non-viable syst-

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Under the receivership action provisions, venue is given to the court in which the receiver was appointed. RSMo 2000, § 444.010. In which the re-

...that built against a c
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payer would be in
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to enhance the powers of the court in any circuit court in the state would appear to allow

The circuit court has the authority to grant the writ, but the Commission is not bound to Osage Water.

20 makes the same requirement of sewer matter of fact that Osage Water has failed these regulations. 10,080 require all water and sewer utilities annual report with the Commission on or ssion found as a matter of fact that Osage uirement.

ides, in pertinent part:
I determine that any sewer or ousand or fewer customers is fe and adequate service or has ndoned by its owners ... the ult court for an order attaching ng the utility under the control

ies, in pertinent part:
suant to this section shall be a, or corporation knowledge-

es as follows:
bond, and have the same ovions, as far as they may elver appointed by virtue of chment. The receiver shall the assets of the utility and stomers. The receiver shall if the utility in an amount to

as follows:
y for the utility shall remain In the best interest of its rs. If the court determines asponsibility for the utility ts customers, be returned eed to liquidate the assets by law.

act that Osage Water has fewer than t Osage Water has been effectively e or unwilling to provide safe and the Commission concludes that the ed and that the Commission may assets of Osage Water and placing iver.

Staff also requests that it be authorized to petition the circuit court to find that control and responsibility for Osage Water should not, in the best interests of its customers, be returned to its owners, and instead that the assets of the company should be liquidated.

The Commission has determined that Osage Water has effectively been abandoned by its owners and that it is unable or unwilling to provide safe and adequate service. The Commission found that Osage Water is in dire financial condition and that its owners no longer wish to be in business with each other. There is no credible evidence in the record to suggest that those conditions would improve if the utility were returned to the owners after being in the hands of a receiver. Therefore, liquidation of Osage Water's assets is the best available option.

One of the duties of a receiver must be to protect the public interest. Indeed, the whole reason to appoint a receiver is to ensure the continuation of safe and adequate service to the utility's customers when it appears that the utility itself is unable to do so. Section 393.145 uses the phrase "best interests of the customers" ~~alone~~. It would be contrary to the best interests of the customers to allow a receiver to liquidate the assets of a utility in a manner that would prevent customers from continuing to receive utility service. The Commission will therefore ask the court to instruct the receiver to liquidate the assets of the company on terms that protect the interest of all of the customers of the utility.

The Commission is particularly concerned that some of the utility systems of Osage Water might be more easily sold than others. That raises the possibility that economically non-viable systems that still must serve customers might be left orphaned after the more valuable systems are sold. Therefore, the receiver must be careful to ensure that any assets that are not immediately sold may still be efficiently operated after other systems and assets are sold.

Section 393.145 does not contain any special venue provisions indicating where the receivership action may be filed. In the absence of any special statutory venue provisions, venue is governed by Missouri's general venue laws.⁶⁴ Under Section 508.030, RSMo 2000, actions affecting title to real estate are to be brought in the counties in which the real estate is located. Section 508.040, RSMo 2000, requires that suits against a corporation must be brought in the county where the cause accrued, or where the corporation maintains an office. Under either statute the proper venue would be in Camden County. However, Section 386.600, RSMo 2000, provides that "[a]n action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri" This provision would appear to allow this action to be brought in any circuit court in the state.

The circuit court has the authority to decide who will be named as receiver for Osage Water, but the Commission will direct its Staff to recommend a receiver who is not connected to Osage Water or any of its creditors.

⁶⁴ *State ex rel. Missouri Property and Cas. Ins. Guar. Ass'n. v. Brown*, 900 S.W2d 268, 271 (1995).

IT IS THEREFORE ORDERED:

1. That the General Counsel of the Commission shall, on behalf of the Commission pursuant to Section 393.145, RSMo 2000, petition the appropriate circuit court for an order attaching the assets of Osage Water Company and placing the utility under the control and responsibility of a receiver.

2. That the General Counsel of the Commission shall, on behalf of the Commission pursuant to Section 393.145, RSMo 2000, seek a determination from the appropriate circuit court that Osage Water Company should not be returned to its owners but should rather be liquidated by the receiver as discussed herein.

3. That this order shall become effective on December 20, 2002.

Simmons, Ch., Murray, Lumpe and Forbis, CC., concur
and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Gaw, C., not participating.

In the Matter of the Joint Application of Missouri-American Water Company, St. Louis County Water Company, d/b/a Missouri-American Water Company, and Jefferson City Water Works Company, d/b/a Missouri-American Water Company, for an Accounting Authority Order Relating to Security Costs.*

Case No. WO-2002-273

Decided December 10, 2002

Water \$1. The Commission determined that Missouri-American Water Company's request for an accounting authority order permitting deferral of expenditures made to upgrade security following the events of September 11, 2001, was reasonable under the circumstances and should be granted.

Water \$29. Missouri-American Water Company filed an application for an accounting authority order relating to security costs. The company alleged that the costs were incurred as a direct result of the unexpected and extraordinary events of September 11, 2001. The company sought an accounting authority order so that it might recover some part of these costs in a later rate case. The Commission concluded that an accounting authority order was reasonable under the circumstances and should be granted.

Water \$32. The Commission determined that Missouri-American Water Company's request for an accounting authority order permitting deferral of expenditures made to upgrade security following the events of September 11, 2001, was reasonable in the circumstances and should be granted. The Commission authorized the company to defer and book to Account 186 expenditures relating to security improvements and enhancements beginning September 11, 2001, and continuing through September 11, 2003.

*The Commission, in an order issued on January 23, 2003, denied applications for rehearing in this case. This case was appealed to Cole County Circuit Court (03CV323385). See page 199, Volume 11, MPSC.3d for another order in this case.

The Commission stated that it is possible some bonds will go to the lawyers of each case. The Commission determined that it is not possible to get the normal accounting authority order from the normal accounting authority order of the shareholders. The Commission must balance the interests of the shareholders being given

The Commission determined that it is not possible to get the normal accounting authority order from the normal accounting authority order of the shareholders. The Commission must balance the interests of the shareholders being given

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Kansas Public Service Cor

1001, in the Staff of the A

REGULATORY LAW JUDGE**STAFF**

The Commission determined that it is not possible to get the normal accounting authority order from the normal accounting authority order of the shareholders. The Commission must balance the interests of the shareholders being given

PROCEDURAL HISTORY

On December 10, 2001, the Missouri-American Water Company and Jefferson City Water Works Company filed a joint application for an Accounting Authority Order.

On January 22, 2002, the joint application of the Missouri-American Water Company and Jefferson City Water Works Company for an Accounting Authority Order was denied.

The Accounting Authority Order was followed here.

LAKE PROFESSIONAL ENGINEERING SERVICES, INC.

CONSULTING ENGINEERS

P.O. Box 27

Camdenton, Mo. 65020

573-873-3898

BOWDEN CAMPBELL, P.E. 573-480-7100 660-438-9856 JAMES O. JACKSON, JR., E.I.T. 573-280-4276 573-873-3898 JAMES O. JACKSON, P.E. 573-216-7934 573-873-3898

02-17-03

Keith Forck, P.E.
Environmental Specialist
Missouri Department of Natural Resources
Division of Environmental Quality
Water Pollution Control Program
P.O. Box 176
Jefferson City, MO. 65102-0176

Ref: Construction permit application for Eagle Woods Subdivision

Dear Mr. Forck,

Please review the enclosed material for a proposed wastewater treatment system for Eagle Woods Subdivision in Camden County.

Enclosed is Form B (application for construction permit for facilities which receive basically domestic waste), plans and specifications, calculations, O & M manual, USGS map, and a check for \$750.00.

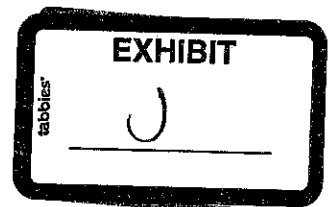
Please review the material as soon as possible.

If you have any questions, please contact me at 660-438-9856 or Jim at 573-873-3898.

Sincerely Yours,

Bowden Campbell

Bowden Campbell, P.E.





**FORM B — APPLICATION FOR CONSTRUCTION OR
OPERATING PERMIT FOR FACILITIES WHICH
RECEIVE BASICALLY DOMESTIC WASTE
UNDER MISSOURI CLEAN WATER LAW**

2-17-03

FOR AGENCY USE ONLY

CHECK NUMBER

DATE RECEIVED

FEE SUBMITTED

NOTE ▶ PLEASE READ THE ACCOMPANYING INSTRUCTIONS BEFORE COMPLETING THIS FORM

- 1.00 This application is for:
☒ a construction permit ☐ SRF Project ☐ an operating permit renewal: permit # _____
☐ an operating permit for a new or unpermitted facility Expiration date: _____
(See instructions for appropriate fee to be submitted with application) ☐ an operating permit modification Reason: _____

2.00 FACILITY

NAME EAGLE WOODS SUBDIVISION PHONE 573-302-0040
ADDRESS (PHYSICAL) HWY 54 TO STATE HWY KK NEAR END CITY OSAGE BEACH STATE MO ZIP 65065

2.10 LEGAL DESCRIPTION: NW 1/4, SE 1/4, NE 1/4, Sec. 7, T39N R16W CAHLEN County

2.20 Is this a new facility constructed under a Missouri Construction Permit? ☐ YES ☒ NO
If yes, please provide Missouri Construction Permit Number: _____

2.30 Name of receiving stream(s) LAKE OF THE OZARKS

3.00 OWNER

NAME EAGLE WOODS HOMEOWNER'S ASSOCIATION PHONE 573-302-0040
ADDRESS PO BOX 496 CITY OSAGE BEACH STATE MO ZIP 65065

3.10 Request review of draft permit prior to Public Notice? ☐ YES ☐ NO

4.00 CONTINUING AUTHORITY: permanent organization which will serve as the continuing authority for the operation, maintenance and modernization of the facility.

NAME EAGLE WOODS HOMEOWNER'S ASSOCIATION PHONE 573-302-0040
ADDRESS PO BOX 496 CITY OSAGE BEACH STATE MO ZIP 65065

5.00 OPERATOR

NAME MIKE Mc DUFFEY CERTIFICATE NUMBER 4661 PHONE 573-346-2292

6.00 FACILITY CONTACT

NAME RONALD WESTENHAVER TITLE PRES. PHONE 573-302-0040

7.00 ADDITIONAL FACILITY INFORMATION

7.10 Description of facilities (attach additional sheet if required). Attach a 1" = 2000' scale USGS topographic map showing location of all outfalls.

7.15 Facility SIC code: 4952; Discharge SIC code: 4952

7.20 Number of separate discharge points 1

7.30 Number of persons presently connected or population equivalent 103.6 Design P.E. 103.6
Number of units presently connected: Homes 18 Trailers _____
Apartments _____ Other _____

Design flow: 7770 GPD Actual flow: 7770 GPD

7.40 Does any bypassing occur anywhere in the collection system or at the treatment facility?
☐ Yes ☒ No (If yes, attach explanation)

7.50 Is industrial waste discharged to the facility identified in item 2? ☐ Yes ☒ No (If yes, see instructions.)

7.60 Will the discharge be continuous through the year? ☒ Yes ☐ No

a. Discharge will occur during the following months: ALL

b. How many days of the week will the discharge occur? 7

7.65 Is wastewater land applied? ☐ Yes ☒ No (If yes, attach Form I)

7.70 Will chlorine be added to the effluent? ☒ Yes ☐ No

a. If chlorine is added, what is the resulting residual? 1 mg/L MAX

7.80 Does this facility discharge to a losing stream or sinkhole? ☐ Yes ☒ No

7.85 Attach a flow chart showing all influents, treatment facilities and outfalls.

7.90 Has a waste load allocation study been completed for this facility? ☐ Yes ☒ No

7.95 List all permit violations, including effluent limit exceedances in the last 5 years. Attach a separate sheet if necessary.
If none, write none. NA

7.10 Install appx. 142 ft. of 4 in. SCH 40 PVC gravity flow effluent sewer line, two 24 ft. x 44 ft. recirculating coarse sand filter beds, an 7480 gal. recirculation tank, a chlorinator, a 300 gal. chlorine contact tank and all necessary appurtenances to complete the system.

ENGINEER'S REPORT
SEWAGE TREATMENT FACILITIES
FOR
EAGLE WOODS SUBDIVISION

1. Nature and use of area to be served:

This proposed treatment system would serve 28 residential lots.

2. Population:

The population equivalent (PE) for this system is 103.6 with a BOD loading of 17.61 lbs./day. The estimated total flow is 7770 gal/day.

3. Wastes and other domestic sewage:

The waste discharged to this system will be domestic.

4. Existing sewage disposal facilities:

The existing facilities cannot serve this development. A new treatment system must be constructed on land owned by the developer. The completed project will be turned over to the homeowners association for maintenance and operation. The plant discharges into an unnamed tributary within 0.5 mile of the Lake of the Ozarks.

5. Nature of soil:

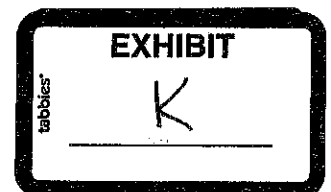
Since the treated effluent will be discharged within 0.5 mile of the Lake of the Ozarks, no geology report has been requested.

6. Size and proximity of site:

The capacity of the proposed system is determined by the needs of the project. Additional plans and specifications will be submitted if there is a need for more than the current 28 lots. No adjoining property owners are interested in becoming a part of this treatment system at this time. The system is located so the discharge will be within 0.5 mile of the Lake of the Ozarks. The treatment system will be constructed in a manner that will prevent runoff from entering the treatment system.

7. Proximity of water supply structures:

There are no known wells within 500 feet of proposed treatment plant.



8. Discharge of effluent:

The treatment system will be constructed within 0.5 mile of the Lake of the Ozarks. The effluent from the recirculating coarse sand filter will discharge to an unnamed tributary of the Lake of the Ozarks. Effluent regulations will be included in the NPDES permit.

9. Analysis of data:

The recommended method of treatment is a recirculating coarse sand filter followed by a chlorine contact tank. The influent will be collected in a pump tank and currently pumped to an overloaded system. The effluent can gravity flow from the existing pump tank to the new recirculation tank. Then the effluent will be pumped from the recirculation tank to the recirculating coarse sand filter. Treated effluent will then drain back to the recirculation tank for more treatment and/or discharge.

10. Recommendations:

The system has been designed to provide treatment for the estimated wastewater production from this project. A recirculating coarse sand filter appears to be the best and most economical solution.

11. Sewer system:

The proposed system is designed to provide sewer treatment facilities for 28 residential lots.

12. Sewage treatment:

The quality of effluent will conform to the 20 mg/l BOD and 20 mg/l suspended solids limits required by the Missouri Water Quality Standards. The system being proposed is a recirculating coarse sand filter followed by chlorination with a chlorine contact tank.

13. Financing:

The project will be financed entirely by private capital.

14. Sludge holding:

No sludge holding facility will be required for this type of treatment system.

15. Land application:

The slope of the land and the proximity to the lake make this land unsuitable for land application.

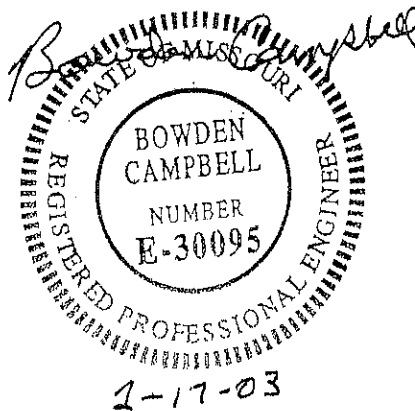
16. Ownership and operation:

The project for a sewage treatment system is being developed by Summit Investment Co., LLC. There is no municipality, public sewer district, or sewer company regulated by the Public Service Commission with adequate capacity available in this area to treat the wastewater from this project. Therefore a homeowners association has been established.

Respectfully Submitted

Bowden Campbell

Bowden Campbell, P.E.



OPERATION AND MAINTENANCE MANUAL FOR EAGLE WOODS SUBDIVISION

System Major Components

- | | |
|------------------------|-------------------------------------|
| 1) Septic Tank | 7) Hydrotek Valve |
| 2) Septic Tank Pump | 8) Recirculation Coarse Sand Filter |
| 3) Service Connection | 9) Splitter Valve |
| 4) Air Release Valve | 10) Chlorinator |
| 5) Pressure Sewer Line | 11) Chlorine Contact Tank |
| 6) Recirculation Tank | |

How The System Operates

Raw sewage flows by gravity from the home to the septic tank where the heavy particles settle to the bottom and the light particles float to the top. A relatively clear zone forms between the floating solids (scum) layer and the settled solids (sludge) layer.

A float operated pump system suspended in the end of the septic tank will screen and pump the clear zone of the septic tank to the pressure sewer main line and then to the recirculation tank.

There is a service connection at the main line that consists of a check valve and a manual valve. The main sewer line has air release valves in all high points of the line, clean outs as necessary and gate valves as necessary.

A timer operated pump suspended in the recirculation tank will screen and pump the septic tank effluent to the hydrotek valve and then to a part of the recirculating coarse sand filter. The PVC piping will evenly distribute the effluent over the specially graded coarse sand. Small particles and other contaminants will be reduced by the microbes attached to the sand particles as the effluent passes down through the sand.

The effluent is collected at the bottom of the filter in an underdrain system and flows by gravity to a splitter valve at the recirculation tank. The splitter valve will discharge 20% of the return flow when necessary. During part of the day, all the effluent from the filter will be returned to the recirculation tank for additional treatment.

Operation

The septic tank pump system is located in the outlet end of the septic tank so the pump vault inlet holes are located in the clearest zone of the tank. The effluent enters through

the PVC pump vault inlet holes, passes through a screen with 1/8" openings and then to the pump inlet.

The pump controls are automatic being controlled by floats. When the liquid level rises and makes the middle float, the pump will come on and operate until the lower float shuts off the pump as the level in the tank drops. The cycle will repeat when the level rises to make the middle float. The system also has a high and low level alarm.

The service connection is located near the main line and consists of a manual valve and a check valve. The purpose of the manual valve is to isolate the service line from the main line. The check valve will keep effluent from flowing from the main line to the septic tank.

The air release valves are located in the high points of the main line. Over time, sewer gas will accumulate in the high points of the line. These gas pockets will reduce the flow rate in the line unless eliminated. The air release valves will automatically release the gas pockets.

The recirculation tank is normally located near the sand filter and is the exit end of the pressure and/or gravity sewer line. The recirculation tank will have one or more sets of pumps as required by the system size. These pumps are in a screened, PVC vault that is very similar to the septic tank vault. These pumps are timer operated with float override switches. The timer is adjustable to vary the pump time on and off as necessary to achieve satisfactory operation of the filter. The bottom float will sound the low level alarm and keep the pumps from operating when the level is too low. The middle float will keep the pump operating continuously until the water level falls below this float. The upper float is a high water level alarm. The pump will be timer operated when the water level is above the bottom float and below the middle float. This condition should be the normal operation.

The splitter valve is also located in the recirculation tank. This valve is capable of 100% recycle of the water leaving the sand filter to the recirculation tank or 80% recycle of the water to the recirculation tank and 20% of the water to discharge. This valve has a ball type buoy that will close the 100% recycle port at a preset water level and activate the splitter function.

The hydrotek valve will direct the flow from the pump to a section of the sand filter. The hydrotek valve will change to a different section of the sand filter each time the pump operates.

The PVC piping network will evenly distribute the water to the sand filter. The entire filter surface should be covered every 30 minutes. The effluent should be applied at a rate not to exceed 2 gallons per hole. This will normally be a pump on time of less than 4.5 minutes. The water will be treated as it passes down through the sand filter to the underdrain system and back to the splitter valve to return to the recirculation tank and/or discharge.

The treated water will flow from the splitter valve to a **chlorinator** for disinfecting, then to a **chlorine contact tank** to allow sufficient time to disinfect the water before final discharge.

Monitoring and Maintenance

THESE SYSTEMS ARE NOT MAINTENANCE FREE. These systems need daily monitoring for best operation. All alarms should be investigated promptly and the proper maintenance done to repair the cause of the alarm.

Some homeowners associations have successfully operated their systems but it requires a group of dedicated individuals to do the work. Consideration should be given to contracting with a business that specializes in operation and maintenance of wastewater treatment systems. The operation will require knowledge of pump and electrical maintenance and troubleshooting.

Anyone working with the raw sewage should have training in the type of infectious diseases present in sewage, and the proper precautions to prevent the spread of these diseases. Proper safety clothing will need to be available for the workers. Proper training in chlorine safety is a must.

Daily checks should include

- 1) Check all stations for alarms. Each homeowner could check their system.
- 2) Check for electrical power to each pump.
- 3) Record the readings for the event counter and run time meters for the recirculation tank pumps.
- 4) Chlorinator has chlorine and the tablets are dissolving. Check NPDES permit to determine months to use chlorine.
- 5) Be sure recirculation tank pumps are operating and that the pumps alternate.
- 6) Remove any grass and weeds growing in the filter. Remove any leaves from the filter.

Monthly checks should include

- 1) Check all pump vault screens to determine when to clean.
- 2) Check to see if splitter valve is working.
- 3) Record run time on recirculation tank pumps. (Actual time the pump runs - not just the time on the meter.)
- 4) Check to see if hydrotek valve is changing zones.
- 5) Check floats to be sure they operate freely.

6 month checks should include

- 1) Monthly checks.
- 2) Flushing of distribution lines of sand filter.
- 3) Remove pumps and clean pump inlet screen.

Yearly checks should include

- 1) 6 month checks.
- 2) Sludge level in septic tanks. Pump tank when sludge depth is twenty (20) inches.
- 3) Open manual bleed valve on air release valves to see if all gas is bled off.
- 4) Check operating pressure on each zone of the sand filter.

Some Do's and Don'ts of septic systems

Do promptly repair any leaks. Even a small leak can severely stress the system with excess water.

Do practice water conservation. This will reduce the amount of water going to the system and result in extended system service life and reduced electrical cost.

Do keep accurate records of maintenance and service calls. Also keep an updated copy of the plans and specifications for easy reference.

Do know the location of underground sewer and electrical lines before you dig.

Don't connect roof gutters, storm drains or basement drains to septic tank.

Don't flush undesirable substances into the septic tank. Flushing flammable and toxic products is dangerous, while other materials such as paper towels, rags, cigarettes, coffee grounds, egg shells, sanitary napkins, large amounts of hair and cooking grease are a maintenance nuisance and will require more frequent pumping of septic tanks and cleaning of pump screens.

Don't dump recreational vehicle (RV) waste into the septic tank. This will greatly increase the solid waste load on the septic tank. The RV chemicals are toxic to the bacteria in the septic tank and will adversely effect the operation of the septic tank.

Don't use special additives that claim to enhance the performance of your tank. The septic tank does not need any help – just do not mistreat. These additives may have an adverse effect on the sand filter system.

Don't enter your tank. This may be a deadly environment. Only trained people with the proper safety equipment should ever enter a septic tank.

Don't dispose of water softener backwash in the septic tank. The high levels of chlorides will damage the bacteria in the septic tank and the increased flow will interfere with proper settling of the solids.

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION



MISSOURI STATE OPERATING PERMIT

In compliance with the Missouri Clean Water Law, (Chapter 644 R.S. Mo. as amended, hereinafter, the Law), and the Federal Water Pollution Control Act (Public Law 92-500, 92nd Congress) as amended,

Permit No: MO-0123170

Owner: Osage Water Company / Gary V. Cover, Receiver
Address: P.O. Box 506, Clinton, MO 64735

Continuing Authority: Osage Water Company/ Gary V. Cover, Receiver
Address: P.O. Box 506, Clinton, MO 64735

Facility Name: Osage Water Company, KK WWTF
Facility Address: Lake Road KK-25, Osage Beach, MO 65065

Legal Description: SE ¼, SE ¼, SE ¼, Sec. 06, T39N, R16W, Camden County
Receiving Stream: Unnamed Tributary to Woods Hollow Cove (U)
First Classified Stream and ID: Lake of the Ozarks (L2) (07205) 303(d)
USGS Basin & Sub-watershed No.: (10290109-080004)

is authorized to discharge from the facility described herein, in accordance with the effluent limitations and monitoring requirements as set forth herein:

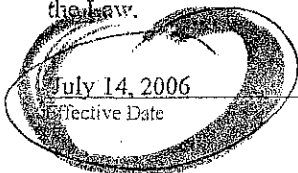
FACILITY DESCRIPTION

Outfall #001 -- Subdivision / Sewerage Works - SIC #4952 / 4952

Septic tanks / recirculating sand filter / seasonal disinfection: chlorination / sludge disposal by contract hauler

Design population equivalent is 185.
Design flow is 13,875 gallons per day.
Design sludge production is 1.3 dry tons/year.

This permit authorizes only wastewater discharges under the Missouri Clean Water Law and the National Pollutant Discharge Elimination System; it does not apply to other regulated areas. This permit may be appealed in accordance with Section 644.051.6 of the Law.



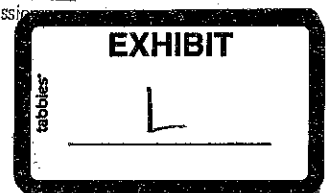
July 14, 2006
Effective Date

Doyle Childers, Director, Department of Natural Resources
Executive Secretary, Clean Water Commission

July 13, 2011
Expiration Date

Edward Galbraith, Director of Staff, Clean Water Commission

MO 780-0011 (10-03)



See page 4 of 5 ★

Note 3 - This permit contains a Total Residual Chlorine (TRC) limit.

- a) This effluent limit is below the minimum quantification level (M.L.) of the most common and practical EPA approved CLTRC methods. The department has determined the current acceptable M.L. for total residual chlorine to be 0.13 mg/L when using the DPD Colorimetric Method #4500 - CL G. from Standard Methods for the Examination of Waters and Wastewater. The permittee will conduct analyses in accordance with this method, or equivalent, and report actual analytical values. Measured values greater than or equal to the minimum quantification level of 0.13 mg/L will be considered violations of the permit and values less than the minimum quantification level of 0.13 mg/L will be considered to be in compliance with the permit limitation. The minimum quantification level does not authorize the discharge of chlorine in excess of the effluent limits stated in the permit.
- b) Disinfection is required year-round unless the permit specifically states that "Final limitations and monitoring requirements for Fecal Coliform are applicable only during the recreational season from April 1 through October 31." If your permit does not require disinfection during the non-recreational months, do not chlorinate in those months.
- c) Do not chemically dechlorinate if it is not needed to meet the limits in your permit.
- d) If no chlorine was used in a given sampling period, an actual analysis is not necessary. Simply report as "0 mg/L" TRC.

C. SPECIAL CONDITIONS

1. There shall be no more than fifty lots connected to the current wastewater treatment system. Service shall be limited to any ~~fifty lots platted in Eagle Woods I, II, III, and IV and the Golden Glade Subdivision.~~ The addition of lots in excess of fifty will require an expansion of the wastewater treatment plant to treat the additional load.
2. This permit may be reopened and modified, or alternatively revoked and reissued, to:
 - (a) Comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a) (2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:
 - (1) contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
 - (2) controls any pollutant not limited in the permit.
 - (b) Incorporate new or modified effluent limitations or other conditions, if the result of a waste load allocation study, toxicity test or other information indicates changes are necessary to assure compliance with Missouri's Water Quality Standards.
 - (c) Incorporate new or modified effluent limitations or other conditions if, as the result of a watershed analysis, a Total Maximum Daily Load (TMDL) limitation is developed for the receiving waters which are currently included in Missouri's list of waters of the state not fully achieving the state's water quality standards, also called the 303(d) list.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Clean Water Act then applicable.

3. All outfalls must be clearly marked in the field.
4. Permittee will cease discharge by connection to areawide wastewater treatment system within 90 days of notice of its availability.
5. Changes in Discharges of Toxic Substances

The permittee shall notify the Director as soon as it knows or has reason to believe:

- (a) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) One hundred micrograms per liter (100 µg/L);
 - (2) Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,5 dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - (3) Five (5) times the maximum concentration value reported for the pollutant in the permit application;
 - (4) The level established in Part A of the permit by the Director.
- (b) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant, which was not reported in the permit application.

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Bob Holden, Governor • Stephen M. Mahford, Director

2040 N. Woodland

Springfield, MO 65807-5912

(417) 891-4300

www.dnr.state.mo.us • FAX (417) 891-4399

February 2, 2004

Eagle Woods Homeowners' Association
P.O. Box 496
Osage Beach, MO 65065

Re: Eagle Woods Subdivision Wastewater Treatment Facility, Camden County

Dear Applicant:

To date the department has not received a continuing authority waiver from Osage Water Company, as requested by the comment letter from Mr. Keith B. Forck, P.E. dated March 25, 2003. Therefore, due to this deficiency review of this project is hereby being terminated and all application fees have been forfeited as per 10 CSR 20-6.010(4)(E).

For future reference in corresponding with the department, please note that due to state budget reductions the Jefferson City Regional Office serving the central Missouri area has been permanently closed. Future correspondence should be directed to the Southwest Regional Office in Springfield. The appropriate contact information can be found on this letterhead.

If you have and questions or comments, please advise by calling 417-891-4300.

Sincerely,

SOUTHWEST REGIONAL OFFICE

Gale L. Roberts, P.E.
Chief, Engineering Unit

GLR/sco

c: Mr. Tim Duggan, Missouri Attorney General's Office
Mr. Paul Dickerson, Water Pollution Branch
Mr. Bowden Campbell, P.E., Lake Professional Engineering Services, Inc.
Osage Water Company
Mr. Dale Johansen, Missouri Public Service Commission

CAMDEN/WPC
OSAGE WATER COMPANY - KK WWTF - CP
(MO-0123170)
26-3922 (SWRO-0560)

CAMDEN/WPC
OSAGE WATER COMPANY - KK WWTF - GENERAL
(MO-0123170)
26-3922 (SWRO-0560)

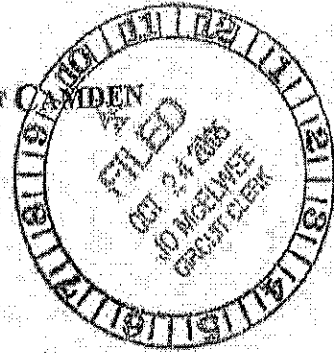
029.wpcp.OsageWaterCo-KKwwtf.mo0123170.EagleWoodswwtf.2004.02.02.fy04.tfppt.swro0560.sac.doc

Integrity and excellence in everything we do



18

IN THE CIRCUIT COURT FOR THE COUNTY OF CAMDEN
STATE OF MISSOURI



Public Service Commission of the State of
Missouri,

Plaintiff,

v.

Osage Water Company,

Defendant.

Case No. CV102-965CC

ORDER

On the 8th day of March, 2004, this cause came on for trial. Plaintiff Public Service Commission appeared by its attorneys, Keith R. Krueger and David A. Meyer. Intervenor Office of the Public Counsel appeared by its attorney, Ruth O'Neill. Paula Hernandez-Johnson, attorney for Defendant Osage Water Company failed to appear, and Defendant appeared without counsel, but William P. Mitchell, president of Defendant was present in court as the corporate representative of Defendant Osage Water Company.

Cause called. After the commencement of the trial, the Court received faxed copies of a Motion for Continuance and an Application / Petition to Disqualify Judge, submitted by Paula Hernandez-Johnson, counsel of record for Defendant Osage Water Company, which were overruled as untimely filed.

On March 9, 2004, after the conclusion of evidence, and during argument on the cause by counsel, the Court received a Notice of Bankruptcy Court Filing issued by the United States Bankruptcy Court for the Western District of Missouri in Case No. 04-20546, which indicated that Defendant Osage Water Company filed a Petition for Bankruptcy under Chapter 7 of the

EXHIBIT

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United States Bankruptcy Code on March 9, 2004, at 1:59 p.m. The Notice of Bankruptcy Court Filing further included the following statement:

The filing of a bankruptcy case automatically stays certain actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Pending resolution of the bankruptcy case, further proceedings in this cause were stayed.

The U.S. Bankruptcy Court issued its judgment dismissing Osage Water Company's bankruptcy case on April 29, 2004. The Bankruptcy Court's Judgment further enjoined Osage Water Company from filing a subsequent bankruptcy petition for 180 days.

On or before June 2, 2004, Gregory D. Williams entered his appearance as attorney for Osage Water Company.

On June 2, 2004, the Court heard argument on various legal issues and the Company advised the Court that it had nearly reached agreement to sell its assets to Missouri-American Water Company. The Court announced that it had determined that the appointment of a receiver was appropriate, but that it would delay the entry of such an order, while the proposal to sell the Company's assets was pending.

Upon the direction of the Court, the Commission subsequently filed 39 Status Reports regarding the progress of the proposed sale of the Company's assets to Missouri-American and of the application to the Commission for approval of such sale of assets.

On October 7, 2005, the Commission and the Company appeared through counsel for argument on the Commission's Petition for Appointment of Receiver. The Office of the Public Counsel, although notified of the hearing, appeared not.

This Court will now rule upon the Plaintiff's Petition.

The Court finds that, based upon the evidence received in this proceeding, Osage Water Company has failed to provide safe and adequate water service to its customers as required by Section 393.130.1 RSMo. (2000). Section 393.130.1 provides, in part, as follows:

Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service and instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.

The Court further finds that although Osage Water Company did execute a contract to sell its assets to Missouri-American Water Company and did seek the Commission's approval of this asset sale, the Commission found, in the opinion of this Court improperly and against public interest, that the proposed asset sale was detrimental to the public interest and dismissed Osage Water Company's application, and that the Company has not sought judicial review of the Commission's order.

By reason of the refusal of the Commission to approve the contract of sale the appointment of a receiver for Osage Water Company is necessary to promote the best interests of the customers of the Company, and to ensure that the customers of the Company receive safe and adequate water and sewer service. See Section 393.145.6, RSMo, as amended by Senate Bill 462 (Laws 2005). Section 393.145.5, RSMo, as amended by Senate Bill 462 (Laws 2005) authorizes the Court to grant the Commission's Petition to appoint a receiver for a water corporation or a sewer corporation. It provides that "[t]he court, after hearing, may grant the commission's petition for appointment of a receiver" and "[a] receiver appointed pursuant to this section shall be a responsible person, partnership, or corporation knowledgeable in the operation of utilities."

The Court further finds that Gary Cover of Clinton, Missouri possesses the foregoing statutory qualifications for service as a receiver. The Court therefore appoints Gary Cover as

receiver for Osage Water Company until further order of this Court. The appointed receiver shall have all of the powers, rights and authority vested in receivers pursuant to the provisions of Section 393.145.6, RSMo, as amended by Senate Bill 462 (Laws 2005). The appointed receiver shall post bond in the amount of \$50,000, with the premium therefore to be paid from the assets of the Company.

The Court further directs the receiver to negotiate with Mike McDuffey, the owner of Lake of the Ozarks Water and Sewer, for the provision of services to operate and maintain the Company's water and sewer facilities.

The Court further orders that Osage Water Company and its officers, agents and representatives, and specifically its past contractual agent and representative Environmental Utilities, LLC, employees and successors, and all other persons in active concert and participation with them, are directed to cooperate with Mr. Cover and with Mr. McDuffey to promptly transfer control of Osage Water Company to the appointed receiver; and to deliver to him all records and assets.

Section 393.145 also authorizes the Court to direct the receiver to liquidate the assets of the Company. Section 393.145.7, RSMo, as amended by Senate Bill 462 (Laws 2005) 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 provided by law.

The Court directs the receiver to liquidate the assets of the Company as soon as practicable on terms that protect the interest of the customers of the Company, and allow them to

continue to receive utility service from the assets that have been put in place to serve them. The Court further directs and requires the appointed receiver to exercise care when liquidating the assets of the Company to ensure that any assets that are not immediately sold may still be efficiently operated after other systems and assets are sold. Further the Court requires the Receiver to file with the Court a request to proceed with sale upon the event that a buyer is found on terms agreeable to the Receiver.

The Receiver shall file monthly status reports with the Court and provide e-mail copies to the Court and to Attorneys of record, and to the Company if it is not represented.

The Court further grants the oral motion of Gregory D. Williams to withdraw as counsel for Osage Water Company.

That the Order for periodic reports by the Commission and Company is terminated.

So ordered this 21st day of October, 2005.


John R. Hutcherson, Judge

COULTAS & GREEN, L.L.C.

FAYE M. COULTAS, P.C.
JEFFREY E. GREEN, L.L.C.

ATTORNEYS AT LAW

FIRST BANK OF THE LAKE, SUITE #106
P.O. BOX 1157 (MAIL)
OSAGE BEACH, MISSOURI 65066
(573) 348-0122 FAX: (573) 348-0124

April 21, 2006

Mr. Gary Cover
Fax no. 660-885-6780

FAXED

Re: Osage Water Company

Dear Mr. Cover:

I was shocked when I read the contents of the letter Mr. Westbrooke addressed to you, dated April 18th, and needed to give you information which you may already possess, but apparently Mr. Westbrooke does not.

First, I state categorically and unqualifiedly that it is untrue that any additional residence in Eagle Woods has been connected to the system, and recommend that any information so indicating should be communicated to me immediately, instead of being used in an attempt to continue directing ill will through rumors against my client, when the responsibility for problems lies with Osage Water Company, not with us.

Mr. Westbrooke is apparently unaware that the water line for the City of Osage Beach stops at Three Seasons Road, which is one and one-half miles away from Eagle Woods, not the short distance he implied. Further, the possibility of using the sewage/wastewater system of the City of Osage Beach was investigated several years ago, before Mr. Westbrooke became involved in this matter. The City deemed it not feasible because the OWC system has effluent, with a recirculating sand filter system, whereas the City uses a grinder pump system with direct sewage. The two systems are not compatible, and the cost would therefore be astronomical, amounting to the construction and installation of completely new systems.

The company with which Mr. Westenhaver is affiliated, not him personally, is certainly the developer of Eagle Woods, and did everything required -- and beyond -- to provide the proper utility systems at the project. That developer contracted with the only utility company approved by MDNR to provide service to the geographical area where Eagle Woods is located, and paid a great

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Mr. Gary Cover
Re: Osage Water Company

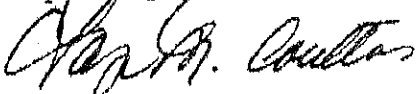
April 21, 2006
Page 2

deal of money to construct the systems and appurtenances required. It is not the fault of the developer that the only company approved by MDNR (namely, OWC) failed to provide the services for which it was paid. It might be well to bear in mind that the developer company is a greater victim than any single lot owner, having suffered an incredible financial disaster through Osage Water Company's failure to provide services, in that the developer is left with undeveloped land and debt to service on that land, as well as a crushing financial load for legal fees. I fail to see how Mr. Westbrooke can claim that the developer continues to owe any lot owner anything further, particularly in light of there being no other licensed public utility available. I can only conclude that he is unfamiliar with the administrative law governing public utilities and/or has been provided with incomplete information about this specific situation.

Should you need further information on the specifics of the sewer and water systems, I know that Mr. McDuffey can provide these for you.

I am aware that serving as receiver for OWC poses a heavy demand on your time, and therefore regret the necessity of adding this distraction, but felt it was important for me to respond. Thank you for your consideration.

Very truly yours,



Faye M. Coultas
Attorney at Law

FAXED

c

cc K. Krueger, fax no. 573-751-9285
Client, fax no. 573-302-0263
H. Westbrooke, fax no. 417-859-0218

FAXED

COPY

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

SUMMIT INVESTMENTS, L.L.C.,)

Plaintiff,)

vs.)

OSAGE WATER COMPANY,)

Defendant.)

[serve Gary V. Cover
130 W. Jefferson St,
Clinton, MO 64735]

Case no. 06CMCC0025

FILED

JUL 10 2006

JO MCELWINE
CIRCUIT CLERK

RECEIVED

JUL 10 2006

CLERK OF COURT, CAMDEN, MO

PETITION

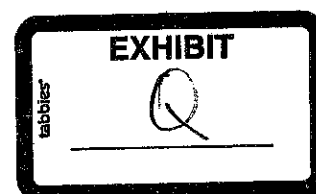
Count I
Breach of Contract

NOW COMES Plaintiff, and in support of its request for relief in this Count I, shows to the Court:

1. Plaintiff is a limited liability company organized and existing under the laws of the State of Missouri, doing business in Camden County, Missouri.

2. Defendant is a general business corporation organized and existing under the laws of the State of Missouri, doing business in Camden County, Missouri, providing services as a public utility.

3. On or about January 12, 1999, Plaintiff and Defendant entered into a certain contract whereby Plaintiff agreed to construct and install certain equipment and appurtenances and convey same to Defendant, and to pay certain sums of money to Defendant, in return for which Defendant agreed to provide sewer and water services to fifty-three (53) residences to be constructed



by Plaintiff in a project called "Eagle Woods", located in Section 6, Township 39 North, Range 16 West, Camden County, Missouri.

4. A copy of said contract [hereinafter "Contract"] is attached hereto, marked "Exhibit 1", and made part hereof by this reference.

5. Thereafter, Plaintiff performed all duties imposed on Plaintiff by the Contract, including the conveyance of easements to Plaintiff, by execution and recordation of documents prepared by Plaintiff, as set forth in paragraph 4 of the Contract.

6. Copies of said easements are attached hereto, marked "Exhibit 2" and "Exhibit 3", and made part hereof by this reference.

7. Notwithstanding Plaintiff's performance, and despite repeated demands, Defendant has failed and refused and continues to fail and refuse to provide such services, but instead allowed such services to be provided to projects controlled by Defendant's principals.

8. As a direct consequence of Defendant's refusal to perform, Plaintiff has suffered damages in that Plaintiff has been unable to construct the remaining residences on his land and has therefore lost his profit on the sale of said residences; further, Plaintiff has been forced to continue making payments of principal and additional interest to the mortgagee of the land where said remaining residences were to have been located.

9. As additional damage to Plaintiff, while Plaintiff relied

on the terms of the Contract and was unaware that the services would not be provided to the residences by Defendant, Plaintiff continued construction of such residences, and therefore was cited by the Department of Natural Resources, costing Plaintiff not only time, but large sums of money for attorneys' fees and penalties.

10. All of Plaintiff's damages will be proved in specificity at trial, but exceed \$100,000.00 at the time of filing this petition.

WHEREFORE, Plaintiff prays judgment against Defendant in the total amount of Plaintiff's damages; for Plaintiff's costs incurred; and for such other and further orders as the Court may deem just and proper in the circumstances.

Count II
Specific Performance

NOW COMES Plaintiff, and in support of its request for relief in this Count II, shows to the Court:

1. Plaintiff restates and realleges paragraphs 1 through 9 of Count I and paragraph 1 of this Count II.

2. Defendant is the only public utility approved by the Department of Natural Resources in the geographic area where Plaintiff's remaining real estate is located, and because of the statutes, rules and regulations governing the Department of Natural Resources, no other public utility will be approved in said area while Defendant continues to be thus approved.

3. Under Missouri law, Plaintiff cannot utilize his land for

the construction of residences without provision of the said services by Defendant.

4. For these reasons, Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that this Court enter the following orders:

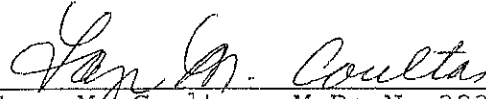
A. Declaring Plaintiff to be entitled to water and sewer services provided by Defendant to Plaintiff's remaining property within the Eagle Woods project;

B. Directing that Defendant specifically perform Defendant's contract with Plaintiff by providing the services promised;

C. Awarding Plaintiff attorneys' fees and costs of this suit; and

D. Granting Plaintiff such other or further relief as the Court may deem just and proper in the circumstances.

Respectfully submitted,



Faye M. Coultas, MoBarNo 32313

Coultas & Green, L.L.C.

P. O. Box 1157

Osage Beach, Missouri 65065

Tel. 573-348-0122

Fax: 573-348-0124

Attorney for Plaintiff

Osage Water Company Water Supply Contract Page 1

WATER AND SEWER SUPPLY CONTRACT

THIS CONTRACT is made and entered into this 12 day of January, 1998, by and between Osage Water Company, a Missouri Public Utility Corporation, "OWC", and Summit Investments, LLC, A Missouri Limited Liability Company, referred to herein as the "Developer".

Whereas, OWC is a Missouri Corporation authorized by the Missouri Public Service Commission to provide water and sewer service and Developer is the owner of property located off of State Route KK near Osage Beach, Missouri, which property is known as Eagle Woods Subdivision (the "Project"); and

Whereas, Developer has prepared and desires to implement a plan for the overall development of its land into residential housing and other facilities compatible therewith that contemplates the construction of 53 residential houses and other facilities over a period of one or more years; and

Whereas, Developer desires to obtain the benefit of public water and sewer utility service for the present and future residents of its property and desires to contract with OWC for said public water and sewer utility service.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, the undersigned do hereby covenant, contract, and agree as follows.

1. Request for Service. Developer does hereby request public water and sewer service from OWC for its property, and requests that the Missouri Public Service Commission ("PSC") grant to OWC a certificate of convenience and necessity to provide such service to its property. OWC shall be solely responsible for the cost of preparing and filing such applications, feasibility studies, engineering plans, and other documentation that may be required by the PSC for the processing and approval of service by OWC to Developer.

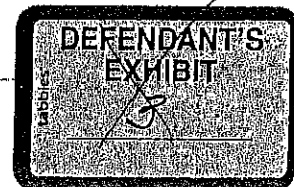
2. Water Supply. OWC agrees to construct and install a water main from OWC's water well site located in Golden Glade Subdivision on Lake Road KK-33 to the northwest property line of Developer's property, at OWC's expense.

OWC agrees to make such additional water main extensions as may be required to extend water utility service to building sites located within Developer's project in accordance with the main extension rules set forth in OWC's Water Tariff on file with the Missouri Public Service Commission.

OWC shall pay the first \$250 of the cost of connecting each residential dwelling to the water distribution system, which shall consist, in the absence of a specific written agreement to the contrary, of the provision of a meter pit, lid, loop, and water meter for each such residential dwelling.

Developer agrees to convey to OWC its existing non-community drinking water supply presently serving Eagle Woods Subdivision, together with all water mains and easements for same, pumps, storage tanks, well control panels, electrical service, pump-house, and other fixtures and equipment associated therewith. Developer shall provide OWC with complete documentation of all costs incurred by Developer in the construction of said non-community drinking water supply.

GREGORY D. WILLIAMS, ATTORNEY AT LAW, HIGHWAY 5 AT LAKE ROAD 5-33, P.O. BOX 431, SUNRISE BEACH, MO 65079
TELEPHONE (573) 374-8761 FAX (573) 374-4432



In the event that existing water lines installed by Developer prior to the date of this Contract are of a smaller diameter than specified by OWC or its engineer, OWC shall be solely responsible for replacing such existing water lines with a water line of a diameter acceptable to OWC, and Developer shall bear no part of the cost of such water line replacement.

Developer shall construct all water lines after the date of this Contract in conformance with OWC's Water Tariff Rule 14(A)(7).

3. Water for Fire Protection. Developer acknowledges that OWC does not propose to provide water for fire protection purposes to Developer's project, and has advised Developer to consult with applicable local governmental entities, including, but not limited to, the Osage Beach Fire Protection District, to determine whether Developer is required to provide water for fire protection purposes within the Project, and that Developer has made such inquiries as Developer deems necessary prior to executing this Contract. In the event that Developer desires or is required to provide water for fire protection purposes within the Project, Developer shall be solely responsible for the cost of construction of all facilities required by the Osage Beach Fire Protection District or any other government entity for the purpose of furnishing water for fire protection, including, but not limited to, additional sprinkler storage facilities in excess of that necessary to meet Missouri Department of Natural Resources requirements for potable drinking water, fire hydrants, dry hydrants, standpipes connected to the Lake of the Ozarks or other non-potable water sources, fire pumps, and any other water facilities not customarily utilized in the provision of potable drinking water by OWC. If such additional fire protection water supply is provided by or through OWC's water system, Developer shall pay to OWC the actual cost of construction incurred by OWC for the provision of such additional capacity or facilities.

4. Sewer System. OWC agrees to construct and install an effluent collection sewer from OWC's sewage treatment facility site located in the Southeast corner of Section 6, Township 39 North, Range 16 West to the northwest corner of Developer's property, at OWC's expense. OWC shall provide the necessary engineering plans and DNR permits for the construction of said effluent collection sewer.

OWC agrees to make such additional effluent collection sewer extensions as may be required to extend sewer utility service to building sites located within Developer's project in accordance with the main extension rules set forth in OWC's Sewer Tariff on file with the Missouri Public Service Commission.

Developer agrees to pay to OWC the sum of Thirty Thousand Dollars (\$30,000.00) as a Contribution In Aid of Construction for the construction of a sewage treatment facility with sufficient capacity to serve the fifty-three (53) single family residential homes presently contemplated by Developer within the Eagle Woods project, and to transfer and convey to OWC all engineering plans, specifications, and Department of Natural Resources permits presently owned by Developer for such sewage treatment facility. OWC agrees to commence construction of said sewage treatment facility immediately upon issuance of a permit therefore by the Missouri Department of Natural Resources.

Developer acknowledges that said CIAC is not refundable and that Developer will not receive any future credits or rebates of said sum, in that said CIAC represents the "net cost" of constructing said sewage treatment facility after application of OWC's customary sewer investment of \$500 per single family residential dwelling.

GREGORY D. WILLIAMS, ATTORNEY AT LAW, HIGHWAY 5 AT LAKE ROAD 5-33, P.O. BOX 431, NUNKING BEACH, MO 65079
TELEPHONE (373) 374-8761 FAX (373) 374-4432

Said CIAC shall be paid as follows: the sum of \$5,000.00 shall be due and payable at the time of execution of this Contract. The balance shall be due and payable in construction draws as construction on the sewage treatment facility progresses, provided, however, that the final balance of \$5,000.00 shall be due upon final certification of completion of said sewage treatment facility by OWC's engineer.

OWC shall take all necessary steps to apply for a permit from the Missouri Department of Natural Resources for the construction of the sewage treatment facility, and to promptly proceed with construction of such sewage treatment facility upon receipt of a MDNR construction permit therefor.

4. Easements to be Conveyed. Developer agrees to convey to OWC such easements for the construction, operation, maintenance, and repair of all water distribution and sewer collection lines, including an easement of access to repair all meters and remote reading devices installed within individual residential units, as are necessary for the proper operation, maintenance, and expansion of said Water System and Sewer System, including specifically a water main easement running along State Route KK across the Project, and a sewer transmission easement running along State Route KK and parallel to and 10 feet from said water main easement across the Project. Said water and sewer transmission easements shall consist of a temporary construction easement twenty feet in width, and a permanent easement ten feet in width lying five feet on either side of said water or sewer main as actually constructed.

5. Required Equipment. OWC agrees that will furnish to Developer, at its cost, all equipment, specifically including but not limited to, water meters, remote readers, interior shutoff valves, and other equipment which OWC requires be of a specific type or manufacture, so that OWC may insure uniformity of such equipment throughout its utility systems.

6. Existing Rates. Developer acknowledges that OWC's current rates for water service are \$7.75 per month base rate which includes 1,000 gallons, plus \$2.07 for each additional 1,000 gallons used each month. OWC's current rates for sewer service are \$23.90 per month flat rate for residential users, and \$23.90 per month base which includes 6,000 gallons plus \$3.98 per month for each additional 1,000 gallons of water consumption for commercial users. Developers further acknowledge that said rates are subject to adjustment under the ratemaking procedures of the PSC.

7. Existing Tariffs. Developer acknowledges that water and sewer service is provided by OWC in accordance with the terms and provisions of its existing tariffs on file with the Missouri Public Service Commission, and that the terms and conditions of those tariffs are incorporated herein by reference.

In witness whereof, the parties have set their hands the day and year first above written.

Osage Water Company

By Gregory D. Williams
Gregory D. Williams, President

Summit Investments, LLC

By Richard Ward
President Manager

BK 0493 PG 0786

WATERLINE EASEMENT

This indenture is made and entered into this 14th day of March, 2000, by and between Summit Investments, LLC, A Missouri Limited Liability Company, of the County of Camden, and the State of Missouri, hereinafter designated as Grantor (herein so styled, whether one or more) and Osage Water Company, a Missouri Corporation, ("OWC") and that for and in consideration of the sum of \$1.00 and other valuable considerations paid and delivered by Osage Water Company, a Missouri Corporation, the receipt of which is hereby acknowledged, Grantor hereby Grants, Bargains and Sells, Conveys and confirms to OWC the perpetual easement and right to enter upon the lands of Grantor, situated in the County of Camden, in the State of Missouri, described as follows:

All of the Eagle Woods development which is located in Section 7, Township 39 North, Range 16 West, more specifically described as follows:

Beginning at the intersection of State Route KK and the East Section line of Section 7, Township 39 North, Range 16 West, thence North along said East Section line 1402 feet, more or less, to the Southeast Corner of the Northeast Quarter of the Northeast Quarter of Section 7, Township 39 North, Range 16 West, thence West along the South line of the Northeast Quarter of the Northeast Quarter of Section 7 1,320 feet, more or less, to the Southwest Corner of the Northeast Quarter of the Northeast Quarter of Section 7, thence North along the West line of the Northeast Quarter of the Northeast Quarter of Section 7 1,320 feet, more or less, to the North Section line of Section 7, thence West along said North Section line of Section 7 473 feet, more or less, to the centerline of State Route KK, thence along the centerline of State Route KK south and east 3,390 feet, more or less, to the point of beginning.

and to erect, construct, install, lay, operate, survey, inspect, maintain, repair, rebuild, replace, remove and patrol on or over or under said lands, and in and upon all streets, roads, or highways abutting said lands, pipes, or tiles for the transmission of water, and all appliances necessary in connection therewith, together with the perpetual right to go in and upon said land for said purposes. The water line easement hereby granted shall be ten feet in width, the centerline thereof to be located across said land as waterlines are now or hereafter installed, and shall include all existing waterlines presently installed across said land. Grantor does further hereby convey to OWC all existing waterlines presently located across Grantor's property. Grantor does further convey to OWC an easement for the use of the existing water wells located on Grantor's property, together with title to and ownership of all equipment, fixtures, and appliances presently located on Grantor's property and utilized for the pumping of water from said water well.

To have and to hold said easement and rights unto OWC forever. It is understood and agreed that the consideration herein stated shall be the full consideration due to Grantor from OWC for going upon said lands and laying of said water pipe. Title to said water pipe line shall be and remain in OWC.

Grantor covenants to and with OWC that subject to exchange easements, if any, for public highways or roads, railroads, laterals, ditches, pipe lines, and electrical

DEFENDANT'S
EXHIBIT

EXHIBIT 2

transmission or distribution lines and telephone and telegraph lines covering the land herein described. Grantor is lawfully seized and possessed of said lands, has a good and lawful right and power to sell and convey them and that they are free and clear of all liens and encumbrances, except as herein stated and that Grantor will forever warrant and defend the title to said easement and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has set its hand and seal the day and year first above written.

Summit Investments, LLC,
A Missouri Limited Liability Company

Ronald Westernhaver
Manager

STATE OF MISSOURI

COUNTY OF CAMDEN

On this 14th day of March, 2000, before me appeared Ronald Westernhaver, to me personally known, who, being by me duly sworn, did say that he is the manager of Summit Investments, LLC, A Missouri Limited Liability Company, and that said instrument was signed and sealed in behalf of said company, and said Ronald Westernhaver acknowledged said instrument to be the free act and deed of said company.

[Signature]
Notary Public

GREGORY D. VILLIAMS
NOTARY PUBLIC
NOTARY SEAL STATE OF MISSOURI
CAMDEN COUNTY
1000 E. 10th St. St. Louis, MO 63104

4-18 493 Page 786

CONNIE ENELLING
Recorder, Camden County, MO

Camden Books
G.D. Williams 8/00

RECORDED
INDEXED
SEAL
CAMDEN COUNTY, MO

BOOK 93PG0786

27/02 09:13 TEL 57334 88

08093750181

SEWER LINE EASEMENT

This instrument is made and entered into this 14th day of March, 2000, by and between Baymont Investments, LLC, A Missouri Limited Liability Company, of the County of Camden and the State of Missouri, hereinafter designated as Grantor (herein so styled, whether one or more) and Osage Water Company, a Missouri Corporation ("OWC") and Bank of America, National Association, hereinafter designated as Grantee (herein so styled, whether one or more), the receipt of which is hereby acknowledged, hereby Grantor and delivered by OWC, the receipt of which is hereby acknowledged, hereby Grantee, enter upon the lands of Grantor situated in the County of Camden, in the State of Missouri, described as follows:

All of the Eagle Woods development which is located in Section 7, Township 39 North, Range 16 West more specifically described as follows:

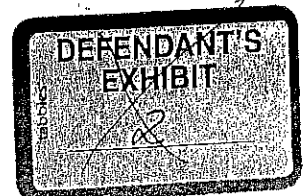
Beginning at the intersection of State Route KK and the East Section line of Section 7, Township 39 North, Range 16 West, thence North along said East Section line 1400 feet, more or less, to the Southeast Corner of the Northeast Quarter of the Northeast Quarter of Section 7, Township 39 North, Range 16 West, thence West along the South line of the Northeast Quarter of the Northeast Quarter of Section 7 1,320 feet, more or less, to the Southwest Corner of the Northeast Quarter of the Northeast Quarter of Section 7, thence North along the West line of the Northeast Quarter of the Northeast Quarter of Section 7 1,320 feet, more or less, to the North Section line of Section 7, thence West along said North Section line of Section 7 475 feet, more or less, to the centerline of State Route KK, thence along the centerline of State Route KK south and east 2,390 feet, more or less, to the point of beginning.

and to erect, construct, install, lay, operate, survey, inspect, maintain, repair, rebuild, replace, remove and parcel on or over or under said lands and in and upon all streets, roads, or highways abutting said lands, pipes or lines for the collection and transmission of wastewater, and all appliances necessary in connection therewith, together with the perpetual right to go in and upon said land for said purpose. The Sewer line easement hereby granted shall be ten feet in width, the centerline thereof to be located within said land as now or hereafter installed and shall include all existing sewer lines presently installed across said land. Grantor does further convey to OWC an easement for the use of all existing sewer lines, tanks, pumps and facilities located on Grantor's property, together with title to and ownership of all equipment, fixtures, and appliances presently located on Grantor's property and utilized for wastewater collection, transmission, and treatment.

To have and to hold said easement and rights unto OWC forever. It is understood and agreed that the consideration herein stated shall be the full consideration due to Grantor from OWC for going upon said lands and laying of said Sewer pipe line except that OWC shall be liable for such damages to crops as may accrue in the future after the original construction of said Sewer line by virtue of the same being located upon said above described lands. Title to said Sewer pipe line shall be and remain in OWC.

Grantor covenants to and with OWC that subject to existing easements, if any, for public highways or roads, railroads, laterals, ditches, pipe lines and electrical transmission or distribution lines and telephone and telegraph lines covering the land

EXHIBIT 3



herein described, Grantor is lawfully seized and possessed of said lands, has a good and lawful right and power to sell and convey them and that they are free and clear of all liens and encumbrances, except as herein stated and that Grantor will forever warrant and defend the title to said premises and the quiet possession thereof against the lawful claims and demands of all persons whatsoever.

IN WITNESS WHEREOF, we have on our hands this day and year first above written.

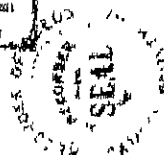
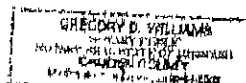
W. J. Jones

Stewart Investments, LLC,
A Missouri Limited Liability Company
Ronald E. Williams
Manager

STATE OF MISSOURI
COUNTY OF CAMDEN

On this 11th day of March, 2008, before me appeared Ronald Williams, to me personally known, who, being by me duly sworn, did say that he is the manager of Stewart Investments, LLC, A Missouri Limited Liability Company, and that said instrument was signed and sealed in behalf of said company, and said Ronald Williams acknowledged said instrument to be the free act and deed of said company.

[Signature]
Notary Public



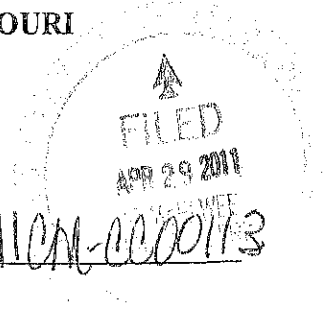
FILED 27 MARCH 2008
IN THE OFFICE OF THE CLERK
OF THE CIRCUIT COURT
FOR THE COUNTY OF CAMDEN
MISSOURI
[Signature]

MO49380183

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

SUMMIT INVESTMENTS, L.L.C.,)
)
Plaintiff,)
)
vs.)
)
OSAGE WATER COMPANY,)
)
Defendant.)

Case no. 11CM-0000113



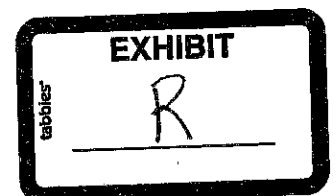
[Serve: Gary V. Cover, Receiver
130 W. Jefferson St,
Clinton, MO 64735]

PETITION

Count I
Breach of Contract

NOW COMES Plaintiff, and in support of its request for relief in this Count I, shows to the Court:

1. Plaintiff is a limited liability company organized and existing under the laws of the State of Missouri, doing business in Camden County, Missouri.
2. Defendant is a general business corporation organized and existing under the laws of the State of Missouri, doing business in Camden County, Missouri, providing services as a public utility.
3. On or about January 12, 1999, Plaintiff and Defendant entered into a certain contract whereby Plaintiff agreed to construct and install certain equipment and appurtenances and convey same to Defendant, and to pay certain sums of money to Defendant, in return for which Defendant agreed to provide sewer and water services to fifty-three (53) residences to be constructed by Plaintiff in a project called "Eagle Woods", located in Section 6, Township 39 North, Range 16 West, Camden County, Missouri.
4. A copy of said contract [hereinafter "Contract"] is attached hereto, marked "Exhibit 1", and made part hereof by this reference.



5. Thereafter, Plaintiff performed all duties imposed on Plaintiff by the Contract, including the conveyance of easements to Plaintiff, by execution and recordation of documents prepared by Plaintiff, as set forth in paragraph 4 of the Contract.

6. Copies of said easements are attached hereto, marked "Exhibit 2" and "Exhibit 3", and made part hereof by this reference.

7. Notwithstanding Plaintiff's performance, and despite repeated demands, Defendant has failed and refused and continues to fail and refuse to provide such services, but instead allowed such services to be provided to projects controlled by Defendant's principals.

8. As a direct consequence of Defendant's refusal to perform, Plaintiff has suffered damages in that Plaintiff has been unable to construct the remaining residences on his land and has therefore lost his profit on the sale of said residences; further, Plaintiff has been forced to continue making payments of principal and additional interest to the mortgagee of the land where said remaining residences were to have been located.

9. As additional damage to Plaintiff, while Plaintiff relied on the terms of the Contract and was unaware that the services would not be provided to the residences by Defendant, Plaintiff continued construction of such residences, and therefore was cited by the Department of Natural Resources, costing Plaintiff not only time, but large sums of money for attorneys' fees and penalties.

10. All of Plaintiff's damages will be proved in specificity at trial, but exceed \$100,000.00 at the time of filing this petition.

WHEREFORE, Plaintiff prays judgment against Defendant in the total amount of Plaintiff's damages; for Plaintiff's costs incurred; and for such other and further orders as the Court may deem just and proper in the circumstances.

Count II
Specific Performance

NOW COMES Plaintiff, and in support of its request for relief in this Count II, shows to the Court:

1. Plaintiff restates and realleges paragraphs 1 through 9 of Count I and paragraph 1 of this Count II.

2. Defendant is the only public utility approved by the Department of Natural Resources in the geographic area where Plaintiff's remaining real estate is located, and because of the statutes, rules and regulations governing the Department of Natural Resources, no other public utility will be approved in said area while Defendant continues to be thus approved.

3. Under Missouri law, Plaintiff cannot utilize his land for the construction of residences without provision of the said services by Defendant.

4. For these reasons, Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that this Court enter the following orders:

A. Declaring Plaintiff to be entitled to water and sewer services provided by Defendant to Plaintiff's remaining property within the Eagle Woods project;

B. Directing that Defendant specifically perform Defendant's contract with Plaintiff by providing the services promised;

C. Awarding Plaintiff attorneys' fees and costs of this suit; and

D. Granting Plaintiff such other or further relief as the Court may deem just and proper in the circumstances.

COULTAS, GREEN & BENNE, L.L.C.

BY: 

Jeffrey E. Green #41379

Attorneys at Law

4558 Osage Beach Parkway, Suite 106

Osage Beach, MO 65065

(573) 348-0122; fax (573) 348-0124

jeff@cgbllaw.net

ATTORNEYS FOR PLAINTIFF

Osage Water Company Water Supply Contract Page 1

WATER AND SEWER SUPPLY CONTRACT

THIS CONTRACT is made and entered into this 12 day of January, 1998, by and between Osage Water Company, a Missouri Public Utility Corporation, "OWC", and Summit Investments, LLC, A Missouri Limited Liability Company, referred to herein as the "Developer".

Whereas, OWC is a Missouri Corporation authorized by the Missouri Public Service Commission to provide water and sewer service and Developer is the owner of property located off of State Route KK near Osage Beach, Missouri, which property is known as Eagle Woods Subdivision (the "Project"); and

Whereas, Developer has prepared and desires to implement a plan for the overall development of its land into residential housing and other facilities compatible therewith that contemplates the construction of 53 residential houses and other facilities over a period of one or more years; and

Whereas, Developer desires to obtain the benefit of public water and sewer utility service for the present and future residents of its property and desires to contract with OWC for said public water and sewer utility service.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, the undersigned do hereby covenant, contract, and agree as follows.

1. Request for Service. Developer does hereby request public water and sewer service from OWC for its property, and requests that the Missouri Public Service Commission ("PSC") grant to OWC a certificate of convenience and necessity to provide such service to its property. OWC shall be solely responsible for the cost of preparing and filing such applications, feasibility studies, engineering plans, and other documentation that may be required by the PSC for the processing and approval of service by OWC to Developer.

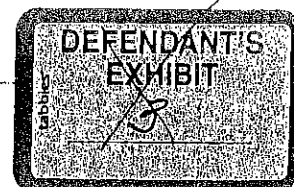
2. Water Supply. OWC agrees to construct and install a water main from OWC's water well site located in Golden Glade Subdivision on Lake Road KK-33 to the northwest property line of Developer's property, at OWC's expense.

OWC agrees to make such additional water main extensions as may be required to extend water utility service to building sites located within Developer's project in accordance with the main extension rules set forth in OWC's Water Tariff on file with the Missouri Public Service Commission.

OWC shall pay the first \$250 of the cost of connecting each residential dwelling to the water distribution system, which shall consist, in the absence of a specific written agreement to the contrary, of the provision of a meter pit, lid, loop, and water meter for each such residential dwelling.

Developer agrees to convey to OWC its existing non-community drinking water supply presently serving Eagle Woods Subdivision, together with all water mains and easements for same, pumps, storage tanks, well control panels, electrical service, pump-house, and other fixtures and equipment associated therewith. Developer shall provide OWC with complete documentation of all costs incurred by Developer in the construction of said non-community drinking water supply.

GREGORY D. WILLIAMS, ATTORNEY AT LAW, HIGHWAY 5 AT LAKE ROAD 5-33, P.O. BOX 431, SUDBURY BEACH, MO 65079
TELEPHONE (573) 374-8761 FAX (573) 374-4432



In the event that existing water lines installed by Developer prior to the date of this Contract are of a smaller diameter than specified by OWC or its engineer, OWC shall be solely responsible for replacing such existing water lines with a water line of a diameter acceptable to OWC, and Developer shall bear no part of the cost of such water line replacement.

Developer shall construct all water lines after the date of this Contract in conformance with OWC's Water Tariff Rule 14(A)(7).

3. Water for Fire Protection. Developer acknowledges that OWC does not propose to provide water for fire protection purposes to Developer's project, and has advised Developer to consult with applicable local governmental entities, including, but not limited to, the Osage Beach Fire Protection District, to determine whether Developer is required to provide water for fire protection purposes within the Project, and that Developer has made such inquiries as Developer deems necessary prior to executing this Contract. In the event that Developer desires or is required to provide water for fire protection purposes within the Project, Developer shall be solely responsible for the cost of construction of all facilities required by the Osage Beach Fire Protection District or any other government entity for the purpose of furnishing water for fire protection, including, but not limited to, additional sprinkler storage facilities in excess of that necessary to meet Missouri Department of Natural Resources requirements for potable drinking water, fire hydrants, dry hydrants, standpipes connected to the Lake of the Ozarks or other non-potable water sources, fire pumps, and any other water facilities not customarily utilized in the provision of potable drinking water by OWC. If such additional fire protection water supply is provided by or through OWC's water system, Developer shall pay to OWC the actual cost of construction incurred by OWC for the provision of such additional capacity or facilities.

4. Sewer System. OWC agrees to construct and install an effluent collection sewer from OWC's sewage treatment facility site located in the Southeast corner of Section 6, Township 39 North, Range 16 West to the northwest corner of Developer's property, at OWC's expense. OWC shall provide the necessary engineering plans and DNR permits for the construction of said effluent collection sewer.

OWC agrees to make such additional effluent collection sewer extensions as may be required to extend sewer utility service to building sites located within Developer's project in accordance with the main extension rules set forth in OWC's Sewer Tariff on file with the Missouri Public Service Commission.

Developer agrees to pay to OWC the sum of Thirty Thousand Dollars (\$30,000.00) as a Contribution in Aid of Construction for the construction of a sewage treatment facility with sufficient capacity to serve the fifty-three (53) single family residential homes presently contemplated by Developer within the Eagle Woods project, and to transfer and convey to OWC all engineering plans, specifications, and Department of Natural Resources permits presently owned by Developer for such sewage treatment facility. OWC agrees to commence construction of said sewage treatment facility immediately upon issuance of a permit therefore by the Missouri Department of Natural Resources.

Developer acknowledges that said CIAC is not refundable and that Developer will not receive any future credits or rebates of said sum, in that said CIAC represents the "net cost" of constructing said sewage treatment facility after application of OWC's customary sewer investment of \$500 per single family residential dwelling.

Said CIAC shall be paid as follows: the sum of \$5,000.00 shall be due and payable at the time of execution of this Contract. The balance shall be due and payable in construction draws as construction on the sewage treatment facility progresses, provided, however, that the final balance of \$5,000.00 shall be due upon final certification of completion of said sewage treatment facility by OWC's engineer.

OWC shall take all necessary steps to apply for a permit from the Missouri Department of Natural Resources for the construction of the sewage treatment facility, and to promptly proceed with construction of such sewage treatment facility upon receipt of a MDNR construction permit therefor.

4. Easements to be Conveyed. Developer agrees to convey to OWC such easements for the construction, operation, maintenance, and repair of all water distribution and sewer collection lines, including an easement of access to repair all meters and remote reading devices installed within individual residential units, as are necessary for the proper operation, maintenance, and expansion of said Water System and Sewer System, including specifically a water main easement running along State Route KK across the Project, and a sewer transmission easement running along State Route KK and parallel to and 10 feet from said water main easement across the Project. Said water and sewer transmission easements shall consist of a temporary construction easement twenty feet in width, and a permanent easement ten feet in width lying five feet on either side of said water or sewer main as actually constructed.

5. Required Equipment. OWC agrees that will furnish to Developer, at its cost, all equipment, specifically including but not limited to, water meters, remote readers, interior shutoff valves, and other equipment which OWC requires be of a specific type or manufacture, so that OWC may insure uniformity of such equipment throughout its utility systems.

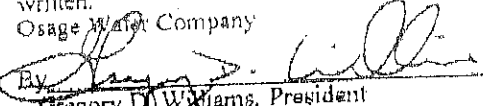
6. Existing Rates. Developer acknowledges that OWC's current rates for water service are \$7.75 per month base rate which includes 1,000 gallons, plus \$2.07 for each additional 1,000 gallons used each month. OWC's current rates for sewer service are \$23.90 per month flat rate for residential users, and \$23.90 per month base which includes 6,000 gallons plus \$3.98 per month for each additional 1,000 gallons of water consumption for commercial users. Developers further acknowledge that said rates are subject to adjustment under the ratemaking procedures of the PSC.

7. Existing Tariffs. Developer acknowledges that water and sewer service is provided by OWC in accordance with the terms and provisions of its existing tariffs on file with the Missouri Public Service Commission, and that the terms and conditions of those tariffs are incorporated herein by reference.

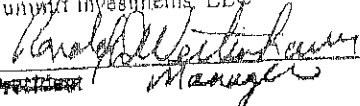
In witness whereof, the parties have set their hands the day and year first above

written.

Osage Water Company

By: 
Gregory D. Williams, President

Summit Investments, LLC

By: 
Kenneth D. Williams, Manager

GREGORY D. WILLIAMS, ATTORNEY AT LAW, HIGHWAY 5 AT LAKE ROAD 5-33, P.O. BOX 431, BURGESS BEACH, MO 65079
TELEPHONE (573) 374-8761 FAX (573) 374-4432

BK 0493 PG 0786
WATERLINE EASEMENT

This indenture is made and entered into this 14th day of March, 2000, by and between Summit Investments, LLC, A Missouri Limited Liability Company, of the County of Camden, and the State of Missouri, hereinafter designated as Grantor (herein so styled, whether one or more) and Osage Water Company, a Missouri Corporation, ("OWC") and that for and in consideration of the sum of \$1.00 and other valuable considerations paid and delivered by Osage Water Company, a Missouri Corporation, the receipt of which is hereby acknowledged, Grantor hereby Grants, Bargains and Sells, Conveys and confirms to OWC the perpetual easement and right to enter upon the lands of Grantor, situated in the County of Camden, in the State of Missouri, described as follows:

All of the Eagle Woods development which is located in Section 7, Township 39 North, Range 16 West, more specifically described as follows:

Beginning at the intersection of State Route KK and the East Section line of Section 7, Township 39 North, Range 16 West, thence North along said East Section line 1402 feet, more or less, to the Southeast Corner of the Northeast Quarter of the Northeast Quarter of Section 7, Township 39 North, Range 16 West, thence West along the South line of the Northeast Quarter of the Northeast Quarter of Section 7 1,320 feet, more or less, to the Southwest Corner of the Northeast Quarter of the Northeast Quarter of Section 7, thence North along the West line of the Northeast Quarter of the Northeast Quarter of Section 7 1,320 feet, more or less, to the North Section line of Section 7, thence West along said North Section line of Section 7 475 feet, more or less, to the centerline of State Route KK, thence along the centerline of State Route KK south and east 3,390 feet, more or less, to the point of beginning.

and to erect, construct, install, lay, operate, survey, inspect, maintain, repair, rebuild, replace, remove and patrol on or over or under said lands, and in and upon all streets, roads, or highways abutting said lands, pipes, or tiles for the transmission of water, and all appliances necessary in connection therewith, together with the perpetual right to go in and upon said land for said purposes. The water line easement hereby granted shall be ten feet in width, the centerline thereof to be located across said land as waterlines are now or hereafter installed, and shall include all existing waterlines presently installed across said land. Grantor does further hereby convey to OWC all existing waterlines presently located across Grantor's property. Grantor does further convey to OWC an easement for the use of the existing water wells located on Grantor's property, together with title to and ownership of all equipment, fixtures, and appliances presently located on Grantor's property and utilized for the pumping of water from said water well.

To have and to hold said easement and rights unto OWC forever. It is understood and agreed that the consideration herein stated shall be the full consideration due to Grantor from OWC for going upon said lands and laying of said water pipe. Title to said water pipe line shall be and remain in OWC.

Grantor covenants to and with OWC that subject to easements, if any, for public highways for roads, railroads, laterals, ditches, pipe lines and electrical

EXHIBIT 2



transmission or distribution lines and telephone and telegraph lines covering the land herein described. Grantor is lawfully seized and possessed of said lands, has a good and lawful right and power to sell and convey them and that they are free and clear of all liens and encumbrances, except as herein stated and that Grantor will forever warrant and defend the title to said easement and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has set its hand and seal the day and year first above written.

Summit Investments, LLC,
A Missouri Limited Liability Company

Ronald Westenhaver
Manager

STATE OF MISSOURI

COUNTY OF CAMDEN

On this 14th day of March, 2000, before me appeared Ronald Westenhaver, to me personally known, who, being by me duly sworn, did say that he is the manager of Summit Investments, LLC, A Missouri Limited Liability Company, and that said instrument was signed and sealed in behalf of said company, and said Ronald Westenhaver acknowledged said instrument to be the free act and deed of said company.

Gregory D. Williams
Notary Public

GREGORY D. WILLIAMS
NOTARY PUBLIC
IN THE STATE OF MISSOURI
CAMDEN COUNTY
EXPIRATION DATE 12/31/2002

FILED
28 March 2000
4:18 PM
993 786

DESSIE ENELLING
Recorder, Camden County, MO

Camden Books
G.D. Williams 2100

RECORDED
SEAL
CAMDEN COUNTY

BOOK 93 PG 0786

SAUQ9376018.9

SEWER LINE EASEMENT

This instrument is made and entered into this 14th day of March, 2000, by and between Summit Investments, LLC, A Missouri Limited Liability Company, of the County of Camden and the State of Missouri, hereinafter designated as Grantor (herein as styled, "Grantor") and OWC Water Company, a Missouri Corporation ("OWC") and hereinafter designated as Grantee, for the purpose of conveying to OWC the perpetual easement and right to lay, install, construct, maintain, repair, replace, remove and remove and/or under said lands, and in and upon all streets, roads, or highways abutting said lands, pipes, or lines for the collection and transmission of wastewater, and all appurtenances necessary in connection therewith, together with the perpetual right to go in and upon said land for said purposes. The Sewer line easement hereby granted shall be ten feet in width, the centerline thereof to be located across said land as now or hereafter installed and shall include all existing sewer lines presently installed across said land. Grantor does hereby convey to OWC an easement for the use of all existing sewer lines, tanks, pumps and facilities located on Grantor's property, together with title to and ownership of all equipment, fixtures, and appurtenances presently located on Grantor's property and utilized for wastewater collection, transmission, and treatment.

All of the Eagle Woods development which is located in Section 7, Township 39 North, Range 16 West, more specifically described as follows:

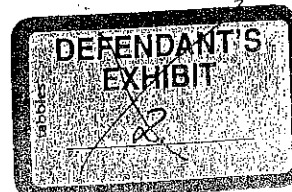
Beginning at the intersection of State Route KK and the East Section line of Section 7, Township 39 North, Range 16 West, thence North along said East Section line 1400 feet, more or less, to the Southeast Corner of the Northeast Quarter of the Northeast Quarter of Section 7, Township 39 North, Range 16 West, thence West along the South line of the Northeast Quarter of the Northeast Quarter of Section 7 1,320 feet, more or less, to the Southwest Corner of the Northeast Quarter of the Northeast Quarter of Section 7, thence North along the West line of the Northeast Quarter of the Northeast Quarter of Section 7 1,320 feet, more or less, to the North Section line of Section 7, thence West along said line, more or less, to the North Section line of Section 7 275 feet, more or less, to the centerline of State Route KK, thence along the centerline of State Route KK south and east 3,300 feet, more or less, to the point of beginning.

and in and upon said lands, and in and upon all streets, roads, or highways abutting said lands, pipes, or lines for the collection and transmission of wastewater, and all appurtenances necessary in connection therewith, together with the perpetual right to go in and upon said land for said purposes. The Sewer line easement hereby granted shall be ten feet in width, the centerline thereof to be located across said land as now or hereafter installed and shall include all existing sewer lines presently installed across said land. Grantor does hereby convey to OWC an easement for the use of all existing sewer lines, tanks, pumps and facilities located on Grantor's property, together with title to and ownership of all equipment, fixtures, and appurtenances presently located on Grantor's property and utilized for wastewater collection, transmission, and treatment.

To have and to hold said easement and rights unto OWC forever. It is understood and agreed that the consideration herein stated shall be the full consideration due to Grantor from OWC for going upon said lands and laying of said sewer pipe line except that OWC shall be liable for such damages to crops as may accrue in the future after the original construction of said sewer line by virtue of the same being located upon said above described lands. Title to said sewer pipe line shall be and remain in OWC.

Grantor covenants to and with OWC that subject to existing easements, if any, for public highways or roads, railroads, levees, ditches, pipe lines and electrical transmission or distribution lines and telephone and telegraph lines covering the land

EXHIBIT 3



herein described, Grantor is lawfully seized and possessed of said lands, has a good and lawful right and power to sell and convey them and that they are free and clear of all liens and encumbrances, except as herein stated and that Grantor will forever warrant and defend the title to said premises and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, we have set our hands this day and year first above written.

Witness

Shawnee Investments, LLC,
A Missouri Limited Liability Company
[Signature]
Manager

STATE OF MISSOURI

COUNTY OF CAMDEN

On this 12th day of March, 2002, before me appeared Ronald Williams, to me personally known, who, being by me duly sworn, did say that he is the manager of Shawnee Investments, LLC, a Missouri Limited Liability Company, and that said instrument was signed and sealed in behalf of said company, and said Ronald Williams acknowledged said instrument to be the free and voluntary act of said company.

[Signature]
Notary Public

GREGORY D. WILLIAMS
Notary Public
Missouri
Commission Expires 06/27/05

MO64360187

FILED
MAR 27 2002
CLERK OF COURT
JUDICIAL CIRCUIT
SOUTHERN DISTRICT
OF MISSOURI
ST. LOUIS, MO
BY *[Signature]*