**IN THE 30TH JUDICIAL CIRCUIT COURT OF BENTON COUNTY**

**STATE OF MISSOURI**

George M. Hall, §

**Petitioner,**  §

**-vs-** § **CASE NO.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Benton County Sewer District #1 and §

Scott Totten, Receiver; BCSD #1 §

**Respondents,** §

Chris Koster, Attorney General for §

The State Of Missouri, §

**Party of Interest.** §

**PETITION FOR DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Come Now George M. Hall, (Petitioner) and makes and files this, his Petition for Declaratory Judgment pursuant to Revised Statutes of Missouri, §§ 478.070, 527.010, 527.020, 527.030 and Missouri Rules of Civil Procedure, Rules 87.01, 87.02, 87.04; and as grounds therefor submit the following:

**INTRODUCTION**

**1**. Since 1994, the Benton County Sewer District #1 has existed in a deluge

of deceit, misleading information, and outright falsehoods. This quagmire of malfeasance, has run roughshod over the approximate 358 account users, leaving many in a state of confusion, disgust, anger, depression and agitation. In a normal world, the Benton County Sewer District #1 operations would have a system which would have been viable, feasible, created, funded, operated and maintained in accordance with all legal standards and

requirements. In reality, the Benton County Sewer District #1, for nearly 21

years, has eviscerated the constitutional rights of those it enslaved as users, account holders, and further encompassed all common taxpayers under its ruse of corruption for a select few to achieve a financial benefit and gain. The conception of the Benton County Sewer District # 1was founded upon pure greed by a select few, corroborated with the assistance and aid of government agencies from the State of Missouri and the United States. As Julian Casablancas stated; “Greed is the inventor of injustice as well as the current enforcer.” Petitioners will show actual facts establishing that greed was one of the reasons the Benton County Sewer District #1 came to exist and the current atrocities and injustice is being enforced and maintained by the greed of those with apparent power and authority.

**2**. The Petitioner seeks declaratory and injunctive relief, which will declare the Benton County Sewer District #1 and its ordinances, policies, practices and operations to be invalid, illegal, unconstitutional, and further be ***null and void ab initio,*** and will declare that the Benton County Sewer District #1 and the State and Federal government agencies are still subject to accountability and liability for the deprivation of constitutional rights of the residents who were and are still being forced to endure the violations bestowed upon them by the Respondents and others who have conspired with and are still conspiring to strip away any constitutional safeguards and rights guaranteed under the provisions of the United States Constitution, the Missouri Constitution, and the statutes and laws of the State of Missouri. The Petitioner seeks an injunction to prevent the agencies from dissipating the assets by extraordinary transactions during the pendency of this case, and relief for violating the constitutional rights and depriving Plaintiffs due process and infringement of the equal application of law. Plaintiffs allege

Ten (10) counts against the Benton County Sewer District #1, to-wit:

**COUNT I;** DECLARATORY JUDGMENT AGAINST RESPONDENT,BENTON COUNTY SEWER DISTRICT #1 THAT ITS MANDATORY CONNECTION ORDINANCE IS INVALID, ILLEGAL, AND UNCONSTITUTIONAL.

**COUNT II**; DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1, THAT REQUIRING PETITIONER TO MANDATORILY CONNECT TO ITS SEWER LINES RESULTED IN AN UNEQUAL APPLICATION OF LAW AND A DENIAL OF DUE PROCESS.

**COUNT III**; DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1, THAT REQUIRING PEITIONER TO MANDATORILY CONNECT TO ITS SEWER LINES RESULTED IN AN UNCONSTITUTIONAL TAKING OF PETITIONER’S PERSONAL PROPERTY WITHOUT JUST COMPENSATION.

**COUNT IV;** DECLARATORY JUDGMENT THAT THERE WAS NO EVIDENCE TO SUPPORT THE PETITION FOR FORMATION OF A COMMON SEWER DISTRICT OR THE COURT’S FINDING OF NECESSITY FOR A COMMON SEWER DISTRICT IN CASE NO. CV-194-55CC AND THAT THE PROVISIONS OF THE REVISED STATUTES OF MISSOURI CHAPTER 204 § 204.250 ARE UNCONSTITUTIONAL.

**COUNT V**; DECLARATORY JUDGMENT THE RESPONDENT, BENTON COUNTY SEWER DISTRICT #1 WAS COURT ORDERED TO FUND THE CONSTRUCTION OF THE COMMON SEWER DISTRICT BY REVENUE BONDS, APPROVED BY THE VOTERS, AND THE FUNDING OBTAINED (USDA LOAN) BY THE RESPONDENT, BENTON COUNTY SEWER DISTRICT #1 WAS UNAUTHORIZED, UNLAWFUL, ILLEGAL AND UNCONSTITUTIONAL.

**COUNT VI;** DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWERE DITRICT #1 FINDING THAT RESPONDENT CREATED, ORGANIZED AND FUNDED A SEWER SUB-DISTRICT CONTRARY TO MISSOURI STATE LAW, RSMO CHAPTER 204 §§ 204.250(3), 204.250(4), 204.250(5), 204.250(6) and 204.250(7).

**COUNT VII;** DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1, THAT THE DISTRICT FORMATION AND FUNDING WAS THE PROMOTION FOR AN UNCONSTITUTIONAL REVENUE GENERATING SCHEME.

**COUNT VIII**; DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1 THAT ITS OPERATION PROCEDURES CONFLICTED WITH THE PROVISIONS OF THE MISSOURI STATE CONSTITUTION, THE MISSOURI REVISED STATUTES AND WERE THERFORE UNCONSTITUTIONAL

**COUNT IX;** DECLATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1 THAT ITS PROCEDURE OF THREATENING TO FILE LIENS, FILING LIENS WITHOUT GIVING DUE NOTICE AND A HEARING TO DETERMINE DELINQUENCY OR APPEAL FROM ANY FINDING OF DELINQUENCY, CONSTITUTES A DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF LAW AND IS THERFORE ILLEGAL, INVALID AND UNCONSTITUTIONAL

**COUNT X;** DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1 FOR THE UNEQUAL APPLICATION OF LAW, DENIAL OF DUE PROCESS, AND UNCONSTITUTIONAL TAKING OF PETITIONERS’ PROPERTY.

**JURISDICTION AND VENUE**

**3**. The Court has subject matter jurisdiction over this civil case under R.S. Mo. Section 478.070 This action arises under the Missouri Declaratory Judgment Act, R.S. MO. Section 527.010, which authorizes the circuit courts to declare the rights, status and legal relations of the parties

**4**. This Court has personal jurisdiction over the Attorney General of the State of Missouri and over the corporate defendant, Benton County Sewer District #1which is a Missouri non-profit corporation with a registered agent and principal office located in Benton County, Missouri. The transactions and acts giving rise to the causes of action set forth occurred within the state of Missouri.

**5**. Venue in this Court is proper pursuant to R. S. Mo. § 508.010(2), which provides that “when there are several defendants, and they reside in different counties, the suit may be brought in any such county.” Defendant Benton County Sewer District #1 has their registered office in Benton County, Missouri, which is deemed to be the place of residence for this corporation. The Missouri Attorney General maintains his principal office in Cole County, Missouri and is being served as a party in this action pursuant to R. S. Mo. § 527.110, which provides, “….if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.”

**6**. Upon information and belief, defendant corporation Benton County Sewer District #1 conspired together with others, who will be identified in discovery, to develop a common plan and scheme to abrogate the provisions of the Missouri Constitution and R. S. Mo. Chapter 204 in the formation of a common sewer district and implement the forming of an unconstitutional revenue generating scheme. Upon information and belief, the defendant corporation Benton County Sewer District #1 communicated and cooperated together and with others, who will be identified in discovery, in executing the plan, so that there are many common factual and legal issues which warrant the joinder of all parties in one action.

**IDENTIFICATION OF PETITIONERS**

**7**. Prior to the formation of Benton County Sewer District #1, Petitioner’s residence had an on-site wastewater treatment system. This system was a fully functional septic system and lateral field. The residential system had never failed nor had their system ever been cited for a violation by the local public health authority based upon Petitioner’s information and belief.

**8**. The creation and funding for the Benton County Sewer District #1 was submitted to the voters of the proposed district in 1994 and 1995 respectively. Petitioner asserts based upon information and belief, property owners in the proposed district area were not permitted to vote on the ballot issue of creation of the district or the subsequent ballot on funding for the district. These property owners were not permitted their say on the ballot issues in either of these elections even though as property owners they would be subject to the ramifications of the outcome of any election results.

**9**. Upon the approval of both ballot issues, creation and funding for the district, Petitioner and others were **mandatorily** made and forced to connect their residence to the Benton County Sewer District #1 even though they had a properly functioning on-site wastewater treatment system.

**10**. Petitioner Hall has been a property owner and resident residing within the Benton County Sewer District #1 since 2009. When acquiring his property, Hall was informed by the Benton County Sewer District #1 it was **mandatory** he be connected to its system for wastewater treatment and disposal. Petitioner requested his property be removed from the District boundary area and that request was denied without a hearing. Petitioner Hall is being billed for services yet other residences that are within the mandatory connection requirement have never been connected to the sewer district and never billed.

**IDENTIFICATION OF RESPONDENTS**

**11**. Respondent Benton County Sewer District #1 was created upon a vote of residents in November, 1994. The Benton County Sewer District #1 is a political sub-division located in Benton County Missouri with a business office located at 938 East Main St., Warsaw, Missouri. Scott Totten is the current Receiver over the Benton County Sewer District #1 and was appointed as Receiver of the Benton County Sewer District #1 in his official capacity as an employee of the Missouri Department of Natural Resources.

Respondent Receiver Scott Totten can be served at Department of Natural Resources, 1101 Riverside Dr., Jefferson City, Missouri 65102.

**12**. Party of Interest, Kevin Koster is the Attorney General of the State of Missouri and is made a party to this action pursuant to the provisions of

Missouri Revised Statutes Chapter 527, § 527.110. Respondent Missouri Attorney General can be served at Supreme Court Bldg. 207 W. High St., Jefferson City, Missouri 65102.

**FACTS COMMON TO ALL COUNTS**

**13**. In Case No. CV194-55CC, in the 30th Judicial Circuit Court of Benton County, Missouri, the Benton County Commissioners petitioned for formation of a common sewer district on April 1, 1994. The petition alleged;

* “The construction and maintenance of a **common** sewer system of trunk sewers and sewage treatment plants is necessary to secure proper sanitary conditions for the preservation of public health in a natural drainage area all of which lies within Benton County, Missouri, a Third Class County.”
* “The aim and purposes for which the district is to be created is to provide a **common sanitary sewer system** for the proper processing of sewage effluent for the **occupants of the sewer district area.**”

**14**. April 20, 1994, the 30th Judicial Circuit Court of Benton County, Missouri issued the following finding in Case No. CV194-55CC;

* “**The Court Finds,** The construction and maintenance of a **common sewer system** of trunk sewers and sewage treatment plants is necessary to secure proper sanitary conditions for the preservation of public health in a natural drainage area, all of which lies within Benton County, Missouri, a Third Class County. That the anticipated cost of such district is $2,608,735.00, which includes the connecting lines to residences and businesses, main lines and treatment plants and facilities.”

* “**It Is Thereby Ordered, Adjudged and Decreed,** by the Court that the following three persons are hereby appointed as commissioners **who shall lay out and define the exact boundaries of the common sewer district** which shall conform to the map labeled as Exhibit A, attached to this Order, and incorporated herein by this reference for all purposes: Michael H. Zimmerman, Bill Dockery, Glen Brenner.”
* “**It Is Further Ordered, Adjudged and Decreed,** by the Court that said sewer district shall be known as Benton County Sewer District #1, and the **proposed method of assessment for such district shall be: Revenue Bonds.**”
* “**It Is Further Ordered, Adjudged and Decreed,** by the Court that the question of creating, organizing and incorporating under Sections 204.250 to 204.470, RSMo, such **common sewer district** shall be submitted to the **legal voters** residing within such boundaries **as specifically determined by said commissioners**. Said question shall be determined at a general or special election called for that purpose, as Petitioner, Benton County, Missouri, so elects.”

**15**. The petition in Case No CV194-55CC was filed on April 1, 1994 and subsequently granted a mere nineteen (19) days later by the Court. There was no public notice given concerning the petition nor was any opportunity for any interested parties to seek intervention in the matter permitted.

**16**. The record in the case is devoid of any evidence, testimony or exhibits that would support the finding that “the construction and maintenance of a common sewer system of trunk sewers and sewage treatment plants is necessary to secure proper sanitary conditions for the preservation of public health….”

**17**. September 6, 1994, in Case No. CV194-55CC, the Court issued its order approving commissioners report and authorizing election.

**18**. November 8, 1994, after majority vote in the special election, the Benton County Sewer District #1 was created.

**19**. November 7, 1995, the residents of the area known as the Benton County Sewer District #1, voted on the ballot issue for funding of the Benton County Sewer District #1. The funding source was to be by the approval of voters for **revenue bonds,** which was previously court ordered, adjudged and decreed.

**20**. The Official Ballot for the special bond election on Tuesday, November 7, 1995, proposed the following question:

“Shall Benton County Sewer District #1 of Benton County, Missouri, issue its sewer district revenue bonds in the amount of $2,000,000 for the purpose of acquiring, constructing, improving and extending a sewage system, the cost of operation and maintenance of said System and the principal of the interest on said revenue bonds to be payable solely from the revenues derived by the District from the operation of its sewage system, including all future extensions and improvements thereto?”

**21**. The voters approved the Revenue Bond question.

**22**. Prior to the election on the revenue bond question, on Tuesday, November 2, 1995, the newspaper article in the Benton County Enterprise, (5 days prior to the special election on the revenue bond issue), stated the following:

“The Facility Plan for the Benton County Sewer District No. 1 has been completed……The new Sewer District **will serve the Warsaw High School and Middle School** and is urgently needed for the area. On Tuesday, November 7, residents of the District will vote on two million dollars of revenue bonds…..”

**23**. The voters were intentionally fed a misrepresentation that the Warsaw High School and Middle School would be served by the Sewer District and the Revenue Bonds were for the entire District area.

**24**. Prior to the Revenue Bond election, the District Board of trustees had predetermined the High School and others **would not be served** by the District. This determination is clearly reflected by the Board Minutes of the District Board meeting on July 18, 1995, which was approximately **(4) four months prior to the Revenue Bond Election.** The Minutes of this Meeting reflect the following:

“….Ken Hanna asked why the areas to be served in Phase I of the project were chosen. Consensus seemed to be, **to get a fundable project size** and serve the most densely populated areas first, with all residents to be served eventually, as voters in Phase II and later areas vote revenue bonds to construct in those areas…..”

**25**. The Revenue Bond election was for funding the **entire common sewer** **district.** The simple and clear reading of the ballot language clearly established **the revenue bond election was for funding the entire district** **boundary**. **The ballot made no reference to a Phase I or Phase II or any** **inference that a smaller sub-district was being voted on**. The ballot as presented to the voters and previously court ordered was to fund the entire district boundary area. The voters were led to believe, as well as the 30th Judicial Circuit Court, the entire district project would cost $2,608,735.00 for the entire District boundary, yet as the Board Minutes reflect prior to the revenue bond election, the project cost would be $4,000,000.00 and this was not for the entire District. The Benton County Sewer District #1 intentionally misled the Court and the voters on the Revenue Bond funding.

**26**. July 18, 1995, Board Meeting Minutes of the Benton County Sewer District #1 clearly establishes the intent of the Board Trustees to dupe the voters of the District and create a sewer sub-district contrary to provisions of Missouri State Law and without voter approval for any such sub-district. The minutes of this meeting reflect the Board’s intention to create a sub-district without the voters and district residents knowing as the following actions transpired:

“….The amount of money needed and how much to ask the voters to approve, in the revenue bond election was discussed. Bill Dockery made the motion to ask the voters to approve $2 million in revenue bonds. Rodney Meyer seconded the motion. After further discussion; here is a $4 million project, we have 2 million in grants (from the State Revolving Fund and FMHA), ask the voters to approve $2 million in bonds to complete-**the Board voted unanimously for the motion**…..It was agreed the voters can be told that monthly user rates will be under $30.00 (probably not much under) and that there will be no cost to residents of the district who will not be served by Phase I of the project. In fact, property values will probably go up because of anticipated service, but until the residents vote for revenue bonds to build sewer in there area at a later time, they will not pay any sewer fees…..”

**27**. Again, the Revenue Bond election ballot made no mention or indication of any Phase I project. The Revenue Bond vote encompassed and was for the entire common sewer district boundary, not a smaller portion.

**28**. The Benton County Sewer District #1 **never sold** any Revenue Bonds as authorized by the voters on November 7, 1995. Instead, the District Board obtained an unauthorized loan and fraudulently obtained said loan from the USDA with the assistance from a USDA employee and an engineer.

**29**. The voters of the Benton County Sewer District #1 never authorized the District Board to indebt the district or obtain a loan from the USDA. This act was the act of the Board members themselves without any voter authorization or knowledge.

**30**. On April 2, 2013, the voters of the Benton Country Sewer District #1 voted to dissolve the Benton County Sewer District #1 as per the provisions of Chapter 67, § 67.950, Revised Statutes of Missouri. However, the USDA, one day prior to the vote on the dissolution question, obtained a temporary restraining order to prevent dissolution in order for the USDA to collect on the unauthorized loan the previous Board members fraudulently obtained.

**31**. In July 2013, Scott Totten, Missouri Department of Natural Resources employee, was appointed by the United States District Court for the Western District of Missouri as the Receiver for the Benton County Sewer District #1.

**32**. Sometime between the initiation of the federal case filed by the USDA against the Benton County Sewer District #1 and the Application for a Certificate of Convenience and Necessity filed by Missouri American Water Company in August, 2014 with the Missouri Public Service Commission, Scott Totten as Receiver and Frank Kartmann, President of Missouri American Water Company executed an Asset Purchase Agreement (which has no entry date) in reference to the assets of the Benton County Sewer District #1.

**33**. The vote to dissolve the Benton County Sewer District #1 was to terminate and end the sewer district. The residents of the District have never voted to privatize and change management of the District much less sell the District assets, complete system, to Missouri American Water Co.

**34**. The ballot question for consideration on April 2, 2013 was clearly stated: “Shall the Benton County Sewer District #1 be dissolved?” The results of the election were overwhelmingly in favor for dissolving, (terminating and ending the Benton County Sewer District #1), not to privatize!

**35**. To date, the Missouri Public Service Commission granted Missouri American Water Company a Certificate of Convenience and Necessity which is a prerequisite before any purchase of District assets can transpire. The effective date of the certificate is December 12, 2015.

**36**. The status quo should be preserved and no major changes should be made in the assets or liabilities of Respondent, Benton County Sewer District #1 while this case is pending to determine the constitutionality of the formation, funding, operations, dissolution, and existence of the Benton County Sewer District #1.

**37**. Only the requested injunctive relief and stay order relief can protect the interests of Petitioners and prevent irreparable damage to Petitioners during the pendency of this case.

**APPLICABLE STATUTES**

**38. RSMo. § 478.070** provides: “The circuit courts shall have original jurisdiction over all cases and matters, civil and criminal. Such courts may issue and determine original remedial writs.”

**39. RSMo. § 527.010** provides: “The circuit courts of this state, within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.”

**40. RSMo. § 527.020** provides: “Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or Validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

**41.** **RSMo. § 527.030** provides: “A contract may be construed either before or after there has been a breach thereof.”

**42. RSMo. § 527.050** provides: “The enumeration in sections 527.020 to 527.040 does not limit or restrict the exercise of the general powers conferred in section 527.010 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.”

**43. RSMo. § 527.080** provides: “Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.”

**44. RSMo. § 527.090** provides: “When a proceeding under sections 527.010 to 527.130 involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.”

**45. RSMo. § 527.110** provides: “When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.”

**46. RSMo. § 527.120** provides:

“The law is declared to be remedial, its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered.”

**47. Missouri Rules of Civil Procedure, Rule 87.01** provides:

“No action or proceeding is open to objection on the ground that a declaratory judgment or decree is prayed for.”

**48. Missouri Rules of Civil Procedure, Rule 87.02(a)** provides:

“Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

**49. Missouri Rules of Civil Procedure, Rule 87.02(c)** provides:

“The power of the courts of this state to render declaratory judgments shall extend to declaratory judgments respecting the validity of agency rules, or threatened applications thereof, and such suits may be maintained against agencies whether or not the plaintiff has first requested the agency to pass upon the question presented.”

**50. Missouri Rules of Civil Procedure, Rule 87.02(d)** provides:

“The foregoing enumeration of instances in which persons may obtain relief by declaratory judgments is illustrative, and anyone may obtain such relief in any instance in which it will terminate a controversy or remove an uncertainty.”

**51. Missouri Rules of Civil Procedure, Rule 87.04** provides:

“When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and, if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.”

**COUNT I**

**DECLARATORY JUDGMENT AGAINST RESPONDENT,**

**BENTON COUNTY SEWER DISTRICT #1 THAT ITS**

**MANDATORY CONNECTION ORDINANCE IS INVALID,**

**ILLEGAL, AND UNCONSTITUTIONAL**

**52.** Petitioner hereby incorporates by reference paragraphs 1 through 52 of this Petition though fully set forth herein.

**53.** After the vote for the creation of a **common sewer district** and the vote for funding by way of **revenue bonds**, Respondent, Benton County Sewer District #1 passed an ordinance entitled “**An Order Regulating The Use Of Public Sewers And Drains And Providing Penalties For Violations Thereof In Benton County Sewer District No. 1**”.

**54.** The provisions of Article II, **Use of Public Sewers Required**, Section 2 of the Ordinance provides:

“It shall be unlawful to discharge to any natural outlet within the District, or in any area under the jurisdiction of said District, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.”

**55.** The provisions of Article II, **Use of Public Sewers Required,** Section 3 of the Ordinance provides:

“Except as hereinafter provided, **it shall be unlawful to** construct or **maintain any** privy, privy vault, **septic tank,** cesspool, or other facility intended or used **for the disposal of sewage**.”

**56.** The provisions of Article II, **Use of Public Sewers Required,** Section 4 of theOrdinance provides:

“**The owner** of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the District and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the District **is hereby required**, at his expense, **to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer,** in accordance with the provisions of this order, within ninety (90) days after the date of the official notice to do so, **provided that said public sewer is within three hundred (300) feet, 96.4 meters) of the property line.**”

**57.** Petitioner submits and asserts the Respondent, Benton County Sewer District #1,Ordinance provisions Article II, §§ 2, 3 and 4 are invalid, illegal, and unconstitutional.

**58.** The above referenced Ordinance Sections prohibited what Missouri State Law permitted.

**59.** Petitioner’s property had a properly septic tank and lateral field when forced to **mandatorily connect** to the Benton County Sewer District #1’s system.

**60.** Petitioner’s property had never been cited for a violation for a failing septic system by the local Benton County Health authority.

**61.** Petitioner’s property was forced to disconnect from its properly functioning septic system.

**62.** Petitioner Hall, when purchasing his property located within the alleged common sewer district, was informed by the District it **was mandatory and** **required** to be connected to the sewer district system.

**63.** Petitioner Hall asserts and submits that the residence he purchased was required to connect to the Benton County Sewer District #1 after adoption of the Ordinance even though the residence had a properly functioning septic system and had not been cited for any violation for a failing system by the local Benton County Health authority. There are no recorded violations for Petitioner Hall’s property on file at the local Public Health Authority.

**64.** The property purchased by Petitioner Hall was forced to connect to the Benton County Sewer District #1 prior to his ownership and the same requirement was forced upon Petitioner Hall. Petitioner Hall asserts the above referenced Ordinance Sections prohibited what Missouri State Law permitted.

**65.** The issue, of mandatory connection evident herein, has been previously heard and decided by the Missouri Courts. In, ***Moats v. Pulaski County Sewer District No. 1,*** 23 S.W.3d 868 (2000), the board of trustees adopted “Pulaski County Sewer District No. 1 Sewer Use Rules and Regulations. Article II, § 4 of these regulations requires all owners of houses and buildings located within the sewer district to connect any toilet “facilities directly with the proper public sewer in accordance with the provisions of these rules and regulations, within ninety (90) days after date of official notice to do so; provided that said public sewer is within three hundred (300) feet of the owners’ property line.”

**66.** The Respondent, Benton County Sewer District #1 Ordinance, Article II § 4 is boilerplate wording of the ordinance used by Pulaski County Sewer District #1. In ***Moats,*** *supra,* on April 2, 1999, the trial court entered a judgment finding for Moats. The trial court determined that no provision in Pulaski County’s “Rules and Regulations” authorized it to charge fees to a property owner who was unconnected to the sewage system. Wherefore, Moats did not owe user fees or connection fees. The trial court further found that the liens were recorded in attempt to collect an invalid debt and contained materially false statements. The Court awarded Moats damages for the period of time their property was unmarketable due to the liens. The trial court went on to note that “the task of overseeing waste water discharge has been delegated by statute, to the Missouri Clean Water Commission [in § 644.026].” The court concluded the Missouri General Assembly “has not delegated authority to [Appellant, Pulaski County Sewer District #1] to compel residents to connect waste water facilities to [Appellant’s] lines.” **The court declared that, absent such authorization, Appellant’s regulations requiring residents to connect to the sewer lines were invalid and could not be enforced.**

**67.** On appeal, the Missouri Court of Appeals, Southern District affirmed the trial courts judgment. In reaching it decision, the Court of Appeals reasoned and concluded Appellant’s regulation is an absolute requirement that all property owners within 300 feet of its sewer lines connect to its system. Appellant’s regulation provides no exemptions, even for a system that has a valid permit issued pursuant to the Missouri Clean Water Law. Therefore, by requiring a homeowner to connect to its sewer lines, Appellant may completely eliminate an individual home sewage system that is in compliance with the requirements of the Missouri Clean Water Law. This amounts to an absolute prohibition of that which state law permits. Appellant’s **regulation, “that all wastewater facilities in its service area connect to its sewer lines”, directly conflicts with Commission’s authority and is therefore invalid.**

**68.** The ***Moats*** case began in 1996 and the trial court decision in 1999. Respondent Benton County Sewer District #1 did not begin construction until April of 1998. At the time of the trial court decision in ***Moats,*** construction was still ongoing in the Benton County Sewer District #1.

**69.** Petitioner maintains and insists that the Benton County Sewer District #1 knew or should have known about the challenge to the mandatory connection ordinance in Pulaski County since the Ordinance of the Benton County Sewer District #1 mirrored the ordinance in Pulaski County.

**70.** The Missouri Department of Natural Resources was involved with the ***Moats*** case and was represented by the Missouri Attorney General’s office. Benton County Sewer District #1 was receiving grant funding from the Missouri Department of Natural Resources state revolving fund. Petitioner asserts and insists the Missouri Department of Natural Resources and the Missouri Attorney General’s Office had an absolute duty to inform the Respondent Benton County Sewer District #1 about the challenge to the mandatory connection ordinance and further had a duty to inform Respondent, Benton County Sewer District #1 not to begin construction until a decision had been reached in the ***Moats*** case.

**71.** Petitioner asserts that there are no records of violations or septic system failure concerning his residence at the time it was forced to connect to the Benton County Sewer District #1. Petitioner further asserts, even if a violation had occurred, a refusal to correct the problem was required before a residence could be forced to connect to the Benton County Sewer District #1.

**72.** Petitioner’s residence at the time of the enactment of Respondent, Benton County Sewer District #1’s Ordinance were under the authority of the Missouri Clean Water Commission. At no time had the Missouri General Assembly delegated authority to the Benton County Sewer District #1 to compel Petitioner and others similarly situated to connect waste water facilities to Respondent’s lines.

**73.** Petitioner’s residence along with a total of approximately three hundred and fifty eight (358) total residences and businesses were **mandatorily forced to connect** to Respondents sewer lines.

**74.** Petitioner asserts before he and others could have been forced to connect to the Respondent’s sewer lines they would have had to be violating the Missouri Clean Water Law and would have had to refuse to correct any such violation.

**75.** Respondent cannot establish Petitioner’s residence was in violation of the Missouri Clean Water Law at the time of their being **mandatorily forced** to connect to Respondent’s sewer lines.

**76.** Based upon information and belief, Petitioner submits that from the time period of 1993 to the year 2000, in the boundary area of the Respondent Benton County Sewer District #1, there were only four (4) violations of the Missouri Clean Water Law issued by the local health authority and only 3 stop orders issued with one of those corrected. (This information was obtained from answers to Interrogatories that were submitted to the Benton County Health Department in Case No 15BE-CC00002 currently pending before the 30th Judicial Circuit Court of Benton County, Missouri.)

**77.** None of the aforementioned violations and stop orders pertained to Petitioner’s property or residence.

**78.** The four (4) violations issued from 1993 to 2000 only constitute 1.1% of the 358 residents and businesses forced to connect to the Benton County Sewer District #1. **[Note: The approximate 358 forced mandatory connections did not encompass the entire district area and raises issues and questions of an invalid sub-district** **which are presented** **in separate counts herein and made part of this petition].** The two (2) stop orders (apparently not corrected) only represents one-half (1/2) of 1% of the systems failing in the area of the Benton County Sewer District #1. These were the only two residents that could have been legally forced to connect to the Benton County Sewer District #1 since apparently not correcting the violations.

**79.** There exists between the parties an actual controversy regarding whether the Respondent, Benton County Sewer District #1 had the lawful right and authority to require Petitioners to **mandatorily** connect to its sewer lines, pursuant to the Respondent’s Ordinance for such, in the absence of Petitioner not violating the Missouri Clean Water Law; which controversy is ripe for judicial resolution by this Court. WHEREFORE, Petitioner prays the Court for relief as follows:

A. For a declaration that:

1. Respondent, Benton County Sewer District #1’s Ordinance requiring mandatory connection to its sewer lines is invalid and unenforceable,

2. Petitioner had the lawful right to be connected to, maintain and use the residential septic systems at all times.

3. The actions of Respondent Benton County Sewer District #1 purporting to extinguish Petitioner’s rights to connect to, maintain and use his residential septic system were of no force and effect.

4. The Respondent, Benton County Sewer District #1’s Ordinance, Article II §§ 2, 3, and 4 are invalid, illegal, unlawful, ineffective, and ***void ab initio.***

5. The adoption and enactment of Respondents Ordinance was unlawful.

6. Petitioner has the lawful right to connect to, maintain and use his residential septic system.

B. For an order directing the Respondent Benton County Sewer District #1 to strike from its files and Ordinance, cancel, annul and render void and of no effect, ***ab initio***, the requirement of mandatory connection to its sewer lines, and to reinstate Petitioners to their status quo prior to connection to the Benton County Sewer District #1.

C. For an order directing the Respondent Benton County Sewer District #1 to take all steps necessary in order to give effect to the foregoing declarations, and in order to rescind, cancel, annul and render void and of no effect, ***ab initio,*** Article II §§ 2, 3, and 4, and to reinstate Petitioners to their status quo prior to connection to the Benton County Sewer District #1.

D. For an award of Petitioner’s costs and attorneys’ fees herein permitted by law.

E. For such other relief that the Court deems just and proper.

**COUNT II**

**DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1, THAT REQUIRING PETITIONER TO MANDATORILY CONNECT TO ITS SEWER LINES RESULTED IN AN UNEQUAL APPLICATION OF LAW AND A DENIAL OF DUE PROCESS**

**80.** Petitioner hereby incorporates paragraphs 1 through 79 as though fully set forth herein.

**81.** In Article I, Section 17 of Respondent’s Ordinance the word “**Shall**” is defined as mandatory.

**82.** Article II, Section 2 of Respondent’s Ordinance provided “It **shall** be unlawful to discharge to any natural outlet within the district….except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.”

**83.** Article II, Section 3 of Respondent’s Ordinance provided “….it **shall** be unlawful to construct or maintain any….septic tank.…or other facility intended or used for the disposal of sewage.”

**84.** Article II, Section 4 of Respondents Ordinance mandatorily required “The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the District....is hereby **required**…to connect such facilities directly with the proper public sewer,…provided that said public sewer is within three hundred (300) feet of the property line.”

**85.** Based upon information and belief, Petitioner avers, the Respondent, Benton County Sewer District #1 arbitrarily enforced its mandatory connection requirement. Petitioner has information that several residences and businesses were within the 300 ft. provision requiring connection. However, these properties were not and have not ever been connected to the Benton County Sewer District #1 sewer lines.

**86.** Equal application and protection of law with due process mandates that all persons similarly situated be treated alike. Petitioner was forced to mandatorily connect to the Benton County Sewer District #1, while others whose property was within the 300 ft. requirement were not made to mandatorily connect to the sewer district lines. Petitioner was arbitrarily subjected to billing for services while others were arbitrarily excluded by the acts of the Respondent intentionally failing to enforce its’ own **mandatory** ordinance provisions.

**87.** Respondents have denied Petitioner the use of his on-site waste water treatment system for being within the 300 ft. connection requirement yet allowed others to use their on-site waste water systems even though their property was subject to the requirement to be mandatorily connected to Respondent’s sewer lines.

**88.** There exists between the parties an actual controversy where Respondent mandatorily made Petitioner connect to its sewer lines pursuant to the provisions of Respondent’s Ordinance Article II, §§ 2, 3, and 4 yet did not enforce its Ordinance on other properties that were within the 300 ft. mandatory connection requirement. The controversy is ripe for judicial resolution by this Court. WHEREFORE, Petitioners prays the Court for relief as follows:

A. For a declaration that:

1. Respondent, Benton County Sewer District #1 subjected Petitioner to an arbitrary and capricious enforcement of its mandatory connection ordinance and thereby subjected Petitioner to and unequal application of law, and denied Petitioner equal protection of law and due process of law.

2. Petitioner had a fundamental constitutional guarantee not to be subjected to an unequal application of law and denial of due process by Respondents arbitrary and capricious selective enforcement of its mandatory connection ordinance.

3. The actions of Respondent, Benton County Sewer District #1 purporting to extinguish Petitioner’s rights to equal application of law, equal protection of law and due process of law were of no force and effect.

4. The arbitrary, selective, and capricious enforcement of the Respondents mandatory connection ordinance was invalid, illegal, unlawful, ineffective, and ***void ab initio.***

5. The Respondents adoption and enactment of its mandatory connection ordinance was unlawful, illegal, invalid, and ***void ab initio.***

B. For an order directing Respondent, Benton County Sewer District to strike from its files and ordinance, cancel, annul and render void and of no effect, ***ab initio*** the selective, arbitrary and capricious enforcement of its mandatory connection ordinance and to reinstate Petitioner to his status quo prior to the mandatory connection to the Respondent’s sewer lines.

C. For an order directing the Respondent, Benton County Sewer District #1 to take all steps necessary in order to give effect of the foregoing declarations, and in order to rescind, cancel, annul and render void and of no effect, **ab initio,** the selective, arbitrary, and capricious enforcement of its mandatory connection ordinance and to reinstate Petitioner to his status quo prior to the required connection to Respondent’s sewer lines.

D. For an award of Petitioner’s cost and attorneys’ fees herein permitted by law.

E. For such other relief that the Court deem just and proper.

**COUNT III**

**DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1, THAT REQUIRING PEITIONER TO MANDATORILY CONNECT TO ITS SEWER LINES RESULTED IN AN UNCONSTITUTIONAL TAKING OF PETITIONERS PERSONAL PROPERTY WITHOUT JUST COMPENSATION**

**89.** Petitioner hereby incorporates paragraphs 1 through 88 as though fully set forth herein.

**90.** The Fifth Amendment to the United States Constitution provides that private property shall not be taken without just compensation.

**91.** Article I, Section 26 of the Missouri Constitution provides that private property shall not be taken……without just compensation.

**92.** Petitioner’s residence had a properly functioning on-site septic system prior to the enactment and enforcement of Respondent’s mandatory connection ordinance that his residence be connected to Respondent’s sewer lines.

**93.** Respondent’s mandatory connection ordinance in its very nature prohibited petitioner from using their personal property at their residential locations.

**94.** Petitioner never received just compensation, for their property; (i.e. their individual on-site waste water treatment systems), from Respondent, Benton County Sewer District #1.

**95.** Pursuant to the mandatory ordinance of Respondent, this governmental mandate required Petitioner to relinquish specific, identifiable property as a “condition” on permission to use their very own residence. In this instance, Petitioner’s residence was required to discontinue use of its septic system (personal property) and pursuant to Article II § 4 of Respondent’s Ordinance, “The owner of all houses…..is hereby required….to connect, such facilities directly with the proper public sewer….”

**96.** Petitioner maintains that the Respondent’s mandatory ordinance constituted a regulatory taking of property tantamount and equal to a physical taking of property and is unconstitutional in the absence of just compensation. There exists between the parties an actual controversy regarding the regulatory taking of property by Respondent Benton County Sewer District #1 without just compensation to Petitioners, which controversy is ripe for adjudication by this court. WHEREFORE, Petitioners prays the Court for relief as follows:

A. For a declaration that:

1. Respondent, Benton County Sewer District #1’s mandatory connection ordinance was illegal, invalid, unlawful, and unconstitutional.

2. Respondent, Benton County Sewer District #1’s governmental mandate, by its regulatory ordinance requiring connection to its sewer lines, required Petitioner to relinquish specific identifiable property as a “condition” on permission to use their residences.

3. Petitioner never received just compensation or any compensation for his individual residential on-site waste water treatment systems (septic tank system) from Respondent, Benton County Sewer District #1.

4. Respondent, Benton County Sewer District #1’s mandatory connection ordinance constituted a regulatory taking of property tantamount and equal to a physical taking of Petitioner’s property and is unconstitutional in the absence of just compensation.

B. For an order directing Respondent, Benton County Sewer District #1 to strike from its files and ordinance, cancel, annul and render void and of no effect, ***ab initio,*** Article II, §§ 2, 3, and 4 of its Ordinance Regulating The Use Of Public Sewers and Drains and Providing Penalties For violations Thereof in Benton County Sewer District #1, and to reinstate Petitioner to the status quo prior to his mandatory connection to Benton County Sewer District #1 sewer lines.

C. For an order directing the Respondent, Benton County Sewer District #1 to take all steps necessary in order to give effect to the foregoing declarations, and in order to rescind, cancel, annul and render void and no effect, ***ab initio,*** THE Ordinance Regulating The Use Of Public Sewers And Drains And Providing Penalties For Violations Thereof In Benton County Sewer District #1, and to reinstate Petitioner’s residence to its status quo before being made to mandatorily connect to the Benton County Sewer District #1’s sewer lines.

D. For an award of Petitioner’s costs and attorneys’ fees herein permitted by law.

E. For such other relief that the Court deems just and proper.

**COUNT IV**

**DECLARATORY JUDGMENT THAT THERE WAS NO EVIDENCE TO SUPPORT THE PETITION FOR FORMATION OF A COMMON SEWER DISTRICT OR THE COURT’S FINDING OF NECESSITY FOR A COMMON SEWER DISTRICT IN CASE NO. CV-194-55CC AND THAT THE PROVISIONS OF THE REVISED STATUTES OF MISSOURI CHAPTER 204 § 204.250 ARE UNCONSTITUTIONAL**

**97.** Petitioner hereby incorporates paragraphs 1 through 96 as though fully set forth herein.

**98.** On April 1, 1994, the Petition For Formation Of A Common Sewer District was filed with the Circuit Court of Benton County, Missouri in case No. CV-194-55CC and submitted by the Benton County Commissioners.

**99.** The Petition submitted by the County Commissioners was two (2) pages in length with one additional page marked Exhibit “A”, a proposed boundary map.

**100.** The Petition at Item #1 provided and alleged: “The construction and maintenance of a common sewer system of trunk sewers and sewage treatment plants **is necessary to secure proper sanitary conditions for the preservation of public health** in a natural drainage area all of which lies within Benton County Missouri, a Third Class County.

**101.** Petitioner asserts there was no public notice given concerning the filing of the petition in Case No. CV194-55CC nor were any interested parties given notice of any intervention deadline.

**102.** There are no exhibits, documents, or evidence to support the speculative allegation, “….a common sewer system…..is necessary to secure proper sanitary conditions for the preservation of public health…..”, submitted with the records n Case No. CV194-55CC.

**103.** On April 20, 1994, the Circuit Court of Benton County, Missouri in Case No. CV194-55CC, issued its Order in the case. In the Order, the Court made the following finding: “**THE COURT FINDS,** The construction and maintenance of a common sewer system of trunk sewers and sewage treatment plants **is necessary to secure proper sanitary conditions for the preservation of public health** in a natural drainage area, all of which lies within Benton County, Missouri, A Third Class County….”

**104.** The record in Case No. CV-194-55CC is devoid of any evidence, exhibits, testimony, records or other documents that support the finding of the Court.

**105.** The Docket Entries establish that the Petition was filed on April 1, 1994, and the Court made its finding on April 20, 1994, just nineteen (19) days after filing of the unsupported petition by the County Commissioners.

**106.** On August 30, 1994, the three (3) Commissioners appointed by the Court submitted to the Court their **proposed boundaries of the Benton** **County Sewer District #1 which was decided upon unanimously by all three commissioners.**

**107.** The Commissioners Report failed to provide any evidence, reports, or documentation that a common sewer district was a necessity for the submitted proposed boundary areas.

**108.** On September 6, 1994 the Court entered its Order Approving Commissioners Report and Authorizing Election which was subsequently filed on September 8, 1994 with the papers in Cause No. CV194-55CC.

**109.** The Order Dated September 6, 1994 provided as follows:

“WHEREAS, by Ordered dated April 20, 1994, this Court appointed three commissioners and **directed them to lay out and define the exact boundaries of the common sewer district** better known as Benton County Sewer District #1.

WHEREAS, on August 30, 1994, said commissioners filed their report with this Court describing the public meeting previously held and **determining an exact boundary and legal description** for the proposed sewer district.

WHEREAS, **the general nature of the proposed district is for the construction and maintenance of a common sewer system** of trunks and sewage treatment plants **to secure proper sanitary conditions for the preservation of public health** in a natural drainage area all of which lies within Benton County, Missouri, a Third Class County. The **anticipated costs of such District is $2,608,735** which includes the connecting lines to residences and businesses, main lines and treatment plants and facilities.  **The boundary of the proposed district is described** **on the legal description and map labeled as “Exhibit A”** attached to this Order and incorporated into this Order for all purposes.

THE COURT FINDS, that the Commissioners’ duties have been fulfilled and the Commissioners should be discharged from their obligations and that **the report and map should be approved** and filed in the Office of the Recorder of Deeds of Benton County, Missouri.

THE COURT FURTHER FINDS, that the question of the **questions of the organization and incorporation of the proposed sewer district should be submitted to the voters of the proposed district,** and that theCounty Clerk should certify to the Court the results of the election, and the Court shall determine if a majority of the votes cast in such an election favor the incorporation of the proposed district.

IT IS THEREBY ORDERED, ADJUDGED AND DECREED by the Court that Michael H. Zimmerman, Bill Dockery, and Glen Brenner are hereby discharged from their obligations to the court as commissioners.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the **question of the organization and incorporation of the Benton County Sewer District #1 be submitted to the voters of such district** in a general or special election called for that purpose to be determined by the County Clerk, and that the County Clerk shall certify to the Court the results of the election.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY the Court that the ballot be substantially in the following form: “Shall the Benton County Circuit Court be authorized to **create a sewer district proposed for the Benton County Sewer District No. 1** and authorize the **common sewer district** to incur indebtedness and issue general obligation bonds and/or revenue bonds to pay for all or part of the **cost of the creation and maintenance of such district,** the cost of the indebtedness so incurred to be assessed by the Benton County District No. 1 **on the property within the District?**”

Dated: 9-6-94 Theodore B. Scott, Judge”

**110.** Petitioner maintains and submits the provisions of RSMo Chapter 204, § 204.250 is unconstitutional in that the plain reading of the statute allows for a question of creation of a common sewer district (such as the Benton County Sewer District #1) based upon a petition that is clearly conclusionary and unsupported by any evidence and approved by a court.

**111.** Petitioner submits that RSMo Chapter 204 § 204.250 is unconstitutional in that it does not require notice be given to any interested parties or allow for the intervention of interested parties in reference to a petition for the creation of a common sewer district submitted by County Commissioners.

**112.** Petitioners submit there was no evidence, exhibits, documents, or testimony that established the necessity for the creation of the Benton County Sewer District #1. As referenced herein, pg. 26, ll’s 11-18 and pg. 27, ll’s 3-13, the information provided by the local health authority, Benton County Health Department, clearly negates any finding of a necessity for a common sewer district being created.

**113.** On November 8, 1994, the question of creation of the Benton County Sewer District #1 was submitted to the voters and Petitioner based upon information and belief submits not all property owners were informed about the election or permitted to vote in the special election even though they were owners of property within the boundary of the proposed common sewer district, Benton County Sewer District #1.

**114.** Petitioner submits the provisions of RSMo Chapter 204, § 204.250 which provides; “….for the submission to the **legal voters residing** in the area of the question whether the area shall be organized and incorporated as a common sewer district….”, is unconstitutional because of the requirement “**legal voters residing**” systematically excluded property owners not residing in the district from voting on issues affecting their property rights based upon their residence location and all was done in the absence of a necessity to promote a compelling state interest.

**115.** In the Petition submitted by the County Commissioners in Case No. CV194-55CC the Commissioners prayed the following: “Wherefore, the undersigned pray an Order of this Court appointing three commissioners and **submitting the question of creating such common sewer district to all owners of record of real property within such proposed sewer district area** at a general or special election called for that purpose.”

**116.** Based on information and belief, Petitioner submits many owners of record of real property within the proposed sewer district were systematically denied to vote on the question of creating a common sewer district absent any showing or promoting of a state compelling interest.

**117.** Though clearly recognized and prayed for by the County Commissioners of Benton County Missouri, the question to create the common sewer district was not submitted to all owners of record of real property within the proposed sewer district.

**118.** As previously stated, the election for creation of the common sewer district occurred on November 8, 1994, and was certified to the Court on November 14, 1994, with the results being 97 votes (yes) and 76 votes (no). This was a total of 173 votes cast in the election. Based upon information and belief, Petitioner maintains that there were approximately 1,500 lots, parcels, and tracts of real property located within the proposed boundary area known as the Benton County Sewer District #1 and that real property owners were systematically excluded from being allowed to vote in order that a favorable vote for the common sewer district was to be determined.

**119.** All property owners have a ‘special pecuniary interest’ in the election, because the efficiency of the utility system directly affects ‘property and property values’ and thus ‘the basic security of their investment in **their** property **is** at stake.’

**120.** Property owners that were excluded from the vote were not less interested or affected than those § 204.250 (…**legal voters residing in the area**…) the statute includes. The challenged statute contains a classification which excludes otherwise qualified voters who are as substantially affected and directly interested in the matter voted upon as are those who are permitted to vote. When the State’s sole justification for the statute is that the classification provides a rational basis for limiting the franchise to those voters with a ‘special interest’ the statute clearly does not meet the exacting standard of precision required of statutes which selectively distribute the franchise.

**121.** There exists, between Petitioner and Respondent, Benton County Sewer District #1, an actual controversy regarding the fact that no evidence, records or exhibits support the finding for the petitioning and the finding of the Court for the necessity of the creation of a common sewer district known as the Benton County Sewer District #1. There exists between Petitioner and Respondent, Benton County Sewer District #1, an actual controversy regarding the constitutionality of the provision of RSMo Chapter 204, § 204.250 permitting the County Commissioners to petition the Circuit Court for the creation of a common sewer district without public notice of the petition being filed, without allowing intervention to the action by any interested party, and without any evidence to support the conclusionary statement and finding of the necessity for a common sewer district. There exists between all property owners and Respondent, Benton County Sewer District #1 regarding the constitutionality of RSMo Chapter 204 § 204.250 which restricts voting on a common sewer district boundary to “….**legal voters residing in the area**....” and substantially excluding other property owners thereby affected. WHEREFORE, Petitioners prays the Court for relief as follows:

A. For a declaration that:

1. The Petition of the Benton County Commissioners was not supported by any factual allegations or evidence establishing the necessity for the creation of a common sewer district.

2. The provisions of RSMo Chapter 204, § 204.250 allowing for the petition for creating a common sewer district by the County Commissioners without requiring substantial factual allegations and evidentiary support of those allegations is unconstitutional.

3. The provisions of RSMo Chapter 204, § 204.250 allowing for the petitioning of a common sewer district by the County Commissioners without the giving of notice of the action pending and without allowing for intervention by interested parties in a timely manner is unconstitutional.

4. The provisions of RSMo Chapter 204, § 204.250 limiting the voting on the creation of a common sewer district area to **“….legal voters** **residing in the area….”**, and excluding real property owners not residing in the area, is unconstitutional.

5. The organization and incorporation of the Benton County Sewer District #1 was and is unconstitutional.

B. For an order directing Respondent, Benton County Sewer District #1 to strike from its files and records, annul and render void and of no effect, ***ab initio,***the organization and incorporation of the Benton County Sewer District #1, and to reinstate Petitioner and all others similarly situated to their status quo prior to the organization and incorporation of the Benton County Sewer District #1.

C. For an order directing the Respondent, Benton County Sewer District #1 to take all steps necessary in order to give effect to the foregoing declarations, and in order to rescind, cancel, annul and render void and of no effect, ***ab initio,*** the organization and incorporation of the Benton County Sewer District #1, and to reinstate Petitioner and all others similarly situated to the status quo prior to the organization and incorporation of the Benton County Sewer District #1.

D. For an award of Petitioner’s costs and attorney fees herein as permitted by law.

E. For such other relief that the Court deems just and proper.

**COUNT V**

**DECLARATORY JUDGMENT THE RESPONDENT, BENTON COUNTY SEWER DISTRICT #1 WAS COURT ORDERED TO FUND THE CONSTRUCTION OF THE COMMON SEWER DISTRICT BY REVENUE BONDS, APPROVED BY THE VOTERS, AND THE FUNDING OBTAINED (USDA LOAN) BY THE RESPONDENT, BENTON COUNTY SEWER DISTRICT #1 WAS UNAUTHORIZED, UNLAWFUL, ILLEGAL AND UNCONSTITUTIONAL**

**122.** Petitioner hereby incorporates paragraphs 1 through 121 as though fully set forth herein.

**123.** On April 20, 1994, the Circuit Court of Benton County, Missouri, in Case No. CV194-55CC issued its Order which provided in part:

**“….**IT IS FURTHER ORDERED, ADJUDGED AND DECREED, by the Court that said sewer district shall be known as Benton County Sewer District #1, and **the proposed method of assessment for such district shall be [Revenue Bonds]**…..”

**124.** On Tuesday, November 7, 1995, the Official Ballot for the Special Bond Election, for funding the Respondent Benton County Sewer District #1, proposed the following Question:

“Shall Benton County Sewer District #1 of Benton County, Missouri, issue its sewer district **revenue bonds** in the amount of $2,000,000 for the purpose of acquiring, constructing, improving and extending a sewage system, the cost of operation and maintenance of said System and the principal of the interest on said revenue bonds to be payable solely from the revenues derived by the District from the operation of its sewage system, including all future extensions and improvements thereto?”

**125.** The election on the ballot for revenue bonds passed by the appropriate margin and it is clear that the **revenue bonds** were for the entire Benton County Sewer District #1 area.

**126.** Petitioner maintains the election on the ballot question concerning the revenue bonds was conducted in an unconstitutional manner by selectively prohibiting nonresident property owners and other qualified voters from voting on the ballot issue.

**127.** Petitioner maintains procedures for selection of voters in the revenue bond election were done in such a manner [property owners not residing in the area were not allowed to vote] to eliminate opposition to the ballot issue and to achieve a more favorable chance and result for the issuance of revenue bonds by Respondent. As noted by the United States Supreme Court in *Carrington v. Rash,* 380 U.S. 89, 94; 85 S.Ct. 775, 779; 13 L.Ed.2d 675 (1965); “**Fencing out** from the franchise a sector of the population because of the way they may **vote** is constitutionally impermissible.”

**128.** In this instant matter, Respondent, Benton County Sewer District #1 fenced out property owners by allowing only legal voters **residing** in the district area to cast ballots in the revenue bond election.

**129.** After the ballot election on revenue bonds for the entire district boundary, Respondent, Benton County Sewer District #1 was to fund the construction by **issuance and selling** of its **revenue bonds**.

**130.** RSMo Chapter 204 § 204.380 mandates that “**The bonds shall be sold…**” yet, based upon information and belief, Petitioner asserts that Respondent, Benton County Sewer District #1 never intended to sell any revenue bonds nor did the Respondent ever sell any revenue bonds.

**131.** The Missouri State Constitution Article VI, Section 27 provides in part; “….political subdivisions in this state, by compliance with then applicable requirements of law, **may issue and sell** its negotiable interest bearing **revenue bonds** for the purpose of paying all or part of the cost of purchasing, construction…..any of the following projects; (1) revenue producing….sewer….; (3) **The bonds shall not constitute an indebtedness of** the state, or **any political subdivision** thereof, and neither the full faith and credit not the taxing power of the state or of any political subdivision thereof is pledged to the payment of or the interest on such bonds…..”

**132.** Respondent, Benton County Sewer District #1 knew it was to fund construction of the district by revenue bonds as court ordered and as decided by the voters.

**133.** On December 3, 1994, at the very first meeting of the trustees of the Benton County Sewer District #1, Board President Glen Brenner indicated he was contacted by Carl E. Brown, Project Coordinator of Water Pollution Control Program of the Department of Natural Resources, and asked if the “**District** needed low interest **loans**”. “**Glen indicated he hope to be ready to use it.**”

**134.** On August 8, 1996, Glen Brenner, Board President of Respondent, Benton County Sewer District #1 submitted an application for federal assistance totaling $4,019,860 which included a **loan amount of $1,686,116.**

**135.** On October 29, 1996 the request for obligation of funds was approved for the **loan amount of $1,685,700.00. Once obligated the funds are available from that particular moment.**

**136.** On November 6, 1996, Glen Brenner, Board Chairman of Respondent Benton County Sewer District #1 was notified of the approval for financial assistance from the USDA. The Notice read as follows: “TO THE APPLICANT: As of this date 11-06-96, this is notice **that your application for financial assistance** from the USDA has been approved,….”.

**137.** Prior to the **loan approval,** Respondent, Benton County Sewer District #1 President, Glen Brenner certified the following: “I HEREBY CERTIFY that **I am unable to obtain sufficient credit elsewhere to finance my actual** **needs**…..”.

**138.** Petitioner maintains that the Respondent, Benton County Sewer District #1’s Minutes of Board Meetings from December, 1994 through October, 1996, make no mention or reflect any attempt by Respondent, Benton County Sewer District #1 to obtain sufficient credit from any source other than the Loan Application made to the USDA.

**139.** Petitioners assert that Respondent, Benton County Sewer District #1 never attempted or intended to sell any revenue bonds because the loan application and loan approval was obtained prior to the alleged Bond Resolution which was not completed and passed upon until April 14, 1998.

**140.** Petitioner submits that Respondent, Benton County Sewer District #1 did not have the authorization to apply for any loan and did so in contradiction to the provisions of the Missouri State Constitution.

**141.** Missouri Constitution Article VI, Section 26a provides in part; “**No**….political corporation or subdivision of the state **shall become indebted in in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as provided in this constitution.**”

**142.** Missouri Constitution Article VI, Section 26b provides in part; “Any ….political corporation or subdivision of the state, **by vote of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five percent of the value of taxable tangible property therein as shown by the last completed assessment for state or county purposes**....”.

**143.** The revenue bond election on November 7, 1995 was for approval for Respondent to issue its revenue bonds. The ballot question submitted did not ask the voters to approve and authorize Respondent to indebt the District. The Missouri State Statutes and the Missouri Constitution referred herein, clearly mandate that revenue bonds are to be sold.

**144.** Petitioner submitS that there are no provisions in the Missouri Statutes or the Missouri Constitution for Respondent, Benton County Sewer District #1 to obtain a loan and pledge the revenues from the system and then by promissory pledge label the loan as revenue bonds.

**145.** On April 1, 2013, the United States initiated a civil action against Respondent, Benton County Sewer District #1 to collect the indebtedness, **unauthorized loan never approved by the voters of the District,** and to prohibit dissolution of the District until said indebtedness was paid.

**146.** The Respondent, Benton County Sewer District #1; the Engineer Michael H. Zimmerman; USDA Employee, Dennis Frisch; District Board President, Glen Brenner; and the State Of Missouri Department of Natural Resources, individually and collectively knew the voters of the District had never approved or authorized a loan (indebtedness) for the funding of the construction of the District.

**147.** There exists between the parties an actual controversy regarding the procedures used by Respondent Benton County Sewer District #1 in selecting voters to decide the issue of funding by revenue bonds; and the procedures of Respondent Benton County Sewer District #1 and others by funding the construction of the district system with an unauthorized USDA loan. WHEREFORE, Petitioners prays the Court for relief as follows;

1. For a declaration that:

1. Non-resident property owners were [fenced out] by Respondent, Benton County Sewer District #1 and intentionally denied the right to participate, as property owners in the election, concerning the funding of the District by revenue bonds in an unconstitutional manner, in which it was an established principal of law when voting for revenue bonds differences of opinion as to advisability of issuance of revenue bonds by municipal utility cannot justify excluding either property taxpayers or non-property taxpayers from bond election when both groups are substantially affected by utility operation.

2. The procedures for selecting qualified voters for the ballot question of revenue bonds endorsed and enacted by Respondent, Benton County Sewer District #1 were unconstitutional.

3. Respondent, Benton County Sewer District #1 had a duty to the Court and the voters of the District to issue and sell revenue bonds for the funding to be obtained for construction of the District Sewer System.

4. Respondent, Benton County Sewer District #1 never attempted to sell and never sold one revenue bond for any monetary denomination as authorized by the vote of the District voters, the Revised Statutes of Missouri or pursuant to the provisions of the Missouri Constitution.

5. Respondent, Benton County Sewer District #1 never received authorization from the voters to indebt the District by obtaining a loan from the USDA for construction of the District Sewer System.

6. Respondent, Benton County Sewer District #1 never presented a ballot question seeking approval from the voters to indebt the District by obtaining a loan from the USDA for the construction of the District System.

7. The loan obtained by Respondent, Benton County Sewer District #1 was unauthorized, illegal, unlawful, and unconstitutional.

8. The actions and procedures by the Respondent, Benton County Sewer District #1 in obtaining a loan from the USDA, which was an indebtedness, constitutes a fraud against the voters and residents of the District and a fraud upon the 30th Judicial District Court of Benton County Missouri.

B. For an order directing Respondent, Benton County Sewer District #1 to strike from its files and records, annul and render void and of no effect, ***ab initio***, the organization, incorporation, and funding of the Benton County Sewer District #1, and to reinstate Petitioner and all others similarly situated to their status quo prior to the organization, incorporation and funding of the Benton County Sewer District #1.

C. For an order directing the Respondent, Benton County Sewer District #1 to take all steps necessary in order to give effect to the foregoing declarations, and in order to rescind, cancel, annul and render void and of no effect, ***ab initio***, the organization, incorporation and funding of the Benton County Sewer District #1 and to reinstate Petitioner and all others similarly situated to the status quo prior to the organization, incorporation and funding of the Benton County Sewer District #1.

D. For an award of Petitioner’s costs and attorney fees herein permitted by law.

E. For such other relief that the Court deems just and proper.

**COUNT VI**

**DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWERE DITRICT #1 FINDING THAT RESPONDENT CREATED, ORGANIZED AND FUNDED A SEWER SUB-DISTRICT CONTRARY TO MISSOURI STATE LAW, RSMO CHAPTER 204 §§ 204.250(3), 204.250(4), 204.250(5), 204.250(6) AND 204.250(7)**

**148.** Petitioner hereby incorporates by reference paragraphs 1-147 as though fully set forth herein.

**149.** On November 8, 1994, voters of the Benton County Sewer District were asked the question which would authorize a sewer district for the Benton County Sewer District #1. The District Boundary was a **specific area** and was for the creation of a **common sewer district**. The vote on November 7, 1995 was for funding the entire construction of the common **sewer district area** with revenue bonds.

**150.** Petitioner maintains and contends based upon information and belief the Respondent, Benton County Sewer District #1 together with Michael H. Zimmerman, Engineer and USDA employee Dennis Frisch intentionally misinformed and made false statementsto the 30th Judicial District Court and residents of the entire sewer district boundary area in order to achieve a favorable vote for the creation, incorporation and funding of the Benton County Sewer District #1. Court Records, Benton county Sewer District #1 Meeting Minutes and local newspaper articles clearly establish the residents and voters were being informed one thing by the Respondent Benton County Sewer District #1 while in reality Respondent clearly had other intentions. The discrepancies include the following:

1. The original Petition for formation of a common sewer district estimated the costs of the **common** **sanitary sewer district** to be the amount of **$2,608,735.00**. It is Petitioners belief that this was the figured supplied by Engineer, Michael H. Zimmerman. The Minutes of the March 1, 1995 , Board Meeting provided: “**As plans are developed, the Board will be asked to set priorities as to what sections of the District will be provided sewer service first and perhaps which will be dropped out of the original construction.**” July 18, 1995, Minutes provide; **“…Consensus seemed to be to** **get a fundable project size and serve the most densely populated areas first,…”** **“…..After further discussion here is a $4 Million project…”.** Engineer Mike Zimmerman was at the July 18, 1995 Board Meeting as well as all of the Board Members. Mike Zimmerman knew in advance the common sewer district was not a fundable size project and that the estimated cost supplied to the Court was erroneous and false.

2. The voters of the District were asked to approve **Revenue Bonds.** Yet, the Board Minutes from December, 1994, through October, 1995, clearly establish the intent of the Board Members of the Benton County Sewer District #1 together with the USDA employee, Dennis Frisch and Engineer Michael H. Zimmerman to obtain a loan from the USDA and refrain from telling the voters that Respondent and others would obtain a loan without voter approval or authorization.

3. Respondent, Benton County Sewer District #1, and others, informed voters they were voting for a common sewer district for the entire area and stressed the Warsaw High School and Middle School would be serviced by the District. Respondent, knew in advance of both the creation election and the funding election that they were not going to service the Warsaw High School and other areas of the common sewer district. Yet, allowed the question of revenue bond funding depict it was for the entire common sewer district area when in fact the Respondent Benton County Sewer District #1 was formulating and funding a sub-district by eliminating areas to be served and without submitting to a vote the new service area to those residents only being serviced.

**151.** Revised Statutes of Missouri Chapter 204, Section 204.250(3) provides: “Notwithstanding any provision of law to the contrary, if a sanitary sewage disposal or treatment system is necessary for any number of buildings used solely or primarily for residential or commercial purposes which are situated in such geographical proximity and manner to one another that the creation of a sewage disposal or treatment system is feasible, and such buildings are situated in or are in geographical proximity to an existing common sewer district formed pursuant to this chapter, and if sanitary sewage disposal or treatment services are not otherwise available for service to such buildings, regardless of whether the buildings lie in a natural drainage area or natural drainage basis, **such area may be established as a common sewer subdistrict of an existing common sewer district formed pursuant to the provisions of this chapter by complying with the procedures set forth in subsections 4 to 7 of this section.**

**152.** Revised Statutes of Missouri Chapter 204, Section 204.250(4), 204.250(5), 204.250(6), and 204.250(7) provide as follows:

“4. The **circuit court** of the circuit proposing to create a sewer subdistrict pursuant to subsection 3 of this section **may, by order of the court, for good** **cause shown, submit the question of creating such subdistrict to all owners of record of all real property within such proposed subdistrict at a general or special election called for that purpose**. Such order shall set forth the project name for the proposed subdistrict, the general nature of the proposed subdistrict, the estimated cost of the sewer improvements for such subdistrict, the boundaries of the proposed subdistrict to be assessed

for sewer improvements, and the proposed method or methods of assessment. **The court may thereafter create a sewer subdistrict of an existing common sewer district formed pursuant to this chapter when the question of creating such subdistrict has been approved by the vote of the percentage of electors within such subdistrict voting thereon that is equal to the percentage of voter approval required for the issuance of general obligation bonds of the city or county wherein such subdistrict is located under article VI, section 26 of the constitution of this state.** The notice of election containing the question of creating a sewer subdistrict shall contain the project name for the proposed subdistrict, the general nature of the proposed subdistrict, the estimated cost of the sewer improvements for such subdistrict, the boundaries of the proposed subdistrict to be assessed for sewer improvements, the proposed method or methods of assessment, and a statement that the final cost of such sewer improvements assessed against property within the subdistrict and the amount of general obligation bonds issued therefor shall not exceed the estimated cost of such sewer improvements, as stated in such notice, by more than twenty-five percent. The ballot upon which the question of creating a sewer subdistrict is submitted to the qualified voters residing within the proposed subdistrict shall contain a question in substantially the following form:

Shall the ........ Circuit Court be authorized to create a sewer subdistrict proposed for the ........ (common sewer district name) and authorize the common sewer district to incur indebtedness and issue general obligation bonds to pay for all or part of the cost of the creation and maintenance of

such subdistrict, the cost of all indebtedness so incurred to be assessed by the ........ (common sewer district name) on the property within the subdistrict?

5. As an alternative to the procedure described in subsection 4 of this section, **the circuit court of the circuit may create such a sewer subdistrict when a proper petition has been signed by the owners of record of at least two thirds by area of all real property located within such proposed subdistrict.** The petition, in order to become effective, shall be filed with the circuit court. A proper petition for the creation of a sewer subdistrict shall set forth the proposed subdistrict name, the general nature of the proposed subdistrict, the estimated cost of the sewer improvements for such subdistrict, the boundaries of the proposed subdistrict to be assessed for sewer improvements, the proposed method or methods of assessment, a notice that the names of the signers may not be withdrawn later than seven days after the petition is filed with the court, and a notice that the final

cost of such assessments against property within the subdistrict and the amount of general obligation bonds issued therefor shall not exceed the estimated cost of sewer improvements, as stated in such petition, by more than twenty-five percent.

6**. Upon receiving the requisite voter approval at an election or upon the filing of a proper petition with the court, the court may by order determine the advisability of the subdistrict and may order that the subdistrict be established and that preliminary plans and specifications for the subdistrict be made.** Such order shall state and make findings as to the subdistrict name, the nature of the subdistrict, the estimated cost of the sewer improvements for such subdistrict, the boundaries of the subdistrict to be assessed for sewer improvements, the proposed method or methods of assessment, and shall also state that the final cost of such assessments against the property within the subdistrict and the amount of general obligation bonds issued therefor shall not, without a new election or petition, exceed the estimated cost of such sewer improvements by more than twenty five percent.

7. The boundaries of the proposed subdistrict shall be described by metes and bounds, streets or other sufficiently specific description. The area of the subdistrict finally determined to be assessed may be less than, but shall not exceed, the total area comprising such district.”

**153.** On November 29, 1994, the 30th Judicial Circuit Court of Benton County, Missouri entered it Decree in Case No. CV194-55CC which provided:

“**IT IS THEREBY ORDERED, ADJUDGED AND DECREED,** by the Court **that the area described in the report of the commissioners previously filed in this cause with the Court is hereby incorporated as a common sewer district to be known as the Benton County Sewer District #1,** a body corporate and politic.”

**154.** For the creation of a subdistrict the prerequisites of voter approval at an election, or filing of a proper petition, and advisability of the subdistrict may then be Court ordered establishing the subdistrict. Respondent, Benton County Sewer District #1 with assistance from Engineer Michael H. Zimmerman and USDA employee Dennis Frisch, had no authority to alter the service size of the common sewer district by eliminating sections at their mere whim and in contradiction to the above mentioned sections of RSMo Chapter 204.

**155.** The changing of the service area of the court ordered common sewer district by Respondent and others resulted in an unlawful, illegal, invalid and unconstitutional sub-district.

**156.** There exists between the parties an actual controversy regarding Respondent, Benton County Sewer District #1 and others creating a sewer subdistrict in contravention to the provisions of Missouri Revised Statutes Chapter 204 §§ 204.250(3), 204.250(4), 204.250(5), 204.250(6) and 204.250(7). WHEREFORE, Petitioners prays the Court for relief as follows:

A. For a declaration that:

1. On November 29, 1994, by Court Order and Decree the area specifically described and boundary marked was thereby incorporated **as a common sewer district** to be known as the Benton County Sewer District #1.

2. The 30th Judicial District Court never did, by order of the Court and for good cause shown, submit the question of creating a subdistrict to all owners of record of real property within such proposed subdistrict at a general or special election called for that purpose.

3. The 30th Judicial District Court never did create a sewer subditrict after the submission of a proper petition signed by  **the owners of record of at least two thirds by area of all real property located within such proposed subdistrict.**

4. Respondent, Benton County Sewer District #1 and assistance from others created a sewer subdistrict that was illegal, unlawful and contrary to state law provisions and without court order approval for any such subdistrict.

5. On April 20, 1994, the 30th Judicial District Court for Benton County, Missouri Ordered and Decreed the Benton County Sewer District #1 was to have the proposed method of assessment for the district as Revenue Bonds.

6. Revenue Bonds are not indebtedness upon the sewer district and under the provisions of state law and the state constitution must be issued and sold.

7. On November 7, 1995, the voters of the Benton County Sewer District #1 approved the method of funding the construction of the district and that method was to be the issuance of Revenue Bonds.

8. Respondent, Benton County Sewer District #1 never sold any revenue bonds for the funding of the construction of the sewer district.

9. Respondent, Benton County Sewer District #1 with the assistance of Engineer, Michael H. Zimmerman and USDA employee Dennis Frisch, applied for, obtained, and secured a loan for funding the construction of the Benton County Sewer District #1 contrary to the provisions of the Missouri Constitution and without voter approval or authorization.

10. The loan obtained by Respondent, Benton County Sewer District #1 with the assistance of others was invalid, illegal, unauthorized and is therefore unenforceable.

11. Respondent, Benton County Sewer District #1 together with the assistance of Engineer, Michael H. Zimmerman and USDA employee, Dennis Frisch committed a fraud upon the 30th Judicial District Court and the residents of the area known as the Benton County Sewer District #1.

B. For an order directing Respondent, Benton County Sewer District #1 to strike from its files and records, cancel, annul and render void and no effect, ***ab initio***, the subdistrict and common sewer district known as the Benton County Sewer District #1, and to reinstate Petitioner and all others similarly situated to their status quo prior to the creation and incorporation of the Benton County Sewer District #1.

C. For an order directing Respondent, Benton County Sewer District #1 to take all steps necessary in order to give effect to the foregoing declarations, and in order ***to*** rescind, cancel, annul and render void and of no effect, ***ab*** ***initio***,the common sewer district and subdistrict, and to reinstate Petitioner and all others similarly situated to their status quo prior to the creation and incorporation of the area known as the Benton County Sewer District #1.

D. For an order directing the Prosecuting Attorney of Benton County, Missouri to convene a grand jury investigation concerning the creation and funding of the Benton County Sewer District #1.

E. For an award of Petitioners’ costs and attorneys’ fees herein permitted by law.

F. For such other relief that the Court deems just and proper.

**COUNT VII**

**DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1, THAT THE DISTRICT FORMATION AND FUNDING WAS THE PROMOTION FOR AN UNCONSTITUTIONAL REVENUE GENERATING SCHEME**

**157.** Petitioner hereby incorporates paragraphs 1 through 156 as though fully set forth herein.

**158.** Petitioner and others were forced and mandatorily required to connect to the Benton County Sewer District #1’s sewer lines even though Petitioner had properly functioning individual residential on-site wastewater treatment systems, septic system and lateral field that had not been cited for any violations or pollution problems or the refusal to correct any violation problems with their systems.

**159.** A Letter dated October 22, 1996, was sent to Glen Brenner, President of the Benton County Sewer District #1 from the United States Department of Agriculture. The subject of this letter was the Benton County Sewer District #1; Letter Of Conditions – Sewer System; Rural Development **LOAN** - **$1,685,700**; Rural Development Grant - $753,000. The letter in part stated: “This letter establishes conditions which must be understood and agreed by you before further consideration may be given to the application…” Petitioner maintains the reference to the application directly referred to the **loan** application signed and submitted by Glen Brenner on August 8, 1996. The letter further provided: “This letter is not to be considered as **loan** and grant approval or as a representation to the availability of funds. The docket may be completed on the basis of a **loan** not to exceed $1,685,700 and a grant not to exceed $753,000. Prior to the **loan closing**, the Form FmHA 1942-47, **Loan Resolution** – Public Bodies, must be adopted.”

**160.** The Letter of Conditions listed 37 specific conditions to be met. Item #20 of the letter required: “**The applicant will have 371 sewer users.**” Item #21 of the letter required: “**The applicant will be required to adopt a mandatory hook-up ordinance.**” Item #22 of the letter required in part: “**The applicant must provide a positive program to encourage connections by all users as soon as service is available for review and approval by the Rural Development before the closing….**”

**161.** On December 10, 1996, President Glen Brenner of the Benton County Sewer District #1 signed and initiated a Letter of Intent To Meet Conditions and stated; **“It is our intent to meet all of them not later than April 20, 1997.”**

**162.** A letter dated October 14, 1997 from the Missouri Department of Natural Resources to Glen Brenner, Chairman, Benton County Sewer District #1 stated: “The Sewer Use Ordinance for the Benton County Sewer District #1 has been reviewed by the Division of Environmental Quality. The ordinance complies with the 40% Grant Program requirements and is approved. The sewer use ordinance must be adopted and implemented by the board prior to 90% completion of the project….”

**163.** The Petitioners maintain that the Meeting Minutes of the Benton County Sewer District #1 Board Members establishes President, Glen Brenner stating the sewer district was needed in order for his bank to give out VA loans and further shows Board Member Rodney Meyer, who was also the Presiding County Commissioner of Benton County, Missouri stating the sewer district was needed in order for the county to assess higher property taxes in the area.

**164.** Based on information and belief, Petitioners assert that Engineer Michael H. Zimmerman of Archer Engineering fabricated a false environmental study in order to secure his company the engineering and design of the Benton County Sewer District #1. The Board Minutes reflect that Michael H. Zimmerman of Archer Engineering was given the engineering and designing of the sewer district system and this was done without competitive bids being taken by the District Board. Revised Statutes of Missouri Chapter 204, § 204.350(1) provides: **“**The board of trustees for the district **shall let contracts for all work to be** **done**, excepting in case of repairs or emergencies requiring prompt attention, in the construction of trunk sewers and sewage treatment plants under the authority of sections 204.250 to 204.470, the expense of which will exceed five hundred dollars, **to the lowest responsible bidder therefor**, upon not less than twenty days' notice of the letting, given by publication in a newspaper of general circulation in the district, and in the discretion of the board, in one or more newspapers of general circulation among contractors. The board shall have the power and authority to reject any and all bids and re-advertise the work.”

**165.** Petitioner asserts the Respondent, Benton County Sewer District #1 only adopted the mandatory connection ordinance in order to receive a **loan** [which was never authorized or approved by the voters of the district] and grants from the USDA and Missouri Department of Natural Resources.

**166.** Respondent, Benton County Sewer District #1 devised a revenue generating scheme by the following: “Requiring Petitioner and others to connect to its sewer lines even though properly functioning on-site systems were being maintained prior to connection; Billing and demanding payment for services from Petitioner and others whether or not the services were being provided or used; Coercing payment by the threat of liens being place on property and the placing of liens on property without affording any due notice and hearing to dispute the billing charges; and, Threatening the filing of legal action and the filing of legal actions against a select few District residents.”

**167.** The actions initiated and taken by Respondent, Benton County Sewer District #1 was for the sole intention of generating revenue to pay back the unapproved and unauthorized loan it had borrowed from the USDA.

**168.** There exists between the parties an actual controversy regarding the unconstitutional revenue generating scheme implemented by Respondent, Benton County Sewer District #1, which controversy is ripe for judicial resolution by this Court. WHEREFORE, Petitioner prays the Court for relief as follows:

A. For a declaration that:

1. Respondent, Benton County Sewer District #1 for the purpose of obtaining a **loan, which was never authorized or approved by the voters of the District,** devised and implemented an unconstitutional revenue generating scheme which required Petitioners, and others similarly situated, to mandatorily connect to its sewer lines upon adoption and implementation of a mandatory connection ordinance despite Petitioner and others having and maintaining properly functioning on-site septic systems; billing and demanding payment from Petitioner and others regardless if the service was provided or used; coercing payment with the threat of filing liens and filing liens on property within the district; not affording any due notice or hearing procedures to dispute or challenge charges and alleged delinquencies; and, threatening legal collection action and filing of collection legal actions against a select and targeted few property owners.

2. Respondent, Benton County Sewer District #1 Board President, Glen Brenner; Board Member Rodney Meyer, also the Presiding County Commissioner of Benton County, Missouri; and Michael H. Zimmerman, Engineer of Archer Engineering assisted in the devising and implementation of an unconstitutional revenue generating scheme for the purpose to advance their personal interests and gains.

B. For an order directing Respondent, Benton County Sewer District #1 to cease and desist from demanding payment and receiving payment for services from Petitioner and others similarly situated and to reinstate Petitioner and all others similarly situated to their status quo prior to the creation and organization of the Benton County Sewer District #1.

C. For an order directing the Benton County Sewer District to refund to Petitioner and all others similarly situated all monies paid by them to the Benton County Sewer District #1 from its inception.

D. For an award of Petitioners’ costs and attorneys’ fees herein permitted by law.

E. For such other relief that the Court deems just and proper.

**COUNT VIII**

**DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1 THAT ITS OPERATION PROCEDURES CONFLICTED WITH THE PROVISIONS OF THE MISSOURI STATE CONSTITUTION, THE MISSOURI REVISED STATUTES AND WERE THERFORE UNCONSTITUTIONAL**

**169.** Petitioner hereby incorporates paragraphs 1 through 168 as though fully set forth herein.

**170.** By court order and decree Respondent, Benton County Sewer District #1 on November 29, 1994, was incorporated as a common sewer district, a body corporate and politic.

**171.** Based on information and belief Petitioner maintains that Respondent, Benton County Sewer District #1 as reflected in Board Meeting Minutes initiated and adopted its original user rate at an amount of $30 per month on the basis this was the highest rate voters would accept and vote for creating a common sewer district. This rate was not formulated from any proper budget or rate analysis. Instead the Respondent, Benton County Sewer District #1 formulated its budget based on the revenue rate and not the actual expenses and contractual obligations of the District.

**172.** The Missouri Constitution Article VI, Section 26(a) mandates the following:

**“**No county, city, incorporated town or village, school district or other **political corporation or subdivision** of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution.”

**173.**  TheMissouri Constitution Article VI, Section 24, Mandates the following:

“As prescribed by law all counties, cities, other legal subdivisions of the state, and **public utilities owned and operated by such subdivisions shall have an annual budget, file annual reports of their financial transactions, and be audited.**”

**174.** The Revised Statutes of MissouriChapter 67, § 67.010 provides:

“1. **Each political subdivision of this state**, as defined in section 70.120, except those required to prepare an annual budget by chapter 50 and section 165.191, shall **prepare an annual** **budget**. The annual budget shall present a complete financial plan for the ensuing budget year, and

shall include at least the following information:

(1) A budget message describing the important features of the budget and major changes from the preceding year;

(2) Estimated revenues to be received from all sources for the budget year, with a comparative statement of actual or estimated revenues for the two years next preceding, itemized by year, fund, and source;

(3) Proposed expenditures for each department, office, commission, and other classification for the budget year, together with a comparative statement of actual or estimated expenditures for the two years next preceding, itemized by year, fund, activity, and object;

(4) The amount required for the payment of interest, amortization, and redemption charges on the debt of the political subdivision;

(5) A general budget summary.

2. **In no event shall the total proposed expenditures from any fund exceed the estimated revenues to be received** plus any unencumbered balance or less any deficit estimated for the beginning of the budget year; provided, that nothing herein shall be construed as requiring any political subdivision to use any cash balance as current revenue or to change from a cash basis of financing its expenditures.”

**175.** Petitioner asserts Respondent, Benton County Sewer District #1 has never complied with the above mentioned mandatory provisions of the Missouri State Constitution or the Missouri Revised Statutes.

**176.** The original $30a month sewer user rate was not established by Respondent, Benton County Sewer District #1 based upon properly proposed expenditures as required pursuant to RSMo Chapter 67, § 67.010(1)(3). Instead Respondent, Benton County Sewer District #1 developed a budget based solely on the revenues generated from the $30 monthly rate. The April 25, 1995 Board Meeting Minutes for the Benton County Sewer District #1 reflect the following:

“…..Dennis Frisch [**USDA Employee**] made a few procedural suggestions. **The District should determine the sewer user rate that would be the highest that could be sold to the voters.** Further discussion concluded the range might be $25 to $30 per month. Voters can be presented this figure….” Again, during the July 18, 1995 Board Meeting of the Benton County Sewer District #1 the minutes reflect the following:

“…It was agreed that voters can be told that monthly user rates will be under $30.00 (probably not much under)….”

**177.** On March 4, 2004, a report (Report and Recommendations of Consultant) was presented to the Respondent, Benton Country Sewer District #1. The Report requested by USDA Rural Development and completed by WM. C. McCaffree depicted the following:

“The District’s P&L statements for the last for years show losses which are increasing:

2000 $14,536 loss

2001 19,003 loss

2002 18,336 loss

2003 27,903 loss

Total losses: $79,778

A surplus prior to 2000 has covered these losses. Without that surplus, the district would be in acute financial distress. That surplus is now exhausted.”

**178.** Petitioner submits the surplus discussed in the March 4, 2004 report was remaining grant funds for the construction of the sewer district system which Respondent, Benton County Sewer District #1 knew were to be refunded since not used for construction of the system.

**179.** Petitioner submits that Respondent, Benton County Sewer District #1

has never complied with the Missouri State law requiring a balanced budget.

Respondent has never complied with mandatory requirements that its expenses cannot exceed its revenues. Has never submitted and approved a proper budget. Has failed to submit audits for the years of 2010, 2011, 2012 and Respondent, Scott Totten has failed to submit audits for the years of 2013 and 2014 and failed to submit a proper budget for the years of 2013, 2014, and 2015. Respondent, Scott Totten as the Receiver was ordered by the United States District Court for the Western District if Missouri to comply with the laws of the United States and the laws of the State of Missouri.

**180.** In November 2014, the Missouri State Auditor’s Office released its findings in the audit of the Respondent, Benton County Sewer District #1, the audit findings reflect the following:

“The district filed inaccurate financial reports with regulatory agencies and budgetary information and management reports used by the Board were inaccurate, incomplete, or failed to comply with statutory provisions. District **budget did not include** a budget message or budget summary, actual beginning and ending or estimated ending fund balances, or **a schedule of indebtedness**. In addition, actual receipts and disbursements reported did not agree to information pulled from the district’s accounting software, cash balances reported could not be traced to either the bank balances or the reconciled bank balances for the same accounting period, and budgets included accrual estimates for items such as depreciation expense, which do not affect cash position. In addition, **no audit of the district has been completed since the year ended 2009** **and no financial transactions report has been filed with the State Auditor’s office for 2009, 2010, 2011, or 2013.**

**Sections 67.010 to 67.040, RSMo, provide specific items required for budgets of all political subdivisions. Section 250.150(3), RSMo, requires the district to be audited at least once a year and an annual audit is required by the district’s revenue bond covenants and USDA loan requirements. Section 105.145, RSMo, requires all political subdivisions to file annual reports of financial transactions with the State Auditor’s office.**

The district and the receiver both changed user rates without completing any documented financial or usage analysis, or utilizing the rate methodology available from the DNR. The only documented rate analysis found was completed in July 2012 by a third party; however, source financial information provided by the district for that analysis was inaccurate and therefore, the suggested rates developed from the study were likely inaccurate as well. Between July 2010, and July 2013, the board increased residential rates five times from $35 per month to $116 per month. After the receivership was established, the receiver lowered the residential user rate to $80 per month as of August 2013. Similar changes were noted for commercial user rates.”

**181**. Petitioner submits that the sewer user rates established by Respondent, Benton County Sewer District #1 were arbitrarily and capriciously established prior to the election on revenue bonds and the $30 per month rate was told the voters just to entice them for voting in favor of funding the district construction and further, Respondent’s continued rates each and every year were established arbitrarily and capriciously.

**182**. Petitioner submits that Respondent, Scott Totten as Receiver of the Benton County Sewer District #1 arbitrarily and capriciously set user rate charges at $80 per month. In August 2013, Respondent, Scott Totten lowered the user rate charges without any rate analysis, rationale, or proper budget. Respondent, Scott Totten knew the USDA Rural Development had informed the Respondent, Benton County Sewer District #1 the user charge of $116 per month was inadequate and not a sufficient amount to cover the expenses of the District. Scott Totten by lowering the sewer user rates violated the mandatory provisions of the Missouri State Constitution and the Revised Statutes of Missouri and subjected Petitioner and others similarly situated to a sewer rate charge that was wholly unfounded and merely plucked from the air.

**183**. Respondent, Scott Totten has not submitted any required audits, budgets, or financial reports since being appointed receiver of the Benton County Sewer District #1.

**184.** There exists between the parties an actual controversy regarding if Respondent, Benton County Sewer District #1 and Respondent Scott Totten have conducted the district operations contrary to the provisions of the Missouri Constitution and the Revised Statutes of the State of Missouri, which controversy is ripe for judicial resolution by this Court. WHEREFORE, Petitioner prays the Court for relief as follows:

A. For a declaration that:

1. All sewer usage charges implemented and adopted by the Respondent, Benton County Sewer District #1 and Respondent, Scott Totten have been and are arbitrarily and capriciously established and therefore illegal, invalid, and unconstitutional.

2. Respondent, Benton County Sewer District and Respondent, Scott Totten by failing to comply with the provisions of the Missouri Constitution and the Revised Statutes of the State of Missouri have and are continuously operating the Benton County Sewer District #1 in an illegal, invalid, unlawful and unconstitutional manner.

B. For an order directing the Respondents to cancel, annul and render void and of no effect, ***ab initio*,** all sewer user rates imposed by Respondents and all financial operations of the Benton County sewer District #1, and to reinstate Petitioner and, all others similarly situated, to the their status quo prior to the creation and funding of the Benton County Sewer District #1.

C. For an order directing Respondents to take all steps necessary in order to give effect to the foregoing declarations, and in order to rescind, cancel, annul and render void and of no effect, **ab initio**, all sewer user rates and financial operations of the Benton County Sewer District #1 and to reinstate Petitioner and all others similarly situated to their status quo prior to the creation and funding of the Benton County Sewer District #1.

D. For an award of Petitioner’s costs and attorneys’ fees herein permitted by law.

E. For such other relief that the Court deems just and proper.

**COUNT IX**

**DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1 THAT ITS PROCEDURE OF THREATENING TO FILE LIENS, FILING LIENS WITHOUT GIVING DUE NOTICE AND A HEARING TO DETERMINE DELINQUENCY OR APPEAL FROM ANY FINDING OF DELINQUENCY, CONSTITUTES A DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF LAW AND IS THERFORE ILLEGAL, INVALID AND UNCONSTITUTIONAL**

**185.** Petitioner hereby incorporates paragraphs 1 through 184 as though fully set forth herein.

**186.** Respondent, Benton County Sewer District #1 mails monthly statements to Petitioner and other users connected to the district system.

**187.** Respondent. Benton County Sewer District #1’s monthly statements to Petitioner and other users reflect the following language:

**“**Payments must be postmarked by the 15th of the month to avoid a $10.00 late fee. Accounts 60 days or more delinquent **shall have a lien placed against the property** and a $50.00 lien fee assessed to their account. **NO EXCEPTIONS.**”

“Any account not paid up to date, upon pump or sewer repair, **will have service disconnected,** until the account is brought current.”

**188.** The Respondent, Benton County Sewer District #1’s 1998 Rate Ordinance, Article V, Section 2 provides:

".......**When any bill is thirty days in default**, rendition of water and/or **sewer service to such premises shall be discontinued** until such bill is paid **following due notice and opportunity for hearing**....."

**189.** The 1998 Rate Ordinance Article V, Section 2 provides that a user of the District services cannot be disconnected until due notice is given and the individual is given an opportunity for a hearing. Petitioners submit that pursuant to this Ordinance, notice and a hearing is essential before a determination of delinquency or before or default can be made. In short, a user cannot be disconnected until the determination of delinquency is found at a hearing.

**190.** The current Billing Statements of Respondent, Benton County Sewer District #1 reflect that an account 60 or more days delinquent shall have a lien placed on the property. It stands to reason that a finding of delinquency would have to be determined first before a lien could be filed, and under the Ordinance provision **due notice and an opportunity for hearing** have to be provided before delinquency can be determined.

**191.** Based on information and belief Petitioners maintain, Respondent, Benton County Sewer District #1 does not give users any notice or opportunity for hearing before filing of a lien on property. Respondent, Benton County Sewer District #1 after filing a lien on property continues to provide service for the purpose of increasing the amount owed on the users account and to circumvent and avoid a delinquency determination after due notice and hearing and to deny any user the opportunity to dispute any billing charges.

**192.** Respondent, Benton County Sewer District #1 does not have any procedure guidelines for conducting a delinquency hearing for determination of disconnection nor any procedures for a user to appeal any determination of delinquency.

**193.** Respondent, Benton County Sewer District #1 maintains the unwritten policy that users have to pay whatever amount they are billed and users will not be given any forum by Respondent in which they can dispute or challenge the charges placed upon them.

**194.** Respondent, Scott Totten as Receiver of the Benton County Sewer District #1 has continued the policy of threatening liens and filing of liens on property without any due notice or opportunity for hearing.

**195.** Petitioner proposes Respondent, Benton County Sewer District #1’s actions of threatening to file and filing of liens without a determination of delinquency after due notice and hearing is nothing more than the extension of the unconstitutional revenue generating scheme as addressed in Count VII herein.

**196.** There exists between the parties an actual controversy regarding the actions of Respondent, Benton County Sewer District #1 threatening to file and filing of liens on user property without first a determination of delinquency after due notice and opportunity for hearing and the opportunity to appeal any delinquency determination, which controversy is ripe for judicial resolution by this Court. WHEREFORE, Petitioners prays the Court for relief as follows:

A**.** For a declaration that:

1. Respondents, Benton County Sewer District #1 and Receiver, Scott Totten actions of threatening liens and filing of liens on users property without a finding of delinquency after due notice and an opportunity for hearing is invalid, unlawful, and constitutionally impermissible.

2. Respondents, Benton County Sewer District #1 and Receiver, Scott Totten filing liens on users property without first making a finding of delinquency after giving due notice and an opportunity for hearing to the property owner constitutes a total denial of due process and equal protection of law and as such is illegal, invalid and unconstitutional.

3. That the liens placed on property by Respondents, Benton County Sewer District #1 and Receiver Scott Totten are illegal, invalid, and constitute “slandering of title” and result in property being unmarketable.

B. For an order directing the Respondents, Benton County Sewer District #1 and Receiver, Scott Totten to cease and desist from the filing of liens without first giving property owners due notice, opportunity for hearing, and opportunity to appeal any delinquency finding.

C. For an order directing Respondents, Benton County Sewer District #1 and Receiver, Scott Totten to release all liens filed by them on users’ property within the boundary area of the Benton County Sewer District #1.

D. For an Order directing Respondents, Benton County Sewer District #1 and Receiver, Scott Totten to compensate the users’ property where liens were place upon, the amount of $25,000.00 each for the act of “slandering title” and rendering the property unmarketable.

E. For an award of Petitioner’s costs and attorneys’ fees herein as permitted by law.

F. For such other relief that the Court Deems just and proper.

**COUNT X**

**DECLARATORY JUDGMENT AGAINST RESPONDENT, BENTON COUNTY SEWER DISTRICT #1 FOR THE UNEQUAL APPLICATION OF LAW, DENIAL OF DUE PROCESS, AND UNCONSTITUTIONAL TAKING OF PETITIONER’S PROPERTY**

**197.** Petitioner hereby incorporates paragraphs 1 through 196 as though fully set forth herein.

**198.** Petitioner, based on information and belief, contend Respondent, Benton County Sewer District #1 is subjecting Petitioner and other users to user charges and service fees which require Petitioners to pay for a treatment plant that was designed and over built, pay for operation of a treatment plant that was designed and over built, and pay for maintenance on a treatment plant that was over built and was done in excess of what was needed.

**199.** The Operating Permit issued by the Missouri Department of Natural Resources to Respondent, Benton County Sewer District #1 reflects that the treatment facility has a designed maximum daily flow rate of 110,000.

**200.** Respondent, Benton County Sewer District #1’s daily flow rates clearly establish the treatment plant has never had a daily flow rate of 50,000 gallons and that the average daily flow rate for the treatment plant is 37,000 gallons per day (approximate).

**201.** The treatment plant as designed and built is more than two (2) times the size needed to service sub-district of the Benton County Sewer District #1 based upon the daily flow readings.

**202.** Respondent, Benton County Sewer District #1 by billing and demanding payment from Petitioner, Respondent is requiring Petitioner to pay for a treatment plant, operation of a treatment plant, and maintenance on a treatment plant which was over built and not needed.

**203.** Petitioner submits that his having to pay for a plant that was designed and over built, pay for operation of an over built plant, and paying maintenance for an over built plant when not needed constitutes an unconstitutional taking of his property by Respondent, Benton County Sewer District #1.

**204.** Petitioner presents that from all the facts herein described, Respondents have, are and continually subjecting Petitioner and all others similarly situated to an unequal application of law, denial of due process and an unconstitutional taking of their property.

**205.** There exists between the parties an actual controversy regarding Respondent, Benton County Sewer District #1 requiring Petitioners and others similarly situated to pay for a treatment plant that was designed and over built and to pay for the operation and maintenance on the over built facility. Further, from all the facts presented, there exists between the parties an actual controversy that Respondent, Benton County Sewer District #1 and Respondent Scott Totten from the conception, creation, organization, incorporation, construction, operation, and continued existence of the Benton County Sewer District #1 has subjected Petitioner and all others similarly situated to an unequal application of law, a denial of due process of law, and the unconstitutional taking of their property. WHEREFORE, Petitioner prays the Court for relief as follows:

A. For a declaration that:

1. Respondent, Benton County Sewer District #1 by designing and over building its treatment plant and billing and demanding payment from Petitioner to pay for the over built plant and the operation and maintenance of the existing facility is an unconstitutional taking of Petitioner’s property.

2. The Benton County Sewer District is unconstitutional and has been unconstitutional form its conception, creation, organization, incorporation, construction, operation and continued existence.

3. Petitioner and others similarly situated are entitled to damages, (actual and punitive) for deprivation of constitutional rights in an amount of Fifty Million, (**$50,000,000.00)** dollars.

B. For an order directing Respondent to annul and render void and of no effect, ***ab initio***, the creation, organization, operation and existence of the Benton County Sewer District #1, and to reinstate Petitioner and all others similarly situate to their status quo prior to the organization of the Benton County Sewer District #1.

C. For an order directing the Respondent, Benton County Sewer District #1 to take all steps necessary to the fore going declarations, and in order to rescind, cancel, annul and render void and of no effect, **ab initio**, the creation, organization and existence of the Benton County Sewer District #1, reinstate Petitioner and all others similarly situated to their status quo prior to the formation of the Benton County Sewer District #1.

D. For an order directing the prosecuting attorney to convene a grand jury to investigate the creation, organization, construction, operation and continued existence of the Benton County Sewer District #1.

E. For an award of damages, (actual and punitive) to Petitioner and others similarly situated for an amount of Fifty Million, (**$50,000,000.00**) dollars.

F. For an award of Petitioners costs and attorneys’ fees herein prescribed by law.

G. For such other relief that the Court deems just and proper.

**CONCLUSION**

**206.** The creation, formation, organization, construction, operation and continued existence of the Benton County Sewer District #1, is, in every aspect and sense, **unconstitutional**! In the recent decision handed down by the United States Supreme Court in *Horne v.* *Department of* *Agriculture,* 576 U.S. \_\_\_\_\_\_\_\_, (June 22, 2015) the Court wrote:

“….The Constitution, however, is concerned with means as well as ends. The Government has broad powers, but the means it uses to achieve its ends must be “consist[ent] with the letter and spirit of the constitution.” *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (1819). As Justice Holmes noted, “a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way.” *Pennsylvania Coal*, 260 U. S., at 416…”

**207.** Petitioner has contacted numerous officials and government agencies concerning the many issues presented herein. Petitioner’s concerns have fell upon deaf ears. Petitioner has no recourse but to seek redress from this Court for the deprivation of his constitutional rights and to end them being subjected to the unconstitutional conditions at the hands of the Benton County Sewer District #1.

**208.** Lastly, on July 30, 1778. The Continental Congress enacted its whistleblower law. This law reads as follows;

“…That it is the duty of all persons in the service of the United States, **as well as all other inhabitants thereof**, to give the earliest information to Congress or any other proper authority of any **misconduct, frauds or misdemeanors committed by any persons in the service of these states, which may come to their knowledge**….”

Petitioner has done his duty, but to no avail.

**DEMAND FOR TRIAL BY JURY**

**209.** Petitioner hereby demands trial by jury on any contested factual issue presented herein.

Respectfully submitted,

**/s/ George M. Hall**

George M. Hall

31971 Chesapeake Dr.

Warsaw, Missouri 65355

**VERIFICATION**

I, George M. Hall, Petitioner in the foregoing Petition For Declaratory Judgment upon my oath state that I have read the foregoing Petition For Declaratory Judgment and that the factual allegations presented therein are true and correct to the best of my knowledge, information and belief.

**/s/ George M. Hall**

George M. Hall

Subscribed and sworn to before me on this the \_\_\_\_\_ day of November, 2015.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public In and For

Benton County, Missouri

My commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_