

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

In the Matter of Lincoln County Utilities)	
Co.'s Application to Sell Its)	
Sewer/Treatment Facilities to the Public)	<u>Case No. SM-2006-0369</u>
Water Supply District No. 1 of Lincoln)	
County, Missouri.)	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Staff Recommendation respectfully states as follows:

1. Lincoln County Utilities Co. (LCU) is a certificated sewer corporation subject to the jurisdiction of the Missouri Public Service Commission (Commission).
2. LCU has applied to the Commission for permission to transfer its assets to the Public Water Supply District No. 1 of Lincoln County, Missouri (the District) pursuant to Section 393.190, RSMo (2000).
3. As ordered by the Commission, Staff has been monitoring this transaction and filing timely status reports since the spring of 2006.
4. LCU and the District were unable to complete the transaction by the originally contemplated closing date.
5. LCU and the District have now reached an agreement and the proposed closing date of the transaction is July 11, 2008.
6. In the attached Staff Memorandum and accompanying Attachments, Staff recommends that the Commission approve the proposed transaction and allow LCU to transfer its facilities to the District as set forth in the terms of the parties' agreement.

7. Staff further recommends that the Commission approve the transaction in time to allow the closing to take place on July 11, 2008 as contemplated by the parties' agreement.

8. Staff further recommends that the Commission order LCU to notify the Commission within three days after the closing takes place, and that the Commission thereafter cancel LCU's certificate and also cancel LCU's currently effective tariffs.

9. Undersigned counsel recommends that the Commission order LCU to update its statement of the impact of the transfer on the tax revenue of Lincoln County to reflect the Company's most current assessment from the taxing authority¹ so that the Commission can provide this information to the county clerk of Lincoln County as required by Section 393.190.1, RSMo (2000).

WHEREFORE, for the reasons set forth in Staff's Memorandum and accompanying Attachments, Staff recommends that the Commission approve the transfer of assets according to the terms of the agreement between LCU and the District. Staff further recommends that the Commission approve the transaction in time for closing to take place on July 11, 2008 as contemplated by the parties' agreement. Staff also recommends that the Commission order LCU to inform the Commission of closing within three days after the closing takes place and that the Commission thereafter take action to cancel LCU's certificate of convenience and necessity and tariffs. Undersigned counsel recommends that the Commission order LCU to update its statement of the impact of the transfer on the tax revenue of Lincoln County to reflect the Company's

¹ The Company reported a tax impact of the loss of \$1,233.73 in property taxes to Lincoln County in its original application. However, this tax impact amount was based on the company's 2005 assessment. Given the length of time that this application has been pending, more current tax assessment information should be available and should be provided to the Commission so the Commission can fulfill its statutory obligations.

most current assessment from the taxing authority so that the Commission can provide this information to the county clerk of Lincoln County as required by Section 393.190.1, RSMo (2000).

Respectfully Submitted,

/s/ Jennifer Heintz

Jennifer Heintz
Associate General Counsel
Missouri Bar No. 57128

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Missouri Public Service Commission
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed with first class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 25th day of June 2008.

/s/ Jennifer Heintz

OFFICIAL CASE FILE MEMORANDUM

Case No. SM-2006-0369

APPENDIX A

Staff's Recommendation

- Attachment A: First Amendment to Purchase and Sale Agreement
- Attachment B: Settlement Agreement – Department of Natural Resources and Lincoln County Utilities
- Attachment C: Agreement – Department of Natural Resources and Public Water Supply District No. 1 of Lincoln County
- Attachment D: Customer Notice
- Affidavit of James A. Merciel, Jr.

Note: To browse through this document by item, click on the "Bookmark" tab at the top of the menu bar on the left side of the screen and then click on the item you want to see.

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. SM-2006-0369
Lincoln County Utilities Company

FROM: James Merciel, Lead Staff - Water and Sewer Department
Jeremy Hagemeyer – Auditing Department
Steve Loethen – Water and Sewer Department

RE: Staff's Recommendation Regarding Transfer of Assets

Date: June 25, 2008

<u>/s/ James Busch</u>	<u>June 25, 2008</u>
Manager – Water and Sewer Dept.	Date
<u>/s/ Jennifer Heintz</u>	<u>June 25, 2008</u>
General Counsel's Office	Date

Introduction

On March 27, 2006 Lincoln County Utilities Company (LCU) submitted its *APPLICATION TO THE PUBLIC SERVICE COMMISSION FOR THE SALE OF A SEWER/TREATMENT FACILITY* (Application), in which it seeks to sell and transfer its assets used to provide sewer service to Public Water Supply District No. 1 of Lincoln County (District).

On March 31, 2006, the Commission issued its ORDER DIRECTING NOTICE AND ADDING PUBLIC WATER SUPPLY DISTRICT NO. 1 OF LINCOLN COUNTY, MISSOURI AS A PARTY. In this order, the Commission made the District a party to the case, prescribed that notice be sent to the County Commission of Lincoln County, members of the Missouri General Assembly who represent the affected area, the Missouri Department of Natural Resources (DNR), and media that serve the affected area. In addition, in this order the Commission set April 20, 2006 as the date by which any interested persons should submit an application to intervene in the case if desired. No parties sought to intervene by the prescribed date, nor have any parties sought to intervene since that time.

On April 24, 2006, the Commission issued its ORDER DIRECTING STAFF TO FILE A RECOMMENDATION, in which it ordered the Staff to file its recommendation pertaining to this case by May 24, 2006. On May 9, 2006, in response to this order, the Staff filed a Status Report in which it explained that the parties would require considerable time to accomplish necessary work, and for sufficient information to become available to the Staff in order to review the case and prepare a recommendation, and the Staff therefore recommended that it file monthly status

reports. On May 12, 2006, the Commission issued its ORDER DIRECTING STAFF TO FILE STATUS REPORTS, in which it directed the Staff to file status reports on or before the 15th day of each month, until a recommendation can be filed.

In response to the Commission's most recent order, the Staff filed its Second Status Report on June 15, 2006, and continued preparing and filing monthly status reports until filing its Seventeenth Status Report on September 10, 2007. On September 11, 2007, the Commission issued its ORDER DIRECTING STAFF TO FILE QUARTERLY STATUS REPORTS, in which it relieved the Staff of filing monthly status reports, but instead to file quarterly status reports on the 15th days of January, April, July, and October, until a recommendation can be filed or unless otherwise ordered by the Commission. The Staff then filed its Eighteenth Status Report, and most recently on April 15, 2008 its Nineteenth Status Report.

Background

The Commission issued a Certificate of Convenience and Necessity to LCU to provide water and sewer service to its service area near Old Monroe in Case No. 18,060, which case was closed on September 26, 1974. The Commission approved LCU to sell and transfer its water system to the District in Case No. WM-91-266, effective May 31, 1991. At present, LCU provides sewer service to approximately 170 residential customers and 3 commercial customers in a community known as Maryknoll and an adjacent subdivision known as Green Acres. LCU originally was formed and operated for many years by several business partners. However, in recent years the children of the original partners have assumed ownership, and as noted in LCU's Application and as observed by the Staff, the present owners do not have good working relationships with each other, nor the resources or desire to properly run LCU. This has resulted in deficiencies with plant operations and maintenance, including violations of DNR regulations. LCU's approved residential rates are \$6.50 per month, and have been in effect since January 1, 1978.

The District was formed as a rural water district in 1966. It was authorized by court decree on December 27, 1993 to provide sewer service in addition to providing water service. The District presently has 4,330 water customers, 1,114 sewer customers, and presently operates two sewage treatment facilities, one of which is a new facility constructed by the District. Besides LCU's facility, the District is in the process of acquiring two additional existing treatment facilities. The District does not have any DNR compliance issues with its sewage treatment facilities. The District's monthly rates for sewer service, applicable to all of its customers including those proposed to be acquired with this sale, are \$27 plus \$2.36 per 1,000 gallons of water usage. For residential customers, the water usage is determined by applying the average monthly usage for the months October through March on a year-around basis, thereby excluding outdoor water use. Monthly sewer bills for residential customers with 5,000 gallons wintertime water use would be \$38.80. The District has a \$75 deposit that it does not intend to apply to existing LCU customers, but will apply to all new customers. It also has a \$5000 fee for new sewer connections which inherently does not apply to existing customers, but will apply to new

customers in the service area making a new sewer connection. The District is not subject to the jurisdiction of the Commission.

Staff's Investigation

LCU included with its Application as Exhibit 2 a copy of the *Purchase and Sale Agreement* (Agreement), into which it entered with the District. The "Effective Date" of the Agreement, defined as the date of acceptance by LCU of the District's offer, was March 24, 2006. The Agreement provided for a "Review Period" beginning on the Effective Date, and ending after 180 days on September 20, 2006; then, an "Approval Period" of 365 days after the expiration of the Review Period, ending on September 20, 2007; and, finally, for Closing to occur within 10 days after the last day of the Approval Period, by September 30, 2007.

Since LCU and the District were not able to accomplish the sale within the time frame outlined in the Agreement, they entered into the *First Amendment to Purchase and Sale Agreement* (Amended Agreement), signed by both parties on March 20, 2008. A copy of the Amended Agreement is included with this Memorandum as Attachment A. The Amended Agreement, among other things, provides for another "Review Period" and "Approval Period," both of which end on July 1, 2008. The proposed 10-day Closing period remains intact, therefore, Closing is scheduled to occur by July 11, 2008, assuming that this proposed sale is approved by the Commission.

During the Review Period and Approval Period of the Agreement, the District's consulting engineer prepared a preliminary engineering report (PER), to address the inadequacies of the existing sewer system. Although there are some deficiencies and maintenance needs with regard to the sewage collection system, the most significant deficiency is sewage treatment. The PER included recommendations for immediate improvements to the current lagoon facility, in order to achieve compliance with current discharge requirements. This includes some fundamental maintenance items such as grass mowing and repairs to the earthen berm, chemical application to control algae, and disinfection of the effluent. However, the PER indicates that additional long term improvements are also necessary in order to meet future proposed treatment requirements, as indicated on a Water Quality Review Sheet (WQRS) that DNR provided to the District. As compared to LCU's most recent discharge permit, the WQRS indicates a necessity for a slightly more stringent requirement for biological oxygen demand (BOD) from 45 milligrams per litre (mg/l) to 30 mg/l, total suspended solids (TSS) from 80 mg/l to 30 mg/l, and new specifications for pH and ammonia.

The PER outlined several options for modification of the existing facility or its replacement, identifying one particular modification that would be most cost effective. The estimated capital cost in the PER is \$905,000 for a 60,000 gallon per day facility, or approximately \$3,940 per customer, or \$15.08 per gallon of capacity. Although the District is contemplating this modification to the existing facility, it is representing to the Staff that it has recently begun talks with a nearby developer, some neighboring communities, and the Lincoln County government

that could result in construction of a larger regional treatment facility that would include the LCU service area, and eliminate LCU's existing facility.

Because of the inadequate treatment plant operations and violations, failure to undertake needed improvements, and past due fees, LCU entered into a Settlement Agreements with DNR, a copy is included with this Memorandum as Attachments B. As a potential purchaser, the District also entered into an Agreement with DNR, included as Attachment C, the terms of which are subject to approval of this proposed sale and Closing. The Agreement between the District and DNR provides that the District will submit plans for disinfection of the treatment plant effluent 120 days after Closing, and to complete construction of the disinfection facilities 180 after issuance of a construction permit by DNR. Also, the District agrees to submit plans for a new/upgraded treatment facility 180 days after Closing, then for construction of the new or upgraded facilities to be complete 545 days after the construction permit is issued by DNR.

This sale will result in a substantial rate impact upon LCU's customers. The Agreement provides that the District will provide notice of the sale to customers, but that occurs after Closing, and the draft proposed notice included with the Agreement has no rate information. At the Staff's request, LCU will send a notice to its customers with its billing scheduled to be send at the end of June. A copy of the notice is included as Attachment D.

Other Matters

The Staff finds that LCU is presently in good standing with the Missouri Secretary of State according to records on that agency's internet site. The Staff believes that LCU does not have compliance issues with the Commission, having reviewed records for annual reports for the years 2002-2008 in the Commission's Electronic Filing and Information System (EFIS), and the Adjudication Division's electronic records dating back to 1997. Annual Assessments are paid through Fiscal Year 2008 according to the Administration Division's electronic records that include Fiscal Years 2000 to the present.

Staff's Conclusions and Recommendation

In an attempt to resolve the issues pertaining to sewage treatment in LCU's service area LCU, the District, DNR, and the Staff have worked together during the course of this case since it was filed more than two years ago, as well as for quite some time before that. The Staff believes that the owners of LCU simply are unable to keep up with running their company and operating the utility facilities adequately, especially considering area growth and increasing water pollution regulations. The District, on the other hand, is an entity that exists for the purpose of providing water and sewer utility service, and is able to plan for growth, undertake capital intensive projects, professionally operate utility systems, and address issues pertaining to customer service. The Staff recognizes that this proposed transaction will result in a substantial rate impact upon LCU's customers, from LCU's current residential monthly rate of \$6.50 to the District's rates

that will result in the \$30 to \$40 range per month for most residential customers, depending on water usage. However, if LCU were to continue ownership of this system, it would need to improve its operations and undertake major capital improvements similar to what the District has agreed to do in order to meet the sewage treatment requirements for the service area, and thus the Staff believes that a substantial rate impact is unavoidable. But, even if LCU had the resources to improve and continue operations, and proceeded in doing so, then the customers would not have the benefits of a larger, professional, regional scale utility, and thus the Staff believes that the acquisition by the District, in itself, is a benefit to the customers. A factor in the rate impact is that LCU's current rates date to 1978. The Staff believes that if LCU had maintained its operations at an adequate level, made necessary capital investments, and kept its rates up to date and reflecting the costs of adequate operations, then it would most likely have rates that are much different than the actual current rates.

Based on the above, the Staff believes that approval of this sale is vital to the public interest. The Staff recommends that this sale and transfer be approved by the terms of the Agreement and the Amended Agreement, such that Closing may take place on or before July 11, 2008.

The Staff further recommends that LCU notify the Commission within three days after Closing takes place, at which time the Commission may cancel the Certificate for LCU and tariffs on file for LCU.

Attachments:

- A – First Amendment to Purchase and Sale Agreement
- B – Settlement Agreement Between DNR and LCU
- C – Agreement Between DNR and District
- D – Notice Provided to Customers by LCU

Official Case File Memorandum

Case No. SM-2006-0369

Attachment A

First Amendment to Purchase and Sale Agreement

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT ("First Amendment") is made between Lincoln County Utilities Co., a Missouri corporation ("Seller"), and Public Water Supply District No. 1 of Lincoln County, Missouri, a political corporation of the State of Missouri ("Purchaser").

WHEREAS, the Seller and the Purchaser have entered into that certain Purchase and Sale Agreement dated March 21, 2006 (the "Agreement"), and

WHEREAS, the parties desire to amend the Agreement in certain respects as set forth herein.

In consideration of the mutual covenants and representations contained herein, Seller and Purchaser agree as follows:

Section 1: Section 4 of the Agreement shall be replaced in its entirety with the following:

4. CONDITIONS TO CLOSING

4.1 Title. Purchaser, at Purchaser's expense, shall order and obtain the following items (collectively, the "Title Documents"):

(a) **Title Commitment.** A Commitment for Title Insurance for an ALTA Owner's Title Policy, as defined in Section 6.2(c), issued by the Title Company and legible copies of all restrictive covenants, easements and other items listed as title exceptions therein;

During the period commencing on the Effective Date and ending on July 1, 2008 thereafter (the "Review Period"), Purchaser may approve or disapprove the Commitment for Title Insurance and all matters contained therein, which approval or disapproval shall be within Purchaser's sole discretion. If Purchaser fails to disapprove any item in the Commitment for Title Insurance by written notice to Seller within the Review Period, Purchaser shall be deemed to have approved the Commitment. If Purchaser disapproves any such item by written notice to Seller during the Review Period, Purchaser may terminate this Agreement in its sole and absolute discretion, or alternatively may allow Seller an opportunity to cure any defects in title, if applicable, as a condition to Closing. The title exceptions listed in Schedule B of the Commitment for Title Insurance which Purchaser approves or is deemed to approve pursuant to this Section 4.1 are hereinafter called the "Permitted Exceptions."

4.2 Governmental and Financing Approvals. During the Review Period, Purchaser shall undertake such actions as are necessary for Purchaser, to obtain approval from all governmental agencies whose approval of this purchase and sale is required by law including, but not limited

to, the Missouri Public Service Commission, including but not limited to conducting such public meetings and obtaining such approvals (the "Approvals") as are necessary for Purchaser to own, operate and use the Property and finance the acquisition of the Property through the issuance of bonds if deemed appropriate by Purchaser. Purchaser shall diligently and timely pursue obtaining such Approvals. Purchaser shall have until July 1, 2008 (the "Approval Period"), to obtain such Approvals. If such Approvals have not been obtained by the end of the Approval Period, this Agreement shall be deemed automatically terminated at the end of the Approval Period. Notwithstanding anything contained herein to the contrary, the parties shall share equally any legal fees and costs incurred in obtaining the Approvals and shall jointly retain the services of an attorney to represent both parties in obtaining the approval of the Missouri Public Service Commission.

4.3 Termination. If this Agreement is terminated pursuant to Section 4.1 or Section 4.2 above, the Earnest Money, together with all accrued interest thereon, will be promptly refunded to Purchaser, and neither party shall have any further obligations under this Agreement, except for those provisions which specifically survive termination.

Section 2: Except as specifically modified herein, all other terms, conditions and provisions of the Sale Contract shall remain in full force and effect.

Section 3: In the event of any conflict between the provisions of this First Amendment and any of the terms, conditions and provisions of the Agreement the provisions of this First Amendment shall govern.

Section 4: Each party agrees to perform any further acts and execute any documents which may be reasonably necessary to carry out the provisions of this First Amendment.

Section 5: Each party warrants and represents that the person executing this First Amendment on his, her or its behalf is authorized to do so.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment as of the date and the year noted below.

PURCHASER:

DATE OF EXECUTION BY PURCHASER:

PUBLIC WATER SUPPLY DISTRICT NO. 1
OF LINCOLN COUNTY, MISSOURI,
a political corporation

3-20-08

By:

Name:

Title:

Wayne Kertman
WAYNE KERTMAN
PRESIDENT

SELLER:

DATE OF EXECUTION BY SELLER:

LINCOLN COUNTY UTILITIES CO.,
a Missouri corporation3-20-08

By:

Name:

Title:

Dennis J. Schultz
Dennis J. Schultz
Secretary

Official Case File Memorandum

Case No. SM-2006-0369

Attachment B

Settlement Agreement – Department of Natural Resources
and Lincoln County Utilities

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made between the Missouri Department of Natural Resources, ("Department"); Jeremiah W. (Jay) Nixon, Attorney General of Missouri, ("Attorney General"); and the Lincoln County Utilities, Inc. ("Lincoln"). The parties stipulate and agree as follows:

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

WHEREAS, the Department director or his designee, on behalf of the Missouri Clean Water Commission, administers the provisions of the Missouri Clean Water Law, Chapter 644 of the Revised Statutes of Missouri (as amended).

WHEREAS, LCU is Missouri corporation registered and in good standing with the Missouri Secretary of State.

WHEREAS, LCU owns and operates a three (3) cell lagoon, hereinafter "wastewater lagoon", and its sewage collection system that provides sewage disposal services for the Green Acres Subdivision. Effluent from the wastewater lagoon discharges to a tributary to the Cuivre River pursuant to the requirements and conditions of Missouri State Operating Permit, hereinafter "MSOP", No. MO-0099228. The wastewater lagoon is located in the NW ¼, NW ¼, NE ¼, Section 15, T48N, R2E, Lincoln County.

WHEREAS, LCU has an agreement to transfer the wastewater lagoon and its sewage collection system to Public Water Supply District No. 1 of Lincoln County, Missouri ("District").

WHEREAS, on October 5, 2001, the Department reissued MSOP No. MO-099228, which included a schedule of compliance. This schedule of compliance required LCU to contract with a

consultant to evaluate the wastewater lagoon to determine whether operational or maintenance problems is causing the effluent to violate the permitted effluent limitations. Effluent discharged from LCU's wastewater lagoon has chronically failed to comply with permitted effluent limitations for Biochemical Oxygen Demand, hereinafter "BOD", Total Suspended Solids, hereinafter "TSS", and Fecal Coliform. If the evaluation concluded the noncompliance was caused by minor operational and maintenance issues, LCU was then required to submit to the Department by December 31, 2001, a letter addressing the noncompliance and offer a solution to return to compliance by January 31, 2002. If the evaluation concluded that the noncompliance was not caused by minor operational and maintenance issues, LCU was then required to submit an engineering report to the Department by January 31, 2002, identifying the steps LCU planned to take to improve the wastewater lagoon or eliminate the discharge.

WHEREAS, LCU has not completed an evaluation of the wastewater lagoon to determine the cause of the chronic noncompliance with the permitted effluent limitations.

WHEREAS, LCU failed to complete an evaluation of the wastewater lagoon as required in part "B", Standard Conditions, and part "C", Schedule of Compliance, of MSOP No. MO-0099228 in violation of Section 644.076.1, RSMo., and 10 CSR 20-6.010(7)(A).

WHEREAS, on May 10, 2005, Department staff conducted an inspection of the wastewater lagoon and observed that the effluent was not being disinfected, a flow measuring device was not present, there was tall grass on the berm of the lagoon, and there was evidence of burrowing rodent activity on the lagoon berm. As part of this inspection, staff completed a file review for this facility and documented the following conditions: LCU did not have a certified operator; Discharge Monitoring Reports, hereinafter "DMR", for the previous twelve months revealed the effluent failed

to comply with permitted effluent limitations for BOD, TSS, and Fecal Coliform; LCU did not comply with the schedule of compliance contained in MSOP No. MO-099228; and the wastewater lagoon appeared to be operating above its design capacity. On June 2, 2005, Department Staff conducted a complaint investigation in response to an overflowing manhole in the LCU collection system. During this investigation staff also observed sewage flowing into a tributary to the Cuivre River and that there were sewage sludge deposits, turbidity, and malodor in the tributary to the Cuivre River. Due to violations documented by staff during the file review, the May 10, 2005, inspection, and the June 2, 2005, complaint investigation, the Department issued Notice of Violation, hereinafter "NOV", No. 2194 SL to LCU on June 8, 2005.

WHEREAS, on June 2, 2005, LCU used or maintained a water contaminant source (sewage bypassing from a manhole) which discharged to a tributary to the Cuivre River, waters of the state, without a MSOP in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

WHEREAS, as a result of the bypass observed by staff on June 2, 2005, LCU discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031. This discharge also caused pollution of the tributary to the Cuivre River, waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

WHEREAS, on September 28, 2005, Department staff conducted an inspection of the wastewater lagoon and observed the effluent that was not being disinfected, there was tall grass on the berm of the lagoon, there was evidence of burrowing rodent activity on the lagoon berm; and

there was excessive duckweed growth covering the second and third cells of the wastewater lagoon. During this inspection staff obtained a sample of the effluent and analysis documented that the effluent did not comply with the permitted effluent limitations for Fecal Coliform. Also as part of this inspection, staff completed a file review for this facility and documented that LCU did not have a certified operator and that LCU did not comply with the schedule of compliance contained in MSOP No. MO-0099228. Due to violations documented by staff during the September 28, 2005, inspection and analysis of the effluent sample, the Department issued NOV No. 2232 SL to LCU on November 10, 2005.

WHEREAS, LCU failed to complete upgrades to its wastewater lagoon so as to enable the effluent discharge from its wastewater lagoon to comply with the final effluent limitation for Fecal Coliform, as required in part "B", Standard Conditions, and part "C", Schedule of Compliance, of its MSOP in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A).

WHEREAS, during the months of April, November and December 2005, and April and August 2006, LCU failed to comply with its permitted monthly average effluent limitation for BOD. During the months of April and November 2005, and April 2006, LCU failed to comply with its permitted monthly average effluent limitation for TSS. During the months of May, July, August, September, October 2005, and June, July, August, and September 2006, LCU failed to comply with its permitted monthly effluent limitation for Fecal Coliform. During the months of April, May, June, July 2005, and August 2006, LCU failed to comply with its permitted daily maximum effluent limitation for total residual chlorine.

WHEREAS, LCU failed to comply with its permitted effluent limitations contained in Part "A" of its MSOP in violation of Sections 644.051.1(3) and 644.076.1 RSMo.

WHEREAS, allowing effluent to be discharged in violation of permitted effluent limitations is causing pollution of the unnamed tributary to Cuivre River, waters of the state, in violation of Sections 644.051.1(1) and 644.076.1 RSMo.

WHEREAS, LCU owes the Department nine thousand one hundred and twenty dollars and zero cents (\$9,120.00) for past annual permit fees and late penalties for MSOP No. MO-0099228.

WHEREAS, the Missouri Clean Water Law, Section 644.076.1, RSMo, makes it unlawful to violate the Missouri Clean Water Law and regulations promulgated pursuant thereto and establishes civil penalties of up to and including ten thousand dollars and no cents (\$10,000.00) per day for each day, or part thereof for each violation.

WHEREAS, the Department, the Attorney General, and Lincoln desire to amicably resolve any and all disputes or claims which could be made against Lincoln for the alleged violations of the Missouri Clean Water Law and/or regulations referenced herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Department, the Attorney General, and Lincoln further stipulate and agree as follows:

1. The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, as well as their successors in interest, and their successors in office. Further, each party executing this Settlement Agreement shall be responsible for ensuring that their agents, subsidiaries, affiliates, lessees, officers, servants, or any person or entity acting pursuant to, through, or for the parties, adhere to the terms of this Settlement Agreement.

2. Lincoln in compromise and satisfaction of all allegations or claims for violations of the Missouri Clean Water Law listed in NOV No. 2194 SL and NOV No. 2232 SL agrees,

without admitting liability or fault, to a civil penalty of five thousand dollars (\$5,000). The entire five thousand dollars (\$5,000.00) shall be suspended on the condition of Lincoln's compliance with the Missouri Clean Water Law for a period of two years following the effective date of this Settlement Agreement. The suspended penalty shall be due and owing by Lincoln within fifteen (15) days of written demand by the Attorney General's Office. The check for the civil penalty shall be in the form of a certified check or cashier's check made payable to the "State of Missouri (Lincoln County School Fund)" and mailed as provided in paragraph 4 of this Settlement Agreement.

3. Lincoln agrees that this Settlement Agreement is expressly conditioned on full compliance with its terms and the transfer of the wastewater lagoon and its sewage collection system to the District on or before September 1, 2008.

4. Lincoln agrees to pay the Department nine thousand one hundred and twenty dollars and zero cents (\$9,120.00) for past annual permit fees and late penalties for MSOP No. MO-0099228. The fees and penalties shall be paid by a certified check or cashiers check made payable to the "State of Missouri (Department of Natural Resources)." The check for the fees and late penalties is due and payable upon the transfer of the wastewater lagoon and its sewage collection system to the District. The check shall be mailed to:

Jo Ann Horvath
Collections Specialist
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102

Receipt of the executed Settlement Agreement and payment for fees and late penalties are acknowledged by the Department and the AGO signatures affixed hereto.

5. The parties further agree that stipulated penalties are not the Department's exclusive remedy for violations of this Agreement. The Department expressly reserves the right to seek any other relief it deems appropriate, including but not limited to, action for statutory penalties or injunctive relief against Lincoln. In addition, the Department expressly reserves and Lincoln acknowledges the Department's right to issue appropriate administrative orders authorized by Section 644.

6. The Department and the Attorney General agree not to cause or be brought any civil action against Lincoln for penalties arising out of the above-referenced claimed violations of the Missouri Clean Water Law and/or regulations listed above, as long as Lincoln complies with the terms of this Settlement Agreement.

7. In consideration for the release contained herein, Lincoln agrees to comply with all State of Missouri Environmental Statutes and their implementing regulations all future activities. Nothing herein shall be construed as forgiving future non-compliance with the Missouri Clean Water Law and implementing regulations.

8. Execution of this Settlement Agreement shall be completed when the Department has signed and dated the Settlement Agreement. As the last party signing the Settlement Agreement, the Department shall promptly distribute copies of the executed Settlement Agreement to the other signatories.

9. The terms stated hereinabove constitute the entire and exclusive agreement of the parties hereto. There are no other obligations of the parties, be they expressed or implied, oral or written, except those which are expressly set forth hereinabove. The terms of this Agreement

supercede all previous memoranda of understanding, notes, conversations, and agreements expressed or implied. This agreement may not be modified orally.

In Witness Whereof, the parties have executed this Agreement as follows:

LINCOLN COUNTY UTILITIES, INC.

By: Dennis J. Schult

Date: 5-8-08

**JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL OF MISSOURI**

By: HT

H. Todd Iveson
Assistant Attorney General

Date: 5/14/08

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: EG

Edward Galbraith, Director
Water Protection Program

Date: 5/30/08

Official Case File Memorandum

Case No. SM-2006-0369

Attachment C

Agreement – Department of Natural Resources and Pubic
Water Supply District No. 1 of Lincoln County

AGREEMENT

This Agreement is made between the Missouri Department of Natural Resources, hereinafter the “Department”; the Attorney General of Missouri, hereinafter the “Attorney General”, and the Public Water Supply District No. 1 of Lincoln County, Missouri, hereinafter “District”..

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

WHEREAS, the Department director or his designee, on behalf of the Missouri Clean Water Commission, administers the provisions of the Missouri Clean Water Law, hereinafter “MCWL, Chapter 644 of the Revised Statutes of Missouri (as amended).

WHEREAS, the District is a public water supply district with authority to provide drinking water and sanitary sewage collection and treatment services in Lincoln County.

WHEREAS, Lincoln County Utilities, Inc., hereinafter “LCU” owns and operates a three (3) cell lagoon, hereinafter “wastewater lagoon”, and its sewage collection system that provides sewage disposal services for the Green Acres Subdivision. Effluent from the wastewater lagoon discharges to a tributary to the Cuivre River pursuant to the requirements and conditions of Missouri State Operating Permit, hereinafter “MSOP”, No. MO-0099228. The wastewater lagoon is located in the NW ¼, NW ¼, NE ¼, Section 15, T48N, R2E, Lincoln County.

WHEREAS, the District is planning to assume control and ownership of the wastewater lagoon and its sewage collection system (the “System”). Transfer of the System to the District is subject to approval from the Missouri Public Service Commission. Currently LCU and the District have an application filed with the Public Service Commission case, No. SM-2006-0369, for approval of the transfer of LCU’s sewer collection and treatment facilities to the District.

WHEREAS, on October 5, 2001, the Department reissued MSOP No. MO-099228, which included a schedule of compliance. This schedule of compliance required LCU to contract with a consultant to evaluate the wastewater lagoon to determine whether operational or maintenance problems is causing the effluent to violate the permitted effluent limitations. Effluent discharged from LCU's wastewater lagoon has chronically failed to comply with permitted effluent limitations for Biochemical Oxygen Demand, hereinafter "BOD", Total Suspended Solids, hereinafter "TSS", and Fecal Coliform. If the evaluation concluded the noncompliance was caused by minor operational and maintenance issues, LCU was then required to submit to the Department by December 31, 2001, a letter addressing the noncompliance and offer a solution to return to compliance by January 31, 2002. If the evaluation concluded that the noncompliance was not caused by minor operational and maintenance issues, LCU was then required to submit an engineering report to the Department by January 31, 2002, identifying the steps LCU planned to take to improve the wastewater lagoon or eliminate the discharge.

WHEREAS, LCU has not completed an evaluation of the wastewater lagoon to determine the cause of the chronic noncompliance with the permitted effluent limitations.

WHEREAS, LCU failed to complete an evaluation of the wastewater lagoon as required in part "B", Standard Conditions, and part "C", Schedule of Compliance, of MSOP No. MO-0099228 in violation of Section 644.076.1, RSMo., and 10 CSR 20-6.010(7)(A).

WHEREAS, on May 10, 2005, Department staff conducted an inspection of the wastewater lagoon and observed that the effluent was not being disinfected, a flow measuring device was not present, there was tall grass on the berm of the lagoon, and there was evidence of burrowing rodent activity on the lagoon berm. As part of this inspection, staff completed a file review for this facility and documented the following conditions: LCU did not have a certified operator; Discharge Monitoring Reports, hereinafter "DMR", for the previous twelve months revealed the effluent failed to comply with permitted effluent limitations for BOD, TSS, and Fecal Coliform; LCU did not comply with the schedule of compliance contained in MSOP No. MO-099228; and the

wastewater lagoon appeared to be operating above its design capacity. On June 2, 2005, Department Staff conducted a complaint investigation in response to an overflowing manhole in the LCU collection system. During this investigation staff also observed sewage flowing into a tributary to the Cuivre River and that there were sewage sludge deposits, turbidity, and malodor in the tributary to the Cuivre River. Due to violations documented by staff during the file review, the May 10, 2005, inspection, and the June 2, 2005, complaint investigation, the Department issued Notice of Violation, hereinafter "NOV", No. 2194 SL to LCU on June 8, 2005.

WHEREAS, on June 2, 2005, LCU used or maintained a water contaminant source (sewage bypassing from a manhole) which discharged to tributary to the Cuivre River, waters of the state, without a MSOP in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

WHEREAS, as a result of the bypass observed by staff on June 2, 2005, LCU discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031. This discharge also caused pollution of the tributary to the Cuivre River, waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

WHEREAS, on September 28, 2005, Department staff conducted an inspection of the wastewater lagoon and observed the effluent that was not being disinfected, there was tall grass on the berm of the lagoon, there was evidence of burrowing rodent activity on the lagoon berm; and there was excessive duckweed growth covering the second and third cells of the wastewater lagoon. During this inspection staff obtained a sample of the effluent and analysis documented that the effluent did not comply with the permitted effluent limitations for Fecal Coliform. Also as part of this inspection, staff completed a file review for this facility and documented that LCU did not have a certified operator and that LCU did not comply with the schedule of compliance contained in MSOP No. MO-0099228. Due to violations documented by staff during the September 28, 2005, inspection and analysis of the effluent sample, the Department issued NOV No. 2232 SL to LCU on November 10, 2005.

WHEREAS, LCU failed to complete upgrades to its wastewater lagoon so as to enable the effluent discharge from its wastewater lagoon to comply with the final effluent limitation for Fecal Coliform, as required in part “B”, Standard Conditions, and part “C”, Schedule of Compliance, of its MSOP in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A).

WHEREAS, during the months of April, November and December 2005, and April and August 2006, LCU failed to comply with its permitted monthly average effluent limitation for BOD. During the months of April and November 2005, and April 2006, LCU failed to comply with its permitted monthly average effluent limitation for TSS. During the months of May, July, August, September, October 2005, and June, July, August, and September 2006, LCU failed to comply with its permitted monthly effluent limitation for Fecal Coliform. During the months of April, May, June, July 2005, and August 2006, LCU failed to comply with its permitted daily maximum effluent limitation for total residual chlorine.

WHEREAS, LCU failed to comply with its permitted effluent limitations contained in Part “A” of its MSOP in violation of Sections 644.051.1(3) and 644.076.1 RSMo.

WHEREAS, allowing effluent to be discharged in violation of permitted effluent limitations is causing pollution of the unnamed tributary to Cuivre River, waters of the state, in violation of Sections 644.051.1(1) and 644.076.1 RSMo.

WHEREAS, the District is aware that LCU owes the Department approximately six thousand one hundred and forty dollars and zero cents (\$6,140.00) for past annual permit fees and late penalties for MSOP No. MO-0099228.

WHEREAS, Section 644.076.1, RSMo, makes it unlawful to violate the Missouri Clean Water Law and regulations promulgated pursuant thereto and establishes civil penalties of up to Ten Thousand Dollars and zero cents (\$10,000.00) per day per violation.

WHEREAS, the District has agreed to upgrade and/or replace the wastewater lagoon in order to achieve compliance with the Missouri Clean Water Law.

WHEREAS, the District, the Attorney General, and the Department desire to resolve all potential disputes or claims which could be made against LCU for

the above-alleged violations of the Missouri Clean Water Law and its implementing regulations if and when the transfer occurs.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the District, the Attorney General, and the Department further stipulate and agree as follows:

1. The provisions of this Settlement Agreement shall apply to and be binding upon the District, the Attorney General, and the Department, as well as their successors in interest, and their successors in office. Further, each party executing this Settlement Agreement shall be responsible for ensuring that their agents, subsidiaries, affiliates, lessees, officers, servants, or any person or entity acting pursuant to, through, or for the parties, adhere to the terms of this Settlement Agreement.

2. Under no condition shall any construction take place to modify, correct or replace any portion of the wastewater lagoon until a construction permit, has been issued by the Department, and all such construction must be in strict compliance with the approved plans and specification reviewed and approved by the Department.

3. The District agrees to complete construction to provide disinfection of the effluent from the wastewater lagoon according to the following schedule (documents required by this schedule shall be submitted to the Department's St. Louis Regional Office at 7545 S. Lindbergh, Suite 210, St. Louis, MO 63125):

Activity	Deadline
Submit to the Department, for review and Approval, plans and specifications and a complete application for construction prepared by an engineer registered in Missouri.	Within one hundred twenty (120) days of the date Public Service Commission approves transfer of the System to the District.
Complete construction of upgrade to the wastewater lagoon.	Within one hundred eighty (180) days of the Department's issuance of a Construction Permit
Achieve compliance with permit effluents limits for Fecal Coliform as contained in part A of the MSOP No. MO 0099228.	Within thirty (30) days of completion of construction
Submit an engineer's certification of work complete.	Within thirty (30) days of completion of construction.

4. The District further agrees to complete construction of a new wastewater treatment facility (WWTF) to replace the wastewater lagoon or upgrade the wastewater lagoon and expand treatment capacity according to the following schedule (documents required by this schedule shall be submitted to the Department's St. Louis Regional Office at 7545 S. Lindbergh, Suite 210, St. Louis, MO 63125):

Activity	Deadline
Submit to the Department, for review and approval, plans and specifications and a complete application for construction prepared by an engineer registered in Missouri	Within one hundred eighty (180) days of the date Public Service Commission approves transfer of the LCU's assets to the District.
Complete construction of replacement of the wastewater lagoon or upgrade of the wastewater lagoon and expansion of capacity.	Within five hundred forty-five (545) days of the Department's issuance of a Construction Permit.
Submit an engineer's certification of work completed.	Within thirty (30) days of completion of construction.
Submit an application, Form B, for the modification of the MSOP to the Department. The application should include a description of the WWTF or upgrades or upgrades to the wastewater lagoon and expansion of treatment capacity.	At least thirty (30) days prior to the new WWTF receiving wastewater from the subdivision.

5. With regard to delays in the upgrade and construction of the WWTF or upgrades to the wastewater lagoon due to weather conditions, it is the District's responsibility to inform the Department of the nature and extent of the delay. The District agrees to cooperate with the Department and provide any necessary information and documents to support the tolling of the deadline and the determination of how long the deadline will be tolled. The District agrees that all determinations regarding the tolling of the deadline to upgrade the wastewater lagoon or construct the WWTF, including the length of time the deadline is tolled, shall be made by the Department in good faith and the Department shall be reasonable in agreeing to extensions.

6. Unless otherwise agreed to by the Department and the Attorney General, the District agrees to limit new sewerage connections so as not to exceed design

capacity of the System until upgrades to the wastewater lagoon or construction of the WWTF is complete and the wastewater lagoon or the WWTF has the capacity to adequately treat the additional waste load.

7. The District agrees to notify the Department of a sewage bypass event as required by applicable law or regulations.

8. During all said periods of time set forth herein, the Department will not take enforcement action against the District so long as the District is in compliance with the terms of this Agreement. In the interim, from the date of this Agreement to the date all improvements contemplated herein are complete, the District shall take all practicable efforts to operate and maintain the wastewater lagoon and the WWTF so as to produce the best quality effluent feasible and practical with the equipment in place during such interim period. Nothing in this Agreement shall be construed as excusing, forgiving, releasing, or waiving any claims against District's predecessors in interest for any violations of state or federal law, including but not limited, violations of Chapters 640 and 644, RSMo, and their implementing regulations.

9. The Department and the Attorney General for themselves, and their past, present and future employees, agents, attorneys, and representatives hereby releases and forever discharges the District, including its officers, agents, employees, assigns, contractors and subcontractors, from all actions, suits, causes of action, damages, loss, claims and demands whatsoever, including, but not limited to, annual permit fees and late penalty fees, which the Department and the Attorney General now have, or at any time hereafter may have, or but for the execution of these presents could or might have had, against the District for or by reason of LCU's operation of the System, including, but not limited to, LCU's failure to comply with the terms of the Schedule of Compliance of its MSOP No. MO-0099228, NOV NO. 2194-SL, NOV NO. 2232-SL, prior to the acquisition of the System by the District.

10. Subject to the provisions of Sections 8 and 9 herein, this Agreement shall not be construed as excusing or forgiving future noncompliance with the Missouri Clean Water Law, Chapter 644, RSMo, and its implementing regulations.

11. In consideration for the release contained herein, the District agrees to comply with all State of Missouri environmental statutes and their implementing regulations for any and all future activities in the State of Missouri. Except as set forth in Section 8, nothing herein shall be construed as forgiving future non-compliance with all State of Missouri environmental statutes and their implementing regulations.

12. Execution of this Agreement shall be complete when the Department has signed and dated the Agreement. As the last party signing the Agreement, the Department shall promptly distribute copies of the executed Agreement to the other signatories.

13. Each signatory to this Agreement avers that he or she has the authority to bind his or her respective party to this Agreement as evidenced by his or her signature on this Agreement.

14. The terms stated hereinabove constitute the entire and exclusive agreement of the parties hereto. There are no other obligations of the parties, be they express or implied, oral or written, except those which are expressly set forth hereinabove. The terms of this agreement supersede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This agreement may not be modified orally.

15. If the District does not assume control and ownership of the System for any reason including, but not limited to, failure of the Missouri Public Service Commission to approve the transfer of LCU's sewer collection and treatment facilities to the District, then this Agreement shall be null and void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first-above written.

PUBLIC WATER SUPPLY DISTRICT NO. 1 OF LINCOLN COUNTY

By: Wayne Keckman Date: 5/15/08

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL OF MISSOURI

By: Todd Iveson Date: 6/13/08
Todd Iveson
Assistant Attorney General

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: Edward Galbraith Date: 6/19/08
Edward Galbraith, Director
Water Protection Program

Official Case File Memorandum

Case No. SM-2006-0369

Attachment D

Customer Notice

NOTICE TO CUSTOMERS OF LINCOLN COUNTY UTILITIES COMPANY
REGARDING SEWER SERVICE

June 25, 2008

Dear Customer:

On March 27, 2006, Lincoln County Utilities Company submitted an application to the Missouri Public Service Commission (Commission) to sell and transfer its sewer system assets to the Public Water Supply District No. 1 of Lincoln County. This is the same water district that provides water service in this area.

Improvements to the sewage treatment facility is desperately needed to meet newer and more stringent treatment requirements of the Missouri Department of Natural Resources. If this sale is approved, then the District is committed to immediately undertake interim improvements to the lagoon, and also develop an improved treatment facility.

Approval of this sale will result in an increase in your sewer bills. Lincoln County Utilities Company's rates are \$6.50 per month, which have been in effect since 1978. The District's monthly rate for residential sewer service is \$27 plus \$2.36 per 1,000 gallons of water usage during the months of October through March, which excludes most outdoor use such as lawn watering. This would result in a bill of \$38.80 per month for customers with water usage of 5,000 gallons per month during those months winter.

You may make comments about this sale if you wish. To submit your comments in writing:

Public Service Commission
Attn: Water/Sewer Dept.
P.O. Box 360
Jefferson City, MO 65102
Phone: 800-392-4211
Fax: 573-751-1847
E-Mail: water.sewer@psc.mo.gov

Office of the Public Counsel
Attn: Water/Sewer Dept.
P.O. Box 2230
Jefferson City, MO 65102
Phone: 866-922-2959
Fax: 573-751-5562
E-Mail: mopco@ded.mo.gov

To submit your comments via the Commission's Website:

- (1) go to <http://www.psc.mo.gov>;
- (2) click on "EFIS / Case Filings" on the menu bar on the left side of the page;
- (3) on the next page, click on the "Public Comment" icon under Submit Public Comments; and
- (4) fill out and submit the Public Comments form, please include the Case Number, SM-2006-0369.

Sincerely,

Lincoln County Utilities Company

Official Case File Memorandum

Case No. SM-2006-0369

Affidavit of James A. Merciel, Jr.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

AFFIDAVIT OF JAMES A. MERCIEL, JR.

STATE OF MISSOURI

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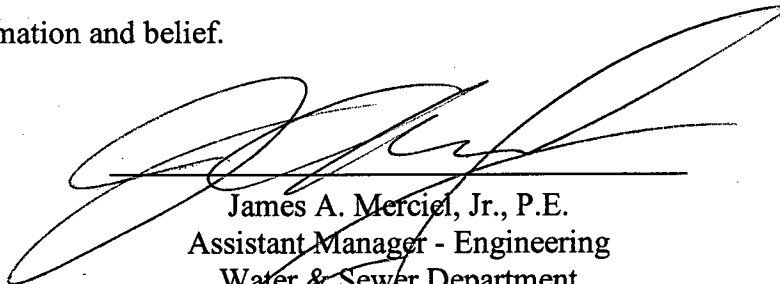
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Case No. SM-2006-0369

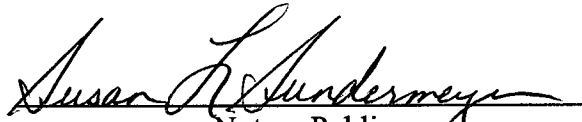
COUNTY OF CALLAWAY

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James A. Merciel, Jr., of lawful age, on his oath states: (1) that he is the Assistant Manager – Engineering in the Water and Sewer Department of the Missouri Public Service Commission; (2) that he participated in the preparation of the foregoing *Staff's Recommendation Regarding Transfer of Assets*; (3) that he has knowledge of the matters set forth in the foregoing *Staff's Recommendation Regarding Transfer of Assets*; and (4) that the matters set forth in the foregoing *Staff's Recommendation Regarding Transfer of Assets* are true and correct to the best of his knowledge, information and belief.


James A. Merciel, Jr., P.E.
Assistant Manager - Engineering
Water & Sewer Department
Utility Operations Division

Subscribed and sworn to before me this 25th day of June 2008.


Notary Public



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086