

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

In the Matter of Missouri-American Water Company	§
For a Certificate of Convenience and Necessity	§
Authorizing it to Install, Own, Acquire, Construct,	§ <b>File No. 2015-0065</b>
Operate, Control, Manage and Maintain a Sewer	§
System in Benton County, Missouri	§

**GEORGE M. HALL, PROPOSED INTERVENOR’S**

**RESPONSE TO**

**COMMISSION ORDER DATED DECEMBER 30, 2014**

Comes now, George M. Hall, Proposed Intervenor, and makes and files this his response to the Commission Order dated December 30, 2014, and submits the following:

1. On December 30, 2014, this Commission issued an order, which in part provided: “No later than January 5, 2015, Staff shall, **and any other party may**, explain whether there is any provision in Missouri-American’s tariff, local ordinance, state regulation, or federal regulation that would require George M. Hall to become a customer of a sewer system operated by Missouri-American Water Company.”

2. During the local public hearing held on November 24, 2014, in Warsaw, Missouri, the President of Missouri-American Water commented during the question answer session of the meeting “residents would **not be**

**required** to use the sewer service from Missouri-American Water.

3. George M. Hall knows of no local ordinance, state regulation, or federal regulation that would require him to be forced to become a customer of a sewer system operated by Missouri-American Water.

4. However, George M. Hall asserts there is a concerted and unwritten practice currently existing to force all residents of the dissolved Benton County Sewer District #1 to use the sewer service of Missouri-American Water if they are awarded a certificate of convenience and necessity. This concerted practice collectively involves the Benton County Health Department, the Missouri Department of Natural Resources and its representation by the Missouri Attorney General's Office, the United States Attorney's Office and sadly to say Missouri-American Water.

### **THE UNWRITTEN PRACTICE**

#### **(What They Do Not Want Known)**

5. In November, 2014, George M. Hall filed an application with the Benton County Health Department for a permit to install a residential sewage system at his residence which is located within the boundary of the Benton County Sewer District #1. On November 25, 2014, George M. Hall

received a response from the Benton County Health Department concerning his application. (See Exhibit “A” attached hereto and made part of this response.) The response reads as follows:

“At this time, the Benton County Health Department **will not be accepting applications, granting permits, or hearing appeals pertaining to permit denial** in regards to residences within the Benton County Sewer District No. 1.

Please Find attached a letter describing the court orders that are still effective and do not allow any action by the Benton County Health Department at this time.”

6. The attached letter submitted by the Benton County Health Department ironically displays it was written by the Missouri Assistant Attorney General who also represents the Missouri Department of Natural Resources which is a co-plaintiff against the Benton County Sewer District #1 in the federal action which presented the asset purchase agreement thereby bringing this entire fiasco currently before this Commission. What the Assistant Attorney General failed to point out is the crucial fact that **nowhere** in the temporary restraining order or the preliminary injunction order did the Federal Judge issue any statement or order that enjoined the Benton County Health Department from issuing applications, receiving applications or issuing permits for individual, on site, residential septic sewage treatment systems in the Benton County Sewer District #1 boundary. Further, nowhere in any order by the Federal Court are the words “**Benton**

**County Health Department”** ever mentioned. Why the biased opinion by the Missouri Attorney General’s Office in its letter to the Benton County Health Department? Quite simple, the Missouri Attorney General’s Office along with the United States Attorney are projecting a false customer base to Missouri-American Water, which they are willingly accepting.

7. Missouri-American Water is an active participant based upon their feasibility study submitted with their application to this Commission.

Missouri-American Water stated in the feasibility study it based its projected costs and revenues on 350 customers (which is the approximate number of customers of the Benton County Sewer District #1). How was this number derived by Missouri-American Water? Quite simply, by the refusing to allow anyone to install an on site residential sewage treatment system, which is the current practice by all parties. Example, in 2013, after the dissolution vote passed, Benton County Sewer District resident Robert Geranis obtained an application to install a residential on site sewage treatment system. Mr. Geranis contacted a licensed geologist and had a morphology test conducted at his property and passed without any complications meaning his property was suitable for an on site residential septic system. The application and test results were submitted to the Benton County Health Department (who’s own policy provides the applications are to be processed within 10 days) yet

Mr. Geranis's application has gone ignored.

### SCENARIO

8. Let's assume, for some impossible rational reasoning, Missouri-American Water is granted a CCN in this case. The USDA gets its grimy fingers on the \$750,000.00 purchase price to cover the balance of the unauthorized and fraudulent loan together with the payments already received from the Benton County Sewer District since 2000. The Federal Court then states the District is dissolved. Since no one has been permitted to install their own residential systems, **all are now forced to accept service** from Missouri-American Water; unless, the residents are given the same grace period time to install their own systems. To date this time period exceeds 21 months from the date of the vote dissolving the district. Will American-Water be willing to say "alright, all residents who desire to put in their own on site residential systems will be allowed 21 months or longer to do so and since you were deprived of the opportunity to do so, there will be no charge during the grace period?" The answer to this does not even have to be stated, but it would in all probability be a resounding "NO".

**MISSOURI REVIDED STATUTES**

**CHAPTER 67, SECTION 67.1441**

9. Missouri State Law provides in Chapter 67, § 67.1441; “Upon the written request of any real property owner within the district, the governing body.....may hold a public hearing for the removal of real property from a district and **such real property may be removed from such district** by ordinance,.....”

10. In January 2014, George M. Hall requested in writing from the court appointed receiver, Scott Totten, also a Missouri Department of Natural Resources employee, that his property be removed from the boundary of the Benton County Sewer District #1. Mr. Totten’s response was no. Further, at least one other resident (Robert Geranis) requested his property be removed from the boundary of the Benton County Sewer District #1. This request was also denied by Mr. Totten.

11. Even though there are no provisions for requiring George M. Hall to become a customer for an American-Water Sewer service, from the aforementioned, it is currently being conditioned by the United States Attorney, Missouri Department of Natural Resources, Missouri Attorney General’s Office, the Federal Receiver and Missouri Department of Natural

Resources employee Scott Totten, the Benton County Health Department, Missouri-American Water, and Staff Counsel, that George M. Hall and all residents will be forced and required to use the sewer service of Missouri-American Water all contrary to the vote of the people on April 2, 2013.

### **RESIDENTIAL SEPTIC AND OTHER SYSTEM TYPES**

12. It is common knowledge and fact that within the boundary of the Benton County Sewer District #1 there are residential septic systems, lagoons, and holding tanks all being used and these systems are not maintained by the Benton County Sewer District #1.

Wanta Linga area of the Benton County Sewer District #1 is located directly across the White Branch Cove from the White Branch resort area. White Branch is located on the west side of the cove, Wanta Linga the east side. Amazingly, Wanta Linga with its residences on the water front are on residential septic systems and have been the entire time since the creation of the Benton County Sewer District #1. Though they are in the District these residents have never been hooked to the Benton County Sewer District #1 system and have never been subjected to the unreasonable rates and the

abusive treatment from District staff and Board members. Amazingly, there are no problems with these individual residential on site sewer systems.

White Branch Villa is another residential area located within the boundary of the Benton County Sewer District #1 and like Wanta Linga, these residents have their own individual sewage treatment systems and have never been forced to endure the atrocities of the Benton County Sewer District #1.

The area North of Blue Branch Road is within the boundary of the Benton County Sewer District #1 and is where the treatment plant of the Benton County Sewer District #1 is located. Astonishingly, the residents located in this area are not connected to the District System and are closest to the treatment plant. Also several of these residents are located on the water front and individual residential systems are working fine.

The Warsaw Middle and High School are also within the boundary of the Benton County Sewer District #1. Before voting on creation of the Benton County Sewer District #1 residents were informed by board members and in the media, the Middle School and High School would be serviced by the Benton County Sewer District #1. Not a falsehood but a blatant outright lie. The Middle School and High School were never connected to the Benton County Sewer District #1 and were originally on a



lagoon but now a sand filter system of their own.

The Dockery residence located in Blue Branch and in the boundary of the Benton County Sewer District #1 was constructed within the last 3-5 years. Strangely, an application was applied for and approved an on site residential septic system and the permit was issued by the Benton County Health Department.

Four houses down the very street where George M. Hall resides is the King residence which is located in the boundary of the Benton County Sewer District #1. This residence utilizes an on site septic system and has never been subjected to the requirement of being forced to use the Benton County Sewer District #1 system.

**The best for last.** The Benton County Sewer District #1 maintenance building restroom is not even connected to the District system. Guess the District reasoned it could not afford one of its own commercial rates! Instead, the maintenance restroom at the plant has a septic holding tank that has to be pumped out by a commercial business that engages in pumping out septic tanks.

These foregoing instances clearly establish a centralized sewer system is not needed in the area known as the Benton County Sewer District #1.

## **GEOLOGICAL ODDITY AND PHENOMENON**

13. It currently appears the United States Attorney's Office, the Missouri Department of Natural Resources, the Federal Receiver and Missouri Department of Natural Resources employee Scott Totten, the Missouri Attorney General's Office, the Benton County Health Department, the Benton County Sewer District #1, Missouri-American Water, and the Staff Counsel for the Public Service Commission want to submit to the Commission that the 358 resident/accounts of the Benton County Sewer District #1 are located on such a geological oddity and phenomenon that the only sewer treatment system that can be used is a centralized system. I am surprised that this area has not been declared a geological wonder and that geologists aren't stumbling over themselves to study this one of a kind formation.

The reality is on site systems were in place before the Benton County Sewer District #1 and the Benton County Health Department cannot provide any evidence where all 358 individual systems were failing and they cannot show any evidence where these 358 residents refused to fix and maintain their individual systems. It is further evident, there are alternative systems being used in the Benton County Sewer District #1 boundary area and these

systems have not been a cause of pollution and clean water violations, unlike the centralized polluting system of the Benton County Sewer District #1.

Wherefore, George M. Hall, proposed Intervenor, request that this Commission make a finding that George M. Hall does not have to become a customer of a sewer system operated by Missouri-American Water and further find that the interests of George M. Hall are different than those of the general public and as such George M. Hall be granted intervention in this case.

Respectfully submitted,

          /s/          *George M. Hall*  
George M. Hall, Proposed Intervenor  
Paralegal, Legal Research Specialties  
31971 Chesapeake Dr.  
Warsaw, Missouri 65355  
(660) 723-4283  
[bonzimagnum@yahoo.com](mailto:bonzimagnum@yahoo.com)

**DECLARATION**

I, George M. Hall, Proposed Intervenor/<sup>bar</sup>Petitioner in the foregoing document state, under the penalty of perjury, that I am the Proposed Intervenor/Petitioner in the foregoing, I have read the forgoing and that the factual allegations contained therein are true and correct

to the best of my knowledge, information and belief.

By: ---George M. Hall---  
George M. Hall

### CERTIFICATE OF SERVICE

I, George M. Hall hereby certify that a true and correct copy of the foregoing was mailed, faxed, or e-mailed to the following:

Missouri Public Service Commission  
Commission  
Cydney Mayfield  
200 Madison St., Suite 800  
P. O. Box 360 P. O. Box 360  
Jefferson City, Mo 65102  
[Cydeney.Mayfield@psc.mo.gov](mailto:Cydeney.Mayfield@psc.mo.gov)

Missouri Public Service  
Office General Counsel  
200 Madison St., Suite 800  
Jefferson City, Missouri 65102  
[staffcounsel@psc.mo.gov](mailto:staffcounsel@psc.mo.gov)

Missouri American Water Company  
Dean L. Cooper  
312 East Capitol  
P. O. Box 456  
Jefferson City, Mo. 65102  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

Missouri American Water Company  
Timothy W. Luft  
727 Craig Road  
St. Louis, Mo. 63141  
[Timothy.Luft@amwater.com](mailto:Timothy.Luft@amwater.com)

Office of the Public Counsel  
Dustin Allison  
200 Madison St., Suite 650  
P. O. Box 2230  
Jefferson City, Mo. 65102  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

Jacob Westen  
Assistant Attorney General  
P. O. Box 899  
Jefferson City, Missouri 65102  
[Jacob.Westen@ago.mo.gov](mailto:Jacob.Westen@ago.mo.gov)

By: ---George M. Hall---  
George M. Hall



**EXHIBIT “A”**



**BENTON COUNTY HEALTH DEPARTMENT**  
PO Box 935 1238 Commercial St.  
Warsaw, Missouri 65355  
(660) 438-2876 Fax (660) 438-5746

November 25, 2014

To Whom It May Concern,

At this time, the Benton County Health Department will not be accepting applications, granting permits, or hearing appeals pertaining to permit denial in regards to residences within the Benton County Sewer District No. 1.

Please find attached a letter describing the court orders that are still effective and do not allow any action by the Benton County Health Department at this time.

Sincerely,

Benton County Health Department

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER  
Services Provided on a Non-discriminatory Basis



ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY  
65102

CHRIS FOSTER  
ATTORNEY GENERAL

P.O. Box 899  
67203 751-3321

November 24, 2014

Barry Pabst  
Benton County Health Dept.  
P.O. Box 935  
Warsaw, MO 65355

Dear Mr. Pabst:

This letter is to follow up from our recent telephone conversation.

On May 1, 2013, the Federal District Court for the Western District of Missouri ("Court") granted the United States' Application for a Preliminary Injunction. The order of preliminary injunction extended a temporary restraining order issued by the Court, continuing to prohibit the Benton County Sewer District #1 ("the District") from dissolving. See, *Order of Preliminary Injunction*, dated May 1, 2013, attached.

On July 2, 2013, the Court issued a Receivership Order, placing the District under the Court's supervision and authority, by appointing Scott Totten, an employee of the Missouri Department of Natural Resources ("Department") as the receiver for the District. The Court ordered that "[u]ntil further order of the Court to the contrary, the Receiver is to have exclusive possession and control over all assets of the District and the operations of the District." Paragraph 3, page 1, *Receivership Order*, attached.

On July 10, 2013, the Court issued an *Order Modifying Preliminary Injunction* that ordered the District "remains enjoined from dissolving." Paragraph 5, page 2, *Order Modifying Preliminary Injunction*, attached.

On August 25, 2014, after an evidentiary hearing on July 30, 2014, the Court issued its *Order*, granting the Receiver the authority to execute and perform an Asset Purchase Agreement ("APA") selling assets of the District

[www.ago.mo.gov](http://www.ago.mo.gov)


to Missouri American Water Company ("MAWC"). The August 25, 2014, *Order* does not grant the dissolution of the District, but only grants "authority to take any actions necessary to effect execution and performance of the APA." Conclusion, *Order*, dated August 25, 2014, attached.

The District, as ordered by the Court, is still intact, as are the ordinances and regulations put in place by the Benton County Circuit Court in *An Order Regulating the Use of Public Sewers and Drains and Providing Penalties Thereof in Benton County Sewer District #1*.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

**CHRIS KOSTER**  
Attorney General

  
**Jacob T. Westen**  
Assistant Attorneys General  
(573) 751-8834

JTW/jtw

Enclosures

c: Charles Thomas, Assistant US Attorney (letter only)  
Eric Folks, Onsite Wastewater Treatment Program Manager, DHSS  
(letter only)  
Scott Totten, Benton County Sewer District #1, Receiver (letter only)