

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water)
Company’s Application for a Certificate)
Of Convenience and Necessity Authorizing) File No. SA-2021-0017
it to Install, Own, Acquire, Construct,)
Operate, Control, Manage and Maintain a)
Sewer System in and around the City of)
Hallsville, Missouri.)

DISTRICT’S POST-HEARING BRIEF

Comes now the Boone County Regional Sewer District (“District”), by counsel, and for its Post-Hearing Brief, states as follows:

INTRODUCTION

Missouri American Water Company’s (MAWC) Application for a certificate of convenience and necessity (“CCN”) to facilitate its proposed acquisition and ownership of the City of Hallsville’s (“City”) municipal wastewater treatment system presents a unique situation and a legal issue of first impression.

The case is factually unique because MAWC is a private sewer corporation and the City’s entire wastewater treatment system undisputedly lies within the boundaries of the District, a voter-approved common public sewer district with regulatory and long-term planning authority conferred by statute and the Missouri Clean Water Commission’s (“CWC”) approval of it as a regional wastewater authority (also known as Level 2 Continuing Authority). The District has exercised this authority by adopting Sanitary Sewer Use Regulations and a CWC-approved areawide management plan. The District’s regulations prohibit the ownership and operation of private wastewater systems in Boone County. The District’s approved plan for Boone County includes a facility plan for the Hallsville area of Boone County under which the City’s system will

be eliminated. The District does not consent to MAWC's acquisition and operation of the City's system and is willing to operate the system until elimination occurs.

From a legal standpoint, the issue of first impression presented by these unique facts is whether the Commission can find that issuance of a CCN meets all necessary criterion—including the fifth *Tartan* criteria requiring promotion of the public interest—is necessary or convenient for the public service as required by § 393.170.3, RSMo (2018).¹² The answer is no. The District's Sanitary Sewer Regulations prohibit the operation of private wastewater systems in areas of Boone County where the District is willing to provide services and has plans to eliminate private systems. The District's regulations preclude MAWC from operating the City's system as a private system because the District operates in the Hallsville area and is willing to operate the City's system until it is eliminated. The District's regulations thus prohibit MAWC's acquisition and operation of the system.³ In addition, the Missouri Department of Natural Resources' ("DNR") regulations preclude it from issuing a state operating permit to MAWC for the City's system because the District is a CWC-approved regional wastewater provider for Boone County, the system is inside the District's boundaries, and MAWC's operation of the system would conflict with the District's CWC-approved plan for Boone County.⁴

The Commission cannot find that approving MAWC's Application promotes the public interest as required by the fifth *Tartan* criteria because the District's regulations prohibit MAWC's operation of the City's system as a private system and DNR's permitting regulation precludes DNR from issuing MAWC the permit it needs to lawfully operate the system. Because the Commission cannot find that MAWC's Application promotes the public interest, it cannot find that issuance of

¹ § 393.170.3, RSMo (2018),

² *In the Matter of Tartan Energy Co., et al.*, 3 Mo. PSC 3d 173, 177 (1994).

³ Exhibit 200, Schedule TR-1, pp. 190 (§ 2.6.2.3). *See also* Exhibit 1

⁴ 10 CSR 20-6.010(2).

a CCN to MAWC for acquisition and operation of the City’s system is “necessary or convenient for the public service.” Accordingly, the Commission should deny MAWC’s Application.

Even if it was appropriate for the Commission to grant MAWC’s Application, it would be necessary for the Commission to impose the conditions proposed by the District in its Statement of Position on the CCN issued to MAWC to minimize the interference with the District’s planning authority and ensure protection of the environment and public health in Boone County.

ISSUES FOR DETERMINATION

On March 22, 2021, the parties, including the District, agreed upon and filed a Joint List of Issues for Commission determination. These issues are:

I. Is MAWC’s provision of wastewater service associated with its proposed purchase of the City of Hallsville wastewater system “necessary or convenient for the public service” within the meaning of the phrase in § 393.170, RSMo?

II. If the Commission grants MAWC’s application for the CCN, what conditions, if any, should the Commission impose?

FACTS

MAWC filed an *Application* with the Commission for a CCN to install, own, acquire, construct, operate, control, manage, and maintain the City of Hallsville’s (“City”) wastewater system in and around Hallsville. More specifically:

MAWC proposes to purchase substantially all of the sewer assets of the currently unregulated system of the City of Hallsville, Missouri, and requests the Commission to approve a CCN to own, acquire, construct, operate, control, manage and maintain the sewer system for the public in an area in and around the City of Hallsville.⁵

⁵ *Id.*, p. 2.

MAWC is a privately owned “sewer corporation” as that term is defined in § 386.020, RSMo.⁶ MAWC does not currently provide sewer service in Boone County, Missouri.⁷ MAWC does not claim to have any long-term regional planning authority for Boone County, Missouri under any statute or approval from the CWC.

The City is located in Boone County.⁸ The City’s entire wastewater treatment facility is located in unincorporated Boone County, as is a portion of the collection system.⁹ The City is a municipality and its system, so long as it is owned and operated by the City, is classified as a municipal sewer system because the system is owned and operated by a municipality.¹⁰ If MAWC is allowed to purchase the City’s system, the system will no longer be owned and operated by a municipality, and instead will be a private sewer system because it will be owned and operated by MAWC, a private entity.¹¹

The District is a common sewer district organized pursuant to Chapter 204, RSMo and a political subdivision of the State of Missouri.¹² The District is a public sewer utility.¹³ For decades, the District has provided wastewater collection and/or treatment services on a regional or watershed basis in incorporated and unincorporated areas of Boone County.¹⁴¹⁵ The District currently owns and/or operates 21 wastewater treatment facilities, including the facility formerly

⁶ MAWC’s Application, p. 2. See also 10 CSR 20-6.010(2)

⁷ *Id.*, p. 2.

⁸ Application, p. 3.

⁹ Exhibit 100, Schedule JAB-d2, p. 8. See also Transcript, V.2, p. 141, lines 9-17.

¹⁰ Transcript, V.2, p. 141, line 22 to p. 142, line 1 (Testimony of James Busch, Staff).

¹¹ *Id.*, p. 142, lines 2-7.

¹² Exhibit 200, p. 5, lines 9-11 (Testimony of Tom Ratermann, General Manager of the District).

¹³ *Id.*

¹⁴ *Id.*, p. 6, lines 3-7. See also Transcript, V.2, p. 224, lines 19-20.

¹⁵ The District currently has two Cooperative Agreements with the City which obligate the City to provide sewer services to the District’s existing customers in Sunnyslope Subdivision and Silver Creek Subdivision, both of which are in unincorporated Boone County. Under these agreements, the District is a customer of the City and is contractually obligated to pay the City a fee for sewer service and take certain other actions, including paying for certain maintenance costs and repairs and providing monthly reports. The initial term of both Cooperative Agreements commenced in 2019 and expires in 2039. See Exhibits 304 and 305.

owned and operated by the City of Rocheport and the facility owned by the City of Hartsburg.¹⁶¹⁷ The District also has customers that are currently served by the City's system.¹⁸

The District was formed by a countywide vote of the citizens of Boone County, including residents of Hallsville, and has been operating since 1973.¹⁹ The District's voter-approved territory is all of Boone County.²⁰ On January 6, 2010, the CWC approved the District as a provider of wastewater collection and/or treatment services on a regional or watershed basis under 10 CSR 20-6.010(2)(B) and (2)(F) in unincorporated areas of Boone County, including incorporated areas that cease to be served by a municipal sewer system.^{21, 22}

The District is responsible for long-range countywide planning for wastewater quality and the operation of wastewater facilities in Boone County.²³ Its mission is to eliminate wastewater discharges to the waters of the State within the boundaries of Boone County to protect the public health and environment.²⁴ For decades, the District has expended public funds to develop and refine an overarching regional plan for wastewater collection and/or treatment

¹⁶ Exhibit 200, p. 6, line 9. See also Transcript, V.2, p. 256, lines 5-10.

¹⁷ Transcript, V.2, p. 256, lines 11-14.

¹⁸ Transcript, V.2, p. 224, lines 15-20.

¹⁹ Exhibit 200, p. 5, lines 12-14.

²⁰ Transcript, V.2, p. 258, lines 23-25.

²¹ Exhibit 200, p. 6, lines 11-14. See also Transcript, V.2, p. 257, lines 21-25.

²² Section 644.076.1 provides that "It is unlawful for any person to cause or permit any discharge of water contaminants from any water contaminant or point source located in Missouri in violation of sections 644.006 to 644.141, or any standard, rule or regulation promulgated by the commission." Missouri Department of Natural Resources' ("DNR") regulation, 10 CSR 20-6.010(1) requires that "all persons who build, erect, alter, replace, operate, use, or maintain ... wastewater treatment facilities shall apply to the Missouri Department of Natural Resources (department) for the permits required in accordance with sections (5) and (7) of this rule, the Missouri Clean Water Law and regulations." This regulation further states "The department issues these permits to enforce the Missouri Clean Water Law and regulations and administer the National Pollutant Discharge Elimination System (NPDES) Program. *Id.* 10 CSR 20-6.010(2)(A) requires permit applicants to designate a "continuing authority" that is "the owner of, operator of, or areawide management authority" for a wastewater treatment facility. This requirement must be fulfilled each time an application is made for an initial permit, or the renewal or transfer of an existing permit. 10 CSR 20-6.010(1), (2), and (11). 10 CSR 20-6.010(2)(B)2 defines a "Level 2 Authority" as "A municipality, public sewer district, or governmental entity which currently provides wastewater collection and/or treatment services on a regional or watershed basis as outlined in section (2)(F) of this rule and approved by the Missouri Clean Water Commission.

²³ Exhibit 200, p. 5, lines 18-21.

²⁴ *Id.*, p. 5, line 21 to p. 6, line 2.

services in Boone County that promotes the protection of the environment and is as cost effective to the District's customers as possible.²⁵ The District has an areawide management plan for Boone County that is comprised of multiple facility plans for different areas of Boone County.²⁶ These plans address future, long-term wastewater treatment needs within Boone County.²⁷ One goal of the plan is to eliminate existing private wastewater treatment facilities in an organized, planned, and efficient manner to protect the public health and environment.²⁸ The District is required to coordinate its activities with various state agencies, including DNR, and the U.S. Army Corps of Engineers.²⁹

The District's areawide management plan for Boone County includes a facility plan for the portion of the county including the City and surrounding areas.^{30, 31} This facility plan involves connecting the District's Cedar Gate, Richardson Acres, and Brown Station facilities to its Rocky Fork facility to serve the City in addition to the surrounding areas in the prior version of the plan.³² The District added the City to its facility plan in 2020 for a couple of reasons. One, Hallsville indicated it no longer desired to own and operate its wastewater system. Two, the system's operation directly impacts the District's long-term planning, operation costs and rates because it is antiquated and unlawfully discharges wastewater to Boone County streams. These discharges use the assimilative capacity of the streams for wastewater, which requires the District to provide additional treatment for wastewater processed by its facilities and incur

²⁵ *Id.*, p. 13, lines 6-10.

²⁶ *Id.*, p. 10, lines 3-12. See also Transcript V.2, p. 233, line 21 to p. 234, line 17 and p. 242, line 18 to p. 244, line 17.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*, p. 11, lines 1-5. See also Transcript, V.2, p. 252, line 25 to p. 253, line 8.

³⁰ Exhibit 200, p. 11, lines 6-9.

³¹ Transcript, V.2, p. 257, lines 2-9.

³² *Id.*, p. 8-16. See also Exhibit 200, Schedule TR-1, Part 1, pp. 10-11 and Schedule TR-5 (maps) and Transcript, V.2, p. 239, line 9 to p. 240, line 25.

additional costs.³³ This facility plan is part of the District's overall areawide management plan for Boone County. DNR, the agency to which the CWC has delegated its permitting authority, approves the District's facility plans, usually in the form of a finding of no significant impact or categorical exclusion.³⁴ The District has submitted this facility plan to DNR and received an email from one of DNR's review engineers that DNR is amenable to approving it.³⁵

DISCUSSION

I. MAWC's acquisition and operation of the City of Hallsville's wastewater system is not necessary or convenient for the public service because it will not promote the public interest as required by § 393.170, RSMo.

Under § 393.170, RSMo (2018), a sewer corporation like MAWC cannot provide service to customers without first obtaining approval from the Commission in the form of a CCN. In deciding whether to grant a CCN, the Commission must determine whether the proposed operation of a water or sewer corporation is necessary or convenient for the public service.³⁶ To make this decision, the Commission applies the *Tartan* Criteria established in *In re Tartan Energy Co. et al.*, 3 Mo. PSC 173, 177 (1994) and must find that all of these criteria are met. The *Tartan* Criteria are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide service; (4) the applicant's proposal must be economically feasible; and (5) the applicant's provision of the service must promote the public interest. *Id.*

³³ Exhibit 200, p. 11, line 18 to p. 12, line 2. See also Transcript, V.2, p. 252, lines 12-21.

³⁴ Transcript, V.2, p. 215, lines 14-24. See also 10 CSR 20-6.010(1) (requiring permit applications to be made to DNR).

³⁵ Transcript, V.2, p. 241, line 22 to p. 242, line 9.

³⁶ § 393.170.3, RSMo.

A. Issuing MAWC a CCN for the City’s wastewater system does not promote the public interest and is not necessary or convenient for the public service because MAWC’s acquisition and operation of the system violates the District’s Regulations.

In Chapters 204 and 250, RSMo, the Missouri legislature delegated a broad grant of powers to common sewer districts like the District.³⁷ The legislature’s express purpose for granting powers to sewer districts was to enable “sewer districts to protect the public health and welfare by preventing or abating the pollution of water.”³⁸ Under § 250.240, the District has the power to do

³⁷ Section 204.330.1 and 7, RSMo (2018). These subdivisions of the statute provide, in part, that:

1. It shall be the duty of the board of trustees to make the necessary surveys, and to lay out and define the general plan for the construction and acquisition of land, rights-of-way and necessary sewers and treatment facilities and of any extensions, expansions, or improvements thereof within the district.

...

7. The board of trustees shall have all of the powers necessary and convenient to provide for the operation and maintenance of its treatment facilities and the administration, regulation, and enforcement of its pretreatment program, including the adoption of rules and regulations, to carry out its powers with respect to all municipalities, subdistricts, districts, and industrial users which discharge into the collection system of the district's sewer system or treatment facilities. These powers include, but are not limited to:

- (1) The promulgation of any rule, regulation or ordinance;
- (2) The issuance, modification or revocation of any order;
- (3) The issuance, modification or revocation of any permit;
- (4) The levying of a civil administrative fine upon any industrial user in violation of the district's rules, regulations and ordinances, or any permit or order issued thereunder, in an amount not to exceed one thousand dollars per violation per day;

(5) Commencing an action through counsel for appropriate legal or equitable relief in the circuit court which decreed the district's incorporation against any industrial user in violation of the district's rules, regulations and ordinances or any permit or order issued thereunder; and

(6) Petitioning the prosecutor for the county in which any criminal violation of the district's rules, regulations, ordinances or any permit or order issued thereunder has occurred to institute criminal proceedings.

8. The board of trustees may adopt rules and regulations creating procedural remedies for all persons affected by any order or permit issued, modified or revoked or any fine or penalty levied by the board including but not limited to the grant of reasonable time periods for such persons to respond, to show cause, and to request reconsideration of fines or penalties levied.

Section 204.320.1 provides that “The board of trustees of any common sewer district shall have power to pass all necessary rules and regulations for the proper management and conduct of the business of the board of trustees, and of the district, and for carrying into effect the objects for which the district is formed.”

³⁸ Section 250.240, RSMo (2018) (“It is the purpose of this chapter to enable ... sewer districts to protect the public health and welfare by preventing or abating the pollution of water and creating means for supplying wholesome water, and to these ends every such ... sewer district shall have the power to do all things necessary or convenient to carry out such purpose, in addition to the powers conferred in this chapter. This chapter is remedial in nature and the powers hereby granted shall be liberally construed.”).

all things necessary or convenient to carry out its purpose of protecting the public health and welfare.³⁹ The District's powers include long-term planning authority and the authority to adopt rules and regulations.⁴⁰ The District's board of trustees have exercised these powers, adopting an areawide management plan for Boone County that includes a facility plan for the Hallsville area and the City's system and Sanitary Sewer Use Regulations ("Regulations") governing the ownership and operation of sewer systems within Boone County.⁴¹ The District's Regulations, which state they were adopted under §§ 204.320 and 204.330, RSMo, have the force and effect of law.⁴² Section 2.2 of the District's Regulations states:

These regulations govern the use of public sanitary sewers, the installation and connection of building sanitary sewers, and the discharge of waters and wastes into the public sanitary sewer systems; and provides penalties for violations thereof in the service areas of the Boone County Regional Sewer District, as established by the Boone County Regional Sewer District Board of Trustees.⁴³

³⁹ *Id.*

⁴⁰ *Id.* See also §§ 204.320 and 204.330, RSMo (2018).

⁴¹ Exhibit 200, Schedule TR-1, Part 4, pp. 178-213. See more specifically, Exhibit 200, Schedule TR-1, Part 4, p. 188 at § 2.3. These regulations operate in tandem with the Boone County Land Use Regulations ("Land Use Regulations") and the Boone County Commission's Zoning Ordinance. A courtesy copy of the Land Use Regulations is attached hereto as Appendix A. Section 3.1 of the Land Use Regulation provides that "No privately owned or operate sewage collection system or treatment facilities shall be permitted except as authorized by public governmental agency having jurisdiction."

⁴² *Civilian Personnel Div. v. Board of Police Comm'rs*, 914 S.W.2d 23, 24 n. 1 (Mo.App.1995) (court assumes that agency's personnel residency rule was a law to which state constitutional provisions apply, and that "[d]uly promulgated substantive regulations have the force and effect of laws."); *Cosada Villa of Mo., Inc. v. Missouri Dep't of Social Servs.*, 868 S.W.2d 157, 160 (Mo.App.1994) ("Duly promulgated substantive regulations have the force and effect of laws").

See also Transcript, V.2, p. 258, lines 8-14 (Tom Ratermann's Testimony: "Q. Were those regulations on the District's books promulgated by the District, before the continuing authority approval was sought from the Clean Water Commission? A. Yes. ... those regulations were developed and were last revived in '05 and '07.").

⁴³ Exhibit 200, Schedule TR-1, Part 4, p. 188 at § 2.2.

The Regulations distinguish between private sanitary sewer systems and private sanitary sewer systems within Boone County, generally prohibiting any person from operating a private sanitary sewer system in Boone County.⁴⁴ Section 2.7.4.1 states:

Unless exempt from the provisions these regulations, no owner or other person shall operate any wastewater collection system and/or treatment facility not owned by the District except under an operating permit issued by the District.⁴⁵

In addition, the Regulations require non-exempt wastewater collection systems and treatment facilities to be conveyed to the District or connected to a District owned or operated public sanitary sewer.⁴⁶

⁴⁴ *Id.*, p. 189 at § 2.6.2. “Public sanitary sewer systems” is defined as “[a] sanitary sewer controlled by public authority and regulated by [DNR]. Public sanitary sewers are those which have been or may be constructed or acquired and paid for wholly out of any public funds available for that purpose for the public use, or sanitary sewers which have been built by a developer and/or private person and conveyed to the District.” *Id.*, p. 189 at § 2.6.2.1. “A private sanitary sewer system is a system that is not under the supervision of the District or other governmental entity and which is regulated by the [DNR] and, when applicable, the Missouri Public Service Commission.” *Id.*, p. 190 at § 2.6.2.3.

See also Transcript, V.2, p. 254, lines 7-9 (Tom Ratermann’s testimony: “Q: And under the District’s regulations, are private plants allowed within the boundaries of the District? A: No, they are prohibited.”).

⁴⁵ *Id.*, p. 195 at § 2.7.4.1.

⁴⁶ *Id.*, p. 193 at § 2.7.1.8 and p. 190 at § 2.6.2.3 (Allowing for a private system only “[i]f neither the District under the provisions of these regulations nor any other public or governmental agency having jurisdiction is willing and/or able to provide wastewater collection and treatment services” in an area where such services are required and “a [DNR] issued operating permit is applicable.” This provision, consistent with § 644.027, RSMo (2018), also authorizes the District to give notice to DNR and the continuing operator of a private system that the District operates and maintains a public sanitary sewer system that is located within a reasonable distance to which the private system can be connected. A District owned or operated public sanitary sewer system is presumed to be within a reasonable distance, if, among other things, a connection to a District public sewer can be designed and constructed.).

Section 644.027, RSMo, which became effective on April 17, 2001, provides:

“Nothing in sections 644.006 through 644.150 shall be deemed to restrict, inhibit or otherwise deny the power of ... any sewer district organized under chapter 204 ... to require the owners of all houses, buildings or other facilities within a municipality, political subdivision or district to connect to the sewer system of the ... district when such sewer system is available.”

See also Transcript, V.2, p. 255, line 21 to p. 256, line 22 (“[W]hen municipal governments transfer something to – when they privatize – before they can privatize, they have to offer it to the Sewer District. And if the Sewer District is willing and able to own, operate, and maintain it, then the Sewer District well, [sic] own, operate, and maintain it. So if a municipality ceases to own and operate their own system, before they could privatize they have to offer it to the District.”).

The City's wastewater treatment system and portions of the collection system undisputedly lie wholly within the District's boundaries and in an area where the District operates and maintains public sanitary sewer systems. The City is authorized to own and operate its own system under § 250.010.1, RSMo (2018).⁴⁷ The City's system is permitted by DNR.⁴⁸ While owned and operated by the City, the City's system is exempt from the District's regulations because it is operated under a DNR permit issued to a municipality with exclusion jurisdiction.⁴⁹

Unlike the City, MAWC is a private entity. MAWC's acquisition of the City's system would result in the system being owned and operated by a private entity, and would convert the system from a municipal or public system that is exempt from the District's regulations to a private system that is subject to the District's regulations absent the District waiving its authority.⁵⁰ The undisputed evidence shows that the District will not waive its

⁴⁷ Section 250.010.1, RSMo (2018) provides, in relevant part:

"1. In addition to all powers granted by law and now possessed by cities, towns and villages in this state for the protection of the public health, any city, town or village, whether organized under the general law or by special charter or constitutional charter, and any sewer district organized under chapter 249 or sections 204.250 to 204.470, as those chapters now exist, or as they may be amended, is hereby authorized to acquire, construct, improve or extend and to maintain and operate a sewerage system and to provide funds for the payment of the cost of such acquisition, construction, improvement or extension and operation as hereinafter provided."

⁴⁸ Exhibit 202 (Rebuttal Testimony of Dennis Stith), Schedule DES-3 (DNR Permit for the City's system).

⁴⁹ Exhibit 200, Schedule TR-1, p. 188 at § 2.5 and 2.5.2 ("These regulations shall not be applicable in the following circumstances: ... No wastewater collection or treatment facility shall be subject to these regulations if constructed and operated under [DNR] permit issued to another public or governmental wastewater management and treatment agency having exclusive jurisdiction or if the District waives the right to act as Continuing Authority for such system or facility.").

See also Transcript V.2, p. 254, lines 10-12.

The District's regulations also contain an exemption for systems and facilities under the jurisdiction of "another public or governmental wastewater management or treatment agency having jurisdiction." This exemption only applies to systems that do not operate under a DNR permit so it is inapplicable here because the City's system is required to operate under a DNR permit. *Id.*, p. 188 at § 2.5.1.

⁵⁰ Exhibit 200, Schedule TR-1, p. 188 at § 2.5 and 2.5.2.

See also Transcript, V.2., p. 254, lines 13-22 (Tom Ratermann Testimony: "Q. And so, if I understand your testimony correctly, right now the Hallsville system, because it is owned and operated by a municipality, would not be subject to the District's regulations? A. That is correct. Q. What is the impact of the sale of that system to

authority.⁵¹ Therefore, MAWC's operation of the City's system as a nonexempt private system would violate the District's regulations prohibiting the operation of a private system. Because MAWC's acquisition and operation of the City's system would violate the District's Regulations, the Purchase Agreement for Wastewater Systems between MAWC and the City provides for conduct prohibited by a law the purpose of which is to protect public health and is void for illegality of consideration.⁵² The Commission's issuance of a CCN approving the consummation of this Agreement thus is contrary to the law and therefore against the public interest. Because the public interest would not be promoted, the fifth *Tartan* Criterion cannot be met, and issuing a CCN is not necessary or convenient for the public service. As such, the Commission should deny MAWC's application.

B. Issuance of a CCN does not promote the public interest and therefore is not necessary for the public convenience and necessity because the DNR cannot transfer the state operating permit for the City's system to MAWC without violating its regulations.

It is unlawful in Missouri for an entity to operate a wastewater treatment system without a state operating permit.⁵³ The City currently operates its system under Missouri State Operating Permit No. MO-0104990 issued by DNR on January 1, 2020.⁵⁴ To operate the City's system,

Missouri-American under the District's regulations? A. Well, the impact is it would be converted from a public system to a private facility, subject to the District's regulations.").

⁵¹ Exhibit 200, p. 12, line 20 to p. 13, line 2.

⁵² *Rice v. James*, 844 S.W.2d 64 (Mo. App. 1992) (A contract that provides for conduct prohibited by law is void for illegality of consideration. A court will not enforce an agreement in violation of law or statutes enacted for the protection of the public). See also *King v. Moorehead*, 495 S.W.2d 65, 77 (Mo. App. 1973) (same).

⁵³ Section 644.051.2, RSMo (2018) ("2. It shall be unlawful for any person to operate, use or maintain any water contaminant or point source in this state that is subject to standards, rules or regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such person holds an operating permit from the commission, subject to such exceptions as the commission may prescribe by rule or regulation.").

⁵⁴ Exhibit 202, Schedule DES-3 (DNR Permit for the City's system).

MAWC will have to obtain a transfer of the City's permit from DNR. DNR's regulation, however, precludes transfer of the permit to MAWC because the CWC approved the District as a Level 2 Continuing Authority within Boone County and MAWC's operation of the City's system conflicts with the District's approved areawide management plan.⁵⁵

The state permitting process for wastewater treatment system is prescribed by regulation.⁵⁶ Under the process, persons desiring to operate wastewater treatment systems must submit a permit application to DNR for review and DNR then makes a permitting decision.⁵⁷ By regulation, each permit application must designate a "continuing authority" that will be responsible for compliance with all permit conditions.⁵⁸ The designated continuing authority is the owner or operator of a wastewater treatment facility or sewer collection system."⁵⁹ The continuing authority requirement must be fulfilled each time an application is submitted, whether for the transfer of a permit, an initial permit, or the renewal of a permit.⁶⁰ DNR's regulation, 10 CSR 20-6.010(2)(B), ranks continuing authorities in order of preference, with level 1 as the highest and having the greatest power and jurisdiction, and level 5 as the lowest with the least power and jurisdiction. DNR's regulation prohibits the issuance of a state operating permit to an applicant that is a level 3 or lower continuing authority when a level 1 or 2 continuing authority

⁵⁵ The District's regulations were first adopted on September 15, 1998. Exhibit 200, Schedule TR-1, p, 213 at Section 2.24. The CWC approved the District as a Level 2 Continuing Authority on January 2, 2010. Exhibit 200, p. 6 (Ratermann Rebuttal Testimony).

⁵⁶ 10 CSR 20-6.010 and 10 CSR 20-6.015.

⁵⁷ 10 CSR 20-6.010(1), requires that "all persons who build, erect, alter, replace, operate, use, or maintain ... wastewater treatment facilities shall apply to the Missouri Department of Natural Resources (department) for the permits required in accordance with sections (5) and (7) of this rule, the Missouri Clean Water Law and regulations." "[DNR] issues these permits to enforce the Missouri Clean Water Law and regulations and administer the National Pollutant Discharge Elimination System (NPDES) Program." *Id.*

⁵⁸ 10 CSR 20-6.010(2)(A).

⁵⁹ 10 CSR 20-6.010(2)(A).

⁶⁰ 10 CSR 20-6.010(1), (2), and (11).

is available and the use of a lower preference continuing authority would conflict with an approved areawide management plan.⁶¹

Under the Federal Clean Water Act, waste treatment management shall be provided on an areawide basis to the extent practicable.⁶² Similarly, the Missouri Clean Water Law provides that the CWC will seek to protect, maintain, and improve the quality of Missouri waters by preventing, abating, and controlling water pollution by all practical and economically feasible methods.⁶³ Consistent with federal law and the Missouri Clean Water Law, the DNR has a stated goal of ‘regionalization’ of wastewater treatment, and incentivizes elimination of smaller treatment facilities through grants and loans.⁶⁴

The District’s purpose in applying to the CWC for approval as a Level 2 Continuing Authority was to further its mission of eliminating discharges of wastewater in Boone County to protect the environment and public health.⁶⁵ Under DNR’s regulation, the District’s application for Level 2 Continuing Authority was required to include an overarching, areawide management plan for regional wastewater treatment service in Boone County, a capital improvements program, an approach to addressing permit compliance with facilities in the county, and a

⁶¹ 10 CSR 20-6.010(2)(B) provides: “Continuing authorities are listed in preferential order in the following paragraphs. A level three (3), four (4), or five (5) applicant may constitute a continuing authority by showing that the authorities listed under paragraphs (B)1.–2. of this rule are not available; do not have jurisdiction; are forbidden by state statute or local ordinance from providing service to the person; or that it has met one of the requirements listed in paragraphs (2)(C)1.–7. of this rule. 10 CSR 20-6.010(2)(C) provides: “Applicants proposing use of a lower preference continuing authority, when the higher level authority is available, must submit one (1) of the following for the department’s review, *provided it does not conflict with any areawide management plan approved ... by the Missouri Clean Water Commission.*” (Emphasis added.)

⁶² Section 201(c) of the Federal Clean Water Act, 33 U.S.C. §1281 states: “(c) To the extent practicable, waste treatment management shall be on an areawide basis and provide control or treatment of all point and nonpoint sources of pollution, including in place or accumulated pollution sources.”

⁶³ Section 644.011, RSMo (2018).

⁶⁴ Exhibit 200, p. 8.

⁶⁵ Exhibit 200, p. 6, line 15 to p. 9, line 5.

defined service area map.⁶⁶ The District’s application sought approval as a Level 2 Continuing Authority for all areas of Boone County not served by a municipal system, which generally were identified as unincorporated areas of Boone County so as not to interfere with local governments.⁶⁷ When the CWC approved the District as a Level 2 Continuing Authority, it approved the District’s service area and areawide management plan proposed in the District’s application as explained at the Commission’s July 1, 2009 and January 6, 2010 meetings.⁶⁸

After being approved as a Level 2 Continuing Authority, the District employed consultants to help it build out its areawide management plan by developing detailed facility plans for

⁶⁶ 10 CSR 20-6.010(2)(F) provides: “Application of Level 2 Authority. If a municipality or public sewer district wishes to provide wastewater collection and/or treatment services on a regional or watershed basis as outlined in paragraph (2)(B)2. of this rule, the entity shall—

1. Submit a preliminary request to the Missouri Clean Water Commission through the department to obtain higher authority;
2. Develop a plan, which includes, but not limited to:
 - A. A discussion of regional treatment service;
 - B. Capital improvements program;
 - C. Process to provide waivers when sewer connection is not available;
 - D. Approach to address permit compliance with facilities in the service area;
 - E. Community financial capability information; and
 - F. Defined service area map.

⁶⁷ Exhibit 200, p. 6, lines 12-14 and p. 8, lines 11-17. See also Transcript, V.2, p. 257, line 21 to p. 258, line 2 (Tom Ratermann Testimony: “[I]t is my belief that for Level 2 continuing authority that the Clean Water Commission granted to the Sewer District, included municipal facilities, in a situation where a city chooses to cease owning and operating its system.”).

See also Exhibit 3-P, Schedule MH-8, p. 19, lines 23-24 (Transcript of 1/6/10 CWC Meeting: “The District will provide regional services in the unincorporated area of Boone County...” and p. 29, lines 12-14). Counsel for the District further explained that the District’s territory also would include “[a]ll the incorporated small towns that have their own responsibility unless they want us to assume their responsibility under our rights as a District they are still autonomous.” *Id.*, p. 29, lines 15-19.

⁶⁸ *Id.* See Transcript, V.2, p. 243, lines 21-24, and p. 244, lines 4-8 (Tom Ratermann Testimony: “So my recollection when the Sewer District and the City of Columbia made application to the Clean Water Commission for Level 2 continuing authority, that we both had capital improvement plans. Those are more of a sketch plan than a facility plan. ... My recollection is that those capital improvement plans were part of the application to the Clean Water Commission when we applied for Level 2 authority. And we had to show that we had a plan for all of Boone County...”)

See also Exhibit 3-P, Schedule MH-6, pp. 60-100 generally and p. 95, line 19- p. 96, line 21 (Discussing a situation where an incorporated city chooses to cease operating its own system and the District’s Board of Trustee’s option to accept the city as a “customer versus a contractee.”).

specific areas of Boone County.⁶⁹ The District is required to develop facility plans to obtain state and federal funding, and both the public and government are involved in facility plan development.⁷⁰ DNR approves these more detailed facility plans on behalf of the CWC, just like it issues permitting decisions.⁷¹ The District has a facility plan for the Hallsville area of Boone County where the District owns and operates several wastewater treatment facilities, including the Brown Station, Cedar Gate, Richardson Acres, Rock Fork, and Quarter Mile Wastewater Treatment Facilities.⁷² Despite the fact that the City’s entire wastewater treatment system is in unincorporated Boone County—which is undisputedly in the District’s Level 2 Continuing Authority boundaries—and that at least two permitted features of the system are upstream from the District’s facilities and directly impact the District’s wastewater treatment plans, costs, and rates, the system was not in the District’s original facility plan since it was owned and operated by the City.⁷³ The District revised its facility plan to include the City’s system after the City indicated it no longer wanted to own and operate its own system.⁷⁴ Under the District’s current facility plan, the District will eliminate the City’s system as soon as it can be connected to the District’s Rocky Fork facility to fulfill. The District is eliminating the City’s system to fulfill its mission to eliminate wastewater discharges to waters of the State within Boone County.⁷⁵ In the

⁶⁹ Exhibit 200, p. 10, line 3-12. See

⁷⁰ Exhibit 200, p. 10, line 13 to p. 11, line 5.

⁷¹ Transcript, V.2, p. 215, lines 21-24 (Tom Ratermann Testimony: “You asked if it has been approved by the Clean Water Commission. The facility plans, the approval is by the Department, itself, usually in the form of a – finding of no significant impact or categorical exclusion.”).

⁷² Exhibit 200, p. 11, lines 6-16. See also Exhibit 200, Schedule TR-1, Parts 1-4, and more specifically Part 1, pp. 10-11.

⁷³ Exhibit 200, p. 11 line 21 to p. 12, line 2.

⁷⁴ At all times, the City’s entire wastewater treatment system and collection system have been within the District’s voter-approved boundaries for purposes of the District’s authority under Chapters 204 and 250, RSMo.

⁷⁵ Exhibit 200, Schedule TR-1. See also Exhibit 200, lines 17-20.

meantime, the District is willing to own and operate the City's system.⁷⁶ DNR has indicated it will approve the District's plan for the Hallsville area.⁷⁷

MAWC is a Level 3 Continuing Authority that, for state operating permitting purposes for the City's system, is outranked by the District as a Level 2 Continuing Authority.⁷⁸ MAWC seeks a CCN for the City's system to facilitate MAWC obtaining the state operating permit it needs to lawfully operate the City's system.⁷⁹ The problem is that under the facts presented DNR's regulation precludes the issuance of a permit for the City's system to MAWC because MAWC cannot show, as required by 10 CSR 20-6.010(2)(B) and (2)(C), that a Level 2 Continuing Authority is not available; does not have jurisdiction; is forbidden by state statute or local ordinance providing service; or that the issuing the permit does not conflict with an approved areawide management plan.⁸⁰ More specifically:

⁷⁶ Exhibit 2, p. 4, lines 17-18 (Direct Testimony of Logan Carter). See also Exhibit 200, Schedule TR-1, Part 1, pp. 10-11 and Exhibit 200, p. 12, line 20 to p. 13, line 2.

⁷⁷ Transcript, V.2, p. 241, line 22-25 (Tom Ratermann Testimony: "Q. In regard to the December facility plan that's attached to your testimony, has that been submitted to DNR for review of any kind? A. It has. Yes."). See also *Id.*, p. 242, lines 7-9 ("And I got an email back from one of the review engineers that they were amendable to approving this in phases.").

⁷⁸ 10 CSR 20-6.010(2)(B)3 (Sewer companies regulated by the Commission are Level 3 authorities).

⁷⁹ 10 CSR 20-6.010(11) provides: Subject to subsection (2)(A), a construction permit and/or operating permit may be transferred upon submission to the department of an application to transfer signed by the existing owner and/or continuing authority and the new owner and/or continuing authority.

⁸⁰ 10 CSR 20-6.010(2)(B) provides: Continuing authorities are listed in preferential order in the following paragraphs. A level three (3), four (4), or five (5) applicant may constitute a continuing authority by showing that the authorities listed under paragraphs (B)1.-2. of this rule are not available; do not have jurisdiction; are forbidden by state statute or local ordinance from providing service to the person; or that it has met one of the requirements listed in paragraphs (2)(C)1.-7. of this rule.

10 CSR 20-6.010(C)1.-7. provides: (C) Applicants proposing use of a lower preference continuing authority, when the higher level authority is available, must submit one (1) of the following for the department's review, provided it does not conflict with any areawide management plan approved under section 208 of the Federal Clean Water Act or by the Missouri Clean Water Commission:

1. A waiver from the existing higher authority;
2. A written statement or a demonstration of non-response from the higher authority declining the offer to accept management of the additional wastewater;
3. A to-scale map showing that all parts of the legal boundary of the property to be connected are beyond two thousand feet (2000') from the collection system operated by a higher preference authority;
4. A proposed connection or adoption charge by the higher authority that would equal or exceed what is economically feasible for the applicant, which may be in the range of one hundred twenty percent (120%) of the applicant's cost for constructing or operating a wastewater treatment system;

- MAWC cannot show there is no Level 2 Continuing Authority available because the District is a Level 2 Continuing Authority for the City’s system and has indicated it is available to own and operate the City’s system;⁸¹
- MAWC cannot demonstrate the District lacks jurisdiction because the District’s CWC-approved Level 2 Continuing Authority service area undisputedly includes all of unincorporated Boone County, and the City’s entire wastewater treatment system (and portions of its collection system) are undisputedly located within unincorporated Boone County;⁸²
- MAWC cannot show there is any law precluding the District from owning and operating the City’s system;⁸³ and
- MAWC cannot demonstrate that its ownership and operation of the City’s system will not conflict with the District’s approved areawide management plan under

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5. A proposed service fee on the users of the system by the higher authority that is above what is affordable for existing homeowners in that area;
 6. Terms for connection or adoption by the higher authority that would require more than two (2) years to achieve full sewer service; or
 7. A demonstration that the terms for connection or adoption by the higher authority are not viable or feasible to homeowners in the area.

In Staff’s *Memorandum*, it posits that this regulation “generally prohibits the issuance of an operating permit to an applicant [like MAWC] that is or will use a lower level continuing authority when a higher level continuing authority is available, and such use would conflict with “any areawide management plan” or where the applicant is unable to show that it has met one of the requirements listed in 10 CSR 20-6.010(2)(C)1.-7.” (Emphasis added.). Exhibit 100 (Correct Direct Testimony of James Busch), Schedule JAB-d2, p 8. Staff misinterprets the regulation, ignoring the “must submit one (1) of the following for the department’s review, *provided it does not conflict with any areawide management plan*” language in 10 CSR 20-6.010(2). (Emphasis added.). This language makes it clear that DNR cannot issue a permit to an applicant proposing use of a lower preference continuing authority if it would conflict with an approved areawide management plan.

⁸¹ Transcript, V.2, p. 212, lines 19-21 and lines 5-14.

⁸² Exhibit 100, Schedule JAB-d2, p. 8 (Corrected Direct Testimony of James Busch).

⁸³ The District notes, however, that the opposite is true for MAWC because the District’s regulations prohibit a private entity like MAWC from operating a wastewater treatment or collection system within Boone County.

which the District is willing to own and operate the City's system until the system is eliminated under its regional plan for the entire Hallsville area.⁸⁴

Because MAWC cannot submit a permit application that makes the showing required by the permitting regulation, DNR cannot issue MAWC a state operating permit for the City's system without violating its own regulation. The Commission's issuance of a CCN that will facilitate MAWC's application for a permit that cannot be issued without violating the law is against the public interest. Because the public interest would not be promoted, the fifth *Tartan* Criterion cannot be met, and issuing a CCN is not necessary or convenient for the public service. As such, the Commission should deny MAWC's application.

CONCLUSION

Under the *Tartan* criteria, the Commission cannot grant MAWC's request for a CCN unless it can find that issuing MAWC a CCN will promote the public interest. The unique facts here do not support such a finding. Granting MAWC a CCN to facilitate its privatization of the Hallsville system is contrary to the public interest because it interferes with the District's exercise of its authority and results in the District and MAWC expending resources on a permit application DNR cannot grant—and likely litigation arising from the permitting process—that are better used to

⁸⁴ 10 CSR 20-6.010(2)(C) is clear that an applicant proposing use of a lower preference continuing authority that is available cannot meet subsections 1. – 7. If using a lower preference continuing authority conflicts with an areawide management plan approved under section 208 of the Federal Clean Water Act or the CWC.

The District's application for Level 2 Continuing Authority was submitted under 10 CSR 20-6.010(2)(F). This regulation required the District to submit develop and submit to the CWC an areawide plan for Boone County. In approving the District's application, the CWC approved the District's overarching areawide plan to eliminate discharges throughout Boone County. The more detailed facility plans for various areas of the county that the District developed after the CWC approved its overarching plan are reviewed and approved by DNR. Here, as noted above, DNR has said it is approving the District's facility plan that includes the City and ultimate elimination of its system.

See Exhibit 200, p. 12, lines 15-19. See also Exhibit 200, Schedule TR-1, Part 1, pp. 6, 10-11, and 24-28.

protect the environment and public health. Accordingly, this Commission should find that MAWC does not meet all the necessary criteria for the requested CCN and deny MAWC's request.

II. If the Commission grants MAWC's application for the CCN, what conditions, if any, should the Commission impose?

If the Commission grants MAWC a CCN for the City's system over the District's objection, conditions should be imposed to address concerns raised by the District about infringement upon its long-term planning authority under Chapters 204 and 250, RSMo and Level 2 Continuing Authority, and to protect the environment and public.

A. The CCN Should Contain a Condition to Ensure Continued Service to the District's Customers.

The District has raised a concern about the potential for disruption of sewer services to customers of the District. The District has contracts with the City under which the City is obligated to provide sewer service to the District's customers in Sunnyslope and Silver Creek Subdivisions, which are in unincorporated Boone County. Under these agreements, the District is a customer of the City. These contracts do not expire until 2039, and the District has already paid the City a \$5,100 connection fee for Sunnyslope.⁸⁵ The City currently provides sewer services to the District's customers in Silver Creek Subdivision. MAWC takes the position that it is not obligated to provide sewer services to the District's customers in either subdivision under these agreements. The District needs assurance that service for the District's existing customers in Silver Creek will not be disrupted and service will be available for the District's new customers in Silver Creek and Sunnyslope. The District agrees with Staff that the service in these areas is essential to the grant of a CCN to MAWC and that any such CCN should be conditioned on MAWC reaching an

⁸⁵ Transcript V.2, p. 224, line 21 to p. 225, line 25 (Testimony of Tom Ratermann).

agreement with the District under which MAWC will provide service to the District's customers in Silver Creek and Sunnyslope within a certain period.⁸⁶ The District endorses the imposition of condition number 5 contained in its *Staff's Position Statement* dated March 24, 2021, which reads as follows:

5. Within thirty (30) days of receiving an Operating Permit from DNR, MAWC will submit to Staff documentation confirming the initiation of negotiations between MAWC and the District involving both the continuation of service for all existing District customers outside the City's service area, and the associated Cooperative Agreements between the City and the District. Once an agreement has been reached to ensure continued service, that agreement will also be submitted to Staff;

B. The CCN Should Contain A Condition Requiring MAWC To Obtain A State Operating Permit Within Two Years Of CCN Issuance.

As discussed in Section I.B above, the District does not believe that the DNR can lawfully issue MAWC a state operating permit for the City's facility and MAWC cannot lawfully operate the City's system without this permit. Under § 393.170.3, RSMo, a CCN issued by the Commission must be exercised within a period of two years from it being granted or it is null and void. If the Commission issues a CCN to MAWC, it should impose a condition requiring MAWC to obtain an operating permit from DNR within two years of the effective date of the CCN,⁸⁷

C. The Commission Should Impose Several Conditions In The CCN To Minimize Interference With The District's Long-Term Planning Authority In Boone County, And Protect The Environment And Public.

The City's entire wastewater treatment system undisputedly lies within unincorporated Boone County, which area undisputedly is within the District's voter-approved and Level 2 Continuing Authority territory and jurisdiction. The manner of operation of the system directly

⁸⁶ Transcript, V.2, p. 152, lines 5-14 (Testimony of James Busch).

⁸⁷ Sections 393.170.3, 640.710, and 644.026 RSMo and 10 CSR 20-6.010.

impacts the District's planning, treatment costs, and rates. MAWC's ownership and operation of the City's system directly conflicts with the District's plan for the Hallsville area of Boone County, which is to eliminate the system as soon as possible. MAWC's ownership and operation of the City's system also appears to conflict with the District's mission to eliminate wastewater discharges within Boone County. The City's system is permitted as a no-discharge system; however, for years the system has discharged in violation of its DNR-issued state operating permit.⁸⁸ The District's long-term plan for the Hallsville area is to eliminate multiple existing wastewater treatment systems, including the City's system, to eliminate discharges of wastewater to waters of the State in that area of Boone County to protect the environment and public health. MAWC proposed five possible long-term solutions to Staff: (1) continued spray irrigation with land application; (2) a drip irrigation system; (3) a new mechanical treatment plant; (4) direct discharge with TriplePoint ammonia removal technology; and (5) direct discharged with minimal plant upgrades.⁸⁹ According to Staff, each of MAWC's potential solutions may result in continued discharges of wastewater from the City's system contrary to the District's plan for the Hallsville area and mission to eliminate discharges in Boone County.

The evidence shows that both irrigation options require land application. MAWC will not be acquiring the fields necessary for a land application solution from the City because the City does not own these fields.⁹⁰ Rather the fields are owned by two farmers who historically have not complied with the terms of their leases with the City, and one of whom constructed waterways on his property that have resulted in illegal discharges of partially-treated wastewater to waters of the

⁸⁸ Exhibit 100 (Corrected Direct Testimony of James Busch), Schedule JAB-d2, p. 11. See also Exhibit 202 (Rebuttal Testimony of Dennis Stith), Schedule DES-3 (State Operating Permit for City's System), Part 1, p. 5 at ¶ 2.

⁸⁹ Transcript, V.2, p. 177, lines 3-12; 179, line 24 to p. 180, line 1;

⁹⁰ Transcript, V.2, p. 177, lines 23-24.

State.⁹¹ There exists no reasonable expectation that MAWC will have any more control over these farmers than the City if MAWC is able to lease the same fields, so it is likely that illegal discharges will continue to occur if an irrigation solution is chosen by MAWC. The only other option is for MAWC to purchase land to use as application fields; however, Staff concluded that this likely is viable because the landowners lacked interest in selling their land.⁹² MAWC itself does not believe that a long-term solution involving land application is viable.⁹³

The evidence also demonstrates that the other three potential solutions proposed by MAWC, a new mechanical plant, direct discharge with TriplePoint ammonia removal technology, and direct discharged with minimal plant upgrades, all would result in MAWC converting the City's system from a no-discharge system to a discharge system.⁹⁴ Such a conversion would require DNR to conduct an anti-degradation review to determine if directly discharging wastewater to waters of the State is necessary or justified.⁹⁵ Staff was not aware of DNR ever approving the conversion of any wastewater treatment system permitted as a no-discharge system to a discharge system.⁹⁶ The District strenuously objects to such a conversion of the City's system because the conversion would reduce the assimilative stream capacity available to the District which in turn would increase the District's operational costs and customer rates.⁹⁷

⁹¹ Exhibit 100, Schedule JAB-d2, p. 11.

⁹² Transcript, V.2, p. 178, line 13 to p. 179, line 3 and lines 19-2; p. 186, lines 8-15; p. 187, line 18 to p. 188, line 5; p. 189, line 22 to p. 190, line

⁹³ Transcript, V.2, p. 76, lines 9-14 (Testimony of Matt Horan: "Q. And would you agree on behalf of Missouri-American, that Hallsville's current practice of land applying Hallsville's wastewater effluent is not a long-term solution for the Hallsville facility? A. I do agree with that. We believe some other type of treatment is necessary.")

⁹⁴ Transcript V.2, p. 185, line 3-19;

⁹⁵ Transcript, V.2, p. 185, lines 9-15. See also Exhibit 202, Schedule DES-3, Part 1, p. 12 ("In accordance with Missouri's Water Quality Standard [10 CSR 20-7.031(3)], the Department is to document by means of Antidegradation Review that the use of a water body's available assimilative capacity is justified. Degradation is justified by documenting the socio-economic importance of a discharging activity after determining the necessity of the discharge.").

⁹⁶ Transcript, V.2, p. 189, lines 9-13.

⁹⁷ Exhibit 200, p. 8, line 18 to p. 9, line 5; p. 11, line 21 to p. 12, line 2.

MAWC's witness, Matt Horan, testified that MAWC does not intend to involve the District in its process for selecting a long-term treatment option for the City's system.⁹⁸ Therefore, absent the Commission's imposition of conditions on a CCN issued to MAWC, MAWC may implement a long-term solution for the City's system that directly conflicts with the District's long-term planning rights in Boone County and approved areawide plan that includes its facility plan for the Hallsville area to the detriment of the environment and public health. The Commission should address this issue by imposing the following three conditions on any CCN issued to MAWC:

(1) Require MAWC to obtain the District's consent for any plan to address the sewer system's capacity and compliance issues prior to submitting applications for construction or operating permits to DNR;

(2) Prohibit MAWC from submitting applications for construction or operating permits to DNR seeking approval to convert the wastewater system from a no discharge facility to a discharge facility, and

(3) Require MAWC, in any plan involving an irrigation system, to own any land used for land application of wastewater flow collected by the sewer system.⁹⁹

These conditions are needed to balance the competing interests of approving the ownership and operation of the City's system by a private entity like MAWC within the District's territory and ensuring that the environment and public health are adequately protected in a manner consistent with the District's long-term plan for Boone County.

⁹⁸ Transcript, V.2, p. 76, line 24 to p. 78, line 78

⁹⁹ 10 CSR 20-6.010. Rebuttal Testimony of Tom Ratermann, pp.5-16.

WHEREFORE, the District respectfully submits its *Post-Hearing Brief*.

Respectfully Submitted,

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Regional Sewer District

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile, or electronically mailed to all parties and/or all counsels of record this 9th day of June 2021.

/s/ Jennifer S. Griffin _____