

STATE OF MISSOURI)
) SS
COUNTY OF WARREN)

**IN THE CIRCUIT COURT OF WARREN COUNTY, MISSOURI
DIVISION 1**

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

Plaintiffs,)

vs.)

Cause No. 02CV155901

WARREN COUNTY WATER & SEWER COMPANY)

Defendants.)

**MOTION TO FINALIZE SALE
AND TO PAY CREDITORS' CLAIMS**

Comes now the Court Appointed Receiver Robert M. Wohler and advises the Court that:

1. Pursuant to the previous Memorandum and Order of April 1, 2004, the Receiver was authorized to take over and manage the Defendant Warren County Water and Sewer Company until its sale is completed, and then to pay creditors out of sale proceeds.
2. This Court specifically authorized the purchase of the Defendant Warren County Water & Sewer Company and its affiliated properties as set out on Exhibit "A" to Missouri-American Water Company for the purchase price of \$335,000.00 in its Order dated May 26, 2004.
3. The list of properties set out on Exhibit "A" which is attached hereto and is incorporated by reference herein, included two lots under the name of Warren/Lincoln Investments, Inc. d/b/a/ Warren County Water & Sewer, and

Warren County Water & Sewer Company.

4. Despite the Court's Order of May 26, 2004, Gary Smith, the owner of Warren County Water & Sewer Company has indicated his unwillingness to convey vacant Lot 393 of Plat 21 of Incline Village which are presently in the name of Warren/Lincoln Investments, Inc., as part of the sale to Missouri-American Water Company.
5. The Receiver's understanding of Missouri-American Water Company's current position is that it will pay the purchase price of \$305,000.00 if it includes the lot 393 titled in the name of Warren/Lincoln Investments, Inc. The property in receiver ship is valued at \$240,000.00 and the purchase price for Lot 393 would be \$65,000.00. The liens and claims of creditors far exceed \$240,000.00 and the Receiver does not believe the customer's or purchaser's property should be encumbered after this sale is finalized.
6. The Receiver understands also that Warren/Lincoln Investments, Inc is owned by Gary Smith, his wife A. Lynn Smith, and two of his children; and that this lot is proximate to lots in Incline Village that contain water or sewer facilities owned and operated by Warren County Water & Sewer Company.
7. Senior Public Counsel Ruth O'Neill has indicated to the Receiver that in the Warren County Circuit Court case Number CV-597-134CC, Petition for Condemnation, Warren County Water & Sewer acquired some interests or rights, through a condemnation proceeding, on Lot 393 of Plat 21 of Incline Village for the purpose of building a water tower. Since Warren-Lincoln Investments was not a party to that case, and the only plaintiff in that case with condemnation power was the


- regulated utility company, these interests and rights were acquired by the utility.
8. Warren County Water & Sewer has never petitioned the Public Service Commission for authority to transfer or sell these parcels of land according to Counsel O'Neill, and therefore any attempted transfers would be void by law. Pursuant to Section 393.190 RSMo 2000, regarding the requirement of PSC approval for transfer of property of assets of a utility company. A copy of this opinion is attached hereto as Exhibit "B."
 9. Counsel O'Neill believes that the Receiver, pursuant to the authority contained in Sec. 393.145RSMo, has the duty and obligation to take whatever steps are necessary to return the unlawfully transferred property interests to the corporation, and that this should help resolve the impasse that seems to be holding up the sale.
 10. Gary Smith has been represented by able counsel in this protracted proceeding, and said counsel have been advised of the Receiver's intention to finalize the sale of the Warren County Water & Sewer Company and its affiliated properties, and have communicated that intent to Gary Smith.
 11. The Receiver has statutory authority to recover assets that are part of the utilities in order to protect the public interest as well as the interest of creditors notwithstanding Gary Smith's intransigence.
 12. The Receiver has been apprised that Gary Smith is currently under Federal probation in U.S. District Court, Eastern District of Missouri (St. Louis) in Case Number 4:01CR00195ERWALL and has been ordered to sell the Warren County Water & Sewer Company system as a condition of his probation. Counsel for Gary Smith in that case had advised Federal Judge E. Richard Weber on August 9,

2002 that this sale would take about six weeks to accomplish.

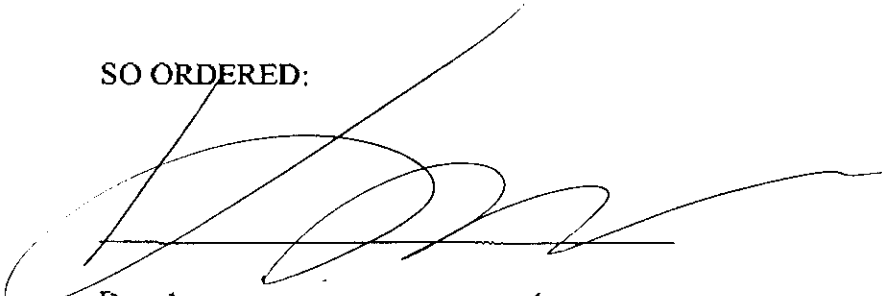
13. The Report and Order of the Missouri Public Service Commission dated November 20, 2003, which authorized the sale to Missouri American Water Company for \$335,000.00 is pursuant to the September 4, 2003 joint application of "Warren County Water & Sewer Company, Warren-Lincoln Investments, Inc., d/b/a Warren County Water & Sewer and Gary Smith and A. Lynn Smith, and Missouri-American Water Company. (page 2, emphasis added). Also, refer to page 5: "Warren County Water & Sewer is a Missouri corporation with its principal offices in Foristell, Missouri. Warren County Water & Sewer has been administratively dissolved under Missouri law. The stock and all of the assets of Warren County Water & Sewer are currently owned and controlled by Gary Smith and A. Lynn Smith, or Warren-Lincoln Investments, Inc. All of the common stock of Warren-Lincoln Investments., a Missouri corporation, is also owned by Gary Smith and A. Lynn Smith.... For purposes of this order, Gary Smith, A. Lynn Smith, Warren-Lincoln Investments, and Warren County Water & Sewer are collectively referred to as Warren County Water & Sewer.
14. Justice to the water and sewer customers of Warren County Water & Sewer Company, as well as to its suppliers and to other creditors, has been unreasonably delayed, and should no longer be denied. Gary Smith et. al. Should not be allotted any further time or excuse to not finalize the sale.
15. The Internal Revenue Service has filed liens on Warren-Lincoln Investments, Inc., as well as against Warren County Water & Sewer, and these liens, unless satisfied, will possibly constitute encumbrances on the sale. A copy of this notice

is attached hereto as Exhibit "C." An updated list of known creditors is attached hereto as Exhibit "D."

WHEREFORE, the Receiver advises the court of his confirmed belief that the sale of the assets of Warren County Water & Sewer Company, and its affiliated properties and entities, to Missouri-American Water Company should proceed without further delay; that Lot 393 be returned and or conveyed to Warren County Water & Sewer Company and then to Missouri American, that such sale include Lot 393 of Plat 21 of Incline Village; that appropriate deeds and documents be executed and delivered at closing on or before noon of July 15, 2004; and if this is not accomplished by such date, that the Federal probation office be notified of a possible violation of court imposed conditions; that lien holders and creditors be paid from the proceeds of the sale; and for such further orders as this court deems appropriate.


ROBERT M. WOHLER #22234
Receiver Warren County Water & Sewer Company
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SO ORDERED:


Dated: 1 JULY 2004