

LORAIN & ASSOCIATES

Attorneys at Law
4075 Highway 54, Suite 300
Osage Beach, Missouri 65065

Thomas E. Loraine
Clara M. Weppner, Paralegal

Tel: (573) 348-8909
Fax: (573) 348-8920

September 18, 2002

Public Service Commission
Attn: Cecil Wright
P.O. Box 360
Jefferson City, MO 65102

FILED²

SEP 18 2002

Missouri Public
Service Commission

RE: Case No. WA-2002-65

Dear Mr. Wright:

Enclosed please find an original and fourteen (14) copies of **Hancock Construction Company's Response to the Notice of Environmental Utilities, LLC'S Water Supply Agreement, Motion for Reconsideration and Motion for a Receiver** to be filed in the above matter. Please file-stamp a copy for our records.

Your attention to this matter is greatly appreciated.

Very truly yours,

LORAIN & ASSOCIATES



Thomas E. Loraine

TEL/cmw

Enclosures

Hancock/filingPSC 9-18-02

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

FILED²

SEP 18 2002

**Missouri Public
Service Commission**

Case No. WA-2002-65

In the Matter of the Application of)
Environmental Utilities LLC. for)
Permission, Approval, and a Certificate of)
Convenience and Necessity Authorizing)
It to Construct, Install, Own, Operate,)
Control, Manage and Maintain a Water System)
for the Public Located in Unincorporated)
Portions of Camden County ,Missouri)
(Golden Glade Subdivision))

HANCOCK CONSTRUCTION COMPANY'S RESPONSE
TO THE NOTICE OF ENVIRONMENTAL UTILITIES, LLC.'S
WATER SUPPLY AGREEMENT,
MOTION FOR RECONSIDERATION
AND MOTION FOR A RECEIVER

COMES NOW, Hancock Construction Company, by and through it's attorney of record, Thomas E. Loraine, of the firm of Loraine & Associates, and pursuant to Environmental Utilities, LLC.'s (hereinafter referred to as Environmental or Applicant) Notice of Water Supply Agreement (hereinafter referred to as Notice) with Osage Water Company (hereinafter referred to as OWC), and in support of it's position states as follows:

1. On August 23, 2002, Environmental Utilities filed an application with the Public Service Commission in case WM-2003-0065 stating that OWC is insolvent and unauthorized to conduct business in Missouri.
2. On September 3, 2002 OWC filed an administrative dissolution with the Secretary of State.
3. Environmental Utilities, LLC. is a limited liability corporation formed and owned by Gregory and Debra Williams, husband and wife. Debra Williams is the managing member of Environmental Utilities, LLC.

4. Osage Water Company is a corporation which holds certificates to provide water and/or sewer service in Camden County, Missouri. Gregory Williams has a history of ownership in the Osage Water Company (OWC) . Mr Williams has also been designated as the trustee of a voting trust allowing him to vote all the voting shares of Osage Water Company's stock. Mr. Williams has previously played significant roles in the management of Osage Water Company as shareholder, director, officer, manager and attorney.

5. Debra Williams became the Director and Manager of the Osage Water Company after President William P. Mitchell "abandoned the company" on or before July 7, 2001.

6. These events have occurred largely because of Mr. Williams, Mrs. Williams and Mr. Mitchell's fiduciary breach and possible felonious authorization contrary to provisions of Section 393.220.4 RSMO. This occurred on February 15, 2001, when OWC President William P. Mitchell executed a Promissory Note with a principle balance of \$436,328.47 to Gregory Williams.

7. Also on February 15, 2001, further fiduciary breach and violation of provisions of Section 393.190.1 occurred when the three OWC principals entered into a probable felonious co- conspiracy to transfer assets from OWC..

8. This became evident in Environmental's Application dated August 23, 2002, in **Case WM-2003-0065.**

9. In a fiduciary breach, through **Case WM-2003-0065** Debra Williams attempted to assign, transfer, merger or consolidate OWC's assets with Environmental's.

10. This probable attempted transfer occurred when these principals created a Future Advance Deed of Trust and Security Agreement ("Deed of Trust") with Gregory Williams, Esquire, as the beneficiary and Debra J. Williams as trustee. A second and third Deed of Trust was transferred to Water Laboratory Company and Jackson Engineering, Inc.; both business entities are primarily controlled by William P. Mitchell.

11. The February 15, 2001 premeditated co-conspiracy is evident from Staff's filing date of its direct case in **Case WR-2000-557**.

12. Commission Staff's last possible day on the premises of Osage to discover any Promissary Note and "Deed of Trust" through its rate case audit of OWC books and records was February 14, 2001, the day Staff filed its direct case in **Case WR-2000-557**.

13. On October 31, 2001, Debra Williams' **Case WA-2002-65** direct testimony stated that William P. Mitchell had abandoned OWC. This statement was supported in attached Environmental Feasibility Study (page 5).

14. Commission's June 27, 2002 **Case WA-2002-65** Order found, effective July 7, 2001, Debra Williams to be both "Director and Manager" of OWC since July 7, 2001.

15. Debra Williams' first action, as OWC Director and Manager , was to misuse Commission tariffs to illegally charge OWC ratepayers.

16. This fiduciary breach was found in Commission 's November 6, 2001 **Order Directing Temporary Reduction** whereby the Commission directed her to lower OWC's rates "...in order to make customers whole for unlawful overcharges".

17. On or about August 14, 2002, these principals' probable fiduciary breach took another step when Gregory Williams assigned both the Promissary Note and "Deed of Trust" to Environmental Utilities, LLC.

18. On or about August 15, 2002 Environmental Manager Debra Williams declared OWC Director and Manager Debra Williams in default of a February 15, 2001 "Future Advance Deed of Trust and Security".

19. Debra Williams, as trustee of the "Future Advance Deed of Trust and Security" in further fiduciary breach of her responsibilities as OWC Director and Manager and Environmental Manager caused to be initiated an Environmental Application on August 23, 2002, in **Case WM-2003-0065**, whereby Environmental, in an effort to acquire the remaining assets of OWC, stated in Paragraph 8 of its Application that OWC is not authorized to conduct business in the State of Missouri, that OWC is insolvent and unable to pay its debts as they accrue.

20. On August 26, 2002, Debra Williams further confirmed her fiduciary breach by stating in a letter to OWC customers, "To put it simply, Osage Water Company has several creditors, and more debt than it can repay".

21. This letter is not accurate. Debra Williams was in fiduciary breach by refusing to pay off Commission's authorized \$12,000 annual debt service to Hancock Construction. Instead, she used and is using OWC tariff generated funds to amortize her own personal debt identified as a \$50,000 "personal guarantee" loan of Debra and Gregory Williams for the Parkview Bay Well with Central Bank of the Lake of the Ozarks.

22. It is a fiduciary breach of Debra Williams to use OWC tariff generated funds to pay off her own Personal Guarantee loan on the Parkview Bay Well, a well not "used and useful" to OWC ratepayers and not in OWC's rate base at the same time refusing to recognize Commission's authorized debt such as the \$240,000 Hancock Debenture.

23. Debra Williams' fiduciary breach required Hancock Construction Company to seek its successful Judgment in Camden County Circuit Court on September 3, 2002.

24. Director and Manager Debra Williams administratively dissolved OWC and resigned her office on September 3, 2002.

25. In **Case WA-99-437** the Commission granted OWC a CCN to serve Eagle Woods; further, the Commission relied on its statutory powers before awarding a CCN to OWC.

26. These statutory powers allow it to "best promote public interest, preserve the public health and protect those using such... water...system."

27. The water system identified in OWC officer, William P. Mitchell's testimony and attached exhibits and feasibility study in **Case WA-99-437** that best promoted the public and preserved public health was identified as OWC's Golden Glade well and distribution system.

28. After William P. Mitchell's abandonment, OWC's Director and Manager, Debra Williams, in a fiduciary breach refused to convey the deed to this water well and distribution system to OWC. Further, in a fiduciary breach, Debra Williams refused to identify assets by Commission rule required NARUC USOA account identification. She also, in a fiduciary breach, refused to file timely and accurate annual reports documenting that the water well was owned by OWC.

29. The Notice of Water Supply Agreement previously filed with the Commission is a fiduciary breach by OWC Director and Manager Debra Williams. It purports to be a September 1, 2002 Water Supply Agreement executed between alleged OWC president William P. Mitchell and Environmental Manager, Debra J. Williams.

30. The fiduciary breach of OWC Director and Manager Debra Williams is evident in this September 1, 2002, Notice of Water Supply Agreement where she, as Environmental's Manager, caused to be filed a August 23, 2002 **Case WM-2003-0065** application with assertions that OWC is "not authorized to conduct business in Missouri, is insolvent and unable to pay its debts as they accrue".

31. Her fiduciary breach is further displayed by finding, recruiting and allowing William P. Mitchell to sign the Water Supply Agreement at least 14 months after she swore in affidavit testimony in this case that he had abandoned OWC.

32. OWC Director and Manager Debra Williams' refusal to be a signatory to this Water Supply Agreement is a fiduciary breach.

33. The lack of her signature combined with the presence of Mr. Mitchell's signature on this Water Supply Agreement brings into question another possible fiduciary breach regarding the purported September 1, 2002 execution date.

34. If this contract had been executed on September 1, then Debra Williams as Director and Manager could have been the proper signatory for OWC as the last director and officer of OWC an administratively dissolved corporation.

35. Debra Williams' fiduciary breach in this case can be seen in the use of OWC as a "piggybank" to pay for over 90% of OWC's loan on the bobcat and excavator at issue in this case.

36. Debra Williams used OWC tariff generated funds to pay down the majority of OWC's loan on the bobcat and excavator. As Director and Officer Manager she ceased paying off the loans on the bobcat and excavator and allowed these assets to be repossessed through default. She and Mr. Williams then reclaimed these assets as their personal property by purchasing them for several hundred dollars. (See Schedule attached to Mrs. Williams Surrebuttal in WA-2002-65).

37. Environmental alleges it is authorized to provide public water utility service.

38. The Commission's **Case WA-2002-65** states that Environmental would be granted a CCN subsequent to the Commission's satisfaction that it had entered into a wholesale contract, "arms length and valid" emphasis added, with OWC.

39. OWC was administratively dissolved on September 3, 2002 shortly after Hancock Construction was awarded a \$215,640.18 Judgment in Camden County Circuit Court.

40. Commission satisfaction concerning a wholesale agreement can't be met by the purported September 1, 2002 signature of Mr. Mitchell, who was identified in this case by Debra Williams as "abandoning" all involvement in and operations of OWC sometime before July 7, 2001.

41. Commission satisfaction can't be met by relying on Environmental's Application in **Case WM-2003-0065** whereby Debra Williams, in paragraph 8, indicated OWC could not do business in Missouri.

42. Commission satisfaction can't be met by relying on Debra Williams' signature as Environmental manager in view of the fiduciary breaches outlined herein.

43. As Environmental manager, Debra Williams implicated herself in conflict by causing to be filed the Environmental **Case WM-2003-0065** Application.

44. Commission satisfaction can't be met by reason of the absence of Debra Williams' signature, as OWC Director and Manager, or last officer and director of a dissolved corporation, on this purported Water Supply Agreement.

45. As found on November 6, 2001, one of Debra Williams' first actions as OWC Director and Manager was illegal collection of revenue from ratepayers.

46. Debra Williams' illegal collections cannot meet any Commission satisfaction standard in light of its statutory responsibility to "best promote public interest".

47. Commission satisfaction can't be met because of Debra Williams' attempt to initiate a September 13, 2002, OWC Foreclosure Sale relying on a "Deed of Trust" in violation of Section 393.190.1 RSMO.

48. Commission satisfaction can't be met by recognizing a purported September 1, 2002 Environmental/OWC Water Supply Agreement when Environmental, in its August 23, 2002, Application, **Case WM 2003-0065** attempted to acquire OWC assets and franchises by stating OWC is not authorized to conduct business in Missouri and unable to pay any debts.

49. Commission satisfaction can't be met by a September 9, 2002 notification of a purported September 1, 2002, OWC Water Supply Agreement since OWC was administratively dissolved on September 3, 2002.

50. It is a fiduciary breach for Environmental Manager Debra Williams to execute a purported September 1, 2002, Water Supply Contract with OWC and notify the Commission on September 9, 2002 simultaneously while dissolving OWC on September 3, 2002, and asserting OWC does not exist, and asserting OWC cannot conduct business in Missouri and can't pay its debts.

51. Environmental's own actions and pleadings have declared **Case WA-2002-65** Commission's required wholesale contract does not exist and cannot exist.

52. Environmental's conditional Certificate of Convenience and Necessity (CCN) is void.

53. Environmental alleges it owns the public drinking water supply with which to supply the needs of OWC Eagle Woods customers.

54. OWC's Eagle Woods **Case WA-99-437** CCN Application identifies this public drinking water system as the OWC's Golden Glade water well and distribution system.

55. Evidence presented in **Case WA-2002-65** regarding unauthorized transfer of Golden Glade water well, distribution system, excavator and bobcat assets from OWC to Environmental was not considered.

56. This evidence was not considered because of the fiduciary breach of OWC principals for the last eight years and Staff's inability to enforce at least 4 Commission Orders.

57. Despite at least four Commission Orders over the last 8 years, these principals have displayed a complete disregard of Commission rule mandated NARUC USOA record keeping.

58. This evidence was not considered because these principals' continual fiduciary breach and violation of Commission rules through extensive non-compliance with generally accepted accounting principals.

59. This evidence was not considered because of OWC's fiduciary breach in refusing to file timely rule mandated Annual Reports.

60. This evidence was not considered because the Annual Reports these principals filed were rife with inaccurate statements and data.

61. This evidence was not considered because in those Annual Reports submitted, significant amounts of required data were missing or grossly misstated.

62. New evidence, in the form of Staff's inability to require compliance with Commission rules regarding NARUC USOA and Annual Reports, Mr. Williams', Mrs. Williams' and Mr. Mitchell's extensive fiduciary breach and possible felonious attempts to transfer franchises and more assets from OWC to Environmental, the now void Environmental CCN and this blatantly bogus wholesale agreement begs for a reconsideration of **Case WA-2002-65**; further, for a review of the ownership status of Golden Glade water well, the bobcat, the excavator, the sale of Cedar Glen water systems and an asset tracing of those assets, and the attempted transfer of the real estate owned by OWC to Environmental via the Deed of Trust for attorney fees.

63. The extensive fiduciary breach exhibited by Mr. Williams, Mrs. Williams and Mr. Mitchell in dissolving OWC calls for Commission's immediate reliance on Section 393.145 RSMO

64. An immediate receiver should be appointed to avoid irrevocable harm to Hancock Construction Company, other creditors and OWC ratepayers.

65. Immediate appointment of a receiver is necessary because the present state of OWC's books and records, NARUC USOA Accounts, and Annual Reports (Asset records) will cause irrevocable harm to creditors such as Hancock Construction Company and OWC ratepayers.

66. OWC's successful refusal, in spite of at least four Commission Orders, to set up books and records in conformance with NARUC USOA confirms Staff's ongoing inability to identify, quantify and locate all OWC assets.

67. OWC's asset record keeping morass renders Staff's September 10, 2002 TRO largely unenforceable.

68. The present state of OWC's asset records and absent, misstated or delinquent Annual Reports assures that these same principals can sell, assign, transfer, merger or consolidate OWC assets.

69. The basis of Staff's inability to require OWC's compliance with at least 4 Commission Orders regarding NARUC USOA and proper filed Annual Reports was revealed in the transcript testimony of James Merceil P.E., Staff's only Water and Sewer Department employee with the training and knowledge capable of identifying and locating NARUC USOA assets.

70. James Merceil P.E. confessed during cross in **Case WA-2002-65** that he doesn't know anything about NARUC USOA.

WHEREFORE, based on new evidence, Hancock Construction Company respectfully requests that the Commission find that this Water Supply Agreement is not a satisfactory arrangement for Environmental Utilities, LLC to provide water to Osage Water Company's Eagle Woods customers, that its Motion for Reconsideration be granted and that the Commission appoint an OWC receiver to prevent irrevocable harm to creditors and OWC ratepayers.

Respectfully submitted,

LORAINE & ASSOCIATES

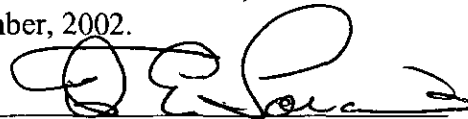
By: 

Thomas E. Loraine #22206
4075 Highway 54, Suite 300
Osage Beach, MO. 65065
(573) 348-8909 Telephone
(573) 348-8920 Facsimile

ATTORNEY FOR HANCOCK CONSTRUCTION
COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon the attorneys of record by **CERTIFIED, RETURN RECEIPT REQUESTED TO Gregory D. Williams**, Highway 5 at Lake Road 5-32, P.O. Box 431, Sunrise Beach, Mo. 65079 and **HAND DELIVERED by William Cochran and U.S. MAIL to Office of Public Counsel, P.O. Box 7800, Jefferson City, Mo. 65102 and General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Mo. 65102, and by U.S. Mail, postage prepaid to the Presiding Commissioner, Camden County Courthouse, 1 court Circle, P.O. Box 960, Camdenton, Mo. 65020, and Missouri Department of Natural Resources, 205 Jefferson Street, Jefferson City, Mo. 65101, on this 18th day of September, 2002.**



Thomas E. Loraine