



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

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MEMORANDUM

FILED

NOV 01 2004

Missouri Public
Service Commission

TO: Public Service Commission

FROM: Timothy P. Duggan, Assistant Attorney General 

DATE: October 29, 2004

RE: *Missouri-American Water Company, et al*, Case No. WO-2005-0086

Enclosed for filing are the original and one copy of an *Application to Intervene* in the above-captioned case. Please return a file-stamped copy to me in the enclosed envelope.

Thank you for your assistance.

TPD:js
enclosures

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

NOV 01 2004

In the matter of:

The joint application of)
Missouri-American Water Company)
and both Osage Water Company and)
Environmental Utilities, L.L.C.)

Missouri Public
Service Commission

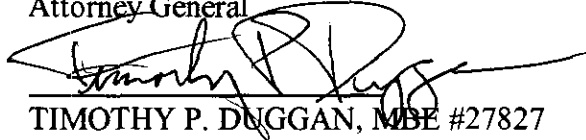
Case No. WO-2005-0086

APPLICATION TO INTERVENE

Comes now Jeremiah W. (Jay) Nixon, Attorney General, at the relation of the Missouri Clean Water Commission and the Department of Natural Resources, and applies for leave to intervene in this matter on the following grounds:

1. The Clean Water Commission and the Department of Natural Resources are charged with enforcing the provisions of Chapter 644, RSMo, and related regulations at 10 CSR, Chapter 20.
2. The Clean Water Commission and Department of Natural Resources have claims for unpaid permit fees and penalties thereon from Osage Water Company related to several OWC facilities. The Commission and Department also have claims for penalties for Osage Water Company's violations of the aforesaid statutes and regulations including a default judgment (copy attached) in the amount of \$47,076.00, in case number CV104-39CC, Circuit Court of Camden County. The judgment also requires Osage Water to pay the court costs.
3. Justice requires that these claims be paid by Osage Water Company from the purchase price funds from the sale of assets to Missouri-American, as Osage Water does not otherwise have the ability pay said claims and the Commission and Department may have no further opportunity to recover on said claims.

Respectfully submitted,
JEREMIAH W. (JAY) NIXON
Attorney General



TIMOTHY P. DUGGAN, MBE #27827
Assistant Attorney General
8th Floor, Broadway Building
P. O. Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-9802
TELEFAX No. (573) 751-8464

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of foregoing to be delivered by the method indicated below:

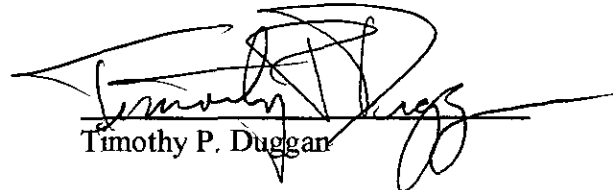
United States mail, postage prepaid,

this 29th day of October, 2004, to

The Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102

Dean L. Cooper
Richard C. Ciottone
Brydon, Swearengen & England P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102

Gregory D. Williams
P.O. Box 431
Sunrise Beach, MO 65079



Timothy P. Duggan

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
JEREMIAH W. (JAY) NIXON, Attorney)
General, and the MISSOURI CLEAN)
WATER COMMISSION,)

Plaintiff,)

v.)

OSAGE WATER COMPANY,)

Defendant.)

RECEIVED

OCT 28 2004

JC - MISSOURI
ATTORNEY GENERAL

Case No. CV104-39CC

Rec'd 10-15-2004

**INTERLOCUTORY DEFAULT ORDER AND
FINAL DEFAULT DECISION, JUDGMENT AND ORDER**

Now on this 15th Day of October, 2004, the Court takes up plaintiff's motion for default judgment. The Court finds and concludes:

1. Plaintiff's petition in the above captioned case was filed on January 15, 2004. Service of summons was made on defendant on January 21, 2004, and a return has been filed.
2. The defendant has failed to file and serve an answer within 30 days of receipt of summons as required by Supreme Court Rule 55.25.
3. Supreme Court Rule 74.05 authorizes this Court to issue an Interlocutory Order of Default because the defendant has failed to plead or otherwise defend.
4. Supreme Court rule 74.05 authorizes this Court, upon issuing an interlocutory order of default, to immediately hold a hearing to assess unliquidated damages and other relief requested by the petition. The hearing may be held without further notice to the

defendant because once a defendant is served with summons and petition he is put on notice of every stage of the proceeding. *Barney v. Suggs*, 688 S.W.2d 356, 359-360 (Mo. banc 1985); *Citizens Nat. Bank v. Boatmen's Nat. Bank*, 934 S.W.2d 6, 9 (Mo. App. E.D. 1996).

WHEREFORE, the Court hereby issues its interlocutory order that defendant is in default and plaintiff is entitled to an immediate hearing to assess relief, without further notice.

FINAL DECISION, JUDGMENT AND ORDER

The Court, having determined that the defendant, after being duly served the petition, is in default for having failed to answer the same, deems the allegations in the petition to be admitted. The allegations of the petition are fully incorporated as though fully set forth herein. The Court, having heard plaintiff's evidence establishing appropriate relief, issues a final decision, judgment and order as follows:

1. Defendant is the owner or operating authority for the State Operating Permit MO-0111104 for the Chelsea Rose Subdivision and is required by § 644.052, RSMo, to pay an annual operating permit fee for discharges from water contaminant sources. The fee is due on the anniversary date of the permit, or May 10 of each year. According to the Department of Natural Resources, the annual fee for this facility is \$800.00, based upon the facility's design flow. The 2003 fee of \$800.00 has not been paid. The 2004 fee of \$800.00 has not been paid. Penalties owed for nonpayment of

these fees is \$416.00, calculated at 2% for each month that the fee is delinquent, pursuant to § 644.055, RSMo. The defendant, as of the day of the hearing, owes \$2,016.00 for said unpaid fees and penalties for the Chelsea Rose facility. The Court orders defendant to pay this amount, by separate check, to the State of Missouri within thirty days of this judgment.

2. Defendant is the owner or operating authority for the State Operating Permit MO-0116921 for the Cimarron Bay Subdivision and is required by § 644.052, RSMo, to pay an annual operating permit fee for discharges from water contaminant sources. The fee is due on the anniversary date of the permit, or September 10 of each year. According to the Department of Natural Resources, the annual fee for this facility is \$150.00, based upon the facility's design flow. The 2002 fee of \$150.00 has not been paid. The 2003 fee of \$150.00 has not been paid. The 2004 fee of \$150.00 has not been paid. Penalties owed for nonpayment of these fees is \$110.00, calculated at 2% for each month that the fee is delinquent, pursuant to § 644.055, RSMo. The defendant, as of the day of the hearing, owes \$560.00 for said unpaid fees and penalties for the Cimarron Bay facility. The Court orders defendant to pay this amount, by separate check, to the State of Missouri within thirty days of this judgment.

3. For violations of Chapter 644, RSMo, and the regulations promulgated pursuant thereto, at the Chelsea Rose facility, the Court hereby assesses against the defendant a penalty of \$ 22,250 to the benefit of the Camden County School

Fund. The Court orders the defendant to pay this amount, by separate check, to the State of Missouri (Camden County) within thirty days of this judgment.

4. For violations of Chapter 644, RSMo, and the regulations promulgated pursuant thereto, at the Cimarron Bay subdivision facility, the Court hereby assesses a penalty of \$ 22,250 against the defendant to the benefit of the Camden County School Fund. The Court orders the defendant to pay this amount, by separate check, to the State of Missouri (Camden County) within thirty days of this judgment.

5. The checks in the amounts ordered to be paid shall be sent to the Office of the Attorney General, to the attention of Jo Ann Horvath, Collections Specialist, P.O. Box 899, Jefferson City, MO 65102.

6. The defendant is ordered to pay all court costs.

7. The defendant is permanently enjoined from committing any further violations of Chapter 644, RSMo, and the regulations promulgated pursuant thereto, subject to the contempt powers of this Court.



Judge, Camden County Circuit Court

The clerk shall serve a certified copy of this judgment upon:

William P. Mitchell
Registered Agent
Osage Water Company
328 South Frontage Road
Osage Beach, Missouri 65065

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

DATE 10.27.04

CLERK OF CIRCUIT COURT
CAMDEN COUNTY, MO.

BY _____ CLERK

BY  DEPUTY