

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

| | | |
|---------------------------------------|---|--|
| The Staff of the Missouri Public |) | |
| Service Commission, |) | |
| |) | |
| Complainant |) | |
| |) | |
| v. |) | |
| |) | |
| Hurricane Deck Holding Company, |) | |
| Chelsea Rose Land Owners Association, |) | |
| Inc., Gregory D. Williams, Debra J. |) | |
| Williams, and Charles H. Williams, |) | |
| |) | |
| Respondents. |) | |

Case No. WC-2006-0303

**MOTION TO STRIKE PLEADING OR IN THE ALTERNATIVE, RESPONSE TO
MOTION TO DISMISS**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and respectfully submits as follows:

Introduction

1. This Motion to Strike Pleading seeks to Strike the Respondents' Motion to Dismiss as untimely filed since the Respondents are currently in default for failure to file a timely answer by February 22, 2006 as directed by this Commission. In the alternative, Staff offers its Response to Respondents' Motion to Dismiss.

Motion to Strike Pleading

2. On January 23, 2006, Staff filed its verified Complaint against the Respondents. (Complaint at p. 1-12, the Affidavit of Dale W. Johansen, and Attachments A, B, and C attached hereto as Exhibit 1). The Complaint contains five specific counts specifying Respondents'

unlawful provision of water and sewer services to the public, for gain, without certification or other authority from the Missouri Public Service Commission (Exhibit 1).

3. All of the Respondents in this case were served by certified mail on January 24, 2006 pursuant to Commission Rule 4 CSR 240-2.070 (7) (EFIS entries 3-7 to Case No. WC-2006-0303).

4. The Commission Notice of Complaint directed that Respondents file their Answers to the Complaint on or before February 22, 2006.

5. Respondents have failed to file their Answers. This failure violates the Commission's Notice of Complaint and Commission Rule 4 CSR 240-2.070 (7, 8).

6. Commission Rule 4 CSR 240-2.070 (9) provides, in pertinent part:

If the respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default may be entered.

7. Respondents filed a pleading entitled "Motion to Dismiss" on February 24, 2006. This pleading does not qualify as an Answer.

8. Accordingly, Staff requests that the Commission strike the Motion to Dismiss and grant a default order pursuant to Commission Rule 4 CSR 240-2.070 (9).

Response to Motion to Dismiss

In the alternative, if the Commission decides not to grant default, then Staff respectfully submits the following Response to Motion to Dismiss:

Failure to State a claim upon which relief can be granted

9. The first ground for dismissal in Respondents' Motion for Dismissal is that the Complaint fails to state a claim upon which relief can be granted (Motion to Dismiss, Paragraph 1). Respondents blatantly fail to specify any facts or other support for this unsubstantiated

statement (Motion to Dismiss, Paragraph 1). A review of the Complaint reveals there are numerous facts alleged that state a claim upon which relief can be granted. The Complaint sets forth ample facts identifying the Respondents' unlawful provision of water and sewer services to the public, for gain, without certification or other authority from the Missouri Public Service Commission (Exhibit 1). The Complaint initially sets out clear facts about the unlawful actions of Respondents (Exhibit 1 at p. 2-3). Count I specifies how Respondents (or some of them) have been operating unlawfully as a public utility providing water and/or sewer service since September 22, 2005 (Exhibit 1 at p. 2-5). Count II specifies that this conduct is unlawful without a certificate of convenience and necessity from the Commission (Exhibit 1 at p. 2-7). Count III specifies the unlawful actions of the sewer operation by Respondents in the Chelsea Rose Service area (Exhibit 1 at p. 2-8). Count IV provides the facts showing that Respondents are attempting to unlawfully transfer the Chelsea Rose Service area water and sewer systems (Exhibit 1 at p. 2-10). Count V seeks penalties for the Respondents' unlawful actions (Exhibit 1 at p. 2-11). Accordingly, Staff has stated a claim upon which relief can be granted and this part of the Motion to Dismiss should be overruled.

Commission Lack of Jurisdiction over Chelsea Rose Land Owners Association, Inc.

10. Respondents next allege that the Commission lacks jurisdiction because Chelsea Rose Land Owners Association, Inc. is a not-for-profit-corporation authorized by the Declaration of Restrictions for Chelsea Rose Subdivision to own and operate a water and sewer system to provide water and sewer service and that this is not done for gain (Motion to Dismiss, Paragraph 2). This claim is not correct in the context of the current case since Respondents have set up a sham association. The Commission has cited the following criteria for a legitimate association:

- 1) It must have as membership all of its utility customers, and operate the utility only for the benefit of its members;

- 2) It must base the voting rights regarding utility matters on whether or not a person is a customer, as opposed to, allowing one (1) vote per lot which would not be an equitable situation if one (1) person owned a majority of lots irrespective of whether each of those lots subscribed to the utility service; and
- 3) It must own or lease the utility system so that it has complete control over it.

In the matter of the application of Rocky Ridge Property Owners Association for an order of the Public Service Commission cessation of PSC jurisdiction and regulation over its operations, Case No. WD-93-307, July 7, 1993.

11. The facts set out in the Complaint support the fact that there is not a legitimate association. The Chelsea Rose Service Area is within the service territory of Osage Water Company which is currently operated by a receiver (Exhibit 1 at p. 3). The Respondents have failed to turn over books and records to the receiver (Exhibit 1 at p. 3). Respondents have operated or controlled or managed the water and sewer systems serving the Chelsea Rose Service Area since September 22, 2005 (Exhibit 1 at p. 4) and are properly regulated by the Commission (See Section 386.020 (48) and (58) RSMo). Furthermore, Respondent Hurricane Deck Holding Company, not the Chelsea Rose Landowners Association, Inc., is billing customers in the Chelsea Rose Service Area (Exhibit 1 at p. 4-5). This also shows that Respondents are subject to Commission regulation. The Respondents are doing these actions without a certificate of convenience and necessity from the Commission (Exhibit 1 at p. 5-7).

12. Furthermore, Respondents themselves have set up the Association and unilaterally have attempted to transfer assets to the association as well as to bill the Osage Water customers on December 30, 2005 (Exhibit 1, Attachments A and B). Respondents filed the Articles of Incorporation for the Chelsea Rose Land Owners Association, Inc. on December 12, 2005 (Exhibit 1, Attachment C). This is a contrived effort to hide the fact that Respondents are subject to Commission jurisdiction. This point should be denied.

Commission Jurisdiction over Hurricane Deck Holding Company

13. Respondents next allege that Hurricane Deck Holding Company has authority to operate on behalf of the subdivision association prior to the formation and organization of said association (Motion to Dismiss at Paragraph 3). First, as set out above, Respondents only created the Homeowners' Association once the fact that it was unlawfully operating a water and sewer system became known and continues to do so. The decisions have all been unilateral on the part of Respondents (Exhibit 1).

14. Furthermore, the pattern of unilaterally creating a Homeowners' Association and unilaterally transferring assets to it does not comply with the *Rocky Ridge Property Owners Association* decision, *supra*. For these reasons, this claim must also fail.

Individual Respondents

15. The Motion to Dismiss next suggests that the Complaint does not allege that the individual Respondents own or operate a water or sewer system for gain (Motion to Dismiss at Paragraph 4). This also is incorrect. The first individual named in the complaint is Gregory Williams (Exhibit 1 at p. 2). Gregory Williams is the president, sole director and registered agent of Hurricane Deck Holding Company (Exhibit 1 at p. 2). As mentioned above, Hurricane Deck Holding Company has operated or controlled or managed the water and sewer systems serving the Chelsea Rose Service Area since September 22, 2005 (Exhibit 1 at p. 4). Gregory Williams has thus been so engaged.

The next individual named is Debra J. Williams. She is the secretary of Respondent Hurricane Deck Holding Company and has engaged in the operation, control or management of a water and sewer system (Exhibit 1 at p. 4). Respondent Charles H. Williams is a member of the Board of Managers of Respondent Chelsea Rose Land Owners Association, Inc. (Exhibit 1 at p.

2). The Complaint specifies all of the actions of the Respondents sufficiently to cover Respondent Charles H. Williams (Exhibit 1 at p. 1-12). This claim also must fail.

First Filed Rule and Concurrent Cases

16. Respondents next allege that the matters raised in the Complaint should have been joined in the Circuit Court action, Case No. 06CM-CC00014, pending in Circuit Court of Camden County (Motion to Dismiss at Paragraph 5). Respondents allege that the Complaint and the court case involve the same issues and parties (Motion to Dismiss at Paragraph 5).

17. Respondents are mistaken. First of all, the parties to the actions are not the same. The parties to case no. 06CM-CC00014 are: Osage Water Company, a Missouri Corporation, Gary V. Cover, Receiver, the Missouri Public Service Commission, Plaintiffs; vs. Hurricane Deck Holding Company, Gregory D. Williams and Debra J. Williams, Defendants (Petition filed in that case attached hereto as Attachment D). The Parties to the Complaint case are similar but by no means identical. The Complainant is the **Staff** of the Public Service Commission. The Respondents are: Hurricane Deck Holding Company, Chelsea Rose Land Owners Association, Inc., Gregory D. Williams, Debra J. Williams, and Charles H. Williams. Furthermore, the Complaint is a matter **before** the Public Service Commission and not a matter in Circuit Court.

18. In addition, Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, “[the] courts have ruled that the [Commission] cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing.” *State ex rel Sure-way Transp., Inc. v. Division of Transportation, Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23,27 (Mo. App. W.D. 1992). The Complaint has initiated this required procedure.

19. Further, the issues are not the same. In Case No. 06CM-CC00014, the Petition seeks specific performance of a contract to sell or convey land, or in the alternative quiet title to Real Estate and a Preliminary Injunction (Exhibit 2). These actions are only appropriate in Circuit Court, Section 478.070 RSMo. The Complaint before the Commission requests that the Commission authorize its General Counsel to seek penalties in Circuit Court for the unlawful acts of the Respondents in violation of Public Service Commission Law (Exhibit 1 at p. 1-12). In essence, the Circuit Court case deals with ownership of facilities serving the Chelsea Rose service area and the complaint case before the Public Service Commission deals with the right to run the facilities serving in the Chelsea Rose service area.

20. Respondents cite two cases in support of their argument that the actions must be joined in a court action for something called the “first filed rule.” The first case cited is *Blechle v. Goodyear Tire & Rubber Company*, 23 S.W.3d 484 (Mo. App. E.D. 2000). The only potentially relevant part of that opinion states: “Efficient administration of justice requires that two courts not have jurisdiction over the same issue in the same case at the same time.” *Id.* at 487. That principle does not control the present case, because the Staff’s Complaint before the Commission is not the “same case” as the Circuit Court case, nor does Staff’s Complaint Case concern the “same issue” as the circuit court case. This is so for the reasons mentioned above.

21. The second case that the Respondents cite in the Motion is *State ex rel. General Dynamics Corp. v. Luten*, 566 S.W.2d 452 (Mo. banc 1978). The most succinct statement of the point, in *General Dynamics*, upon which Respondents seek to rely:

...it is settled in Missouri that where two actions involving the same parties are brought in courts of concurrent jurisdiction, the court in which service

of process is first obtained acquires exclusive jurisdiction and may dispose of the entire controversy without interference from the other.

22. First, it should be noted that the Commission and this Court are not “courts of concurrent jurisdiction.” The Commission is not a court. Furthermore, the Commission does not have the same jurisdiction as the circuit court. Second, a decision by the Commission that disposes of all issues in the Complaint Case would not interfere in any respect with the jurisdiction of the Circuit Court. The Court would still be free to rule on all of the issues presented in the court case, for there are no issues that are common to both cases. Likewise, a decision by the Court that disposes of all issues in this case would not interfere in any respect with the jurisdiction of the Commission.

Contrary to Respondents’ claims, these two actions are authorized and may be pursued.

For these reasons, the Motion to Dismiss must be denied.

WHEREFORE, Staff respectfully requests that the Commission enter an Order of Default, or in the alternative, overrule Respondents’ Motion to Dismiss.

Respectfully submitted,

/s/ Robert V. Franson

Robert V. Franson
Senior Counsel
Missouri Bar No. 34643

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 3rd day of March 2006.

/s/ Robert V. Franson

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

FILED²

JAN 23 2006

Missouri Public
Service Commission

The Staff of the Missouri Public Service)
Commission,)

Complainant,)

v.)

Hurricane Deck Holding Company, Chelsea)
Rose Land Owners Association, Inc., Gregory)
D. Williams, Debra J. Williams, and Charles)
H. Williams,)

Respondents.)

Case No. WC-2006-_____

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, pursuant to Section 386.390, RSMo 2000, and for its Complaint states as follows:

Introduction

1. This Complaint concerns Respondents' unlawful provision of water and sewer services to the public, for gain, without certification or other authority from the Missouri Public Service Commission.

Complainant

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Commission's General Counsel as authorized by Commission Rule 4 CSR 240-2.070(1). Section 386.390.1 provides that "Complaint may be made . . . in writing, setting forth

any act or thing done or omitted to be done by any corporation . . . in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission . . ."

Respondents

3. Respondent Hurricane Deck Holding Company ("HDHC") is a Missouri general business corporation in good standing, incorporated on June 6, 1988. Its principal place of business is located at P.O. Box 431, Sunrise Beach, MO 65079.

4. Respondent Chelsea Rose Land Owners Association, Inc. ("CRLOA"), is a Missouri non-profit corporation in good standing, incorporated on December 12, 2005. Its principal place of business is located at P.O. Box 431, Sunrise Beach, MO 65079.

5. Respondent Gregory D. Williams is the president, sole director, and registered agent of Respondent HDHC, and the incorporator, a member of the Board of Managers, and the registered agent of Respondent CRLOA. Respondent Gregory D. Williams maintains a law office at P.O. Box 431, Sunrise Beach, MO 65079.

6. Respondent Debra J. Williams is the secretary of Respondent HDHC and a member of the Board of Managers of Respondent CRLOA. Her address is P.O. Box 431, Sunrise Beach, MO 65079.

7. Respondent Charles H. Williams is a member of the Board of Managers of Respondent CRLOA. His address is P.O. Box 431, Sunrise Beach, MO 65079.

Allegations Common to All Counts

8. Osage Water Company ("OWC") is a Missouri general business corporation in good standing. Its registered agent is William P. Mitchell and its registered office is at 328 Frontage Road, Osage Beach, MO 65065.

9. Pursuant to Certificates of Convenience and Necessity issued by this Commission, OWC is in the business of providing water and sewer services to the public for gain. OWC is thus a "public utility," a "water corporation," and a "sewer corporation" within the intendments of Section 386.020, RSMo, and subject to regulation by this Commission.

10. OWC operates in seven separate service areas in the vicinity of Lake of the Ozarks, Missouri, one of which is the Chelsea Rose Service Area, where water and sewer service is provided to the residents of the Chelsea Rose Estates, Chelsea Rose Estates First Addition, Zane's Addition to Chelsea Rose Estates, Cinnamon Hollow Subdivision, Cinnamon Hollow Addition, Cinnamon Ridge Subdivision, and Cinnamon Ridge Addition subdivisions.

11. On October 21, 2005, the Circuit Court of Camden County, Missouri, at the request of this Commission, appointed Gary V. Cover of Clinton, Missouri, as receiver for OWC pursuant to Section 393.145, RSMo. The Court's order appointing the receiver stated, in pertinent part, "Osage Water Company and its officers, agents and representatives, and specifically its past contractual agent and representative Environmental Utilities, LLC, employees and successors, and all other persons in active concert and participation with them, are directed to cooperate with Mr. Cover . . . to promptly transfer control of Osage Water Company to the appointed receiver; and to deliver to him all records and assets."

12. The Circuit Clerk of Camden County, Missouri, mailed a certified copy of the order appointing the receiver to Respondent Gregory D. Williams and all of the Respondents, consequently, have actual knowledge of its contents.

13. Despite actual knowledge of the contents of the order appointing the receiver, Respondents, or some of them, have failed and refused to turn over to the receiver the system assets, books and records pertaining to the Chelsea Rose Service Area.

Count I

Respondents are Subject to Regulation by the Commission

14. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 13, above.

15. Section 386.020(58), RSMo, provides:

"Water corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]

16. Section 386.020(48), RSMo., provides:

"Sewer corporation" includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets[.]

17. Since September 22, 2005, Respondents, or some of them, have operated or controlled or managed the water and sewer systems serving the Chelsea Rose Service Area within the intendments of Section 386.020, (48) and (58), RSMo, and have provided water and sewer service to OWC's customers in that service area.

18. On or about December 30, 2005, Respondent Debra J. Williams on behalf of Respondent HDHC sent a letter regarding "Water and Sewer Issues" to homeowners in the Chelsea Rose Service Area. Attached hereto and incorporated herein by reference as Attachment A is a true and correct copy of Respondent HDHC's letter of December 30, 2005.

19. Included with the letter of December 30, 2005, referred to above was a bill for \$52.48 entitled "HDHC Quarterly Water & Sewer Assessment" due on January 22, 2006, and payable to HDHC. Attached hereto and incorporated herein by reference as Attachment B is a

true and correct copy of Respondent HDHC's Quarterly Water & Sewer Assessment.

20. By billing OWC's customers in the Chelsea Rose Service Area for water and sewer services, Respondents, or some of them, are selling water, or supplying water for gain, within the intendments of Section 386.020, (48) and (58), RSMo.

21. The sewer system in the Chelsea Rose Service Area has 25 or more outlets.

22. With respect to the Chelsea Rose Service Area water and sewer systems, Respondents, or some of them, are a water corporation and a sewer corporation within the intendments of Section 386.020, (48) and (58), RSMo.

23. Section 386.020(42), RSMo, provides:

"Public utility" includes every . . . water corporation, . . . and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]

24. With respect to the Chelsea Rose Service Area water and sewer systems, Respondents, or some of them, are a public utility within the intendments of Section 386.020(42), RSMo, and thus subject to the jurisdiction, control and regulation of this Commission.

WHEREFORE, Staff prays that the Commission will give notice to Respondents as required by law and, after hearing, find that Respondents, or some of them, with respect to their operation of the Chelsea Rose Service Area water and sewer systems, are a water corporation and a sewer corporation within the intendments of Section 386.020, (48) and (58), RSMo, and thus a public utility within the intendments of Section 386.020(42), RSMo, and subject to the jurisdiction, regulation and control of this Commission.

Count II

Unauthorized Provision of Water and Sewer Services to the Public

25. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 24, above.

26. Section 393.170, RSMo, provides:

1. No . . . water corporation or sewer corporation shall begin construction of a . . . water system or sewer system without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

27. None of the Respondents possesses Certificates of Convenience and Necessity issued by this Commission authorizing them to exercise any right, privilege or franchise by providing water or sewer services to the public for gain in the Chelsea Rose Service Area.

28. With respect to the Chelsea Rose Service Area water and sewer systems, Respondents, or some of them, have violated Section 393.170, RSMo, by the conduct described in Paragraphs 1 through 27.

WHEREFORE, Staff prays that the Commission will give notice to Respondents as required by law and, after hearing, find that Respondents, or some of them, have violated Section 393.170, RSMo, by their conduct with respect to the Chelsea Rose Service Area water and sewer systems and, further, find that each day of operation in violation of Section 393.170, RSMo, constitutes a separate violation.

Count III

Provision of Unsafe Sewer Services to the Public

29. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 28, above.

30. None of the Respondents currently holds a permit from the Missouri Department of Natural Resources ("DNR") authorizing the operation of a sewer system in the Chelsea Rose Service Area.

31. Rule 10 CSR 20-6.010(5)(A) provides that "Persons who . . . operate, use or maintain any . . . wastewater treatment facility which discharges to waters of the state shall obtain an operating permit from the department before any discharge occurs."

32. Commission Rule 4 CSR 240-60.020(1) provides that "Each sewer utility . . . shall comply with the laws and regulations of the state and local health authority."

33. Commission Rule 4 CSR 240-60.010(J) provides that a "sewer utility" is "every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment or disposal of sewage anywhere within the state for gain; provided, that the provisions of this order shall not apply to sewer systems with fewer than twenty-five (25) outlets[.]"

34. With respect to their operation of the Chelsea Rose Service Area sewer system, Respondents, or some of them, are a "sewer utility" within the intendments of Commission Rule 4 CSR 240-60.010(J).

35. Respondents, or some of them, are thus in violation of Commission Rule 4 CSR 240-60.020(1) in that they are operating the Chelsea Rose Service Area sewer system in violation of Rule 10 CSR 20-6.010(5)(A).

WHEREFORE, Staff prays that the Commission will give notice to Respondents as required by law and, after hearing, find that Respondents, or some of them, have violated Section 393.170, RSMo, by their conduct with respect to the Chelsea Rose Service Area water and sewer systems and, further, find that each day of operation in violation of Section 393.170, RSMo, constitutes a separate violation.

Count IV

Unauthorized Transfer of Water and Sewer Systems

36. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 35, above.

37. In the letter referred to in Paragraph 18, above, Respondent Debra J. Williams stated that "we have determined the best course of action at this point is to turn the systems over to the homeowners. Articles of Incorporation have already been filed with the Secretary of State[.]" Attached hereto and incorporated herein by reference as Attachment C is a true and correct copy of said Articles of Incorporation.

38. Complainant is without knowledge as to whether or not an attempt to transfer the Chelsea Rose Service Area water and sewer systems to Respondent CRLOA has already occurred. However, in a letter dated January 20, 2006, Respondent Gregory D. Williams stated,

"The water and sewer system serving the Chelsea Rose development is owned by Hurricane Deck Holding Company." Attached hereto and incorporated herein by reference as Attachment D is a true and correct copy of said letter.

39. Section 393.190.1, RSMo, provides:

No . . . water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. Any person seeking any order under this subsection authorizing the sale, assignment, lease, transfer, merger, consolidation or other disposition, direct or indirect, of any gas corporation, electrical corporation, water corporation, or sewer corporation, shall, at the time of application for any such order, file with the commission a statement, in such form, manner and detail as the commission shall require, as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation, or other disposition will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the corporations involved in such disposition are located. The commission shall send a copy of all information obtained by it as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation or other disposition will have on the tax revenues of various political subdivisions to the county clerk of each county in which any portion of a political subdivision which will be affected by such disposition is located. Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

40. This Commission has not authorized any transfer, sale, assignment, mortgage,

encumbrance, or disposition by any other means of all or any part of the Chelsea Rose Service Area water and sewer systems.

41. Any purported transfer, sale, assignment, mortgage, encumbrance, or disposition by any other means of all or any part of the Chelsea Rose Service Area water and sewer systems is both void and a violation of Section 393.190.1, RSMo.

WHEREFORE, Staff prays that the Commission will give notice to Respondents as required by law and, after hearing, find that Respondents, or some of them, have violated Section 393.190.1, RSMo, in the event that there has been any purported transfer, sale, assignment, mortgage, encumbrance, or disposition by any other means of all or any part of the Chelsea Rose Service Area water and sewer systems.

Count V

Authority to Seek Penalties

42. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 41, above.

43. Section 386.570, RSMo, provides:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties

of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

44. Section 386.600, RSMo, provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

WHEREFORE, Staff prays that the Commission will give such notice to Respondents as is required by law and, after hearing, in the event that any of the conduct herein described is determined to be a violation of any law of the State of Missouri or of any order, decision, or rule of the Commission, deem each day that such violation existed to be a separate offense and authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law.

Respectfully submitted,

/s/ Robert V. Franson

Robert V. Franson
Senior Counsel
Missouri Bar No. 34643

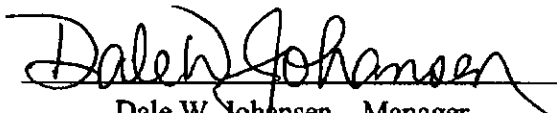
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AFFIDAVIT OF DALE W. JOHANSEN

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Dale W. Johansen, of lawful age, on his oath states: (1) that he is a member of the Staff of the Missouri Public Service Commission; (2) that he participated in the preparation of this Complaint; (3) that he has knowledge of the matters set forth in this Complaint; and (4) that the matters set forth in this Complaint are true and correct to the best of his knowledge, information and belief.



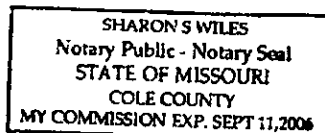
Dale W. Johansen – Manager
Water & Sewer Department
Utility Operations Division



Subscribed and sworn to before me this 20th day of January 2006.


Notary Public

My Commission Expires: _____



**HURRICANE DECK HOLDING COMPANY
P. O. BOX 431
SUNRISE BEACH, MO 65079**

PHONE 573/374-8761

FAX 573/374-4432

December 30, 2005

To Homeowners in

Chelsea Rose
Cinnamon Ridge
Cinnamon Hollow
Zane's Addition

RE: Water and Sewer Issues

Dear Homeowners:

Several years ago we entered into an agreement with Osage Water Company to provide operation and maintenance of the water and sewer systems we built for our subdivisions, as Greg and I did not wish to be in the utility business. When the president had insufficient funds to operate the company, he delivered the company records on our doorstep in July, 2001. Since that time I have been managing temporarily until the systems could be sold.

Although the company was under contract to be sold last spring, the Public Service Commission refused to allow the sale, and instead, on October 21 asked Camden County Circuit Court to allow them to appoint a "receiver" to seize and liquidate OWC's assets.

Fortunately, Hurricane Deck Holding Company never transferred ownership of its water and sewer systems to OWC. The receiver has elected not to enter into an agreement providing operation and maintenance to HDHC. We do not believe that OWC can be sold, or will ever be financially stable enough to manage these systems as long as the Missouri Public Service Commission is in control.

Therefore, we have determined the best course of action at this point is to turn the systems over to the homeowners. Articles of Incorporation have already been filed with the Secretary of State, and a copy is enclosed for your information. Also enclosed is an accounting for the past two (2) months which itemizes a portion of the actual costs for your systems for that period. I have divided the total amount spent by the number of customers (30) and am billing you for that amount, which is due on January 22.

In order to form the Homeowner's Association Board, three (3) people are required to serve. After the Board is elected, it can make decisions regarding establishing a reserve fund for future repairs. If you are interested in serving on this new Board, please indicate which position you would like -- President, Vice-President, or Secretary on your payment of your assessments.

The Water Company telephone line has been disconnected, and until the Board is elected you may call Jeff Smith directly at 216-1276 for service issues, or me at 216-2389 for billing matters. Thank you in advance for your patience and cooperation during this transition.

Sincerely,


Debra J. Williams
Secretary

Enclosures: Summary of partial actual expenses
Articles of Incorporation of Chelsea Rose Land Owners Association, Inc.

Attachment A, p. 2

HDHC
QUARTERLY WATER & SEWER ASSESSMENT
September 22 - December 30

| | |
|--------------------------------|----------|
| Co-Mo (electric bill) | \$534.60 |
| Jeff Smith (Licensed operator) | \$900.00 |
| McDuffy Lab (testing) | \$120.00 |
| Sludge test | \$20.00 |

Total: \$1,574.60

Divided by 30 users

\$52.48 TO HDHC

Please send amount due by January 22, 2006 in the enclosed envelope

Attachment B

**ARTICLES OF INCORPORATION
OF
CHELSEA ROSE LAND OWNERS ASSOCIATION, INC.**

(A Missouri Corporation Not for Profit)

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators in order to incorporate and establish a not for profit corporation pursuant to Chapter 355 RSMo., hereby adopt the following Articles of Incorporation:

ARTICLE ONE

Name

The name of the corporation is Chelsea Rose Land Owners Association, Inc.

ARTICLE TWO

Mutual Benefit Corporation

This corporation is a Mutual Benefit Corporation.

ARTICLE THREE

Duration

The duration of its corporation is perpetual.

ARTICLE FOUR

Purposes and Powers

The purposes for which the corporation is organized are as follows:

1. To govern the common property in the County of Camden, State of Missouri, known as Chelsea Rose Estates, Chelsea Rose Estates First Addition, Zane's Addition to Chelsea Rose Estates, Cinnamon Hollow Subdivision, Cinnamon Hollow Addition, Cinnamon Ridge Subdivision, and Cinnamon Ridge Addition as described more fully in the Declaration of Restrictions for Chelsea Rose Subdivision filed for record in Book 333 at Page 792 and the Amended and Restated Declaration of Restrictions for Chelsea Rose Estates recorded in Book 368 at Page 690 in Camden County, Missouri and subsequent amendments and annexations thereto.

2. To take and hold by purchase, gift, bequest, devise, lease or assignment, either absolutely or in trust for any of its purposes, any property, real, personal or mixed, without limitation as to amount or value thereof, and, with or without the owners thereof, to exercise and enjoy all of the rights, powers and privileges of ownership to the same extent as a natural person might or could; to operate, use, manage,

State of Missouri
Creation - Not Profit 4 Pages



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improve, mortgage, pledge, lease, assign, sell, transfer, convey or otherwise dispose of any such property, real, personal or mixed; to invest and reinvest its funds, either principal or income, in any securities or property of whatsoever character deemed proper by its Board of Managers for such investment; and to employ, donate and expend the property and funds of the corporation for the purposes contained in this paragraph.

3. To make, enter into and perform contracts of every kind and description, necessary, advisable or expedient in carrying out the purpose of the corporation, with any person, firm, association, corporation, municipality, body politic, district, county, state or other governmental unit.

4. To act as Trustee or attorney in fact for lot unit owners whenever so designated or authorized to do so by such owners, without termination due to death or disability of such owners as provided in Chapter 448.1-101 et seq. RSMo. 1983.

5. To have one or more offices and to conduct and carry on any of its business at any place either within or without the State of Missouri, as may be determined by its Board of Managers.

6. In addition to the above, to do everything necessary, proper, advisable or convenient for the accomplishment of the purposes herein, and to do all other things incidental thereto, or connected therewith, which are not forbidden by Chapter 355 of the Missouri Not-For-Profit Corporation Code, by any other law, or these Articles of Incorporation, and to do so in any state, territory, district, possession, dependency, or other political subdivision of the United States of America, or in any foreign country to the extent that such purposes are not forbidden by such subdivision of the United States or such foreign country.

ARTICLE FIVE

Dissolution

In the event of dissolution and termination of the corporation's activities, its assets shall be liquidated and its debts paid in full; and, after it has fully complied with the applicable provisions of the Chapter 355 of the Missouri Not-For-Profit Corporation Code relating to dissolution, any remaining balance shall be distributed to the members.

ARTICLE SIX

Board of Managers

The management of the Corporation shall be vested in the Board of Managers and may be partially delegated by the Board of Managers to or among such committees as may be appointed by the Board of Managers from among its membership. The initial Board of Managers shall be established in Article VI infra until its successors are duly elected and qualified according to the By-Laws of the corporation. The initial board shall consist of two members. The number of managers thereafter shall be fixed by the By-Laws of the corporation and said Board of Managers shall be empowered to appoint a managing agent.

ARTICLE SEVEN

Initial Board of Managers

The names and addresses of the original Board of Managers shall be:

NAME

Address

Gregory D. Williams
Debra J. Williams
Charles H. Williams

P.O. Box 431, Sunrise Beach, MO 65079
P.O. Box 431, Sunrise Beach, MO 65079
P.O. Box 431, Sunrise Beach, MO 65079

ARTICLE EIGHT

Compensation of Managers

No manager or member of the Corporation shall receive any pecuniary profit from the Corporation or its operations, except reasonable compensation for services performed in effecting one or more of its purposes. Compensation may be set by the Board of Managers from time to time. No contract or other transaction between the corporation and any other person, firm, partnership, corporation, trust, joint venture, syndicate or other entity shall be in any way affected or invalidated solely by reason of the fact that any director, officer, or member of the corporation is pecuniarily or otherwise interested in, or is a manager, officer, shareholder, employee, fiduciary, or member of any such entity or solely by reason of the fact that any manager, officer, or member of the corporation is in any way interested in a contract or other transaction of the corporation.

ARTICLE NINE

Registered Office and Agent

The address of the initial registered office of the Corporation shall be Law Office Gregory D. Williams, Highway 5, P.O. Box 431, Sunrise Beach, Missouri, 65079 and the initial registered agent at that address shall be Gregory D. Williams.

ARTICLE TEN

Members

Membership in the Association shall be automatically awarded to each owner of an individual lot or tract in Chelsea Rose Estates, Chelsea Rose Estates First Addition, Zane's Addition to Chelsea Rose Estates, Cinnamon Hollow Subdivision, Cinnamon Hollow Addition, Cinnamon Ridge Subdivision, and Cinnamon Ridge Addition, or any subsequent developments annexed pursuant to the Amended and Restated Declaration of Restrictions for Chelsea Rose Estates recorded in Book 368 at Page 690 in Camden County, Missouri and voting of said members shall be regulated as provided for in the Declaration of Restrictions and the By-Laws.

ARTICLE ELEVEN

By-Laws

The corporation, through its Board of Managers, shall make, adopt and maintain such By-Laws as it shall deem proper for the management of the business and internal affairs of the corporation, and may alter and amend the By-Laws from time to time in accordance with the provisions thereof.

ARTICLE TWELVE

Incorporators

The name and address of each Incorporator is:

NAME

ADDRESS

Gregory D. Williams

16537 N. State Highway 5, Sunrise Beach, MO 65079

ARTICLE THIRTEEN

Amendment of Articles


These Articles of Incorporation may be amended from time to time in the manner permitted by the laws of the State of Missouri then in effect. Provided, that prior to the relinquishment of Declarant's control as specified in the Declaration of Restrictions such amendment may not be made without the approval of the Developer, its successors, and assigns.

ARTICLE FOURTEEN

Effective Date

The effective date of this document is the date it is filed by the Secretary of State of Missouri.

IN WITNESS AND AFFIRMATION WHEREOF, we have hereunto set our hands and seals this 9 day of December, 2005.


Gregory D. Williams

Attachment C, p. 4

THE LAW OFFICE OF GREGORY D. WILLIAMS

HIGHWAY 5 AT LAKE ROAD 5-33
P.O. Box 431
SUNRISE BEACH, MO 65079

GREGORY D. WILLIAMS, ATTORNEY AT LAW
ANDREW W. RENKEN, ATTORNEY AT LAW

PHONE 573/374-8761
FAX 573/374-4432

January 20, 2006

Mr. Keith R. Krueger
Deputy General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Facsimile: 573-751-9285

Re: Your Correspondence of January 13 & January 19, 2006

Dear Mr. Krueger:

Please be advised that Environmental Utilities, LLC has promptly and fully responded to all requests by Mr. Cover for records and/or assets owned by or pertaining to Osage Water Company, to the extent of its ability to do so. Environmental Utilities has maintained records as to the information requested by and furnished to Mr. Cover. Your demands and threats to seek judicial remedies are without legal merit.

Please be further advised that Environmental Utilities operated certain assets of Osage Water Company under the terms of a written contract, which was terminated according to its terms for failure of Osage Water Company to comply with the requirements thereof, prior to the appointment of Mr. Cover. Environmental Utilities does not, did not, and never has had many of the records you have requested.

With respect to your specific requests:

- 1) The water and sewer system serving the Chelsea Rose development is owned by Hurricane Deck Holding Company. These systems have been the subject of a number of contracts between that corporation and Osage Water Company over the past decade, which allowed Osage Water Company to operate them, and, if certain payments and obligations were met, to acquire ownership of those assets. Osage Water Company did not make those payments or satisfy those obligations, and all of those contracts have been terminated.

Attachment D, p.1.

Environmental Utilities does not have the authority to transfer possession of those systems to Osage Water Company.

- 2) The KK Wastewater Treatment Facility is not owned by Osage Water Company. Pursuant to a signed Stipulation filed with the Circuit Court of Camden County with the Missouri Department of Natural Resources, that facility was leased to Osage Water Company for a term expiring on October 12, 2005. Mr. Cover has elected not to renew that lease agreement. Osage Water Company has no right to use, operate, or possess that facility. Environmental Utilities does not own the facility, and has no right to transfer possession thereof to Osage Water Company.
- 3) If Osage Water Company owns any accounts receivable, Environmental Utilities is not aware of the same, and has no records or schedules pertaining to the same. You should contact Mr. Mitchell as president of Osage Water Company to determine whether that corporation has any accounts receivable.
- 4) Environmental Utilities has records of the revenues it has received and the disbursements it has made with respect to its operation of the Osage Water Company assets, and has furnished your agency with complete copies of the same as your auditors have requested. Mr. Cover has also received these records, or so much thereof as he has requested. To the extent there are other records pertaining to actual revenues received and expenses incurred directly by Osage Water Company, you should contact Mr. Mitchell as the president of Osage Water Company.
- 5) Environmental Utilities does not, did not, and never has had any records pertaining to Osage Water Company's federal and state income tax returns. Mr. Mitchell has been furnished a general ledger regarding operations each year from which to prepare such returns. It is our understanding that he may have filed some federal and state returns during the period of contract operations by Environmental Utilities, but no copies thereof have ever been received by Environmental Utilities. You should contact Mr. Mitchell regarding this request.
- 6) As noted above, the Chelsea Rose systems are not the property of Osage Water Company, and, absent an agreement between the owner of those systems and Mr. Cover, there are no customers served by Osage Water Company in that development.
- 7) Environmental Utilities utilized billing software which it acquired, and continues to utilize in its utility operations, to provide billing services under its contract with Osage Water Company. Osage Water Company utilized an older version of that software prior to execution of its contract with Environmental Utilities. Environmental Utilities did not retain the old version of that software, and the version currently utilized is the property of Environmental Utilities, not Osage Water Company.
- 8) Environmental Utilities did not maintain or retain system drawings for the physical facilities owned by Osage Water Company. I believe Mr. Mitchell, though his company Jackson Engineering, may have a comprehensive set, as he furnished the same to Missouri American Water Company recently. You should contact him regarding this request.

Attachment D, p. 2

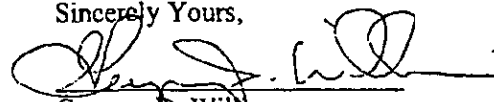
- 9) Environmental Utilities did not maintain any special locks on the control panels which could not be opened by the master key for Osage Water Company, of which Mr. McDuffy has always had a copy, and no requests for an additional copy of that key have been received from Mr. McDuffy or Mr. Cover. Separate locks are maintained for the Chelsea Rose and KK WWTP, as those facilities are not the property of Osage Water Company.
- 10) Environmental Utilities did not maintain maintenance repair records, other than invoices for materials and subcontractor work, with respect to the Osage Water Company systems, as the maintenance of such records was not required under the terms of its contract with Osage Water Company.
- 11) Environmental Utilities did not maintain an inventory of spare parts and equipment for Osage Water Company's facilities, as such items were purchased as need from local suppliers. There is an extensive repository of miscellaneous parts located adjacent to the Shawnee Bend WWTP which is left over from prior to execution of the management contract, but it appears to largely consist of junk that needs to be disposed of, rather than usable parts and equipment.

Please be further advised that due to the reduction in the scope of its operations, Environmental Utilities has reduced its staffing to the minimum necessary to maintain its remaining operations. Mr. Cover was so advised and requested to advise prior to November 30, 2005 as to any additional records which he might need. He did not request any additional records prior to that date. Environmental Utilities does not presently have the staff to locate or respond to any additional requests of any significant scope, and would have to be compensated for the cost of such additional staff time as might be required to respond to such additional requests, in advance.

I trust that the foregoing is a complete response to your inquiry, and merely duplicates the information previously provided to Mr. Cover. Your agency is wasting everyone's time in this matter. Your agency intentionally and deliberately bankrupted Osage Water Company, to the great harm of its investors, employees, creditors and customers. Your agency had the opportunity to allow its assets to be sold to Missouri American Water Company, and refused to even consider that alternative.

You have a mess on your hands, and you will have to figure out how to fix it. Further litigation, whether with Environmental Utilities, or others, will not fix the mess you have made.

Sincerely Yours,



Gregory D. Williams

cc: Gary Cover

Attachment D, p.3

IN THE CIRCUIT COURT FOR THE COUNTY OF CAMDEN
STATE OF MISSOURI

Osage Water Company,
a Missouri corporation,
Gary V. Cover, Receiver

and

Missouri Public Service Commission,

Plaintiffs,

v.

Hurricane Deck Holding Company, a
Missouri Corporation,

Gregory D. Williams
Highway 5 at Lake Road 5-33
Sunrise Beach, MO 65079

and

Debra J. Williams
Highway 5 at Lake Road 5-33
Sunrise Beach, MO 65079,

Defendants.

(Serve Defendant Hurricane Deck
Holding Company by delivering a copy
of the Petition and Summons to its
registered agent, Gregory D. Williams,
Highway 5 at Lake Road 5-33, Sunrise
Beach, MO 65079.)

Case No. 06CM-CC00014

PETITION FOR SPECIFIC PERFORMANCE
OF A CONTRACT TO SELL OR CONVEY LAND,
OR IN THE ALTERNATIVE TO QUIET TITLE TO REAL ESTATE,
AND MOTION FOR PRELIMINARY INJUNCTION

COME NOW the Plaintiffs, Osage Water Company and Missouri Public Service Commission, and, for their Petition for Specific Performance of a Contract to Sell or Convey

Land, or in the Alternative to Quiet Title to Real Estate, and Motion for Preliminary Injunction, state to the Court as follows:

THE PARTIES

1. Plaintiff Osage Water Company ("Osage") is a "public utility," a "water corporation," and a "sewer corporation," as those terms are defined in Section 386.020, RSMo.¹ Osage is a Missouri general business corporation in good standing. Its registered agent is William P. Mitchell and its registered office is at 328 Frontage Road, Osage Beach, MO 65065. Osage provides water and sewer services to customers in the Chelsea Rose Estates Subdivision and in nearby subdivisions (known collectively as the "Chelsea Rose service territory") as well as in other service territories, all in Camden County, Missouri. Osage is currently managed by its receiver, Gary V. Cover, who was appointed as receiver by the Camden County Circuit Court on October 21, 2005. Mr. Cover's business address is P.O. Box 506, 130 W. Jefferson, Clinton, MO 64735.

2. Plaintiff Missouri Public Service Commission ("Commission") is a state administrative agency established by the Missouri General Assembly to regulate public utilities operating within the state of Missouri, pursuant to the Public Service Commission Law, Chapters 386, 392, and 393, RSMo, with its principal office located at 200 Madison Street, Jefferson City, Missouri 65101.

3. Defendant Hurricane Deck Holding Company ("Hurricane Deck") is a Missouri general business corporation in good standing, incorporated on June 6, 1988. Its principal place of business is located at P.O. Box 431, Sunrise Beach, Missouri 65079.

4. Defendant Gregory D. Williams is an individual residing in Camden County, Missouri. He owns approximately fifty percent of the voting stock of Plaintiff Osage Water

¹ Unless otherwise indicated, all statutory citations are to RSMo 2000, as currently supplemented.

Company. He has a long association with Osage, and has served as an officer, director, and registered agent for the corporation at various times since 1991, and has served as attorney for the corporation for most of the last 14 years. His business address is at Highway 5 at Lake Road 5-33, Sunrise Beach, Missouri 65079.

5. Defendant Debra J. Williams is the wife of Defendant Gregory D. Williams, and resides in Camden County, Missouri. She has served as an officer of Plaintiff Osage Water Company at various times since 1991. She is also the managing member of Environmental Utilities, LLC, a Missouri limited liability company that operated and managed Osage's water and sewer facilities under an Operations and Management Agreement that was in effect for about three years, from 2002 to 2005. Her business address is at Highway 5 at Lake Road 5-33, Sunrise Beach, Missouri 65079.

COUNT I – PETITION FOR SPECIFIC PERFORMANCE OF A CONTRACT TO SELL OR CONVEY LAND

For Count I of their Petition, Plaintiffs Osage Water Company and Missouri Public Service Commission state to the Court as follows:

6. Defendant Hurricane Deck Holding Company is now or formerly was the owner of all or part of a subdivision of land in unincorporated Camden County, Missouri known and platted as Chelsea Rose Estates. Included within Chelsea Rose Estates are tracts of land that are used for the purpose of providing water and sewer service to the persons who reside in Chelsea Rose Estates and the other parts of Plaintiff Osage Water Company's Chelsea Rose service territory. The legal descriptions of the said tracts of land are not known to the Plaintiffs. However, the water supply and distribution system are located in Sections 13 and 24, Township 39 North, Range 17 West, and are identified in Missouri Department of Natural Resources Permit MO-3031244, and the sewers and wastewater treatment plant are located in Sections 13 and 24,

Township 39 North, Range 17 West, and are identified in Missouri Department of Natural Resources Permit MO-0111104. The said tracts of land and the facilities located thereon are now and, for more than ten years, have been used for the purpose of providing water treatment and sewage treatment and disposal services for the residents living in Osage's Chelsea Rose service territory in Camden County, Missouri. Defendant Hurricane Deck Holding Company claims that it is now the owner of the said land and the facilities thereon.

7. On December 19, 1991, Plaintiff Osage Water Company filed with the Commission a series of four cases. Three of those cases pertained to the capitalization and financing of Osage. In Case No. WM-92-138, William P. Mitchell sought to acquire all of Osage's outstanding common stock. In Case No. WF-92-139, Osage sought authorization to issue new stock. In Case No. WF-92-140, Osage sought authorization to recapitalize and for authority to issue additional stock.

8. When it filed the said four cases, Osage had only one class of stock, common, consisting of 50 outstanding shares. By these cases, Osage sought to cancel the existing common stock, and to issue to Mr. Mitchell in exchange therefor 50 shares of new common stock with a par value of \$1.00 per share and 75 shares of Class A preferred stock with a par value of \$1,000 per share. Osage also sought authority to issue 51 shares of Class A preferred stock with a par value of \$1,000 per share to Hurricane Deck Holding Company, 30 shares of Class A preferred stock with a par value of \$1,000 per share to Hancock Construction Company, and 62 shares of Class B preferred stock with a par value of \$100 per share to Williams and Williams, P.C.

9. Osage supported its application in Case No. WF-92-139 with a copy of the minutes of a special meeting of Osage's board of directors, held on December 13, 1991. A copy of the said minutes of the special meeting is attached hereto as "Exhibit A."

10. The said minutes said that Hurricane Deck was willing to exchange assets for shares of stock of Osage, on the following terms:

2. Hurricane Deck Holding Company would transfer its existing water and sewer systems in Chelsea Rose Estates, a subdivision of record in Camden County, Missouri in exchange for fifty-one (51) shares of Class A preferred stock of Osage Water Company.

11. The said minutes further included the following resolution of the board of directors:

RESOLVED, it is in the best interests of Osage Water Company that, upon issuance of a certificate of necessity and convenience by the Public Service Commission of the State of Missouri for a geographic are (*sic*) which includes Chelsea Rose Estates, Osage Water Company issue fifty-one (51) shares of Class A preferred stock to Hurricane Deck Holding Company in exchange for the existing water and sewer systems located in Chelsea Rose Estates, a subdivision of record in Camden County, Missouri, and which were built at the cost of fifty-one thousand dollars (\$51,000).

12. Hurricane Deck agreed to convey the said water and sewer systems located in Chelsea Rose Estates, which were valued at \$51,000, in exchange for 51 shares of Osage's Class A preferred stock, which, together, had a par value of \$51,000.

13. On August 25, 1992, the Commission approved the three capitalization and financing applications that Osage had submitted to the Commission on December 19, 1991.

14. On the same date, in Case No. WA-92-141, the Commission issued to Osage Water Company a certificate of convenience and necessity to provide water service to a service territory that includes Chelsea Rose Estates. No party sought judicial review of the Commission's Order granting Osage the certificate, and the Order is final and unappealable. A copy of the Commission's Order is attached hereto as "Exhibit B."

15. Osage also applied for a certificate of convenience and necessity to provide sewer service to Chelsea Rose Estates in 1993, but that case was dismissed on November 17, 1995. Osage again applied for a certificate to provide sewer service to Chelsea Rose Estates on September 17, 1996, and the Commission issued to Osage a certificate of convenience and necessity to provide sewer service to a service territory that includes Chelsea Rose Estates. The

Commission issued the said certificate in Commission Case No. WA-97-110, on March 5, 1998. No party sought judicial review of the Commission's order granting Osage the certificate, and the order is now final and unappealable. A copy of the Commission's order is attached hereto as "Exhibit C."

16. In order to carry out its obligations under the agreement with Hurricane Deck Holding Company, Osage adopted an amendment to its Articles of Incorporation on September 4, 1992. As amended, the Articles of Incorporation authorized Osage to issue 3000 shares of common stock at a par value of \$10 per share, 4500 shares of Class A preferred stock with no par value, and 3000 shares of Class B preferred stock at a par value of \$100 per share. The Amended Articles further provided that no shares of Class A preferred stock could be issued for more or less consideration than \$1000 per share. Osage filed its certificate of amendment of the Articles of Incorporation with the Missouri Secretary of State on October 23, 1998.

17. In performance of its agreement, Osage Water Company did issue 51 shares of Osage's Class A preferred stock to Hurricane Deck.

18. Plaintiff Osage Water Company has performed all of its obligations under its agreement with Hurricane Deck, and all contingencies therein have been satisfied.

19. However, Hurricane Deck has failed to perform its obligation, under the agreement with Osage, to transfer to Osage the subject water and sewer systems in Chelsea Rose Estates, without justification or excuse.

20. Defendant Hurricane Deck Holding Company wrongfully maintains and continues to maintain that it is the owner of the water and sewer system facilities in Chelsea Rose Estates.

21. Despite the fact that Hurricane Deck agreed to convey the water and sewer system facilities to Osage, Hurricane Deck nonetheless required Osage to pay rent to Hurricane Deck for the use of the said Chelsea Rose water and sewer system facilities. At the time of the execution

of the lease agreement, Defendant Gregory D. Williams was the owner of approximately fifty percent of the voting stock of Osage Water Company.

22. In September, 2004, Defendant Hurricane Deck Holding Company entered into a written contract with Missouri-American Water Company, wherein it again asserted that it is the owner of the said Chelsea Rose water and sewer system facilities and proposed to sell the said facilities to Missouri-American. In October, 2005, Hurricane Deck continued to assert that it is the owner of the Chelsea Rose water and sewer system facilities, and demanded that Osage Water Company pay rent for the use of the said facilities.

23. Since real property is the subject matter of the agreement between Plaintiff Osage Water Company and Defendant Hurricane Deck Holding Company, damages cannot adequately compensate Osage for the refusal of Hurricane Deck to convey title to the Chelsea Rose water and sewer system facilities to Osage. Furthermore, the Chelsea Rose water and sewer system facilities are uniquely able to provide the water supply and sewage treatment services that the residents in Osage's Chelsea Rose service territory require. Therefore, Plaintiffs lack an adequate remedy at law.

WHEREFORE, Plaintiffs Osage Water Company and the Missouri Public Service Commission request that the Court render judgment:

Declaring that Plaintiff Osage Water Company is the fee simple owner of the Chelsea Rose water and sewer facilities and that Defendants Hurricane Deck Holding Company, Gregory D. Williams, and Debra J. Williams have no interest therein, whatsoever; or

Directing Defendant Hurricane Deck Holding Company to deliver to Plaintiff Osage Water Company a good and sufficient deed for the Chelsea Rose water and sewer system facilities;

Awarding Plaintiffs' attorney fees and the costs of suit; and

Granting such other and further relief as to the Court seems just and proper.

COUNT II – ALTERNATIVE PETITION TO QUIET TITLE TO REAL ESTATE

For Count II of its Petition, Plaintiff Osage Water Company states to the Court as follows:

24. Plaintiff Osage Water Company hereby realleges and incorporates herein the allegations contained in Paragraphs 1 through 23 hereof.

25. Section 527.150.1 provides in full as follows:

1. Any person claiming any title, estate or interest in real property, whether the same be legal or equitable, certain or contingent, present or in reversion, or remainder, whether in possession or not, may institute an action against any person or persons having or claiming to have any title, estate or interest in such property, whether in possession or not, to ascertain and determine the estate, title and interest of said parties, respectively, in such real estate, and to define and adjudge by its judgment or decree the title, estate and interest of the parties severally in and to such real property.

26. Defendant Hurricane Deck Holding Company claims that it is the owner of certain tracts of land in the Chelsea Rose Estates Subdivision in Camden County, Missouri, on which are situated water and sewer system facilities that are used to provide water and sewer service in Osage Water Company's Chelsea Rose service territory. The exact legal descriptions of the said tracts of land are not known to the Plaintiffs. However, the water supply and distribution system are located in Sections 13 and 24, Township 39 North, Range 17 West, and are identified in Missouri Department of Natural Resources Permit MO-3031244, and the sewers and wastewater treatment plant are located in Sections 13 and 24, Township 39 North, Range 17 West, and are identified in Missouri Department of Natural Resources Permit MO-0111104.

27. Plaintiff Osage Water Company entered into an agreement with Defendant Hurricane Deck Holding Company, by the terms of which said Defendant agreed that it would convey the said water and sewer systems to Osage, when certain conditions were met.

28. All of the conditions in the said contract have been satisfied, but Hurricane Deck has failed and refused, and continues to fail and refuse to convey title to the Chelsea Rose water and sewer systems to Osage.

29. Osage is the equitable owner of the Chelsea Rose water and sewer systems.

30. A contract for sale of real estate vests equitable title in the purchaser, and where the purchaser has performed the conditions of the contract, he may maintain an action to quiet title, whether in possession or not. *Hamilton v. Linn*, 200 S.W.2d 69 (Mo. 1947).

31. Defendant Hurricane Deck Holding Company claims an interest and estate in the said water and sewer systems adverse to Plaintiff Osage Water Company. Hurricane Deck's claim is without any right whatever, and Hurricane Deck has no right, title, lien or interest in or to the property, or any part thereof.

32. Defendant Hurricane Deck Holding Company claims some estate, right, title, lien, or interest in or to the said water and sewer systems adverse to Osage's title, and such claim or claims constitute a cloud on Osage's title to the property.

WHEREFORE, Plaintiff Osage Water Company requests judgment as follows:

Defendant Hurricane Deck Holding Company, and all persons claiming under it, be required to set forth the nature of their claims to the described real property;

All adverse claims to such real property be determined by a decree of this court;

The decree declare and adjudge that Plaintiff Osage Water Company owns in fee simple, and is entitled to the quiet and peaceful possession of, such real property, and that Defendant Hurricane Deck Holding Company, and all persons claiming under it, have no estate, right, title, lien, or interest in or to the real property or any part thereof;

The decree permanently enjoin Defendant Hurricane Deck Holding Company, and all persons claiming under it, from asserting any adverse claim to Plaintiff Osage Water Company's title to the property;

Awarding Plaintiffs' attorney fees and the costs of suit; and

Granting such other and further relief as to the court seems just and proper.

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

For their Motion for Preliminary Injunction, Plaintiffs Osage Water Company and Missouri Public Service Commission state to the court as follows:

33. Plaintiffs Osage Water Company and Missouri Public Service Commission hereby reallege and incorporate herein the allegations contained in Paragraphs 1 through 32 hereof.

34. Osage holds a certificate of convenience and necessity, issued by the Commission pursuant to Chapter 393, to provide water service to the Chelsea Rose service territory. As a regulated water corporation, Osage has an obligation to provide safe and adequate service to the residents of the Chelsea Rose service territory, in accordance with the certificate of convenience and necessity issued by the Commission and by Osage's tariff.

35. On September 1, 2002, Osage entered into an "Operation and Maintenance Agreement" with Environmental Utilities, LLC, a Missouri limited liability company owned by Defendants Gregory D. Williams and Debra J. Williams. A copy of the said Operation and Maintenance Agreement is attached hereto as "Exhibit D." Under the terms of this agreement, Environmental agreed to maintain and operate Osage's water and sewer systems, and to handle Osage's billing and collection and the payment of accounts payable, and to generally manage Osage's financial affairs. Environmental continued to provide service to Osage under the Operation and Management Agreement until October 1, 2005.

36. On October 21, 2005, the Camden County Circuit Court issued an Order in Case No. CV102-965CC, appointing Gary V. Cover as receiver for plaintiff Osage Water Company. A copy of the said Order is attached hereto as "Exhibit E." The said Order includes the following provision:

The Court further orders that Osage Water Company and its officers, agents and representatives, and specifically its past contractual agent and representative Environmental Utilities, LLC, employees and successors, and all other person in active concert and participation with them, are directed to cooperate with Mr. Cover and with Mr. McDuffey to promptly transfer control of Osage Water Company to the appointed receiver; and to deliver to him all records and assets.

37. Defendant Debra J. Williams is the managing member of Environmental Utilities, and Defendants Gregory D. Williams and Debra J. Williams are owners and agents of Environmental Utilities, and are in active concert and participation with Environmental Utilities, and are bound by the provisions of the said Order.

38. Defendants Gregory D. Williams and Debra J. Williams have refused to provide Osage with a list of Osage's customers who are served by the Chelsea Rose water and sewer facilities, and have prevented Osage's agent, Mike McDuffey, from having access to the Chelsea Rose water and sewer facilities, and have threatened to charge Mr. McDuffey with trespass if he attempts to go onto the site of the Chelsea Rose water and sewer facilities.

39. Defendants' refusal to permit Mr. McDuffey to have access to the Chelsea Rose water and sewer facilities makes it impossible for Osage to discharge its obligation under § 393.130 to provide safe and adequate service to its customers in the Chelsea Rose service territory.

40. The actions of Defendants Gregory D. Williams and Debra J. Williams, as described herein, are in direct violation of the provisions of this Court's Order appointing Mr. Cover as the receiver, which provisions are set forth in Paragraph 36 hereof.

41. Despite the fact that Defendant Hurricane Deck Holding Company does not own the Chelsea Rose water and sewer facilities, it has required that Plaintiff Osage Water Company pay it the sum of \$1250 per month as rent for the said Chelsea Rose water and sewer systems, either through payments directly to Hurricane Deck or through payments to banks or others on the account of Hurricane Deck.

42. Beginning on September 1, 2002, and continuing until September 30, 2005, Defendants Gregory D. Williams and Debra J. Williams had control of the checking account wherein funds belonging to Osage were deposited. During this time, they failed and neglected to assert Osage's ownership interest in the Chelsea Rose water and sewer system facilities, and for most months during this time period they paid rent in the amount of \$1250 per month to Hurricane Deck, which is a closely held corporation in which they have an equity interest, from Osage's funds.

43. On December 12, 2005, Defendant Gregory D. Williams caused to be formed a Missouri not-for-profit corporation known as Chelsea Rose Land Owners Association, Inc. Defendant Gregory D. Williams is the incorporator and registered agent of said corporation. The initial board of managers for said corporation consists of Charles H. Williams and Defendants Gregory D. Williams and Debra J. Williams, all of whom are owners of Defendant Hurricane Deck Holding Company. The corporation was formed without the knowledge, consent, or approval of the residents living in Osage's Chelsea Rose service territory. Although the Articles of Incorporation state that membership in the corporation shall be automatically awarded to each owner of an individual lot or tract in one of the seven subdivisions that comprise the Chelsea Rose service territory, the board of managers retained the right to adopt and amend the bylaws of the corporation, and Defendants Gregory D. Williams, Debra J. Williams and Hurricane Deck

Holding Company remain in control of the corporation, which has not held an organizational meeting.

44. Hurricane Deck does not hold a certificate of convenience and necessity to provide water and sewer services to the public, and does not have any authority to provide water and sewer services to the residents of the Osage's Chelsea Rose service territory for gain. Nonetheless, on December 30, 2005, Hurricane Deck sent a letter to residents living in the Chelsea Rose service territory, stating that it was turning the water and sewer systems over to the homeowners. In the same letter, Defendant Hurricane Deck Holding Company billed residents for water and sewer services for the period of time from September 22, 2005 through December 30, 2005. Hurricane Deck told the residents they must pay the amount demanded by January 22, 2006.

45. Residents of Osage's Chelsea Rose service territory do not believe they have an obligation to pay the bills that Hurricane Deck submitted to them, but they reasonably fear that if they do not do so, Hurricane Deck will disconnect their water and sewer services.

46. The conduct by Hurricane Deck demonstrates that there is good reason for Plaintiffs and the residents living within the boundaries of Osage's Chelsea Rose service territory to fear that Hurricane Deck may take action to interrupt the water and sewer services to Osage's customers in the Chelsea Rose service territory.

47. If Hurricane Deck takes such action, the residents living within the boundaries of Osage's Chelsea Rose service territory will be without a water supply or a source of sewer service, and will be without any ability to replace the existing water and sewer service, rendering their homes virtually uninhabitable. Immediate and irreparable injury, loss, and damage will result to Plaintiffs and to the customers of Plaintiff Osage Water Company living in Osage's Chelsea Rose service territory by reason of the threatened actions of Defendant Hurricane Deck

Holding Company. Osage will be unable to provide safe and adequate service to its customers in the Chelsea Rose service territory, as it is obliged by law to do. The Commission will be unable to carry out its statutory obligation to ensure that customers of regulated utilities receive safe and adequate service.

48. The Plaintiffs have no adequate remedy at law.

49. This Court should issue a temporary restraining order and preliminary injunction to prevent Defendant Hurricane Deck Holding Company from disconnecting service to Osage's Chelsea Rose service territory.

50. If this temporary restraining order and preliminary injunction are granted, the injury, if any, to Defendant herein, should a final judgment be in Defendant's favor, will be inconsequential. As a state agency, Plaintiff Public Service Commission is not required to provide bond.

51. Alternatively, the Court could ensure that Defendant Hurricane Deck Holding Company will not suffer any harm by directing Plaintiff Osage Water Company to pay the sum of \$1250 per month into the registry of the Court, to be disbursed to Hurricane Deck or to Osage, as their interests may subsequently be determined by the Court.

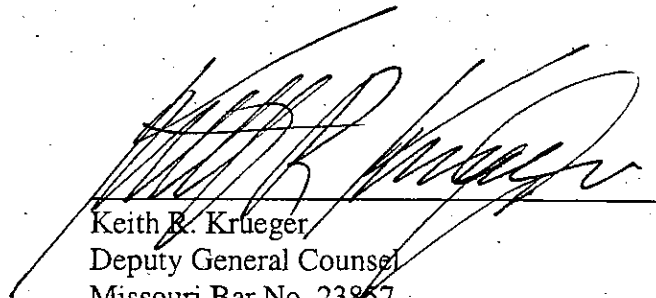
WHEREFORE, Plaintiffs Missouri Public Service Commission and Osage Water Company request a judgment as follows:

Issuing a temporary restraining order and a preliminary injunction, requiring Defendants Gregory D. Williams and Debra J. Williams to provide Plaintiff Osage Water Company with a list of all of Osage's customers who are served by the Chelsea Rose water and sewer facilities and prohibiting Defendants Hurricane Deck Holding Company, Gregory D. Williams, and Debra J. Williams from refusing to permit Plaintiff Osage Water Company and its agents from having access to, and operating, the Chelsea Rose water and sewer facilities;

Issuing a preliminary injunction, prohibiting Defendant Hurricane Deck Holding Company or its agents from disconnecting water and sewer service to the residents living in Plaintiff Osage Water Company's Chelsea Rose service territory; and

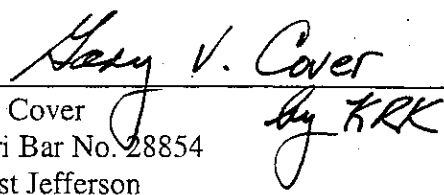
Granting such other and further relief as to the Court seems just and proper.

Respectfully submitted,



Keith R. Krueger
Deputy General Counsel
Missouri Bar No. 23857

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Attorney for Osage Water Company

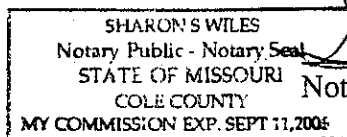
VERIFICATION


State of Missouri)
)
County of Cole)

The undersigned, Dale W. Johansen, Manager of the Water and Sewer Department of the Missouri Public Service Commission, Plaintiff in the above action, has reviewed the above Petition, and being duly sworn, hereby verifies that the allegations contained in the above Petition are true and correct to the best of his knowledge, information and belief.


Dale W. Johansen

Subscribed and sworn to before me, a Notary Public, this 24th day of January, 2006.




Notary Public

My Commission expires: _____

**MINUTES OF 1991 SPECIAL MEETING
OF BOARD OF DIRECTORS OF
OSAGE WATER COMPANY**

A special meeting of the board of directors of Osage Water company called by the President of the corporation, William Patterson Mitchell, was held on December 13, 1991, at 9:00 a.m. at the principal place of business of the corporation. The following persons were present: William Patterson Mitchell, William R. Mitchell and Martha M. Mitchell, being all the directors of the corporation.

On motion duly made, seconded and unanimously carried, William Patterson Mitchell was elected chairman of the meeting and William R. Mitchell was elected secretary thereof.

The following directors waived notice of the special meeting by signing their name below:

I hereby waive notice of this special meeting called by the President of Osage Water Company.



William P. Mitchell



Martha M. Mitchell



William R. Mitchell

The chairman advised that the corporation and its shareholders had been negotiating with Hancock Construction Company, Hurricane Deck Holding Company, David L. Hancock and Gregory D. Williams for acquisition of existing water and sewer systems and expertise to improve service by the corporation. He stated these entities were willing to exchange assets and expertise for shares of stock in Osage Water Company as follows:

1. Hancock Construction Company would transfer its water and sewer systems in Hancock Trailer Park, NE1/4, SE1/4, Sec. 34, T40N, R17W, Camden County, Missouri in exchange for thirty (30) shares of Class A preferred stock of Osage Water Company.

2. Hurricane Deck Holding Company would transfer its existing water and sewer systems in Chelsea Rose Estates, a subdivision of record in Camden County, Missouri in exchange for fifty-one (51) shares of Class A preferred stock of Osage Water Company.

3. David L. Hancock would provide his expertise as a builder of sewer systems and forgo establishment of competing public sewer utilities and pay fifty dollars (\$50) in exchange for fifty (50) shares of Class A common stock of Osage Water Company.

4. Gregory D. Williams would provide his expertise as an attorney-at-law and forgo establishment of competing public utilities and pay fifty dollars (\$50) in exchange for fifty (50) shares of Class A common stock in Osage Water Company.

The chairman presented documents to the board showing the costs of construction of the water and sewer systems to be acquired and advised that the water and sewer systems lie within areas the corporation is seeking to acquire certificates of convenience and necessity to supply water and sewer service to by application to the Public Service Commission, those areas roughly being Shawnee Bend and the area west of Shawnee Bend bounded by the Lake of the Ozarks and the Camden-Morgan County line.

After review of the foregoing documents presented by the chairman and discussion of the merits of acquiring the expertise and forbearance of David L. Hancock and Gregory D. Williams and the existing water and sewer systems as well as exploring possible alternatives, the following resolutions were, upon motion duly made, seconded and unanimously passed, adopted:

RESOLVED, it is in the best interests of Osage Water Company that it issue fifty (50) shares of Class A common stock to Gregory D. Williams upon his payment of fifty dollars (\$50) therefor to retain his services as an attorney-at-law and forbearance to seek establishment of other Missouri water and/or sewer utilities;

RESOLVED, it is in the best interests of Osage Water Company that it issue fifty (50) shares of Class A common stock to David L. Hancock upon his payment of fifty dollars (\$50) therefor to retain his expertise as a builder of sewer systems and forbearance to seek establishment of other Missouri water and/or sewer utilities;

RESOLVED, it is in the best interests of Osage Water Company that, upon issuance of a certificate of necessity and convenience by the Public Service Commission of the State of Missouri for a geographic area which includes Hancock Trailer Park, Osage Water Company issue thirty (30) shares of Class A preferred stock to Hancock Construction Company in exchange for the water and sewer systems in Hancock Trailer Park which is located on Shawnee Bend in Camden County, Missouri, and which cost thirty thousand dollars (\$30,000) to build;

RESOLVED, it is in the best interests of Osage Water Company that, upon issuance of a certificate of necessity and convenience by the Public Service Commission of the State of Missouri for a geographic area which includes Chelsea Rose Estates, Osage Water Company issue fifty-one (51) shares of Class A preferred stock to Hurricane Deck Holding Company in exchange for the existing water and sewer systems located in Chelsea Rose Estates, a subdivision of record in Camden County, Missouri, and which were built at the cost of fifty-one thousand dollars (\$51,000).

The chairman then announced that the firm of Williams & Williams was willing to accept _____ shares of Class B preferred in lieu of cash for the legal fees it had generated in providing services to the corporation, a copy of the firm's bill to the corporation as attached hereto was presented to the board.

Upon motion duly made, seconded and unanimously passed the board adopted the following resolution:

RESOLVED, it is in the best interests of Osage Water Company and to its advantage to issue sixty-two (62) shares of Class B preferred stock to the firm of Williams & Williams for legal services rendered to the corporation as shown on the bill presented to the board and attached to these minutes.

There being no further business to come before the board, on motion duly made seconded and unanimously carried the meeting was adjourned.



William P. Mitchell,
chairman

I hereby certify that the foregoing are true and accurate minutes of a special meeting of the Board of Directors of Osage Water Company.



William R. Mitchell,
secretary.

STATE OF MISSOURI)

COUNTY OF Camden) ss

On this 13 day of December, 1991, before me appeared

William P. Mitchell, to me personally known, who, being by me duly sworn, did say that he is the secretary of Osage Water Company, a Missouri Corporation, and that the above minutes are accurate minutes of the special meeting of the Board of Directors held at the time and date first set forth above.


Notary Public

My commission expires:

Jennifer L. Gray, Notary Public
Camden County, State of Missouri
My Commission Expires 8/4/95

At a Session of the Public Service Commission held at its office in Jefferson City on the 25th day of August, 1992.

CASE NO. 84-92-118

CASE NO. WF-92-139

CASE NO. 77-92-140

CASE NO. NA-92-141

On December 19, 1991, Osage Water Company (Osage) filed four applications with the Commission. The application in Case No. WA-92-138 seeks permission for William Patterson Mitchell (Mitchell) to acquire the Osage stock he does not presently own. The applications in Case Nos. WF-92-139 and WF-92-140 seek permission to issue additional stock. In Case No. WA-92-141, Osage is requesting that the Commission issue a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage and maintain a water system in an area including part of the City of Osage Beach, all of the Village of Sunrise Beach, plus unincorporated portions of Camden and Miller Counties.

Exhibit B

On January 10, 1992, the Commission issued an Order and Notice consolidating the four cases and directing its Executive Secretary to send notice of the applications. The Commission stated that if no one filed an application to intervene or motion for hearing, Osage would be allowed to submit evidence in support of the application by verified statement. No application to intervene nor motion for hearing was filed. On July 22, 1992, the Staff of the Commission (Staff) filed a memorandum recommending that the Commission approve the applications.

In Case No. WM-92-138, Mitchell is seeking to acquire all of Osage's stock from his co-shareholders because they do not want to sign personal guarantees required for Osage to obtain loans. Staff stated in its memorandum that Mitchell is experienced in the management of Osage and that the changeover should not be detrimental to Osage's operations or to its ratepayers. The Commission finds that, because of Mitchell's experience with Osage's operations and the need for Osage to have the ability to obtain financing, the purchase of Osage's stock by Mitchell is not detrimental to the public interest and should be approved.

In Case No. WF-92-139, Osage is requesting authority to issue Class A common stock for retention of the services of an attorney and the services of an expert in sewer system construction. Osage is also requesting authority to issue Class A preferred stock for the acquisition of water and sewer systems to improve service. In addition, Osage is requesting authority to issue 62 shares of Class B preferred stock to compensate its attorneys for service already rendered. Following issuance of the stock, the ownership of Osage would be as follows:

CLASS A COMMON

| <u>Owner</u> | <u>Shares</u> |
|---------------------|---------------|
| William P. Mitchell | 50 |
| Gregory D. Williams | 50 |
| David L. Hancock | 50 |

CLASS A PREFERRED

| <u>Owner</u> | <u>Shares</u> |
|--------------------------------|---------------|
| William P. Mitchell | 75 |
| Hurricane Deck Holding Company | 51 |
| Hancock Construction Company | 30 |

CLASS B PREFERRED

| <u>Owner</u> | <u>Shares</u> |
|---------------------------|---------------|
| Williams & Williams, P.C. | 62 |

In case No. WF-92-140, Osage requests authority to create and issue the new classes of stock found in Case No. WF-92-139. Osage is seeking to recapitalize by issuing the following classes and number of shares of stock:

| <u>CLASS</u> | <u># of Shares</u> | <u>Par Value</u> |
|--------------------------------|--------------------|------------------|
| Class A Common (New Common) | 3,000 | \$ 1.00 |
| Class A Preferred | 4,500 | 1,000.00 |
| Class B Preferred | 3,000 | 100.00 |

Osage currently is authorized to issue 3,000 shares of Class A common stock (Old Common) of which 50 shares are outstanding and would be held by Mitchell pending approval of the application in Case No. WM-92-138. Under the plan proposed by Osage, the Old Common shares would be exchanged for New Common and Class A preferred stock as follows:

"...to issue one share of New Class A common stock plus one and one-half (1.5) shares of Class A preferred stock in exchange for each share of Old Common...."

In its memorandum, Staff states that Osage's capital structure shows Osage to be highly leveraged, with 96.80 percent of its total capital in short-term debt. The pro-forma capital structure proposed by Osage indicates that, if the applications herein are approved, the capital structure would consist of 95.85 percent preferred stock. Staff indicates that while this is not a normal capital structure, it should not be detrimental to Osage's operations or its ratepayers.

Staff states that although the proposed capital structure is not optimal, a significant portion of preferred stock should not increase the risk of financial failure as would the same proportion of debt in the capital structure. Staff further stated that the problem created by an excessive amount of preferred stock is in the increased cost of capital. Staff suggests that a hypothetical capital structure be used to determine Osage's appropriate rate of return during ratemaking proceedings to prevent the ratepayers from bearing the burden of the increased cost of capital.

The Commission finds that Osage's decision to create and issue stock as contemplated in its applications in Case Nos. WF-92-139 and WF-92-140 is reasonable in that stock carries less risk than debt. The Commission also finds that Osage's proposed capital structure, while not ideal, is reasonable. Nonetheless, the Commission will reserve the right to consider the ratemaking treatment of these transactions in any later proceeding.

The Commission further finds that the money, property, or labor to be procured or paid for by the issuance of stock herein is reasonably required for the purposes specified herein, and that the purposes are not, in whole or in part, reasonably chargeable to operating expenses or income.

Thus, the Commission finds that Osage's proposal to create and issue stock is not detrimental to the public interest and should be approved.

In Case No. WA-92-141, Osage is seeking a certificate of public convenience and necessity to install, own, acquire, construct, operate, control, manage and maintain a water system in both incorporated and unincorporated areas of Camden and Miller Counties. On March 3, 1992, Osage filed amendments to its application. On July 6, 1992, after discussions with Staff, Osage again amended its application to revise the requested service area. Osage states that it has received approval from the City of Osage Beach and the Village of Sunrise Beach. Osage also states that there are no other public utilities or governmental bodies rendering water service in the proposed service area.

In its memorandum, Staff indicated that Osage is an existing company currently providing water service to portions of Camden County. Staff stated that Osage has proposed to use its present tariff and rates for customers in the new service area and that Staff agrees with this approach.

Upon review of Osage's application and Staff's recommendation, the Commission finds that providing a clean and reliable source of water to the proposed area is in the public interest, and that Osage's proposal is reasonable. The Commission also finds that, as Osage is an existing company currently providing water service to other areas, Osage is capable of providing water service to the proposed service area on an ongoing basis. Thus, the Commission determines that Osage's application for a certificate of convenience and necessity is in the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That William Patterson Mitchell is hereby authorized to acquire the outstanding stock of Osage Water Company that he does not presently own.
2. That Osage Water Company is hereby authorized to issue 3,000 shares of Class A common stock, 4,500 shares of Class A preferred stock and 3,000 shares of Class B preferred stock.

3. That Osage Water Company is hereby authorized to convert its present shares of common stock to shares of Class A common stock and shares of Class A preferred stock as follows: one share of Class A common stock plus 1.5 shares of Class A preferred stock for each current share of common stock.

4. That Osage Water Company is hereby authorized to issue 50 shares of Class A common stock to Gregory D. Williams, 50 shares of Class A common stock to David L. Hancock, 51 shares of Class A preferred stock to Hurricane Deck Holding Company, 30 shares of Class A preferred stock to Hancock Construction Company and 62 shares of Class B preferred stock to the law firm of Williams and Williams.

5. That Osage Water Company is hereby granted a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage and maintain a water system within the area outlined in its application, as amended.

6. That Osage Water Company shall update its tariff within twenty (20) days of the effective date of this order by filing a revised map and legal description consistent with the service area approved by this order.

7. That Osage Water Company shall utilize its current tariffs and rates for customers in the service area approved by this order.

8. That Osage Water Company is hereby authorized to take any and all actions necessary to effectuate the transactions contemplated by the applications and this order.

9. That nothing in this order shall be considered as a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein included, nor as an acquiescence in the value placed upon said properties by Osage Water Company.

10. That the Commission reserves the right to consider the ratemaking treatment to be afforded the transactions herein contemplated in any later proceeding.

11. That this Order shall become effective on September 4, 1992.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch
and Kincheloe, CC., Concur.
Perkins, C., Absent.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 5th
day of March, 1998.

In the Matter of the Application of)-
Osage Water Company for a Certificate of)
Convenience and Necessity Authorizing it)
to Construct, Install, Own, Operate,) Case No. WA-97-110
Control, Manage and Maintain a Water)
System for the Public Located in Unincor-)
porated Portions of Camden County,)
Missouri.)

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

On September 17, 1996, Osage Water Company (Osage) filed an application with the Commission requesting an order from the Commission granting certificates of convenience and necessity for Osage to provide water and sewer service to an unincorporated area of Camden County, Missouri, known as "Cimarron Bay," and sewer service to an area, also part of unincorporated Camden County, known as "Chelsea Rose." On May 22, 1997, Osage amended its application by the addition of various exhibits. Osage has filed plans, a feasibility study, a plat map, and metes and bounds description of both proposed service territories. Osage plans to provide water service to Cimarron Bay under its currently existing tariffed rate. Otherwise, Osage has provided the Commission with information regarding its proposed capital structure and anticipated rates for service.

Osage is a public utility regulated by the Commission and currently holding a certificate for water service in the Chelsea Rose area. In addition, the Cimarron Bay project is planned as an extension of water service from an already existing water service territory.

On December 12, 1997, the Staff of the Commission (Staff) filed its initial recommendation in this case. This recommendation was followed by a supplemental recommendation filed February 2, 1998. After extensive investigation of the financial ability of Osage to provide the requested service, the Staff has come to the conclusion that Osage has met the necessary criteria for issuance of a certificate. The Staff believes that Osage has shown (1) that there is a need for the requested service; (2) that Osage is technically qualified to provide the service; (3) that it has the near-term financial ability to provide the proposed service; (4) that the proposal is economically feasible; and (5) the proposed service will promote the public interest.

The Staff notes in its supplemental recommendation that its audit process has extended to the point where the Staff can make a recommendation regarding issuance of the requested certificates. The Staff adds that its ongoing financial audit of Osage is for the purpose of determining long-term financial viability in the context of a rate proceeding. The Staff makes the following recommendations:

That the Commission grant the Osage Water Company a certificate of convenience and necessity to provide sewer service to the public in the areas known as Chelsea Rose and Cimmarron Bay subdivisions in Camden County, Missouri. The Staff also recommends that the Commission authorize the company to provide water service to the public in the Cimmarron Bay subdivision. The Staff further recommends that the Commission's granting of the referenced certificate and authority become effective upon approval of the requisite tariff filings.

The Staff recommends that the Commission order the company to file a complete tariff pertaining to its provision of sewer service, including the proper descriptions of the two subject areas, with the contents of the tariff to be consistent with Exhibit B-2 to the May 22, 1997, Amendment to Application and subsequent agreed-upon changes. The Staff also recommends that the Commission order the company to file the necessary revisions to its existing water tariff pertaining to the

description of the service area for the Cimarron Bay subdivision, with the revisions to be consistent with Exhibit B-1 to the May 22, 1997, Amendment to Application.

In addition, the Staff recommends the Commission require the following:

1. That Osage be required to maintain its books and records in accordance with the Commission-approved Uniform System of Accounts;
2. That the Commission order an 18-month review period for sewer rates;
3. That the Commission approve existing rates for water and sewer service to Cimarron Bay; and
4. The Commission order Osage to adopt sewer depreciation rates as set out in Attachment A to this order.

The Commission has reviewed the application, attached documentation and the recommendations of the Staff and finds no detriment to the public from issuance of the requested certificates for sewer and water service. ~~The Commission will approve the application and grant the~~ requested certificates of convenience and necessity as augmented by the recommendations of the Staff.

IT IS THEREFORE ORDERED:

1. That a certificate of convenience and necessity is hereby granted to Osage Water Company to install, own, acquire, construct, operate, control, manage and maintain a water and sewer system for the public in an unincorporated area of Camden County known as "Cimarron Bay" as specifically described in the application in this case.
2. That a certificate of convenience and necessity is hereby granted to Osage Water Company to install, own, acquire, construct, operate, control, manage and maintain a sewer system for the public in an

unincorporated area of Camden County known as "Chelsea Home" as specifically described in the application in this case.

3. That Osage Water Company is ordered to comply with all Staff recommendations as follows: (1) that Osage is required to maintain its books and records in accordance with the Commission-approved Uniform System of Accounts; (2) that an 18-month review period for sewer rates is hereby approved; (3) that the existing rates for water and sewer service to Cimarron Bay are just and reasonable and are hereby approved; and (4) that Osage is ordered to adopt sewer depreciation rates as set out in Attachment A to this order.

4. That Osage Water Company is hereby ordered to adopt the depreciation schedule, as set out in Attachment A to this order, for both of the above-stated sewer systems.

5. That the Commission makes no findings or determinations for ratemaking purposes in this order and, further, makes no determination of the ratemaking treatment to be afforded the services granted by the above certificates.

6. That Osage Water Company is ordered to file complete tariffs in accordance with this order and the Staff recommendations for both certificated areas prior to commencing either construction or operation.

7. That this order shall become effective on March 17, 1998.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur.

Derque, Regulatory Law Judge

Atty/Sec'y:

Dorsey/Bryce

2-27
Date Circulated

WP-97-110
CASE NO.

Lump
Lump, Commissioner

Crumpton
Crumpton, Commissioner

Murray
Murray, Commissioner

Commissioner

Drainer
Drainer, Vice-Chair

3-5
Agenda Date

Action taken:

4-CAS

Must Vote Not Later Than

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 5th day of March, 1998.

Hardy Roberts

Date Hardy Roberts
Secretary/Chief Regulatory Law Judge

OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of September, 2002 by and between Osage Water Company, a Missouri Corporation, and Environmental Utilities, LLC, a Missouri Limited Liability Company.

WHEREAS, Osage Water Company is in the public water and sewer utility business in Camden County, Missouri; and

WHEREAS, Environmental Utilities, LLC is also in the public water utility business in Camden County, Missouri; and

WHEREAS, Environmental Utilities, LLC is also the holder of a promissory note executed by Osage Water Company with a present principal balance thereon of \$500,000; and

WHEREAS, Osage Water Company desires to contract to Environmental Utilities, LLC to operate and manage its various water and sewer utility properties so that water and sewer utility service to its customers can be maintained.

NOW, THEREFORE, the undersigned do hereby covenant, contract, and agree as follows:

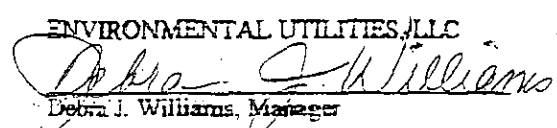
1. Osage Water Company ("OWC") does hereby appoint Environmental Utilities, LLC as its agent for the purpose of operating, maintaining, and repairing the water and sewer utility systems owned by OWC in Camden County, Missouri.
2. Environmental Utilities, LLC is hereby expressly authorized to collect all revenues due and owing to Osage Water Company, and to which Osage Water Company has hereto for granted a security interest therein now held by Environmental Utilities, LLC, and to pay therefrom all expenses incurred in the operation of the water and sewer utility systems now owned by Osage Water Company, and to reimburse therefrom the expenses incurred by Environmental Utilities, LLC for payroll, including any taxes thereon, for personnel employed by Environmental Utilities, LLC, equipment rental, transportation expenses, sales taxes, insurance premiums or any other expenses arising from or relating to the operation of said water and sewer utility systems, and to the apply the remainder of said revenues, if any, the principal and interest due under said promissory note due and owing from Osage Water Company to Environmental Utilities, LLC.
3. This Agreement may be terminated by either party hereto at any time by delivering written Notice of Termination to the other party. Termination shall be effective at the end of the calendar month after the month in which said Notice of Termination is given.

In witness whereof the parties have set their hands the day and year first above written.

OSAGE WATER COMPANY


William P. Mitchell, President

ENVIRONMENTAL UTILITIES, LLC


Debra J. Williams, Manager

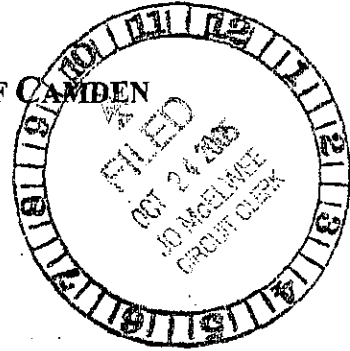
EXHIBIT

TT # 7

318/04 SPS

Exhibit D

IN THE CIRCUIT COURT FOR THE COUNTY OF CAMDEN
STATE OF MISSOURI



Public Service Commission of the State of)
Missouri,)

Plaintiff,)

v.)

Osage Water Company,)

Defendant.)

Case No. CV102-965CC

ORDER

On the 8th day of March, 2004, this cause came on for trial. Plaintiff Public Service Commission appeared by its attorneys, Keith R. Krueger and David A. Meyer. Intervenor Office of the Public Counsel appeared by its attorney, Ruth O'Neill. Paula Hernandez-Johnson, attorney for Defendant Osage Water Company failed to appear, and Defendant appeared without counsel, but William P. Mitchell, president of Defendant was present in court as the corporate representative of Defendant Osage Water Company.

Cause called. After the commencement of the trial, the Court received faxed copies of a Motion for Continuance and an Application / Petition to Disqualify Judge, submitted by Paula Hernandez-Johnson, counsel of record for Defendant Osage Water Company, which were overruled as untimely filed.

On March 9, 2004, after the conclusion of evidence, and during argument on the cause by counsel, the Court received a Notice of Bankruptcy Court Filing issued by the United States Bankruptcy Court for the Western District of Missouri in Case No. 04-20546, which indicated that Defendant Osage Water Company filed a Petition for Bankruptcy under Chapter 7 of the

United States Bankruptcy Code on March 9, 2004, at 1:59 p.m. The Notice of Bankruptcy Court Filing further included the following statement:

The filing of a bankruptcy case automatically stays certain actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Pending resolution of the bankruptcy case, further proceedings in this cause were stayed.

The U.S. Bankruptcy Court issued its judgment dismissing Osage Water Company's bankruptcy case on April 29, 2004. The Bankruptcy Court's Judgment further enjoined Osage Water Company from filing a subsequent bankruptcy petition for 180 days.

On or before June 2, 2004, Gregory D. Williams entered his appearance as attorney for Osage Water Company.

On June 2, 2004, the Court heard argument on various legal issues and the Company advised the Court that it had nearly reached agreement to sell its assets to Missouri-American Water Company. The Court announced that it had determined that the appointment of a receiver was appropriate, but that it would delay the entry of such an order, while the proposal to sell the Company's assets was pending.

Upon the direction of the Court, the Commission subsequently filed 39 Status Reports regarding the progress of the proposed sale of the Company's assets to Missouri-American and of the application to the Commission for approval of such sale of assets.

On October 7, 2005, the Commission and the Company appeared through counsel for argument on the Commission's Petition for Appointment of Receiver. The Office of the Public Counsel, although notified of the hearing, appeared not.

This Court will now rule upon the Plaintiff's Petition.

The Court finds that, based upon the evidence received in this proceeding, Osage Water Company has failed to provide safe and adequate water service to its customers as required by Section 393.130.1 RSMo. (2000). Section 393.130.1 provides, in part, as follows:

Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service and instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.

The Court further finds that although Osage Water Company did execute a contract to sell its assets to Missouri-American Water Company and did seek the Commission's approval of this asset sale, the Commission found, in the opinion of this Court improperly and against public interest, that the proposed asset sale was detrimental to the public interest and dismissed Osage Water Company's application, and that the Company has not sought judicial review of the Commission's order.

By reason of the refusal of the Commission to approve the contract of sale the ~~appointment of a receiver for Osage Water Company is necessary to promote the best interests of~~ the customers of the Company, and to ensure that the customers of the Company receive safe and adequate water and sewer service. See Section 393.145.6, RSMo, as amended by Senate Bill 462 (Laws 2005). Section 393.145.5, RSMo, as amended by Senate Bill 462 (Laws 2005) authorizes the Court to grant the Commission's Petition to appoint a receiver for a water corporation or a sewer corporation. It provides that "[t]he court, after hearing, may grant the commission's petition for appointment of a receiver" and "[a] receiver appointed pursuant to this section shall be a responsible person, partnership, or corporation knowledgeable in the operation of utilities."

The Court further finds that Gary Cover of Clinton, Missouri possesses the foregoing statutory qualifications for service as a receiver. The Court therefore appoints Gary Cover as

receiver for Osage Water Company until further order of this Court. The appointed receiver shall have all of the powers, rights and authority vested in receivers pursuant to the provisions of Section 393.145.6, RSMo, as amended by Senate Bill 462 (Laws 2005). The appointed receiver shall post bond in the amount of \$50,000, with the premium therefore to be paid from the assets of the Company.

The Court further directs the receiver to negotiate with Mike McDuffey, the owner of Lake of the Ozarks Water and Sewer, for the provision of services to operate and maintain the Company's water and sewer facilities.

The Court further orders that Osage Water Company and its officers, agents and representatives, and specifically its past contractual agent and representative Environmental Utilities, LLC, employees and successors, and all other persons in active concert and participation with them, are directed to cooperate with Mr. Cover and with Mr. McDuffey to promptly transfer control of Osage Water Company to the appointed receiver; and to deliver to him all records and assets.

Section 393.145 also authorizes the Court to direct the receiver to liquidate the assets of the Company. Section 393.145.7, RSMo, as amended by Senate Bill 462 (Laws 2005) provides in full as follows:

Control of and responsibility for the utility shall remain in the receiver until the utility can, in the best interests of its customers, be returned to the owners. However, if the commission or another interested party petitions and the court determines, after hearing, that control of and responsibility for the utility should not, in the best interests of its customers, be returned to the owners, the court shall direct the receiver to transfer by sale or liquidate the assets of the utility in the manner provided by law.

The Court directs the receiver to liquidate the assets of the Company as soon as practicable on terms that protect the interest of the customers of the Company, and allow them to

continue to receive utility service from the assets that have been put in place to serve them. The Court further directs and requires the appointed receiver to exercise care when liquidating the assets of the Company to ensure that any assets that are not immediately sold may still be efficiently operated after other systems and assets are sold. Further the Court requires the Receiver to file with the Court a request to proceed with sale upon the event that a buyer is found on terms agreeable to the Receiver.

The Receiver shall file monthly status reports with the Court and provide e-mail copies to the Court and to Attorneys of record, and to the Company if it is not represented.

The Court further grants the oral motion of Gregory D. Williams to withdraw as counsel for Osage Water Company.

That the Order for periodic reports by the Commission and Company is terminated.

So ordered this 21st day of October, 2005.


John R. Hutcherson, Judge