

Exhibit No. 1

David Brown – Exhibit 1
Final Judgment in Case No. 05BE-CC00040
Filed August 28, 2009 – Circuit Court Benton County
File No. WR-2023-0006

IN THE CIRCUIT COURT OF BENTON COUNTY
STATE OF MISSOURI

STATE OF MISSOURI ex rel.)
CHRIS KOSTER, Attorney General, the)
CLEAN WATER COMMISSION,)
SAFE DRINKING)
WATER COMMISSION, and the)
MISSOURI DEPARTMENT OF)
NATURAL RESOURCES,)
)
Plaintiff,)
)
v.)
)
BARRY HURST and IRMA BAIN)
)
Defendants.)

FILED

AUG 28 2009

Clerk of the Circuit Court
Benton County

Case No. 05BE-CC00040

FINAL JUDGMENT

Plaintiff filed its Petition for Preliminary Injunction, Permanent Injunction, and Civil Penalties on July 5, 2005. Trial in this matter commenced on August 7, 2008. Plaintiff presented its case-in-chief on August 7, 2008, then rested. Defendants Barry Hurst and Glen Bain commenced presentation of their case on August 7, 2008. Defendants Hurst and Bain did not complete presentation of their case on August 7, 2008, so the Court recessed and scheduled a second trial date. Before the trial could resume, Glen Bain passed away. Plaintiff subsequently dismissed Mr. Bain as a party. The trial resumed on July 16, 2009. Plaintiff appeared by Assistant Attorney General Don Willoh. Defendant Barry Hurst appeared in person and by counsel, Michael Edgett. Defendant Hurst completed presentation of the defense's case. Both parties offered rebuttal

evidence. Both parties made closing statements and submitted written suggestions in support of their cases. The Court has reviewed the evidence presented by the parties and has considered arguments of counsel. The Court now makes the following findings of fact and enters judgment accordingly. No evidence was offered concerning defendant Irma Bain and this Court makes no findings regarding Ms. Bain.

Findings of Fact

1. Plaintiff has alleged violations of the Missouri Clean Water Law, ' ' 644.006, RSMo, *et. seq.* and the Missouri Safe Drinking Water Law, ' ' 640.100, RSMo, *et. seq.*, on real property located within the confines of Benton County, Missouri.

2. That this Court has jurisdiction in this action, and venue is proper herein pursuant to ' 640.130.2, RSMo and ' 644.076.1, RSMo, in that the public water supply system and the wastewater treatment facility are both situated in Benton County, Missouri.

CREATION OF THE SUBDIVISION

3. In 1988, a tract of land near Warsaw, in Benton County, Missouri, was deeded to Glenn Bain and Irma Bain, as husband and wife, and Barry Hurst.

4. Barry Hurst and others subsequently subdivided this property into more than 100 individual lots and offered the lots for sale as part of a common promotional scheme and development plan. This property will hereinafter be referred to as "the Subdivision" and includes the following housing developments: Sun Valley, Sunny Hills Addition, Tebo Flats, Eastwood, Westwood, Cedar Flats, and Sunny Slope.

5. At the time trial commenced, the Subdivision consisted of 33 full-time residences and a number of residences used on a part-time or seasonal basis.

CONSTRUCTION OF THE WATER WELLS

6. In 1987, at the behest and direction of Barry Hurst, a water well (Well #1) was drilled in the Subdivision at the far southeastern confines of the subdivision. No depth, casing or pump information is available for this well.

7. In November 2002, a second water well was drilled in the Subdivision at the far northeastern confines of the subdivision by the Homeowners Association and/or Missing Well, Inc.

8. These two wells are the sole source for piped water for all of the full and part-time residents of the Subdivision.

9. Barry Hurst never submitted copies of the waterworks of Well #1, and he never applied for or obtained an operating permit for said well, nor has he consistently submitted samples of the water provided by said well.

10. In 1987 Barry Hurst owned and subdivided Sun Valley Subdivision into 14 lots. He caused Well #1 to be drilled to serve those lots which he testified was approved by the Missouri Department of Natural Resources.

11. As he sold off lots in Sun Valley Subdivision, Defendant conveyed a 1/14th interest in the well and well lot to the purchasers. Defendants Exhibits Q, R, S, T, U, V, W, X, Y, Z, AA.

12. Before selling any lots in Sun Valley Subdivision, Defendant caused Restrictive Covenants to be recorded which placed certain restrictions upon each lot in Sun Valley Subdivision, including a provision that upon the sale of 2/3rds of the lots in the subdivision the property owners would be obligated to take over and operate the water well. Defendant's Exhibit J.

13. The owners did in fact organize and take control of the water well. Defendant's Exhibit J.

14. The Sun Valley Subdivision Plat, Defendant's Exhibit A, provides a dedication which states: "The roads and easements indicated hereon are hereby dedicated to the use of the property owners for the purpose of ingress and egress and the construction and maintenance of utilities." The provision of water is a utility.

15. The rules and regulations regarding the operation of community water systems changed substantially in 2001 at which time the regulations became more stringent regarding the monitoring, testing and operation of community water systems.

16. Defendant's interest in this community water system was extinguished before 2001. the owners of lots in Sun Valley Subdivision are the persons responsible for the operation of the community water system and not the Defendant, and by the dates of the deeds, Defendant's Exhibits Q, R, S, T, U, V, W, X, Y, Z and AA, and the date on Defendant's Exhibit BB, Defendant had no interest in such well or the duty or right to control it since 1992.

17. A second well was drilled in 2002 in the Northeast corner of Sunny Hills Subdivision. Defendant had nothing to do with the drilling of this well. He did not contribute any funds to it, he did not own the property where it was drilled, the Water Well Certification and Pump Information Data, Exhibit HH were in the name of "The Missing Well, Inc.," a homeowners organization.

18. Barry Hurst failed to apply for and receive a permit to construct a public water supply for Well #1 or the distribution system, even though the system has more than three service connections each, in violation of Section 640.115, RSMo, 10 CSR 60-3.010, and 10 CSR 23-1.030(5).

19. Section 640.115, RSMo, provides that every individual who supplies drinking water to the public shall file copies of the plans of the waterworks and its treatment technologies.

20. Sections 640.120 and 640.125, RSMo, provide that water systems shall be periodically tested for contaminants and the results of those tests shall be reported to the Department of Natural Resources.

21. Barry Hurst has failed to sample for microbiological contaminants at Well # 1 during his period of control.

22. Barry Hurst has failed to sample for Inorganic Chemical Contaminants at Well # 1 during his period of control.

23. Barry Hurst has failed to sample for Synthetic Organic Chemical Contaminants at Well # 1 during his period of control.

24. Barry Hurst has failed to sample for Radiological Contaminants at Well # 1 during his period of control.

25. Barry Hurst has failed to provide Public Notice for monitoring violations at Well # 1 during his period of control.

26. Barry Hurst has failed to provide any yearly Consumer Confidence Reports for at Well # 1 during his period of control.

27. Barry Hurst has failed to sample for lead and copper in tap water at Well # 1 during his period of control.

28. Section 640.130, RSMo, authorizes the State of Missouri to institute an action to obtain injunctive relief and civil penalties.

CONSTRUCTION OF THE SEWAGE LAGOON

29. On December 21, 1994, the Department issued construction permit No. 26-2018 (the "construction permit") to the defendants for construction of a collection system and a wastewater treatment system at the Subdivision, including two aerated lagoons, with a design flow of 25, 200 gallons per day serving a population equivalent of 336. The construction permit was to expire on December 21, 1995 but the Department later extended the construction permit to October 15, 1998. (Plaintiff's Exhibit 4, admitted in Defendants' answers, paragraph 36).

30. Barry Hurst did not install two lagoons, but only installed one lagoon. Barry Hurst has never obtained an operating permit for this lagoon.

31. Currently, 26 full-time residences discharge waste to the lagoon. An additional 7 full-time residences in the subdivision use a variety of onsite septic systems or holding tanks. An additional unknown number of part-time residences discharge waste into a variety of treatment systems.

32. The lagoon is located at NW 3 of Section 31, Township 41N, Range 23W, Benton County, Missouri.

33. Defendant recorded Deeds of Restrictions which required the homeowners in his subdivision to comply with the law and only install government approved septic systems. Defendant's Exhibits H and J.

34. Plaintiff has asked for a mandatory injunction to cause defendant to "submit a signed and sealed engineer's certification documenting that the Subdivision's collection and wastewater treatment systems have been completed in accordance with the requirements and design specifications contained in construction permit No. 26-2018." Plaintiff's expert testimony was that the existing lagoon would not meet newer, more stringent regulations which were implemented since the issuance of the original construction permit, regardless of the improvements which might be made to it.

CLEAN WATER LAW VIOLATIONS

35. 10 CSR 20-6.030(1)(D), *Disposal of Wastewater in Subdivisions*, states that the developer of any residential housing development shall obtain approval from the Department for the proposed method of sewage treatment and disposal to be used in the

development prior to the sale or lease of any lot, or the commencement of construction on any lot, by the developer or any other person.

36. 10 CSR 20-6.010(1)(A) and (5)(D), *Construction and Operating Permits*, requires that persons building any water contaminant source submit an engineer=s certification, in writing, that confirms the project has been completed in accordance with Department-approved plans and specifications.

37. Barry Hurst is a “developer” as that term is defined in 10 CSR 20-6.030(1)(A), in that he engaged, directly and indirectly, in the sale or lease or offer to sell or lease lots in the Subdivision, and is not a licensed brokers or licensed salesmen who are not shareholders, directors, officers or employees of a developers and who have no legal or equitable interest in the land.

38. The lagoon is a “water contaminant source” as defined in Missouri Clean Water Law ' 644.016 (24), RSMo.

39. Barry Hurst subdivided property at the Subdivision and sold lots prior to having a Department-approved centralized sewer system in place, in violation of 10 CSR 20-6.030(1)(D).

40. Barry Hurst failed to construct the Subdivision=s collection system and wastewater treatment system in accordance with the construction permit, and failed to submit a written engineer=s certification documenting that the Subdivision=s collection and wastewater treatment systems have been completed in accordance with Department-approved plans and specifications, thus violating 10 CSR 20-6.010 (5) (D).

41. Section 644.076.1, RSMo, provides that it is unlawful for any person to cause or permit any discharge of water contaminants from any water contaminant or point source located in Missouri in violation of ' ' 644.006-644.141, RSMo, or any standard, rule or regulation promulgated by the Commission.

42. Section 644.051.1 (1) and 644.076.1, RSMo, make it unlawful for any person to cause pollution to any waters of the state or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution to any waters of the state.

43. Section 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010 (1) (A) and (5) (A) prohibit any person from discharging a water contaminant from a water contaminant source into waters of the state without an operating permit, and then only in accordance with standards set by the permit and the Missouri Clean Water Law and Regulations.

44. Wastes from the lagoon built by the Defendant are "water contaminant(s)" that have the potential to alter the physical, chemical or biological properties of the receiving waters and thereby cause "pollution," as defined in ' 644.016 (16), RSMo.

45. The waters impacted by the discharges that flow from the lagoon are "waters of the state" as defined in ' 644.016, RSMo, and 10 CSR 20-2.010(82), in that they are bodies of surface and subsurface water which are not completely upon lands owned, leased or otherwise controlled by a single person for by two or more persons jointly or as tenants in common.

46. Barry Hurst continues to unlawfully permit the discharge of water contaminants (wastewater) from the lagoon, a water contaminant source, in violation of ' 644.076.1, RSMo.

47. Barry Hurst has placed or permitted to be placed, water contaminants Bincluding wastewater Bin a location where said water contaminants were reasonably certain to cause pollution to waters of the state in violation of ' ' 644.051.1 (1) and 644.076.1, RSMo.

48. Since at least September 26, 2000, Barry Hurst operated the lagoon and allowed the illegal discharge of wastewater into waters of the state without a permit in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010 (1) (A) and (5) (A). Said lagoon is found to discharge into an unnamed tributary of Truman Lake.

49. ' 644.076, RSMo, authorizes the imposition of injunctive relief to remedy violations of the Clean Water Law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

WASTEWATER SYSTEM:

A. Within 120 days, Barry Hurst is ordered to submit for the Department's approval an engineering report prepared by a professional engineer registered in the State of Missouri. The engineering report shall describe the upgrades necessary to bring the existing wastewater treatment facility into compliance with the Missouri Clean Water Law and its implementing regulations or the construction of a new facility.

B. Within 60 days after the Department's approval of the engineering report, Barry Hurst is ordered to submit plans, specifications and an application for a construction permit, with the appropriate filing fee, to upgrade or replace the existing wastewater treatment facility, as recommended in the approved engineering report to the Department for approval.

C. Within 270 days of the issuance of the construction permit, complete construction and submit a certificate of construction completion from a registered engineer in the State of Missouri.

D. Within 30 days prior to the completion of construction of the facility submit a complete application for a Missouri State Operating Permit.

E. Within 30 days after completion of construction activities, Barry Hurst shall achieve compliance with all applicable permit effluent limits contained in the permit.

F. All required documents shall be submitted to the Department's Kansas City Regional Office located at 500 NE Colbern Road, Lee's Summit, MO 64086.

G. Barry Hurst is ordered to pay a civil penalty of \$10,000.00. Payment of this sum shall be submitted to Jo Ann Horvath at the following address: Attorney General's Office, P.O. Box 899, Jefferson City, Missouri 65102 immediately. Said penalty shall be certified check and made payable to the "State of Missouri (Benton County)."

DRINKING WATER SYSTEM:

H. Mr. Hurst will employ a certified Missouri engineer to produce a technical report describing all necessary improvements required before the public water system

meets minimum standards set by the Missouri Safe Drinking Water Law as they apply to Well #1 only.

I. Mr. Hurst will employ a certified Missouri engineer to produce all necessary pre-design studies, as well as technical plans and specifications, that will meet minimum standards set by the Missouri Safe Drinking Water Law as they apply to Well #1 only.

J. Mr. Hurst will submit a complete application for a construction permit, as described in 10 CSR 60-3.010, before beginning any construction or modification of the existing system of Well #1 only.

K. Mr. Hurst will properly abandon, plug, and permanently close any and all existing wells that do not meet minimum standards of the Missouri Safe Drinking Water Law in accord with those regulations and requirements of the Geologic Survey and Resource Assessment Division of the Department as defined in 10 CSR 23-3.110.

L. Mr. Hurst is ordered to pay a civil penalty of \$1,000.00. Payment of this sum shall be submitted to Jo Ann Horvath at the following address: Attorney General's Office, P.O. Box 899, Jefferson City, Missouri 65102 immediately. Said penalty shall be certified check and made payable to the "State of Missouri (Benton County)."

M. Until both the drinking water systems and the wastewater systems are operating under a valid operating permit issued by the Department, Mr. Hurst, his assigns, heirs, successors, and corporate alter egos are prohibited from offering for sale or lease or rent any available lots in the Sun Valley subdivision or any adjacent properties

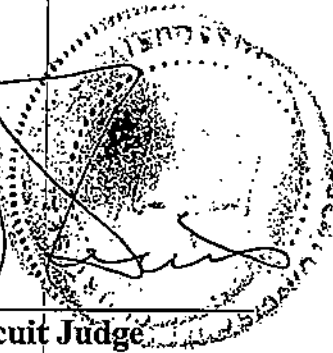
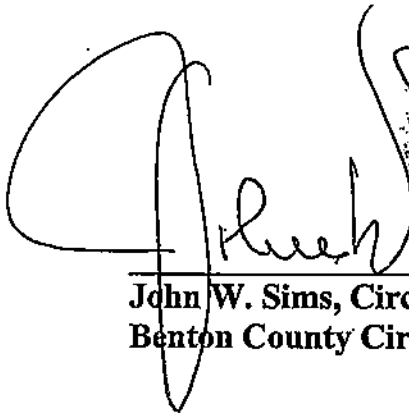
that may be connected to the existing wastewater treatment facility and/or public drinking water facility.

N. Mr. Hurst is assessed all costs in these proceedings.

IT IS SO ORDERED.

Date: _____

8/28/09



John W. Sims, Circuit Judge
Benton County Circuit Court

NOTICE OF ENTRY
(SUPREME COURT RULE 74.03)

In The 30th Judicial Circuit Court, Benton County, Missouri

ST OF MO EX REL ET AL V BARRY HURST ET AL

CASE NO : 05BE-CC00040

To: File

YOU ARE HEREBY NOTIFIED that the court duly entered the following:

<u>Filing Date</u>	<u>Description</u>
19-Aug-2009	Motion to Withdraw Motion to Withdraw as Counsel for Defendant Hurst Filed By:MICHAEL X EDGETT
	Notice of Hearing Filed Filed By:MICHAEL X EDGETT
	Hearing Scheduled Scheduled For:02-Sep-2009 10:00 AM;JOHN W SIMS;Benton

Clerk of Court

CC: File
DONALD ANTHONY WILLOH JR.
MICHAEL X EDGETT
Date Printed : 21-Aug-2009