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1 MR. THOMAS: All right. Let me sort of repose the
2 -- or not repose but recite what -- the question that you
3 raised through Anne Hershewe. RSMo. Section 204.390 provides
4 that revenue bonds issued under authority of Sections 204.250
5 to 204.70 [as spoken] shall be payable solely from the
6 revenues derived and to be derived from the operation of the
7 sewage system.

8 And it goes on to say that revenue bonds do not
9 constitute indebtedness of the common sewer district.

10 THE COURT: Right.

11 MR. THOMAS: Now, the court has posed the question
12 whether that's compatible with the payment provision of the
13 APA, the asset purchase agreement. The payment provision
14 provided that Missouri American, the buyer, will pay the USDA
15 \$750,000, and the USDA will release claims under a number of
16 agreements and documents.

17 There are five independently sufficient reasons why
18 the sale is compatible with the statute that you cite, and let
19 me run through those quickly. If you wish, I can brief it
20 afterwards. I have not had the chance to brief that yet, but
21 I will tell you I think pretty much all I have to say on that.

22 Number one, the payment does not have to be
23 attributed to the bond. Paragraph X of the recitations of the
24 APA recites that upon Missouri American's payment of \$750,000,
25 the USDA will release the district and Missouri American and

1 all of its successors and the trustees of the district of all
2 liability and all obligations under four documents. It's not
3 just the bond.

4 It's the bond resolution, which is the same thing as
5 a bond ordinance; the loan resolution, also passed by the
6 board of trustees; the grant agreement by which the USDA made
7 a \$913,000 grant to the district for construction of the sewer
8 system; and the bond itself. So it's four documents from
9 which all obligations are deemed released under the provisions
10 of the APA and the release it contemplates.

11 The grant agreement, let's look at the grant
12 agreement. It contains numerous provisions that the district
13 must necessarily violate if it proceeds with dissolution, if
14 it ceases to operate as a district. The grant agreement --
15 and incidentally, Judge, there are two exhibits that are
16 really demonstrative that may be helpful in this.

17 Exhibit 14 is my abstract of the key provisions of
18 these four documents, and Exhibit 15 sets forth verbatim the
19 key statutes that I think are pertinent to this issue. And
20 I'm going to cite some of those statutes, but I have set those
21 forth in bold in some of the language that I think is
22 particularly important.

23 But the grant agreement provides that the district
24 will operate the sewer system continuously. It provides that
25 they -- that the district will make sufficient charges to pay

1 the debt, the bond debt. It provides that the district will
2 use the property acquired for the purpose of the grant only,
3 and if it is no longer needed for that purpose, it must be
4 used in connection with a federally-sponsored activity.

5 It also says the district will not transfer or
6 dispose of the property. Upon default, and you will see there
7 where the provision is, upon default under any of those
8 agreements, the district owes back to the USDA \$913,000.
9 There is nothing in Missouri law that negates that liability.

10 The provision that you cited has to do with payment
11 of bonds. The grant debt of two hundred -- of \$913,000 plus 5
12 percent interest from default exceeds the amount of the
13 payment that is contemplated under the APA. So --

14 THE COURT: What was the total amount that the USDA
15 gave the sewer district?

16 MR. THOMAS: Well, they granted \$913,000. They made
17 a bond -- they lent through a bond \$1,529,000.

18 THE COURT: An additional 1.5 million?

19 MR. THOMAS: Yeah, yeah. And the State of Missouri
20 made a grant of approximately \$1.4 million.

21 This came out -- it was about a \$3.8 million
22 project. The current balance on the bond is about \$1.2
23 million.

24 But my point in this first point -- in this first
25 reason why the APA is valid is that you don't even have to

1 look to the bond to account for that payment. That is a debt
2 that is owed by the district, and it is being extinguished by
3 this -- by the APA, so you don't have to rely on the bond.

4 Number two, even putting aside the grant agreement,
5 the payment to the USDA is justified as resolution of a claim
6 by the U.S. that is specifically conferred by Missouri
7 statutes. Missouri statutes are clear that a district has an
8 absolute obligation to generate sufficient revenue to pay all
9 principal and interest on revenue bonds, and the statutes are
10 clear that the bondholder has a legal right to enforce that
11 obligation.

12 I'll run through a few -- this is a repeated theme
13 throughout Section 204 -- Chapter 204 and Chapter 250, both of
14 which are applicable. I'll cite a few of those.

15 204.400, it says it's the mandatory duty of a sewer
16 district to pay interest and principal -- that issues the
17 revenue bonds -- to pay the interest and principal, to provide
18 funds necessary to meet the district's obligations under the
19 bond ordinance as well.

20 Now, the bond ordinance here, which is one of those
21 -- Exhibit 11, I believe, says -- Section 802 says that a
22 district will fix and collect rates and charges sufficient to
23 pay the bond's principal and interest. Section 804 says the
24 district will not pledge, encumber, sell, or dispose of the
25 system. Section 1002 states that the bondholder may by

1 mandamus or other action enforce the bondholder's rights
2 including by enjoining any violation of the bond resolution.

3 Then Section 204.410 says the sewer district must
4 pledge a sufficient amount to pay revenue bonds. 204.440 says
5 the board of trustees must fix rates that are sufficient to
6 pay all principal and interest on revenue bonds. 204 -- and
7 these get better actually. 204.470 says it's the duty of all
8 governing bodies of counties and state officials to perform
9 all acts necessary to carry out the purposes of that section.

10 Then 250.120 -- and 250 is also applicable to
11 districts that are formed under 204.250 to 470. It says it's
12 a mandatory duty of any sewer district to maintain rates and
13 collect charges sufficient to pay the principal and interest
14 on revenue bonds, and I'll quote what it goes on to say. It
15 says as long as any bond so issued or the interest thereon
16 shall remain outstanding and unpaid, rates and charges
17 sufficient to meet the requirements of this section shall be
18 maintained and collected.

19 As long as unpaid, you shall, you shall impose
20 charges and rates. Not just rates. Charges. It could be a
21 one-time charge, but you must do that until the bond is paid.

22 250.130 reiterates that obligation. 250.170 says
23 that the holder of a revenue bond may by civil -- and we
24 are -- of course, the USDA is the holder -- may by civil
25 action compel a sewer district to perform all duties imposed

1 by a bond ordinance -- that's our bond resolution -- or by
2 law, including four specifically-enumerated things, that you
3 can by in equity, that you can by injunction, or mandamus
4 require, continued operation of the sewer system, fixing
5 charges to customers, payment of any bonds chargeable to
6 revenues, performance of any covenant in a bond ordinance.

7 In short here's the point: The USDA has a right
8 under Missouri law to make the district collect sufficient
9 charges to pay the bond. Is there a right under Missouri law
10 to require the imposition of taxation? No. But there is a
11 right to require the collection of sufficient charges to pay
12 the bond.

13 And 204.455 -- and this makes it very real for every
14 resident there, for every customer there. 204.455 says that
15 if those charges are unpaid, it becomes a lien on the
16 customers' land. We do not want that to happen.

17 There is nothing in Missouri law that would prevent
18 the district from dealing with this problem by resolution
19 through settlement. It doesn't have to be seen as a payment
20 on the bond. It is simply taking the very prudent step of
21 acceding to the payment of a sum to the USDA by Missouri
22 American, and that's a sum far short of the liability here, to
23 compromise and eliminate the claim. That's what it's doing,
24 getting rid of this claim that does exist under Missouri law.

25 Third reason, here's the third reason why the

1 payment provision is compatible with the statute that you
2 cited. The payment is consistent with Missouri statutes
3 because the USDA has a security interest recognized by
4 Missouri law in the proceeds of the sale of the system. It
5 has a security interest.

6 250.150 provides it's the mandatory duty of a sewer
7 district to perform all duties set out in a bond ordinance.
8 204.400 further provides that it is the mandatory duty of a
9 sewer district to provide funds ample to meet the valid and
10 reasonable requirements of the bond resolution.

11 And here's what the bond resolution says. Section
12 401 provides that the bond is secured as to payment of
13 principal and interest by a pledge of the net income and
14 revenues derived from operation of the system, and I'm going
15 to go on to the key language here, and other funds made
16 available to the district from sources other than funds raised
17 by taxation. The bond resolution says that this security
18 interest lies in funds available to the district other than
19 through taxation. In short the USDA has a security interest
20 in the proceeds of the sale of the system.

21 Fourth reason, Missouri statutes would not be
22 violated even if the \$750,000 payment were deemed to be a
23 simple payment on the bond. I'm kind of working down to --
24 backward here to now hypothesizing that we simply deem this to
25 be a payment on the bond, and that -- and here's why. 204.390

1 says that revenue bonds are payable not only from revenues
2 derived from the operation of the sewer system but also from
3 revenues to be derived from operation of the sewer system.
4 Not from operation of the district, from operation of the
5 sewer system. In other words, bond payments can be based on
6 anticipated future revenue.

7 Why is Missouri American willing to pay the USDA
8 \$750,000? Two reasons. One, it wants to eliminate any cloud
9 on its ownership of the sewer system after it buys them, and
10 it will do so because the USDA is releasing all claims. But,
11 number two, it anticipates that in the long run revenue from
12 operation of the system will more than fund the payment being
13 made to the USDA.

14 So even if the payment is deemed a bond payment, it
15 is in conformity with 204.390 because it is in effect a
16 payment from revenues to be derived from operation of the
17 system in the future. Missouri American will be operating it,
18 and, frankly, everybody will be better off with Missouri
19 American operating it.

20 Heroic efforts were made by trustees here, but
21 Missouri American does this all over Missouri. They know how
22 to do it.

23 THE COURT: Okay. So what's your point number five?

24 MR. THOMAS: Point number five, the APA, the asset
25 purchase agreement, and the payment to the USDA are in

1 conformity with Missouri law because they are necessary to
2 fulfill the purposes of Chapter 250, and the district is
3 empowered to undertake all things necessary to fulfill the
4 purposes of Chapter 250. Let me cite -- 250.240 says three
5 things. It says it's the purpose of the chapter to protect
6 public health and welfare by preventing and abating water
7 pollution.

8 Number two, it says sewer districts have the power
9 to do all things necessary to carry out that purpose in
10 addition to the powers that are expressly conferred.

11 And, number three, it says that these powers are to
12 be liberally construed.

13 The APA absolutely serves the purposes of Chapter
14 250. It keeps the sewer system alive for those who need it
15 and thus promotes public health and welfare.

16 So payment provided in the APA, while leaving the
17 USDA with a significant hit, the USDA is voluntarily taking a
18 significant hit on this, helps advance the goal of Chapter
19 250. In fact, this sale is essential, I think, to that. It's
20 by no means a stretch of the term all things to deem it to
21 include the district's entry in to the APA.

22 I think that answer -- that is my response to this,
23 but that fifth reason says, look, they have to do -- they are
24 empowered, mandated to do what's necessary, and it's to be
25 considered liberally to do what's necessary to serve the

1 interests of 250, Chapter 250, and that's exactly what this
2 APA does.

3 * * * * *

4 REPORTER'S CERTIFICATE

5
6 I certify that the foregoing pages are a correct
7 transcript from the record of proceedings in the
8 above-entitled matter.

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11 Date Registered Merit Reporter

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