

IN THE CIRCUIT COURT OF CHRISTIAN COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON,)
Attorney General of Missouri,)
the DEPARTMENT OF NATURAL)
RESOURCES,)

Plaintiff,)

v.)

Case No. CV197-4CC

JED FORRESTER, individually, and)
OZARK WATER AND WASTEWATER)
MANAGEMENT, a Missouri Corporation,)

Defendants.)

JOINT STIPULATION FOR RECEIVERSHIP
AND ORDER OF RECEIVERSHIP

The parties, Plaintiff State of Missouri ex rel Nixon, and defendants, Jed Forrester and Ozark Water and Wastewater Management (OWWM) agree that this Court attach the assets of OWWM and place OWWM under the control and responsibility of a receiver, and appoint Bruce Martin, Regional Director of the Southwest Regional Office, Missouri Department of Natural Resources, as receiver for the treatment facility which is more fully described herein in order to keep and preserve all property and protect any business or business interest of OWWM which is necessary to obtain compliance with this Court's December 7, 1998, as



modified on June 6, 2000, Judgment in this case. It is therefore Stipulated and Agreed as follows:

Stipulation

1. Defendants own and operate the English Village Wastewater Treatment Facility and collection system (the treatment facility) is located in the SW ¼, SE ¼, NE ¼, Section 35, T28N, R22W, Christian County. This treatment facility is a water contaminant point source that discharges a water contaminant pursuant to Missouri State Operating Permit number MO-0094129 (Permit). The receiving stream and basin to this treatment facility is an unnamed tributary to the James River and the James River Basin. Both the unnamed tributary to the James River, and the James River Basin are waters of the state. See, 644.016, RSMo Cum Sup. 2002.

2. Section 644.051 RSMo 2000 prohibits defendants from: (1) causing pollution of any waters of the state or to place any water contaminant in a location where it is reasonable certain to cause pollution of any waters of the state; (2) discharging any water contaminant into any water of the state which reduces the quality of such waters below the water quality standards established by the Missouri Clean Water Commission;(3) discharging any water contaminants into any waters of the state which exceed effluent regulations or permit provision.

3. Based on a June 5 and June 9, 2003, inspection of the treatment facility by Missouri Department of Natural Resources staff, it was discovered that the treatment facility has

become full of solids (solid sewage), so that the treatment facility is not operational. Very little of the equipment at the treatment facility was operating. Further, the plant was receiving approximately 130,000 to 140,000 gallons of wastewater flow everyday, (which is approximately 45% over design capacity)¹ and it is believed that this wastewater is being discharged raw, without treatment into the receiving stream and then flowing into the James River.

4. Missouri Department of Natural Resources staff, including engineers, inspected the site again on June 10, 2003, and because of the state of disrepair the plant is in, and the high amount of flow coming into the treatment facility and no flow equalization capacity, it is believed that even with the removal of all sludge that the plant cannot now be operated within the requirements of this Court's Judgment, the plant's Missouri State Operating

¹. The permit limits the daily flow of wastewater to the treatment facility to 80,250 gallons per day. The approximate daily flow to the treatment facility in December 1998 was 75,702 gallons per day. The approximate daily flow to the treatment facility in March 2000 was 108,298 gallons per day. The approximate daily flow to the treatment facility in April 2000 was 99,600 gallons per day. This Court entered an agreed Modification to the Consent Judgment and Order of Injunction on June 6, 2000 prohibiting defendants from making any further service connections to the treatment facility. The reason for the increase in daily flow to 130,000 to 140,000 gallons per day is

Permit and the Missouri Clean Water law without extraordinary measures that plaintiff does not believe that defendants can undertake.

5. The treatment facility has approximately 538 connections. Defendants receive \$9.10 for mobile home connections, \$10.90 for the residential connections and \$10.90 minimum per commercial connection on a monthly basis. Defendant Forrester has advised Plaintiff, through his counsel, that he takes annual salary of \$27,000.00 to \$30,000.00 per year from the company. Gross income from the treatment facility is estimated to be at least \$5,000.00 per month.

6. The parties have been working on a complicated transaction (hereinafter referred to as "the transaction") aimed at bringing defendants in compliance with this Court's December 7, 1998 Judgment as modified on June 6, 2000, and with the Missouri Clean Water Law in general. Defendants are selling the collection system, but not the treatment facility, to a not-for-profit corporation named English Village Not-For-Profit Sewer Company formed pursuant to §383.825, RSMo. The selling price for the collection system is \$155,000.00. The money being paid to defendant OWWM for the collection system shall be paid to the law firm of Carnahan, Evans, Cantwell & Brown, P.C. (Attention: Don Busch) as escrow agent. As escrow agent, Mr. Busch of Carnahan, Evans, Cantwell & Brown, P.C. shall be entitled to payment for his services in the amount of \$15,000.00. Further, Mr. Busch of Carnahan,

Evans, Cantwell & Brown, P.C. shall disperse this money to pay the following in this order of priority:

a. The closing cost of the treatment facility, not the collection system, not to exceed \$17,679.52. Any closing costs beyond this amount are to be paid by Defendants.

b. The past due permit fees and late penalty fees for OWWM's Missouri State Operating Permit through March 30, 2003, is \$11,700.00.

c. A penalty to the Christian County School Fund in the amount of \$23,000.00 for stipulated penalties up to and including the date the modified order of the Consent Judgment was entered;

d. Defendant OWWM's past due fees in the amount of \$25,911.53 to the Public Service Commission;

e. The following engineering costs related to efforts in compliance with the Missouri Clean Water Law and Consent Agreement since negotiations and litigation began in this matter in 1977;

(1.) An amount not to exceed \$25,000.00 from this fund on a money judgment owed to OEI; and

(2.) Obligation to engineering firms for engineering costs related to efforts in compliance known to the escrow agent, or other related costs to implementing the transaction in the amount of \$ 36,708.95:

Simmons Engineering - \$8,100.00

Archer Engineering - \$7,108.95 (with no more than \$2000 for closure)

OWWM Loan	-	\$15,000.00
Morris Loan	-	\$4,500.00
USDA Application	-	\$1,000.00
Accountant	-	\$1,000.00

The not-for-profit corporation is obtaining this money as a loan from the United States Department of Agriculture, Rural Development. This money will be paid back over time out of the sewer rates paid by the not-for-profit corporation's customers. The sale from defendants to the not-for-profit sewer company will have to be approved by the Public Service Commission as defendant OWWM is a regulated utility.

7. After approval of the sales transaction, the City of Springfield will build a gravity line or force main and lift station from its existing James River trunk main to and connecting with the treatment facility's collection system. The City of Springfield shall retain ownership of said gravity line or force main and lift station. The Receiver shall close the facility in pursuant to the approved closure plan so far as the funds allows. Defendants shall then pay any further cost of closing the treatment facility pursuant to the approved closure plan, and shall complete the closure of the facility if it is not done by the receiver.

8. In order for all of this to occur, and compliance achieved with this Court's December 7, 1998, and June 6, 2000 Judgment, it is necessary for a receiver to be appointed that can bring the treatment facility as close if not in compliance with the treatment facility's permit, and stop the discharge of raw sewage into waters of the state until such time as the City of Springfield has built its line and connected the collection system from the treatment

facility to its line and the treatment facility closed or until it is clear that the above described transaction designed to achieve compliance with this Court's Judgment will not take place.

9. Section 515.240 RSMo 2000 authorizes this Court to appoint a receiver whenever such appointment shall be deemed necessary. This statute further provides as follows:

...whose duty it shall be to keep and preserve any money or other thing deposited in court, or that may be subject of a tender, and to keep and preserve all property and protect any business or business interest entrusted to him pending any legal or equitable proceeding concerning the same, subject to the order of the court.

10. By appointing a receiver for the treatment facility, this Court will be keeping and preserving all property and protecting the business interest of the treatment facility until such time as the herein described transaction can be implement which will provide a permanent solution to this environmental problem and achieve compliance with this Court's December 7, 1998, and June 6, 2000, Judgment.

11. Defendants Jed Forrester and OWWM have agreed to this receivership and will turn over all rights of access, easements, accounts, any computer programs dealing with the accounts and/or billing for the treatment facility. Said defendants further agree to give up any right of access to the treatment facility as of the date this Stipulation is signed by the

parties, and defendants will continue to go forward with the transaction to achieve final compliance with the December 7, 1998, and June 6, 2000, Judgment.

12. The parties agree that all assets, but none of the liabilities of OWWM and OWWM itself will be placed under the control and responsibility of the receiver. The receiver, however, will not be accepting any liabilities or outstanding debt of OWWM except it shall pay electrical and water bills from the date the receivership is approved by this Court, and it shall transfer the collection system assets to the not-for-profit should the transaction be approved by the Public Service Commission, and the receiver agrees that the \$155,000.00 shall be paid to the escrow agent as set out herein.

13. The receiver shall be authorized to hire a contract operator to operate the treatment facility.

14. Upon the execution of the Stipulation for Receivership, the City of Springfield is granted access to the treatment facility in order to undertake an assessment of the treatment facility and to abate any exiting nuisances it may find. It may further take any other action to enhance the operation of the treatment facility.

15. Defendants has no U.C.C. (Form 1) security filings against OWWM or the treatment facility (or the property upon which said facility sits), nor does defendant OWWM has an judgment liens, liens or other security interests filed against OWWM or the treatment facility (or the property upon which said facility sits) in Christian County.

ORDER OF RECEIVERSHIP

IT IS THEREFORE ORDERED, pursuant to § 515.240 RSMo 2000, that Bruce Martin, Regional Director of the Southwest Regional Office, Department of Natural Resources is appointed receiver for the treatment facility. Said receiver may:

a. Elect to assume the role of operator and business manager or contract with others to take control of all day-to-day operations of the treatment facility.

b. Hold the right to process the facility and all goods and fixtures in the facility's treatment facility. The receiver further shall take such action as is reasonably necessary to protect and conserve the assets or property of which the receiver takes possession, or the proceeds of any transfer thereof, and may use them only in the performance of its powers and duties pursuant to this Order.

c. Use the collection system, treatment facility fixtures, furnishings and any accompanying consumable goods for treatment of wastewater and remediation of any problems associated with the operation of the treatment facility and/or collection system. The receiver shall collect payments for all services provided to wastewater customers of OWWM during the period of receivership, at the same rate of payments charged by the former operator at the time the stipulation for receivership was filed.

d. Enter into contracts to provide wastewater services including billing and collection and the ability to terminate any contract in place at the time the stipulation for receivership herein was filed.

- e. Hire or discharge any employees and/or third-party contractors of the treatment facility as of the date the stipulation for receivership herein was filed.
- f. Receive all revenues generated from the operation of the treatment facility and the spending of said revenues to operate the treatment facility after the date of this Order.
- g. Do any and all acts necessary or appropriate to conserve the treatment facility and promote the health, welfare, safety or care of the environment and the treatment facility's receiving stream.
- h. Honor contracts that the receiver enters into during the pendency of the receivership herein.
- i. Pay all taxes accruing during the period of the receivership.
- j. Take control of the treatment facility and other assets attendant thereto, and incur such expenses as are necessarily advisable to remedy all defaults and deficiencies that the defendants failed to cure.
- k. Obtain all necessary insurance coverage sufficient to cover the value of the facility and any liabilities arising from the operation of the facility.
- l. Receive and expend in a reasonable manner the revenues of the treatment facility, due on the date of the order of appointment as a receiver, and to become due during the period of the receivership.
- m. Perform any other acts authorized by §§ 644.006 to 644.141, RSMo as amended.

IT IS FURTHER ORDERED that defendants shall turn over all business records relating to defendants' operation of the treatment facility to the receiver.

IT IS FURTHER ORDERED that defendants shall provide receiver an accounting of all accounts payable and accounts receivable for the three years defendants operated the facility previous to the date this Stipulation and Order of Receivership is entered by this Court of, as requested by the receiver.

IT IS FURTHER ORDERED that defendants shall turn over to receiver all payments already received, or to be received, by defendants for wastewater treatment issues at the treatment facility after the date of this Order, and to the extent necessary, prorate the appropriate payment for the month in which this Order is entered, and pay the prorated amount to the receiver.

IT IS FURTHER ORDERED that the defendants shall turn over the treatment facility to the receiver.

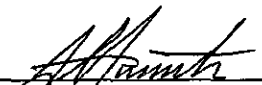
IT IS FURTHER ORDERED that defendant OWWM and its banks produce a statement of all accounts related to the treatment facility owned by defendant OWWM. Receiver shall have exclusive access to all such funds of defendant OWWM.

IT IS FURTHER ORDERED that this receivership shall be automatically dissolved upon the connection of the wastewater flow currently going to the treatment facility to a sewer line owned and operated by the City of Springfield or upon request by plaintiff on the

basis that the transaction described herein for sewer treatment to be provided by the city of Springfield is not going forward.


IT IS SO AGREED.

JED FORRESTER


Jed Forrester

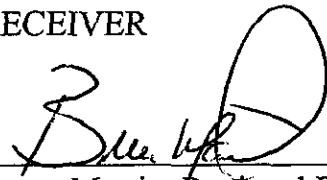
Date: 6-19-03

OZARK WATER AND WASTEWATER
MANAGEMENT, INC.


BY: Jed Forrester, President

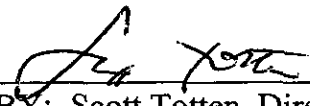
Date: 6-19-03

RECEIVER


Bruce Martin, Regional Director
Southwest Regional Office
Missouri Department of Natural Resources

Date: July 7, 2003

DEPARTMENT OF NATURAL RESOURCES


BY: Scott Totten, Director
Division of Water Protection and
Soil Conservation

Date: 7-3-03


OFFICE OF THE ATTORNEY GENERAL



Date: 7-2-03

BY: Deborah Neff,
Assistant Attorney General

IT IS SO ORDERED.



Judge James L. Eiffert
Presiding Judge

Date: 7-8-03