

SETTLEMENT AGREEMENT

The parties to this Settlement Agreement ("Agreement") are the Missouri Department of Natural Resources, ("Department"), Chris Koster, Attorney General of Missouri, ("Attorney General"), and the Reynolds County Commission. The parties stipulate and agree as follows:

WHEREAS, Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri;

WHEREAS, the Missouri Department of Natural Resources is a duly authorized state agency created under § 640.010, RSMo, to administer the programs relating to environmental control and conservation, and to manage the natural resources of the State of Missouri;

WHEREAS, the Department's director or her designee, on behalf of the Missouri Clean Water Commission, administers the provisions of the Missouri Clean Water Law, Chapter 644 of the Revised Statutes of Missouri (as amended);

WHEREAS, the Reynolds County Commission is the governing body of Reynolds County, a third-class county and a political subdivision of the State of Missouri;

WHEREAS, Joe Loyd is currently the Presiding Commissioner of the Reynolds County Commission;

WHEREAS, Wayne Henson is currently a member of the Reynolds County Commission and is the Commissioner for District 2;

WHEREAS, Doug Warren is currently a member of the Reynolds County Commission and is the Commissioner for District 1;

WHEREAS, the Commission and its members perform road maintenance within and on behalf of the county on county roads, and the work performed by the Commission and its members includes road repair and maintenance that affects streams and creeks that are defined as waters of the state and waters of the United States;

WHEREAS, On May 7, 2009, and other days not yet known, a crew of County workers used road-grading and earth-moving vehicles below the ordinary high water mark in the Harrison Valley Creek in Reynolds County, Missouri, to push gravel and soil and create piles of such material dredged from the streams. The piles were eight to ten feet above the surface of the water on both sides of the stream banks. The piles extended for several hundred feet;

WHEREAS, the activities in the Harrison Valley Creek were authorized, supervised, and conducted by or on behalf of the Reynolds County Commission;

WHEREAS, under the Missouri Clean Water Law it is unlawful for any person "to cause pollution of any waters of the State or to place or cause

or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state.” *See* §§ 644.051.1(1).

WHEREAS, under the Missouri Clean Water Law 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 to 644.141, or any standard, rule or regulation promulgated by the [clean water] commission.” *See* § 644.076.1, RSMo.

WHEREAS, the Clean Water Commission has promulgated as a regulation water quality criteria for waters of the state, and under the criteria waters shall be free from “substances in sufficient amounts to cause unsightly color or turbidity, offensive odor, or prevent full maintenance of beneficial uses” and “physical, chemical, or hydrologic changes that would impair the natural biological community.” *See* 10 CSR 20-7.031(3)(C) and (G).

WHEREAS, by allowing the use of heavy equipment to create piles of material in the streams and on the banks of the Harrison Valley Creek on May 7, 2009, and other dates not yet known, Reynolds County placed or caused or permitted to be placed a water contaminant in a location where it is reasonably certain to cause pollution of the waters of the state, in violation of §§ 644.051.1(1).

WHEREAS, by allowing the use of road-grading and earth-moving vehicles to create piles of material in the streams and on the banks of the Harrison Valley Creek on May 7, 2009, and other dates not yet known, thereby causing or permitting the discharge of water contaminants from water contaminant or point sources that caused the Harrison Valley Creek to be turbid with sediment and caused physical, chemical and hydrologic changes that can impair the natural biological community, Reynolds County violated § 644.076.1, RSMo and 10 CSR 20-7.031(3)(C) and (G).

WHEREAS, pursuant to § 644.076.1, RSMo, Reynolds County is potentially liable for penalties up to \$10,000.00 per violation, per each day or part thereof that the violations occurred in the Harrison Valley Creek;

WHEREAS, pursuant to § 644.096 RSMo, the state may recover natural resources damages, including the costs and expenses of mitigating harm to waters of the state or restoring them to their condition before the violation;

WHEREAS, the Department issued to Reynolds County a notice of violation, numbered NOV # 18577 SE;

WHEREAS, the Department, the Attorney General, and Reynolds County desire to amicably resolve the state's claims based upon NOV # 18577 SE;

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Department, the Attorney General, and Reynolds County stipulate and agree as follows:

1. The provisions of this Agreement shall apply to and be binding upon the parties signing this Agreement, as well as their successors in interest and their successors in office. Further, each party signing this Agreement shall be responsible for ensuring that their agents, subsidiaries, affiliates, lessees, officers, servants, or any person or entity acting pursuant to, through, or for the parties, adhere to the terms of this Agreement.

2. Reynolds County agrees to comply with the Missouri Clean Water Law and all implementing regulations for any and all future activities in the state of Missouri.

3. Reynolds County agrees to obtain, when required by law, all appropriate federal and state permits and water quality certifications before conducting activities that impact waters of the state, and to comply with the terms and conditions of such federal and state permits and water quality certifications. In this regard, Reynolds County agrees to confer with the United States Army Corps of Engineers and the Missouri Department of

Natural Resources before engaging in activities that may affect waters of the state to determine whether permits or water quality certifications are required in advance of proposed activities and to allow both agencies an opportunity to observe or provide on-site guidance regarding the activities to assure that Reynolds County complies with the terms and conditions of any permits and water quality certifications.

4. Reynolds County agrees to pay a civil penalty of One Thousand Dollars (\$1,000.00) by check made payable to the "*State of Missouri (Reynolds County)*." Reynolds County shall mail the check and a copy of this Agreement to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899 within thirty days after execution of this Agreement by the Department. The Attorney General's office shall assure that the payment is credited to the proper account.

5. The Attorney General and Department agree to allow credit to Reynolds County in the amount of \$35,174.72, for bank stabilization work performed by Reynolds County in Sinking Creek, in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of section 21, T. 30 N., R 2.E, east of Ellington, Reynolds County, Missouri. This credit is in lieu of additional penalties and costs of mitigation that the state could recover against Reynolds County in a civil action.

6. Reynolds County agrees to monitor the bank stabilization project in Sinking Creek for a period of five years from the date this Agreement is

executed by the Department. At the end of each year, no later than the anniversary date of the Department's signature, Reynolds County shall submit a written report indicating whether the bank remains stabilized or is failing, and whether additional work is required to ensure long term protection of Sinking Creek. The report shall be sent to:

The Department of Natural Resources
Water Protection Program, Enforcement Section
P.O. Box 176
Jefferson City, Missouri 65102-0176

The Department or the Attorney General will provide a written reminder to Reynolds County at least sixty days in advance when a report is due. If the report indicates that additional work is needed, Reynolds County shall also submit to the Department for review and approval a mitigation plan and schedule for performing such work. Within fifteen (15) days receipt of Department comments on the mitigation plan, Reynolds County shall respond in writing to the Department addressing all Department Comments on the mitigation plan to the Department's satisfaction. Reynolds County shall perform the work in accordance with paragraph # 3 of this Agreement and as approved by the Department. Failure of Reynolds County to comply with the requirements of this paragraph or paragraph # 3 shall be deemed a breach of this Agreement for which the state may file an action for penalties, any damages attributable to the breach and injunctive relief.

7. The Department and the Attorney General agree not to bring an administrative or civil action for any damages, expenses, penalties, fees and costs against Reynolds County and its predecessors, representatives, and affiliates, except that the state reserves the right to bring a civil action if necessary to compel Reynolds County to comply with this Agreement. The Department and Attorney General will bring such an action only after they attempted but failed to resolve any dispute concerning Reynolds County's compliance through negotiation. Reynolds County reserves the right to defend against an action brought by the Department and Attorney General to compel Reynolds County to comply with this Agreement.

8. This Agreement shall be effective when the Department has signed and dated the Agreement, after which the Attorney General shall promptly provide a copy of the fully signed Agreement to Reynolds County.

9. The terms stated herein constitute the entire an exclusive agreement of the parties. There are no other obligations of the parties, be they expressed or implied, oral or written, except those which are expressly set forth herein. The terms of this Agreement supersede all previous memoranda of understanding, notes, conversations, and agreements expressed or implied. This Agreement may not be modified verbally.

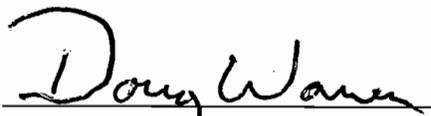
IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SO AGREED:

REYNOLDS COUNTY

By: 
Joe Loyd, Presiding Commissioner

Date: 6-18-12

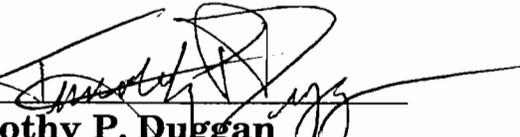

Doug Warren, Commissioner for District No. 1

Date: 6-18-12


Wayne Henson, Commissioner for District No. 2

Date: 6-18-2012

**CHRIS KOSTER
ATTORNEY GENERAL OF MISSOURI**

By: 
**Timothy P. Duggan
Assistant Attorney General**

Date: 6/20/2012

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: 
**John Madras
Director, Water Pollution Program**

Date: 6/20/12