

IN THE CIRCUIT COURT OF STONE COUNTY, MISSOURI

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STATE OF MISSOURI ex rel.)
Chris Koster, the Attorney)
General of Missouri, and the)
Missouri Department of)
Natural Resources,)

Plaintiff,)

v.)

CARROLL JAMES CHRISTIANSEN and)
DAY BREAK RANCHES INC.)

Defendants.)

08 15 2013

WATER PROTECTION PROGRAM

Case No. 13SN-CC00169

CONSENT JUDGMENT

The State of Missouri, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendants Carroll James Christiansen and Day Break Ranches Inc. by and through counsel, consent to the entry of this Consent Judgment.

Each and every term of this Judgment shall be enforceable by further order of this Court, and to that end, the Court retains jurisdiction of the matter in order to enforce each and every term of this Consent Judgment. The Court finds that the terms of this Consent Judgment protect the public's interest.

The parties, having consented to the entry of this Consent Judgment, it is hereby ORDERED, ADJUDGED AND DECREED that:

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I. Objectives of the Parties

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve allegations contained in Plaintiff's Petition.

II. Definitions

2. Terms used herein shall have the same meaning as provided in Missouri Clean Water Law, Chapter 644 RSMo,¹ and the regulations adopted thereunder. In addition, the following terms are specifically defined:

- a. "Consent Judgment" means this Consent Judgment.
- b. "Defendants" means Carroll James Christiansen and Day Break Ranches, Inc.
- c. "Department" means the Missouri Department of Natural Resources.
- d. "Facility" means Overlook Subdivision Wastewater Treatment Facility.
- e. "Plaintiff" means the State of Missouri on the relationship of Attorney General Chris Koster, the Department and the Missouri Clean Water Commission.

¹ All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

- f. "Commission" means the Missouri Clean Water Commission.
- g. "DMR" means Discharge Monitoring Report.
- h. "Permit" means Missouri State Operating Permit number MO-0116211.

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter herein and over the parties consenting hereto pursuant to § 644.076 RSMo. The subject matter of this action involves the Missouri Clean Water Law, Chapter 644 RSMo, and its implementing regulations. The Defendants' actions giving rise to this action took place in Stone County and venue is proper pursuant to § 644.076 RSMo.

IV. Parties Bound

4. The provisions of this Order shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of the parties to this action or their agents, servants, employees, heirs, successors, and assigns. Defendants shall provide a copy of this order to all persons or entities retained to perform work required by this order.

V. Satisfaction and Reservation of Rights

5. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all schedules of compliance and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendants are relieved of liability for the violations alleged in the petition.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or its implementing regulations, or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition.

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of the

Missouri Clean Water Law or regulations promulgated under its authority.

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

VI. Injunctive Relief

7. Defendants agree and are ordered to comply with the Missouri Clean Water Law, Chapter 644 RSMo, and all implementing regulations for any and all future activities in the State of Missouri.

8. Defendants agree and are ordered to complete the following remedial actions:

a. Immediately following entry of this Judgment, Defendants shall properly implement and maintain the Facility's chlorination and dechlorination equipment so that the Facility's effluent complies with the permitted effluent limitations for Fecal Coliform and Total Residual Chlorine.

b. Within thirty (30) days of entry of this Judgment, Defendants shall submit to the Department DMRs for September and

November 2011, and annual sludge reports for 2006 through 2010. In the event that the DMRs and annual sludge reports are unavailable, Defendants shall submit a letter explaining the reason for the missing reports. Defendants shall submit all future DMRs and annual sludge reports to the Department in a complete, accurate and timely manner pursuant to the Permit.

c. Within thirty (30) days of receipt of Department comments on the preliminary engineering report and/or construction permit application, Defendants shall submit to the Department 1) a final engineering report addressing all the Department comments on the preliminary report and 2) a written response addressing all Department comments on the construction permit application.

d. If the Department-approved engineering report recommends operational changes and/or maintenance repairs that do not require a construction permit, Defendants shall fully implement all approved recommendations within thirty (30) days of the date the Department approves the engineering report.

e. Within ninety (90) days of issuance of the construction permit, Defendants shall complete Department-approved upgrades to the facility.

f. Within fifteen (15) days of completion of construction, Defendants shall submit to the Department a Statement of Work Completed form signed and dated by a professional engineer, certifying that the project has been completed in accordance with the approved plans and specifications, and a completed application with the appropriate fee for the modification of the Permit.

VII. Information Collection and Retention

9. The State, through its authorized representatives, shall have the right of entry into any facility covered by this Consent Judgment, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Judgment;
- b. verify any data or information submitted to the State in accordance with the terms of this Consent Judgment;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Judgment.

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10. Upon request, Defendants shall provide the State, through its authorized representatives, splits of any samples taken by Defendants.

11. Until five years after the termination of this Consent Judgment, Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Consent Judgment. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the State, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

12. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the State at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the State, Defendants shall deliver any such documents, records, or other information to the State. Defendants may assert that certain documents, records, or other information is privileged under the

attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Judgment shall be withheld on grounds of privilege.

13. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

VIII. Civil Penalty

14. Defendants consent to the entry of judgment in favor of the State of Missouri for a civil penalty of \$15,000. Defendants hereby authorize entry of this judgment against them and in favor of the State of Missouri for this sum.

15. Defendants agree to pay the \$15,000 by check made payable to the "*State of Missouri (Stone County)*" within thirty (30) days of the entry of this Consent Judgment by mailing same to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

IX. Stipulated Penalties

16. In the event that Defendants fail to comply with the requirements set forth in this Consent Judgment, Defendants shall be liable for stipulated penalties in accordance with the following schedule:

- A. **\$50.00** per day for each day of each violation up to thirty days.
- B. **\$100.00** per day for each day of each violation, from thirty-one days to sixty days.
- C. **\$200.00** per day for each day of each violation, beyond sixty days.

17. Stipulated penalties shall be due and payable within ten (10) days of demand being made by the Attorney General's Office. Defendants shall pay stipulated penalties by check made payable to the "*State of Missouri (Stone County)*" and mailed, along with a copy of the State's stipulated penalty demand letter, to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. That check will be deposited and processed in accordance with the consent judgment and Missouri law.

18. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations.

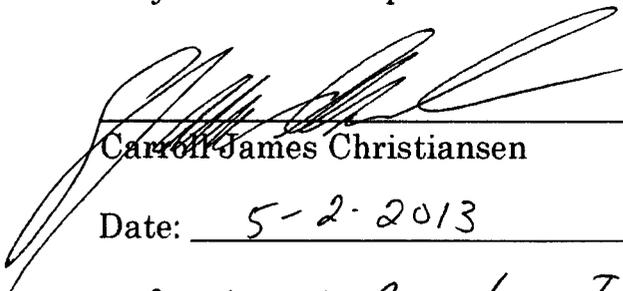
XIV. Modification

19. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among the parties, their successors and assigns and with the approval of the Court. All modifications shall be in writing and filed with the Court.

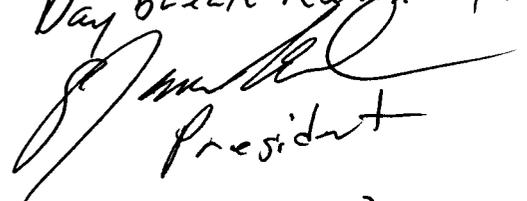
XV. Costs

20. Defendant shall pay all court costs in this action.

The parties hereby consent to this Consent Judgment through their duly authorized representatives as indicated below.


Carroll James Christiansen

Date: 5-2-2013

Daybreak Ranches, Inc

President
5-2-2013

MISSOURI ATTORNEY GENERAL'S OFFICE

By: *Mary H. Mulhearn*
Mary H. Mulhearn
Assistant Attorney General

Date: 5/13/2013

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: *Steven Fuller*
Leanne Tippet Mosby, Director
Division of Environmental Quality

Date: May 21, 2013

SO ORDERED.

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Jack G. L. Goodman
Circuit Judge

Date: 8-5-13

