Missouri Clean Water Commission
Meeting

April 2, 2020

Department of Natural Resources
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, MO

MISSOURI DEPARTMENT OF NATURAL RESOURCES
WATER PROTECTION PROGRAM

Notice of Open Meeting

Missouri Clean Water Commission

To review minutes from previous meetings and learn about agenda items, please refer to the Department website at https://dnr.mo.gov/env/wpp/cwc/index.html

AGENDA

Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette and Nightingale Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102
April 2, 2020
10:00 a.m.

A. Call to Order — Ashley McCarty

B. Approval of Minutes — Ashley McCarty
(Approval Needed)

1. January 9, 2020, Open Session Minutes
2. February 24, 2020, Open Session Minutes

Recommended Action: The Department recommends the Commission approve the minutes from the January 9 and February 24, 2020, open meeting.

C. DNR Reports and Updates
(Information Only)

1. Director's Update — Chris Wieberg

2. Update on the Clean Water State Revolving Fund's Regionalization Incentive Grant — Kurtis Cooper

3. Update on the Clean Water State Revolving Fund's Nonprofit Assistance to Small and Medium Publicly Owned Treatment Works Grant — Hannah Humphrey

D. Public Hearing
(There are no Public Hearings scheduled for this meeting)

E. Recommended for Adoption and Actions to be voted on
(Approval Needed)

1. Proposed 2020 303(d) Impaired Water List — Robert Voss

   Recommend Action: The Department recommends the Commission adopt the 2020 Missouri Section 303(d) Impaired Waters List as proposed.

2. Fiscal Year 2020 Clean Water State Revolving Fund Intended Use Plan Amendment — Joan Doerhoff

   Recommend Action: The Department recommends the Commission approve the amendment to the Fiscal Year 2020 Clean Water State Revolving Fund Intended Use Plan as proposed.

3. City of Spickard Small Borrower Loan — Joan Doerhoff

   Recommend Action: The Department recommends the Commission approve the allocation of funding in the amount of $100,000 for a Small Borrower Loan for the City of Spickard.

F. New Business
(Information Only)

G. Appeals and Variance Requests

1. Application for Award of Attorney's Fees Regarding Appeal No. 18-0498 — Tim Duggan
2. Application for Award of Attorney's Fees Regarding Appeal No. 18-0501 — Tim Duggan

H. Open Comment Session
(Information Only)

This segment of the meeting affords the public an opportunity to comment on any other issues pertinent to the Clean Water Commission.

I. Future Meeting Dates
(Information Only)

July 8, 2020, Lewis and Clark State Office Building
October 7, 2020, Lewis and Clark State Office Building
January 7, 2021, Lewis and Clark State Office Building
April 8, 2021, Lewis and Clark State Office Building
August 9, 2021, Lewis and Clark State Office Building
October 12, 2021, Lewis and Clark State Office Building

J. Closed Session

This portion of the meeting may be closed if such action is approved by a majority vote of the Clean Water Commission members who constitute a quorum, pursuant to Section 610.021, RSMo.

K. Meeting Adjournment Ashley McCarty
(Approval Needed)

People requiring special services at the meeting can make arrangements by calling 1-800-361-4827 or 573-751-6721. Hearing- and speech-impaired individuals may contact the department through Relay Missouri, 1-800-735-2966.

For more information contact:
Krista Welschmeyer, Commission Secretary, Missouri Clean Water Commission
Water Protection Program, P.O. Box 176, Jefferson City, MO 65102
Phone: 573-751-6721
Fax: 573-526-1146
E-mail: krista.welschmeyer@dnr.mo.gov

Tab A

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Approval of Minutes

Issue:

The Missouri Clean Water Commission will review the minutes from the past Clean Water Commission meetings.

Recommended Action:

The Department recommends that the Missouri Clean Water Commission vote to approve past meeting minutes.

Tab B

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Call to Order

Issue:

The Missouri Clean Water Commission will be called to order.

Recommended Action:

None

Tab B1

MISSOURI DEPARTMENT OF NATURAL RESOURCES
WATER PROTECTION PROGRAM

DRAFT
MINUTES OF THE
MISSOURI CLEAN WATER COMMISSION MEETING
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri

January 9, 2020

Present via Telephone
Patricia Thomas, Missouri Clean Water Commission

Present at Lewis and Clark State Office Building
Ashley McCarty, Chair, Missouri Clean Water Commission
Stan Coday, Missouri Clean Water Commission
John Reece, Missouri Clean Water Commission
Allen Rowland, Missouri Clean Water Commission
Ross Keeling, Acting Legal Counsel, Missouri Clean Water Commission
Chris Wieberg, Director of Staff, Missouri Clean Water Commission
Chelsey Distler, Acting Secretary, Missouri Clean Water Commission

Michael Abbott, Missouri Department of Natural Resources, Jefferson City, Missouri
Van Beydler, Missouri Department of Natural Resources, Jefferson City, Missouri
Robert Brundage, Newman, Comley, and Ruth, Jefferson City, Missouri
David Carani, Metropolitan Sewer District, St. Louis, Missouri
John Carter, Citizen, Rolla, Missouri
Joe Clayton, Missouri Department of Natural Resources, Jefferson City, Missouri
Jane Davis, Missouri Department of Natural Resources, Jefferson City, Missouri
Joan Doerhoff, Department of Natural Resources, Jefferson City, Missouri
Angela Falls, Missouri Department of Natural Resources, Jefferson City, Missouri
David Hertzberg, City of Joplin, Joplin, Missouri
Lacey Hirschvogel, Missouri Public Utility Alliance, Columbia, Missouri
John Hoke, Missouri Department of Natural Resources, Jefferson City, Missouri
Jay Hoskins, Metropolitan Sewer District, St. Louis, Missouri
Hannah Humphrey, Missouri Department of Natural Resources, Jefferson City, Missouri
Melanie Hutton, Cooper County Public Health, Boonville, Missouri
Sherri Irving, KC Water, Kansas City, Missouri
Chris Klenklen, Missouri Department of Agriculture, Jefferson City, Missouri
Misty Lange, Missouri Department of Natural Resources, Jefferson City, Missouri

Jeff Meadows, Archer-Elgin Engineering, Rolla, Missouri
Collin Mackey Missouri Department of Natural Resources, Jefferson City, Missouri
Holly Neill, The Nature Conservancy, Springfield, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Joel Reschly, Missouri Department of Natural Resources, Jefferson City, Missouri
Lisa Rodgers, Missouri Department of Natural Resources, Jefferson City, Missouri
Darrick Steen, Missouri Corn Growers/Soybean Association, Jefferson City, Missouri
Ray Walden, City of Salem, Salem, Missouri
Philip Walsack, Burns & McDonnell, Joplin, Missouri
Gary Webber, Missouri Rural Water Association, Ashland, Missouri

CALL TO ORDER

Chair McCarty called the meeting of the Missouri Clean Water Commission (CWC) to order on January 9, 2020, at 10:03 a.m., at the Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO.

Chair McCarty introduced the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

Administrative Matters

Election of Missouri Clean Water Commission Chair
Agenda Item A-1

Commissioner Reece made a motion to elect Commissioner McCarty as Chair. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	**Yes**
Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Chair McCarty:	**Yes**

Election of Missouri Clean Water Commission Vice-Chair
Agenda Item A-2

Commissioner Reece made a motion to elect Commissioner Thomas as Vice-Chair. Commissioner Coday seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	**Yes**
Commissioner Thomas:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Chair McCarty:	**Yes**

Approval of Minutes

Approval of the October 9, 2019, Open Session Minutes
Agenda Item B-1

Commissioner Reece made a motion to approve the minutes as presented. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Vice Chair Thomas:	**Yes**
Chair McCarty:	**Yes**

DNR Reports and Updates

Director's Update
Agenda Item C

Chris Wieberg, Director, Water Protection Program, reported the following to the Commission:

- In 2020 starting on February 10, the Water Protection Program (WPP) will hold seven meeting to discuss increases to clean water fees to address budget shortfalls. The concepts that Chris Wieberg would like to explore is reducing the amount of the State Revolving Fund (SRF) administration fee used to pay for operating expenses so that those dollars can be available to cover the states portion of the SRF grant match. These expenses would need to be shifted to the clean water fees funding source; therefore, a fee increase would be necessary. At current spending and without shifts, projections show the administration fee going negative in future years so it is important that we address this issue during these discussions. Chris Wieberg has provided the CWC with the fee-meeting announcement so that they have the dates of the meetings and a link to the website where all of the fee related information will be posted for this effort.
- On December 3, 2019, the Missouri Coalition for the Environment filed a lawsuit in district court against U.S. Environmental Protection Agency (EPA) regarding their approval of Missouri's Numeric Criteria for Lakes. The Missouri Department of Natural Resources is currently discussing with the Attorney General's Office next steps for the State and Chris Wieberg plans to inform the CWC as decisions are reached. Partied not named in the lawsuit such as the Department and the CWC must indicate whether they wish to intervene by February 1, 2020. A copy of the lawsuit was provided to the CWC.
- On December 26, 2019, the Department received an approval letter from EPA regarding several items that remand outstanding as it pertained to the Water Quality Standards package that was submitted to them in April 2018. The EPA

approved 30 revisions to pollutant parameters, the Missouri Multiple Discharger Variance (MDV) Framework for Ammonia, and the revised definitions of waters of the State. Items that remain undecided are the Kirksville Variance and revisions to the pH criteria. The WPP is currently developing plans to reach out to potential MDV candidates to determine participations and to assist with application development. A copy of the approval letter and rational was provided to the Commissioners.

- Much of 2019 was spent working to reduce permitting backlogs and the WPP currently stands at 214 permits in backlog status. Applications for new permits show 212 new general permits in 2019. A large portion of these were small domestic site-specific permits that were transferred to a new general permit. This small domestic general permit was a permit the WPP developed in order to streamline permit processing times where a group of facilities have like requirements. In 2019, there was an abnormally high general permit renewal year, which was indicated in the numbers. The report includes a new section titled "Total Terminations" given we processed a fair amount of terminations of permits that were not related to an application for termination. The 2019 permit report was provided to the CWC.
- On December 24, 2019, the Missouri Court of Appeals affirmed the Clean Water CWC decision regarding the Valley Oaks Concentrated Animal Feeding Operation permit appeal. Parties have made applications for attorney's fees with CWC. Since it appears all appeals will have occurred Chris Wieberg will be consulting with the CWC's counsel on when to include a decision items for attorney's fee on the CWC agenda. The CWC was provided a copy of the document.
- On January 7, the Cole County Circuit Court made a judgment on the CWC's decision regarding the Carla Malone Steck appeal. The CWC agreed with the Administrative Hearing Committee's (AHC) recommendation in favor of upholding the Department's decision. The court disagreed with both the AHC and the CWC. This judgment was received on January 8 and it is being reviewed by Chris Wieberg and will be discussed with the Department and CWC's counsel on the next steps. The CWC was provided a copy of the Judgment and the AHC's recommendation.
- In December 2019, the WPP held the first of several workgroup meetings to discuss revisions to the Antidegradation Implementation Procedure. The procedure establishes the process for Antidegradation for new or expanding discharges. As the WPP makes changes to water quality standards such as in the case of the numeric nutrient criteria for lake, we must also re-evaluate how those standard changes are addressed for new and expanded discharges. Conversations are planned to occur throughout 2020; however, dates have not been established yet.

Public Hearing

Recommended for Adoption and Actions to be Voted On

<u>10 CSR 20-6.020 – Public Participation, Hearings, and Notice to Governmental Agencies Approval</u>
Agenda Item E1

Michael Abbott, Water Pollution Control Branch, Chief of Operating Permits, presented testimony on the Order of Rulemaking regarding the proposed rule amendment 10 CSR 20-6.020 Public Participation, Hearings and Notice to Governmental Agencies.

The rule amendment was on public notice from September 3, 2019, through November 12, 2019. A public hearing was held on October 9, 2019. No comments were received for this amendment.

10 CSR 20-6.020 is an administrative rule that does not prescribe any environmental conditions or criteria. The existing rule, 10 CSR 20-6.020(6)(C), allows an extra 3 days to the prescribed 30 day period for appeals of conditions in issued permits when the service of notice is accomplished by mail. The additional 3 days is not required by statute and has caused confusion.

The proposed rule amendment removes the allowance for three additional days, to avoid confusion and to establish consistency with other appealable decisions.

The Department recommended that the CWC adopt the order of rulemaking for 10 CSR-6.020.

Commissioner Rowland made a motion to adopt the order of rulemaking for 10 CSR 20-6.020 Public Participation, Hearings, and Notice to Governmental Agencies as presented. Commissioner Reece seconded the motion. The motion passed with a roll call vote:

Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice Chair Thomas:	**Yes**
Chair McCarty:	**Yes**

<u>Fiscal Year 2020 Clean Water State Revolving Intended Use Plan Amendment</u>
Agenda Item E2

Joan Doerhoff, Department of Natural Resources, Financial Assistance Center, presented an amendment to the Fiscal Year 2020 Clean Water State Revolving Fund Intended Use Plan.

Commissioner Coday made a motion to approve the amendment to the Fiscal Year 2020 Clean Water State Revolving Fund Intended Use Plan as proposed. Commissioner Reece seconded the motion. The motion passed with a roll call vote:

Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice Chair Thomas:	**Yes**
Chair McCarty:	**Yes**

<u>City of Ellsinore Small Borrower Loan</u>
Agenda Item E3

Joan Doerhoff, Department of Natural Resources, Financial Assistance Center, provided comments for the Small Borrower Loan for the City of Ellsinore and requested the Commission approve the allocation of funding in the amount of $100,000 for a Small Borrower loan to the City of Ellsinore.

Commissioner Rowland made a motion to approve the allocation of funding in the amount of $100,000 for a Small Borrower Loan for the City of Ellsinore. Commissioner Reece seconded the motion. The motion passed with a roll call vote:

Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice Chair Thomas:	**Yes**
Chair McCarty:	**Yes**

New Business

Appeals and Variance Requests

<u>Joplin Water Quality Standards Variance Approval</u>
Agenda Item G1

Angela Falls, Missouri Department of Natural Resources, Watershed Protection Section, provided background information on water quality standards variances in general. She outlined the regulations that allow for variances and requirements for highest attainable conditions and pollutant minimization programs.

Angela Falls described the Joplin Turkey Creek Wastewater Treatment Plant. She explained that the City of Joplin, Missouri requested a water quality standards variance from the zinc criteria for the protection of aquatic life use and that the City is making the request due to the difficulty to meet permit requirements because of historic mining in the area. She outlined the variance conditions including factor, term, highest attainable conditions, and pollutant minimization plan.

Commissioner Rowland asked what the impacts of zinc in the water are to wildlife. Angela Falls explained the potential lethal impacts. Chris Wieberg added information on the impacts of growth and reproduction in aquatic species.

Commissioner Reece commented that the highest attainable conditions looked low and difficult to meet by a wastewater treatment facility. Angela Falls clarified that the highest attainable conditions are based on the facility's data, so it should produce effluent that can meet those conditions.

Commissioner Reece asked if they are adding treatment to the plant. Angela Falls explained that they are going to work on inflow and infiltration to stop it from entering the collection system.

Commissioner Coday commented on how there will still be zinc in the watershed even with this effort by Joplin. Angela Falls noted that the impairment to Turkey Creek will still exist, and that the variance is for the discharger specifically.

Chair McCarty pointed out a typo in the variance text.
David Herzberg, Public Works Director for the City of Joplin, thanked the Department for all its help with the variance over the past several years.
Commissioner Reece asked David Herzberg about Joplin's inflow and infiltration effort. David Herzberg provided general information about their collection system.

Commissioner Coday made a motion to approve the Joplin Water Quality Variance for Zinc as proposed. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice Chair Thomas:	**Yes**
Chair McCarty:	**Yes**

Following the vote to approve, Commissioner Reece asked how often Joplin will have to report to the Department on their inflow and infiltration efforts. Angela Falls answered that the Department will require annual reporting.

<u>Bolivar Water Quality Standards Variance Approval</u>
Agenda Item G2

Angela Falls, Missouri Department of Natural Resources, Watershed Protection Section, described the Bolivar Wastewater Treatment Facility. She explained that the City of Bolivar, Missouri requested a water quality standards variance from the total nitrogen, total phosphorus, and total biochemical oxygen demand criteria for the protection of aquatic life use. A Total Maximum Daily Load established these wasteload allocations due to the impairment in Piper Creek. She outlined the variance conditions including factor, term, highest attainable conditions, and pollutant minimization plan.

Commissioner Reece asked if Bolivar is going to remove phosphorus by biological or chemical means. Angela Falls answered that they are looking at chemical addition to remove phosphorus. Commissioner Reece asked what Bolivar plans to do with the phosphorus laden sludge. Chris Wieberg answers that they land apply sludge and plan to continue that practice.

Commissioner Reece asks if HDR, who conducted the study, has anything to add. David Carani, HDR, adds additional information on the process for phosphorus treatment addition to the facility and beyond. Commissioner Reece asked for additional information on the excess flow to the plant. David Carani provided information about planned wet weather improvements.

Robert Brundage, Newman Comely and Ruth, adds that variances are revisited every five years and that gives flexibility to find the appropriate technology. Chris Wieberg adds that the five-year review is through an EPA process.

Commissioner Reece asked to verify that Bolivar would be required to report Inflow and Infiltration to the Department. Angela Falls verified that to be correct.

Commissioner Rowland made a motion to approve the Bolivar Water Quality Variance as proposed. Commissioner Coday seconded the motion. The motion passed with a roll call vote:

Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice Chair Thomas:	**Yes**
Chair McCarty:	**Yes**

<u>Salem Water Quality Standards Variance Approval</u>
Agenda Item G3

Angela Falls, Missouri Department of Natural Resources, Watershed Protection Section, described the Salem Wastewater Treatment Facility. She explained that the City of Salem, Missouri requested a water quality standards variance from the total nitrogen, total phosphorus, total suspended solids, and total carbonaceous biochemical oxygen demand criteria for the protection of aquatic life use. A Total Maximum Daily Load established these wasteload allocations due to the impairment in Spring Creek. She outlined the variance conditions including factor, term, highest attainable conditions, and pollutant minimization plan.

Commissioner Reece asked when the City of Salem would take bids on plant improvements. Jeff Meadows, CM Archer Engineers, answered that phase one of the project is already underway to install disinfection and to make structural improvements to the facility. He goes on to outline future improvements.

Commissioner Reece made a motion to approve the Salem Water Quality Variance as proposed. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Commissioner Coday:	**Yes**
Vice Chair Thomas:	**Yes**
Chair McCarty:	**Yes**

Open Comment Session

Phil Walsack, complement Chris Wieberg and staff on National Pollutant Discharge Elimination System Permits renewal and the speed with which they are coming out. This has been a long hard road to get the backlog dealt with. Phil Walsack noticed this week there are a plethora of permits on public notice after the holidays. This is a very daunting project. Phil Walsack also notes that ten and a half years ago we started this variance process. With the city of Web City's, and they discharge to something called the 201 center creek board wastewater treatment plant. It was denied, the variance was denied because there were no variance process yet. That is how the EPA treated that variance. Therefore, this has been a long road coming back. This was a long process to get the variance especially for heavy metals dealt with and Phil Walsack congratulated the staff and this board for getting this done. This is big a long difficult road. Thank you very much.

Future Meeting Dates

<u>Missouri Clean Water Commission Meetings</u>
Agenda Item I

- April 2, 2020, Lewis and Clark State Office Building
- July 8, 2020, Lewis and Clark State Office Building
- October 7, 2020, Lewis and Clark State Office Building

Closed Session

There was no closed session during this Clean Water Commission meeting.

Meeting Adjournment

Chair McCarty adjourned the open meeting at 11:28 a.m.

For more information contact:
Krista Welschmeyer, Commission Secretary, Missouri Clean Water Commission
Water Protection Program, P.O. Box 176, Jefferson City, MO 65102
Phone: 573-751-6721
Fax: 573-526-1146
E-mail: krista.welschmeyer@dnr.mo.gov

Respectfully Submitted,

Chris Wieberg
Director of Staff

Tab B2

MISSOURI DEPARTMENT OF NATURAL RESOURCES
WATER PROTECTION PROGRAM

DRAFT
MINUTES OF THE
MISSOURI CLEAN WATER COMMISSION MEETING
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri

February 24, 2020

Present via Telephone
Ashley McCarty, Chair, Missouri Clean Water Commission
Patricia Thomas, Missouri Clean Water Commission
Stan Coday, Missouri Clean Water Commission
John Reece, Missouri Clean Water Commission
Allen Rowland, Missouri Clean Water Commission

Present at Lewis and Clark State Office Building
Tim Duggan, Legal Counsel, Missouri Clean Water Commission
Chris Wieberg, Director of Staff, Missouri Clean Water Commission
Chelsey Distler, Acting Secretary, Missouri Clean Water Commission

Keith Arbuckle, Duckett Creek Sewer District, O'Fallon, Missouri
Jane Davis, Missouri Department of Natural Resources, Jefferson City, Missouri
Chuck Gross, Duckett Creek Sewer District, O'Fallon, Missouri
Jay Hoskins, Metropolitan Sewer District, St. Louis, Missouri – via Telephone
Leasue Meyer, Missouri Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Joel Reschly, Missouri Department of Natural Resources, Jefferson City, Missouri
Kristi Savage-Clarke, Missouri Department of Natural Resources, Jefferson City, Missouri

CALL TO ORDER

Chair McCarty called the meeting of the Missouri Clean Water Commission to order on February 24, 2020, at 10:00 a.m., at the Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO 65101.

Chair McCarty introduced the Commissioners, Staff Director, Legal Counsel, and the Commission Secretary.

Approval of Minutes

DNR Reports and Updates

Public Hearing

Recommended for Adoption and Actions to be Voted On

<u>Proposed Amendments to 208 Plan for the Lower Meramec Basin Approval</u>
Agenda Item E1

Leasue Meyers, Missouri Department of Natural Resources, Engineering Section, presented the January 2020 Proposed Lower Meramec Basin Amendment of the East-West Gateway 208 Plan. The proposed amendment was placed on public notice January 17 to February 18, 2020. No comments were received on the public notice

Commissioner Reece asked how this amendment was different from the amendment adopted by the Commission at the July 22, 2019, meeting. Leasue Meyers explained that the revision was minor and that it was to clarify that the proposed amendment only superseded the Lower Meramec Basin portion of the 1978 Plan and it was not in conflict with the rest of the Plan. Jay Hoskins with Metropolitan Sewer District provided further explanation that at the request of legal, a sentence was added into the document stating the document did not conflict with the 1978 Plan, but that there was no change to the evaluation or the plan recommendations.

Commissioner Reece made a motion to approve the amendment to the 1978 St. Louis, Missouri Water Quality Management 208 Plan as presented. Commissioner Rowland seconded the motion. The motion passed with a roll call vote:

Commissioner Coday:	**Yes**
Commissioner Reece:	**Yes**
Commissioner Rowland:	**Yes**
Vice Chair Thomas:	**Yes**
Chair McCarty:	**Yes**

New Business

Appeals and Variance Requests

Open Comment Session

Future Meeting Dates

<u>Missouri Clean Water Commission Meetings</u>
Agenda Item I

- April 2, 2020, Lewis and Clark State Office Building
- July 8, 2020, Lewis and Clark State Office Building
- October 7, 2020, Lewis and Clark State Office Building

Closed Session

There was no closed session during this Clean Water Commission meeting.

Meeting Adjournment

Chair McCarty adjourned the open meeting at 10:07 a.m.

For more information contact:
Krista Welschmeyer, Commission Secretary, Missouri Clean Water Commission
Water Protection Program, P.O. Box 176, Jefferson City, MO 65102
Phone: 573-751-6721
Fax: 573-526-1146
E-mail: krista.welschmeyer@dnr.mo.gov

Respectfully Submitted,

Chris Wieberg
Director of Staff

Tab C

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

DNR Reports and Updates

Issue:

Routine update to the Commission

Recommended Action:

Information only.

Tab C1

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Director's Update

Issue:

Routine update to the Commission

Recommended Action:

Information only.

Tab C2

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Update on the Clean Water State Revolving Fund's Regionalization Incentive Grant

Issue:

Update to the Commission

Recommended Action:

Information only.

Tab C3

Missouri Clean Water Commission Meeting
Lewis and Clark State Office Building
LaCharette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri
Clean Water Commission Meeting

April 2, 2020

Update on the Nonprofit Assistance to Small and Medium Publicly Owned Treatment Works Pilot Grant

Issue: The Missouri Department of Natural Resources awarded a Clean Water State Revolving Fund (CWSRF) grant to the Missouri Public Utility Alliance - Resource Services Corporation (MPUA-RSC) for the purpose of providing assistance to small and medium publicly owned treatment works.

Background:

On August 13, 2018, the MPUA-RSC submitted a CWSRF application requesting $500,000 in grant to provide technical assistance and planning resources to the owners and operators of small and medium sized publicly owned treatment works.

This funding is authorized by provisions of Water Resources Reform and Development Act (WRRDA) of 2014, amending the Clean Water Act (CWA). WRRDA included Section 603(c)(11) which states that the CWSRF may provide financial assistance to any qualified nonprofit entity to provide assistance to owners and operators of small and medium publicly owned treatment works (A) to plan, develop, and obtain financing for eligible projects under this subsection, including planning, design, and associated preconstruction activities; and (B) to assist such treatment works in achieving compliance with the CWA.

After the Department and MPUA-RSC agreed on a scope of work focused on planning activities that will result in SRF projects, a grant in the amount of $300,000 was awarded to MPUA-RSC on January 18, 2019. On December 23, 2019, the Department received a letter from MPUA-RSC requesting an additional $200,000 in funding to increase the total award from $300,000 to $500,000 based on MPUA-RSC's estimated budget of $293,000 for Department-approved projects. The Department approved the amended grant award with an additional $200,000 on February 14, 2020.

A summary of activities completed by MPUA-RSC will be provided to the Commission.

Recommended Action: Information Only.

Tab D

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Public Hearing

Issue:

This portion of the meeting allows information to be presented to the Commission.

Recommended Action:

Information only.

Tab E

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Recommended for Adoption and Actions to Be Voted On

Issue:

This portion of the meeting allows for the Commission to review and vote on specific actions.

Recommended Action:

It is recommended that the Commission review and vote on the actions presented.

Tab E1

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Proposed 2020 303(d) Impaired Waters List

Issue:

The Federal Water Pollution Control Act, Section 303(d) requires states to biennially (once every two years) submit to the U.S. Environmental Protection Agency (EPA) a list of impaired waters for which adequate pollution controls have not yet been required.

Background:

The Clean Water Commission approved the 2020 Listing Methodology Document (LMD) on July 22, 2019. The LMD describes how the Missouri Department of Natural Resources will use water quality data to determine if waters of the state are placed on the 303(d) list. The Department assessed waters and developed the draft 2020 303(d) List following this methodology. The draft list was placed on public notice November 15, 2019, through February 20, 2020.

The proposed 2020 303(d) List is comprised of 481 water body or pollutant pairs. Sixty-one of these listings are new to the list in 2020 and the remaining 420 listings are carried over from the EPA approved 2018 303(d) List. Forty-six of these new listings are due to the new ecoregional lake nutrient criteria.

A total of 44 water body or pollutant pairs from the 2018 303(d) List are being proposed for de-listing. Of the 44 listings proposed for de-listing, 29 now meet water quality standards, 3 were originally listed in error, 3 are a result of a revised assessment method, and 9 are due to a total maximum daily load being developed and approved by EPA.

The Department held two public availability meetings to answer questions and provide information on the draft 2020 303(d) List. Summaries of the discussions from the December 10, 2019, and January 14, 2020, public availability meetings are provided in the Commission packet and are available on the Department's website:
http://dnr.mo.gov/env/wpp/waterquality/303d/303d.htm.

Public Comment:

All public comments, along with the Department's responses, are part of the administrative record for the 303(d) list and are available on the Department's website and are included in the Commission packet. Comments were received from six different parties.

I. LimnoTech on behalf of the Doe Run Resource Company
II. Metropolitan St. Louis Sewer District
III. Missouri Coalition for the Environment
IV. City of Kansas City
V. City of Independence
VI. City of Springfield

Summary of Department actions as a result of public comments

A. Waters to be added or re-added to the Proposed 2020 303(d) List

1. Mozingo Lake (water body identification (WBID) 7402) – Chlorophyll-a

B. Waters Proposed to be Delisted from the 2020 303(d) List

1. Courtois Creek (WBID 1943) – Lead in sediment
2. Indian Creek (WBID 1946) – Lead in sediment
3. Indian Creek (WBID 1946) – Zinc in sediment
4. Indian Creek (WBID 1946) – Lead in water
5. Crooked Creek (WBID 1928) – Cadmium in sediment
6. Crooked Creek (WBID 1928) – Lead in sediment
7. Crooked Creek (WBID 1928) – Cadmium in water
8. Bee Fork (WBID 2760) – Lead in water
9. West Fork Black River (WBID 2755) – Lead in sediment
10. West Fork Black River (WBID 2755) – Nickel in sediment
11. Little Antire Creek (WBID 4115) – *Escherichia coli*
12. Brush Creek (WBID 3986) - PAHs in sediment

C. Other changes to the 2020 303(d) List

1. King Lake (WBID 7112) – Chlorophyll-a
   i. This water will be removed from the list due to all data showing impairment being older than seven years.

Recommended Action:

The Department recommends the Clean Water Commission adopt the 2020 Missouri Section 303(d) List as proposed.

Suggested Motion Language:

None

List of Attachments:

- Proposed 2020 303(d) List for Clean Water Commission approval;
- List of waters on the 2018 303(d) List proposed for removal from the 2020 303(d) List (Waters Proposed for Delisting);
- 2020 303(d) List Summary Tables showing the breakdown of the number of listings by pollutants, sources, impaired uses, and cycle originally listed;
- Summary of the December 10, 2019, Public Availability Meeting discussions;
- Summary of the January 14, 2020, Public Availability Meeting discussions;
- Summaries of all public comments received as well as Department responses to those comments;
- All public comments received; and
- Transcript of Public Hearing held on February 13, 2020.

Missouri Department of Natural Resources
2020 Section 303(d) Listed Waters

Proposed List for Clean Water Commission Approval on April 2, 2020

Row #	Year	WBID	Waterbody	Class	Entire WB Imprd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
1	2012	2188.00	Antire Cr.	P	Y	1.90	Miles	WBC B	Escherichia coli (W)	Nonpoint Source	St. Louis	07140102		H	2025
2	2018	2668.00	Ashley Cr.	P	Y	2.50	Miles	WBC B	Escherichia coli (W)	Rural NPS	Dent	11010008		H	2025
3	2018	7637.00	August A Busch Lake Number 36	UL	Y	16.00	Acres	GEN	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	St. Charles	07110009	4	L	> 10 years
4	2010	7627.00	August A Busch Lake Number 37	L3	Y	30.00	Acres	GEN	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	St. Charles	07110009	4	L	> 10 years
5	**2020**	**7239.00**	**Austin Community Lake**	**L3**	**Y**	**21.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Texas**	**10290201**	**1**	L	> 10 years
6	2016	4083.00	Barker Creek tributary	C	Y	1.20	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Henry	10290108		L	> 10 years
7	2018	2693.00	Barn Hollow	C	Y	8.20	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Howell/Texas	11010008		L	> 10 years
8	2012	0752.00	Bass Cr.	C	Y	4.40	Miles	WBC A	Escherichia coli (W)	Rural NPS	Boone	10300102		H	2023
9	2012	3240.00	Baynham Br	P	Y	4.00	Miles	WBC B	Escherichia coli (W)	Rural NPS	Newton	11070207	9	L	> 10 years
10	2014	3224.00	Beef Br.	P	Y	2.50	Miles	AQL	Cadmium (S)	Mill Tailings	Newton	11070207		M	2026 - 2030
11	2014	3224.00	Beef Br.	P	Y	2.50	Miles	AQL	Cadmium (W)	Mill Tailings	Newton	11070207		M	2026 - 2030
12	2014	3224.00	Beef Br.	P	Y	2.50	Miles	AQL	Lead (S)	Mill Tailings	Newton	11070207		M	2026 - 2030
13	2014	3224.00	Beef Br.	P	Y	2.50	Miles	AQL	Zinc (S)	Mill Tailings	Newton	11070207		M	2026 - 2030
14	2014	3224.00	Beef Br.	P	Y	2.50	Miles	AQL	Zinc (W)	Mill Tailings	Newton	11070207		M	2026 - 2030
15	2014	7309.00	Bee Tree Lake	L3	Y	10.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	St. Louis	07140102		L	> 10 years
16	2006	7365.00	Belcher Branch Lake	L3	Y	42.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Buchanan	10240012		L	> 10 years
17	**2020**	**2179.00**	**Belew Cr.**	**P**	**Y**	**7.00**	**Miles**	**AQL**	**Oxygen, Dissolved (W)**	**Municipal Point Source Discharges, Source Unknown**	**Jefferson**	**07140104**		L	> 10 years
18	2018	7186.00	Ben Branch Lake	L3	Y	37.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Osage	10300102		L	> 10 years
19	2014	3980.00	Bens Branch	C	Y	5.80	Miles	AQL	Cadmium (S)	Oronogo/Duenweg Mining Belt	Jasper	11070207		H	2022
20	2018	3980.00	Bens Branch	C	Y	5.80	Miles	AQL	Cadmium (W)	Mill Tailings	Jasper	11070207		H	2022
21	2014	3980.00	Bens Branch	C	Y	5.80	Miles	AQL	Lead (S)	Oronogo/Duenweg Mining Belt	Jasper	11070207		H	2022
22	2014	3980.00	Bens Branch	C	Y	5.80	Miles	AQL	Zinc (S)	Oronogo/Duenweg Mining Belt	Jasper	11070207		H	2022
23	2016	3980.00	Bens Branch	C	Y	5.80	Miles	AQL	Zinc (W)	Oronogo/Duenweg Mining Belt	Jasper	11070207		H	2022
24	2010	2916.00	Big Cr.	P	N (1.8)	34.10	Miles	AQL	Cadmium (S)	Glover smelter	Iron	08020202		M	2026 - 2030
25	2010	1578.00	Big Piney R.	P	N (4)	7.80	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Texas	10290202	2	M	2026 - 2030
26	2006	2080.00	Big R.	P	N (52.8)	81.30	Miles	AQL	Cadmium (S)	Old Lead Belt tailings	St. Francois/Jefferson	07140104		H	2024
27	2012	2080.00	Big R	P	Y	81.30	Miles	AQL	Zinc (S)	Old Lead Belt tailings	St. Francois/Jefferson	07140104		H	2024
28	**2020**	**7185.00**	**Binder Lake**	**L3**	**Y**	**127.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Cole**	**10300102**	**1**	L	> 10 years
29	2006	3184.00	Blackberry Cr	C	N (3.5)	6.50	Miles	AQL	Chloride (W)	Asbury Power Plant	Jasper	11070207		M	2026 - 2030
30	2008	3184.00	Blackberry Cr.	C	N (3.5)	6.50	Miles	AQL	Sulfate + Chloride (W)	Asbury Power Plant	Jasper	11070207		M	2026 - 2030
31	**2020**	**0112.00**	**Black Cr.**	**C**	**Y**	**21.80**	**Miles**	**WBC B**	**Escherichia coli (W)**	**Nonpoint Source**	**Shelby**	**07110005**		L	> 10 years
32	2006	3825.00	Black Creek	P	Y	5.60	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		H	2025
33	2002	2769.00	Block R	P	Y	47.10	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Butler	11010007	2	L	> 10 years
34	2002	2784.00	Black R.	P	Y	39.00	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Wayne/Butler	11010007	2	L	> 10 years
35	**2020**	**7189.00**	**Blind Pony Lake**	**L3**	**Y**	**96.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Saline**	**10300104**	**1**	L	> 10 years
36	2006	0417.00	Blue R.	P	Y	4.40	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2023
37	2006	0418.00	Blue R	P	Y	9.40	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2023
38	2006	0419.00	Blue R.	P	Y	7.70	Miles	WBC A	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2023

Row #	Year	WBID	Waterbody	Class	Entire WB Imprd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
39	2016	0417.00	Blue R.	P	Y	4.40	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2023
40	2016	0418.00	Blue R.	P	Y	9.40	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2023
41	2012	1701.00	Bonhomme Cr.	C	Y	2.50	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	10300200		M	2026 - 2030
42	2006	0750.00	Bonne Femme Cr.	P	Y	7.80	Miles	WBC A	Escherichia coli (W)	Rural NPS	Boone	10300102		H	2023
43	2012	0753.00	Bonne Femme Cr.	C	Y	7.00	Miles	WBC B	Escherichia coli (W)	Rural NPS	Boone	10300102		H	2023
44	2002	2034.00	Bourbeuse R.	P	Y	136.70	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Phelps/Franklin	07140103	2	L	> 10 years
45	2014	7003.00	Bowling Green Lake - Old	L1	Y	7.00	Acres	AQL	Chlorophyll-a (W)	Rural NPS	Pike	07110004	1 2 7	L	> 10 years
46	2012	7003.00	Bowling Green Lake - Old	L1	Y	7.00	Acres	AQL	Nitrogen, Total (W)	Rural NPS	Pike	07110004	1 2 7	L	> 10 years
47	2012	7003.00	Bowling Green Lake - Old	L1	Y	7.00	Acres	AQL	Phosphorus, Total (W)	Rural NPS	Pike	07110004	1 2 7	L	> 10 years
48	2012	1796.00	Brazeau Cr.	P	Y	10.80	Miles	WBC B	Escherichia coli (W)	Rural NPS	Perry	07140105		M	2026 - 2030
49	2002	1371.00	Brush Cr.	P	Y	4.70	Miles	AQL	Oxygen, Dissolved (W)	Humansville WWTP	Polk/St. Clair	10290106		H	2020
50	2016	3986.00	Brush Creek	C	Y	5.40	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2023
51	2016	3986.00	Brush Creek	C	Y	5.40	Miles	AQL	Oxygen, Dissolved (W)	Nonpoint Source	Jackson	10300101		L	> 10 years
52	2016	7117.00	Buffalo Bill Lake	L3	Y	45.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	DeKalb	10280101		L	> 10 years
53	2012	3273.00	Buffalo Cr	P	Y	8.00	Miles	AQL	Fishes Bioassessments/ Unknown (W)	Source Unknown	Newton/McDonald	11070208	5	M	2026 - 2030
54	2008	3118.00	Buffalo Ditch	P	Y	17.30	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Dunklin	08020204		M	2026 - 2030
55	2006	1865.00	Burgher Br.	C	Y	1.50	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Phelps	07140102		M	2026 - 2030
56	2018	3414.00	Burr Oak Cr.	C	Y	6.80	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2024
57	2018	3414.00	Burr Oak Cr.	C	Y	6.80	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2024
58	**2020**	**3414.00**	**Burr Oak Cr.**	**C**	**Y**	**6.80**	**Miles**	**AQL**	**Oxygen, Dissolved (W)**	**Source Unknown**	**Jackson**	**10300101**		L	> 10 years
59	**2020**	**7056.00**	**Busch W.A.- Kraut Run Lake**	**L3**	**Y**	**164.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**St. Charles**	**07110009**	**1**	L	> 10 years
60	2006	7057.00	Busch W.A. No. 35 Lake	L3	Y	51.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	St. Charles	07110009		L	> 10 years
61	**2020**	**7229.00**	**Butler Lake**	**L1**	**Y**	**71.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Bates**	**10290102**	**1 2**	L	> 10 years
62	**2020**	**7384.00**	**Cameron Lake #4 (Grindstone Reservoir)**	**L1**	**Y**	**173.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**DeKalb**	**10280101**	**1 2**	L	> 10 years
63	2006	3234.00	Capps Cr	P	Y	5.00	Miles	WBC A	Escherichia coli (W)	Rural NPS	Barry/Newton	11070207	9	L	> 10 years
64	2016	3241.00	Carver Br.	P	Y	3.00	Miles	WBC A	Escherichia coli (W)	Nonpoint Source	Newton	11070207	9	L	> 10 years
65	**2020**	**7374.00**	**Catclaw Lake**	**L3**	**Y**	**42.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Jackson**	**10290108**	**1**	L	> 10 years
66	2008	1344.00	Cedar Cr.	P	N (10.9)	31.00	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Source Unknown	Cedar	10290106	5	M	2026 - 2030
67	2008	0737.00	Cedar Cr.	C	N (7 9)	37 40	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Source Unknown	Boone	10300102	5	M	2026 - 2030
68	2010	1357.00	Cedar Cr.	C	Y	16.20	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Source Unknown	Dade/Cedar	10290106	5	L	> 10 years
69	2016	1344.00	Cedar Cr.	P	Y	31 00	Miles	WBC A	Escherichia coli (W)	Rural NPS	Cedar	10290106		H	2020
70	2008	1357.00	Cedar Cr.	C	Y	16.20	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Dade/Cedar	10290106		M	2026 - 2030
71	2010	1344.00	Cedar Cr	P	N (10.9)	31.00	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Cedar	10290106		M	2026 - 2030
72	2006	3203.00	Center Cr.	P	N (19)	26.80	Miles	AQL	Cadmium (S)	Tri-State Mining District	Jasper	11070207		H	2022
73	2008	3210.00	Center Cr	P	Y	21.00	Miles	WBC A	Escherichia coli (W)	Rural NPS	Newton/Jasper	11070207	9	L	> 10 years
74	2010	3214.00	Center Cr.	P	Y	4.90	Miles	WBC A	Escherichia coli (W)	Rural NPS	Lawrence/Newton	11070207	9	L	> 10 years
75	2006	3203.00	Center Cr.	P	N (19)	26.80	Miles	AQL	Lead (S)	Tri-State Mining District	Jasper	11070207		H	2022
76	2016	5003.00	Center Creek tributary	C	Y	2.70	Miles	AQL	Cadmium (W)	Oronogo/Duenweg Mining Belt	Jasper	11070207		H	2022
77	**2020**	**5003.00**	**Center Creek tributary**	**C**	**Y**	**2.70**	**Miles**	**AQL**	**Lead (W)**	**Mill Tailings**	**Jasper**	**11070207**		H	2022
78	2016	5003.00	Center Creek tributary	C	Y	2.70	Miles	AQL	Zinc (W)	Oronogo/Duenweg Mining Belt	Jasper	11070207		H	2022
79	2014	7634.00	Chaumiere Lake	UL	Y	3.40	Acres	GEN	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Clay	10300101	4	M	2026 - 2030
80	2012	1781.00	Cinque Hommes Cr.	P	Y	17.10	Miles	WBC B	Escherichia coli (W)	Rural NPS	Perry	07140105		M	2026 - 2030

Row #	Year	WBID	Waterbody	Class	Entire WB Impmd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
81	2016	1781.00	Cinque Hommes Cr	P	Y	17.10	Miles	SCR	Escherichia coli (W)	Rural NPS	Perry	07140105		M	2026 - 2030
82	2018	1000.00	Clark Fk.	C	Y	6.00	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Cole	10300102		L	> 10 years
83	2006	3238.00	Clear Cr	P	Y	11.10	Miles	WBC B	Escherichia coli (W)	Rural NPS	Lawrence/Newton	11070207	9	L	> 10 years
84	2002	3239.00	Clear Cr.	C	Y	3.50	Miles	AQL	Nutrient/Eutrophication Biol. Indicators (W)	Monett WWTP	Barry/Lawrence	11070207	1	H	2020
85	2002	3239.00	Clear Cr	C	Y	3.50	Miles	AQL	Oxygen, Dissolved (W)	Monett WWTP	Barry/Lawrence	11070207		H	2020
86	2006	1333.00	Clear Cr.	P	Y	28.20	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Vernon/St. Clair	10290105		M	2026 - 2030
87	2006	0935.00	Clear Fk.	P	N (3.1)	25.80	Miles	AQL	Oxygen, Dissolved (W)	Knob Noster WWTP	Johnson	10300104		H	2025
88	2014	7326.00	Clearwater Lake	L2	Y	1635.00	Acres	AQL	Chlorophyll-a (W)	Rural NPS	Reynolds/Wayne	11010007	1 7	L	> 10 years
89	2002	7326.00	Clearwater Lake	L2	Y	1635.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Reynolds/Wayne	11010007	7	L	> 10 years
90	2016	7326.00	Clearwater Lake	L2	Y	1635.00	Acres	AQL	Phosphorus, Total (W)	Nonpoint Source	Reynolds/Wayne	11010007	1 7	L	> 10 years
91	2006	1706.00	Coldwater Cr	C	Y	6.90	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis	10300200		H	2025
92	**2020**	**7378.00**	**Coot Lake**	**L3**	**Y**	**20.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Jackson**	**10290108**	**1**	L	> 10 years
93	2016	7378.00	Coot Lake	L3	Y	20.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Jackson	10290108		L	> 10 years
94	2016	7379.00	Cottontail Lake	L3	Y	22.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Jackson	10290108		L	> 10 years
95	**2020**	**3962.00**	**Crackerneck Creek**	**C**	**Y**	**6.00**	**Miles**	**WBC B**	**Escherichia coli (W)**	**Urban Runoff/Storm Sewers**	**Jackson**	**10300101**		L	> 10 years
96	2012	2382.00	Crane Cr.	P	Y	13.20	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Source Unknown	Stone	11010002	5	M	2026 - 2030
97	2016	7334.00	Crane Lake	L3	Y	109.00	Acres	AQL	Chlorophyll-a (W)	Source Unknown	Iron	08020202	1 7	L	> 10 years
98	2016	7334.00	Crane Lake	L3	Y	109.00	Acres	AQL	Phosphorus, Total (W)	Source Unknown	Iron	08020202	1 7	L	> 10 years
99	2012	2816.00	Craven Ditch	C	Y	11.60	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Butler	11010007		L	> 10 years
100	2006	1703.00	Creve Coeur Cr.	C	Y	3.80	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis	10300200		H	2025
101	2008	3961.00	Crooked Creek	C	Y	6.50	Miles	AQL	Cadmium (W)	Buick Lead Smelter	Iron/Crawford	07140102		M	2026 - 2030
102	2010	3961.00	Crooked Creek	C	Y	6.50	Miles	AQL	Copper (W)	Buick Lead Smelter	Iron/Crawford	07140102		M	2026 - 2030
103	2016	7135.00	Crowder St. Park Lake	L3	Y	18.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Grundy	10280102		L	> 10 years
104	**2020**	**0152.00**	**Cuivre R.**	**P**	**Y**	**30.00**	**Miles**	**WBC A**	**Escherichia coli (W)**	**Nonpoint Source**	**Lincoln/St. Charles**	**07110008**		L	> 10 years
105	2006	2636.00	Current R.	P	Y	124.00	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Shannon/Ripley	11010008		L	> 10 years
106	2018	2662.00	Current R.	P	Y	18.80	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Dent/Shannon	11010008		L	> 10 years
107	2018	0221.00	Dardenne Cr.	P	Y	16.50	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Charles	07110009		M	2026 - 2030
108	**2020**	**0222.00**	**Dardenne Cr.**	**C**	**Y**	**8.50**	**Miles**	**WBC B**	**Escherichia coli (W)**	**Urban Runoff and Nonpoint Source**	**St. Charles**	**07110009**		L	> 10 years
109	2006	0219.00	Dardenne Cr.	P1	Y	7.00	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	St. Charles	07110009		M	2026 - 2030
110	2006	3826.00	Deer Creek	P	Y	1.60	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis/St. Louis City	07140101		H	2025
111	2002	7015.00	Deer Ridge Community Lake	L3	Y	39.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Lewis	07110002		L	> 10 years
112	**2020**	**7331.00**	**DiSalvo Lake**	**L3**	**Y**	**210.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**St. Francois**	**08020202**	**1**	L	> 10 years
113	2006	3109.00	Ditch #36	P	Y	7.80	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Dunklin	08020204		M	2026 - 2030
114	2006	3810.00	Douger Br.	C	Y	2.80	Miles	AQL	Lead (S)	Aurora Lead Mining District	Lawrence	11070207		M	2026 - 2030
115	2006	3810.00	Douger Br.	C	Y	2.80	Miles	AQL	Zinc (S)	Aurora Lead Mining District	Lawrence	11070207		M	2026 - 2030
116	**2020**	**7228.00**	**Drexel Lake**	**L1**	**Y**	**28.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Bates**	**10290102**	**1 2**	L	> 10 years
117	2008	3189.00	Dry Fk.	C	Y	10.20	Miles	WBC A	Escherichia coli (W)	Rural NPS	Jasper	11070207	9	L	> 10 years
118	2016	1792.00	Dry Fk.	C	Y	3.20	Miles	WBC B	Escherichia coli (W)	Source Unknown	Perry	07140105		M	2026 - 2030
119	2016	3163.00	Dry Hollow	C	Y	0.50	Miles	SCR	Escherichia coli (W)	Source Unknown	Lawrence	11070207		M	2026 - 2030
120	2016	3570.00	Dutro Carter Cr.	C	Y	0.50	Miles	SCR	Escherichia coli (W)	Source Unknown	Phelps	07140102		M	2026 - 2030
121	2016	3570.00	Dutro Carter Cr.	C	Y	0.50	Miles	WBC B	Escherichia coli (W)	Source Unknown	Phelps	07140102		M	2026 - 2030
122	2006	3569.00	Dutro Carter Cr.	P	N (0.5)	1.50	Miles	AQL	Oxygen, Dissolved (W)	Rolla SE WWTP	Phelps	07140102		M	2026 - 2030

Row #	Year	WBID	Waterbody	Class	Entire WB Imprd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
123	2016	3199.00	Duval Cr.	C	Y	7.00	Miles	WBC B	Escherichia coli (W)	Nonpoint Source	Jasper	11070207	9	L	> 10 years
124	2006	2166.00	Eaton Br.	C	Y	1.20	Miles	AQL	Cadmium (S)	Leadwood tailings pond	St. Francois	07140104		H	2024
125	2006	2166.00	Eaton Br.	C	Y	1.20	Miles	AQL	Cadmium (W)	Leadwood tailings pond	St. Francois	07140104		H	2024
126	2006	2166.00	Eaton Br.	C	Y	1.20	Miles	AQL	Lead (S)	Leadwood tailings pond	St. Francois	07140104		H	2024
127	2018	2166.00	Eaton Br.	C	Y	1 20	Miles	AQL	Lead (W)	Leadwood tailings pond	St. Francois	07140104		H	2024
128	2006	2166.00	Eaton Br.	C	Y	1.20	Miles	AQL	Zinc (S)	Leadwood tailings pond	St. Francois	07140104		H	2024
129	2006	2166.00	Eaton Br	C	Y	1 20	Miles	AQL	Zinc (W)	Leadwood tailings pond	St. Francois	07140104		H	2024
130	**2020**	**7026.00**	**Edina Reservoir**	**L1**	**Y**	**51.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Knox**	**07110003**	**1 2**	L	> 10 years
131	**2020**	**7192.00**	**Edwin A Pape Lake**	**L1**	**Y**	**272.50**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Lafayette**	**10300104**	**1 2**	L	> 10 years
132	2010	0372.00	E. Fk. Crooked R.	P	Y	19.90	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Ray	10300101		M	2026 - 2030
133	2006	0457.00	E Fk Grand R	P	Y	28.70	Miles	WBC A	Escherichia coli (W)	Rural NPS	Worth/Gentry	10280101	2	H	2020
134	**2020**	**0428.00**	**E. Fk. L. Blue R.**	**C**	**N (2.6)**	**3.70**	**Miles**	**AQL**	**Oxygen, Dissolved (W)**	**Source Unknown**	**Jackson**	**10300101**		L	> 10 years
135	**2020**	**0610.00**	**E. Fk. Locust Cr.**	**C**	**Y**	**15.70**	**Miles**	**AQL**	**Chloride (W)**	**Industrial Point Source Discharge**	**Sullivan**	**10280103**		L	> 10 years
136	2008	0608.00	E. Fk. Locust Cr.	P	Y	16.70	Miles	WBC B	Escherichia coli (W)	Milan Lagoon and Nonpoint Source	Sullivan	10280103		H	2025
137	2008	0610.00	E. Fk. Locust Cr.	C	Y	15 70	Miles	WBC A	Escherichia coli (W)	Rural NPS	Sullivan	10280103		H	2025
138	2018	0608.00	E. Fk. Locust Cr	P	Y	16.70	Miles	SCR	Escherichia coli (W)	Milan Lagoon and Nonpoint Source	Sullivan	10280103		H	2025
139	2018	1282.00	E Fk. Tebo Cr	C	Y	14.50	Miles	AQL	Ammonia, Total (W)	Municipal Point Source Discharges	Henry	10290108		L	> 10 years
140	2006	1282.00	E. Fk. Tebo Cr.	C	N (10.4)	14.50	Miles	AQL	Oxygen, Dissolved (W)	Windsor SW WWTP	Henry	10290108		M	2026 - 2030
141	2002	2593.00	Eleven Point R.	P	Y	22.70	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Oregon	11010011		L	> 10 years
142	2006	2597.00	Eleven Point R.	P	Y	11.40	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Oregon	11010011		L	> 10 years
143	2008	2601.00	Eleven Point R	P	Y	22.30	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Oregon	11010011		L	> 10 years
144	2002	0189.00	Elkhorn Cr.	C	N (17.6)	21.40	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Montgomery	07110008		M	2026 - 2030
145	**2020**	**7011.00**	**Ella Ewing Community Lake**	**L3**	**Y**	**15.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Scotland**	**07110002**	**1**	L	> 10 years
146	2006	1283.00	Elm Br.	C	Y	3.00	Miles	AQL	Oxygen, Dissolved (W)	Windsor SE WWTP	Henry	10290108		M	2026 - 2030
147	2018	4110.00	Engelholm Creek	C	Y	3.00	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		L	> 10 years
148	2018	4110.00	Engelholm Creek	C	Y	3.00	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		L	> 10 years
149	2012	1704.00	Fee Fee Cr (new)	P	Y	1.50	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis	10300200		M	2026 - 2030
150	2012	1704.00	Fee Fee Cr. (new)	P	Y	1.50	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	10300200		H	2020
151	2012	7237.00	Fellows Lake	L1	Y	800.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Greene	10290106	2	L	> 10 years
152	2016	3595.00	Fenton Cr.	P	Y	0.50	Miles	AQL	Chloride (W)	Source Unknown	St. Louis	07140102		M	2026 - 2030
153	2012	3595.00	Fenton Cr.	P	Y	0.50	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140102		M	2026 - 2030
154	2012	2186.00	Fishpot Cr.	P	Y	3.50	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis	07140102		M	2026 - 2030
155	2016	3220.00	Fivemile Cr	P	N (4.9)	5.00	Miles	WBC B	Escherichia coli (W)	Rural NPS	Newton	11070207	9	L	> 10 years
156	2016	0864.00	Flat Cr.	P	Y	23.70	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Pettis/Morgan	10300103		L	> 10 years
157	2006	2168.00	Flat River Cr.	C	N (4.7)	10.00	Miles	AQL	Cadmium (W)	Old Lead Belt tailings	St. Francois	07140104		H	2024
158	2012	3938.00	Flat River tributary	US	Y	0.30	Miles	GEN	Zinc (W)	Elvins Chat Pile	St. Francois	07140104	4	H	2024
159	**2020**	**3587.00**	**Fleck Cr.**	**C**	**Y**	**4.30**	**Miles**	**AQL**	**Sulfate + Chloride (W)**	**Coal Mining**	**Barton**	**10290104**		L	> 10 years
160	2010	7151.00	Forest Lake	L1	Y	580.00	Acres	AQL	Chlorophyll-a (W)	Rural NPS	Adair	10280202	1 2 7	L	> 10 years
161	2016	7151.00	Forest Lake	L1	Y	580.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Adair	10280202	2 7	L	> 10 years
162	2016	3943.00	Foster Branch tributary	C	N (0.2)	2.00	Miles	AQL	Oxygen, Dissolved (W)	Ashland WWTF	Boone	10300102		M	2026 - 2030
163	2018	7324.00	Fourche Lake	L3	Y	49.00	Acres	AQL	Chlorophyll-a (W)	Source Unknown	Ripley	11010009	1 7	L	> 10 years
164	2018	7324.00	Fourche Lake	L3	Y	49.00	Acres	AQL	Nitrogen, Total (W)	Source Unknown	Ripley	11010009	1 7	L	> 10 years
165	2006	0747.00	Fowler Cr.	C	Y	6.00	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Boone	10300102		M	2026 - 2030

Row #	Year	WBID	Waterbody	Class	Entire WB Imprd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
166	2010	7382.00	Foxboro Lake	L3	Y	22.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Franklin	07140103		L	> 10 years
167	2008	0038.00	Fox R	P	Y	42.00	Miles	WBC B	Escherichia coli (W)	Rural NPS	Clark	07110001		M	2026 - 2030
168	2014	7008.00	Fox Valley Lake	L3	Y	89.00	Acres	AQL	Chlorophyll-a (W)	Rural NPS	Clark	07110001	1 7	L	> 10 years
169	2014	7008.00	Fox Valley Lake	L3	Y	89.00	Acres	AQL	Nitrogen, Total (W)	Rural NPS	Clark	07110001	1 7	L	> 10 years
170	2010	7008.00	Fox Valley Lake	L3	Y	89.00	Acres	AQL	Phosphorus, Total (W)	Rural NPS	Clark	07110001	1 7	L	> 10 years
171	**2020**	**7328.00**	**Fredricktown City Lake**	**L1**	**Y**	**80.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Madison**	**08020202**	**1 2**	L	> 10 years
172	2002	7280.00	Frisco Lake	L3	Y	5.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Phelps	07140102		L	> 10 years
173	2016	4061.00	Gailey Branch	C	Y	3.20	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Pike	07110007		M	2026 - 2030
174	2012	1004.00	Gans Cr.	C	Y	5.50	Miles	WBC A	Escherichia coli (W)	Rural NPS	Boone	10300102		M	2026 - 2030
175	**2020**	**7426.00**	**Garden City New Lake**	**L1**	**Y**	**39.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Cass**	**10290108**	**1 2**	L	> 10 years
176	2002	1455.00	Gasconade R.	P	Y	264.00	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Pulaski	10290203	2	L	> 10 years
177	2006	2184.00	Grand Glaize Cr.	C	Y	4.00	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis	07140102		H	2025
178	2008	2184.00	Grand Glaize Cr.	C	Y	4.00	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140102		M	2026 - 2030
179	2002	2184.00	Grand Glaize Cr.	C	Y	4.00	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	St. Louis	07140102		L	> 10 years
180	2006	0593.00	Grand R.	P	Y	56.00	Miles	WBC A	Escherichia coli (W)	Rural NPS	Livingston/Chariton	10280103	2	M	2026 - 2030
181	2006	1713.00	Gravois Creek	C	Y	10.70	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		H	2025
182	2008	1712.00	Gravois Creek	P	Y	2.30	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis/St. Louis City	07140101		M	2026 - 2030
183	2016	4051.00	Gravois Creek tributary	C	Y	1.90	Miles	WBC B	Escherichia coli (W)	Municipal, Urbanized High Density Area, Urban Runoff/Storm Sewers	St. Louis	07140101		L	> 10 years
184	**2020**	**7161.00**	**Green City Lake**	**L1**	**Y**	**57.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Sullivan**	**10280202**	**1 2**	L	> 10 years
185	2006	1009.00	Grindstone Cr	C	Y	2.50	Miles	WBC A	Escherichia coli (W)	Rural NPS	Boone	10300102		M	2026 - 2030
186	**2020**	**7385.00**	**Harmony Mission Lake**	**L3**	**Y**	**96.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Bates**	**10290103**	**1**	L	> 10 years
187	**2020**	**7386.00**	**Harrison County Lake**	**L1**	**Y**	**280.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Harrison**	**10280101**	**1 2**	L	> 10 years
188	2014	7386.00	Harrison County Lake	L1	Y	280.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Harrison	10280101	2	L	> 10 years
189	**2020**	**7214.00**	**Harrisonville City Lake**	**L1**	**Y**	**419.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Cass**	**10290108**	**1 2**	L	> 10 years
190	2010	7152.00	Hazel Creek Lake	L1	Y	518.00	Acres	AQL	Chlorophyll-a (W)	Rural NPS	Adair	10280201	1 2 7	L	> 10 years
191	2018	7152.00	Hazel Creek Lake	L1	Y	518.00	Acres	AQL	Nitrogen, Total (W)	Nonpoint Source	Adair	10280201	1 2 7	L	> 10 years
192	**2020**	**7387.00**	**Hazel Hill Lake**	**L3**	**Y**	**62.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Johnson**	**10300104**	**1**	L	> 10 years
193	2016	2196.00	Headwater Div. Chan.	P	Y	20.30	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Cape Girardeau	07140105	2	L	> 10 years
194	2008	0848.00	Heaths Cr.	P	Y	21.00	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Pettis/Cooper	10300103		M	2026 - 2030
195	2006	3226.00	Hickory Cr.	P	Y	4.90	Miles	WBC A	Escherichia coli (W)	Rural NPS	Newton	11070207	9	L	> 10 years
196	**2020**	**7190.00**	**Higginsville Reservoir (South)**	**L1**	**Y**	**147.10**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Lafayette**	**10300104**	**1 2**	L	> 10 years
197	2012	1008.00	Hinkson Cr.	C	Y	18.80	Miles	WBC A	Escherichia coli (W)	Nonpoint Source	Boone	10300102		M	2026 - 2030
198	2016	1007.00	Hinkson Cr.	P	Y	7.60	Miles	WBC B	Escherichia coli (W)	Nonpoint Source	Boone	10300102		M	2026 - 2030
199	2016	7193.00	Holden City Lake	L1	Y	290.20	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Johnson	10300104	2	L	> 10 years
200	2012	1011.00	Hominy Br.	C	Y	1.00	Miles	WBC B	Escherichia coli (W)	Rural NPS	Boone	10300102		M	2026 - 2030
201	2010	3169.00	Honey Cr.	P	Y	16.50	Miles	WBC B	Escherichia coli (W)	Rural NPS	Lawrence	11070207	9	L	> 10 years
202	2010	3170.00	Honey Cr.	C	Y	2.70	Miles	WBC B	Escherichia coli (W)	Rural NPS	Lawrence	11070207	9	L	> 10 years
203	2018	1251.00	Honey Cr.	C	Y	8.50	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Henry	10290108		L	> 10 years
204	2010	1348.00	Horse Cr.	P	Y	27.70	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Source Unknown	Vernon/Cedar	10290106	5	L	> 10 years
205	2008	1348.00	Horse Cr.	P	Y	27.70	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Vernon/Cedar	10290106		M	2026 - 2030
206	2014	3413.00	Horseshoe Cr.	C	Y	5.80	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Lafayette/Jackson	10300101		M	2026 - 2030
207	2002	7388.00	Hough Park Lake	L3	Y	10.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Cole	10300102		L	> 10 years
208	**2020**	**7029.00**	**Hunnewell Lake**	**L3**	**Y**	**228.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Shelby**	**07110004**	**1 8**	L	> 10 years

Row #	Year	WBID	Waterbody	Class	Entire WB Imprd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
209	2012	7029.00	Hunnewell Lake	L3	Y	228.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Shelby	07110004		L	> 10 years
210	2010	0420.00	Indian Cr.	C	Y	3.40	Miles	AQL	Chloride (W)	Road/Bridge Runoff, Non-construction	Jackson	10300101		M	2026 - 2030
211	2002	0420.00	Indian Cr.	C	Y	3.40	Miles	WBC A	Escherichia coli (W)	Leawood, KS WWTP	Jackson	10300101		H	2023
212	2008	7389.00	Indian Creek Community Lake	L3	Y	185.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Livingston	10280101		L	> 10 years
213	2014	3223.00	Jacobs Br	P	Y	1.60	Miles	AQL	Cadmium (S)	Tri-State Mining District	Newton	11070207		M	2026 - 2030
214	2014	3223.00	Jacobs Br.	P	Y	1.60	Miles	AQL	Cadmium (W)	Tri-State Mining District	Newton	11070207		M	2026 - 2030
215	2014	3223.00	Jacobs Br.	P	Y	1.60	Miles	AQL	Lead (S)	Tri-State Mining District	Newton	11070207		M	2026 - 2030
216	2014	3223.00	Jacobs Br.	P	Y	1.60	Miles	AQL	Zinc (S)	Tri-State Mining District	Newton	11070207		M	2026 - 2030
217	2012	3223.00	Jacobs Br.	P	Y	1.60	Miles	AQL	Zinc (W)	Tri-State Mining District	Newton	11070207		M	2026 - 2030
218	**2020**	**2365.00**	**James R.**	**P**	**Y**	**39.00**	**Miles**	**WBC A**	**Escherichia coli (W)**	**Source Unknown**	**Greene**	**11010002**	**2**	L	> 10 years
219	2012	3207.00	Jenkins Cr.	P	Y	2.80	Miles	WBC A	Escherichia coli (W)	Rural NPS	Jasper	11070207	9	L	> 10 years
220	2014	3208.00	Jenkins Cr.	C	Y	4.80	Miles	WBC A	Escherichia coli (W)	Rural NPS	Newton/Jasper	11070207	9	L	> 10 years
221	2012	3205.00	Jones Cr.	P	Y	7.50	Miles	WBC A	Escherichia coli (W)	Rural NPS	Newton/Jasper	11070207	9	L	> 10 years
222	2016	5006.00	Joplin Creek	C	Y	3.90	Miles	AQL	Cadmium (W)	Mill Tailings	Jasper	11070207		L	> 10 years
223	2018	5006.00	Joplin Creek	C	Y	3.90	Miles	AQL	Zinc (W)	Mill Tailings	Jasper	11070207		L	> 10 years
224	2014	3374.00	Jordan Cr.	P	Y	3.80	Miles	AQL	Polycyclic Aromatic Hydrocarbons-PAHs (S)	Urban NPS	Greene	11010002		L	> 10 years
225	2012	3592.00	Keifer Cr.	P	Y	1.20	Miles	WBC A	Escherichia coli (W)	Rural NPS	St. Louis	07140102		M	2026 - 2030
226	2016	7657.00	Knox Village Lake	L3	Y	3.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Jackson	10300101		L	> 10 years
227	2016	2171.00	Koen Cr.	C	Y	1.00	Miles	AQL	Lead (S)	Mine Tailings	St. Francois	07140104		H	2024
228	**2020**	**7023.00**	**Labelle Lake #2**	**L1**	**Y**	**98.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Lewis**	**07110003**	**1 2**	L	> 10 years
229	2016	7023.00	Labelle Lake #2	L1	Y	98.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Lewis	07110003	2	L	> 10 years
230	2010	7297.00	Lac Capri	L3	Y	106.00	Acres	AQL	Nitrogen, Total (W)	Rural, Residential Areas	St. Francois	07140104	1 6 7	L	> 10 years
231	2016	7659.00	Lake Boulin	L3	Y	20.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Cape Girardeau	07140105		L	> 10 years
232	2002	7469.00	Lake Buteo	L3	Y	7.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Johnson	10300104		L	> 10 years
233	**2020**	**7311.00**	**Lake Girardeau**	**L3**	**Y**	**144.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Cape Girardeau**	**07140107**	**1**	L	> 10 years
234	**2020**	**7332.00**	**Lake Killarney**	**L3**	**Y**	**61.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Iron**	**08020202**	**1**	L	> 10 years
235	2018	7049.00	Lake Lincoln	L3	Y	88.00	Acres	AQL	Chlorophyll-a (W)	Source Unknown	Lincoln	07110008	1 7	L	> 10 years
236	2002	7436.00	Lake of the Woods	L3	Y	3.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Boone	10300102		L	> 10 years
237	2008	7629.00	Lake of the Woods	UL	Y	7.00	Acres	GEN	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Jackson	10300101	4	L	> 10 years
238	2016	7132.00	Lake Paho	L3	Y	273.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Mercer	10280102		L	> 10 years
239	**2020**	**7312.00**	**Lake Springfield**	**L3**	**Y**	**293.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Greene**	**11010002**	**1**	L	> 10 years
240	2014	7055.00	Lake Ste. Louise	L3	Y	71.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	St. Charles	07110009		L	> 10 years
241	**2020**	**7054.00**	**Lake St. Louis**	**L3**	**Y**	**444.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**St. Charles**	**07110009**	**1**	L	> 10 years
242	2016	7035.00	Lake Tom Sawyer	L3	Y	4.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Monroe	07110006		L	> 10 years
243	**2020**	**7341.00**	**Lake Tywappity**	**L3**	**Y**	**43.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Scott**	**08020204**	**1**	L	> 10 years
244	**2020**	**7336.00**	**Lake Wappapello**	**L2**	**Y**	**7827.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Wayne**	**08020202**	**1**	L	> 10 years
245	2010	7212.00	Lake Winnebago	L3	Y	272.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Cass	10290108		L	> 10 years
246	2006	0847.00	Lamine R.	P	Y	64.00	Miles	WBC A	Escherichia coli (W)	Rural NPS	Morgan/Cooper	10300103		H	2023
247	2018	3105.00	Lateral #2 Main Ditch	P	Y	11.50	Miles	AQL	Ammonia, Total (W)	Source Unknown	Stoddard	08020204		L	> 10 years
248	2006	3105.00	Lateral #2 Main Ditch	P	Y	11.50	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Stoddard	08020204		M	2026 - 2030
249	2014	1529.00	L. Beaver Cr.	C	Y	3.50	Miles	WBC A	Escherichia coli (W)	Source Unknown	Phelps	10290203		M	2026 - 2030

Row #	Year	WBID	Waterbody	Class	Entire WB Imprd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
250	2008	1529.00	L. Beaver Cr.	C	Y	3.50	Miles	AQL	Sedimentation/Siltation (S)	Smith Sand and Gravel	Phelps	10290203		M	2026 - 2030
251	2012	0422.00	L Blue R.	P	Y	35.10	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2024
252	2018	0422.00	L. Blue R.	P	Y	35.10	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2024
253	2012	1003.00	L Bonne Femme Cr.	P	Y	9.00	Miles	WBC B	Escherichia coli (W)	Source Unknown	Boone	10300102		M	2026 - 2030
254	2006	1863.00	L. Dry Fk.	P	N (1)	5.20	Miles	AQL	Oxygen, Dissolved (W)	Rolla SE WWTP	Phelps	07140102		M	2026 - 2030
255	2006	1864.00	L. Dry Fk.	C	N (0.6)	4.70	Miles	AQL	Oxygen, Dissolved (W)	Rolla SE WWTP	Phelps	07140102		M	2026 - 2030
256	2008	1864.00	L. Dry Fk.	C	Y	4.70	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Phelps	07140102		M	2026 - 2030
257	2006	1325.00	L Dry Wood Cr.	P	Y	20.50	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Vernon	10290104		M	2026 - 2030
258	2010	1326.00	L. Dry Wood Cr.	C	Y	15.60	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Barton/Vernon	10290104		M	2026 - 2030
259	2012	3137.00	Lee Rowe Ditch	C	Y	6.00	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Mississippi	08020201		M	2026 - 2030
260	2018	7346.00	Lewis Lake	L3	Y	6.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Stoddard	08020204		L	> 10 years
261	2002	7020.00	Lewistown Lake	L1	Y	35.00	Acres	DWS	Atrazine (W)	Rural NPS	Lewis	07110002	2	M	2026 - 2030
262	2012	3575.00	Line Cr.	C	Y	7.00	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Platte	10240011		H	2023
263	2018	4107.00	Little Blue River tributary	C	Y	5.50	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		L	> 10 years
264	**2020**	**7180.00**	**Little Dixie Lake**	**L3**	**Y**	**176.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Callaway**	**10300102**	**1**	L	> 10 years
265	2010	3279.00	L. Lost Cr.	P	Y	5.80	Miles	WBC B	Escherichia coli (W)	Rural NPS	Newton	11070206		H	2023
266	2006	0606.00	Locust Cr.	P	N (37.7)	91.70	Miles	WBC B	Escherichia coli (W)	Rural NPS	Putnam/Sullivan	10280103	2	H	2025
267	2012	2763.00	Logan Cr.	P	N (6.1)	36.00	Miles	AQL	Lead (S)	Sweetwater Lead Mine/Mill	Reynolds	11010007		M	2026 - 2030
268	2006	0696.00	Long Branch Cr.	C	N (1.8)	14.80	Miles	AQL	Oxygen, Dissolved (W)	Atlanta WWTP	Macon	10280203		M	2026 - 2030
269	2002	7097.00	Longview Lake	L2	Y	953.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Jackson	10300101		L	> 10 years
270	2008	3652.00	L. Osage R.	C	Y	23.60	Miles	WBC B	Escherichia coli (W)	Rural NPS	Vernon	10290103		M	2026 - 2030
271	2006	3278.00	Lost Cr.	P	Y	8.50	Miles	WBC A	Escherichia coli (W)	Rural NPS	Newton	11070206		H	2021
272	2014	2854.00	L. St. Francis R.	P	N (24.2)	32.40	Miles	AQL	Lead (S)	Catherine Lead Mine, pos. Mine La Motte	Madison	08020202	2	H	2024
273	2006	2814.00	Main Ditch	C	Y	13.00	Miles	AQL	pH (W)	Poplar Bluff WWTP	Butler	11010007		M	2026 - 2030
274	2006	2814.00	Main Ditch	C	Y	13.00	Miles	AQL	Temperature, water (W)	Channelization	Butler	11010007		L	> 10 years
275	2012	3839.00	Maline Cr.	C	Y	0.50	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis City	07140101		M	2026 - 2030
276	2016	3839.00	Maline Cr.	C	Y	0.50	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis City	07140101		M	2026 - 2030
277	2016	7398.00	Maple Leaf Lake	L3	Y	127.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Lafayette	10300104		L	> 10 years
278	2002	7033.00	Mark Twain Lake	L2	Y	18132.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Ralls	07110005	2	L	> 10 years
279	2018	4109.00	Martigney Creek	C	Y	1.60	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		M	2026 - 2030
280	2018	4109.00	Martigney Creek	C	Y	1.60	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		M	2026 - 2030
281	2014	3596.00	Mattese Cr.	P	Y	1.10	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140102		M	2026 - 2030
282	2016	1786.00	McClanahan Cr.	C	Y	2.50	Miles	SCR	Escherichia coli (W)	Source Unknown	Perry	07140105		M	2026 - 2030
283	2016	1786.00	McClanahan Cr	C	Y	2.50	Miles	WBC B	Escherichia coli (W)	Source Unknown	Perry	07140105		M	2026 - 2030
284	2008	2183.00	Meramec R.	P	Y	22.80	Miles	AQL	Lead (S)	Old Lead belt tailings	St. Louis	07140102	2	M	2026 - 2030
285	2010	0123.00	M. Fk Salt R.	C	N (11.4)	25.40	Miles	AQL	Oxygen, Dissolved (W)	Macon WWTP	Macon	07110006		M	2026 - 2030
286	2008	1299.00	Miami Cr.	P	Y	19.60	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Bates	10290102		M	2026 - 2030
287	2006	0468.00	Middle Fk Grand R.	P	Y	27.50	Miles	WBC A	Escherichia coli (W)	Rural NPS	Worth/Gentry	10280101		H	2023
288	2010	3262.00	Middle Indian Cr.	C	Y	3.50	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Source Unknown	Newton	11070208	5	M	2026 - 2030
289	2010	3263.00	Middle Indian Cr.	P	Y	2.20	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Source Unknown	Newton	11070208	5	M	2026 - 2030

Row #	Year	WBID	Waterbody	Class	Entire WB Impmd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
290	2008	3263.00	Middle Indian Cr.	P	Y	2.20	Miles	WBC B	Escherichia coli (W)	Rural NPS	Newton	11070208		H	2021
291	2016	4066.00	Mill Creek	C	Y	3.40	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2024
292	2016	4066.00	Mill Creek	C	Y	3.40	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2024
293	2016	4066.00	Mill Creek	C	Y	3 40	Miles	AQL	Oxygen, Dissolved (W)	Urban Runoff/Storm Sewers	Jackson	10300101		M	2026 - 2030
294	2008	1604.00	Missouri R.	P	N (33.9)	104.50	Miles	WBC B	Escherichia coli (W)	Municipal Point Source Discharges, Nonpoint Source	St. Charles/St. Louis	10300200	2	L	> 10 years
295	2010	0226.00	Missouri R.	P	Y	184 50	Miles	WBC B	Escherichia coli (W)	Municipal Point Source Discharges, Nonpoint Source	Atchison/Jackson	10240011	2	L	> 10 years
296	2012	0356.00	Missouri R.	P	Y	129.00	Miles	WBC B	Escherichia coli (W)	Municipal Point Source Discharges, Nonpoint Source	Jackson/Chariton	10300101	2	L	> 10 years
297	**2020**	**7031.00**	**Monroe City Lake**	**L1**	**Y**	**94.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Ralls**	**07110007**	**1 2**	L	> 10 years
298	2014	7031.00	Monroe City Lake	L1	Y	94.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Ralls	07110007	2	L	> 10 years
299	**2020**	**7034.00**	**Monroe City Lake B**	**L1**	**Y**	**55.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Monroe**	**07110007**	**1 2**	L	> 10 years
300	2018	7301.00	Monsanto Lake	L3	Y	18.00	Acres	AQL	Chlorophyll-a (W)	Source Unknown	St. Francois	07140104	1 3 7	L	> 10 years
301	2016	7301.00	Monsanto Lake	L3	Y	18.00	Acres	AQL	Nitrogen, Total (W)	Source Unknown	St. Francois	07140104	1 3 7	L	> 10 years
302	2018	7301.00	Monsanto Lake	L3	Y	18.00	Acres	AQL	Phosphorus, Total (W)	Source Unknown	St. Francois	07140104	1 3 7	L	> 10 years
303	**2020**	**7402.00**	**Mozingo Lake**	**L1**	**Y**	**998.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Nodaway**	**10240013**	**1 2**	L	> 10 years
304	2010	7402.00	Mozingo Lake	L1	Y	998.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Nodaway	10240013	2	L	> 10 years
305	2018	0853.00	Muddy Cr.	P	Y	62.20	Miles	WBC B	Escherichia coli (W)	Rural NPS	Pettis	10300103		M	2026 - 2030
306	**2020**	**7136.00**	**New Marceline City Lake**	**L1**	**Y**	**160.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Chariton**	**10280103**	**1 2**	L	> 10 years
307	2016	0158.00	N. Fk. Cuivre R.	P	Y	25 10	Miles	WBC A	Escherichia coli (W)	Rural NPS	Pike/Lincoln	07110008		H	2020
308	2018	0110.00	N. Fk. Salt R.	P	Y	84.90	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Shelby/Monroe	07110005	2	L	> 10 years
309	2008	3186.00	N Fk Spring R.	P	Y	17.40	Miles	WBC B	Escherichia coli (W)	Rural NPS	Jasper	11070207	9	L	> 10 years
310	2008	3188.00	N. Fk. Spring R.	C	Y	55.90	Miles	WBC B	Escherichia coli (W)	Rural NPS	Dade/Jasper	11070207	9	L	> 10 years
311	2006	3188.00	N Fk Spring R.	C	Y	55.90	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Dade/Jasper	11070207		M	2026 - 2030
312	2012	3260.00	N. Indian Cr.	P	Y	5.20	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Source Unknown	Newton	11070208	5	M	2026 - 2030
313	2008	3260.00	N Indian Cr.	P	Y	5.20	Miles	WBC B	Escherichia coli (W)	Rural NPS	Newton	11070208		H	2021
314	2014	0227.00	Nishnabotna R.	P	Y	10.20	Miles	WBC B	Escherichia coli (W)	Rural NPS	Atchison	10240004	2	M	2026 - 2030
315	2018	0227.00	Nishnabotna R	P	Y	10.20	Miles	SCR	Escherichia coli (W)	Rural NPS	Atchison	10240004	2	M	2026 - 2030
316	2014	7316.00	Noblett Lake	L3	Y	26.00	Acres	AQL	Chlorophyll-a (W)	Nonpoint Source	Douglas	11010006	1 7	L	> 10 years
317	2002	7316.00	Noblett Lake	L3	Y	26.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Douglas	11010006	7	L	> 10 years
318	2014	7316.00	Noblett Lake	L3	Y	26.00	Acres	AQL	Phosphorus, Total (W)	Nonpoint Source	Douglas	11010006	1 7	L	> 10 years
319	2006	0550.00	No Cr.	P	Y	28.70	Miles	WBC B	Escherichia coli (W)	Rural NPS	Grundy/Livingston	10280102		M	2026 - 2030
320	2010	0550.00	No Cr.	P	Y	28.70	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Grundy/Livingston	10280102		M	2026 - 2030
321	**2020**	**7076.00**	**Nodaway Lake**	**L3**	**Y**	**73.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Nodaway**	**10240013**	**1**	L	> 10 years
322	2010	0279.00	Nodaway R.	P	Y	59.30	Miles	WBC B	Escherichia coli (W)	Rural NPS	Nodaway/Andrew	10240010		H	2020
323	2016	7317.00	Norfork Lake	L2	Y	1000.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Ozark	11010006		L	> 10 years
324	2010	7109.00	North Bethany City Reservoir	L3	Y	78.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Harrison	10280101		L	> 10 years
325	2014	3811.00	North Branch Wilsons Cr.	P	Y	3.80	Miles	AQL	Zinc (S)	Urban NPS	Greene	11010002		M	2026 - 2030
326	**2020**	**7218.00**	**North Lake**	**L3**	**Y**	**19.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Cass**	**10290108**	**1**	L	> 10 years
327	2016	1794.00	Omete Cr.	C	Y	1.20	Miles	SCR	Escherichia coli (W)	Source Unknown	Perry	07140105		M	2026 - 2030
328	2016	1794.00	Omete Cr.	C	Y	1.20	Miles	WBC B	Escherichia coli (W)	Source Unknown	Perry	07140105		M	2026 - 2030
329	2018	3190.00	Opossum Cr.	C	Y	6.40	Miles	WBC B	Escherichia coli (W)	Rural NPS	Jasper	11070207	9	L	> 10 years
330	2016	1293.00	Osage R.	P	Y	50.70	Miles	WBC A	Escherichia coli (W)	Source Unknown	Vernon/St. Clair	10290105		H	2020
331	2006	1373.00	Panther Cr.	C	Y	9.70	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Polk/St. Clair	10290106		M	2026 - 2030

Row #	Year	WBID	Waterbody	Class	Entire WB Imprd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
332	2008	2373.00	Pearson Cr.	P	Y	8.00	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Source Unknown	Greene	11010002	5	L	2031
333	2006	2373.00	Pearson Cr.	P	Y	8.00	Miles	WBC A	Escherichia coli (W)	Rural NPS	Greene	11010002		L	2031
334	2016	0099.00	Peno Cr.	C	Y	14.40	Miles	AQL	Oxygen, Dissolved (W)	Northeast Correctional Center WWTP	Pike	07110007		M	2026 - 2030
335	**2020**	**7273.00**	**Perry County Community Lake**	**L3**	**Y**	**89.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Perry**	**07140105**	**1**	L	> 10 years
336	2008	7628.00	Perry Phillips Lake	UL	Y	32.00	Acres	GEN	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Boone	10300102	4	L	> 10 years
337	2002	0218.00	Peruque Cr.	C	Y	10.90	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Nonpoint Source	Warren/St. Charles	07110009	5	M	2026 - 2030
338	2012	0215.00	Peruque Cr.	P1	Y	9.60	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	St. Charles	07110009		M	2026 - 2030
339	2016	0218.00	Peruque Cr.	C	Y	10.90	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Warren/St. Charles	07110009		M	2026 - 2030
340	2018	0785.00	Petite Saline Cr.	P	Y	21.00	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Cooper/Moniteau	10300102		L	> 10 years
341	2010	2815.00	Pike Cr.	C	Y	6.00	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Butler	11010007		M	2026 - 2030
342	2010	0312.00	Platte R.	P	Y	142.40	Miles	WBC B	Escherichia coli (W)	Rural NPS	Worth/Platte	10240012	2	H	2020
343	2012	1327.00	Pleasant Run Cr.	C	Y	7.60	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Vernon	10290104		M	2026 - 2030
344	2006	3120.00	Pole Cat Slough	P	Y	12.60	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Dunklin	08020204		M	2026 - 2030
345	2014	3120.00	Pole Cat Slough	P	Y	12.60	Miles	AQL	Temperature, water (W)	Source Unknown	Dunklin	08020204		M	2026 - 2030
346	**2020**	**7238.00**	**Pomme de Terre Lake**	**L2**	**Y**	**7820.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Hickory/Polk**	**10290107**	**1**	L	> 10 years
347	**2020**	**7213.00**	**Raintree Lake**	**L3**	**Y**	**248.10**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Cass**	**10290108**	**1**	L	> 10 years
348	**2020**	**7083.00**	**Ray County Community Lake**	**L3**	**Y**	**23.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Ray**	**10300101**	**1**	L	> 10 years
349	2018	0743.00	Renfro Cr	C	Y	1.50	Miles	AQL	Oxygen, Dissolved (W)	Abandoned Mine Lands and Rural NPS	Callaway/Boone	10300102		L	> 10 years
350	2016	7204.00	Rinquelin Trail Community Lake	L3	Y	27.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Maries	10290111		L	> 10 years
351	2006	1710.00	River des Peres	P	Y	2.60	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis City	07140101		H	2025
352	2006	3972.00	River des Peres	C	Y	13.60	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		H	2025
353	2012	1710.00	River des Peres	P	Y	2.60	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis City	07140101		M	2026 - 2030
354	2016	3972.00	River des Peres	C	Y	13.60	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		M	2026 - 2030
355	2016	3972.00	River des Peres	C	Y	13.60	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		M	2026 - 2030
356	2018	4111.00	River des Peres tributary	C	Y	1.80	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		L	> 10 years
357	2018	4111.00	River des Peres tributary	C	Y	1.80	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		L	> 10 years
358	2018	4111.00	River des Peres tributary	C	Y	1.80	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		M	2026 - 2030
359	2018	4106.00	Rock Creek	C	Y	6.20	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson/Clay	10300101		H	2023
360	2018	4106.00	Rock Creek	C	Y	6.20	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson/Clay	10300101		H	2023
361	**2020**	**7086.00**	**Rocky Hollow Lake**	**L3**	**Y**	**20.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Clay**	**10300101**	**1**	L	> 10 years
362	**2020**	**7164.00**	**Rothwell Lake**	**L3**	**Y**	**27.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Randolph**	**10280203**	**1**	L	> 10 years
363	2018	3577.00	Sadler Br.	C	Y	0.80	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Polk	10290106		L	> 10 years
364	2010	0594.00	Salt Cr.	C	Y	14.90	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Chariton	10280103		M	2026 - 2030
365	2014	0893.00	Salt Fk.	P	Y	26.70	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Saline	10300104		M	2026 - 2030
366	2012	2113.00	Salt Pine Cr.	C	Y	1.20	Miles	AQL	Lead (S)	Barite tailings pond	Washington	07140104		M	2026 - 2030
367	2012	2113.00	Salt Pine Cr	C	Y	1.20	Miles	AQL	Zinc (S)	Barite tailings pond	Washington	07140104		M	2026 - 2030
368	2012	0103.00	Salt R.	P1	Y	9.30	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Ralls	07110007	2	L	> 10 years
369	2008	0091.00	Salt R.	P	Y	29.00	Miles	AQL	Oxygen, Dissolved (W)	Mark Twain Lake re-regulation dam	Ralls/Pike	07110007	2	L	> 10 years
370	2014	0103.00	Salt R.	P1	Y	9.30	Miles	AQL	Oxygen, Dissolved (W)	Cannon Dam	Ralls	07110007	2	L	> 10 years
371	2006	0655.00	S. Blackbird Cr.	C	Y	13.00	Miles	AQL	Ammonia, Total (W)	Source Unknown	Putnam	10280201		M	2026 - 2030
372	2006	0142.00	S. Fk. Salt R.	C	N (20.1)	40.10	Miles	AQL	Oxygen, Dissolved (W)	Mexico WWTP, Rural Nonpoint Source	Callaway/Audrain	07110006		M	2026 - 2030

Row #	Year	WBID	Waterbody	Class	Entire WB Imprd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
373	**2020**	**0141.00**	**S. Fk. Salt R.**	**P**	**Y**	**9.30**	**Miles**	**AQL**	**pH (W)**	**Nonpoint Source**	**Monroe**	**07110006**		L	> 10 years
374	2006	1249.00	S. Grand R.	P	Y	66.80	Miles	WBC B	Escherichia coli (W)	Rural NPS	Cass/Henry	10290108		H	2020
375	**2020**	**2865.00**	**Shays Cr.**	**C**	**Y**	**1.70**	**Miles**	**AQL**	**Lead (S)**	**Mine La Motte**	**Madison**	**08020202**		L	> 10 years
376	**2020**	**7042.00**	**Shelbina Lake**	**L1**	**Y**	**45.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Shelby**	**07110005**	**1 2**	L	> 10 years
377	2014	3222.00	Shoal Cr.	P	N (3.8)	50.50	Miles	AQL	Zinc (S)	Mill Tailings	Newton	11070207	2	M	2026 - 2030
378	2014	3981.00	Shoal Creek tributary	C	Y	1.90	Miles	GEN	Cadmium (W)	Tanyard Hollow Pits	Jasper/Newton	11070207	4	M	2026 - 2030
379	**2020**	**3982.00**	**Shoal Creek tributary**	**C**	**Y**	**2.20**	**Miles**	**AQL**	**Cadmium (W)**	**Mill Tailings**	**Jasper**	**11070207**		M	2026 - 2030
380	2014	3981.00	Shoal Creek tributary	C	Y	1.90	Miles	GEN	Zinc (W)	Tanyard Hollow Pits	Jasper/Newton	11070207	4	M	2026 - 2030
381	2014	3982.00	Shoal Creek tributary	C	Y	2.20	Miles	AQL	Zinc (W)	Mill Tailings	Jasper	11070207		M	2026 - 2030
382	2018	3244.00	Silver Cr.	P	Y	1.90	Miles	AQL	Zinc (S)	Mill Tailings	Newton	11070207		M	2026 - 2030
383	2012	3259.00	S. Indian Cr.	P	Y	8.70	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Source Unknown	McDonald/Newton	11070208	5	M	2026 - 2030
384	2008	3259.00	S. Indian Cr.	P	Y	8.70	Miles	WBC B	Escherichia coli (W)	Rural NPS	McDonald/Newton	11070208		H	2021
385	2014	3754.00	Slater Br.	C	Y	3 70	Miles	WBC B	Escherichia coli (W)	Nonpoint Source	Jasper	11070207	9	L	> 10 years
386	2006	0399.00	Sni-a-bar Cr.	P	Y	36.60	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Jackson/Lafayette	10300101		M	2026 - 2030
387	2012	0224.00	Spencer Cr	C	Y	1.50	Miles	AQL	Chloride (W)	Road/Bridge Runoff, Non-construction	St. Charles	07110009		M	2026 - 2030
388	2016	5007.00	Spring Branch	C	N (1.4)	3.10	Miles	WBC B	Escherichia coli (W)	Source Unknown	St. Louis	07140102		H	2024
389	2018	5004.00	Spring Branch	C	Y	6 70	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2024
390	2018	5004.00	Spring Branch	C	Y	6.70	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jackson	10300101		H	2024
391	2006	3160.00	Spring R.	P	Y	61 70	Miles	WBC A	Escherichia coli (W)	Rural NPS	Lawrence/Jasper	11070207	9	L	> 10 years
392	2010	3164.00	Spring R.	P	Y	8.80	Miles	WBC A	Escherichia coli (W)	Rural NPS	Lawrence	11070207	9	L	> 10 years
393	2010	3165.00	Spring R	P	Y	11.90	Miles	WBC A	Escherichia coli (W)	Rural NPS	Lawrence	11070207	9	L	> 10 years
394	2018	4112.00	Spring River tributary	C	Y	4.00	Miles	WBC B	Escherichia coli (W)	Nonpoint Source	Jasper	11070207	9	L	> 10 years
395	2018	2677.00	Spring Valley Cr	P	Y	10.80	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Shannon	11010008		L	> 10 years
396	2006	3135.00	Stevenson Bayou	C	Y	6.40	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Mississippi	08020201		M	2026 - 2030
397	2012	2835.00	St. Francis R.	P	N (8.4)	93.10	Miles	CLF	Temperature, water (W)	Source Unknown	St. Francois	08020202		M	2026 - 2030
398	2006	3138.00	St. Johns Ditch	P	Y	15.30	Miles	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	New Madrid	08020201		L	> 10 years
399	2006	0959.00	Straight Fk	C	Y	6.00	Miles	AQL	Oxygen, Dissolved (W)	Versailles WWTP	Morgan	10300102		H	2025
400	2006	0686.00	Sugar Cr.	P	Y	6.80	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Randolph	10280203		M	2026 - 2030
401	2018	0686.00	Sugar Cr	P	Y	6.80	Miles	AQL	Sulfate + Chloride (W)	Source Unknown	Randolph	10280203		L	> 10 years
402	2018	4108.00	Sugar Creek	C	Y	1.80	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		M	2026 - 2030
403	2018	4108.00	Sugar Creek	C	Y	1.80	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		M	2026 - 2030
404	2014	7166.00	Sugar Creek Lake	L1	Y	308.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Randolph	10280205	2	L	> 10 years
405	2006	7399.00	Sunset Lake	L3	Y	6.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Cole	10300102		L	> 10 years
406	2002	7313.00	Table Rock Lake	L2	Y	41747.00	Acres	AQL	Chlorophyll-a (W)	Municipal Point Source Discharges, Nonpoint Source	Stone	11010001	1 7	H	2025
407	2002	7313.00	Table Rock Lake	L2	Y	41747.00	Acres	AQL	Nitrogen, Total (W)	Municipal Point Source Discharges, Nonpoint Source	Stone	11010001	1 7	H	2025
408	2002	7313.00	Table Rock Lake	L2	Y	41747.00	Acres	AQL	Nutrient/Eutrophication Biol. Indicators (W)	Municipal Point Source Discharges, Nonpoint Source	Stone	11010001	1 7	H	2025
409	2016	7352.00	Thirtyfour Corner Blue Hole	L3	Y	9.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Mississippi	08010100		L	> 10 years
410	2008	0549.00	Thompson R.	P	N (5.2)	70.60	Miles	WBC B	Escherichia coli (W)	Rural NPS	Harrison	10280102	2	H	2021
411	2012	3243.00	Thurman Cr.	P	Y	3.00	Miles	WBC B	Escherichia coli (W)	Rural NPS	Newton	11070207	9	L	> 10 years
412	2018	2114.00	Trib. Old Mines Cr.	C	Y	1.50	Miles	AQL	Lead (S)	Barite tailings pond	Washington	07140104		M	2026 - 2030
413	2010	2114.00	Trib. Old Mines Cr	C	Y	1.50	Miles	AQL	Sedimentation/Siltation (S)	Barite tailings pond	Washington	07140104		M	2026 - 2030
414	2018	2114.00	Trib. Old Mines Cr.	C	Y	1.50	Miles	AQL	Zinc (S)	Barite tailings pond	Washington	07140104		M	2026 - 2030

Row #	Year	WBID	Waterbody	Class	Entire WB Imprd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
415	2010	1420.00	Trib. to Goose Cr.	C	Y	3.00	Miles	WBC B	Escherichia coli (W)	Rural NPS	Lawrence	10290106		H	2021
416	2006	3490.00	Trib. to L. Muddy Cr.	C	Y	1.00	Miles	AQL	Chloride (W)	Tyson Foods	Pettis	10300103		L	> 10 years
417	2006	3589.00	Trib to Wolf Cr.	C	Y	1.50	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	St. Francois	08020202		M	2026 - 2030
418	2006	0074.00	Troublesome Cr.	C	N (6.1)	41.30	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Knox	07110003		M	2026 - 2030
419	2012	0074.00	Troublesome Cr	C	Y	41.30	Miles	AQL	Sedimentation/Siltation (S)	Habitat Mod - other than Hydromod.	Knox/Marion	07110003		L	> 10 years
420	2012	3175.00	Truitt Cr.	C	Y	6.40	Miles	SCR	Escherichia coli (W)	Rural NPS	Lawrence	11070207	9	L	> 10 years
421	2016	3174.00	Truitt Cr.	P	Y	1.50	Miles	WBC B	Escherichia coli (W)	Rural NPS	Lawrence	11070207	9	L	> 10 years
422	2018	2985.00	Turkey Cr.	C	N (2.3)	3.10	Miles	AQL	Ammonia, Total (W)	Puxico WWTF	Stoddard	08020203		L	> 10 years
423	2006	3216.00	Turkey Cr.	P	Y	7.70	Miles	AQL	Cadmium (S)	Tri-State Mining District	Jasper	11070207		H	2021
424	2006	3217.00	Turkey Cr.	P	Y	6.10	Miles	AQL	Cadmium (S)	Tri-State Mining District	Jasper	11070207		H	2021
425	2016	3282.00	Turkey Cr.	P	Y	2.40	Miles	AQL	Cadmium (S)	Bonne Terre chat pile	St. Francois	07140104		M	2026 - 2030
426	2006	3216.00	Turkey Cr.	P	Y	7.70	Miles	AQL	Cadmium (W)	Tri-State Mining District	Jasper	11070207		H	2021
427	2006	3282.00	Turkey Cr.	P	Y	2.40	Miles	AQL	Cadmium (W)	Bonne Terre chat pile	St. Francois	07140104		M	2026 - 2030
428	2016	3282.00	Turkey Cr.	P	Y	2.40	Miles	AQL	Copper (S)	Bonne Terre chat pile	St. Francois	07140104		M	2026 - 2030
429	2006	3216.00	Turkey Cr.	P	N (4.5)	7.70	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jasper	11070207	9	L	> 10 years
430	2006	3217.00	Turkey Cr.	P	Y	6.10	Miles	WBC A	Escherichia coli (W)	Urban Runoff/Storm Sewers	Jasper	11070207	9	L	> 10 years
431	2012	0751.00	Turkey Cr	C	Y	6.30	Miles	WBC A	Escherichia coli (W)	Source Unknown	Boone	10300102		H	2023
432	2006	3217.00	Turkey Cr.	P	Y	6.10	Miles	AQL	Lead (S)	Tri-State Mining District	Jasper	11070207		H	2021
433	2008	3216.00	Turkey Cr.	P	Y	7.70	Miles	AQL	Lead (S)	Tri-State Mining District	Jasper	11070207		H	2021
434	2016	3282.00	Turkey Cr.	P	Y	2.40	Miles	AQL	Lead (S)	Bonne Terre chat pile	St. Francois	07140104		M	2026 - 2030
435	2006	3282.00	Turkey Cr.	P	Y	2.40	Miles	AQL	Lead (W)	Bonne Terre chat pile	St. Francois	07140104		M	2026 - 2030
436	2016	3282.00	Turkey Cr.	P	Y	2.40	Miles	AQL	Nickel (S)	Bonne Terre chat pile	St. Francois	07140104		M	2026 - 2030
437	2018	2985.00	Turkey Cr.	C	N (2.3)	3.10	Miles	AQL	Oxygen, Dissolved (W)	Puxico WWTF	Stoddard	08020203		L	> 10 years
438	2006	3216.00	Turkey Cr.	P	Y	7.70	Miles	AQL	Zinc (S)	Tri-State Mining District	Jasper	11070207		H	2021
439	2006	3217.00	Turkey Cr.	P	Y	6.10	Miles	AQL	Zinc (S)	Tri-State Mining District	Jasper	11070207		H	2021
440	2016	3282.00	Turkey Cr.	P	Y	2.40	Miles	AQL	Zinc (S)	Bonne Terre chat pile	St. Francois	07140104		M	2026 - 2030
441	2006	3282.00	Turkey Cr	P	N (1.2)	2.40	Miles	AQL	Zinc (W)	Bonne Terre chat pile	St. Francois	07140104		M	2026 - 2030
442	2014	3983.00	Turkey Creek tributary	C	Y	2.90	Miles	GEN	Cadmium (S)	Abandoned Smelter Site	Jasper	11070207	4	H	2021
443	2016	3983.00	Turkey Creek tributary	C	Y	2.90	Miles	GEN	Cadmium (W)	Abandoned Smelter Site	Jasper	11070207	4	H	2021
444	2016	3984.00	Turkey Creek tributary	C	Y	2.20	Miles	GEN	Cadmium (W)	Mill Tailings	Jasper	11070207	4	H	2021
445	2014	3983.00	Turkey Creek tributary	C	Y	2.90	Miles	GEN	Lead (S)	Abandoned Smelter Site	Jasper	11070207	4	H	2021
446	2014	3983.00	Turkey Creek tributary	C	Y	2.90	Miles	GEN	Zinc (S)	Abandoned Smelter Site	Jasper	11070207	4	H	2021
447	2014	3983.00	Turkey Creek tributary	C	Y	2.90	Miles	GEN	Zinc (W)	Abandoned Smelter Site	Jasper	11070207	4	H	2021
448	2014	3984.00	Turkey Creek tributary	C	Y	2.20	Miles	GEN	Zinc (W)	Leadwood Hollow pits	Jasper	11070207	4	H	2021
449	2014	3985.00	Turkey Creek tributary	C	Y	1.60	Miles	GEN	Zinc (W)	Chitwood Hollow pits	Jasper	11070207	4	H	2021
450	2010	1414.00	Turnback Cr.	P	Y	19.90	Miles	WBC A	Escherichia coli (W)	Rural NPS	Lawrence/Dade	10290106		H	2021
451	2016	4079.00	Twomile Creek	C	Y	5.60	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		M	2026 - 2030
452	2016	7099.00	Unity Village Lake #2	L1	Y	26.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Jackson	10300101	2	L	> 10 years
453	**2020**	**7051.00**	**Vandalia Community Lake**	**L3**	**Y**	**35.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Audrain**	**07110008**	**1**	L	> 10 years
454	**2020**	**7032.00**	**Vandalia Reservoir**	**L1**	**Y**	**28.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**Pike**	**07110007**	**1 2**	L	> 10 years
455	2006	1708.00	Watkins Creek	C	Y	6.40	Miles	AQL	Chloride (W)	Urban Runoff/Storm Sewers	St. Louis/St. Louis City	07140101		H	2025
456	2016	4097.00	Watkins Creek tributary	C	Y	1.20	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		L	> 10 years
457	2016	4097.00	Watkins Creek tributary	C	Y	1.20	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		L	> 10 years

Row #	Year	WBID	Waterbody	Class	Entire WB Imprd	WB Size	Units	IU	Pollutant	Source	County Up/Down	HUC 8	Comment	TMDL Priority	TMDL Schedule Year
458	2016	4098.00	Watkins Creek tributary	C	Y	1.20	Miles	SCR	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		L	> 10 years
459	2016	4098.00	Watkins Creek tributary	C	Y	1.20	Miles	WBC B	Escherichia coli (W)	Urban Runoff/Storm Sewers	St. Louis	07140101		L	> 10 years
460	**2020**	**7072.00**	**Waukomis Lake**	**L3**	**Y**	**76.00**	**Acres**	**AQL**	**Phosphorus, Total (W)**	**Nonpoint Source**	**Platte**	**10240011**	**1 7**	L	> 10 years
461	2012	7071.00	Weatherby Lake	L3	Y	185.00	Acres	AQL	Chlorophyll-a (W)	Urban Runoff/Storm Sewers	Platte	10240011	1 7	L	> 10 years
462	2012	7071.00	Weatherby Lake	L3	Y	185.00	Acres	HHP	Mercury in Fish Tissue (T)	Atmospheric Deposition - Toxics	Platte	10240011	7	L	> 10 years
463	2010	7071.00	Weatherby Lake	L3	Y	185.00	Acres	AQL	Nitrogen, Total (W)	Urban Runoff/Storm Sewers	Platte	10240011	1 7	L	> 10 years
464	2014	7071.00	Weatherby Lake	L3	Y	185.00	Acres	AQL	Phosphorus, Total (W)	Urban Runoff/Storm Sewers	Platte	10240011	1 7	L	> 10 years
465	2006	0560.00	Weldon R.	P	Y	43.40	Miles	WBC B	Escherichia coli (W)	Rural NPS	Mercer/Grundy	10280102		H	2021
466	2006	1317.00	W. Fk. Dry Wood Cr.	C	Y	8.10	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Vernon	10290104		M	2026 - 2030
467	2008	1504.00	Whetstone Cr.	P	Y	12.20	Miles	AQL	Oxygen, Dissolved (W)	Rural NPS	Wright	10290201		H	2024
468	2010	3182.00	White Oak Cr.	C	Y	18.00	Miles	WBC A	Escherichia coli (W)	Rural NPS	Lawrence/Jasper	11070207	9	L	> 10 years
469	2012	1700.00	Wildhorse Cr.	C	Y	3.90	Miles	WBC B	Escherichia coli (W)	Rural, Residential Areas	St. Louis	10300200		M	2026 - 2030
470	2010	3171.00	Williams Cr.	P	Y	1.00	Miles	WBC A	Escherichia coli (W)	Rural NPS	Lawrence	11070207	9	L	> 10 years
471	2010	3172.00	Williams Cr.	P	Y	8.50	Miles	WBC A	Escherichia coli (W)	Rural NPS	Lawrence	11070207	9	L	> 10 years
472	2012	3594.00	Williams Cr.	P	Y	1.00	Miles	WBC B	Escherichia coli (W)	Rural NPS	St. Louis	07140102		M	2026 - 2030
473	2014	3280.00	Willow Br	P	Y	2.20	Miles	AQL	Cadmium (S)	Mill Tailings	Newton	11070206		M	2026 - 2030
474	2010	3280.00	Willow Br.	P	Y	2.20	Miles	WBC B	Escherichia coli (W)	Rural NPS	Newton	11070206		H	2021
475	2014	3280.00	Willow Br.	P	Y	2.20	Miles	AQL	Zinc (S)	Mill Tailings	Newton	11070206		M	2026 - 2030
476	**2020**	**7438.00**	**Willow Brook Lake**	**L1**	**Y**	**53.00**	**Acres**	**AQL**	**Chlorophyll-a (W)**	**Nonpoint Source**	**DeKalb**	**10280101**	**1 2**	L	> 10 years
477	2006	0955.00	Willow Fk.	C	Y	6.80	Miles	AQL	Oxygen, Dissolved (W)	Tipton WWTP and Unknown Sources	Moniteau	10300102		H	2025
478	2006	0956.00	Willow Fork tributary	C	Y	0.50	Miles	AQL	Oxygen, Dissolved (W)	Source Unknown	Moniteau	10300102		M	2026 - 2030
479	1998	2375.00	Wilsons Cr.	P	Y	14.00	Miles	AQL	Aquatic Macroinvertebrate Bioassessments/ Unknown (W)	Nonpoint Source	Greene	11010002	5	L	2031
480	2006	2375.00	Wilsons Cr.	P	N (7.4)	14.00	Miles	WBC B	Escherichia coli (W)	Nonpoint Source	Greene	11010002		L	2031
481	2014	2429.00	Woods Fk.	C	Y	5.50	Miles	AQL	Fishes Bioassessments/ Unknown (W)	Source Unknown	Christian	11010003	5	M	2026 - 2030

Key To List:

Bolded rows are new listings for the 2020 listing cycle

Row #: Row number that is not unique to any water, but is simply a count of the rows (listings)

Year: Year this waterbody/pollutant pair was added to the 303(d) List

WBID: Unique waterbody identification number. Clicking the link will bring up a WQA Public Search webpage with the available data for that WBID

Waterbody: Name of the waterbody.

Class: Waterbody Classification in Missouri State Water Quality Standards: P - Permanently Flowing Waters, C - Intermittently Flowing Waters, L1 - Drinking Water Reservoirs, L2 - Large Multi-purpose Lakes.
L3 - Other Recreational Lakes, US - Unclassified Stream, UL - Unclassified Lake

Entire WB Imprd: Y= Yes the entire waterbody is considered impaired; N= No the entire waterbody is not considered impaired.

WB Size: Size of entire waterbody segment

IU: Impaired Use
AQL - Protection of Warm Water Aquatic Life ; CLF - Cool-Water Fishery ; CLD - Cold-Water Fishery ; DWS - Drinking Water Supply ; GEN - General Criteria ; HHP - Human-Health Protection (Fish Consumption) ;
SCR - Secondary Contact Recreation ; WBC A - Whole Body Contact Recreation A (Designated Public Swimming Areas) ; WBC B - Whole Body Contact Recreation B (Those areas not considered WBC A)

Pollutant: The reason\cause the water is impaired
Media Indicators: (W) - The pollutant is in the water ; (S) - The pollutant is in the sediment ; (T) - The pollutant is in the tissue of an organism ; If no media indicator is shown the pollutant is in the water

Source: The source of the pollutant causing the impairment

County Up/Down: The county of the upstream end and downstream end of the segment that is impaired. Clicking the link will bring up a map viewer displaying the location of the impaired portion of the waterbody.

Comment:
1 - Nutrient related impairment
2 - Water is a Public Drinking Water Supply
3 - Monsanto Lake is part of the group of lakes known as the St. Joe State Park Lakes
4 - General Use pertaining to Aquatic Life
5 - This water is listed for either "Aquatic Macroinvertebrate Bioassessment/Unknown (W)" or "Fishes Bioassessment/Unknown (W)" . This water lacks the necessary information to point to a discrete pollutant and does not show signs of habitat impairment. Since the Department currently cannot point to a specific pollutant as the cause, the water is being listed for the observed effect as the reason the water is impaired.
6 - Only Lac Capri of the Terre Du Lac Lakes is impaired
7 - Lake is impaired for site specific criteria

8 - Trend analysis shows this water will exceed WQS within 5 years. See the 2020 Listing Methodology Document and Nutrient Implementation Plan for more information.
9 - This water is being prioritized as low for TMDL development due to 319 watershed management plans being implemented in the watershed.

Missouri Department of Natural Resources, Water Protection Program, (573)751-1300, www.dnr.mo.gov

http://www.dnr.mo.gov/mocwis_public/wqa/waterbodySearch.do
http://dnr.mo.gov/env/esp/wqm/biologicalassessments.htm

02/24/2020

Missouri Department of Natural Resources
2020 Section 303(d) Delisted Waters

Proposed Delist for Clean Water Commission Approval on April 2, 2020

Row #	Year	WBID	Waterbody Name	Pollutant	Delist Reason	Delist Comment	County Up/Down	WBD 8
1	2020	2760.00	Bee Fk	Lead (W)	WQS attained; due to restoration action	Mine water and tailings water discharges from Fletcher mine and mill have been discontinued. 2017 and 2019 data show the lead levels in water are meeting WQS	Reynolds	11010007
2	2020	3184.00	Blackberry Cr.	Oxygen, Dissolved (W)	WQS attained; recovery reason unknown	Additional data shows DO is now meeting standard	Jasper	11070207
3	2020	111.00	Black Cr	Escherichia coli (W)	4A - TMDL approved or established by EPA	TMDL approved by EPA on 2/8/2019	Shelby	07110005
4	2020	3825.00	Black Creek	Escherichia coli (W)	4A - TMDL approved or established by EPA	TMDL approved by EPA in 2019.	St. Louis	07140101
5	2020	3986.00	Brush Creek	Polycyclic Aromatic Hydrocarbons-PAHs (S)	Status unknown - Orig listing in error	Original listing was based on combination of KS and MO sites, but when evaluated only using the MO site Total PAHs were below 100% PEC value	Jackson	10300101
6	2020	2288.00	Castor R.	Escherichia coli (W)	WQS attained; recovery reason unknown	Recent data shows low E. coli levels.	Bollinger	07140107
7	2020	3203.00	Center Cr	Cadmium (W)	WQS attained, due to change in WQS	WQS changed to median hardness rather than 25th percentile. Water is now meeting WQS	Jasper	11070207
8	2020	3203.00	Center Cr.	Escherichia coli (W)	WQS attained; recovery reason unknown	Last three years of data show geometric means below the WQS	Jasper	11070207
9	2020	3203.00	Center Cr	Zinc (W)	WQS attained, due to change in WQS	WQS changed to median hardness rather than 25th percentile. Water is now meeting WQS	Jasper	11070207
10	2020	3168.00	Chat Cr.	Cadmium (W)	WQS attained; recovery reason unknown	Water Quality standards met	Lawrence	11070207
11	2020	1336.00	Clear Cr	Oxygen, Dissolved (W)	Status unknown - Orig listing in error	Most of the low DO data is older; newer data shows some exceedences, but are likely due to lack of flow	Vernon	10290105
12	2020	2177.00	Coenville Cr.	Lead (W)	WQS attained, due to change in WQS	New WQS changed to median hardness. Raised the chronic standard from 5.02 to 6.72. The data shows two exceedances but on the same day. This is considered one toxicity event. There must be more than one event for a water to be listed as impaired.	St. Francois	07140104
13	2020	1943.00	Courtois Cr	Lead (S)	WQS attained, due to restoration action	Doe Run constructed a treatment plant at the Viburnum facility that discharges into Indian Cr. and then Courtois Cr. Operation of the facility began in 10-2016. Data collected in 2017 and 2019 show levels of Pb in sediment are below 150%PEC	Washington/Crawford	07140102
14	2020	1928.00	Crooked Creek	Cadmium (S)	WQS attained, due to restoration action	Regular discharges by Doe Run into Crooked Creek from Casteel Mine and BRRF were eliminated 2014 and 2016. 2017 and 2019 data show cadmium in sediment is below 150% PEC	Crawford	07140102
15	2020	1928.00	Crooked Creek	Cadmium (W)	WQS attained, due to restoration action	Regular discharges by Doe Run into Crooked Creek from Casteel Mine and BRRF were eliminated 2014 and 2016. 2017 and 2019 data show cadmium in water is meeting WQS	Crawford	07140102
16	2020	1928.00	Crooked Creek	Lead (S)	WQS attained; due to restoration action	Regular discharges by Doe Run into Crooked Creek from Casteel Mine and BRRF were eliminated 2014 and 2016. 2017 and 2019 data show lead in sediment is below 150% PEC.	Crawford	07140102
17	2020	3826.00	Deer Creek	Escherichia coli (W)	4A - TMDL approved or established by EPA	TMDL approved by EPA in 2019.	St. Louis/St. Louis City	07140101
18	2020	1180.00	Dousinbury Cr	Escherichia coli (W)	WQS attained; recovery reason unknown	Meeting E. coli standard. TMDL approved by EPA in 2018.	Dallas	10290110
19	2020	428.00	E. Fk. L. Blue R	Escherichia coli (W)	WQS attained; recovery reason unknown	Last three years of data show geometric means below the WQS.	Jackson	10300101
20	2020	610.00	E. Fk. Locust Cr	Oxygen, Dissolved (W)	WQS attained; original listing incorrect	Impairment was based on samples collected during non-flowing conditions. Per the LMD, DO criterion applies conditions when flowing water is present	Sullivan	10280103
21	2020	7151.00	Forest Lake	Nitrogen, Total (W)	WQS attained; new assessment method	Per LMD, Total nitrogen criteria are met for latest seven years of data. Still impaired for chlorophyll-a.	Adair	10280202

Row #	Year	WBID	Waterbody Name	Pollutant	Delist Reason	Delist Comment	County Up/Down	WBD 8
22	2020	7151.00	Forest Lake	Phosphorus, Total (W)	WQS attained; new assessment method	Per LMD, Total phosphorus criteria are met for latest seven years of data. Still impaired for chlorophyll-a.	Adair	10280202
23	2020	1712.00	Gravois Creek	Escherichia coli (W)	4A - TMDL approved or established by EPA	TMDL approved by EPA in 2018	St. Louis/St. Louis City	07140101
24	2020	1713.00	Gravois Creek	Escherichia coli (W)	4A - TMDL approved or established by EPA	TMDL approved by EPA in 2018	St. Louis	07140101
25	2020	1946.00	Indian Cr.	Lead (S)	WQS attained, due to restoration action	Doe Run constructed a treatment plant at the Viburnum facility that discharges into Indian Cr. and then Courtois Cr. Operation of the facility began in 10/2016. Data collected in 2017 and 2019 show levels of Pb in sediment are below 150% PEC	Washington	07140102
26	2020	1946.00	Indian Cr.	Lead (W)	WQS attained; due to restoration action	Doe Run constructed a treatment plant at the Viburnum facility that discharges into Indian Cr. and then Courtois Cr. Operation of the facility began in 10/2016. Data collected in 2017 and 2019 show levels of Pb in water are meeting WQS.	Washington	07140102
27	2020	1946.00	Indian Cr.	Zinc (S)	WQS attained, due to restoration action	Doe Run constructed a treatment plant at the Viburnum facility that discharges into Indian Cr. and then Courtois Cr. Operation of the facility began in 10/2016. Data collected in 2017 and 2019 show levels of Zn in sediment are below 150% PEC	Washington	07140102
28	2020	3592.00	Keifer Cr.	Chloride (W)	WQS attained; recovery reason unknown	Last three years of data show only one chloride exceedance. Water meets LMD definition of an unimpaired stream.	St. Louis	07140102
29	2020	4115.00	Little Antire Creek	Escherichia coli (W)	WQS attained; recovery reason unknown	MSD provided additional data collected in 2019. The criterion is based on the yearly geometric mean over the past three years of available data. 2017, 2018, and 2019 geometric means were all below the WBC B criterion	Jefferson/St. Louis	07140102
30	2020	623.00	L. Medicine Cr.	Escherichia coli (W)	4A - TMDL approved or established by EPA	Bacteria TMDL approved by EPA in 2019	Mercer/Grundy	10280103
31	2020	1189.00	L. Niangua R.	Oxygen, Dissolved (W)	WQS attained, recovery reason unknown	Water now meeting DO standards based on last 10 years of data and LMD procedures	Dallas/Camden	10290110
32	2020	1709.00	Maline Creek	Escherichia coli (W)	4A - TMDL approved or established by EPA	TMDL approved by EPA in 2018.	St. Louis/St. Louis City	07140101
33	2020	619.00	Medicine Cr.	Escherichia coli (W)	4A - TMDL approved or established by EPA	Bacteria TMDL Approved by EPA in 2019	Putnam/Grundy	10280103
34	2020	2183.00	Meramec R.	Escherichia coli (W)	WQS attained; recovery reason unknown	Last three years of data show geometric means below the WQS.	St. Louis	07140102
35	2020	1707.03	Mississippi R.	Escherichia coli (W)	WQS attained, recovery reason unknown	Data shows yearly recreation season geometric means of samples did not exceed the WBC B criterion in the last three years of available data	St. Louis/Ste. Genevieve	07140101
36	2020	1170.00	Niangua R.	Escherichia coli (W)	4A - TMDL approved or established by EPA	TMDL approved by EPA in 2018.	Webster/Dallas	10290110
37	2020	1293.00	Osage R.	Oxygen, Dissolved (W)	WQS attained, recovery reason unknown	Water now meeting DO standards based on last 10 years of data and LMD procedures	Vernon/St. Clair	10290105
38	2020	7273.00	Perry County Community Lake	Mercury in Fish Tissue (T)	WQS attained; recovery reason unknown	New data shows standards are being met. 60% LCL level under 0.300.	Perry	07140105
39	2020	1440.00	Pomme de Terre R.	Escherichia coli (W)	WQS attained, recovery reason unknown	Last three years of data show geometric means below the WQS	Webster/Polk	10290107
40	2020	2038.00	Red Oak Cr.	Oxygen, Dissolved (W)	WQS attained; recovery reason unknown	DO standard is now being met	Gasconade	07140103
41	2020	2755.00	W. Fk. Black R.	Lead (S)	WQS attained, recovery reason unknown	Additional data collected in 2017 and 2019 shows levels of lead in sediment within the first 1.3 miles below the mine are below 150% PEC.	Reynolds	11010007
42	2020	2755.00	W. Fk. Black R.	Nickel (S)	WQS attained; recovery reason unknown	Additional data collected in 2017 and 2019 shows levels of nickel in sediment within the first 1.3 miles below the mine are below 150% PEC.	Reynolds	11010007
43	2020	3594.00	Williams Cr.	Escherichia coli (W)	WQS attained; recovery reason unknown	Last three years of data show geometric means below the secondary contact recreation use criterion, but above the whole body contact B criterion. Stream is still impaired for escherichia coli for the whole body contact B use.	St. Louis	07140102

Row #	Year	WBID	Waterbody Name	Pollutant	Delist Reason	Delist Comment	County Up/Down	WBD 8
44	2020	2375.00	Wilsons Cr.	Polycyclic Aromatic Hydrocarbons-PAHs (S)	WQS attained, new assessment method	Following LMD for Total PAH's. Total PAH's are less than 150% PEC. Biological community shows impairment.	Greene/Christian	11010002

Key To List:

Row # = Row number that is not unique to any water, but is simply a count of the rows (listings)
Year = Year this waterbody/pollutant pair was delisted
WBID = Unique waterbody identification number
Delist Cause = Pollutant or cause for which the waterbody was originally listed
Delist Reason = Reason/justification for delisting action
Delist Comment = Comments or additional justification explaining the delisting action

Missouri Department of Natural Resources, Water Protection Program, (573)751-1300, www.dnr.mo.gov

http://www.dnr.mo.gov/mocwis_public/wqa/waterbodySearch.do
http://dnr.mo.gov/env/esp/wqm/biological,assessments.htm

02/24/2020 02:38

Missouri Department of Natural Resources
2020 Section 303(d) List Summary Tables
Summary of Proposed List for Public Notice

Number of Current Listings By Cycle	
Cycle First Listed Year	**# of Listings**
1998	1
2002	25
2006	89
2008	35
2010	41
2012	52
2014	50
2016	74
2018	53
2020	61
Total	**481**

Use Impairments for 2020 List		
Use	**# of Impairments**	**%**
AQL	263	54.68%
WBC B	79	16.42%
HHP	58	12.06%
WBC A	39	8.11%
SCR	24	4.99%
GEN	16	3.33%
CLF	1	0.21%
DWS	1	0.21%
Total:	**481**	**100%**

Pollutants on 2020 List		
Pollutant	**# of Listings**	**%**
Escherichia coli	142	29.52%
Oxygen, Dissolved	71	14.76%
Mercury in Fish Tissue	63	13.10%
Chlorophyll-a	58	12.06%
Zinc	29	6.03%
Chloride	20	4.16%
Cadmium	26	5.41%
Lead	20	4.16%
Aquatic Macroinvertebrate Bioassessments	12	2.49%
Nitrogen, Total	8	1.66%
Phosphorus, Total	8	1.66%
Ammonia, Total	4	0.83%
Sedimentation/Siltation	3	0.62%
Temperature, water	3	0.62%
Total Dissolved Solids	3	0.62%
Copper	2	0.42%
Fishes Bioassessments	2	0.42%
Nutrient/Eutrophication Biol. Indicators	2	0.42%
pH	2	0.42%
Atrazine	1	0.21%
Nickel	1	0.21%
Polycyclic Aromatic Hydrocarbons-PAHs	1	0.21%
Total:	**481**	**100%**

Sources on 2020 List		
Sources	**# of Listings**	**%**
Nonpoint Source	156	31.26%
Source Unknown	91	18.24%
Atmospheric Deposition - Mercury	63	12.63%
Urban Runoff/Storm Sewers	67	13.43%
Point Source	43	8.62%
Mining Related	70	14.03%
Road/Bridge Runoff, Non-construction	2	0.40%
Rural, Residential Areas	2	0.40%
Channelization	1	0.20%
Dam or Impoundment	1	0.20%
Habitat Mod. - other than Hydromod.	1	0.20%
Impacts, Flow Regulation modification	1	0.20%
Municipal, Urbanized High Density Area	1	0.20%

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

2020 303(d) List
Public Availability Meeting No. 1
Department of Natural Resources
1101 Riverside Drive
Jefferson City, MO
December 10, 2019

Meeting Purpose:
An open forum for comments, questions and discussion on proposed 2020 303(d) Impaired Waters Listings and the data used for assessments.

Summary of the Topics Discussed:

- The Department provided an overview of the 2020 303(d) List format and organization and where to find the list. Staff highlighted links in the table for finding assessment data and a map viewer for locating proposed impairments and sampling locations. Staff walked through where to find the assessment worksheets that are attached to the pdf of the 303(d) List.
- The Department walked through an assessment of the recently approved lake numeric nutrient criteria.
- The Department answered questions and provided information on bacteria and other impairments in Cooper County.
- The Department answered questions on total maximum daily loads (TMDLs) related to bacteria impairments.
- The Department answered questions on TMDL prioritization and scheduling.
- The Department answered questions on permitted facilities in relation to new lake impairments due to lake numeric nutrient criteria.
- A comment was made for the Department to always include the 303(d) summary tables.
- A comment was made to correct the Department's website for the January 14, 2019, public availability meeting. The meeting will be held in Gasconade Camp Conference Room.
- The Department discussed uses of volunteer data, specifically how Cooperative Stream Investigation (CSI) data is used for assessments.
- The Department answered questions on the 305(b) Report.

A second Public Availability Meeting will be held on January 14, 2020, from 9 a.m. – 12 Noon at the Lewis and Clark State Office Building, Gasconade Camp Conference Room, 1101 Riverside Drive, Jefferson City, MO 65101.

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

2020 303(d) List
Public Availability Meeting No. 2
Department of Natural Resources
1101 Riverside Drive
Jefferson City, MO
January 14, 2019

Meeting Purpose:
An open forum for comments, questions, and discussion on proposed 2020 303(d) Impaired Waters Listings and the data used for assessments.

Summary of the Topics Discussed:

- The Missouri Department of Natural Resources provided an overview of the 2020 303(d) List format and organization and where to find the list. Staff highlighted links in the table for finding assessment data and a map viewer for locating proposed impairments and sampling locations. Staff walked through where to find the assessment worksheets that are attached to the pdf of the 303(d) list. Staff outlined the timetable for public comment submission and incorporation.
- The Department answered questions about what potential comments could look like. Staff provided an example of how comments can consist of new data brought forward to inform impairment assessments or a request for more information regarding pollutant sources for an impairment listing.
- The Department explained the requirements for inclusion and prevalence of external data sources.
- The Department explained the process of total maximum daily load (TMDL) prioritization and scheduling.
- The Department answered questions about the Lakes of Missouri Volunteer Program data collection and analysis.
- The Department explained why a stream might be listed for both a poor macroinvertebrate community and low dissolved oxygen.
- The Department answered questions on the timing of the next 305(b) report release.
- The Department answered questions regarding which entities collect the data used in our assessment and how much of it is collected in-house.
- The Department provided a brief overview of the 303(d) Listing Methodology.
- The Department addressed questions about classifying entire water body impairments and the distinctions between nonpoint source (NPS) categories.
- The Department outlined the addition of the TMDL priorities list for 2020.

- A comment was made for a potential presentation at a future Water Protection Forum. The request referenced a 2018 report: Soil and Water Assessment Tool (SWAT) simulated flow and bacteria in Little Sac Watershed: A Best Management Practice Assessment.
- The Department addressed delisting of impaired water bodies.
- The Department walked through an assessment of the recently approved lake numeric nutrient criteria and lake nutrient trends. The Department emphasized the criteria apply to the protection of warm water aquatic life use, not the drinking water supply use. Staff addressed decisions to not include 2018 data in trend analyses, citing a desire to first understand the impacts of that year's drought.
- Following a mention of a recent algal cell counts in Mozingo Lake, the Department discussed algal toxin monitoring.
- The Department answered questions about listings of water bodies with drinking water impairments.
- A comment was made for the online Map Gallery to include a more opaque watershed fill and stronger outline than what is currently displayed.
- Public concern was expressed about the inability to regulate NPS from manure application and runoff. Department staff provided alternative suggestions to dealing with manure related NPS concerns (e.g., Best Management Practices) as well as programs that provide assistance such as the Soil and Water Conservation Program and the 319 Nonpoint Source Program.
- Public interest was shown in Little Sac, Cedar Creek, Brush Creek, Stockton Lake, and Mozingo Lake.
- The Department will accept comments and data until February 20, 2020.

A Public Hearing will be held on February 13, 2020, 9 a.m. at the Lewis and Clark State Office Building, Gasconade Camp Conference Room, 1101 Riverside Drive, Jefferson City, MO 65101.

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

2020 303(d) List
Responses to Public Comments
Received During the Public Notice Period

Public Notice Period
November 15, 2019 – February 20, 2020

Missouri Department of Natural Resources
Water Protection Program
PO Box 176
Jefferson City, MO 65102-0176
800-361-4827 / 573-751-1300

Introduction

Pursuant to 40 C.F.R. § 130.7, States, Territories, and authorized Tribes must submit biennially to the U.S. Environmental Protection Agency (EPA) a list of water-quality limited (impaired) segments, pollutants causing impairment, and the priority ranking of waters targeted for total maximum daily load (TMDL) development. The Missouri Department of Natural Resources (Department) placed the draft 2020 303(d) List of Impaired Waters on public notice from November 15, 2019, to February 20, 2020. All original comments received during this public notice period are available online on the Department's website at dnr.mo.gov/env/wpp/waterquality/303d/303d.htm. Comments were received from the following groups:

I. LimnoTech on behalf of the Doe Run Resource Company
II. Metropolitan St. Louis Sewer District
III. Missouri Coalition for the Environment
IV. City of Kansas City
V. City of Independence
VI. City of Springfield

This document summarizes and paraphrases the comments received, provides the Department's responses to those comments, and notes any changes made to the final proposed 2020 303(d) List of Impaired Waters or supporting documentation.

Summary of Department actions as a result of public comments

A. Waters to be added or re-added to the Proposed 2020 303(d) List

1. Mozingo Lake (water body identification (WBID) 7402) – Chlorophyll-a

B. Waters Proposed to be Delisted from the 2020 303(d) List

1. Courtois Creek (WBID 1943) – Lead in sediment
2. Indian Creek (WBID 1946) – Lead in sediment
3. Indian Creek (WBID 1946) – Zinc in sediment
4. Indian Creek (WBID 1946) – Lead in water
5. Crooked Creek (WBID 1928) – Cadmium in sediment
6. Crooked Creek (WBID 1928) – Lead in sediment
7. Crooked Creek (WBID 1928) – Cadmium in water
8. Bee Fork (WBID 2760) – Lead in water
9. West Fork Black River (WBID 2755) – Lead in sediment
10. West Fork Black River (WBID 2755) – Nickel in sediment
11. Little Antire Creek (WBID 4115) – *Escherichia coli (E. coli)*
12. Brush Creek (WBID 3986) – Polycyclic Aromatic Hydrocarbons (PAHs) in sediment

C. Other changes to the 2020 303(d) List

1. King Lake (WBID 7112) – Chlorophyll-a
   i. This water will be removed from the list due to all data showing impairment being older than seven years.

Summary of Comments and Department Responses

I. LimnoTech on behalf of the Doe Run Resource Corporation (Doe Run)

LimnoTech requested the reassessment and delisting of multiple streams due to actions that Doe Run has taken in the watersheds of the streams referenced in the comment letter. LimnoTech provided recently collected data showing the effects of the actions taken by Doe Run. Streams referenced for delisting: Courtois Creek (WBID 1943), Indian Creek (WBID 1946), Crooked Creek (WBID 1928), Bee Fork (WBID 2760), and West Fork Black River (WBID 2755). LimnoTech also requested the Department withdraw the TMDLs for Indian Creek and Courtois Creek, or alternatively pursue a permit in lieu of a TMDL.

Summary of actions taken by Doe Run:

1. A treatment plant was constructed at the Doe Run Viburnum facility and began operation in October 2016. The Viburnum facility discharges into Indian Creek and then subsequently into Courtois Creek.
2. Doe Run discharges from Casteel Mine into Crooked Creek were eliminated in May 2014.
3. Doe Run discharges from Buick Resources Recycling Facility (BRRF) into Crooked Creek were eliminated in March 2016.
4. Doe Run eliminated discharges from the Fletcher Mine and Mill facility into Bee Fork.

Department Response

The Department appreciates the comments provided by LimnoTech on behalf of Doe Run. The actions taken by Doe Run have reduced or eliminated pollutant sources within the watersheds of these impaired segments, providing the Department cause to split the data record following these improvements. Therefore, only data collected after the actions taken by Doe Run will be considered as recent and relevant to assessment of designated uses on the streams listed. The data provided demonstrates that water quality standards (WQSs) are now being met; therefore, the Department proposes to delist Courtois Creek (WBID 1943) for lead in sediment, Indian Creek (WBID 1946) for lead in water, Indian Creek (WBID 1946) for lead and zinc in sediment, Crooked Creek (WBID 1928) for cadmium in water and sediment, Crooked Creek (WBID 1928) for lead in sediment, Bee Fork (WBID 2760) for lead in water, and West Fork Black River (WBID 2755) for lead and nickel in sediment. Indian Creek (WBID 1946) is not currently listed for zinc in water.

The Department will evaluate the need to take action on the TMDLs for Indian Creek or Courtois Creek upon final approval of the 2020 303(d) list by the Missouri Clean Water Commission and EPA. TMDLs are protective of water quality regardless of the status (impaired or unimpaired) of the water body or water bodies for which the TMDL is applicable.

II. Metropolitan St. Louis Sewer District (MSD)

MSD provided comments in regard to several streams:

1. Little Antire Creek (WBID 4115) – MSD provided data for 2017, 2018, and 2019 that indicate the WQS for the Whole Body Contact Recreation class B use is currently being supported.
2. The Department's assessment of River des Peres (WBID 1710) does not reflect the 2017 and 2018 data provided by MSD.
3. The Department's assessment of Spring Branch (WBID 5007) does not reflect the 2017 and 2018 data provided by MSD.
4. The Department's assessment of Watkins Creek (WBID 1708) does not reflect the 2017 and 2018 data provided by MSD.
5. MSD proposed that Escherichia coli impairment for Gravois Creek (WBID 4051) is addressed through the TMDL for the Gravois Creek watershed.

Department Response

The Department appreciates the comments provided by MSD.

Comment 1
The Department reassessed Little Antire Creek including the data provided by MSD and agrees that data indicate that WQSs are now being met. The Department proposes to delist Little Antire Creek (WBID 4115) for *E. coli*.

Comments 2 – 4
The Department apologizes for the error and will add the data to our database. As noted by MSD, the data does not change the impairment status of these streams.

Comment 5
Per federal regulations at 40 C.F.R. § 130.7(c)(1), states shall establish TMDLs for all identified water quality-limited segments. The Gravois Creek TMDL approved by EPA on January 16, 2018, calculates the *E. coli* loading capacities and associated wasteload and load allocations for two water quality-limited segments of Gravois Creek, WBIDs 1712 and 1713. Although the draft TMDL document made available for public review from March 3 to May 2, 2017, did include calculations specific to WBID 4051, this segment was removed from the final document in response to the public comments submitted by MSD. For this reason, WBID 4051 remains identified as a Category 5 impaired water. The Department recognizes that actions implemented to target the loading capacities calculated for Gravois Creek are occurring on a watershed scale and may result in pollutant reductions to the tributary of Gravois Creek. For this reason, the *E. coli* impairment for WBID 4051 has been identified on the 2020 303(d) List as a low priority for TMDL development in order to allow such pollutant reductions to occur. For more information regarding Missouri TMDLs, please contact Mike Kruse, TMDL Unit Chief, at 573-522-4901.

III. Washington University Interdisciplinary Environmental Clinic on behalf of Missouri Coalition for the Environment (MCE)

The Missouri Coalition for the Environment submitted comments that focus on the new nutrient criteria for lakes and the proposed lake listings added under such criteria. MCE identified three major concerns: 1) insufficient data collection; 2) a lack of transparency in the listing methodology and process; and 3) the reconsideration of five lakes that MCE suggests should be added to the list.

Concern 1
MCE commented that the Department's Nutrient Criteria Implementation Plan requires a minimum of 4 samples for each year a lake is considered and provided 4 examples wherein lakes had less than 4 measurements per year. Also noted by MCE were 6 examples of lakes missing measures of Chlorophyll-a (Chl-a), total nitrogen (TN) and total phosphorus (TP), and/or Secchi depth, and 17 examples of lakes with large temporal data gaps wherein impairment thresholds were also exceeded. MCE requests that the Department prioritize data collection from lakes wherein threshold exceedances have occurred recently or at least once in the sampling record. MCE also commented that the amount of data collected on unlisted lakes is insufficient.

Concern 2
MCE requests that the Department provide Excel worksheets for all lakes of the state, whether listed as impaired or not, along with a narrative analysis to clearly explain why each lake was or was not included. MCE requests written descriptions of assessment endpoints, which should include more details on fish kills and/or excessive turbidity. MCE also requests that the Department provide a full list of lakes and water bodies by name and make improvements to the Water Quality Assessment System that would include general accessibility and the inclusion of an ecoregion field. MCE also requests that the data should be compiled into a single Excel file. Additionally, MCE asks for more description of potentially impaired lakes listed in the 305(b) report and requests Excel data and a narrative analysis to be made available for each of these lakes.

Concern 3
Additionally, MCE identified five lakes to be reconsidered for listing, along with explanations for why these lakes should be considered:
1. Jackrabbit Lake (WBID 7391)
2. Shelbyville Lake (WBID 7036)
3. Montrose Lake (WBID 7208)
4. Cameron Lake No. 1 (WBID 7120)
5. Cameron Lake No. 2 (WBID 7121)

Department Response

The Department appreciates the comments made by the Washington University Interdisciplinary Environmental Clinic on behalf of the Missouri Coalition for the Environment (MCE).

Concern 1

The requirement to calculate nutrient concentrations as the geometric mean of a minimum of four representative samples is contained in 10 CSR 7.031(5)(N)4, not the Nutrient Criteria Implementation Plan. In order to assess a lake against the numeric nutrient criteria in 10 CSR 20-7.031(5)(N)4, at least four samples must be collected between May 1 and September 30 under representative conditions. If this data requirement is not met, the lake will be placed in Category 3 of Missouri's 305(b) Report until further information can be collected. Although the Department wishes to have at least four samples for lake assessment, sample collection is often subject to circumstances outside the Department's control (e.g., unsafe weather conditions, flooding, etc.) and therefore this data requirement may not always be met. The collection of Chl-a, TN, TP, and Secchi depth are necessary for assessment, but the Department is not required to collect this data; instead, this is a data requirement for assessment against the criteria. These parameters were important to the development of the criteria, thus the Department cannot properly assess against the criteria when there is missing information.

There are no federal or state statutes or regulations that require the Department to collect water quality samples. However, the Department solicits a multitude of data every year by funding statewide efforts to collect quality-assured water quality samples at lakes. The Department has a cooperative agreement for sample collection with the University of Missouri Limnology Lab through their Statewide Lake Assessment Program (SLAP) and their Lakes of Missouri Volunteer Program (LMVP). SLAP collects samples between May 1 and September 30 from approximately 78 lakes statewide. Of those 78 lakes, 38 have been consistently sampled as part of a long-term data study for assessing water quality and conducting long-term trend analyses; the remaining 40 lakes are rotated every 3-4 years. The Department will work with SLAP to expand monitoring or add priority lakes for additional data collection needs, subject to year to year budget limitations. In addition to SLAP, a large portion of the Department's data is collected through LMVP with lake volunteers. Neither the University nor the Department can control where the public wants to volunteer their sampling efforts. The Department is very appreciative of volunteer efforts and the data they contribute.

The Lake Ecoregion Criteria in 10 CSR 20-7.031(5)(N)1.C.(I) do not explicitly require a minimum number of years of data, but the Lake Site-Specific Criteria 10 CSR 20-7.031(5)(N)1.C.(II) do require a minimum of three years of data. According to the 2020 Listing Methodology Document (LMD): "If a water body has not been listed previously <u>and all data indicating an impairment</u> is older than 7 years, then the water body is placed into Category 2B or 3B and prioritized for future sampling." If more recent data confirms the impairment, then older data is included in the assessment. The LMD is public noticed for every listing cycle. The Department will be accepting comments on the 2022 LMD in the near future.

At present, neither the Department nor the University of Missouri have the capacity nor budget to regularly sample every lake in the state. To the extent that the Department does not have comprehensive water quality data on Missouri lakes, this is largely due to logistical and budgetary constraints. The Department cannot change the amount or types of data collected from past sampling efforts. However, in 2019, the Department began working more closely with the University to expand monitoring to ongoing SLAP efforts. With much of the data used by the

Department to make assessments coming from the University's volunteer program, the Department welcomes the opportunity to coordinate with MCE and the University to find more volunteers to sample lakes. The Department invites MCE to inform its members of volunteer opportunities through the LMVP. Additionally, the Department is prepared to work with any organization to develop a quality assurance project plan (QAPP) to collect additional samples.

Concern 2

The Department has provided assessment worksheets for each water body listed on the 303(d) list. Each ecoregional lake nutrient assessment worksheet has been color coded, and exceedances of the criteria, thresholds, and eutrophication factors are highlighted. Included at the bottom of each assessment worksheet is an explanation of the criteria used and justification for the impairment listing. The LMD contains information on how each piece of the criteria will be assessed. The Department is open to suggestions for improving the transfer of information of interest to the public and how that appears on the assessment worksheets. If the LMD is not clear in its presentation of the information, the Department is open to suggested language to clarify the assessment process. As noted by MCE, the Department provides public access to the data used for assessments. If members of the public are interested in data for a specific water body, the Department can provide the data in spreadsheet format for that water body and explain the assessment process. The Department will look at improving the public data search web application to correct any issues. The Department is looking into newer technologies that may provide better access for the public. Water quality data can also be requested by emailing Robert.Voss@dnr.mo.gov.

A shapefile containing all the lakes in Missouri that are included in the Missouri Use Designation Dataset (MUDD) can be downloaded from the Missouri Spatial Data Information Service (MSDIS), available at https://data-msdis.opendata.arcgis.com/datasets/mo-2019-lake-numeric-nutrient-criteria-watersheds/data. This dataset contains the WBID, size, whether or not the lake has site-specific criteria, and the percent of the lake's watershed that is in each ecoregion. For assessment purposes, the Department applied the criteria for the ecoregion comprising the majority of the watershed (e.g., if 51 percent of a lake's watershed is in the Ozark Border ecoregion and 49 percent is in the Plains ecoregion, Ozark Boarder criteria were used for assessment).

In accordance with the LMD, the Department should provide a statement on the assessment worksheet when using data more than seven years old in assessment decisions. In the case of assessment worksheets for the ecoregional lake nutrient criteria, the Department included data older than seven years when necessary to ensure three years of data that met the requirements. If all of the data was older than seven years, then the data should not have been used for impairment decisions, but may still be used to categorize the lake for future data needs. All data used for assessment, including the date of sampling, is included in the assessment worksheets. The Department will make a greater effort to include a written justification when using data older than seven years in assessment worksheets.

Lakes included as potentially impaired in the 305(b) Report are lakes that met the LMD requirements to be placed into categories 2B or 3B only. These waters mainly lack the data

necessary to come to a confident assessment conclusion or do not meet the LMD definition of an impaired water, but the Department has reason to believe that water quality concerns remain. The Department can provide the water quality data for those waters upon request. The Department will prioritize collection of more data on waters that show impairment based on data that is too old to use.

Concern 3

1. Jackrabbit Lake (WBID 7391)
   Jackrabbit Lake does not meet the impairment criteria. While the Chl-a values do increase over time from 2011 to 2017, there is not enough data to account for climatic variation. The Department, therefore, cannot evaluate possible bias in the current data. If data had been collected between 2011 and 2017, it is undetermined whether this data would have exceeded the Plains ecoregional criteria as well. While Jackrabbit Lake does exceed the screening thresholds for TN, TP, and Secchi depth, neither of the endpoints of Chl-a/TP ratio and inorganic suspended sediment are met, nor are algal toxin counts exceeded. Therefore, the lake does not presently meet the criteria for impairment.

2. Shelbyville Lake (WBID 7036)
   The only available data for Shelbyville Lake are from 2010 and 2014, and no Chl-a data are available for 2010. These data cannot appropriately account for the climatic variability of the site. While Chl-a data in 2014 exceeds the Plains ecoregional criteria, and the screening thresholds are exceeded for inorganic suspended sediment, Secchi depth, TN, and TP, the Chl-a/TP ratio is greater than 0.15. Therefore, the site does not meet the LMD definition of an impaired water.

3. Montrose Lake (WBID 7208)
   MCE is correct that Montrose Lake has exceeded the Plains ecoregion Chl-a criteria in the last three years of available data. However, the last three years of available data are from 2008, 2007, and 2005. All of these dates are older than seven years and therefore may not be representative of current lake conditions. While these data do not meet the LMD requirements for listing, the Department has prioritized this lake for additional monitoring.

4. Cameron lake No. 1 (WBID 7120)
   The only available data for Cameron Lake No. 1 is from 2016 and 1996. Chl-a data from 2016 exceed the numeric nutrient criteria. Chl-a data from 1996 do not exceed the criteria, and additional data do show elevated levels of mineral turbidity. However, the Department cannot definitively say that the 1996 data represents current conditions. While these data do not meet the LMD requirements for listing, the Department has prioritized this lake for additional monitoring.

5. Cameron Lake No. 2 (WBID 7121)
   Similar to Cameron Lake No. 1, the only two years of available data for Cameron Lake No. 2 are 2016 and 1996. Chl-a data from 2016 exceed the numeric nutrient criteria. Chl-a data from 1996 do not exceed the criteria, and additional data do show elevated levels of mineral turbidity. However, the Department cannot definitively say that the 1996 data represents

current conditions. While these data do not meet the LMD requirements for listing, the Department has prioritized this lake for additional monitoring.

Additionally, MCE pointed out that King Lake (WBID 7112) was listed using data that was all collected more than seven years prior to assessment. This listing was in error and does not follow the LMD, therefore the Department will remove King Lake from the proposed 303(d) list. However, the Department intends to collect additional data from this lake for use in future assessments.

IV. City of Kansas City

Kansas City Water Services provided comments regarding Brush Creek (WBID 3986) and the PAHs impairment. Kansas City Water Services commented that two of the three sites used for assessment are in Kansas, rather than Missouri. The City comments that the listing is also based on a probable effects concentration (PEC) threshold that is not a regulatory standard, but rather intended for weight of evidence to warrant further investigation. The Missouri site is indicated by the City to be below the recommended PEC values for impairment. The City therefore requests that the stream be reassessed using only data from Missouri.

Department Response

In accordance with the LMD, PAH toxicity is assessed by comparing the sum of the geometric means for all PAH compounds to 150 percent of the recommended PEC value for total PAHs. The Department has reassessed the PAHs impairment on Brush Creek (WBID 3986) and determined that the sum of the geometric means for all PAHs compounds at the Missouri site (site code 3986/5.1) is below the 100 percent recommended PEC value for total PAHs (22.8 mg/kg). Total PAH values at the Kansas sites suggest that total PAHs in the stream are decreasing as the water body flows into Missouri. The Department proposes to delist Brush Creek for PAHs in sediment based on this reassessment.

V. City of Independence

The City of Independence requests that the Department re-evaluate *E. coli* impairment for the following sites by calculating geometric means without the inclusion of storm flow samples:

1. Little Blue River (WBID 0422)
2. Little Blue River Tributary (WBID 4107)
3. Burr Oak Creek (WBID 3414)
4. Crackerneck Creek (WBID 3962)
5. Rock Creek (WBID 4106)
6. Spring Branch (WBID 5004)

The City of Independence cited a joint agreement with the United States Geological Survey (USGS) in order to obtain data during storm events. The City and USGS provided data for some of these events, along with geometric means that were calculated with and without storm flow

samples for Little Blue River, Rock Creek, and Spring Branch. Based on these calculations, the City suggests that a significant bias in *E. coli* counts is present when storm flow data is included.

Department Response

The Department appreciates the comments made by the City of Independence. Missouri's WQSs do not contain a high flow or storm flow exclusion to the recreational use criteria. The data used for assessment contained samples from both storm flow and non-storm flow conditions. The Department will not exclude data points purely on the basis of storm flow exceedance, especially when such data shows bacterial contamination issues during storm flow events. The Department maintains that the listings of Little Blue River (WBID 0422), Little Blue River Tributary (WBID 4107), Burr Oak Creek (WBID 3414), Crackerneck Creek (WBID 3962), Rock Creek (WBID 4106), and Spring Branch (WBID 5004) are appropriate.

VI. City of Springfield

The City of Springfield provided comments on the TMDL schedule for Pearson Creek (WBID 2373) and Wilsons Creek (WBID 2375), asking the Department to lower the priority from medium to low and revise the schedule to greater than 10 years. The City also provided comments requesting the Department delist North Branch Wilsons Creek for zinc in sediment, noting that the 2020 LMD states additional biological data is needed, and this data is lacking from the assessment.

Department Response

The Department appreciates the City's efforts to improve water quality in Pearson and Wilson creeks. At this time, the Department agrees to lower the priority from medium to low and revise the schedule to 11 years. The Department intends to evaluate progress during the development of future 303d lists and 305b reports. Additionally the Department would like to invite the City to meet with us in order to discuss the plan moving forward to help the Department evaluate progress toward addressing the impairments. Please contact Mike Kruse, TMDL Unit Chief, at 573-522-4901 or via email at Michael.Kruse@dnr.mo.gov to set up a time to discuss.

North Branch Wilsons Creek was initially placed on the 2014 303(d) List due to levels of zinc in sediment above 150 percent of PEC. The City cites the 2020 LMD needing biological data as part of the weight of evidence to confirm the toxicity of zinc in sediment to aquatic life. While biological data is a requirement for placing any new waters on the 303(d) list for toxics in sediment, the water body has already been listed and there is no evidence to show that the zinc is not causing toxicity. In the absence of biological data or additional sediment data, the Department will maintain North Branch Wilsons Creek on the 303(d) list for zinc in sediment.

LimnoTech
Water Environment | Scientists Engineers

7300 Hudson Blvd.
Suite 295
Oakdale, MN 55128
651.330.6038
www.limno.com

November 7, 2019

Missouri Department of Natural Resources
Attention: Robert Voss
Water Protection Program
P.O. Box 176
Jefferson City, MO 65102-0176
robert.voss@dnr.mo.gov

RE: Missouri Section 303(d) Impaired Waters List

Dear Mr. Voss:

On behalf of The Doe Run Company ("Doe Run"), LimnoTech collected water and sediment samples to inform Missouri Section 303(d) Impaired Waters List impairment determinations for streams in the Viburnum Trend. As you are aware, Doe Run has constructed water treatment plants at mine and mill facilities, leading to improved water quality. The sampling was conducted consistent with a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) that had submitted to and approved by Missouri DNR in 2017. An Addendum to the SAP, describing proposed 2019 sampling, was provided to Missouri DNR in April 2019. Missouri DNR provided approval of the Addendum to the SAP in an email dated April 26, 2019. The sampling was conducted June 26-27 and September 4-5, 2019, and focused on stream reach segments and parameters that had previously been included as impaired on past Missouri 303(d) lists.

Attached to this letter is a sampling report presenting a summary of the data collection activities, results of field measurements and laboratory analyses, and quality control / quality assurance review. The laboratory Electronic Data Deliverable (EDD) reports are also being provided to you via email. We request that Missouri DNR include these data in assessments to develop the 2020 303(d) list, as well as future assessments.

Additionally, based on the results of these recent samples, the following impairments from the 2018 303(d) list should be removed from the forthcoming 2020 list:

- Courtois Cr. (WBID 1943): lead in sediment
    - A treatment plant has been constructed at the Doe Run Viburnum facility which discharges into Indian Creek, upstream of Courtois Cr. and began operation in October, 2016.
    - 2017-2019 data indicate lead levels in sediment are below the probable effect level (PEL), which represents 150% of the probable effects concentration (PEC) and is the value used by MDNR to assess impairment of sediments. In addition, the probable effects concentration quotient (PECQ), which MDNR uses to estimate the synergistic effects of multiple metals in sediments, is below the threshold of 0.75, as shown in the table below.

Courtois Creek Lead in Sediments

Location	Date	Lead (mg/kg)	PECQ
1943/29.0	9/4/2019	12.4	0.077
1943/29.0	6/26/2019	40.6	0.146
1943/29.0	9/29/2017	66.1	0.236
Geometric mean		**32.2**	**0.134**
Probable Effect Level Threshold		**192**	**0.75**

- Indian Cr. (WBID 1946): lead and zinc in sediment.
  - As stated above, a treatment plant has been constructed at the Doe Run Viburnum facility which discharges into Indian Cr., and a previous outfall to a tributary to Indian Cr. has been eliminated. The treatment plant began operation in October, 2016.
  - 2017-2019 data indicate lead and zinc levels in sediment are below the PELs, and the PECQ for the suite of metals in sediment is below the threshold, as shown in the table below.

Indian Creek Lead and Zinc in Sediments

Location	Date	Lead (mg/kg)	Zinc (mg/kg)	PECQ
1946/0.1	9/4/2019	132	286	0.450
1946/0.1	6/26/2019	89.2	56.8	0.179
1946/0.1	9/29/2017	110	326	0.477
Geometric mean		**109**	**174**	**0.312**
Probable Effect Level Threshold		**192**	**689**	**0.75**

- Crooked Cr. (WBID 1928): cadmium and lead in sediment, copper in water
  - Doe Run previously discharged into Crooked Cr. from the Casteel Mine and BRRF. Regular discharges were eliminated in May, 2014 and March, 2016 respectively.
  - 2017-2019 data indicate cadmium and lead levels in sediment are below the PELs, and the PECQ for the suite of metals in sediment is below the threshold, as shown in the table below.

Crooked Creek Cadmium and Lead in Sediments

Location	Date	Cadmium (mg/kg)	Lead (mg/kg)	PECQ
1928/0.5	9/4/2019	2.3	33.7	0.181
1928/0.5	6/26/2019	4.2	39.8	0.258
1928/0.5	9/29/2017	4.3	62.4	0.306
Geometric mean		**3.5**	**43.7**	**0.241**
Probable Effect Level Threshold		**7.5**	**192**	**0.75**

- 2019 data indicate copper concentrations in water below the lowest calculated hardness-based water quality criterion, as shown in the table below.

Crooked Creek Copper in Water

Location	Date	Copper (µg/L)
1928/0.5	9/4/2019	0.78
1928/0.5	6/26/2019	0.77
1928/0.5	9/29/2017	0.58
1928/3.5	9/4/2019	0.75
1928/3.5	6/26/2019	1.1
1928/3.5	9/29/2017	0.75
Chronic Water Quality Criterion		11

- Bee Fk. (WBID 2760): lead in water
  - Doe Run previously discharged mine and tailings water to Bee Fork from the Fletcher Mine and Mill facility. Mine water and tailings water discharges at Fletcher have been discontinued; discharges to Bee Fork are now stormwater only.
  - 2017-2019 data indicate dissolved lead concentrations in water well below the lowest hardness-based chronic criterion, as shown in the table below.

Bee Fork Lead in Water

Location	Date	Lead (µg/L)
2760/8.6	9/5/2019	0.13
2760/8.6	6/27/2019	0.25
2760/8.6	9/26/2017	1.9
Chronic Water Quality Criterion		2.6

- West Fk. Black R. (WBID 2755): lead and nickel in sediment
  - 2017-2019 data indicate geometric mean lead and nickel levels in sediment are below the PELs, and the geometric mean PECQ for the suite of metals in sediment is below the threshold, as shown in the table below.

West Fork Black River Lead and Nickel in Sediments

Location	Date	Lead (mg/kg)	Nickel (mg/kg)	PECQ
2755/21.5	9/5/2019	136	22.4	0.332
2755/21.5	6/27/2019	8.6	4.2	0.049
2755/21.5	9/27/2017	264	34.6	0.597
2755/22.3	9/5/2019	23.7	7.8	0.093
2755/22.3	6/27/2019	96	31.1	0.356
2755/22.3	9/27/2017	1430	126	2.818
2755/22.5	9/5/2019	53.2	18.9	0.269
2755/22.5	6/27/2019	37.1	12.7	0.125
2755/22.7	9/27/2017	9.8	3.2	0.041
Geometric mean		**64.5**	**16.2**	**0.205**
Probable Effect Level Threshold		**192**	**73**	**0.75**

Additionally, there is a TMDL for lead and zinc in water for Indian Creek and Courtois Creek. The data collected during the 2017 and 2019 surveys show compliance with water quality standards for both lead and zinc in Indian Creek, as shown in the table below. Doe Run requests that MDNR withdraw the TMDL, or alternatively, accept the existing Viburnum permit as a permit in lieu of the TMDL.

Lead and Zinc Concentrations in Water in Indian Creek

Location	Date	Lead (µg/L)	Zinc (µg/L)
1946/0.1	9/4/2019	<0.13	4.6
1946/0.1	6/26/2019	<0.1	<10
1946/0.1	9/29/2017	0.36	16.9
Chronic water quality criterion		4.2	175

Please contact us if you have questions.

Sincerely,
LimnoTech

Hans Holmberg

Hans Holmberg
Associate Vice President, Senior Engineer

Attachments:
Sampling Report
Electronic Data Deliverables submitted via email

Metropolitan St. Louis Sewer District
Division of Environmental Compliance
10 East Grand Avenue
St. Louis, MO 63147-2913
314-768-6200 www.stlmsd.com

February 10, 2020

Robert Voss
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, Missouri 65201

Dear Mr. Voss:

The Metropolitan St. Louis Sewer District has reviewed the St. Louis area streams included on the proposed 2020 Section 303(d) listings and de-listings for Missouri. We would like to take the opportunity to provide the Missouri Department of Natural Resources (MDNR) with the following comments.

303(d) List Comments

Comment #1: Little Antire Creek (WBID 4115.00) was listed as impaired by *E. coli* for WBC B in 2016. Since MDNR sent out the data solicitation request, MSD has collected additional data for this waterbody. Review of this additional data shows compliance with the water quality standard for the past three (3) years. MSD is requesting that MDNR consider the data collected during 2017, 2018 and 2019. Review of this data indicates that Little Antire Creek is attaining water quality standards and should be delisted for impairment by *E. coli*. Supporting data will be provided to the Department in an electronic format.

Comment #2: MDNR's 2020 data review worksheet for River des Peres (WBID 1710.00) does not include the 2017 or 2018 data that was submitted by MSD during the data solicitation. This data will not affect the listing status, but MSD requests that the data be added to MDNR's water quality database for future use. Data will be re-submitted to the Department in an electronic format.

Comment #3: MDNR's 2020 data review worksheet for Spring Branch (WBID 5007.00) does not include the 2017 or 2018 data that was submitted by MSD during the data solicitation. This data will not affect the listing status, but MSD requests that the data be added to MDNR's water quality database for future use. Data will be re-submitted to the Department in an electronic format.

Comment #4: MDNR's 2020 data review worksheet for Watkins Creek (WBID 1708.00) does not include the 2017 or 2018 data that was submitted by MSD during the data solicitation. This data will not affect the listing status, but MSD requests that the data be added to MDNR's water quality database for future use. Data will be re-submitted to the Department in an electronic format.

Comment #5: Gravois Creek tributary (WBID 4051.00) was listed as impaired by *E. coli* for WBC B in 2016. Since the time of the original listing, EPA has approved a Total Maximum Daily Load (TMDL) for the Gravois Creek Watershed. Implementation of this TMDL will address the water quality issues throughout the watershed, including the Gravois Creek tributary. MSD is proposing WBID 4051.00 be delisted and placed in Category 4A – TDML approved or established by EPA.

The Metropolitan St. Louis Sewer District appreciates the MDNR's commitment to transparency and the use of sound data and analysis in protecting Missouri's waterways. Thank you for the opportunity to provide comments during this process.

If you have any questions or comments, please feel free to contact me at (314) 436-8714 or Austin Nieman at (314) 436-8700.

Sincerely,

Jason Peterein
Program Manager – Department of Environmental Compliance
Metropolitan St. Louis Sewer District

cc: Jay Hoskins
Austin Nieman

Washington University in St. Louis
SCHOOL OF LAW

Interdisciplinary Environmental Clinic

February 20, 2020

Robert Voss
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, MO 65102-0176
VIA email: robert.voss@dnr.mo.gov

Re: Missouri 2020 Section 303(d) Impaired Waters List

Dear Mr. Voss,

On behalf of the Missouri Coalition for the Environment ("MCE"), the Washington University Interdisciplinary Environmental Clinic is submitting this letter to comment on the proposed Missouri 2020 Section 303(d) Impaired Waters List ("303(d) list"). Our comments specifically focus on the proposed lakes that are added under the new nutrient criteria. MCE is an environmental advocacy organization with offices in St. Louis City and Columbia. MCE has over 800 members throughout Missouri. MCE's members have advocated since 1969 for the protection of all streams, rivers, wetlands, and floodplains throughout the State of Missouri. MCE's members frequently pursue various activities which involve drawing drinking water from, swimming and fishing in, and floating on Missouri's waters. Thus, MCE has a substantial interest in MDNR's proposed 303(d) list.

Section 303(d) of the Clean Water Act requires states to develop a list of impaired waters ("303(d) list") by April 1st of every even-numbered year that do not meet the state's Water Quality Standards. Missouri Department of Natural Resources ("MDNR") published the Draft 2020 Section 303(d) Impaired Waters List on November 15, 2019. While the 303(d) list covers all pollutants for all waters of the state, we have reviewed and will be commenting based only on the new nutrient criteria for lakes. We previously testified at MDNR's public hearing on the 303(d) list draft proposal on February 13, 2020 and will expand upon our testimony in the following comments.

Lakes added under the new nutrient criteria make up over 75% of all new waterbody additions to the proposed 2020 303(d) list. For this reason, we believe MDNR should pay special attention to how it implements its nutrient criteria plan and monitors lakes for impairment. MCE's specific concerns and recommendations for the 303(d) list focus on three major points. First, MCE has noticed deficient collections of data and recommends MDNR comply with all data collection requirements. Second, MCE recommends MDNR improve transparency in the 303(d) listing methodology and process. Finally, MCE has found five additional lakes that show sufficient impairment qualifying them for 303(d) listing. MCE asks MDNR to consider adding these lakes

to the list.

I. MISSING INFORMATION FROM DATA COLLECTION AND RECOMMENDATIONS FOR IMPROVEMENT

There is a significant amount of data that has not been collected as required. First, according to the Department's Nutrient Criteria Implementation Plan, a minimum of four samples/grabs must be taken each year considered.[1] The following lakes have missing grabs for at least one of the most recent three years of data:

- Busch W.A. Kraut Run Lake: missing 1 grab in 2015; missing 3 grabs in 2014
- Rocky Hollow Lake: missing 1 in 1996
- Cameron Lake #4: missing 2 grabs in 2018; missing 1 in 2015
- Garden City New Lake: missing 1 grab in 2018

Second, each sample must include data for Chl-a, TN, TP, and Secchi depth.[2] Many lakes are missing one or more of these data requirements in sample years used to analyze these lakes. Missing data includes:

- Chl-a: Busch W.A. Kraut Run Lake (2015, 2014, 2010), Coot Lake (2010), Catclaw Lake (2010), Monroe City Lake (2010), New Marceline Lake (2010)
- TN + TP: Busch W.A. Kraut Run Lake (2015, 2014)
- Secchi depth: Lake Killarney (2003)

Additionally, a general review of a sample of unlisted lakes reveals that the amount of data collected by MDNR is insufficient. There are many non-impaired lakes on MDNR's Water Quality Assessment System that only have data for specific analytes without any nutrient data or only have fish tissue analysis without any water testing data. While most of the missing data points come from grabs prior the new nutrient criteria, MDNR is still using data from these years to determine whether a lake should be placed on the list. Under the new nutrient criteria, we hope to see all required data and grabs for each lake.

Under the third requirement, MDNR must consider at least three years of data and any data over seven years old may not be used to assess impairment.[3] As stated in the Implementation Plan, "a duration of three or more years is necessary to account for natural variations in nutrient levels due to climatic variability."[4] In its Methodology for the Development of the 2020 Section 303(d) List in Missouri, DNR states that "[f]or assessing present conditions, more recent data are preferable; however, older data may be used to assess present conditions if the data remains

---

[1] *Nutrient Criteria Implementation Plan*, MO. DEP'T OF NAT. RES. 8 (July 27, 2018).
[2] *Id.*
[3] *Id.*
[4] *Id.* at 4.

representative of present conditions."[5] Based on the information available from DNR's Water Quality Data Search, there are many waterbodies for which there is a significant gap in years between sample collections.[6] Additionally, on numerous occasions after a lake exceeded an impairment or screening threshold, there was no sampling undertaken in the subsequent years.[7] Following each lake is the three most recent years that water quality data was collected:

- Butler Lake (2017, 2015, 2006)
- Drexel Lake (2017, 2015, 2011)
- Edina Reservoir (2012, 2008, 2006)
- Edwin A. Pape Lake (2016, 2009, 2005)
- Fredericktown City Lake (2017, 2014, 2008)
- Green City Lake (2016, 2012, 2009)
- Harrisonville City Lake (2017, 2015, 2007)
- Labelle Lake #2 (2017, 2015, 2011)
- Monroe City Lake (2014, 2011, 2010)
- New Marceline City Lake (2016, 2010, 2009)
- Willow Brook Lake (2015, 2006, 2005)
- Catclaw Lake (2017, 2011, 2010)
- Ella Ewing Community Lake (2012, 2008, 2007)
- King Lake (2009, 2006, 2005)
- Lake Killarney (2018, 2007, 2005)
- Rocky Hollow Lake (2012, 2008, 2005)
- Vandalia Community Lake (2012, 2005, 2002)

A. Prioritization of Data Collection for Lakes where Recent Data Indicates Impairment

We first recommend that DNR prioritize data collection for lakes where a recent collection of data showed that screening values and/or impairment thresholds were exceeded. Understandably, MDNR is limited in its capacity to collect data due to resource constraints. While we commend MDNR for adding lakes to 303(d) even though it requires using data from years before 2011, we are concerned that through their discretion of whether or not to consider old data, other lakes are left off of the protected list because of insufficient data. For example, if a lake has "good" criteria for years 2008 and 2009, and then the lake is sampled in 2016 and exceeds the Chl-a threshold, MDNR has the authority to keep a lake off the 303(d) list simply by not testing it after 2016. Thus, to mitigate the potential for impaired lakes being left off the list due to lack of

---

[5] *Methodology for the Development of the 2020 Section 303(d) List in Missouri, Mo. Dep't of Nat. Res. 17 (Apr. 6, 2016).*

6 *Water Quality Assessment System*, MO. DEP'T. OF NAT'L RES., https://apps5.mo.gov/mocwis_public/wqa/waterbodySearch.do

7 MDNR considered data taken before 2011 for these lakes, 2011 representing 7 years before 2018 when is the most recent year any data was published for proposed additions to the 2020 303(d) list. Missouri Department of Natural Resources, 2020 Section 303(d) Listed Waters Proposed List for Public Notice (November 15, 2019), https://dnr.mo.gov/env/wpp/waterquality/303d/docs/2020-303d-list-public-notice-attachments.pdf.

sampling, MDNR should direct resources towards those lakes that have already exceeded impairment thresholds at least once.

For example, we reviewed data for Lamar Lake (Barton County) (WBID:7356.00) and found that its Chl-a data from 2018, 2017 and 2016 are 27.8, 26.5 and 28.7 respectively. These all exceeded the Chl-a screening value but failed to exceed the Impairment Response Threshold. The only assessment endpoint noted was Secchi depth data which indicated no impairment. But Secchi data alone does not verify that the lake is not impaired, and more data is needed to assess whether it should be included on the 303(d) list. Thus, there is a possibility that if more assessment endpoint data was collected, it would show that Lamar Lake is impaired and requires protection through inclusion on the 303(d) list.

B. Use of Discretion To Be Over-Inclusive In The Use Of Older Data

Additionally, we recommend that MDNR continue to use its discretion to be over-inclusive, rather than under-inclusive, when adding lakes using data older than 7 years and consider several additions to the list that rely on older data. A failure to collect an adequate amount of recent data does not justify the non-inclusion of waters that older data indicates as being impaired or trending towards being impaired.

II. RECOMMENDATIONS TO INCREASE TRANSPARENCY

MDNR's proposed 303(d) list seriously lacks transparency. The purpose of the 303(d) public hearing is to give the public the opportunity to comment on the newly added lakes, and potentially suggest new additions. But, if the public is to have any meaningful opportunity to do this, they must have access to the proper data and information.

A. Inclusion of A Narrative Justification For 303(d) Additions

Due to the complexity of the new nutrient criteria, MDNR should include a narrative for each newly proposed 303(d) waterbody addition describing why a lake was added to the list. While MDNR does provide a link to an Excel sheet with data on each lake, this data often does not provide the entire picture.[8] Additionally, MDNR failed to provide Excel format data for the lakes that were not placed on the 303(d) list. Excel data should be provided for the lakes that MDNR decided were not impaired, along with a narrative analysis and conclusion explaining why the lake was or was not judged to be impaired. If a lake has two or more years of Chl-a data that exceeds the nutrient response impairment threshold, then the reason for its addition is apparent. For the lakes that did not exceed the response threshold but rather had three years of data that exceed one of the nutrient screening thresholds (triggering consideration of the response assessment endpoints), it is less clear whether the lake should be added to the 303(d) list. The Excel documents contain very little information about any of the response assessment endpoints, such as if there were documented fish kills or excessive turbidity. MDNR should include all

[8] 2020 Section 303(d) Listed Waters Proposed List for Public Notice, *supra* note 7.

assessment endpoints data and a written narrative that describes MDNR's analysis and conclusion. If a lake is added to the list (or not added), the public should know exactly why it was added (or not) so that individuals have the proper knowledge to submit comments and understand the lake's condition with respect to water quality. Missouri decided not to use numeric nutrient criteria to determine impairment, and instead uses a system that requires consideration of several parameters before impairment can be demonstrated. Having chosen this system, Missouri must now explain how it is using these multiple data points when it communicates impairment decisions to the public.

B. Expansion of Access to Basic Waterbody Information

MDNR should make available basic information about Missouri lakes so that the public can monitor lakes that are not on the 303(d) list. While MDNR has the Water Quality Assessment System (WQAS), which allows the public to search a lake by name and find a list of all data taken from that lake, it does not have a list of all lakes and reservoirs under its jurisdiction in Missouri. As such, there is no list that an individual can go to and in order to determine if a particular body of water is protected by the state. In addition, if an individual does find the data on a particular lake on the WQAS, there is no definite way to know what criteria applies to that lake. Missouri has three different sets of criteria based on which region (Plains, Ozark Highlands, and Ozark Border) a lake is located. The WQAS documents on a particular lake do not contain information about which region the lake falls into and there is no map showing the boundaries of each region. So, if an individual sees that the Chl-a concentration of a particular lake averages to about 17, then it would be impaired if it were in the Ozark Highlands, but would not be at all if it were located in the Plains. Thus, with no basis to assess data against, there is no way for the public to know definitively if a particular lake should be considered impaired or at least be subject to stricter monitoring. The MDNR should do a better job of compiling data and providing information for these lakes. The data collected by the same program in the same year should be complied into one Excel file, making it easier for the public to review.

C. Written Justification For The Use Of Older Data

MDNR should publish written justifications for using or not using data older than seven years alongside the proposed 303(d) list. As mentioned in the previous section, MDNR has discretion to use older data and according to the MDNR's own listing methodology, "If the department uses data older than seven years to make a Section 303(d) list decision, a written justification for the use of such data will be provided." Without such information, the public may assume that every lake with data showing impairment for one year or more, regardless of when the data was collected, has the potential to be added to the 303(d) list.

D. Water Quality Assessment Tool Update

MDNR should consider updating its Water Quality Assessment tool website/database. While the database is immensely helpful in accessing water quality data, it should be noted that there are frequent error messages and time periods where the data is inaccessible. If the public is to have

the ability to monitor and provide comments on MDNR's activities, they must be able to consistently access the information.

E. Written Analysis and Conclusion of Potentially Impaired Lakes

There is a list of lakes placed on the 305(b) list named as potentially impaired lakes, but there is no available Excel data provided for this list that is similar to the data provided for the lakes placed on the 303(d) List. The MDNR should include Excel data and a narrative analysis with a conclusion for these lakes. This would allow the public to know that a certain lake has indicators of impairment and that it has the potential of becoming impaired. It is also important that the public know which lakes are showing signs of impairment so that they can provide oversight of MDNR to ensure that they are conducting the extra testing that is required.

III. CURRENT UNLISTED LAKES THAT SHOULD BE INCLUDED ON 2020 303(d) LIST

A. Jackrabbit Lake (Jackson County) (WBID:7391.00)

Jackrabbit Lake's most recent data is from 2017, 2011, and 2010. In 2010, the available data indicates that the lake was below the screening threshold. Again in 2011, the available data was just slightly under the screening threshold, with a geometric mean of 16.67 for Chlorophyll-a, but showing a clear upward trend. In 2017, six years later, the geometric mean for Chlorophyll-a had increased more than three-fold to 60.23. Had data been collected within the 6-year timeframe between 2011 and 2017, it is more than likely that another year's data would have exceeded the impairment threshold and Jackrabbit Lake would have automatically been added to the 303(d) list based on the requirements of the listing methodology.

B. Shelbyville Lake (Shelby County) (WBID:7036.00)

Shelbyville Lake has data from year 2010 and 2014. In 2014, Shelbyville Lake had a Chl-a geometric mean of 73.027, which is higher than the Plains Response Impairment Threshold. And the data from 2010 only had the data of Total Chlorophyll, the geometric mean of Total Chlorophyll was 94.775. Even assuming that Total Chlorophyll is 120% of the Chl-a (which normally would not reach that high), the estimated geometric mean of Chl-a is still 78.979, still higher than the Response Impairment Threshold. Up to now the lake was still not listed on the 303(d) list.

C. Montrose Lake (Henry County) (WBID:7208.00)

Montrose Lake has data from year 2007 and 2008. In 2007, the geometric mean of Chl-a was 54.976. In 2007, the geometric mean of Chl-a was 53.496. Both years' data had exceeded the Response Impairment Threshold for the plains region. Thus, the lake should be placed on the 303(d) list.

D. Cameron Lake #1 (Dekalb County) (WBID:7120.00)

Cameron Lake #1 has data from 1998 and 2016. In 2016, the geometric mean for Cameron Lake #1's Chlorophyll-a was 49.11. The last time Cameron #1 was tested before 2016 was 1998, and the sample did not include values for Chlorophyll-a, Phosphorus, or Nitrogen. Had additional data been collected before or after 2016, it is more than likely that another year's data would have exceeded the impairment threshold and Cameron #1 would have automatically been added to the 303(d)list based on the requirements of the listing methodology.

E. Cameron Lake #2 (Dekalb County) (WBID:7121.00)

Cameron Lake #2 is similar to Cameron Lake #1 and has data from 1998 and 2016. In 2016, the geometric mean for Cameron Lake #2's Chlorophyll-a was 33.92. The last time Cameron Lake #2 was tested before 2016 was 1998, and the sample did not include values for Chlorophyll-a, Phosphorus, or Nitrogen. Had additional data been collected before or after 2016, it is more than likely that another year's data would have exceeded the impairment threshold and Cameron Lake #2 would have automatically been added to the 303(d)list based on the requirements of the listing methodology.

IV. CONCLUSION

In summation of our public testimony and written commentary, we ask MDNR to implement the following recommendations: (1) Comply with the implementation plan requirements including collecting all prescribed data and ensuring that such data is up to date; (2) Include lakes that indicate impairment even if MDNR was unable to collect two years of data from the past seven years; (3) Improve transparency by making the 303(d) list information and reasoning more publicly available. This includes adding written narratives that describe why each lake was added to the list; (4) Consider adding the lakes detailed above. In this letter, we have further supported upon and explained these recommendations. While we understand the limits of MDNR's resources, we strongly encourage MDNR to ensure that all required data is collected moving forward, to improve transparency with the public, and to consider adding the lakes detailed above. We are glad to have the opportunity to weigh in on the 2020 303(d) list and appreciate MDNR considering our comments.

Sincerely,

Elizabeth Hubertz
Clinic Attorney

KC WATER

REGULATORY COMPLIANCE DIVISION
4700 E. 63rd Street • Kansas City, MO 64130

P: 816-513-0600 • F: 816-513-0615 • www.kcwater.us

February 19, 2020

Mr. Robert Voss
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Subject: Comments on Proposed 2020 303(d) List for Missouri

Mr. Voss,

The City of Kansas City (City) submits the following comments on the proposed 2020 303(d) List of impaired waters which the Missouri Department of Natural Resources (MDNR or Department) placed on public notice on November 15, 2019.

The 2020 303(d) List identifies Brush Creek (3986) as impaired for total polycyclic aromatic hydrocarbons (PAHs) in the sediment. This listing is based on sediment data collected from 2006 through 2015 at three monitoring locations: 1) Brush Creek upstream of Rockwell Ln (Site 3986/5.1), 2) Brush Creek at Park Road (3986/6.2), and 3) Brush Creek downstream of Tomahawk Rd (Site 3986/7.9). However, sites 3986/6.2 and 3986/7.9 are both located in the State of Kansas and are upstream of Missouri Waterbody ID (WBID) 3986.

Total PAH sediment data from Missouri site 3986/5.1 is below the probable effects concentration (PEC) used to determine the need for further evaluation. The Listing Methodology Document (LMD) for the 2020 Section 303(d) List states that "pollutant geometric means will be compared to 150% of the recommended PEC values." The geomean of total PAH sediment data at Missouri site 3986/5.1 is 19.2 mg/kg, which is below 150% of the PEC value of 22.8 mg/L (i.e., below 34.2 mg/kg) recommended by MacDonald et al. (2000). Furthermore, PECs are not regulatory standards and are only intended to be used as part of a weight of evidence analysis.

In summary, the draft listing of Brush Creek (3986) for total PAHs in sediment is based solely on 1) data collected upstream of the listed segment in the State of Kansas, and 2) a threshold value intended only to trigger a weight of evidence analysis. Total PAH sediment data from the only site within the listed segment does not even meet the threshold for further analysis. Therefore, the City requests the Department remove Brush Creek from the 303(d) List for total PAHs.

Thank you for considering our comments on the proposed 2018 303(d) list. Please contact me at 816-513-0601 if you have any questions or would like to discuss these issues further.

Sincerely,

Sherri Irving

Sherri Irving, Regulatory Compliance Division Manager

cc: Terry Leeds, Director
David Nelsen, Wastewater Utility Officer
Matt Bond, Deputy Director
Brent Herring, Wastewater Treatment Division Manager

INDEPENDENCE
★ WATER POLLUTION CONTROL ★

February 19, 2020

Department of Natural Resources
Water Protection Program
Attn: Mr. Robert Voss
P.O. Box 176, Jefferson City, MO 65102-0176

RE: Draft Missouri 2020 Section 303(d) Impaired Waters List Public Comment

The City of Independence (City) would like to request that the following streams listed in the Draft Missouri 2020 Section 303(d) Impaired Waters List be re-evaluated for Escherichia coli (E. coli):

Little Blue River, WBID 0422.00
Little Blue River Tributary, WBID 4107.00
Burr Oak Creek, WBID 3414.00
Crackerneck Creek, 3962.00
Rock Creek, WBID 4106.00
Spring Branch, WBID 5004.00

It is believed that these streams have been misclassified as impaired, based on data collected by the United States Geological Survey (USGS) through a joint founding agreement with the City of Independence, Missouri. The purpose of this agreement is to meet compliance with the City's Municipal Separate Storm Sewer System (MS4) Permit. The MS4 permit requires sampling during storm events. Results from these storm flow sampling events were included in the data set used by MDNR for the 303(d) list determination.

The Methodology for the Development of the 2020 Section 303(d) List in Missouri, states on page 49 under *Other Statistical Considerations* that "Data sets composed mainly or entirely of storm water data or data collected only during a season when water quality problems are expected could result in a biased estimate of the true exceedance frequency. In these cases, the department may use methods to estimate the true annual frequency and display these calculations whenever they result in a change in the impairment status of a water body".

At the request of the City, USGS calculated the geometric mean of E. coli for Rock Creek, Little Blue River, and Spring Branch, Attachments 1, 2, and 3 respectfully. The analysis was conducted with and without the addition of storm flow samples in the data set. Their calculations shows a significant bias in E. coli counts when storm flow samples are included.

The City respectfully requests that the Missouri Department of Natural Resources review the data used in the determination of impairment for the previously mentioned streams and calculate the E. coli geometric mean without storm flow samples included in the data set.

Thank you for the opportunity to comment on this matter and if you have any further questions regarding this comment please feel free to contact us.

Sincerely,

Josh Eis
Environmental Compliance Supervisor
City of Independence - Water Pollution Control
jeis@indepmo.org
816.325.7054
9600 Norledge Ave.
Independence MO 64051

Attachments
Attachment 1 - Rock Creek, WBID 4106.00
Attachment 2 - Spring Branch, WBID 5004.00
Attachment 3 - Little Blue River, WBID 422.00

1 BEFORE THE DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION
2
3
4
5 PUBLIC HEARING
REGARDING DRAFT 2020 303(d) IMPAIRED WATERS LIST
6 AT LEWIS & CLARK STATE OFFICE BUILDING
1101 RIVERSIDE DRIVE
7 JEFFERSON CITY, MISSOURI 65101
8 FEBRUARY 13, 2020
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 A P P E A R A N C E

2 MEMBERS:

3 MR. ALLEN ROWLAND, Member (via phone)

4 MR. CHRIS WIEBERG, Member

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19 Court Reporter:
Joann Renee Richardson
20 Alaris Litigation Services
711 North Eleventh Street
21 St. Louis, MO 63101
(314) 644-2191
22 1-800-280-3376

23

24

25

1 MR. ROWLAND Today we will conduct a public
2 hearing on the proposed 2020 303(d) Impaired Waters
3 List. The purpose of this public hearing is to provide
4 the Department opportunity to present testimony and to
5 provide both the Department and the public opportunity
6 to comment on the proposed Impaired Water List.
7 I am Commissioner Allen Rowland, member of
8 Missouri's Clean Water Commission. I am serving as the
9 hearing officer for today's hearing. This public
10 hearing is not a forum for debate or resolution of
11 issues. I ask that those commenting limit their
12 testimony to five minutes and not repeat comments that
13 others have already made.
14 We will first hear testimony from the Department.
15 Following the Department's testimony, the public will
16 have an opportunity to comment. We ask that all
17 individuals present fill out the attendance card so our
18 records are complete. If you wish to present verbal
19 testimony, please indicate that on your attendance card.
20 When you come forward to present your testimony, please
21 speak into the microphone and begin by identifying
22 yourself to the court reporter.
23 Following the public hearing today, the
24 Department will review testimony presented and make
25 appropriate modifications to the proposed documents.

1 The Missouri Clean Water Commission plans to take final
2 action on the 2020 303(d) List at our April 2, 2020
3 meeting. The court reporter will now swear in anyone
4 wishing to testify at this public hearing. Will those
5 wishing to comment please stand?
6 MS. REPORTER: Will you raise your right
7 hand? Do you swear to tell the truth, the whole truth
8 and nothing but the truth, so help you God?
9 PUBLIC SPEAKERS: I do.
10 MR. WIEBERG: So Allen, we have the
11 Department ready to provide testimony. Are you ready to
12 hear that?
13 MR. ROWLAND: Yes. Please begin.
14 MR. VOSS: Good morning. My name is Robert
15 Voss. I am the supervisor of the Monitoring and
16 Assessment Unit within the Watershed Protection Section
17 of the Water Protection Program. Today I will be
18 providing information on the draft 2020 303(d) List of
19 Impaired Waters currently posted on the Missouri
20 Department of Natural Resources website for public
21 comment. Commissioner Rowland, thank you for serving as
22 a hearing officer today.
23 The Federal Water Pollution Control Act,
24 Section 303(d)requires states to biennially submit the
25 U.S. Environmental Protection Agency (EPA) a list of

1 impaired waters for which adequate pollution controls
2 have not yet been required.
3 The Department assessed waters and developed a
4 draft 2020 303(d)List following the 2020 listing
5 methodology document. The Clean Water Commission
6 approved the 2020 Listing Methodology Document on July
7 22nd, 2019. The Department placed the draft 2020 303(d)
8 List on public notice November 15th, 2019. The public
9 notice will continue through February 20th, 2020.
10 The draft 2020 303(d) List is composed of 491
11 water body-pollutant pairs. Sixty-one of these listings
12 are new to the 2020 List. The remaining 430 listings
13 are carried over from the EPA approved 2018 303(d) List.
14 Forty-six of the new 61 listings are due to the recently
15 approved ecoregional numeric nutrient criteria for
16 lakes.
17 A total of 33 water body/pollutant pairs from the
18 2018 List list are being proposed for de-listing. Of
19 the 33 proposed de-listings, 18 now meet water quality
20 standards, nine are due to a Total Maximum Daily Load
21 being developed and approved by EPA. Three were
22 originally listed in error and three are the result of a
23 revised assessment method.
24 Also of note, the draft list contains two columns
25 at the end of the table representing the Department's

1 draft Total Maximum Daily Load prioritization and
2 schedule. This schedule and priority is also open for
3 public comment.
4 The top five pollutant categories on the draft
5 2020 List are bacteria, heavy metals in water or
6 sediments, related to nutrients, low dissolved oxygen
7 and mercury in fish tissue.
8 The five most common sources on the draft 2020
9 List are non-point source, unknown source, mining
10 related, urban runoff and atmospheric deposition.
11 The Department held two public availability
12 meetings to discuss the draft 303(d) List. These
13 meetings were held on December 10th, 2019 and January
14 14th, 2020. A summary of the meetings is available on
15 the Department's 303(d) website.
16 To date, the Department has received two written
17 comments on the draft 2020 303(d) List. Comments were
18 received from Metropolitan St. Louis Sewer District and
19 LimnoTech on behalf of the Doe Run Company. Written
20 comments will continue to be received through February
21 20th, 2020. All public comments, along with the
22 Department's responses, will become part of the public
23 administrative record and will be made available on the
24 Department's 303(d) website.
25 As a result of the comments received thus far,

1 the Department anticipates some changes to the draft
2 list, mainly in the form of additional de-listings. The
3 Department believes that recent events on Mozingo Lake,
4 as well as data collected in 2019, warrant the addition
5 of Mozingo Lake to the draft list. Data for this
6 addition will be provided with the final list for the
7 Clean Water Commission's approval.
8 As Commissioner Rowland stated, the purpose of
9 today's hearing is to introduce the draft 2020 303(d)
10 List of impaired waters and allow the public to provide
11 comment. The Department will request the Clean Water
12 Commission's approval of the 2020 303(d) List at the
13 April 2nd, 2020 Commission meeting. Thank you.
14 MR. WIEBERG: All right. Commissioner
15 Rowland, we have a Claire Rainford who had asked to make
16 a comment representing the Missouri Coalition for the
17 Environment.
18 MS. RAINFORD: My name is Claire Rainford
19 and I am a law student with the Washington University
20 Interdisciplinary Environmental Clinic. The Clinic
21 represents the Missouri Coalition for the Environment.
22 My comments specifically will be focusing on
23 proposed lakes that were added to Missouri's proposed
24 303(d) List under the new nutrient criteria. Lakes with
25 excessive nutrient levels account for an overwhelming

1 majority of all proposed 303(d) water body additions
2 with 46 added this year, accounting for about 78 percent
3 of total water bodies added.
4 After reviewing the 2020 List, we recommend that
5 MDNR, Number one, ensure that under the new nutrients
6 monitoring program, all requisite data is collected,
7 Number two, publish additional information to improve
8 transparency with the public. And Number three,
9 consider adding a number of lakes that suggest
10 impairment.
11 First, according to the Nutrient Criteria
12 Implementation Plan, MDNR is required to collect four
13 samples per year of each lake, with samples including
14 Chlorophyll-a, total nitrogen, total phosphorous, and
15 Secchi depth. We noticed that some proposed 303(d)
16 lakes were missing the requisite number of samples for
17 nutrients for each year. We ask MDNR to ensure that
18 they are complying with these requirements so that they
19 have enough data to properly assess whether a lake is
20 impaired.
21 Additionally, the Implementation Plan requires at
22 least three samples within the last seven years and
23 requires a lake be added if two of the sample years show
24 impairment. While older data can be used, the data must
25 be representative of present conditions. This means

1 that MDNR has the discretion to include, or not include,
2 lakes on the list with data that suggestions impairment,
3 but where not enough recent data was collected to
4 require inclusion on the list.
5 We first ask MDNR to prioritize lakes where
6 recent nutrient levels exceed impairment thresholds so
7 that impaired lakes are not left unprotected solely due
8 to lack of testing.
9 Next, while we commend MDNR for adding lakes on
10 the 2020 proposed list where the Department considered
11 all the data, we ask that MDNR continue to add
12 additional lakes to the List where the data suggests
13 impairment, but only one year of recent data is
14 available.
15 Finally, MDNR is required to provide written
16 justification if older data is used to make a 303(d)
17 List decision. To our knowledge, MDNR does not
18 currently do so and we recommend publishing a
19 justification for why considering older data justifies
20 adding or leaving a lake off the list.
21 Second, we ask MDNR to take steps to improve
22 transparency. On the proposed 303(d) list, MDNR
23 provides a link to an excel sheet for each lake which
24 includes the value of Chlorophyll, total nitrogen, total
25 phosphorous, and other indicators of impairment. While

1 this is helpful to the public to the extent the lake has
2 very high Chlorophyll-a, thus automatically qualifying
3 as impaired, these numbers do not give an entire picture
4 of why a lake was added if it only exceeded one of the
5 nutrient screening thresholds.
6 If a lake exceeds one of these screening
7 thresholds, it triggers consideration of the response
8 assessment endpoints, such as fish kills or excessive
9 turbidity, to determine if the lake should be added to
10 the list. MDNR should include a written narrative and
11 conclusion on each newly proposed 303(d)addition about
12 why the lake was added, specifically including all
13 assessment endpoints taken into consideration.
14 If a lake is added or not added to the list, the
15 public should know why so that they have the proper
16 knowledge to monitor a lake's water quality conditions,
17 submit comments to MDNR, and generally provide oversight
18 of water body protection.
19 Finally, after reviewing nutrient data, we have
20 identified lakes that we believe MDNR should consider
21 adding to the 2020 303(d)List. We will submit these and
22 our reasons for including them in our written comments.
23 While we understand the limits of MDNR's
24 resources, we strongly encourage MDNR to adopt our
25 suggestions to collect all required data moving forward

1 and improve transparency with the public.
2 We are glad to have the opportunity to comment on
3 the proposed 2020 303(d) List and we appreciate MDNR
4 considering our comments. Thank you.
5 MR. WIEBERG: All right. Are there any
6 other folks in the audience today that wish to file
7 comments on the proposed 303(d) List for 2020? Not
8 seeing anyone jump up, Allen, I think you're good to
9 close the hearing right now.
10 MR. ROWLAND: Okay. The Department will
11 accept comments on the proposed document until 5:00 p.m.
12 Thursday, February 20, 2020. Comments can be submitted
13 to the Department's Water Protection Program by, Number
14 one, mailing mail to the Department's Water Protection
15 Program, Attention Robert Voss, P.O. Box 176, Jefferson
16 City, MO 65102-0167.
17 You may email directly to robert.voss@dnr.mo.gov.
18 And you may hand deliver to the receptionist at the
19 Lewis and Clark State Office Building, 1101 Riverside
20 Drive, Jefferson City. Mark comments with the attention
21 to Robert Voss, Water Protection Program.
22 On behalf of the Missouri Clean Water
23 Commission, I thank everyone who has participated in
24 this process. This hearing is now closed. Thank you.
25

1 C E R T I F I C A T E

2 I, Joann Renee Richardson, Certified Court
3 Reporter, do hereby certify that pursuant to Notice
4 there came before me on February 13, 2020, Department of
5 Natural Resources Missouri Clean Water Commission
6 Hearing, 1101 Riverside Drive, City of Jefferson City,
7 County of Cole, and this hearing was written in machine
8 shorthand by me and afterwards transcribed and is fully
9 and correctly set forth in the foregoing 12 pages.
10 I further certify that I am neither attorney or
11 counsel for, nor related to, nor employed by any of the
12 parties to this action in which this hearing is taken;
13 and further that I am not a relative or employee of any
14 attorney or counsel employed by the parties hereto, or
15 financially interested in this action.
16 Given at my office in the City of St. James,
17 County of Phelps, State of Missouri this 23rd day of
18 February 2020.
19
20 _____
21 Joann Renee Richardson, CCR
22
23
24
25

A

accept 11:11
account 7:25
accounting 8:2
Act 4:23
action 4:2 12:12 12:15
add 9:11
added 7:23 8:2 8:3,23 10:4,9 10:12,14,14
adding 8:9 9:9 9:20 10:21
addition 7:4,6
additional 7:2 8:7 9:12
Additionally 8:21
additions 8:1
adequate 5:1
administrative 6:23
adopt 10:24
Agency 4:25
Alaris 2:20
Allen 2:3 3:7 4:10 11:8
allow 7:10
anticipates 7:1
appreciate 11:3
appropriate 3:25
approval 7:7,12
approved 5:6 5:13,15,21
April 4:2 7:13
asked 7:15
assess 8:19
assessed 5:3
assessment 4:16 5:23 10:8 10:13
atmospheric 6:10
attendance 3:17 3:19
attention 11:15 11:20
attorney 12:10 12:14
audience 11:6
automatically 10:2
availability 6:11
available 6:14 6:23 9:14

B

bacteria 6:5
behalf 6:19 11:22
believe 10:20
believes 7:3
biennially 4:24
bodies 8:3
body 8:1 10:18
body-pollutant 5:11
body/pollutant 5:17
Box 11:15
Building 1:6 11:19

C

C 2:1 12:1,1
card 3:17,19
carried 5:13
categories 6:4
CCR 12:21
Certified 12:2
certify 12:3,10
changes 7:1
Chlorophyll 9:24
Chlorophyll-a 8:14 10:2
CHRIS 2:4
City 1:7 11:16,20 12:6,6,16
Claire 7:15,18
Clark 1:6 11:19
Clean 1:1 3:8 4:1 5:5 7:7,11 11:22 12:5
Clinic 7:20,20
close 11:9
closed 11:24
Coalition 7:16 7:21
Cole 12:7
collect 8:12 10:25
collected 7:4 8:6 9:3
columns 5:24
come 3:20
commend 9:9
comment 3:6,16 4:5,21 6:3 7:11 7:16 11:2
commenting 3:11
comments 3:12 6:17,17,20,21 6:25 7:22 10:17,22 11:4,7 11:11,12,20
Commission 1:1 3:8 4:1 5:5 7:13 11:23 12:5
Commission's 7:7,12
Commissioner 3:7 4:21 7:8,14
common 6:8
Company 6:19
complete 3:18
complying 8:18
composed 5:10
conclusion 10:11
conditions 8:25 10:16
conduct 3:1
consider 8:9 10:20
consideration 10:7,13
considered 9:10
considering 9:19 11:4
contains 5:24
continue 5:9 6:20 9:11
Control 4:23
controls 5:1
correctly 12:9
counsel 12:11,14
County 12:7,17
court 2:19 3:22 4:3 12:2
criteria 5:15 7:24 8:11
currently 4:19 9:18

D

Daily 5:20 6:1
data 7:4,5 8:6 8:19,24,24 9:2,3,11,12,13 9:16,19 10:19 10:25
date 6:16
day 12:17
de-listing 5:18
de-listings 5:19 7:2
debate 3:10
December 6:13
decision 9:17
deliver 11:18
Department 1:1 3:4,5,14,24 4:11,20 5:3,7 6:11,16 7:1,3,11 9:10 11:10 12:4
Department's 3:15 5:25 6:15 6:22,24 11:13 11:14
deposition 6:10
depth 8:15
determine 10:9
developed 5:3 5:21
directly 11:17
discretion 9:1
discuss 6:12
dissolved 6:6
District 6:18
document 5:5,6 11:11
documents 3:25
Doe 6:19
draft 1:5 4:18 5:4,7,10,24 6:1 6:4,8,12,17 7:1 7:5,9
Drive 1:6 11:20 12:6
due 5:14,20 9:7

E

E 2:1,1 12:1,1
ecoregional 5:15
Eleventh 2:20
email 11:17
employed 12:11 12:14
employee 12:13
encourage 10:24
endpoints 10:8 10:13
ensure 8:5,17
entire 10:3
Environment 7:17,21
Environmental 4:25 7:20
EPA 4:25 5:13 5:21
error 5:22
events 7:3
exceed 9:6
exceeded 10:4
exceeds 10:6
excel 9:23
excessive 7:25 10:8

extent 10:1

F

F 12:1
far 6:25
February 1:8 5:9 6:20 11:12 12:4,18
Federal 4:23
file 11:6
fill 3:17
final 4:1 7:6
Finally 9:15 10:19
financially 12:15
first 3:14 8:11 9:5
fish 6:7 10:8
five 3:12 6:4,8
focusing 7:22
folks 11:6
following 3:15 3:23 5:4
foregoing 12:9
form 7:2
forth 12:9
Forty-six 5:14
forum 3:10
forward 3:20 10:25
four 8:12
fully 12:8
further 12:10,13

G

generally 10:17
give 10:3
Given 12:16
glad 11:2
God 4:8
good 4:14 11:8

H

hand 4:7 11:18
hear 3:14 4:12
hearing 1:5 3:2 3:3,9,9,10,23 4:4,22 7:9 11:9 11:24 12:6,7,12
heavy 6:5
held 6:11,13
help 4:8
helpful 10:1
hereto 12:14
high 10:2

I

identified 10:20
identifying 3:21
impaired 1:5 3:2 3:6 4:19 5:1 7:10 8:20 9:7 10:3
impairment 8:10,24 9:2,6 9:13,25
Implementation 8:12,21
improve 8:7 9:21 11:1
include 9:1,1 10:10
includes 9:24
including 8:13 10:12,22
inclusion 9:4
indicate 3:19
indicators 9:25
individuals 3:17
information 4:18 8:7
Interdisciplina... 7:20
interested 12:15
introduce 7:9
issues 3:11

J

James 12:16
January 6:13
Jefferson 1:7 11:15,20 12:6
Joann 2:19 12:2 12:21
July 5:6
jump 11:8
justification 9:16,19
justifies 9:19

K

kills 10:8
know 10:15
knowledge 9:17 10:16

L

lack 9:8
lake 7:3,5 8:13 8:19,23 9:20 9:23 10:1,4,6 10:9,12,14
lake's 10:16
lakes 5:16 7:23 7:24 8:9,16 9:2,5,7,9,12 10:20
law 7:19
leaving 9:20
left 9:7
levels 7:25 9:6
Lewis 1:6 11:19
limit 3:11
limits 10:23
LimnoTech 6:19
link 9:23
list 1:5 3:3,6 4:2 4:18,25 5:8,10 5:12,13,18,18 5:24 6:5,9,12 6:17 7:2,5,6,10 7:12,24 8:4 9:2,4,10,12,17 9:20,22 10:10 10:14 11:3,7
listed 5:22
listing 5:4,6
listings 5:11,12 5:14
Litigation 2:20
Load 5:20 6:1
Louis 2:21 6:18
low 6:6

M

machine 12:7
mail 11:14
mailing 11:14
majority 8:1
Mark 11:20
Maximum 5:20 6:1
MDNR 8:5,12,17 9:1,5,9,11,15,17 9:21,22 10:10 10:17,20,24 11:3
MDNR's 10:23
means 8:25
meet 5:19
meeting 4:3 7:13
meetings 6:12 6:13,14
member 2:3,4 3:7
MEMBERS 2:2
mercury 6:7
metals 6:5
method 5:23
methodology 5:5,6
Metropolitan 6:18
microphone 3:21
mining 6:9
minutes 3:12
missing 8:16
Missouri 1:1,7 4:1,19 7:16,21 11:22 12:5,17
Missouri's 3:8 7:23
MO 2:21 11:16
modifications 3:25
monitor 10:16
monitoring 4:15 8:6
morning 4:14
moving 10:25
Mozingo 7:3,5

N

N 2:1
name 4:14 7:18
narrative 10:10
Natural 1:1 4:20 12:5
neither 12:10
new 5:12,14 7:24 8:5
newly 10:11
nine 5:20
nitrogen 8:14 9:24
non-point 6:9
North 2:20
note 5:24
notice 5:8,9 12:3
noticed 8:15
November 5:8
number 8:5,7,8 8:9,16 11:13
numbers 10:3
numeric 5:15
nutrient 5:15 7:24,25 8:11 9:6 10:5,19
nutrients 6:6 8:5,17

O

office 1:6 11:19 12:16
officer 3:9 4:22
Okay 11:10
older 8:24 9:16 9:19
open 6:2
opportunity 3:4 3:5,16 11:2
originally 5:22

oversight 10:17
overwhelming 7:25
oxygen 6:6

P

P 2:1,1
p.m 11:11
P.O 11:15
pages 12:9
pairs 5:11,17
part 6:22
participated 11:23
parties 12:12,14
percent 8:2
Phelps 12:17
phone 2:3
phosphorous 8:14 9:25
picture 10:3
placed 5:7
Plan 8:12,21
plans 4:1
please 3:19,20 4:5,13
pollutant 6:4
pollution 4:23 5:1
posted 4:19
present 3:4,17 3:18,20 8:25
presented 3:24
prioritization 6:1
prioritize 9:5
priority 6:2
process 11:24
program 4:17 8:6 11:13,15,21
proper 10:15
properly 8:19
proposed 3:2,6 3:25 5:18,19 7:23,23 8:1,15 9:10,22 10:11 11:3,7,11
protection 4:16 4:17,25 10:18 11:13,14,21
provide 3:3,5 4:11 7:10 9:15 10:17
provided 7:6
provides 9:23
providing 4:18
public 1:5 3:1,3 3:5,9,15,23 4:4,9,20 5:8,8 6:3,11,21,22 7:10 8:8 10:1 10:15 11:1
publish 8:7
publishing 9:18
purpose 3:3 7:8
pursuant 12:3

Q

qualifying 10:2
quality 5:19 10:16

R

R 2:1 12:1
Rainford 7:15,18 7:18
raise 4:6
ready 4:11,11
reasons 10:22
received 6:16 6:18,20,25
receptionist 11:18
recommend 8:4 9:18
record 6:23
records 3:18
REGARDING 1:5
related 6:6,10 12:11
relative 12:13
remaining 5:12
Renee 2:19 12:2 12:21
repeat 3:12
reporter 2:19 3:22 4:3,6 12:3
representative 8:25
representing 5:25 7:16
represents 7:21
request 7:11
require 9:4
required 5:2 8:12 9:15 10:25
requirements 8:18
requires 8:21 8:23
requisite 8:6,16
resolution 3:10
resources 1:1 4:20 10:24 12:5
response 10:7
responses 6:22
result 5:22 6:25
review 3:24
reviewing 8:4 10:19
revised 5:23
Richardson 2:19 12:2,21
right 4:6 7:14 11:5,9
Riverside 1:6 11:19 12:6
Robert 4:14 11:15,21
robert.voss@... 11:17
Rowland 2:3 3:1 3:7 4:13,21 7:8 7:15 11:10
Run 6:19
runoff 6:10

S

sample 8:23
samples 8:13,13 8:16,22
schedule 6:2,2
screening 10:5 10:6
Secchi 8:15
Second 9:21
Section 4:16,24
sediments 6:6
seeing 11:8
Services 2:20
serving 3:8 4:21
set 12:9
seven 8:22
Sewer 6:18
sheet 9:23
shorthand 12:8
show 8:23
Sixty-one 5:11
solely 9:7
source 6:9,9
sources 6:8
speak 3:21
SPEAKERS 4:9
specifically 7:22 10:12
St 2:21 6:18 12:16
stand 4:5
standards 5:20
State 1:6 11:19 12:17
stated 7:8
states 4:24
steps 9:21
Street 2:20
strongly 10:24
student 7:19
submit 4:24 10:17,21
submitted 11:12
suggest 8:9
suggestions 9:2 10:25
suggests 9:12
summary 6:14
supervisor 4:15
swear 4:3,7

T

T 12:1,1
table 5:25
take 4:1 9:21
taken 10:13 12:12
tell 4:7
testify 4:4
testimony 3:4 3:12,14,15,19 3:20,24 4:11
testing 9:8
thank 4:21 7:13 11:4,23,24
think 11:8
three 5:21,22 8:8,22
thresholds 9:6 10:5,7
Thursday 11:12
tissue 6:7
today 3:1,23 4:17,22 11:6
today's 3:9 7:9
top 6:4
total 5:17,20 6:1 8:3,14,14 9:24 9:24
transcribed 12:8
transparency 8:8 9:22 11:1
triggers 10:7
truth 4:7,7,8
turbidity 10:9
two 5:24 6:11,16 8:7,23

U

U.S 4:25
understand 10:23

Unit 4:16
University 7:19
unknown 6:9
unprotected 9:7
urban 6:10

V

value 9:24
verbal 3:18
Voss 4:14,15 11:15,21

W

warrant 7:4
Washington 7:19
water 1:1 3:6,8 4:1,17,23 5:5 5:11,17,19 6:5 7:7,11 8:1,3 10:16,18 11:13 11:14,21,22 12:5
waters 1:5 3:2 4:19 5:1,3 7:10
Watershed 4:16
website 4:20 6:15,24
WIEBERG 2:4 4:10 7:14 11:5
wish 3:18 11:6
wishing 4:4,5
written 6:16,19 9:15 10:10,22 12:7

X

Y

year 8:2,13,17 9:13
years 8:22,23

Z

0

1

1-800-280-33... 2:22
10th 6:13
1101 1:6 11:19 12:6
12 12:9
13 1:8 12:4
14th 6:14
15th 5:8
176 11:15
18 5:19

2

2 4:2
20 11:12
2018 5:13,18
2019 5:7,8 6:13 7:4
2020 1:5,8 3:2 4:2,2,18 5:4,4 5:6,7,9,10,12 6:5,8,14,17,21 7:9,12,13 8:4 9:10 10:21 11:3 11:7,12 12:4,18
20th 5:9 6:21
22nd 5:7
23rd 12:17
2nd 7:13

3

303(d) 1:5 3:2 4:2,18 5:7,10 5:13 6:12,15,17 6:24 7:9,12,24 8:1,15 9:16,22 11:3,7
303(d)addition 10:11
303(d)List 5:4 10:21
303(d)requires 4:24
314 2:21
33 5:17,19

4

430 5:12
46 8:2
491 5:10

5

5:00 11:11

6

61 5:14
63101 2:21
644-2191 2:21
65101 1:7
65102-0167 11:16

7

711 2:20
78 8:2

Tab E2

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Fiscal Year 2020 Clean Water State Revolving Fund Intended Use Plan and Project Priority List Revisions

Issue:

Fiscal Year (FY) 2020 Clean Water State Revolving Fund (SRF) Intended Use Plan (IUP) and Project Priority List Revisions

Background:

Financial Assistance Center staff is recommending an amendment to the FY 2020 Clean Water SRF IUP and Project Priority List that includes the following revisions:

- The Missouri Department of Natural Resources had listed the City of Kansas City project on the FY 2020 Fundable List for a loan in the amount of $80,000,000. This amount reflected the city's initial application for $80,000,000 in SRF funding to be combined with $20,000,000 from the federal Water Infrastructure Finance Innovation Act program for a biosolids project estimated at $100 million. Since the city's initial application, the project estimate has increased to $160 million. The city's bonding capacity is currently $100,000,000, and it plans to seek approval from the voters for the issuance of an additional $60,000,000 in bonds. The city has submitted a revised application requesting $160,000,000 in SRF funds for the entire project. The Department is increasing the amount listed on the FY 2020 Fundable List to $100,000,000 to reflect the city's bonding capacity, and includes the remainder requested, in the amount of $60,000,000, on the FY 2020 Contingency List until bonds are authorized for the entire project.
- The Department recently received an application from the City of Springfield requesting funds in the amount of $18,375,000. The Department is placing the City of Springfield on the FY 2020 Large Metropolitan Areas and Districts Fundable List since the city meets the readiness to proceed criteria.
- The Department is adding seven eligible applicants to the Regionalization Incentive Grant funding fundable and contingency lists on pages 7 and 8 of the FY 2020 IUP.

Recommended Action:

The Department recommends the Missouri Clean Water Commission approve changes to the FY 2020 Clean Water SRF IUP and Project Priority List as follows:

- Increase the loan and requested amounts for the City of Kansas City project on the Fundable List from $80,000,000 to $100,000,000. Add the City of Kansas City project on the FY 2020 Fundable Contingency List for $60,000,000.
- Add the City of Springfield project in the amount of $18,375,000 to the FY 2020 Large Metropolitan Areas and Districts Fundable List.
- Add the seven eligible applicants to the Regionalization Incentive Grant fundable list for $1,079,208 and contingency list for $2,970,238 on the FY 2020 IUP.

Suggested Motion Language:

I move to approve the proposed changes to the Fiscal Year 2020 Clean Water State Revolving Fund Intended Use Plan and Priority List as proposed.

List of Attachments:

- Revised Fiscal Year 2020 Clean Water State Revolving Fund Intended Use Plan and Project Priority List

MISSOURI DEPARTMENT OF NATURAL RESOURCES

Fiscal Year 2020

(Oct. 1, 2019 – Sept. 30, 2020)

Clean Water State Revolving Fund Intended Use Plan And Priority List

Adopted October 9, 2019
Amended January 9, 2020
Proposed Amendment April 2, 2020

List of Fiscal Year 2020 Applicants

	APPLICANT	PRIORITY POINTS	SERVICE AREA POP.	Financial Assistance Request
	Boone County Commission (Bolli Road Coll System)	110	37	$ 319,900
	Boone County Commission (Phenora North Coll System)	90	102	$ 372,099
	Boone County RSD (Highfield Acres)	90	200	$ 414,294
	Deer Run Reorganized Common Sewer District	105	385	$ 1,808,100
	East Lynne	95	303	$ 1,315,310
	East Prairie - Facility Plan	**1-80**	**3,292**	**$ 62,500**
	Gravois Arm Sewer District - Phase 5	130	300	$ 3,275,950
C	Greenfield	95	1,500	$ 1,454,350
	Holts Summit - Design/Construction	**2-55**	**3,866**	**$ 1,017,918**
	Huntsville	95	1,525	$ 4,626,125
	Jackson	125	14,869	$ 8,620,000
	Jasper	80	931	$ 750,000
	Jefferson County Public Sewer District	95	170	$ 3,751,075
C	Kansas City	135	631,000	~~$ 80,000,000~~ $ 160,000,000
C	Labadie Creek Watershed Sewer District of Franklin County	110	963	$ 2,127,756
C	Lancaster	95	940	$ 2,227,325
	Lathrop (Collection System)	125	2,086	$ 3,045,000
	Lathrop (Treatment Plant)	125	2,086	$ 3,255,000
	Linn - Design/Construction	**1-100**	**1,662**	**$ 607,570**
	Lockwood	80	1,114	$ 2,139,310
	Meadville	110	512	$ 1,226,730
	Miller	90	725	$ 2,858,525
	Missouri Agriculture & Small Business Development	N/A	N/A	$ 500,000
	Moberly - Design/Construction	**1-170**	**13,898**	**$ 1,186,279**
C	Moberly (Regional Lift Station)	70	13,974	$ 3,000,000
C	Moberly (Sewer Installation)	70	13,974	$ 1,629,666
C	MSD - Deer Creek Tunnel Pump Station	140	140,000	$ 22,000,000
	MSD - Lower Meramec River System Improvements	185	32,000	$ 218,000,000
	MSD Public I/I Reduction Program - Phase 5	155	1,300,000	$ 41,200,000
C	MSD Public I/I Reduction Program - Phase 6	175	1,300,000	$ 41,200,000
C	Northeast Public Sewer District Jefferson County	140	30,166	$ 5,000,000
	Peculiar	75	4,608	$ 8,691,880
C	Perryville	90	8,458	$ 27,509,650
	Potosi - Design/Construction	**3-105**	**2,795**	**$ 483,750**
	Rocky Mount Sewer District	115	450	$ 2,937,000
C	Rolla	85	20,000	$ 28,830,000
	Skidmore	110	276	$ 1,178,457
	Springfield	**160**	**173,130**	**$ 18,375,000**
	Troy	120	10,500	$ 18,579,000
C	Urbana	80	417	$ 1,250,652
	Van Buren - Design/Construction	**1-140**	**1,515**	**$ 1,017,085**
	Weston	125	1,641	$ 3,533,430
C	Windsor	100	3,087	$ 5,000,000
	Winfield - Facility Plan	**1-90**	**1,215**	**$ 62,500**
Total Projects				**$ 656,439,186**

C = Carried over from the last Intended Use Plan

Allocation of Available Loan Funds

~~**It is important to note:**~~

- ~~**The fundable project lists may change significantly between the draft Intended Use Plan placed on public notice and the final version approved by the Clean Water Commission.**~~
- **The inclusion of a project on the fundable list is not a guarantee of funding. Other factors, such as timely progress, compliance with program requirements and funding availability, may impact project funding.**
- ~~**Projects carried over from the 2019 Intended Use Plan retain the points they received under the criteria in effect at the time they initially applied. Carry-over projects in the fiscal year 2020 Intended Use Plan are not eligible to compete in the fiscal year 2021 Intended Use Plan unless reapplication was made by January 15, 2020.**~~

Allocation of Available Funds (Loan and Additional Subsidization)

Funding Category	Percent of Fundable List Allocation	Loan	Additional Subsidization	Additional Subsidization/ Regionalization Incentive Grant	Total
Small and Non-Metropolitan Areas and Districts (1)	40%	$ 185,667,609	$ 12,649,526	$ 6,000,000	$ 204,317,135
Large Metropolitan Areas and Districts (2)	30%	$ 153,237,850	$ -	$ -	$ 153,237,850
Combined Sewer Overflow (CSO)	15%	$ 76,618,926	$ -	$ -	$ 76,618,926
Department Initiatives	15%	$ 76,618,926	$ -	$ -	$ 76,618,926
Total Allocation of Available Funds		**$ 492,143,311**	**$ 12,649,526**	**$ 6,000,000**	**$ 510,792,837**

(1) Service area population of less than 75,000.
(2) Service area population of 75,000 or more.

Financial Summary of the Fundable Projects

	Loans				
	Small and Non-Metropolitan Areas and Districts	Large Metropolitan Areas & Districts	Combined Sewer Overflow	Department Initiatives	Total
Allocation of Available Loan Funds	$ 185,667,609	$ 153,237,850	$ 76,618,926	$ 76,618,926	$ 492,143,311
Total Loans on Fundable List (1)	$ 100,663,717	$ 390,979,594	$ -	$ 500,000	$ 492,143,311
Transfers	$ (85,003,892)	$ 85,003,892			$ -
		$ 76,618,926	$ (76,618,926)		$ -
		$ 76,118,926		$ (76,118,926)	$ -
Funding Assistance Planned (2)	$ 100,663,717	$ 390,979,594	$ -	$ 500,000	$ 492,143,311
Balance Available after Projects Funded (3)	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*

	Additional Subsidization				
	~~Metropolitan Areas and Districts~~ Affordability Grant	~~Large Metropolitan Areas & Districts~~ Regionalization Incentive Grant	~~Combined Sewer Overflow~~	~~Department Initiatives~~	Total
Allocation of Available Additional Subsidization Funds	**$ 12,649,526**	**$ 6,000,000**	**$ -**	**$ -**	**$ 18,649,526**
Total Additional Subsidization on Fundable List (1)	**$ 9,767,236**	**$ 1,079,208**	**$ -**	**$ -**	**$ 10,846,444**
Transfers	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**
Funding Assistance Planned (2)	**$ 12,649,526**	**$ 6,000,000**	**$ -**	**$ -**	**$ 18,649,526**
Balance Available after Additional Subsidization Funded (3)	***$ 2,882,290***	***$ 4,920,792***	***$ -***	***$ -***	***$ 7,803,082***

(1) From the Project Lists on the subsequent pages.
(2) Funding Assistance Planned = Allocation + Transfers.
(3) Balances may be shifted to other categories to fund projects that are ready to proceed.

CWSRF Fiscal Year 2020 Project Priority Lists

Carryover	Priority Points	Applicant	Project #	Description/ Needs Category	Service Area Population	IUP Amount Requested	Loan Amount	Additional Subsidization Amount	NPDES #	Est. Financing Schedule FY - Quarter
Note: An explanation of the abbreviations and codes appears at the end of the project lists.										
FUNDABLE LIST (Debt instrument secured and facility plan submitted; fundable if funds become available)										
TOTAL AVAILABLE FUNDS							**$ 492,143,311**	**$ 18,649,526**		
Small and Non-Metropolitan Areas and Districts (Service area population of fewer than 75,000 people)							**$ 100,663,717**	**$ 12,649,526**		
C	140	Northeast Public Sewer District Jefferson County	C295684-05	TP Impr; I	30,166	$ 5,000,000	$ 5,000,000	$ -	MO-0128490	20-2
C	110	Labadie Creek Watershed Sewer District of Franklin County	C295727-01	TP, Coll, Exp; II, IVA	963	$ 2,127,756	$ 2,127,756	$ -	Multiple	20-4
C	100	Windsor	C295512-01	TP Impr, I/I; I, IIIA, IIIB	3,087	$ 5,000,000	$ 3,000,000	$ 2,000,000	MO-0047325 MO-0047317	~~20-4~~ **21-2**
C	95	Greenfield	C295831-01	Coll Impr, FM; I	1,500	$ 1,454,350	$ 727,175	$ 727,175	MO-0055603 MO-0055590	20-3
C	90	Perryville*	C295832-01	TP, Impr, PS; I	8,458	$ 27,509,650	$ 26,000,000	$ -	MO-0051144	20-2
C	85	Rolla*	C295836-01	TP, Exp; II	20,000	$ 28,830,000	$ 27,750,000	$ -	MO-0047031 MO-0050652	20-2
C	80	Urbana	C295834-01	TP Impr, Coll, I/I; II, IIIA	417	$ 1,250,652	$ 625,326	$ 625,326	MO-0095176	~~20-4~~ **21-2**
	130	Gravois Arm Sewer District - Phase 5**	C295826-01	Coll Impr; IVA	300	$ 3,275,950	$ 1,495,475	$ 1,495,475	MO-0134821	20-3
	125	Lathrop (Collection System)	C295821-01	I/I, Rehab; IIIA, IIIB	2,086	$ 3,045,000	$ 3,045,000	$ -	MO-0112704	20-1
	125	Lathrop (Treatment Plant)	C295821-02	TP Impr; II	2,086	$ 3,255,000	$ 2,755,000	$ -	MO-0112704	20-2
	125	Weston	C295814-01	TP Impr, PS, Coll; I, II, IIIB	1,641	$ 3,533,430	$ 3,533,430	$ -	MO-0031585	20-2
	120	Troy	C295822-01	FM, PS, Impr; I	10,500	$ 18,579,000	$ 18,579,000	$ -	MO-0054623 MO-0131296	20-2
	115	Rocky Mount Sewer District**	C295838-01	Det, Coll; IVA	450	$ 2,937,000	$ 1,254,750	$ 1,254,750	MO-1336719	~~20-4~~ **21-2**
	110	Boone County Commission (Bolli Road Coll System)	C295375-25	IVA	37	$ 319,900	$ 319,900	$ -	N/A	20-3

Carryover	Priority Points	Applicant	Project #	Description/ Needs Category	Service Area Population	IUP Amount Requested	Loan Amount	Additional Subsidization Amount	NPDES #	Est. Financing Schedule FY - Quarter
	110	Meadville	C295801-01	TP Impr; I	512	$ 1,226,730	$ 613,365	$ 613,365	MO-0041114	20-3
	110	Skidmore	~~C295540-02~~ **C295841-01**	TP Impr, Rhab; II, IIIA	276	$ 1,178,457	$ 589,229	$ 589,228	MO-0022969	~~20-4~~ **21-2**
	95	East Lynne	C295695-01	TP Impr; I	303	$ 1,315,310	$ 657,655	$ 657,655	MO-0099961	21-1
	90	Boone County Commission (Phenora North Coll System)	C295375-24	Coll; IVA	102	$ 372,099	$ 372,099	$ -	MO-0137294	20-3
	90	Boone County RSD (Highfield Acres)	C295375-29	Coll; IVA	200	$ 414,294	$ 414,294	$ -	MO-0053376	21-1
	90	Miller	C295726-02	TP Impr, Coll; IIIA, II	725	$ 2,858,525	$ 1,429,263	$ 1,429,262	MO-0041149	20-3
	80	Jasper	C295843-01	Impr; II	931	$ 750,000	$ 375,000	$ 375,000	MO-0044202	20-4
Small and Non-Metropolitan Areas and Districts Total						**$ 114,233,103**	**$ 100,663,717**	**$ 9,767,236**		
Balance							**$ -**	**$ 2,882,290**		
Large Metropolitan Areas and Districts (Service area population of 75,000 or more people)							**$ 390,979,594**	**$ -**		
C	175	MSD Public I/I Reduction Program - Phase 6	C295023-41	I/I; IIIA	1,300,000	$ 41,200,000	$ 41,200,000	$ -	Multiple	20-3
C	140	MSD Deer Creek Tunnel Pump Station	C295833-02	Coll; IVB	140,000	$ 22,000,000	$ 22,000,000	$ -	MO-0025151	20-3
C	135	Kansas City	C295840-01	TP; I	631,000	~~$ 80,000,000~~ **$ 160,000,000**	~~$ 80,000,000~~ **$ 100,000,000**	$ -	MO-0024911	20-4
	185	MSD Lower Meramec River System Improvements (Tunnel) - Balance of Amount Requested appears on Fundable Contingency List	C295072-01	Coll; IVA, V	32,000	$ 218,000,000	$ 168,204,594	$ -	Multiple	20-4
	160	**Springfield**	**C295859-01**	**Coll Impr; I/I**	**173,130**	**$ 18,375,000**	**$ 18,375,000**	**$ -**	**MO-0049522** **MO-0103039**	**21-2**
	155	MSD Public I/I Reduction Program - Phase 5	C295023-40	I/I; IIIA	1,300,000	$ 41,200,000	$ 41,200,000	$ -	Multiple	20-2
Large Metropolitan Areas and Districts Total						**$ 500,775,000**	**$ 390,979,594**	**$ -**		
Balance							**$ -**	**$ -**		

Carryover	Priority Points	Applicant	Project #	Description/ Needs Category	Service Area Population	IUP Amount Requested	Loan Amount	Additional Subsidization Amount	NPDES #	Est. Financing Schedule FY - Quarter
Combined Sewer Overflow							**$ 0**	**$ -**		
					Combined Sewer Overflow Total	**$ -**	**$ -**	**$ -**		
					Balance		**$ 0**	**$ -**		
Department Initiatives							**$ 500,000**	**$ -**		
	N/A	Missouri Agriculture & Small Business Development	C295212-10	NPS; VIIB	N/A	$ 500,000	$ 500,000	$ -	N/A	20-4
					Department Initiatives Total	**$ 500,000**	**$ 500,000**	**$ -**		
					Balance		**$ 0**	**$ -**		
					Total Fundable List Projects	**$ 615,508,103**	**$ 492,143,311**	**$ 9,767,236**		
					Balance of Fundable List		**$ -**	**$ 8,882,290**		
FUNDABLE CONTINGENCY LIST (Debt instrument secured and facility plan submitted; fundable if funds become available)										
	185	MSD Lower Meramec River System Improvements (Tunnel)	C295072-01	Coll; IVA, V	32,000	Balance of Amount Requested from the Large Metropolitan Areas and Districts Fundable List	$ 49,795,406	$ -		
					Total Fundable Contingency Projects	**$ -**	**$ 49,795,406**	**$ -**		
CONTINGENCY LIST (Either debt instrument or facility plan has not been submitted)										
C	**135**	**Kansas City**	**C295840-01**	**TP; I**	**631,000**	**Balance of Amount Requested from Large Metropolitan Areas Fundable List. Contingent on additional bond authorization in April 2020**	**$ 60,000,000**	**$ -**	**MO-0024911**	**20-4**

Carryover	Priority Points	Applicant	Project #	Description/ Needs Category	Service Area Population	IUP Amount Requested	Loan Amount	Additional Subsidization Amount	NPDES #	Est. Financing Schedule FY - Quarter
	95	Jefferson County Public Sewer District	C295844-01	Coll; IVA	170	$ 3,751,075	$ -	$ -	MO-0131024	20-4
					Total Contingency Projects	**$ 3,751,075**	**$ 60,000,000**	**$ -**		
PLANNING LIST				***Note: Information will be added to the shaded columns when the project moves to the fundable or contingency list.***						
	125	Jackson	C295839-01	TP Impr; IIIA, IIIB	14,869	$ 8,620,000			MO-0022853	
	105	Deer Run Reorganized Common Sewer District	C295815-01	TP, Coll; IIIA, I, IVA	385	$ 1,808,100			N/A	
	95	Huntsville	C295848-01	TP, Coll; IVA, IVB, IIIA	1,525	$ 4,626,125			Multiple	
C	95	Lancaster	C295804-01	Coll Rehab, TP; II, IIIA	940	$ 2,227,325			MO-0039691	
	80	Lockwood	C295842-01	TP Impr, Coll, I/I; IIIA, IIIB	1114	$ 2,139,310			MO-0030473	
	75	Peculiar	C295824-01	Coll, Impr, I, I/I; IIIA, IIIB	4,608	$ 8,691,880			MO-0089443	
C	70	Moberly (Sewer Installation)	C295648-02	Coll; IVA, IVB	13,974	$ 1,629,666			MO-0117960	
C	70	Moberly (Regional Lift Station)	C295648-03	Coll; IVA, IVB	13,974	$ 3,000,000			MO-0117960	
					Total Planning List Projects	**$ 32,742,406**	**$ -**	**$ -**		

REGIONALIZATION INCENTIVE GRANT (RIG)										
FUNDABLE LIST (Design/Construction - Facility Plan and Signed Service Agreements meeting minimum requirements submitted)							**$ -**	**$ 6,000,000**		
	1-170	**Moberly - Design/Construction****	**C295854-01**	**Coll, PS**	**13,898**	**$ 1,186,279**	**$ -**	**$ 954,208**	**MO-0117960**	**22-3**
	1-90	**Winfield - Facility Plan**	**C295856-01**	**NA**	**1,215**	**$ 62,500**	**$ -**	**$ 62,500**	**MO-0088676**	**21-3**
	1-80	**East Prairie - Facility Plan**	**C295851-01**	**NA**	**3,292**	**$ 62,500**	**$ -**	**$ 62,500**	**MO-0021750**	**21-3**
					Total RIG Fundable List Projects	**$ 1,311,279**	**$ -**	**$ 1,079,208**		
					Balance of RIG Fundable List		**$ -**	**$ 4,920,792**		
CONTINGENCY LIST (Signed Service Agreements meeting minimum requirements not submitted)										
	1-140	**Van Buren - Design/Construction****	**C295857-01**	**Coll, PS**	**1,515**	**$ 1,017,085**	**$ -**	**$ 981,050**	**MO-0099490**	**22-3**
	1-100	**Linn - Design/Construction**	**C295853-01**	**Coll, PS**	**1,662**	**$ 607,570**	**$ -**	**$ 607,570**	**MO-0051551**	**22-3**

Carryover	Priority Points	Applicant	Project #	Description/ Needs Category	Service Area Population	IUP Amount Requested	Loan Amount	Additional Subsidization Amount	NPDES #	Est. Financing Schedule FY - Quarter
	2-55	**Holts Summit - Design/Construction**	**C295852-01**	**Coll, PS**	**3,866**	**$ 1,017,918**	**$ -**	**$ 1,017,918**	**MO-0106810**	**22-3**
	3-105	**Potosi - Design/Construction****	**C295855-01**	**Coll**	**2,795**	**$ 483,750**	**$ -**	**$ 363,700**	**MO-0127566**	**22-3**
					Total RIG Contingency Projects	**$ 3,126,323**	**$ -**	**$ -**		

Description Reference List		Needs Category	
C	Carried over from the last Intended Use Plan	I	Secondary Treatment
Coll	Collection	II	Advanced Treatment
CSO	Combined Sewer Overflow	IIIA	I/I correction
Det	Detention	IIIB	Sewer replacement or rehabilitation
Exp	Expansion	IVA	New Collection
FM	Force Main	IVB	New Interceptors
Impr	Improvements	V	CSO
Int	Interceptor	VIIB	NPS: Animal
I/I	Inflow/Infiltration	VIID	NPS: Urban
NPDES	National Pollution Discharge Elimination System		
NPS	Non Point Source		
PS	Pump Station		
Rehab	Rehabilitation		
TP	Treatment Plant		

* Applicant has a max bonding capacity that the loan amount cannot exceed.

** Ineligible project costs deducted off total project costs.

Notes:

Final eligible costs will be determined as documents are submitted and the project progresses toward loan closing.

Financing schedule shown is for planning purposes only. Final scheduling will be determined as documents are submitted and approvals obtained.

Carry over projects from the fiscal year 2020 list must reapply to be considered for the fiscal year 2021 list.

Priority points for RIG projects include two numbers separated by a hyphen. The first number is the RIG category. The second number is the priority point score calculated through the RIG procedure.

https://dnr.mo.gov/env/wpp/srf/documents/2019-10-31-RegionalizationGrantGuidance.pdf.

Tab E3

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Small Borrower Loan for the City of Spickard

Issue:

The City of Spickard has requested a Small Borrower Loan in the amount of $100,000 to fund the costs of needed upgrades to the city's collection system and existing wastewater treatment facility.

Background:

The City of Spickard, population 244, is located in Grundy County. The community's sewer system consists of a three-cell lagoon that discharges to a tributary of Weldon River. One of the city's pump stations is located near a tributary and the supporting sewer main runs underneath the tributary. The city applied for a Small Borrower Loan of $100,000 to replace and relocate the pump station and sewer main so the collection system is able to work more efficiently and prevent exposure of the sewer main after flooding events. The project also includes installation of an ultraviolet disinfection unit at the city's wastewater treatment facility, which will enable the city to comply with the *E. coli* limits. The total project cost is estimated to be $355,700. The city anticipates using Community Development Block Grant and city funds for the remaining $255,700 and any cost overruns.

Small Borrower Loan funds come from the Rural Water and Sewer Revolving Loan Fund, which consists of repayments of loans originated with state Water Pollution Control bonds. There are adequate funds available for this loan. Small Borrower Loans are available to municipalities and sewer districts serving a population less than 1,000. Loan terms include a subsidized interest rate that is 30 percent of the municipal market rate at the time of loan closing. The loan term is typically 20 years or the project's design life.

The Missouri Department of Natural Resources administers Small Borrower Loans on behalf of the Clean Water Commission, per 10 CSR 20-4.041. If the Clean Water Commission approves allocation of funds for this project, Financial Assistance Center staff will evaluate the city's proposed user rates to ensure the city has sufficient revenue to pay back the small borrower loan prior to the entering into the loan.

Recommended Action:

The Department recommends the Missouri Clean Water Commission approve the allocation of funding in the amount of $100,000 for a Small Borrower Loan to the City of Spickard.

Suggested Motion Language:

I move to approve the allocation of funding in the amount of $100,000 for a Small Borrower Loan for the City of Spickard.

List of Attachments:

- Copy of the City of Spickard's Small Borrower Loan application

INITIAL EXPECTED PROBABLE COSTS
PUMP STATION REPLACEMENT AND UV SYSTEM
SEWER SYSTEM IMPROVEMENTS
SPICKARD, MISSOURI

FEBRUARY 2020

Item	Description	Quantity	Units	Unit Price	Subtotal
	Lagoon Maintenance and Land Application System				
A.	Mobilization, Demobilization, Insurance	1	L.S.	$ 20,000	$ 20,000
B.	Duplex Pump Station	1	L.S.	$ 70,000	$ 70,000
C.	Pump Station Electrical	1	L.S.	$ 7,000	$ 7,000
D.	Gravity Sewer Creek Crossing Removal	1	L.S.	$ 3,000	$ 3,000
E.	2-Inch Forcemain Bore, SDR-21 R.J. PVC	100	L.F.	$ 60	$ 6,000
F.	2-Inch Water Main Bore, SDR 21 R.J. PVC	100	L.F.	$ 60	$ 6,000
G.	Existing Sewer Tie-In	1	L.S.	$ 5,000	$ 5,000
H.	4' Diameter Concrete Manhole	1	L.S.	$ 5,000	$ 5,000
I.	Lagoon UV System	1	L.S.	$ 75,000	$ 75,000
J.	UV Electrical	1	L.S.	$ 7,000	$ 7,000
K.	Gravel Access Road	75	TONS	$ 40	$ 3,000
L.	Finshed Grading, Seeding, and Mulch	1	L.S.	$ 5,000	$ 5,000
				SUBTOTAL COSTS:	**$ 212,000**

Land and Right of Way	$ 5,000
Financial Advisor	$ 5,000
Legal Fees	$ 5,000
Bond Counsel Fees	$ 2,500
Engineering - Basic Services	
a. Study and Report Phase	$ 2,500
Engineering - Basic Services	$ 22,500
b. Preliminary Design Phase	
c. Final Design Phase	
d. Bidding and Negotiating Phase	
e. Construction Phase	
f. Post Construction Phase	
Resident Project Representative	$ 18,000
Additional Services	
a. Geotechnical Investigation	$ 8,000
b. Geotechnical Materials & Testing	$ 5,000
c. Surveying and Staking	$ 4,000
d. O & M Manuals	$ 1,500
e. Record Drawings	$ 1,500
f. Construction Engineering	$ 8,000
g. Reimbursibles	$ 5,000
Interest	$ 4,000
Historic Preservation and Environmental	$ 5,000
Administrative Expenses	$ 20,000
Project Contingencies (10%)	$ 21,200
TOTAL PROFESSIONAL SERVICES:	**$ 143,700**
TOTAL PROJECT COSTS:	**$ 355,700**

MISSOURI DEPARTMENT OF NATURAL RESOURCES
WATER PROTECTION PROGRAM, FINANCIAL ASSISTANCE CENTER

SMALL BORROWER LOAN APPLICATION

Submit to: P.O. Box 176, Jefferson City, MO 65102-0176
Attn: Financial Assistance Center

This application is for a Small Borrower Loan

FOR OFFICE USE ONLY
DATE RECEIVED
LOAN NUMBER
PWS ID NUMBER

APPLICANT INFORMATION

APPLICANT NAME City of Spickard			
MAILING ADDRESS 303 Jefferson, P.O. Box 77			
CITY Spickard	STATE Missouri	ZIP CODE + FOUR 64679	COUNTY Grundy
TELEPHONE NUMBER WITH AREA CODE 660-485-6106 Ext.		FAX NUMBER WITH AREA CODE 660-485-6156	
AUTHORIZED REPRESENTATIVE NAME Alan Tharp		AUTHORIZED REPRESENTATIVE TITLE Mayor	
NAME OF PERSON TO CONTACT ABOUT THIS APPLICATION Alan Tharp		TELEPHONE NUMBER WITH AREA CODE 660-485-6106 Ext.	
CONSULTING ENGINEER Allstate Consultants LLC - Cary D. Sayre			
CONSULTANT MAILING ADDRESS 30601 Highway 5, P.O. Box 156			
CITY Marceline		STATE Missouri	ZIP CODE + FOUR 64658
CONSULTANT TELEPHONE NUMBER WITH AREA CODE 660-376-2941 Ext.		CONSULTANT FAX NUMBER WITH AREA CODE 573-875-8850	
POPULATION (CURRENT CENSUS) 244	POPULATION OF AREA TO BE SERVED 244	FEDERAL TAX ID NUMBER 43-6005862	
STATE SENATE DISTRICT NUMBER(S) FOR PROJECT 12		STATE REPRESENTATIVE DISTRICT NUMBER(S) FOR PROJECT 7	
OTHER FUNDS ANTICIPATED FOR THIS PROJECT CDBG			

Is this a water project or a sewer project? Sewer System Improvements and Water System Improvements

ESTIMATED PROJECT COST INFORMATION		APPLICANT FINANCIAL INFORMATION
Cost Estimate Dated:		**Bond Information/Debt Instrument**
Development and Administration	$ 20,000.00	Date of Ballot Approval
Engineering (Construction Phase)	$ 36,000.00	Anticipated Date for Bond Election
Engineering Inspection	$ 18,000.00	☐ General Obligation Bonds $
Construction	$ 161,900.00	☐ Revenue Bonds $
Equipment	$ 62,000.00	☐ No Bonds Available
Other Costs specify: Legal, Bonding, Interest, and Environmental	$ 36,600.00	
Contingencies	$ 21,200.00	
Total Project Costs	$ 355,700.00	
Loan amount requested (Loan is limited to $100,000)	$ 100,000.00	

ANTICIPATED FUNDING

Total Costs	Applicant Contribution	Small Borrower Loan	Other Grants	Other Loan	Bonds
$ 355,700.00	$	$ 100,000.00	$ 255,700.00	$	$
Percentage of Total Costs	%	26 %	64 %	%	%

BONDED INDEBTEDNESS OF APPLICANT

Outstanding Balance of Bonds	Interest Rate	Purpose of Bond	Amortization Period	Payment Due Date	Installment Amount
$	%				$
$	%				$
$	%				$
$	%				$

General Obligation Bonding Capacity $

FINANCIAL REPORT OF APPLICANT

Does applicant have an adequate accounting system? ☑ Yes ☐ No

TAX REVENUES OF APPLICANT

TYPE OF PROPERTY	AGRICULTURAL	COMMERCIAL	INDUSTRIAL	RESIDENTIAL
Total Assessed Value	$	$	$	$
Anticipated Annual Income	$	$	$	$

How will the applicant repay the loan?
User Rates

Median Household Income of project service area (as determined by latest census) $ 31,563.00

Projected Monthly User Charge for 5,000 gallons wastewater at completion of this project is $ 57.00
Current Monthly User Charge for 5,000 gallons wastewater is $ 57.00

Projected Monthly User Charge for 5,000 gallons drinking water at completion of this project is $ 96.00
Current Monthly User Charge for 5,000 gallons drinking water is $ 96.00

PROJECT DESCRIPTION

(ATTACH ENGINEERING REPORT, IF AVAILABLE)

The proposed project will repair exposed force main, gravity sewer, and water main relocation to accommodate sewer improvements. Sewer pump station will be replaced. Other work as funds allow will include I&I reduction, water main replacement, and lagoon effluent disinfection. Preliminary Engineering Report is not yet completed.

CERTIFICATION

The undersigned representative certifies that the information submitted in this application is true and correct to the best of his/her knowledge and that he/she is authorized to sign and submit this application. The applicant agrees, if a loan is awarded on the basis of this application, to comply with all applicable rules and regulations of the Department of Natural Resources and the terms and conditions of the loan agreement. **Incomplete applications will be returned.**

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
NAME AND OFFICIAL TITLE (TYPE OR PRINT) Alan Tharp, Mayor	TELEPHONE NUMBER WITH AREA CODE 660-485-6106 Ext.

PREPARER'S NAME AND SIGNATURE (IF APPLICABLE)

SIGNATURE OF PREPARER	DATE
NAME AND TITLE (PRINT OR TYPE) Cary D. Sayre, Vice-President/Engineer	TELEPHONE NUMBER WITH AREA CODE 660-376-2941 Ext.

MO 780-2035 (2/09)

Tab F

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

New Business

Issue:

Any new business can be presented to the Commission.

Recommended Action:

Information only.

Tab G

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Appeals and Variances

Issue:

This portion of the meeting allows information to be presented to the Commission. The Commission can review and vote on specific actions as necessary.

Recommended Action:

It is recommended that the Commission review and vote on the actions presented.

Tab G1

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Application for Award of Attorney's Fees Regarding Appeal No. 18-0498

Issue:

The Missouri Clean Water Commission will hear from Tim Duggan regarding the Application for Award of Attorney's Fees Regarding Appeal No. 18-0498.

List of Attachments:

- Petitioner's Application for Award of Attorney's Fees
- Petitioner's Amended Application for Award of Attorney's Fees
- Petitioner's Second Amended Application for Award of Attorney's Fees

BEFORE THE MISSOURI CLEAN WATER COMMISSION

IN RE COUNTRY CLUB HOMES, LLC	)	
	)	No. 18-0498
PERMIT NO. MOG010872	)	

PETITIONER'S APPLICATION FOR AWARD OF ATTORNEYS FEES

COMES NOW, Petitioner-Lone Jack Neighbors for Responsible Agriculture, LLC, by and through counsel, pursuant to § 536.087, RSMo and for its Application for Award of Attorneys' Fees states:

PARTIES

1. Petitioner is a Missouri limited liability company in good standing with its principal place of business located at 37904 E US 50 Highway, Suite B, Lone Jack, Missouri 64070. Petitioner has a net worth of less than $7 million and does not have any employees.

2. Petitioner, its members, and its supporters reside in the immediate vicinity of the location of the concentrated animal feeding operation known as Valley Oaks Steak Company ("Valley Oaks CAFO") and the fields where manure from its operations will be land applied, and are adversely affected and aggrieved by the issuance of Permit MOG010872 and the operation of the Valley Oaks CAFO.

3. Respondent-Missouri Department of Natural Resources ("DNR") is the state agency created by § 640.010.1, RSMo.

STATEMENT OF FACTS

4. On December 19, 2017, "Country Club Homes, LLC" submitted a permit Application (Form W) to Respondent-DNR for the operation of a concentrated animal feeding operation ("CAFO") known as the Valley Oaks CAFO and located near Lone Jack, Missouri.

5. In section 1.2, the Permit Application stated "Country Club Homes, LLC" is the "Owner" of the facility.

6. 10 CSR 20-6.010(3) requires, *inter alia*, that "All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made."

7. On June 15, 2018, DNR issued Permit MOG010872 to "Country Club Homes, LLC" for the operation of the Valley Oaks CAFO.

8. Petitioner timely appealed the issuance of Permit MOG010872.

9. On appeal, Petitioner alleged that Respondent-DNR improperly issued Permit MOG01872 to "Country Club Homes, LLC" because (a) "Country Club Homes, LLC" is a nonexistent legal entity; and (b) "Country Club Homes, LLC," as a nonexistent legal entity, cannot serve as a lawful Continuing Authority for the Valley Oaks CAFO as required by 10 CSR 20-6.010(3).

10. According to the "Certificate of No Record" issued by the Missouri Secretary of State, there is no legal entity in existence in Missouri known as "Country Club Homes, LLC."

11. 10 CSR 20-6.300(3) "Neighbor Notice Requirements," requires "Prior to filing an application for an operating permit with the department for a new or expanding Class I concentrated animal feeding operation, the following information shall be provided [by the applicant] by way of a letter to all the parties listed in paragraph (3)(C)2. of this section: ..." (emphasis added).

12. The permit applicant did not send Neighbor Notice letters to all the parties listed in 10 CSR 20-6.300(3)(C)2 prior to December 19, 2017 (the date of the permit application), as specifically required by 10 CSR 20-6.300(3).

13. Certified Mail Receipts from the U. S. Postal Service conclusively show that the required Neighbor Notice letters were not mailed until January 30, 2018.

14. On appeal, Petitioner alleged that the permit applicant's failure to comply with 10 CSR 20-6.300(3) to timely provide the required Neighbor Notice letters prior to the submission of the CAFO permit application, adversely affected Petitioner, its members, and supporters by effectively denying their legal rights to public notice and public participation and hindering their ability to timely organize to oppose the permit application.

15. On appeal, Petitioner alleged that Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because the permit applicant failed to timely provide Neighbor Notice as required by 10 CSR 20-6.300(3).

16. On October 23, 2018, the Missouri Administrative Hearing Commission issued a Recommended Decision to the Missouri Clean Water Commission in Case 18-0498 to reverse the issuance of Permit MOG010872 because Respondent-DNR unlawfully issued the Permit in that: Permit MOG010872 was issued to "Country Club Homes, LLC," which is a non-existent legal entity and cannot serve as a continuing authority, and the required Neighbor Notice letters were not mailed by the permit applicant to all required parties prior to December 19, 2018, the date the permit application was submitted.

17. On December 10, 2018, the Missouri Clean Water Commission took-up the matter of the Country Club Homes, LLC permit appeal and voted to accept the Recommended Decision submitted by the Missouri Administrative Hearing Commission.

18. The permit appeal involving Permit MOG010872 is an "agency proceeding" as defined by § 536.085, RSMo.

19. Petitioner obtained a favorable decision from the Clean Water Commission, and therefore "prevail[ed]" as defined by § 536.085, RSMo.

20. Respondent-DNR is a State agency, and therefore Petitioner prevailed against the "State" as defined by § 536.085, RSMo.

21. In the "Country Club Homes, LLC permit appeal, Petitioner incurred legal fees and expenses in the amount of: (a) 123.3 hours of attorney time, (b) hourly rate of $175.00 for attorney time, and (c) $712.28 in expenses. *See* Exhibit 1, attached hereto and incorporated herein.

22. The position of Respondent-DNR in issuing Permit MOG010872 to "Country Club Homes, LLC" was <u>not substantially justified</u> because a cursory examination of the relevant facts conclusively shows that: (a) "Country Club Homes, LLC" was not an existing legal entity and could not lawfully serve as a continuing authority as required by 10 CSR 20-6.010(3); and (b) the permit applicant failed to comply with the Neighbor Notice requirements in 10 CSR 20-6.300(3) because the Neighbor Notice letters were mailed on January 30, 2018, which is six weeks after the date the permit application was submitted on December 19, 2017.

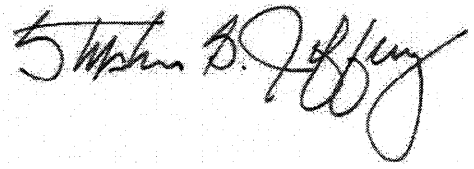
23. Because of the existence of special factors, including the limited availability of qualified attorneys who routinely practice environmental law, environmental litigation, are familiar with the contested case procedures in the Missouri Administrative Procedure Act, Chapter 536, RSMo, and rules adopted by the Respondent-DNR and the Clean Water Commission, a higher hourly rate for attorney time in excess of the statutory $75.00 per hour rate is justified in this matter.

24. An hourly rate of $175.00 and 123.3 hours of attorney time is reasonable and appropriate.

WHEREFORE, pursuant to § 536.087, RSMo, Petitioner submits this Application for Award of Attorneys' Fees and respectfully requests that the Clean Water Commission approve an award of $21,577.50 for reasonable attorney fees and $712.28 in reasonable expenses, for a total award in connection with the permit appeal in the amount of $22,289.78.

Respectfully submitted,

JEFFERY LAW GROUP, LLC



Stephen G. Jeffery, MBE 29949
400 Chesterfield Center, Suite 400
Chesterfield, MO 63107-4800
(855) 915-9500 – Toll-Free
(314) 714-6510 – Fax
E-mail: sjeffery@jefferylawgroup.com

ATTORNEY FOR PETITIONER

JEFFERY LAW GROUP, LLC
400 CHESTERFIELD CENTER
SUITE 400
CHESTERFIELD, MO 63017-4800
FEIN: 27-4821891

(855) 915-9500 - Toll-Free
(314) 714-6510 - Fax

December 12, 2018

Carolyn Wilkinson
37605 E US 50 Hwy
Lone Jack, MO 64070

In Reference To:

Invoice # 17183

Professional Services

		Hrs/Rate	Amount
04/03/18 SGJ	Preparation for DNR meeting. Conference with clients. Attend DNR public meeting. Travel from St. Louis to Warrensburg.	6.80	
04/04/18 SGJ	Phone call with Carolyn. Travel from Warrensburg to St. Louis.	4.10	
04/23/18 SGJ	Draft Freedom of Information Act request to USDA, Farm Services Agency. Draft e-mail to Carolyn and Karen. Call from Aimee Davenport (Powell Gardens counsel).	1.20	
05/08/18 SGJ	Phone call with Carolyn and Karen. Review Groebbel report.	1.20	
05/16/18 SGJ	Voicemail from Aimee Davenport (Powell Gardens' attorney). Draft e-mails to Aimee Davenport. Review replies.	0.40	
06/18/18 SGJ	Start work on Complaint. Review permit application and supporting documents.	1.80	
06/19/18 SGJ	Continue work on Complaint. Review DNR regulations. Review hydrogeologic investigation at Valley Oak lagoon. Review Grobbel report. Draft e-mail to Carolyn and Karen. Review e-mails from Aimee Davenport. Draft replies.	4.20	

		Hrs/Rate	Amount
06/21/18 SGJ	Continue work on Complaint. Review e-mails from Carolyn Wilkinson. Draft replies. Review FEMA website for FIRM information for Johnson County, Missouri.	2.60	
06/25/18 SGJ	Review and Revise Complaint. Review permit application, Secretary of State website, DNR permit. File Complaint with AHC.	4.20	
06/26/18 SGJ	Review and revise Amended Complaint. File same. Draft e-mails to Carolyn and Karen. Review replies. Review and revise Motion for Stay. Review Complaint and Motion for Stay filed by Powell Gardens.	4.80	
06/27/18 SGJ	Review and revise Amended Motion for Stay. File same. Calls with Marie Gellerstedt. Draft Affidavit for Marie Gellerstedt. Draft e-mail to Marie Gellerstedt. Call with Secretary of State's Office. Obtain Certificate of No Record from Secretary of State's Office. Draft e-mails to Carolyn and Karen. Review replies. Review executed Affidavit from Marie.	6.20	
06/28/18 SGJ	Draft Notice of Affidavit for Marie Gellerstedt affidavit. File same.	0.40	
07/06/18 SGJ	Preparation for July 9 hearing on motion for stay. Review AHC rules, statutes, and case law. Review e-mails from Carolyn and Karen. Draft revised questions for Carolyn and Karen. Assemble exhibits. Call with Aimee Davenport (Powell Gardens).	4.80	
07/08/18 SGJ	Review documents and exhibits for hearing. Travel from Chesterfield - Jefferson City.	3.10	
07/09/18 SGJ	Final preparation for Stay hearing. Conference with clients. Attend hearing on motion for stay. Conference with clients. Travel from Jefferson City -	10.20	

		Hrs/Rate	Amount
	Chesterfield.		
07/10/18 SGJ	Draft First Interrogatories and First Request for Admissions to DNR and Valley Oaks. Draft e-mail to opposing counsel. Draft e-mail to Carolyn, Karen, and Rachel.	2.40	
08/13/18 SGJ	Phone call from CEC (Ivan Cooper) regarding depo preparation. Revise depo outline. Draft e-mail to John Bognar (CEC). Review VO discovery responses. Draft Motion to Compel Discovery. File same with AHC. Draft e-mail to clients.	2.40	
08/19/18 SGJ	Review August 9, 2018 re-issued Permit and correspondence. Draft Motion for Contempt against DNR. Draft Motion to file amended Complaint and to reschedule hearing. File same with AHC.	4.90	
08/20/18 SGJ	Deposition of Ivan Cooper, PE. Revisions to Amended Motion to Compel Discovery. File same.	5.20	
08/26/18 SGJ	Review documents, exhibits, witness outlines for hearing. Travel from Chesterfield - Jefferson City.	3.90	
08/27/18 SGJ	AHC Hearing.	10.60	
08/28/18 SGJ	AHC Hearing. Travel from Jefferson City - Chesterfield.	8.60	
10/01/18 SGJ	Start work on draft Recommended Decision. Review transcripts and exhibits.	5.60	
10/02/18 SGJ	Continue work on Recommended Decision. Review case law. Review transcripts and exhibits. Draft e-mail to Carolyn, Karen, and Rachel.	6.20	

		Hrs/Rate	Amount
10/03/18 SGJ	Draft Designations for Cooper deposition. Review and revise draft Recommended Decision. Review transcript of hearing. Review e-mails from Carolyn, Karen, and Rachel.	2.30	
11/08/18 SGJ	Draft Motion to Disqualify Ashley McCarty. Review photos from April 3 public hearing. Draft e-mail to Karen, Carolyn, and Rachel. Review e-mails from Karen. File motion with AHC. Draft e-mail to Shawna Bligh, Jennifer Hernandez, and Jennifer Griffin.	2.10	
11/20/18 SGJ	Revisions to draft Motions to Disqualify CWC Commissioners. Draft cover letter. Draft e-mail to Chris Wieberg, Shawna Bligh, Jennifer Hernandez, and Jennifer Griffin.	1.40	
12/08/18 SGJ	Preparation for December 10 Clean Water Commission meeting. Draft e-mail to Carolyn, Karen, Rachel, Amy Davenport, and Chuck Hatfield. Review e-mail from Carolyn.	1.10	
12/09/18 SGJ	Preparation for Clean Water Commission meeting. Travel to Columbia.	3.20	
12/10/18 SGJ	Attend Clean Water Commission meeting to argue permit appeal in Country Club Homes LLC matter. Conference with clients. Travel from Columbia-Jefferson City. Return travel.	7.40	
	For professional services rendered	123.30	$0.00

Additional Charges :

		Qty/Price
04/03/18 SGJ	Comfort Inn, Warrensburg	1 98.77

		Qty/Price	Amount
04/03/18 SGJ	Mileage to/from St. Louis - Warrensburg	404 0.55	
06/27/18 SGJ	Postage	1 3.26	
SGJ	Secretary of State charge for No Record Certificate	1 10.00	
07/06/18 SGJ	FedEx charge.	1 15.22	
07/08/18 SGJ	Mileage - Chesterfield - Jefferson City	117 0.55	
07/09/18 SGJ	Mileage Jefferson City - Chesterfield	117 0.55	
08/25/18 SGJ	FedEx copying cost.	1 4.87	
08/26/18 SGJ	Mileage Chesterfield - Jefferson City	117 0.55	
08/27/18 SGJ	Parking	1 7.00	
08/28/18 SGJ	Parking.	1 7.00	
SGJ	Mileage Jefferson City - Chesterfield.	117 0.55	
11/21/18 SGJ	Postage for certified mail to DNR.	1 8.46	
12/09/18 SGJ	Mileage - Chesterfield - Columbia	107 0.55	
12/10/18 SGJ	Mileage - Columbia - Jefferson City	35 0.55	
	Total additional charges		$712.28

Timekeeper Summary

Name	Hours	Rate	Amount
Stephen G. Jeffery	123.3	175.00	$21,577.50

Balance Due: $22,289.78

BEFORE THE MISSOURI CLEAN WATER COMMISSION

IN RE COUNTRY CLUB HOMES, LLC	)	
	)	No. 18-0498
PERMIT NO. MOG010872	)	

PETITIONER'S AMENDED APPLICATION FOR AWARD OF ATTORNEYS FEES

COMES NOW, Petitioner-Lone Jack Neighbors for Responsible Agriculture, LLC, by and through counsel, pursuant to § 536.087, RSMo and for its Amended Application for Award of Attorneys' Fees states:

PARTIES

1. Petitioner is a Missouri limited liability company in good standing with its principal place of business located at 37904 E US 50 Highway, Suite B, Lone Jack, Missouri 64070. Petitioner has a net worth of less than $7 million and does not have any employees.

2. Petitioner, its members, and its supporters reside in the immediate vicinity of the location of the concentrated animal feeding operation known as Valley Oaks Steak Company ("Valley Oaks CAFO") and the fields where manure from its operations will be land applied, and are adversely affected and aggrieved by the issuance of Permit MOG010872 and the operation of the Valley Oaks CAFO.

3. Respondent-Missouri Department of Natural Resources ("DNR") is the state agency created by § 640.010.1, RSMo.

STATEMENT OF FACTS

4. On December 19, 2017, "Country Club Homes, LLC" submitted a permit Application (Form W) to Respondent-DNR for the operation of a concentrated animal feeding operation ("CAFO") known as the Valley Oaks CAFO and located near Lone Jack, Missouri.

5. In section 1.2, the Permit Application stated "Country Club Homes, LLC" is the "Owner" of the facility.

6. 10 CSR 20-6.010(3) requires, *inter alia*, that "All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made."

7. On June 15, 2018, DNR issued Permit MOG010872 to "Country Club Homes, LLC" for the operation of the Valley Oaks CAFO.

8. Petitioner timely appealed the issuance of Permit MOG010872.

9. On appeal, Petitioner alleged that Respondent-DNR improperly issued Permit MOG01872 to "Country Club Homes, LLC" because (a) "Country Club Homes, LLC" is a nonexistent legal entity; and (b) "Country Club Homes, LLC," as a nonexistent legal entity, cannot serve as a lawful Continuing Authority for the Valley Oaks CAFO as required by 10 CSR 20-6.010(3).

10. According to the "Certificate of No Record" issued by the Missouri Secretary of State, there is no legal entity in existence in Missouri known as "Country Club Homes, LLC." *See Exhibit1, attached hereto and incorporated herein.*

11. 10 CSR 20-6.300(3) "Neighbor Notice Requirements," requires "<u>Prior to filing an application for an operating permit</u> with the department for a new or expanding Class I concentrated animal feeding operation, <u>the following information shall be provided [by the applicant] by way of a letter to all the parties listed in paragraph (3)(C)2</u>. of this section: …" (emphasis added).

12. The permit applicant did not send Neighbor Notice letters to all the parties listed in 10 CSR 20-6.300(3)(C)2 prior to December 19, 2017 (the date of the permit application), as specifically required by 10 CSR 20-6.300(3).

13. Certified Mail Receipts from the U. S. Postal Service conclusively show that the required Neighbor Notice letters were not mailed until January 30, 2018.

14. On appeal, Petitioner alleged that the permit applicant's failure to comply with 10 CSR 20-6.300(3) to timely provide the required Neighbor Notice letters prior to the submission of the CAFO permit application, adversely affected Petitioner, its members, and supporters by effectively denying their legal rights to public notice and public participation and hindering their ability to timely organize to oppose the permit application.

15. On appeal, Petitioner alleged that Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because the permit applicant failed to timely provide Neighbor Notice as required by 10 CSR 20-6.300(3).

16. On October 23, 2018, the Missouri Administrative Hearing Commission issued a Recommended Decision to the Missouri Clean Water Commission in Case 18-0498 to reverse the issuance of Permit MOG010872 because Respondent-DNR unlawfully issued the Permit in that: Permit MOG010872 was issued to "Country Club Homes, LLC," which is a non-existent legal entity and cannot serve as a continuing authority, and the required Neighbor Notice letters were not mailed by the permit applicant to all required parties prior to December 19, 2018, the date the permit application was submitted.

17. On December 10, 2018, the Missouri Clean Water Commission took-up the matter of the Country Club Homes, LLC permit appeal and, by a 4-1 vote, accepted the

Recommended Decision submitted by the Missouri Administrative Hearing Commission and issued a Final Decision. *See Exhibit 2, attached hereto and incorporated herein.*

18. The permit appeal involving Permit MOG010872 is an "agency proceeding" as defined by § 536.085, RSMo.

19. Petitioner is a "party" as defined by § 536.085, RSMo.

20. Petitioner obtained a favorable decision from the Clean Water Commission, and therefore "prevail[ed]" as defined by § 536.085, RSMo.

21. Respondent-DNR is a State agency, and therefore Petitioner prevailed against the "State" as defined by § 536.085, RSMo.

22. Specialized knowledge and skills were necessary to successfully try this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo; significant experience in litigation involving administrative hearings at the Administrative Hearing Commission; and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo. *See Affidavit of Rachel Foley (attached as Exhibit 3), Affidavit of Roger Walker (attached as Exhibit 4), and Affidavit of Eugene Schmittgens (attached as Exhibit 5), all of which are incorporated herein.*

23. There were no qualified attorneys reasonably available to Petitioner who would conduct the "County Club Homes, LLC" permit appeal at the hourly rate of $75.00. *See Affidavit of Rachel Foley.*

24. Because of the existence of special factors, including the limited availability of qualified attorneys at an hourly rate of $75.00 who routinely practice environmental law, environmental litigation, are familiar with the contested case procedures in the Missouri Administrative Procedure Act, Chapter 536, RSMo, have conducted contested case hearings at

the Administrative Hearing Commission, and are experienced with the rules adopted by the Respondent-DNR and the Clean Water Commission, a higher hourly rate for attorney time in excess of the statutory $75.00 per hour rate is justified in this matter.

25. An hourly rate of $175.00 is reasonable for the work performed in this case. *See Affidavit of Rachel Foley, Affidavit of Roger Walker, and Affidavit of Eugene Schmittgens.*

26. In the "Country Club Homes, LLC" permit appeal, Petitioner incurred legal fees and expenses in the amount of: (a) 127.7 hours of attorney time, (b) hourly rate of $175.00 for attorney time, and (c) $712.28 in expenses. *See Exhibit 6, attached hereto and incorporated herein.*

27. The amount of attorneys' fees and expenses incurred by Petitioner are "reasonable fees and expenses" as defined in § 536.085, RSMo.

28. The position of Respondent-DNR in issuing Permit MOG010872 to "Country Club Homes, LLC" was <u>not substantially justified</u> because a cursory examination of the relevant facts conclusively shows that: (a) according to the Missouri Secretary of State, "Country Club Homes, LLC" was not an existing legal entity and, as a result, could not lawfully serve as a continuing authority as required by 10 CSR 20-6.010(3); and (b) the permit applicant failed to comply with the Neighbor Notice requirements in 10 CSR 20-6.300(3) because the Neighbor Notice letters were mailed on January 30, 2018, which is six weeks after the date the permit application was submitted on December 19, 2017.

WHEREFORE, pursuant to § 536.087, RSMo, Petitioner respectfully requests that the Clean Water Commission approve an award of $22,347.50 for reasonable attorney fees and $712.28 in reasonable expenses, for a total award in connection with the permit appeal in the amount of $23,059.78.

Respectfully submitted,

JEFFERY LAW GROUP, LLC

Stephen G. Jeffery, MBE 29949
400 Chesterfield Center, Suite 400
Chesterfield, MO 63107-4800
(855) 915-9500 – Toll-Free
(314) 714-6510 – Fax
E-mail: sjeffery@jefferylawgroup.com

ATTORNEY FOR PETITIONER

Certificate of Service

I certify that a true copy of the foregoing was served via electronic mail on this 21st day of January 2019 to:

Chris Wieberg, Water Protection Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102-0176, e-mail: *chris.wieberg@dnr.mo.gov*;

Chelsey Distler, Acting Secretary, Missouri Clean Water Commission, P.O. Box 176, Jefferson City, MO 65102-0176, e-mail: *chelsey.distler@dnr.mo.gov*; and

Tim Duggan, Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899, e-mail: *tim.duggan@ago.mo.gov*.

NO RECORD

STATE OF MISSOURI

John R. Ashcroft
Secretary of State

CERTIFICATE OF NO RECORD

I, JOHN R. ASHCROFT, Secretary of State of the State of Missouri, do hereby certify that there are no records in my office and in my care and custody as the Secretary of State which show that

Country Club Homes, LLC
1120 NE Eagle Ridge Blvd. Grain Valley Mo. 64029

is not now, or ever has been registered as a Foreign or Domestic Corporation, Foreign or Domestic Limited Partnership, Foreign or Domestic Limited Liability Company, Foreign or Domestic Limited Liability Partnership, Foreign or Domestic Limited Liability Limited Partnership, under the Fictitious Name Act, or any other business entity required by law to file with the Secretary of State.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 27th day of June, 2018.

Secretary of State

Certification Number: CERT-06272018-0076

EXHIBIT
1

Jeffery Law Group, LLC

SOS #30 (01-2017)

BEFORE THE
MISSOURI CLEAN WATER COMMISSION

In The Matter Of:	)	
	)	
Country Club Homes, LLC	)	**Appeal No. 18-0498**
	)	
	)	
	)	

FINAL DECISION

The Missouri Department of Natural Resources issued general operating permit MOG010872 to Country Club Homes, LLC, for a concentrated animal feeding operation. Lone Jack Neighbors for Responsible Agriculture, LLC filed an appeal. The Administrative Hearing Commission (AHC) heard the appeal on August 27 through 28, 2018, and issued its recommendations to the Commission on October 23, 2018.

The Commission may 1) adopt the AHC's recommendation; 2) change findings of fact or conclusions of law; or 3) vacate or modify the recommended decision.[1] If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s).[2] Commission hereby adopts the AHC's recommended decision. This decision is based on the facts and evidence presented to the Commission pursuant to RSMo 644.026 and its corresponding regulations.

[1]Section 621.250.3, RSMo Supp. 2006
[2]*Id.*

EXHIBIT
2

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Ashley McCarty
Chair

Commissioner

Commissioner

Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

_____	Patricia Thomas
Chair	Commissioner
_____	_____
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

_____

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Chair	Commissioner
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

_____	_____
Chair	Commissioner
_____	_____
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

_____

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Chair	Commissioner
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Allen Rowland

Commissioner

AFFIDAVIT

COMES NOW the undersigned Affiant who upon oath states:

1. I am Rachel Lynn Foley. I practice bankruptcy law at Foley Law, PC, 4016 S Lynn Ct Dr., Independence, Missouri 64055.

2. I live in the Rock Lake Village subdivision, and my home address is 1719 NW 775th Street, Bates City, Missouri 64011. My property is located in the vicinity of the proposed Valley Oaks concentrated animal feeding operation or CAFO.

3. After I first learned of this proposed facility, I met with several other affected property owners. I assisted the group called Lone Jack Neighbors for Responsible Agriculture, LLC to oppose the proposed CAFO.

4. I am familiar with the background facts and legal issues in *In Re Country Club Homes, LLC*, Missouri Clean Water Commission, Appeal No. 18-0498, which involved the appeal of the CAFO permit issued by the Missouri Department of Natural Resources.

5. I was involved in the efforts to locate an attorney to represent us in our opposition to the proposed facility. Because of the complexity of the issues involved, we could not find an attorney in the area that would accept our case.

6. As an attorney, I believe specialized knowledge and skills were necessary to successfully try this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo; significant experience in litigation involving administrative hearings at the Administrative Hearing Commission; and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo.

EXHIBIT
3

Jeffery Law Group, LLC

7. It is my professional opinion that the average attorney in Missouri does not handle cases like this on a regular basis, and our group could not find any attorneys who have these specialized knowledge and skills who were available at an hourly rate of $75.00.

8. Our group retained Stephen G. Jeffery as our attorney. It is my professional opinion that Mr. Jeffery possesses these specialized knowledge and skills set forth in paragraph 6. My opinion is based on the facts that Mr. Jeffery formerly served as the General Counsel at the Department of Natural Resources for several years, and he has litigated a significant number of cases and administrative appeals in Missouri courts and the Administrative Hearing Commission regarding environmental issues, including CAFO permit appeals.

9. I know that Mr. Jeffery's rate to litigate this case was $175.00 per hour, and in my professional opinion, this hourly rate is extremely reasonable for the type of case that was involved.

Rachel Lynn Foley

Date 1/17/19

STATE OF MISSOURI)
) SS.
CITY OF JACKSON)

Before me, the undersigned Notary Public, personally appeared on this 17th day of January, 2019, Rachel Lynn Foley, a person known to me, who acknowledged that the foregoing is true and correct to the best of her personal knowledge and belief.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

MICHAEL J. BELL
MY COMMISSION EXPIRES 6/18/2021
NOTARY PUBLIC NOTARY SEAL
COMMISSION #13494692
JACKSON COUNTY
STATE OF MISSOURI

AFFIDAVIT

COMES NOW the undersigned Affiant who upon oath states:

1. I am Roger A. Walker. I am a Principal at RAWalker & Associates LLC, which provides high-level client-centered services on environmental and energy matters focusing primarily on compliance, permitting, and enforcement in all media; regulatory advocacy, due diligence and analysis of property and financial transactions involving contamination; risk management of complex legal and regulatory issues, and other related matters. My business address is 238 E. High Street, Suite 200, Jefferson City, Missouri 65101.

2. My educational background is: LL.M, Environmental Law, Lewis & Clark School of Law (1997); J.D., University of Missouri – Kansas City (1991) (Law Review); M.A., History, University of Missouri – Columbia; and B.S., Education/Journalism , University of Missouri – Columbia (cum laude).

3. I have reviewed the case background and legal issues in the *In Re Country Club Homes, LLC*, Missouri Clean Water Commission, Appeal No. 18-0498, which involved the appeal of a permit issued by the Missouri Department of Natural Resources.

4. It is my professional opinion that specialized knowledge and skills were necessary to successfully litigate this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo, significant experience in conducting hearings at the Administrative Hearing Commission, and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo.

EXHIBIT
4

Jeffery Law Group, LLC

5. Further, it is my professional opinion that there are no attorneys in Missouri available at an hourly rate of $75.00 who have these specialized knowledge and skills.

6. Further, I have known Stephen G. Jeffery for several years. It is my professional opinion that Mr. Jeffery possesses these specialized knowledge and skills set forth in paragraph 4. My opinion is based on the facts that Mr. Jeffery formerly served as the General Counsel at the Department of Natural Resources for several years, and he has litigated a significant number of cases and administrative appeals in Missouri courts and the Administrative Hearing Commission regarding environmental issues, including permit appeals.

7. I am advised that Mr. Jeffery's hourly rate to litigate this matter was only $175.00. In my professional opinion, this hourly rate is extremely reasonable for the type of case that was involved.

Further Affiant Sayeth Naught.

Roger A. Walker

Roger A. Walker

Date: 1-17-19

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

Before me, the undersigned Notary Public, personally appeared on this 17 day of January, 2019, Roger A. Walker, a person known to me, who acknowledged that the foregoing is true and correct to the best of his personal knowledge and belief.

Cole Russum

COLE RUSSUM
Notary Public - Notary Seal
STATE OF MISSOURI
County of Callaway
My Commission Expires 3/29/2021
Commission # 17773916

AFFIDAVIT

COMES NOW the undersigned Affiant who upon oath states:

1. I am Eugene P. Schmittgens, Jr. I practice law with the law firm of Rouse Frets White Goss Gentile Rhodes, P.C. I represent clients in environmental law issues including compliance, enforcement, including administrative litigation, insurance, permitting, transportation requirements and transactional issues arising out of the sale of real estate and businesses. I am a past chair of the Illinois State Bar Association's Environmental Law Section Council, and I am active in a number of other environmental law committees of various bar associations and civic groups. I have also been an Assistant Adjunct Professor at Saint Louis University of Law where I taught a course on Environmental Due Diligence.

2. My educational background is: St. Louis University, St. Louis, Missouri, Juris Doctorate, 1982; University of Missouri – St. Louis Masters of Arts (Political Science, Phi Sigma Alpha Honor Society for Political Science), 2014; MacMurray College, Jacksonville, Illinois, Bachelor of Science (Political Science, with honors; Sociology), 1979.

3. I am familiar with the background facts and legal issues in *In Re Country Club Homes, LLC*, Missouri Clean Water Commission, Appeal No. 18-0498, which involved the appeal of a permit issued by the Missouri Department of Natural Resources.

4. I believe that specialized knowledge and skills were necessary to successfully try this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo; significant experience in litigation involving administrative hearings at the Administrative Hearing Commission; and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo.

5. It is my professional opinion that the average attorney in Missouri does not handle cases like this on a regular basis, and there are not any attorneys who have these specialized knowledge and skills in Missouri available at an hourly rate of $75.00.

EXHIBIT
5

Jeffery Law Group, LLC

6. I have known Stephen G. Jeffery for several years. It is my professional opinion that Mr. Jeffery possesses these specialized knowledge and skills set forth in paragraph 4. My opinion is based on the facts that Mr. Jeffery formerly served as the General Counsel at the Department of Natural Resources for several years, and he has litigated a significant number of cases and administrative appeals in Missouri courts and the Administrative Hearing Commission regarding environmental issues, including permit appeals.

7. I know that Mr. Jeffery's rate to litigate this case was $175.00 per hour, in my professional opinion, this hourly rate is extremely reasonable for the type of case that was involved.

Eugene P. Schmittgens, Jr.

Date 1/21/2019

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

Before me, the undersigned Notary Public, personally appeared on this 21st day of JANUARY, 2019, Eugene P. Schmittgens, Jr., a person known to me, who acknowledged that the foregoing is true and correct to the best of his personal knowledge and belief.

ROBERT W. HOFFMAN
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis County
My Commission Expires: July 09, 2021
Commission Number: 13510141

JEFFERY LAW GROUP, LLC
400 Chesterfield Center
Suite 400
Chesterfield, MO 63017-4800

(855) 915-9500 - Toll-Free
(314) 714-6510 - Fax
FEIN: 27-4821891

January 18, 2019

Carolyn Wilkinson
37605 E US 50 Hwy
Lone Jack, MO 64070

In Reference To:

Invoice # 17183

Professional Services

		Hrs/Rate	Amount
04/03/18 SGJ	Preparation for DNR meeting. Conference with clients. Attend DNR public meeting. Travel from St. Louis to Warrensburg.	6.80	
04/04/18 SGJ	Phone call with Carolyn. Travel from Warrensburg to St. Louis.	4.10	
04/23/18 SGJ	Draft Freedom of Information Act request to USDA, Farm Services Agency. Draft e-mail to Carolyn and Karen. Call from Aimee Davenport (Powell Gardens counsel).	1.20	
05/08/18 SGJ	Phone call with Carolyn and Karen. Review Groebbel report.	1.20	
05/16/18 SGJ	Voicemail from Aimee Davenport (Powell Gardens' attorney). Draft e-mails to Aimee Davenport. Review replies.	0.40	
06/18/18 SGJ	Start work on Complaint. Review permit application and supporting documents.	1.80	
06/19/18 SGJ	Continue work on Complaint. Review DNR regulations. Review hydrogeologic investigation at Valley Oak lagoon. Review Grobbel report. Draft e-mail to Carolyn and Karen. Review e-mails from Aimee Davenport. Draft replies.	4.20	

EXHIBIT
6
Jeffery Law Group, LLC

		Hrs/Rate	Amount
06/21/18 SGJ	Continue work on Complaint. Review e-mails from Carolyn Wilkenson. Draft replies. Review FEMA website for FIRM information for Johnson County, Missouri.	2.60	
06/25/18 SGJ	Review and Revise Complaint. Review permit application, Secretary of State website, DNR permit. File Complaint with AHC.	4.20	
06/26/18 SGJ	Review and revise Amended Complaint. File same. Draft e-mails to Carolyn and Karen. Review replies. Review and revise Motion for Stay. Review Complaint and Motion for Stay filed by Powell Gardens.	4.80	
06/27/18 SGJ	Review and revise Amended Motion for Stay. File same. Calls with Marie Gellerstedt. Draft Affidavit for Marie Gellerstedt. Draft e-mail to Marie Gellerstedt. Call with Secretary of State's Office. Obtain Certificate of No Record from Secretary of State's Office. Draft e-mails to Carolyn and Karen. Review replies. Review executed Affidavit from Marie.	6.20	
06/28/18 SGJ	Draft Notice of Affidavit for Marie Gellerstedt affidavit. File same.	0.40	
07/06/18 SGJ	Preparation for July 9 hearing on motion for stay. Review AHC rules, statutes, and case law. Review e-mails from Carolyn and Karen. Draft revised questions for Carolyn and Karen. Assemble exhibits. Call with Aimee Davenport (Powell Gardens).	4.80	
07/08/18 SGJ	Review documents and exhibits for hearing. Travel from Chesterfield - Jefferson City.	3.10	
07/09/18 SGJ	Final preparation for Stay hearing. Conference with clients. Attend hearing on motion for stay. Conference with clients. Travel from Jefferson City -	10.20	

		Hrs/Rate	Amount
	Chesterfield.		
07/10/18 SGJ	Draft First Interrogatories and First Request for Admissions to DNR and Valley Oaks. Draft e-mail to opposing counsel. Draft e-mail to Carolyn, Karen, and Rachel.	2.40	
08/13/18 SGJ	Phone call from CEC (Ivan Cooper) regarding depo preparation. Revise depo outline. Draft e-mail to John Bognar (CEC). Review VO discovery responses. Draft Motion to Compel Discovery. File same with AHC. Draft e-mail to clients.	2.40	
08/19/18 SGJ	Review August 9, 2018 re-issued Permit and correspondence. Draft Motion for Contempt against DNR. Draft Motion to file amended Complaint and to reschedule hearing. File same with AHC.	4.90	
08/20/18 SGJ	Deposition of Ivan Cooper, PE. Revisions to Amended Motion to Compel Discovery. File same.	5.20	
08/26/18 SGJ	Review documents, exhibits, witness outlines for hearing. Travel from Chesterfield - Jefferson City.	3.90	
08/27/18 SGJ	AHC Hearing.	10.60	
08/28/18 SGJ	AHC Hearing. Travel from Jefferson City - Chesterfield.	8.60	
10/01/18 SGJ	Start work on draft Recommended Decision. Review transcripts and exhibits.	5.60	
10/02/18 SGJ	Continue work on Recommended Decision. Review case law. Review transcripts and exhibits. Draft e-mail to Carolyn, Karen, and Rachel.	6.20	

		Hrs/Rate	Amount
10/03/18 SGJ	Draft Designations for Cooper deposition. Review and revise draft Recommended Decision. Review transcript of hearing. Review e-mails from Carolyn, Karen, and Rachel.	2.30	
11/08/18 SGJ	Draft Motion to Disqualify Ashley McCarty. Review photos from April 3 public hearing. Draft e-mail to Karen, Carolyn, and Rachel. Review e-mails from Karen. File motion with AHC. Draft e-mail to Shawna Bligh, Jennifer Hernandez, and Jennifer Griffin.	2.10	
11/20/18 SGJ	Revisions to draft Motions to Disqualify CWC Commissioners. Draft cover letter. Draft e-mail to Chris Wieberg, Shawna Bligh, Jennifer Hernandez, and Jennifer Griffin.	1.40	
12/08/18 SGJ	Preparation for December 10 Clean Water Commission meeting. Draft e-mail to Carolyn, Karen, Rachel, Amy Davenport, and Chuck Hatfield. Review e-mail from Carolyn.	1.10	
12/09/18 SGJ	Preparation for Clean Water Commission meeting. Travel to Columbia.	3.20	
12/10/18 SGJ	Attend Clean Water Commission meeting to argue permit appeal in Country Club Homes LLC matter. Conference with clients. Travel from Columbia-Jefferson City. Return travel.	7.40	
01/16/19 SGJ	Draft affidavits in connection with Application for Award of Attorneys' Fees. Draft e-mails to Rachel Foley, Gene Schmittgens, and Roger Walker. Review replies.	1.40	
01/17/19 SGJ	Draft affidavits in support of Application for Award of Attorneys' Fees. Draft e-mails to Roger Walker, Gene Schmittgens,	1.90	

			Hrs/Rate	Amount
		and Rachel; Foley. Review replies.		
01/18/19	SGJ	Review e-mails from Rachel Foley and Roger Walker. Revisions to Application.	1.10	
	For professional services rendered		127.70	$0.00
	Additional Charges :			
			Qty/Price	
04/03/18	SGJ	Comfort Inn, Warrensburg	1 98.77	
	SGJ	Mileage to/from St. Louis - Warrensburg	404 0.55	
06/27/18	SGJ	Postage	1 3.26	
	SGJ	Secretary of State charge for No Record Certificate	1 10.00	
07/06/18	SGJ	FedEx charge.	1 15.22	
07/08/18	SGJ	Mileage - Chesterfield - Jefferson City	117 0.55	
07/09/18	SGJ	Mileage Jefferson City - Chesterfield	117 0.55	
08/25/18	SGJ	FedEx copying cost.	1 4.87	
08/26/18	SGJ	Mileage Chesterfield - Jefferson City	117 0.55	
08/27/18	SGJ	Parking	1 7.00	
08/28/18	SGJ	Parking.	1 7.00	
	SGJ	Mileage Jefferson City - Chesterfield.	117 0.55	

		Qty/Price	Amount
11/21/18 SGJ		1	
	Postage for certified mail to DNR.	8.46	
12/09/18 SGJ		107	
	Mileage - Chesterfield - Columbia	0.55	
12/10/18 SGJ		35	
	Mileage - Columbia - Jefferson City	0.55	
	Total additional charges		$712.28

BEFORE THE MISSOURI CLEAN WATER COMMISSION

IN RE COUNTRY CLUB HOMES, LLC	)	
	)	No. 18-0498
PERMIT NO. MOG010872	)	

PETITIONER'S SECOND AMENDED
APPLICATION FOR AWARD OF ATTORNEYS FEES

COMES NOW, Petitioner-Lone Jack Neighbors for Responsible Agriculture, LLC, by and through counsel, pursuant to § 536.087, RSMo and for its Second Amended Application for Award of Attorneys' Fees states:

PARTIES

1. Petitioner is a Missouri limited liability company in good standing with its principal place of business located at 37904 E US 50 Highway, Suite B, Lone Jack, Missouri 64070. Petitioner has a net worth of less than $7 million and does not have any employees.

2. Petitioner, its members, and its supporters reside in the immediate vicinity of the location of the concentrated animal feeding operation known as Valley Oaks Steak Company ("Valley Oaks CAFO") and the fields where manure from its operations will be land applied, and are adversely affected and aggrieved by the issuance of Permit MOG010872 and the operation of the Valley Oaks CAFO.

3. Respondent-Missouri Department of Natural Resources ("DNR") is the state agency created by § 640.010.1, RSMo.

STATEMENT OF FACTS

4. On December 19, 2017, "Country Club Homes, LLC" submitted a permit Application (Form W) to Respondent-DNR for the operation of a concentrated animal feeding operation ("CAFO") known as the Valley Oaks CAFO and located near Lone Jack, Missouri.

5. In section 1.2, the Permit Application stated "Country Club Homes, LLC" is the "Owner" of the facility.

6. 10 CSR 20-6.010(3) requires, *inter alia*, that "All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made."

7. On June 15, 2018, DNR issued Permit MOG010872 to "Country Club Homes, LLC" for the operation of the Valley Oaks CAFO.

8. Petitioner timely appealed the issuance of Permit MOG010872.

9. On appeal, Petitioner alleged that Respondent-DNR improperly issued Permit MOG01872 to "Country Club Homes, LLC" because (a) "Country Club Homes, LLC" is a nonexistent legal entity; and (b) "Country Club Homes, LLC," as a nonexistent legal entity, cannot serve as a lawful Continuing Authority for the Valley Oaks CAFO as required by 10 CSR 20-6.010(3).

10. According to the "Certificate of No Record" issued by the Missouri Secretary of State, there is no legal entity in existence in Missouri known as "Country Club Homes, LLC." *See Exhibit 1, attached hereto and incorporated herein.*

11. 10 CSR 20-6.300(3) "Neighbor Notice Requirements," requires "<u>Prior to filing an application for an operating permit</u> with the department for a new or expanding Class I concentrated animal feeding operation, <u>the following information shall be provided [by the applicant] by way of a letter to all the parties listed in paragraph (3)(C)2</u>. of this section: …" (emphasis added).

12. The permit applicant did not send Neighbor Notice letters to all the parties listed in 10 CSR 20-6.300(3)(C)2 prior to December 19, 2017 (the date of the permit application), as specifically required by 10 CSR 20-6.300(3).

13. Certified Mail Receipts from the U. S. Postal Service conclusively show that the required Neighbor Notice letters were not mailed until January 30, 2018.

14. On appeal, Petitioner alleged that the permit applicant's failure to comply with 10 CSR 20-6.300(3) to timely provide the required Neighbor Notice letters prior to the submission of the CAFO permit application, adversely affected Petitioner, its members, and supporters by effectively denying their legal rights to public notice and public participation and hindering their ability to timely organize to oppose the permit application.

15. On appeal, Petitioner alleged that Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because the permit applicant failed to timely provide Neighbor Notice as required by 10 CSR 20-6.300(3).

16. On October 23, 2018, the Missouri Administrative Hearing Commission issued a Recommended Decision to the Missouri Clean Water Commission in Case 18-0498 to reverse the issuance of Permit MOG010872 because Respondent-DNR unlawfully issued the Permit in that: Permit MOG010872 was issued to "Country Club Homes, LLC," which is a non-existent legal entity and cannot serve as a continuing authority, and the required Neighbor Notice letters were not mailed by the permit applicant to all required parties prior to December 19, 2018, the date the permit application was submitted.

17. On December 10, 2018, the Missouri Clean Water Commission took-up the matter of the Country Club Homes, LLC permit appeal and, by a 4-1 vote, accepted the

Recommended Decision submitted by the Missouri Administrative Hearing Commission and issued a Final Decision. *See Exhibit 2, attached hereto and incorporated herein.*

18. On January 18, 2019, Country Club Homes appealed the decision of the Missouri Clean Water Commission to the Court of Appeals, Western District.

19. On December 24, 2019, the Missouri Court of Appeals, Western District affirmed the Clean Water Commission's decision of December 10, 2018 on all grounds. *See Exhibit 7, attached hereto and incorporated herein.*

20. The permit appeal involving Permit MOG010872 is an "agency proceeding" as defined by § 536.085, RSMo.

21. Petitioner is a "party" as defined by § 536.085, RSMo.

22. Petitioner obtained a favorable decision from the Missouri Clean Water Commission, such decision was affirmed by the Court of Appeals, and therefore Petitioner "prevail[ed]" in this action as defined by § 536.085, RSMo.

23. Respondent-DNR is a State agency, and therefore Petitioner prevailed against the "State" as defined by § 536.085, RSMo.

24. Specialized knowledge and skills were necessary to successfully try this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo; significant experience in litigation involving administrative hearings at the Administrative Hearing Commission; and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo. *See Affidavit of Rachel Foley (attached as Exhibit 3), Affidavit of Roger Walker (attached as Exhibit 4), and Affidavit of Eugene Schmittgens (attached as Exhibit 5), all of which are incorporated herein.*

25. There were no qualified attorneys reasonably available to Petitioner who would conduct the "County Club Homes, LLC" permit appeal at the hourly rate of $75.00. *See Affidavit of Rachel Foley.*

26. Because of the existence of special factors, including the limited availability of qualified attorneys at an hourly rate of $75.00 who routinely practice environmental law, environmental litigation, are familiar with the contested case procedures in the Missouri Administrative Procedure Act, Chapter 536, RSMo, have conducted contested case hearings at the Administrative Hearing Commission, and are experienced with the rules adopted by the Respondent-DNR and the Clean Water Commission, a higher hourly rate for attorney time in excess of the statutory $75.00 per hour rate is justified in this matter.

27. An hourly rate of $175.00 is reasonable for the work performed in this case. *See Affidavit of Rachel Foley, Affidavit of Roger Walker, and Affidavit of Eugene Schmittgens.*

28. In the "Country Club Homes, LLC" permit appeal, Petitioner incurred legal fees and expenses in the amount of: (a) 127.7 hours of attorney time, (b) hourly rate of $175.00 for attorney time, and (c) $712.28 in expenses. *See Exhibit 6, attached hereto and incorporated herein.*

29. In the "Country Club Homes, LLC" appeal at the Court of Appeals, Western District, Petitioner incurred legal fees and expenses in the amount of: (a) 58.5 hours of attorney time; (b) hourly rate of $175.00 for attorney time, and (c) $637.10 in expenses. *See Exhibit 8, attached hereto and incorporated herein.*

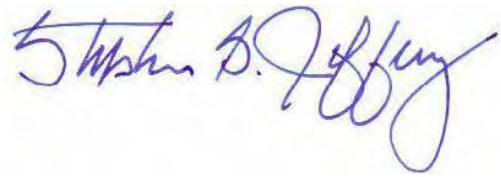
30. The amount of attorneys' fees and expenses incurred by Petitioner are "reasonable fees and expenses" as defined in § 536.085, RSMo.

31. The position of Respondent-DNR in issuing Permit MOG010872 to "Country Club Homes, LLC" was not substantially justified because a cursory examination of the relevant facts conclusively shows that according to the Missouri Secretary of State, "Country Club Homes, LLC" was not an existing legal entity and, as a result, could not lawfully serve as a continuing authority as required by 10 CSR 20-6.010(3), and, as a result, Respondent-DNR's actions in issuing and transferring Permit MOG010872 were unlawful. *See Opinion, Exhibit 7, at 19-24*.

WHEREFORE, pursuant to § 536.087, RSMo, Petitioner respectfully requests that the Clean Water Commission approve an award of $32,585.00 for reasonable attorney fees and $1,349.38 in reasonable expenses, for a total award in connection with the permit appeal in the amount of $33,934.38.

Respectfully submitted,

JEFFERY LAW GROUP, LLC



Stephen G. Jeffery, MBE 29949
400 Chesterfield Center, Suite 400
Chesterfield, MO 63107-4800
(855) 915-9500 – Toll-Free
(314) 714-6510 – Fax
E-mail: sjeffery@jefferylawgroup.com

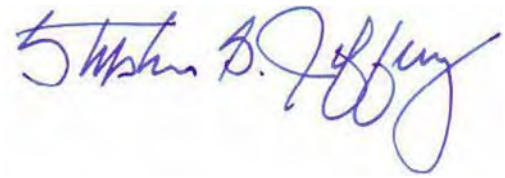
ATTORNEY FOR PETITIONER

Certificate of Service

I certify that a true copy of the foregoing was served via electronic mail on this 26th day of December 2019 to:

Chris Wieberg, Water Protection Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102-0176, e-mail: *chris.wieberg@dnr.mo.gov*;

Tim Duggan, Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899, e-mail: *tim.duggan@ago.mo.gov*.



NO RECORD

STATE OF MISSOURI

John R. Ashcroft
Secretary of State

CERTIFICATE OF NO RECORD

I, JOHN R. ASHCROFT, Secretary of State of the State of Missouri, do hereby certify that there are no records in my office and in my care and custody as the Secretary of State which show that

Country Club Homes, LLC
1120 NE Eagle Ridge Blvd. Grain Valley Mo. 64029

is not now, or ever has been registered as a Foreign or Domestic Corporation, Foreign or Domestic Limited Partnership, Foreign or Domestic Limited Liability Company, Foreign or Domestic Limited Liability Partnership, Foreign or Domestic Limited Liability Limited Partnership, under the Fictitious Name Act, or any other business entity required by law to file with the Secretary of State.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 27th day of June, 2018.

Secretary of State

Certification Number: CERT-06272018-0076

EXHIBIT
1

Jeffery Law Group, LLC

SOS #30 (01-2017)

BEFORE THE
MISSOURI CLEAN WATER COMMISSION

In The Matter Of:	)	
	)	
Country Club Homes, LLC	)	**Appeal No. 18-0498**
	)	
	)	
	)	

FINAL DECISION

The Missouri Department of Natural Resources issued general operating permit MOG010872 to Country Club Homes, LLC, for a concentrated animal feeding operation. Lone Jack Neighbors for Responsible Agriculture, LLC filed an appeal. The Administrative Hearing Commission (AHC) heard the appeal on August 27 through 28, 2018, and issued its recommendations to the Commission on October 23, 2018.

The Commission may 1) adopt the AHC's recommendation; 2) change findings of fact or conclusions of law; or 3) vacate or modify the recommended decision.[1] If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s).[2] Commission hereby adopts the AHC's recommended decision. This decision is based on the facts and evidence presented to the Commission pursuant to RSMo 644.026 and its corresponding regulations.

[1]Section 621.250.3, RSMo Supp. 2006
[2]*Id.*

EXHIBIT
2

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Ashley McCarty
Chair

Commissioner

Commissioner

Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

_____	Patricia Thomas
Chair	Commissioner
_____	_____
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

_____

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Chair	Commissioner
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

_____	_____
Chair	Commissioner
_____	_____
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

_____

Commissioner

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Chair	Commissioner
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Allen Rowland

Commissioner

AFFIDAVIT

COMES NOW the undersigned Affiant who upon oath states:

1. I am Rachel Lynn Foley. I practice bankruptcy law at Foley Law, PC, 4016 S Lynn Ct Dr., Independence, Missouri 64055.

2. I live in the Rock Lake Village subdivision, and my home address is 1719 NW 775th Street, Bates City, Missouri 64011. My property is located in the vicinity of the proposed Valley Oaks concentrated animal feeding operation or CAFO.

3. After I first learned of this proposed facility, I met with several other affected property owners. I assisted the group called Lone Jack Neighbors for Responsible Agriculture, LLC to oppose the proposed CAFO.

4. I am familiar with the background facts and legal issues in *In Re Country Club Homes, LLC*, Missouri Clean Water Commission, Appeal No. 18-0498, which involved the appeal of the CAFO permit issued by the Missouri Department of Natural Resources.

5. I was involved in the efforts to locate an attorney to represent us in our opposition to the proposed facility. Because of the complexity of the issues involved, we could not find an attorney in the area that would accept our case.

6. As an attorney, I believe specialized knowledge and skills were necessary to successfully try this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo; significant experience in litigation involving administrative hearings at the Administrative Hearing Commission; and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo.

EXHIBIT
3

Jeffery Law Group, LLC

7. It is my professional opinion that the average attorney in Missouri does not handle cases like this on a regular basis, and our group could not find any attorneys who have these specialized knowledge and skills who were available at an hourly rate of $75.00.

8. Our group retained Stephen G. Jeffery as our attorney. It is my professional opinion that Mr. Jeffery possesses these specialized knowledge and skills set forth in paragraph 6. My opinion is based on the facts that Mr. Jeffery formerly served as the General Counsel at the Department of Natural Resources for several years, and he has litigated a significant number of cases and administrative appeals in Missouri courts and the Administrative Hearing Commission regarding environmental issues, including CAFO permit appeals.

9. I know that Mr. Jeffery's rate to litigate this case was $175.00 per hour, and in my professional opinion, this hourly rate is extremely reasonable for the type of case that was involved.

Rachel Lynn Foley

Date 1/17/19

STATE OF MISSOURI)
) SS.
CITY OF JACKSON)

Before me, the undersigned Notary Public, personally appeared on this 17th day of January, 2019, Rachel Lynn Foley, a person known to me, who acknowledged that the foregoing is true and correct to the best of her personal knowledge and belief.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

MICHAEL J. BELL
MY COMMISSION EXPIRES 6/18/2021
NOTARY PUBLIC NOTARY SEAL
COMMISSION #13494692
JACKSON COUNTY
STATE OF MISSOURI

AFFIDAVIT

COMES NOW the undersigned Affiant who upon oath states:

1. I am Roger A. Walker. I am a Principal at RAWalker & Associates LLC, which provides high-level client-centered services on environmental and energy matters focusing primarily on compliance, permitting, and enforcement in all media; regulatory advocacy, due diligence and analysis of property and financial transactions involving contamination; risk management of complex legal and regulatory issues, and other related matters. My business address is 238 E. High Street, Suite 200, Jefferson City, Missouri 65101.

2. My educational background is: LL.M, Environmental Law, Lewis & Clark School of Law (1997); J.D., University of Missouri – Kansas City (1991) (Law Review); M.A., History, University of Missouri – Columbia; and B.S., Education/Journalism , University of Missouri – Columbia (cum laude).

3. I have reviewed the case background and legal issues in the *In Re Country Club Homes, LLC*, Missouri Clean Water Commission, Appeal No. 18-0498, which involved the appeal of a permit issued by the Missouri Department of Natural Resources.

4. It is my professional opinion that specialized knowledge and skills were necessary to successfully litigate this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo, significant experience in conducting hearings at the Administrative Hearing Commission, and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo.

EXHIBIT
4

Jeffery Law Group, LLC

5. Further, it is my professional opinion that there are no attorneys in Missouri available at an hourly rate of $75.00 who have these specialized knowledge and skills.

6. Further, I have known Stephen G. Jeffery for several years. It is my professional opinion that Mr. Jeffery possesses these specialized knowledge and skills set forth in paragraph 4. My opinion is based on the facts that Mr. Jeffery formerly served as the General Counsel at the Department of Natural Resources for several years, and he has litigated a significant number of cases and administrative appeals in Missouri courts and the Administrative Hearing Commission regarding environmental issues, including permit appeals.

7. I am advised that Mr. Jeffery's hourly rate to litigate this matter was only $175.00. In my professional opinion, this hourly rate is extremely reasonable for the type of case that was involved.

Further Affiant Sayeth Naught.

Roger A. Walker

Roger A. Walker

Date: 1-17-19

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

Before me, the undersigned Notary Public, personally appeared on this 17 day of January, 2019, Roger A. Walker, a person known to me, who acknowledged that the foregoing is true and correct to the best of his personal knowledge and belief.

Cole Russum

COLE RUSSUM
Notary Public - Notary Seal
STATE OF MISSOURI
County of Callaway
My Commission Expires 3/29/2021
Commission # 17773916

AFFIDAVIT

COMES NOW the undersigned Affiant who upon oath states:

1. I am Eugene P. Schmittgens, Jr. I practice law with the law firm of Rouse Frets White Goss Gentile Rhodes, P.C. I represent clients in environmental law issues including compliance, enforcement, including administrative litigation, insurance, permitting, transportation requirements and transactional issues arising out of the sale of real estate and businesses. I am a past chair of the Illinois State Bar Association's Environmental Law Section Council, and I am active in a number of other environmental law committees of various bar associations and civic groups. I have also been an Assistant Adjunct Professor at Saint Louis University of Law where I taught a course on Environmental Due Diligence.

2. My educational background is: St. Louis University, St. Louis, Missouri, Juris Doctorate, 1982; University of Missouri – St. Louis Masters of Arts (Political Science, Phi Sigma Alpha Honor Society for Political Science), 2014; MacMurray College, Jacksonville, Illinois, Bachelor of Science (Political Science, with honors; Sociology), 1979.

3. I am familiar with the background facts and legal issues in *In Re Country Club Homes, LLC*, Missouri Clean Water Commission, Appeal No. 18-0498, which involved the appeal of a permit issued by the Missouri Department of Natural Resources.

4. I believe that specialized knowledge and skills were necessary to successfully try this case. These specialized knowledge and skills include a detailed understanding of the Missouri Administrative Procedure Act, Chapter 536, RSMo; significant experience in litigation involving administrative hearings at the Administrative Hearing Commission; and the permitting process set forth in the Missouri Clean Water Law, Chapter 644, RSMo.

5. It is my professional opinion that the average attorney in Missouri does not handle cases like this on a regular basis, and there are not any attorneys who have these specialized knowledge and skills in Missouri available at an hourly rate of $75.00.

EXHIBIT
5

Jeffery Law Group, LLC

6. I have known Stephen G. Jeffery for several years. It is my professional opinion that Mr. Jeffery possesses these specialized knowledge and skills set forth in paragraph 4. My opinion is based on the facts that Mr. Jeffery formerly served as the General Counsel at the Department of Natural Resources for several years, and he has litigated a significant number of cases and administrative appeals in Missouri courts and the Administrative Hearing Commission regarding environmental issues, including permit appeals.

7. I know that Mr. Jeffery's rate to litigate this case was $175.00 per hour, in my professional opinion, this hourly rate is extremely reasonable for the type of case that was involved.

Eugene P. Schmittgens, Jr.

Date 1/21/2019

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

Before me, the undersigned Notary Public, personally appeared on this 21st day of JANUARY, 2019, Eugene P. Schmittgens, Jr., a person known to me, who acknowledged that the foregoing is true and correct to the best of his personal knowledge and belief.

ROBERT W. HOFFMAN
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis County
My Commission Expires: July 09, 2021
Commission Number: 13510141

JEFFERY LAW GROUP, LLC
400 Chesterfield Center
Suite 400
Chesterfield, MO 63017-4800

(855) 915-9500 - Toll-Free
(314) 714-6510 - Fax
FEIN: 27-4821891

January 18, 2019

Carolyn Wilkinson
37605 E US 50 Hwy
Lone Jack, MO 64070

In Reference To:

Invoice # 17183

Professional Services

		Hrs/Rate	Amount
04/03/18 SGJ	Preparation for DNR meeting. Conference with clients. Attend DNR public meeting. Travel from St. Louis to Warrensburg.	6.80	
04/04/18 SGJ	Phone call with Carolyn. Travel from Warrensburg to St. Louis.	4.10	
04/23/18 SGJ	Draft Freedom of Information Act request to USDA, Farm Services Agency. Draft e-mail to Carolyn and Karen. Call from Aimee Davenport (Powell Gardens counsel).	1.20	
05/08/18 SGJ	Phone call with Carolyn and Karen. Review Groebbel report.	1.20	
05/16/18 SGJ	Voicemail from Aimee Davenport (Powell Gardens' attorney). Draft e-mails to Aimee Davenport. Review replies.	0.40	
06/18/18 SGJ	Start work on Complaint. Review permit application and supporting documents.	1.80	
06/19/18 SGJ	Continue work on Complaint. Review DNR regulations. Review hydrogeologic investigation at Valley Oak lagoon. Review Grobbel report. Draft e-mail to Carolyn and Karen. Review e-mails from Aimee Davenport. Draft replies.	4.20	

EXHIBIT
6
Jeffery Law Group, LLC

		Hrs/Rate	Amount
06/21/18 SGJ	Continue work on Complaint. Review e-mails from Carolyn Wilkenson. Draft replies. Review FEMA website for FIRM information for Johnson County, Missouri.	2.60	
06/25/18 SGJ	Review and Revise Complaint. Review permit application, Secretary of State website, DNR permit. File Complaint with AHC.	4.20	
06/26/18 SGJ	Review and revise Amended Complaint. File same. Draft e-mails to Carolyn and Karen. Review replies. Review and revise Motion for Stay. Review Complaint and Motion for Stay filed by Powell Gardens.	4.80	
06/27/18 SGJ	Review and revise Amended Motion for Stay. File same. Calls with Marie Gellerstedt. Draft Affidavit for Marie Gellerstedt. Draft e-mail to Marie Gellerstedt. Call with Secretary of State's Office. Obtain Certificate of No Record from Secretary of State's Office. Draft e-mails to Carolyn and Karen. Review replies. Review executed Affidavit from Marie.	6.20	
06/28/18 SGJ	Draft Notice of Affidavit for Marie Gellerstedt affidavit. File same.	0.40	
07/06/18 SGJ	Preparation for July 9 hearing on motion for stay. Review AHC rules, statutes, and case law. Review e-mails from Carolyn and Karen. Draft revised questions for Carolyn and Karen. Assemble exhibits. Call with Aimee Davenport (Powell Gardens).	4.80	
07/08/18 SGJ	Review documents and exhibits for hearing. Travel from Chesterfield - Jefferson City.	3.10	
07/09/18 SGJ	Final preparation for Stay hearing. Conference with clients. Attend hearing on motion for stay. Conference with clients. Travel from Jefferson City -	10.20	

		Hrs/Rate	Amount
	Chesterfield.		
07/10/18 SGJ	Draft First Interrogatories and First Request for Admissions to DNR and Valley Oaks. Draft e-mail to opposing counsel. Draft e-mail to Carolyn, Karen, and Rachel.	2.40	
08/13/18 SGJ	Phone call from CEC (Ivan Cooper) regarding depo preparation. Revise depo outline. Draft e-mail to John Bognar (CEC). Review VO discovery responses. Draft Motion to Compel Discovery. File same with AHC. Draft e-mail to clients.	2.40	
08/19/18 SGJ	Review August 9, 2018 re-issued Permit and correspondence. Draft Motion for Contempt against DNR. Draft Motion to file amended Complaint and to reschedule hearing. File same with AHC.	4.90	
08/20/18 SGJ	Deposition of Ivan Cooper, PE. Revisions to Amended Motion to Compel Discovery. File same.	5.20	
08/26/18 SGJ	Review documents, exhibits, witness outlines for hearing. Travel from Chesterfield - Jefferson City.	3.90	
08/27/18 SGJ	AHC Hearing.	10.60	
08/28/18 SGJ	AHC Hearing. Travel from Jefferson City - Chesterfield.	8.60	
10/01/18 SGJ	Start work on draft Recommended Decision. Review transcripts and exhibits.	5.60	
10/02/18 SGJ	Continue work on Recommended Decision. Review case law. Review transcripts and exhibits. Draft e-mail to Carolyn, Karen, and Rachel.	6.20	

		Hrs/Rate	Amount
10/03/18 SGJ	Draft Designations for Cooper deposition. Review and revise draft Recommended Decision. Review transcript of hearing. Review e-mails from Carolyn, Karen, and Rachel.	2.30	
11/08/18 SGJ	Draft Motion to Disqualify Ashley McCarty. Review photos from April 3 public hearing. Draft e-mail to Karen, Carolyn, and Rachel. Review e-mails from Karen. File motion with AHC. Draft e-mail to Shawna Bligh, Jennifer Hernandez, and Jennifer Griffin.	2.10	
11/20/18 SGJ	Revisions to draft Motions to Disqualify CWC Commissioners. Draft cover letter. Draft e-mail to Chris Wieberg, Shawna Bligh, Jennifer Hernandez, and Jennifer Griffin.	1.40	
12/08/18 SGJ	Preparation for December 10 Clean Water Commission meeting. Draft e-mail to Carolyn, Karen, Rachel, Amy Davenport, and Chuck Hatfield. Review e-mail from Carolyn.	1.10	
12/09/18 SGJ	Preparation for Clean Water Commission meeting. Travel to Columbia.	3.20	
12/10/18 SGJ	Attend Clean Water Commission meeting to argue permit appeal in Country Club Homes LLC matter. Conference with clients. Travel from Columbia-Jefferson City. Return travel.	7.40	
01/16/19 SGJ	Draft affidavits in connection with Application for Award of Attorneys' Fees. Draft e-mails to Rachel Foley, Gene Schmittgens, and Roger Walker. Review replies.	1.40	
01/17/19 SGJ	Draft affidavits in support of Application for Award of Attorneys' Fees. Draft e-mails to Roger Walker, Gene Schmittgens,	1.90	

			Hrs/Rate	Amount
		and Rachel; Foley. Review replies.		
01/18/19	SGJ	Review e-mails from Rachel Foley and Roger Walker. Revisions to Application.	1.10	
	For professional services rendered		127.70	$0.00
	Additional Charges :			
			Qty/Price	
04/03/18	SGJ	Comfort Inn, Warrensburg	1 98.77	
	SGJ	Mileage to/from St. Louis - Warrensburg	404 0.55	
06/27/18	SGJ	Postage	1 3.26	
	SGJ	Secretary of State charge for No Record Certificate	1 10.00	
07/06/18	SGJ	FedEx charge.	1 15.22	
07/08/18	SGJ	Mileage - Chesterfield - Jefferson City	117 0.55	
07/09/18	SGJ	Mileage Jefferson City - Chesterfield	117 0.55	
08/25/18	SGJ	FedEx copying cost.	1 4.87	
08/26/18	SGJ	Mileage Chesterfield - Jefferson City	117 0.55	
08/27/18	SGJ	Parking	1 7.00	
08/28/18	SGJ	Parking.	1 7.00	
	SGJ	Mileage Jefferson City - Chesterfield.	117 0.55	

		Qty/Price	Amount
11/21/18 SGJ		1	
	Postage for certified mail to DNR.	8.46	
12/09/18 SGJ		107	
	Mileage - Chesterfield - Columbia	0.55	
12/10/18 SGJ		35	
	Mileage - Columbia - Jefferson City	0.55	
	Total additional charges		$712.28

In the Missouri Court of Appeals
Western District

COUNTRYCLUB HOMES, LLC and VALLEY OAKS REAL ESTATE, LLC, Appellants,	)	
v.	)	
MISSOURI DEPARTMENT OF NATURAL RESOURCES, MISSOURI CLEAN WATER COMMISSION, LONE JACK NEIGHBORS FOR RESPONSIBLE AGRICULTURE, POWELL GARDENS, INC., ELIZABETH DEICH, RYAN DEICH and THE ROBERT M. CHAMNESS TRUST, COLLECTIVELY KNOWN AS THE POWELL PARTIES, Respondents.	)	**WD82476** **Consolidated with WD82477** **FILED: December 24, 2019**

APPEAL FROM THE CLEAN WATER COMMISSION

BEFORE DIVISION FOUR: KAREN KING MITCHELL, CHIEF JUDGE, PRESIDING, LISA WHITE HARDWICK AND CYNTHIA L. MARTIN, JUDGES

Countryclub Homes, LLC and Valley Oaks Real Estate, LLC (collectively, "Valley Oaks") appeal from the decisions of the Clean Water Commission ("CWC") in two cases to deny Valley Oaks's permit application for a concentrated animal feeding operation ("CAFO") in Johnson County. In case number WD82476 ("Lone Jack case"), the entity opposing the permit was Lone Jack Neighbors for Responsible Agriculture, LLC ("Lone Jack"). In case number WD82477 ("Powell case"), the entities opposing the permit

were Powell Gardens, Inc., Ryan Deich, Elizabeth Deich, and the Robert M. Chamness Trust (collectively, "Powell").

In both appeals, Valley Oaks alleges the same four procedural errors in the CWC's decisions to deny its permit application: (1) Lone Jack and Powell lacked standing to challenge the permitting decision of the Department of Natural Resources ("DNR"); (2) the CWC's written decisions were untimely; (3) the CWC issued its decisions without reviewing all of the record; and (4) the CWC's decisions were not approved by four commissioners because the approvals of two commissioners were void. Also in both appeals, Valley Oaks contends the CWC erred in denying its permit on the grounds that its application failed to identify a continuing authority and that Valley Oaks failed to provide neighbor notice prior to filing its application for the CAFO. Lastly, in its appeal of the decision in the Powell case, Valley Oaks asserts the CWC erred in denying its permit on the additional grounds that Valley Oaks failed to provide realistic yield goals for the fields it identified for land application of manure and that Valley Oaks failed to provide for adequate manure storage.

We consolidated the two cases for appeal. For reasons explained herein, we find no error and affirm the CWC's decisions in both cases to deny Valley Oaks's permit application. We remand the cause to the CWC for a determination of Lone Jack's entitlement to attorneys' fees.

FACTUAL AND PROCEDURAL HISTORY

On December 19, 2017, David Ward submitted an application to the DNR for a proposed Class IB CAFO, comprised of approximately 6,999 head of cattle, to be located on property in Johnson County. Ward filed the CAFO permit application in the

name of “Country Club Homes LLC.” “Country Club Homes LLC” was listed on the application as both the owner and the continuing authority that was to be responsible for the operation, maintenance, and modernization of the facility to which the permit was issued, as required by 10 CSR 20-6.010(3)(A).[1] Ward, however, is the sole member of an entity named “Countryclub Homes, LLC,” and not an entity named “Country Club Homes LLC.”

The permit application was reviewed by DNR employee Greg Caldwell, who determined that the application met all statutory and regulatory requirements. On June 15, 2018, the DNR issued a Class IB CAFO permit to “County [sic] Club Homes, LLC.” Shortly thereafter, Ward applied to the DNR for a transfer of the ownership of the CAFO permit to “Valley Oaks Real Estate, LLC.” Ward signed the transfer application as both the previous owner and the new owner. In August 2018, the DNR transferred ownership of the CAFO permit to Valley Oaks Real Estate, LLC.

Meanwhile, Lone Jack appealed the DNR’s issuance of the permit by filing a complaint in the Administrative Hearing Commission (“AHC”) on June 25, 2018. Lone Jack later filed two amended complaints. In its second amended complaint, Lone Jack alleged that its organization, members, and supporters reside in the immediate vicinity of the location of Valley Oaks’s CAFO and the fields where manure from its operations will be spread, and they are adversely affected and aggrieved by the issuance of the permit and the operation of the CAFO. Lone Jack challenged the issuance of the permit on eight grounds.

[1] All regulatory references are to the Missouri Code of State Regulations (2016).

Two days later, on June 27, 2018, Powell also filed a complaint in the AHC appealing the DNR's issuance of the permit. Powell later filed an amended complaint, in which it alleged that Powell Gardens, Inc., is Kansas City's botanical garden and cultivates more than 20,000 species of plants and attracts more than 100,000 visitors each year. Powell Gardens, Inc., is less than three miles from the Valley Oaks facility. Powell further alleged that the Deichs, whose property is held by the Robert M. Chamness Trust, live 1,900 feet from the Valley Oaks facility on a historic Missouri Century Farm. Powell alleged that, due to the high animal population density, on-site slaughterhouse, unique CAFO design, and minimal owned-acreage for nutrient management, Valley Oaks's operation was unusual and unproven and would have impacts on water quality and the environment that the DNR has not sufficiently quantified. Powell asserted that the DNR erred in issuing Valley Oaks a permit to operate the facility without sufficiently considering these issues. Powell challenged the issuance of the permit on six grounds.

Valley Oaks intervened in the appeals. The AHC held a consolidated evidentiary hearing for the two appeals on August 27-28, 2018. The AHC issued decisions in both cases on October 23, 2018, recommending that the CWC reverse the DNR's decision to issue the permit. In both decisions, the AHC found that denial of the permit was appropriate on the grounds that Valley Oaks failed to identify a continuing authority, in violation of 10 CSR 20-6.010(3)(A), and failed to provide neighbor notice prior to filing its application, in violation of § 640.715, RSMo 2016,[2] and 10 CSR 20-6.300(3)(C). In the Powell case, the AHC found that denial of the permit was appropriate on two

[2] All statutory references are to the Revised Statutes of Missouri 2016.

additional grounds that only Powell raised. These two grounds were that Valley Oaks failed to provide realistic yield goals for the fields it identified for land application of manure, in violation of 10 CSR 20-6.300(3)(G)2.A, and that Valley Oaks failed to provide for adequate manure storage, in violation of 10 CSR 20-6.300(1)(A)11 and 10 CSR 20-8.300(5)(B)2.

As required by the administrative review procedures, the AHC forwarded the administrative record to the CWC for final decision. The record was comprised of the AHC proceedings in the appeals of the Lone Jack and Powell cases but did not include the proposed recommended findings that the parties had submitted to the AHC. On December 10, 2018, the CWC heard oral arguments on both appeals during a single hearing and ultimately voted 4-1 in both cases to adopt the AHC's recommended decisions. The CWC issued its final written decisions in the cases on January 7, 2019. Valley Oaks appeals both decisions, and we consolidated the appeals.[3]

STANDARD OF REVIEW

Pursuant to Section 644.051.6, the CWC's decisions are subject to appellate review pursuant to Chapter 536 of the Administrative Procedure Act. *In re Trenton Farms RE, LLC v. Mo. Dep't of Nat. Res.,* 504 S.W.3d 157, 160 (Mo. App. 2016). Our review is limited to determining whether the CWC's action: (1) violates a constitutional provision; (2) exceeds the CWC's statutory authority or jurisdiction; (3) is unsupported by competent and substantial evidence upon the whole record; (4) is unauthorized by law; (5) is made upon unlawful procedure or without a fair trial; (6) is arbitrary, capricious, or unreasonable; or (7) involves an abuse of discretion. § 536.140.2.

[3] In their respective cases, Lone Jack and Powell filed motions to dismiss Valley Oaks's appeal. We deny those motions.

We defer to the CWC's findings of fact so long as they are supported by competent and substantial evidence. *Trenton Farms*, 504 S.W.3d at 160. We review questions of law *de novo*. *Id*. The CWC's decision "is presumed valid, and the burden is on the party attacking it to overcome that presumption." *Wagner v. Mo. State Bd. of Nursing*, 570 S.W.3d 147, 152 (Mo. App. 2019) (citation omitted).

ANALYSIS

Point I – Standing

In Point I, Valley Oaks asserts that Sections 644.051 and 640.013 allow only permit applicants or potential permit applicants to appeal adverse decisions made by the Director of the DNR ("the Director"), and that Lone Jack and Powell are not included in either class. Therefore, Valley Oaks contends the CWC erred in denying its permit because Lone Jack and Powell lacked standing to appeal from the Director's decision.

Standing is a question of law subject to our *de novo* review. *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). "Standing is a necessary component of a justiciable case that must be shown to be present prior to adjudication on the merits." *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013) (citation omitted). "Reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote." *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 622-23 (Mo. banc 2011) (citation omitted).

"Not every person who files a protest and is given an opportunity to be heard by an administrative agency has a right to appeal from the decision of the agency[.]" *Mo. Nat'l Educ. Ass'n v. Mo. State Bd. of Educ.*, 34 S.W.3d 266, 276 (Mo. App. 2000).

Instead, a party attempting to successfully assert standing must have a legally protectable interest. *St. Louis Ass'n*, 354 S.W.3d at 623. "A legally protectable interest exists only if the [party] is affected directly and adversely by the challenged action or if the [party]'s interest is conferred statutorily." *Id*.

The General Assembly, in recognizing the necessity of state action to retain control of its water pollution control programs after Congress made amendments to the Federal Water Pollution Control Act in 1972, enacted the "Missouri Clean Water Law,"[4] which created, *inter alia*, an elaborate permitting scheme for persons[5] seeking to discharge water contaminants. Under this scheme, the permitting of CAFOs, in the first instance, falls to the Director. *See* 10 CSR 20-6.300(E); see *also* § 640.715. At issue in this point is who has standing to appeal from the Director's decision.

Section 640.010.1 provides, in pertinent part, that the Director "shall faithfully cause to be executed all policies established by the boards and commissions assigned to the department, *be subject to their decisions as to all substantive and procedural rules and his or her decisions shall be subject to appeal as provided by law*." (Emphasis added). Valley Oaks asserts that this version of Section 640.010.1 limits standing to appeal the Director's decision to only a narrow class of persons. In support of this contention, Valley Oaks argues that a previous version of Section 640.010 stated that "affected parties" had the right to appeal and that, by amending the section to state

---

[4] Sections 644.006, *et seq*.

[5] As used in the Missouri Clean Water Law, the term "person" means "any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties[.]" § 644.016(15).

that appeals may be taken "as provided by law[,]" the legislature signaled its intention to limit the ability to appeal to those persons explicitly contemplated *by statute*. Valley Oaks then contends that, by enacting Section 644.051.6, the legislature intended the AHC to take appeals only from permit applicants and potential applicants. Section 644.051.6 states, in pertinent part:

> The director shall promptly notify the applicant in writing of his or her action and if the permit is denied state the reasons for such denial. As provided by sections 621.250 and 640.013, the applicant may appeal to the administrative hearing commission from the denial of a permit or from any condition in any permit by filing a petition with the administrative hearing commission within thirty days of the notice of denial or issuance of the permit. After a final action is taken on a new or reissued general permit, a potential applicant for the general permit who can demonstrate that he or she is or may be adversely affected by any permit term or condition may appeal the terms and conditions of the general permit within thirty days of the department's issuance of the general permit.

Valley Oaks's contention that Sections 640.010.1 and 644.051.6 limit the right to appeal to permit applicants or potential applicants is wrong for several reasons.

In 2005, the legislature transferred the authority to hear all contested case administrative appeals granted in Chapter 640 and the Missouri Clean Water Law to the AHC. *See* 621.250.1; *see also Valley Park Props., LLC v. Mo. Dept. of Nat. Res.*, 580 S.W.3d 607, 616 (Mo. App. 2019). Section 621.250.2 states, in pertinent part, that:

> Except as otherwise provided by law, *any person or entity who is a party to, or who is aggrieved or adversely affected by, any finding, order, decision, or assessment for which the authority to hear appeals was transferred to the administrative hearing commission in subsection 1 of this section may file a notice of appeal with the administrative hearing commission* within thirty days after any such finding, order, decision, or assessment is placed in the United States mail or within thirty days of any such finding, order, decision, or assessment being delivered, whichever is earlier.

(Emphasis added).

At no point in its brief does Valley Oaks assert that Lone Jack and Powell were not adversely affected by the issuance of a permit to Valley Oaks. Instead, Valley Oaks argues that, despite the legislature's clear expression of intent in Section 621.250.2 to allow "any person or entity who is a party to, or who is aggrieved or adversely affected by" a decision of the Director to appeal, Lone Jack and Powell do not have standing to appeal because Section 644.051.6 provides that a narrower class of persons or entities – only applicants or potential applicants — may take appeals from the Director's decision. This argument, however, has already been specifically rejected by our Supreme Court in *Missouri Coalition for the Environment v. Herrmann*, 142 S.W.3d 700, 702 (Mo. banc 2004).

In *Herrmann*, the Court stated that "Section 644.051.6 does not limit the right of appeal to the [CWC] solely to those denied a permit[.]" *Id.* Nevertheless, Valley Oaks argues that, after *Herrmann*, the legislature's amendment of Section 640.010 to remove language that granted "affected parties" the right to appeal signaled the legislature's repudiation of the Court's holding in *Herrmann*. Valley Oaks misunderstands the effect of the amendment. While the legislature has amended Sections 644.010.1 and 644.051.6 since the Supreme Court's decision in *Herrmann*, it has neither implicitly nor explicitly abrogated that opinion.[6] Further, the *Herrmann* Court did not base its decision on the then-in-force language of Section 640.010.1 or predicate its holding on any language that has since been amended. *See* 142 S.W.3d at 702. The Court merely mentioned that Section 640.010.1 provides that the Director's decisions are subject to appeal before it held that Section 644.051.6 did not limit the right to appeal

[6] *See, e.g.*, § 287.020.10, wherein the Legislature specified that amendments to the Workers' Compensation Law were intended to "reject and abrogate earlier case law interpretations."

the decisions of the Director to any exclusive class. *See id.* Put another way, the Court did not state that it was ruling as it did *because* of any particular language in Section 640.010.1. *See id.* Therefore, *Herrmann* still binds this court. *See* MO. CONST. art V, § 2. The CWC did not err in holding that Lone Jack and Powell had standing to appeal the Director's decision. Point I is denied.

Point II – Failure to Issue Decision Within 180 Days

In Point II, Valley Oaks contends the CWC exceeded its statutory authority by failing to issue its decision within the statutorily-prescribed time period. Valley Oaks argues that the failure to comply with the statute's deadline rendered the CWC's decision null and void and, therefore, the DNR's decision to issue the permit should be allowed to stand.

As set forth in Section 621.250.2, any party aggrieved by the DNR's decision appeals to the AHC. The AHC is authorized to hold a hearing and send a recommended decision to the CWC along with the record. § 621.250.2-3. The CWC's final decision "shall be issued" within 180 days of the date the notice of appeal to the AHC was filed. § 621.250.3. The date by which the CWC is required to issue its final decision "may be extended at the sole discretion of the permittee as either petitioner or intervenor in the appeal." *Id*.

Here, after the DNR issued the permit to Valley Oaks, Lone Jack filed its notice of appeal to the AHC on June 25, 2018, while Powell filed its notice of appeal on June 27, 2018. The AHC held hearings and made recommended decisions in both cases, which it then transmitted along with the record to the CWC. Pursuant to Section 621.250.3, the CWC's final decision in the Lone Jack case was due on December 22,

2018, and the CWC's final decision in the Powell case was due on December 24, 2018. The permittee, Valley Oaks, did not extend the time period beyond these dates. On December 10, 2018, all parties were present when the CWC voted 4-1 to deny the permit; however, the CWC did not issue its final decision in both cases until January 7, 2019. Valley Oaks argues that, because Section 621.250.3 states that the CWC's decision "shall be issued" within 180 days of the date the notice of appeal to the AHC was filed, the issuance of the decisions within that time period was mandatory and, consequently, the CWC's untimely decisions reversing the DNR's decision to issue the permit were null and void.

Our Supreme Court has explained that, when the legislature uses the word "shall" in a statute, the issue "is not whether 'shall' means 'shall' but what sanction (if any) the legislature intended to apply" when the required act is not done. *Frye v. Levy*, 440 S.W.3d 405, 408 (Mo. banc 2014). If the legislature has imposed a sanction or otherwise indicated a consequence for noncompliance, then the statute is a mandatory statute, and courts will enforce the intended sanction or consequence for noncompliance. *Id*. If, however, the legislature has not approved a sanction or has not otherwise indicated a consequence for noncompliance, then the statute is a directory statute. *Id*. A directory statute's "terms are limited to what is required to be done," and courts will not create a sanction or consequence for noncompliance where the legislature has not expressed an intent for such sanction or consequence. *Id*. at 409 (quoting *Hudgins v. Mooresville Consol. Sch. Dist.*, 278 S.W. 769, 770 (Mo. 1925)).[7]

---

[7] The Court in *Frye* explained in detail the difference in the language of mandatory and directory statutes:

> Two examples of when a statute that imposes an obligation will be construed to be "mandatory" are: (a) if the statute explicitly provides what the consequence of non-

The determination as to whether a statute is mandatory or directory turns on the language the legislature has chosen. *Id*. at 410. Section 621.250.3 imposes an obligation on the CWC to issue its final decision within 180 days of the date the notice of appeal to the AHC is filed. It does not, however, explicitly provide that the CWC may issue its decision only within that 180 days, nor does it explicitly provide that the CWC lacks the authority to issue a decision after the 180th day. "In the absence of such legislative intent, courts have no authority to impose such a sanction on their own." *Id.*

The Court in *Frye* recognized that, while "[t]he lack of statutory approval for a sanction in the event of non-compliance with a statutory obligation, or the lack of any language permitting only acts that are in compliance with that obligation, is an important factor" in distinguishing between mandatory and directory statutes, other factors may be considered. *Id*. Indeed, the Court noted that, "[u]ltimately, whether a statute is mandatory or directory is a 'function of context and legislative intent.'" *Id*. at 410-11 (quoting *Bauer v. Transitional Sch. Dist. of City of St. Louis*, 111 S.W.3d 405, 408 (Mo. banc 2003)).

> compliance will be (e.g., that any act performed after the stated deadline or in a manner different than the required method will be void or ineffective); and (b) if the statute explicitly provides that the required action can be taken *only* before the stated deadline or can be performed ***only*** in the stated manner. *See, e.g., [West v.]Ross*, 53 Mo. [350], 354 [(Mo. 1873)] ("the legislature has not only by the statute directed what shall be done, but has also declared what consequence shall follow disobedience"); *Greene v. Holt*, 76 Mo. 677, 680 (1882) ("Negative words are imperative.") (citing Sedgwick [on Stat. Const.], at 316, 320, and 325). On the other hand, if a statute imposes an obligation and does not explicitly allow only compliant actions (or explicitly declare non-compliant actions void or ineffective), the statute likely is "directory" and courts are not free to create and impose a sanction that the legislature did not approve.

440 S.W.3d at 410.

Valley Oaks argues that, despite the lack of an explicit sanction or of language allowing only compliant acts, the context of the statute indicates that Section 621.250.3's time limit is mandatory. Specifically, Valley Oaks argues that the legislature has created an "elaborate permitting system with the goal of promoting business and maximizing employment in the State" and, within the statutory scheme, the legislature has "provided a series of rapid deadlines ensuring applicants certainty in applying for permits and planning business operations."[8] Valley Oaks contends that, collectively, this statutory scheme "demonstrates a legislative intent of expedient issuance and review throughout the permitting process."

Notwithstanding this argument, we find nothing in the relevant statutes to indicate that the CWC's final decision must be invalidated if the 180-day time frame is exceeded. It is noteworthy that the Legislature has included consequences for the failure to follow the time deadlines contained in the permit process statutory scheme when it so chooses. For example, Section 640.018.1 provides that, in any case where the DNR "has not issued a permit or rendered a permit decision by the expiration of a statutorily required time frame for any application for a permit . . . , upon request of the permit applicant, the [DNR] shall issue the permit the first day following the expiration of the required time frame[.]" That the legislature explicitly provided a consequence for the DNR's failure to render a permit decision within the statutorily-required time frame – but

[8] Valley Oaks has listed several of these deadlines, including: (1) the DNR shall issue or deny permits within 60 days under Section 644.051.5-6; (2) the DNR shall issue or respond with a letter of comment to CAFO permit applicants within 45 days under Section 640.715.3; (3) appeals of DNR permit decisions must filed with the AHC within 30 days of the decision under Section 621.250.2; (4) the AHC may hold hearings within 90 days of the filing of the notice of appeal under Section 621.250.2; (5) the AHC shall make its recommended decision within 120 days of the filing of the notice of appeal under Section 621.250.2; and (6) the AHC must transmit its record and recommended decision to the CWC within 15 days after the AHC has rendered its recommended decision under Section 621.250.3.

did not do so for the CWC's failure to timely issue its final decision – further supports the conclusion that Section 621.250.3 is a directory, and not mandatory, statute. Therefore, we cannot conclude that the CWC's decisions are null and void because the CWC failed to comply with this directory statute.[9] Point II is denied.

Point III – The CWC's Review of the AHC's Record

In Point III, Valley Oaks contends the CWC committed reversible error by issuing its final decisions before reviewing "missing portions" of the AHC's record, namely, the parties' proposed recommended decisions that they submitted to the AHC. Valley Oaks asserts that, at the end of oral arguments before the CWC, the CWC agreed to receive and review the proposed recommended decisions but never did so.

Administrative appeals of the DNR's permitting decisions are contested cases, which are governed, *inter alia*, by Chapter 536 and Section 621.250. *See* 621.250.1. Section 536.080.2 states:

> In contested cases, each official of an agency who renders or joins in rendering a final decision shall, prior to such final decision, either hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs. The parties to a contested case may by written stipulation or by oral stipulation in the record at a hearing waive compliance with the provisions of this section.

Valley Oaks argues that, by not reviewing the parties' proposed recommended decisions submitted to the AHC, the CWC neglected the statutory prerequisite of

[9] To enforce Section 621.250.3's requirement that the CWC issue its final decisions within the 180-day time limit, Valley Oaks could have sought a writ of mandamus compelling the CWC to do so. *See, e.g., Am. Civil Liberties Union v. Ashcroft*, 577 S.W.3d 881, 895-96 (Mo. App. 2019).

"personally consider[ing] the portions of the record cited or referred to in the arguments or briefs" before exercising its authority to render a final decision in both cases.

Contrary to Valley Oaks's assertion, the page in the record to which it cited does not indicate that the CWC agreed to receive and review the parties' proposed recommended decisions before rendering its final decisions. In any event, Valley Oaks has not demonstrated how the CWC's failure to review the proposed recommended decisions means that the CWC failed to "personally consider the portions of the record cited or referred to in the arguments or briefs." Valley Oaks argues that the proposed recommended decisions "included the parties' respective positions along with citations to legal authority and evidence on which they relied – and show Powell abandoned one argument." The parties had oral arguments before the CWC, however, during which they were each given an opportunity to argue their respective positions with legal authority and citations to the record. During oral arguments, Valley Oaks used a PowerPoint presentation to "walk through each one of the items" of the AHC's recommended decision that it believed was incorrect. Included in Valley Oaks's presentation was its assertion of Powell's purported abandonment of one of its arguments.

In this appeal, Valley Oaks does not articulate the specific position, legal authority, or citations to the record contained in its proposed recommended decision – but not in its subsequent oral argument to the CWC – that the CWC needed to consider but did not do so because of the CWC's failure to review the parties' proposed recommended decisions. "[T]here is a presumption that administrative decisions are made in compliance with applicable statutes." *Stith v. Lakin*, 129 S.W.3d 912, 920 (Mo.

App. 2004) (citation omitted). By not specifying the information in the proposed recommended decision that the CWC did not consider, Valley Oaks has failed to rebut this presumption. Valley Oaks has not demonstrated how the omission of the proposed recommended decisions rendered the record before the CWC deficient. "It is not the function of the appellate court to serve as advocate for any party to an appeal." *See Falls Condo. Owners' Ass'n, Inc. v. Sandfort*, 263 S.W.3d 675, 676 (Mo. App. 2008) (citation omitted).

Moreover, we note that Section 621.250.3, which specifically governs appeals of DNR decisions to the CWC, states that the CWC's final decision "shall be *based only on the facts and evidence in the hearing record*[.]" (Emphasis added). Valley Oaks does not assert that the parties' proposed recommended decisions constituted either "facts" or "evidence" as contemplated by Section 621.250.3. Indeed, statements made in briefs submitted to the court are generally not considered evidence. *See State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo. App. 1997). As the parties' proposed recommended decisions were neither facts nor evidence, the CWC did not err in failing to review them before rendering its final decision. Valley Oaks has not demonstrated that the CWC neglected its statutory obligations under Sections 536.080.2 or 621.250.3. Point III is denied.

Point IV – The Validity of the Commissioners' Approvals

In Point IV, Valley Oaks contends the CWC's decisions were arbitrary, capricious, unreasonable, and in excess of its statutory authority because they were not validly approved by four commissioners as required by Section 644.066.3(3). In the Lone Jack case, Commissioners Ashley McCarty, Patricia Thomas, John Reece, and

Allen Rowland voted to approve and adopt the AHC's recommended decision as the CWC's final decision, while Commissioner Stan Coday voted to disapprove the AHC's recommended decision. In the Powell case, Commissioners McCarty, Thomas, Reece, and Coday voted to approve and adopt the AHC's recommended decision as the CWC's final decision, while Commissioner Rowland voted to disapprove the AHC's recommended decision. Valley Oaks argues that, even though four commissioners approved each decision, the approval of Commissioner Reece was void in both cases, and the approval of Commissioner Coday was void in the Powell case.

With regard to Commissioner Reece, Valley Oaks asserts that his approval was void because he improperly considered information outside the record in making his decision. At the start of the hearing before the CWC, Valley Oaks made an oral motion to disqualify Commissioner Reece because he visited Valley Oaks's proposed facility during the pendency of the appeal. In response, Commissioner Reece stated, "I did visit Valley Oaks, mainly for my own edification to see what was there and to see what type of an operation they had." He further stated, "And if that disqualifies me, then something is wrong. I'm trying to educate myself as to what is going on, and I think visiting the site gave me a lot of insight into this whole proceeding." The remaining four commissioners then voted to deny Valley Oaks's motion to disqualify Commissioner Reece. Valley Oaks further argues that, later in the hearing, Commissioner Reece indicated that he did not have to accept as correct the engineering report submitted with Valley Oaks's permit application simply because the report was sealed by a professional engineer.

On appeal, Valley Oaks does not argue that the CWC erred in refusing to disqualify Commissioner Reece. Instead, Valley Oaks argues that Commissioner Reece's comments show that his decision was contrary to Section 621.250.3's mandate that the CWC's final decision "shall be based only on the facts and evidence in the hearing record[.]" We disagree. Commissioner Reece voted to approve the AHC's recommended decisions in both cases in their entirety and without any modifications. Valley Oaks does not specify *anything* in the AHC's recommended decisions – including its explanation in the Powell case for rejecting Valley Oaks's engineering report – that was based upon facts or evidence outside the record. Thus, despite Commissioner Reece's comments during the hearing, it appears that his *final decisions* were based only on the facts and evidence in the hearing record, as Section 621.250.3 required.[10] Valley Oaks has not met its burden of demonstrating that Commissioner Reece violated Section 621.250.3.

Regarding Commissioner Coday, Valley Oaks contends that his approval of the AHC's recommended decision in the Powell case was void because he did not approve the AHC's recommended decision in the Lone Jack case. As detailed *supra*, in the Lone Jack case, the AHC recommended overturning the DNR's permitting decision based on two grounds: Valley Oaks's failure to prove a continuing authority and its

[10] Valley Oaks's reliance on *Hauk v. Scotland Cty. Comm'n*, 429 S.W.3d 459 (Mo. App. 2014), is misplaced. *Hauk* was an appeal from the circuit court's decision in a non-contested case. *Id*. at 461. In explaining their reasons for denying the health permit in *Hauk*, the commissioners' testimonies during the hearing before the circuit court indicated that they ignored the language of the ordinance they were purportedly applying and, instead, "'each applied their self-determined, unwritten standard' to make their determination with respect to the application of the [ordinance]." *Id*. at 463. Hence, on appeal, the Eastern District of this court properly affirmed the circuit court's finding that the commission's decision to deny the permit was arbitrary. *Id*. In these contested cases, regardless of Commissioner Reece's comments during the hearing before the CWC, the CWC's final decisions indicate that the decisions were based solely upon evidence in the record and, therefore, were not arbitrary or capricious.

failure to provide the required neighbor notice. In the Powell case, the AHC recommended overturning the DNR's permitting decision based those same two grounds, plus two other grounds: Valley Oaks's failure to provide a compliant nutrient management plan and its failure to ensure the requisite minimum days of manure storage. Valley Oaks argues that, because the two grounds in the Lone Jack case overlapped with two of the four grounds in this case, Coday's approval in the Powell case was arbitrary and capricious. We disagree.

Valley Oaks points to no statute or regulation requiring commissioners to explain their votes or reasoning. It is only when the CWC modifies or does not adopt the AHC's recommended decision that the CWC must explain the specific reason why. § 621.250.3. While we do not know why Coday did not approve the AHC's recommended decision in the Lone Jack case, a simple explanation could be that he found the other two grounds for denying the permit in the Powell case – the failure to provide realistic yield goals for the fields it identified for land application of manure and the failure to provide for adequate manure storage – more persuasive. Valley Oaks has not demonstrated that Coday's approval of the AHC's recommended decision in the Powell case was arbitrary and capricious. Point IV is denied.

Points V, VI, and VII – Continuing Authority and Transfer

In Points V and VI, Valley Oaks asserts that the CWC erred in determining that its permit application was deficient because it failed to identify a continuing authority. Valley Oaks contends any typographical error associated with its identification of "Country Club Homes LLC" as the continuing authority for the operation and maintenance of the CAFO was not fatal to the permitting process and that, in approving

the permit, the DNR properly followed its “historical application” of the regulations addressing the issuance of permits. In Point VII, Valley Oaks asserts that the CWC erred in determining that, based on the failure to identify a continuing authority in the permit application, the subsequent transfer of the permit was ineffective.

In denying the permit to Valley Oaks, the CWC concluded that Valley Oaks “failed in th[e] simple task [of identifying the entity to serve as a continuing authority], and the DNR failed to ask it to correct the mistake pursuant to 10 CSR 20-6.300.” The CWC made the following findings of fact in support of this ruling: On December 19, 2017, Ward submitted a permit application for a proposed CAFO. Greg Caldwell, an employee of the DNR for more than thirty years, reviewed the application. The application listed “Country Club Homes LLC” as both the owner and continuing authority for the CAFO facility. The CWC determined that a “Certificate of No Record,” dated June 27, 2018, from the Missouri Secretary of State indicates than no entity named “Country Club Homes LLC," with the address [as stated on the permit] exists. Caldwell testified that he had reviewed the Secretary of State’s website and found information for an entity named “Countryclub Homes, LLC” and assumed that the application identifying “Country Club Homes LLC” as the continuing authority merely contained a typographical error. The CWC found that “Caldwell did not communicate with the permit applicant or the [permit applicant’s] engineer concerning the purported typographical error.”

Nevertheless, on June 15, 2018, the DNR issued the instant permit for the operation of a Class IB CAFO. The permit had another typographical error and was issued to “County [sic] Club Homes, LLC.” Ward then requested the permit be transferred to “Valley Oaks Real Estate, LLC.” On August 9, 2018, the DNR issued the

modified permit "for ownership transfer and facility name change" to Valley Oaks Real Estate, LLC.

10 CSR 20-6.010(3)(A), in effect at the time of Valley Oaks's permit application, states:

> All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made. Construction and first-time operating permits shall not be issued unless the applicant provides such proof to the department and the continuing authority has submitted a statement indicating acceptance of the facility.

The term "continuing authority" is not defined in the text of the regulations, *see* 10 CSR 20-2.010,[11] but we have previously stated that, under agency interpretations of 10 CSR 20-6.010(3) applicable here, the regulation "requires only a showing that an entity was a permanent organization to satisfy the 'continuing authority' requirements." *Trenton Farms*, 504 S.W.3d at 164. Thus, 10 CSR 20-6.010(3) necessitates only that the applicant "*identify* the entity which will serve the function [of operating, maintaining, and modernizing the CAFO facility.]" *Id.* at 166.

Here, we agree with the CWC that Valley Oaks failed to identify the entity serving as a continuing authority. As a general matter, to be registered as a limited liability company in the State of Missouri, an entity must, *inter alia*, have a name that is "distinguishable upon the records of the secretary from the name of any corporation, limited liability company, limited partnership, limited liability partnership, or limited

[11] 10 CSR 20-2.010 has since been amended to include a definition of continuing authority. 10 CSR 20-2.010(19). This amendment is immaterial to the disposition of this appeal, however, as we apply the regulations that were in effect at the time of the permit application. *See, e.g., State ex rel. Wolfhole, Inc. v. Scott Cty. Soil & Water Conservation Dist.*, 880 S.W.2d 908, 910 (Mo. App. 1994).

liability limited partnership which is licensed, organized, reserved, or registered under the laws of this state as a domestic or foreign entity, unless" one of two inapplicable exceptions excuses the noncompliance. § 347.020(3).

The term "distinguishable" is not defined in the statute, so we look to a dictionary to determine the term's meaning. *Kader v. Bd. of Regents of Harris-Stowe State Univ.*, 565 S.W.3d 182, 187 (Mo. banc 2019). "Distinguishable" is defined as "capable of being distinguished," *Distinguishable*, WEBSTER'S THIRD NEW INT'L DICTIONARY 659 (2002), while the term "distinguish" means: (1) "to perceive as being separate or different: [to] recognize a difference in"; or (2) to mark as separate or different (as one thing from another)." *Distinguish*, WEBSTER'S THIRD NEW INT'L DICTIONARY 659 (2002). There is no doubt that the entities "Country Club Homes LLC" and "Countryclub Homes, LLC" are distinguishable from one another because they are easily perceivable as different from one another. This observation is further supported by the fact that one entity exists on the records of the Secretary of State *and the other does not*.

Moreover, a limited liability company's name, as set forth in its articles of organization, "shall be the name under which the limited liability company transacts business in this state unless the limited liability company registers another name under which it transacts business as provided under chapter 417 or conspicuously discloses its name as set forth in its articles of organization." § 347.020(1). Valley Oaks does not contend that "Countryclub Homes, LLC" registered the name "Country Club Homes LLC" to transact business pursuant to Chapter 417 or that it conspicuously disclosed its actual name during the permitting process. Instead, Valley Oaks argues that any typographical error was cured because the DNR was able to intuit the correct permit

applicant through context clues and additional investigation. However, this effort to cure the deficiencies was in excess of the DNR's authority because neither the regulation nor statute[12] provides for any such internal correction mechanism. Rather, the regulations provide the following procedure for the DNR to handle incomplete or deficient applications:

> When an application is submitted incomplete or any of the required permit documents are deficient, or if additional information is needed including, but not limited to, engineering design plans, the department *will act in one (1) of the following ways*:
>
> A. The department may return the entire permit application back to the applicant for re-submittal; or
>
> B. The applicant and/or the applicant's engineer will be notified of the deficiency and will be provided time to address department comments and submit corrections. Processing of the application may be placed on hold until the applicant has corrected identified deficiencies.

10 CSR 20-6.300(2)(E)4 (emphasis added).

The regulation requires that the DNR, when presented with a deficient permit, will either return all permit application documents to be resubmitted or notify the applicant and/or the applicant's engineer of the deficiency and provide the applicant and/or applicant's engineer with the opportunity to cure the deficiency.[13] While we have no doubt that the DNR could, on its own, create fully-compliant permit applications in short

[12] In rendering its decision, the CWC determined that Section 644.052.8, which authorizes the modification of permits, did not give the DNR the authority to make the changes to the permit application at issue here. As Valley Oaks does not challenge this finding on appeal, we will not address it. *See Lewis v. Fort Zumwalt Sch. Dist*., 260 S.W.3d 888, 890 (Mo. App. 2008); Rule 84.13(a).

[13] In fact, the record contains several examples of Caldwell offering Valley Oaks's engineer the opportunity to correct other deficiencies.

order, nothing in the text of the regulation or in any provided agency interpretation gives the DNR the authority to *sua sponte* correct the deficiencies at issue here. *See id.*

The record supports the CWC's determination that Valley Oaks failed to complete the "simple task" of correctly identifying the permanent entity that would operate as the CAFO's continuing authority and that the DNR did not follow 10 CSR 20-6.300(2)(E)4 when it failed to ask Valley Oaks to correct this mistake. Valley Oaks has not demonstrated how this finding was in conflict with the plain meaning of the regulation or with the DNR's historical application of any regulation. The CWC did not err in denying Valley Oaks's permit application on the ground that the application failed to identify a continuing authority. Consequently, the CWC did not err in further holding that, because the continuing authority on the original permit was a non-existent entity, the transfer of the permit to "Valley Oaks Real Estate, LLC" was ineffective under 10 CSR 20-6.010(11)(A). Points V, VI, and VII are denied.

Having found that the CWC properly denied the permit on the ground that the permit application failed to identify a continuing authority, we need not address Valley Oaks's challenges to the CWC's remaining grounds for denying the permit presented in Points VIII and IX in the appeal of the Lone Jack case and Points VIII-XIV in the appeal of the Powell case. *See Knight v. Con-Agra Foods, Inc.*, 476 S.W.3d 355, 358-59 (Mo. App. 2015).

Lone Jack's Motion for Attorneys' Fees

Prior to the submission of its case, Lone Jack filed a motion for attorneys' fees on appeal pursuant to Section 536.087.1, which states:

> A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those

> reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust.

Section 536.087.2 similarly authorizes the award of reasonable fees and expenses "to a party who prevails in any action for judicial review of an agency proceeding . . . unless the court finds that during such agency proceeding the state was substantially justified, or that special circumstances make an award unjust."

A party seeking to recover attorneys' fees and expenses is required to file its application for fees to the body before which it *first* prevailed. *See* § 536.087.3; *see also* § 536.087.4; *Mo. Real. Estate Appraisers Comm'n v. Funk*, 492 S.W.3d 586, 593-94 (Mo. banc 2016). Here, there is no dispute that Lone Jack has filed the necessary application before the CWC. In light of our affirmance of the administrative decision, we must remand this cause to the CWC to determine whether, pursuant to Section 536.087, Lone Jack is entitled an award of attorneys' fees. *See also* § 536.087.4; *Funk*, 492 S.W.3d at 593-94.

CONCLUSION

The CWC's final decisions in the Lone Jack and Powell cases are affirmed. The cause is remanded to the CWC for a determination of Lone Jack's entitlement to attorneys' fees.

LISA WHITE HARDWICK, JUDGE

ALL CONCUR.

JEFFERY LAW GROUP, LLC
400 Chesterfield Center
Suite 400
Chesterfield, MO 63017-4800

(855) 915-9500 - Toll-Free
(314) 714-6510 - Fax
FEIN: 27-4821891

December 26, 2019

Carolyn Wilkinson
37605 E US 50 Hwy
Lone Jack, MO 64070

Invoice # 19088

Professional Services

		Hrs/Rate	Amount
01/18/19 SGJ	Review Valley Oaks' Petition for Judicial Review. Review statutes for appeal time limitations. Draft e-mails to Carolyn, Karen, and Rachel. Review replies.	1.30 175.00/hr	227.50
02/01/19 SGJ	Draft Motion to Redesignate Party from Defendant to Respondent. Call with Court of Appeals clerk. Draft e-mail to Carolyn, Karen, and Rachel. Review e-mail from Rachel. Start work on Motion to Dismiss.	2.10 175.00/hr	367.50
02/19/19 SGJ	Review Record on Appeal.	1.10 175.00/hr	192.50
02/20/19 SGJ	Review DNR correspondence.	0.10 175.00/hr	17.50
02/22/19 SGJ	Continue work on Motion to Dismiss VO appeal. Draft e-mails to LJN and counsel for Powell Gardens. Review e-mail from Chuck Hatfield.	5.20 175.00/hr	910.00
02/23/19 SGJ	Continue work on Motion to Dismiss VO appeal. Draft e-mail to Carolyn, Karen, and Rachel.	3.80 175.00/hr	665.00
03/01/19 SGJ	Review Valley Oaks' Suggestions in Opposition.	0.30 175.00/hr	52.50
03/14/19 SGJ	Review Supplemental Record on Appeal.	0.20 175.00/hr	35.00

		Hrs/Rate	Amount
04/14/19 SGJ	Conference with Lone Jack Neighbors at Powell Garden. Travel to/from Chesterfield - Lone Jack.	7.90 175.00/hr	1,382.50
05/15/19 SGJ	Review and analyze Appellants' Brief. Draft e-mail to clients.	1.60 175.00/hr	280.00
05/30/19 SGJ	Review DNR correspondence. Review Valley Oaks' motion.	0.20 175.00/hr	35.00
06/06/19 SGJ	Review Powell Gardens' motion.	0.10 175.00/hr	17.50
06/11/19 SGJ	Work on Respondent's Brief. Review transcript and exhibits. Review caselaw.	4.60 175.00/hr	805.00
06/12/19 SGJ	Work on revisions to Brief. Assemble documents for Appendix.	4.20 175.00/hr	735.00
06/13/19 SGJ	Continue work on Brief and Appendix.	3.90 175.00/hr	682.50
06/14/19 SGJ	Review Valley Oaks' motion.	0.10 175.00/hr	17.50
06/25/19 SGJ	Review Supplemental Record on Appeal.	0.20 175.00/hr	35.00
07/17/19 SGJ	Review and analyze Appellants' Reply Brief. Draft e-mail to clients.	1.90 175.00/hr	332.50
08/13/19 SGJ	Review Valley Oaks' motion.	0.10 175.00/hr	17.50
09/03/19 SGJ	Review Valley Oaks' Appendix.	0.10 175.00/hr	17.50
11/21/19 SGJ	Review correspondence from Court.	0.10 175.00/hr	17.50
12/14/19 SGJ	Preparation for argument. Review briefs. Review appendix. Review motion to dismiss and suggestions in opposition. Review statutes.	3.10 175.00/hr	542.50
12/16/19 SGJ	Conference with Carolyn, Rachel, and Karen. Preparation for oral argument. Travel from Chesterfield-Kansas City.	7.80 175.00/hr	1,365.00

			Hrs/Rate	Amount
12/17/19	SGJ	Court of Appeals oral argument. Debrief with clients. Travel to from Drury Hotel-Court of Appeals. Travel from Kansas City-Chesterfield.	6.20 175.00/hr	1,085.00
12/24/19	SGJ	Review Opinion. Draft e-mail to Lone Jack Neighbors. Call with Karen Lux.	1.10 175.00/hr	192.50
12/26/19	SGJ	Draft Supplement to Application for Award of Attorneys' Fees and Expenses. Assemble billing invoice. Assemble exhibits.	1.20 175.00/hr	210.00
	For professional services rendered		58.50	$10,237.50

Additional Charges :

			Qty/Price	
04/14/19	SGJ	Mileage - to/from Chesterfield and Lone Jack.	423 0.55	232.65
12/16/19	SGJ	Mileage Chesterfield-Kansas City.	227 0.55	124.85
12/17/19	SGJ	Mileage Kansas City-Chesterfield	227 0.55	124.85
	SGJ	Uber charges from/to Drury Hotel - Court of Appeals ($18.70 + $5.00 tip); ($19.83 + $5.00 tip),	1 48.53	48.53
	SGJ	Drury Hotel- Kansas City	1 106.22	106.22
	Total additional charges			$637.10
	Total amount of this bill			$10,874.60

Timekeeper Summary

Name	Hours	Rate	Amount
Stephen G. Jeffery	58.50	175.00	$10,237.50
Balance due			$10,874.60

Tab G2

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Application for Award of Attorney's Fees Regarding Appeal No. 18-0501

Issue:

The Missouri Clean Water Commission will hear from Tim Duggan regarding the Application for Award of Attorney's Fees Regarding Appeal No. 18-0501.

List of Attachments:

- Application for Attorneys' Fees
- Petitioners' Supplemental Application for Attorneys' Fees and Expenses

BEFORE THE
CLEAN WATER COMMISSION
STATE OF MISSOURI

	)	
IN RE: COUNTRY CLUB HOMES, LLC	)	
Permit No. MOG010872	)	Case No. 18-0501
	)	

APPLICATION FOR ATTORNEYS' FEES

Pursuant to Section 536.087 of the Missouri Revised Statutes, Petitioners Elizabeth and Ryan Deich respectfully submit this application for attorneys' fees they incurred in this action. Petitioners support this application with their contemporaneously filed "Suggestions in Support," which are incorporated herein by this reference. Petitioners seek fees totaling $40,612.50 calculated at the statutory rate of $75.00/hour. Petitioners do not seek their expert witness fees.

Petitioners request that the Clean Water Commission allow them an opportunity to respond to any briefs in opposition that may submitted by the Missouri Department of Natural Resources. Petitioners also request that the Clean Water Commission hold a hearing on this application, but only to the extent that the Missouri Department of Natural Resources files a brief in opposition or if the Clean Water Commission is not inclined to summarily grant the application.

Respectfully submitted,

STINSON LEONARD STREET LLP

/s/ Aimee D. Davenport
Charles W. Hatfield, No. 40363
Aimee D. Davenport, No. 50989
230 W. McCarty Street
Jefferson City, Missouri 65101
Telephone: 573-636-6263
Facsimile: 573-636-6231
chuck.hatfield@stinson.com
aimee.davenport@stinson.com

Matthew D. Moderson, No. 64035
1201 Walnut Street, Suite 2900
Kansas City, Missouri, 64105
Telephone: 816-842-8600
Facsimile: 816-691-3495
matt.moderson@stinson.com

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

The undersigned hereby states that a copy of the foregoing was served upon the Clean Water Commission on this 6th day of February, 2019 by sending a copy via U.S. Mail and Email to Chris Weiberg and Timothy Dugan.

A courtesy copy was transmitted to the Missouri Department of Natural Resources, care of its attorneys Jennifer Hernandez and Shawna Bligh.

/s/ Aimee D. Davenport
ATTORNEYS FOR PETITIONERS

BEFORE THE
CLEAN WATER COMMISSION
STATE OF MISSOURI

	)	
IN RE: COUNTRY CLUB HOMES, LLC	)	
Permit No. MOG010872	)	Case No. 18-0501
	)	

SUGGESTIONS IN SUPPORT OF
APPLICATION FOR ATTORNEYS' FEES

Petitioners are entitled to their attorneys' fees in this action. "A party who prevails in an agency proceeding . . . shall be awarded those reasonable fees and expenses incurred by that party . . . unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust." §536.087(1) RSMo. Petitioners are prevailing parties and they "shall" be awarded fees unless this Commission finds that MoDNR's position in granting the permit was "substantially" justified. The purpose of the statute is to "require agencies to carefully scrutinize agency and court proceedings and to increase the accountability of the administrative agencies." *Carpenter v. State Board of Nursing*, 508 S.W.3d 110, 115 (Mo. banc. 2016) (citation omitted).

There can be no dispute that Petitioners meet the first part of the statute. The only issue is whether MoDNR was "substantially justified." It is clear that MoDNR should not have issued a permit for the Valley Oaks CAFO. The AHC so found and this Commission affirmed the AHC's ruling without changing a word. The word "substantial" in the statute should be interpreted using its dictionary meaning. *See, e.g., Great Southern Bank v. Director of Revenue*, 269 S.W.3d 22, 25 (Mo. banc 2008) ("When a statutory term is not defined, courts apply the ordinary meaning of the term as found in the dictionary"). "Substantial" means "solidly built" or "ample." Webster's II New College Dictionary 1999. MoDNR's position here was not solidly built or ample. Among

other problems, the facility did not submit a compliant nutrient management plan, demonstrate that it had adequate manure storage, or even designate a valid continuing authority to accept liability for its operations. These are fundamental requirements that every CAFO must meet to ensure that their operations do not harm the waters of the State. Yet, in this instance, MoDNR missed these issues during the permitting process and granted a permit to a facility that did not comply with State laws. The AHC entered a stay order indicating that these positions were likely to be insufficient, but MoDNR did not abandon its position. The AHC then issued a final decision that these positions were incorrect, and MoDNR still did not abandon its position. This Commission upheld the AHC swiftly and without alteration in a 4-1 vote. Petitioners should not have had to incur the attorneys' fees they did to challenge MoDNR and they should be paid accordingly.

I. STATEMENT OF FACTS

Pursuant to Section 536.087 of the Missouri Revised Statutes, Petitioners state the following facts in support of this application for attorneys' fees:

A. Petitioners are Eligible for an Attorneys' Fee Award.

1. On June 15, 2018, the Missouri Department of Natural Resources ("MoDNR") issued Permit Number MOG010872 to "County Club Homes, LLC" (the "Permit"), purporting to authorize the operation of a Class IB concentrated animal feeding operation located at 1921 West Highway 50, Lone Jack, Missouri, 64070 (the "Valley Oaks CAFO"). *See* Ex. A (Recommended Decision).

2. Petitioners Elizabeth and Ryan Deich ("Petitioners") reside next door to the Valley Oaks CAFO, less than 1,900 feet from one of its buildings, and were uniquely impacted by its operations. *See* Ex. A; and Ex. B (Affidavit of E. Deich).

3. On June 27, 2018, Petitioners filed a complaint captioned *In re: Country Club Homes, LLC* (AHC No. 18-0501) with the Administrative Hearing Commission ("AHC"), appealing MoDNR's decision to issue the permit (the "Action"). *See* Ex. A. Petitioners named the State of Missouri, acting through MoDNR, as Respondent.

4. The Action was a contested case, in which Assistant Attorneys General Jennifer Hernandez and Shawna Bligh represented MoDNR. *See* Ex. A at p. 2. The applicants intervened through their counsel of record at Lathrop Gage LLP.

5. Petitioners are a married couple whose net worth, both individually and together, did not exceed two million dollars ($2,000,000.00) at the time this Action was filed. *See* Ex. B at ¶ 5.

B. Petitioners are the Prevailing Party.

6. Through the Action, Petitioners sought an order from the Clean Water Commission ("Commission") revoking the Permit.

7. On June 27, 2018, Petitioners moved the AHC to stay the effectiveness of the Permit through the merits hearing. The AHC held a one-day hearing on July 9, 2018, during which Petitioners, MoDNR and the applicant put on evidence supporting their respective positions.

8. The AHC granted Petitioners' motion to stay on July 26, 2018. *See* Ex. C. In so doing, the AHC determined that Petitioners had shown a "reasonable likelihood of success" on proving that: (i) the applicant's cool season grass hay yields were overinflated and not supported by any historical data or other information in MoDNR's records; (ii) the applicant did not have sufficient manure storage capacity; and (iii) MoDNR issued a the permit "to an entity does not exist." *See* Ex. C at pp. 8-9.

9. Rather than acknowledge the obvious deficiencies in its position, MoDNR sought a writ of prohibition from the Circuit Court of Cole County, Missouri, seeking to enjoin Commissioner Brett W. Berri from enforcing the stay order. *See* Ex. D.

10. On October 23, 2018, the AHC issued its final decision, recommending that "the Missouri Clean Water Commission reverse [MoDNR's] decision to issue Permit No. MOG010872 because the applicant failed to provide realistic yield goals for the fields it identified for land application of manure in violation of 10 CSR 20-6.300(3)(G)2.A; failed to provide for adequate storage by misapplying the definition of dry process waste in violation of 10 CSR 20-6.300(1)(A)11 and 10 CSR 20-8.300(5)B.2; failed to provide neighbor notice prior to filing its application in violation of § 640.715 and 10 CSR 20-6.300(3)(C); and failed to identify a continuing authority in violation of 10 CSR 20-6.010(3)(A). *See* Ex. A at pp. 19-20.

11. On December 10, 2018, this Commission issued its "Final Decision." This Commission had authority to "(1) adopt the AHC's recommendation; (2) change findings of fact or conclusions of law; or (3) vacate or modify the recommended decision." *See* Ex. E at p. 1. Given these options, the Commissioners voted 4-1 to adopt the AHC's recommended decision as-is, without modifying any findings of facts or conclusions or law, or modifying the recommended decision in any way. Rather, they adopted the AHC's decision as their own.

C. Petitioners Incurred Reasonable Attorneys' Fees in the Action.

12. Throughout the Action and all subsequent proceedings before the Commission, Petitioners have been represented by the undersigned counsel at Stinson Leonard Street LLP. *See* Ex. B at ¶ 4. In so doing, Petitioners' counsel incurred fees totaling more than $40,612.50 when calculated at the statutory rate of $75.00 per hour. Attached hereto and incorporated herein as Exhibit F is an Affidavit of Aimee D. Davenport, lead counsel for Petitioners, itemizing the

time expended by counsel and discussing the manner in which those fees were calculated. Petitioners are not seeking the expert fees they incurred in pursuing this Action.

13. This was a complex Action that involved technical questions of fact and sophisticated questions of law. The parties extensively briefed these issues, engaged in written discovery, and participated in three evidentiary hearings. *See* Ex. G (Docket). Petitioners' attorneys' fees are reasonable, given the nature of this Action, the special expertise required, and the quality of services necessary to obtain a favorable result.

D. MoDNR's position was not "Substantially Justified."

14. As discussed above, the real issue here is substantial – solidly built or ample – justification. In the Action, Petitioners asserted three principal arguments for why MoDNR erred in issuing the Permit. First, MoDNR approved the applicant's nutrient management plan, even though the "Cool Season Grass Hay" yields reflected therein were three times higher than the state average, and did so without consulting any literature as to whether such yields were reasonable. Second, MoDNR approved the applicant's manure storage calculations, even though they were based on unreasonable inputs (*e.g.*, "dry" manure with an 80% moisture content, stacking manure to the very top of the stem walls while covering the animals' drinking sources, etc.). Finally, MoDNR approved the permit even though the applicant – "Country Club Homes, LLC" – does not actually exist.

15. Any one of these arguments, standing alone, would be a sufficient basis for revoking the Permit; however, the AHC – and this Commission – agreed with all three of them. After conducting a two-day hearing, during which the State and the applicant put on evidence supporting their positions, the AHC and this Commission determined that the nutrient management plan was based on unreasonable yield goals, the manure storage calculations were flawed, and the Permit was issued to an invalid entity.

16. The established record, as discussed in more detail *infra*, demonstrates that the State's position was not substantially justified.

1. Nutrient Management Plan

17. For nearly two dozen fields, the applicant proposed cool season grass hay yields of 6.0 tons per acre. *See* Ex A at ¶ 33.

18. Pursuant to Missouri law, MoDNR was required to ensure that the applicant's proposed crop yield were "reasonable." *See* Ex. A at pp. 11-12.

19. The applicant "submitted no field-specific data indicating that 6.0 tons per acre was a realistic, achievable yield goal for cool season grass hay in Johnson County, Missouri." *See* Ex. A at ¶ 35.

20. MoDNR acknowledged that "its record on the application contains no documents that show how Valley Oaks arrived at its cool season grass hay yields of 6.0 tons per acre. The Department's record does not contain any historical records for the particular fields on which cool season grass hay will be grown, any scientific literature that suggests 6.0 was a reasonable tonnage, any explanation of how Valley Oaks came up with 6.0 tons, or any record that Valley Oaks consulted with anyone regarding the cool season grass hay yields." *See* Ex. A at ¶ 36.

21. Instead, MoDNR "determined that the Nutrient Management Plan was reasonable based on [Greg Caldwell's] recollection of having seen cool season grass hay yields of 6.0 tons per acre in the annual reports of other CAFOs in the northern part of Missouri." *See* Ex. A at ¶ 37.

22. As a result, the AHC and this Commission determined:

> Valley Oaks proposed yield goals of 6 tons per acre on cool season grass hay fields. The [Nutrient Management Technical Standard] requires that 'yield goals be based on crop yield records from multiple years for the field,' and only when a field's history is not available may another source be considered to estimate yield goals. **The Department did not consider either here.** Valley Oaks did not

> submit historical yields or other referenced sources for the identified fields. [Greg] Caldwell acknowledged that **the Department did not receive any historical yields or other information for the identified fields**. Instead, Caldwell relied on his recollection of having seen 6-ton-per-acre yields reported in the annual reports of other CAFOs in the northern part of the state. These reports were **not made a part of the record** of the review of Valley Oaks' application.
>
> * * *
>
> [T]he average cool season grass hay yields in Johnson County, Missouri (as reported by the University of Missouri), ranged from 1.95 tons per acre to 2.20 tons per acre for 2015, 2016, and 2017.
>
> Given the ready availability of data – even assuming that none was available specific to the proposed application fields – we conclude that Valley Oaks' application as was deficient in that it failed to provide realistic crop yield goals as part of its Nutrient Management Plan. **The Department approved the permit based solely on Caldwell's recollection of having seen anecdotal instances of yields reported in the range of Valley Oaks' submitted figures.** The **Department failed** in its burden to prove that the yield goals it approved – 6 tons per acre for cool season grass hay – are realistic as required by 10 CSR 20-6.300(3)(G)2.A.

Ex. A at p. 11-12 (emphasis added).

2. Manure Storage

23. Under Missouri law, a CAFO must have at least 180 days' manure storage in order to obtain a Class IB operating permit. *See* Ex. A at p. 12.

24. The applicant claimed to have just 186 days of storage capacity, just above the regulatory minimum. *See* Ex. A at ¶ 22. However, that figure was only reached by unrealistically relying on manure being stacked to the top of the stem walls and covering the animals' only sources of fresh drinking water. *Id.* at ¶¶ 22-24.

25. The applicant also relied upon an 80% moisture content to calculate its days of storage, even though it was purportedly "dry" waste that cannot exceed 75% moisture content. *See* Ex. A at ¶¶ 25-26.

26. All other variables being equal (*e.g.*, storing manure to the very top of the walls, etc.), at 75% moisture content, the facility has at best 152 days of manure storage. *See* Ex. A at ¶ 29. This is far below the minimum state requirement of 180 days' storage.

27. As a result of these key facts, the AHC and this Commission determined: "the Department's decision to issue the permit was unlawful because Valley Oaks used **facially inaccurate moisture content assumptions** in calculating its required storage capacity." *See* Ex. A at p. 14.

3. Continuing Authority

28. Prior to issuing a CAFO permit, an applicant is required to submit proof of – and MoDNR is required to confirm – that "a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application was made." *See* Ex. A at p. 17 (citing 10 CSR 20-6.010(3)A).

29. In this case, the entity that applied for the permit – "Country Club Homes, LLC" – does not actually exist. Moreover, the permit itself was actually issued to "County Club Homes, LLC" – another non-existent entity. *See* Ex. A.

30. The AHC noted that the applicant "failed in this simple task, and [MoDNR] failed to ask it to correct the mistake." *See* Ex. A at pp. 17-18. It further held:

> In his testimony, Caldwell explained in that in his review process, he used the search function of the Secretary of State's website to look for the named entity, Country Club Homes, LLC, and found among the results, 'Countryclub Homes, LLC.' Because this entity was affiliated with David Ward, the signatory to the application, Caldwell **assumed** this was the correct entity and that it was adequately identified. **But the law does not allow for such an assumption**….[A] difference of one word – or one space – distinguishes one entity from another….**In other words, spelling counts.**

Ex. A at p. 18 (citations omitted).

31. The AHC went on to explain:

> The entity identified in the application to serve the function of the continuing authority simply did not exist in the records of the Secretary of State. Caldwell's discovery of a similarly named entity is of no import, because he did not have the authority to change or make the corrections to the application. **The correct course of action would have been to call attention to the mistake to the applicant or engineer**… Instead, the Department granted a permit based on a deficient application. **Compounding the error, the permit issued by the Department on June 15, 2018 was issued in the name of 'Country Club Homes, LLC', a name so obviously wrong that none of the parties bothered to submit evidence as to whether an entity by that name exists in the records of the Secretary of State.**

Ex. A at p. 18 (citations omitted).

32. The AHC and this Commission further determined that MoDNR's attempt to transfer the permit from a non-existent entity to "Valley Oaks Real Estate, LLC" was invalid because, as Petitioners argued, "the permit was issued unlawfully and the transfer of a void instrument to a new owner cannot revive it." *See* Ex. A at 19.

II. LAW AND ARGUMENT

A. MoDNR was not "Substantially Justified" in issuing the Permit.

Petitioners are entitled to their attorneys' fees because MoDNR's decision to issue the Permit was not substantially justified. Section 536.087(1) states: "A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against any the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust." The purpose of the statute is to "require agencies to carefully scrutinize agency and court proceedings and to increase the accountability of the administrative agencies." *Carpenter v. State Board of Nursing*, 508 S.W.3d 110, 115 (Mo. banc. 2016) (citation omitted). This Commission should hold MoDNR accountable by awarding modest attorneys' fees to the Petitioners.

"Whether or not the position of the state was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by an agency upon which a civil action is based) which is made in the agency proceeding or civil action for which fees and other expenses are sought, and on the basis of the record of any hearing the court or agency deems appropriate to determine whether an award of reasonable fees and expenses should be made, provided that any such hearing shall be limited to consideration of matters which affected the agency's decision leading to the position at issue in the fee application." RSMo. § 537.087(3). In other words, **"there must be a reasonable basis in both law and fact for the government's action."** *McMahan v. Missouri Department of Social Services*, 980 S.W.2d 120, 125 (Mo. Ct. App. 1998) (internal citation omitted).

Applied here, there is nothing in the established record that shows that MoDNR was "substantially justified" in issuing the permit. This is not a situation where MoDNR's personnel made informed, but incorrect, judgment calls. To the contrary, the record is replete with examples where MoDNR made uninformed decisions, accepted plainly incorrect data, and in some cases "assumed" that State requirements for issuing a permit were satisfied.

Take, for instance, the deficiencies in the applicant's nutrient management plan. MoDNR was required, by state regulation, to ensure that the applicant's nutrient management plan contained "reasonable" yield goals <u>based on actual historical data</u>. This is an important issue because overinflated yield goals can result in the over application of manure, which can harm groundwater and surface water. Here, the applicant proposed, for dozens of fields, yield goals that were <u>three times higher</u> than the state average and offered absolutely no data to support its position. Under state law, MoDNR was required to request and consult actual data in order to intelligently evaluate those proffered yield goals. Yet, MoDNR never consulted any experts on

crop yields in the area, requested data historical data from the applicant, or even performed a quick search on the University of Missouri's website – where actual data is readily available – to see whether the applicant's yield goals were roughly reasonable. Instead, MoDNR approved them as-is, no questions asked.[1]

The same is true with regard to the applicant's manure storage calculations. The applicant claimed to have just 186 days of storage – 6 days more than the absolute bare minimum required by state law, and almost half of what is recommended in the regulation. In order to make the numbers work, the applicant relied on plainly unreasonable inputs. For example, under their assumptions, manure would be stacked 2.3 feet high, to the very top of the stem walls and covering the animals' only source of drinking water. Moreover, the applicant used an 80% moisture content to reduce the amount of bedding required (and, conversely, increase the amount of storage capacity). This Commission adopted the AHC's finding that this input was "facially inaccurate." The result of the applicant's creative math is significant. If reasonable inputs are applied, the facility has just 152 days of manure storage – far below the legal requirement. Given that the applicant purported to meet the minimum storage requirements by just 6 days, one would have expected MoDNR to at least review the basic inputs used to calculate those figures. Instead, MoDNR glossed over them and issued the permit anyway.

And of course, there is the error of MoDNR issuing the permit to a non-existent entity. Missouri law requires that CAFO permits be issued to permanent, continuing entities who accept liability for the operation. As such, applicants are required to prove that their entity lawfully exists and MoDNR is required to review that proof and confirm its accuracy. Here, the applicant never submitted any proof of its existence. MoDNR never requested such proof. Instead, its

[1] Mr. Caldwell purportedly recalled seeing similar yield goals on other CAFOs; however, MoDNR never identified those CAFOs or put forth any evidence at all supporting the reasonableness of the yield goals it approved. Had such documents existed, MoDNR surely would have introduced them during the Action to justify its decision.

personnel found only a roughly similar entity on the internet and "assumed" it was the right one to which the permit should be issued. As this Commission found, "spelling counts" when it comes to legal matters and the law does not allow one to simply "assume" that things are correct. *See* Ex. A at p. 18.

MoDNR made several significant errors in this process. It (1) accepted significantly inflated yield goals without consulting any published materials, (2) approved a manure storage plan that was based on plainly absurd assumptions, and (3) issued the permit to a non-existent continuing authority without confirming the entity's legal status. These actions have no justification and, for that reason, Petitioners are entitled to an attorneys' fee award.

B. Petitioners' fees are reasonable.

Petitioners seek reimbursement of the approximately $40,612.50 attorneys' fees they incurred to pursue this action and take it before this Commission. Petitioners are limited to recovering $75.00 an hour, which is a very low hourly rate and much lower than the normal rate for the attorneys who worked the case. *See* Ex. F. Petitioners do not seek their expert fees.

The factors relevant to a determination of a reasonable amount of attorney fees under a statute that authorizes an award of reasonable fees include: (1) the rates customarily charged by the attorneys involved in the case and by other attorneys in the community for similar services; (2) the number of hours reasonably expended on the litigation; (3) the nature and character of the services rendered; (4) the degree of professional ability required; (5) the nature and importance of the subject matter; (6) the amount involved or the result obtained; and (7) the vigor of the opposition. *See, e.g., Hutchings ex rel. Hutchings v. Roling*, 193 S.W.3d 334 (Mo. Ct. App. E.D. 2006). Applied here, the firm's fees and rates are less than what would be reasonable and they are properly recoverable under the statute.

The facts speak for themselves. While the case was pending at the AHC, Petitioners' counsel prepared for and attended two separate hearings – a one-day hearing on Petitioners' motion for stay (which was granted) and a two-day evidentiary hearing on the merits. Several live witnesses testified at these hearings. Dozens of documents were introduced as evidence. Multiple expert witnesses were called. After that, Petitioners prepared for and attended another hearing before this Commission. Sufficiently preparing for these hearings takes time and effort.

The pretrial schedule at the AHC was equally labor intensive. By Petitioners' count, there were no fewer than 141 separate docket entries in a case that spanned fewer than six months. There was an incredible amount of activity in this Action during the short time while it was pending. Those motions included, *inter alia*, motions to amend pleadings, motions to stay the effectiveness of the permit, motions for expedited discovery, and proposed findings of fact and conclusions of law. Petitioners also were required to respond to a litany of motions from the other parties, including, *inter alia*, motions to dismiss for lack of standing, motions to reconsider the commission's stay order, and motions for protective order related to discovery. The parties also served and responded to written discovery. This level of activity is unusual in agency proceedings.

Further complicating matters were the applicants' participation in this Action. As this Commission is aware, the applicant moved to intervene in the Action and vigorously worked with MoDNR in an attempt to defend the validity of the permit. Thus, Petitioners were effectively fighting a war on two fronts – against MoDNR and the applicants, both of whose counsel are well-versed in representing clients in CAFO cases. These factors increased the work that was required to bring this case to a successful result for Petitioners.

An hourly rate of $75.00 is well below the reasonable rate for counsel. Counsels' normal hourly rates are actually substantially higher and are consistent with, or lower than, hourly rates of other similarly situated attorneys practicing in the Jefferson City and Kansas City, Missouri areas. One would be highly unlikely to find counsel capable of successfully representing Petitioners in this Action at a standard hourly rate of $75.00 or below.

In short, the parties compressed a complete, complex civil trial into a time period spanning less than 6 months – pleadings, significant motion practice, injunctive relief, written discovery, evidentiary hearings, and post-trial briefing. Under those circumstances, Petitioners respectfully submit that their fees are reasonable and properly reimbursable, whether as requested or at some other rate or amount determined by this Commission.

C. Petitioners satisfy the other requirements for obtaining attorneys' fees.

Finally, Petitioners have satisfied the other statutory requirements for obtaining attorneys' fees. As used in the statute, a prevailing party is one who "obtains a favorable order, decision, judgment or dismissal in a civil action or agency proceeding." RSMo. § 537.085(3). An individual must have a net worth of less than "two million dollars at the time the civil action or agency proceeding was initiated", in order to be eligible for the award. RSMo. § 537.085(2)(a). Applied here, Petitioners are prevailing parties who have incurred costs in pursuing this Action, and whose net worth are less than $2,000,000.

III. CONCLUSION

If MoDNR had properly identified and addressed the issues discussed herein, it would not have been necessary to pursue this Action to revoke the permit. MoDNR failed to do so. The established record shows that MoDNR's actions were not substantially justified and that the other statutory requirements for attorney fee recovery are satisfied.

Respectfully submitted,

STINSON LEONARD STREET LLP

/s/ Aimee D. Davenport

Charles W. Hatfield, No. 40363
Aimee D. Davenport, No. 50989
230 W. McCarty Street
Jefferson City, Missouri 65101
Telephone: 573-636-6263
Facsimile: 573-636-6231
chuck.hatfield@stinson.com
aimee.davenport@stinson.com

Matthew D. Moderson, No. 64035
1201 Walnut Street, Suite 2900
Kansas City, Missouri, 64105
Telephone: 816-842-8600
Facsimile: 816-691-3495
matt.moderson@stinson.com

ATTORNEYS FOR PETITIONERS

Exhibit A

Before the
Administrative Hearing Commission
State of Missouri

IN RE COUNTRY CLUB HOMES, LLC,	)	
Permit No. MOG010872	)	No. 18-0501
	)	

RECOMMENDED DECISION

The Administrative Hearing Commission ("AHC") recommends that the Missouri Clean Water Commission ("CWC") reverse the Department of Natural Resources' ("Department") decision to issue Permit No. MOG010872 (the permit) to County Club Homes, LLC, [sic] and subsequently to Valley Oaks Real Estate, LLC, ("Valley Oaks") to operate a Class IB concentrated animal feeding operation ("CAFO").

Procedure

On June 27, 2018, Powell Gardens, Inc., Ryan and Elizabeth Deich and the Robert M. Chamness Trust (collectively, "Powell Gardens"), filed a complaint appealing the Department's decision to issue the Permit. On July 2, 2018, Valley Oaks filed a motion to intervene, which we granted by order dated July 5, 2018. On July 2, 2018, Valley Oaks also filed its answer to the complaint. On August 3, 2018, the Department filed a motion to file its answer to the complaint out of time and its answer. By order dated August 3, 2018, we granted the motion. On August 7, 2018, with our leave, Valley Oaks filed an amended answer to the complaint. On August 20, 2018, Powell Gardens and the Petitioners in Case No. 18-0498 filed motions for leave to file amended complaints. On August 21, 2018, Valley Oaks filed a response to the motion to file an

amended complaint. By order dated August 22, 2018, we granted both petitioners leave to file an amended complaint "solely on the issue of the Department of Natural Resources' action of August 9, 2018." On August 24, 2018, Powell Gardens filed its first amended complaint. On August 27, 2018, Valley Oaks filed an answer and motion to strike.

On June 27, 2018, Powell Gardens filed a motion for stay. On July 9, 2018, Valley Oaks filed suggestions in opposition to the motion for stay. On July 9, 2018, we held a hearing on the stay. By order dated, July 26, 2018, we granted the motion. On August 6, 2018, the Department filed a motion to reconsider our stay order, and on August 7, 2018, Valley Oaks also filed a motion to reconsider. On August 10, 2018, Powell Gardens filed suggestions in opposition to the motion to reconsider the stay order. By order dated August 14, 2018, we reconsidered our stay order and declined to lift or vacate it. The Department filed for an extraordinary writ in the Cole County Circuit Court to overturn the stay. The writ remains under review by the court.

On August 7, 2018, Valley Oaks filed a motion to dismiss Powell Gardens' appeal, arguing Powell Gardens lacked standing. On August 10, 2018, Powell Gardens filed suggestions in opposition to the motion. By order dated August 14, 2018, we denied the motion to dismiss. On August 14, 2018, Valley Oaks filed a motion to hold separate hearings in this case and Case No. 18-0498. On August 16, 2018, Powell Gardens filed suggestions in opposition to the motion. By order dated August 21, 2018, because of the substantial overlap of issues and potential witnesses, we denied the motion.

On August 27-28, 2018, we held a hearing. Charles W. Hatfield, Aimee Davenport and Matthew D. Moderson, with Stinson Leonard Street, represented Powell Gardens. Assistant Attorneys General Jennifer Hernandez and Shawna Bligh represented the Department. Jennifer

Griffin and Doug Nelson, with Lathrop Gage, represented Valley Oaks.[1] The matter became ready for our decision on October 10, 2018, the date the last written argument was filed.

Findings of Fact

1. Powell Gardens is a non-profit public charity that owns and operates a 970-acre botanical garden, located approximately three miles from the Valley Oaks CAFO. Powell Gardens uses clean water to, among other things, irrigate its property.

2. Ryan and Elizabeth Deich (the "Deichs") reside on a family farm next to Valley Oaks, in a home located less than 1,900 feet from a Valley Oaks CAFO building. The Deichs use clean water, among other things, for recreational purposes and for agriculture.

3. Powell Gardens and the Deichs are adversely affected by the Department's decision to issue the permit.

4. Countryclub Homes, LLC, is Missouri limited liability company registered in good standing with the Secretary of State. David Ward is the sole member of Countryclub Homes, LLC. Ward testified at the stay hearing on July 9, 2018.

5. Ward, through business entities owned by him, began operating an animal feeding operation ("AFO") in September 2016.

6. The AFO was comprised of approximately 900 head of cattle.

7. On December 19, 2017, Ward submitted a Permit Application (Form W) to the Department for a proposed CAFO to be located on the property comprising the AFO in Johnson County, Missouri. ("the facility" or "Valley Oaks").

[1] The Petitioner in Case No. 18-0498 was represented by Stephen G. Jeffery, with Jeffery Law Group, LLC.

8. Greg Caldwell reviewed the permit application. He has been employed by the Department for over 30 years. Caldwell testified on behalf of the Department and Valley Oaks at the hearing.

9. "Country Club Homes, LLC" was listed on the application as both the owner and the continuing authority that is responsible for the operation, maintenance, and modernization of the facility to which the permit is issued.

10. A "Certificate of No Record," dated June 27, 2018, from the Missouri Secretary of State indicates than no entity named "Country Club Homes, LLC," with the address 1120 NE Eagle Ridge Blvd., Grain Valley, Mo 64029 exists. Ex. 7.

11. On June 15, 2018, Department issued Permit No. MOG010872 "County Club Homes, LLC, 1120 NE Eagle Ridge Blvd., Grain Valley, MO 64029" [sic] for the operation of a Class IB CAF0. A Class IB CAFO requires a permit from the Department.

12. Ward submitted a Form W to the Department requesting a transfer of the Permit from Country Club Homes, LLC to Valley Oaks Real Estate, LLC.

13. The request for transfer was signed by David L. Ward purporting to be a member of Country Club Homes, LLC.

14. By letter dated August 9, 2018, the Department purportedly issued a modified permit "for ownership transfer and facility name change." Ex.103. the modified permit, dated August 8, 2018, is issued in the name of Valley Oaks Real Estate, LLC.

15. The neighbor notice letter prepared by Valley Oaks was dated January 30, 2018.

16. The U.S. Postal Service certified mail receipts provided to the Department as proof of mailing of neighbor notice letters were all dated January 30, 2018.

17. The holder of a Class IB CAFO permit may hold up to 6,999 animal units in its facility. One cow is equal to one animal unit.

18. As of June 15, 2018, there were approximately 900 head of cattle at the facility, and since that time, the facility has added 1,000 head of cattle. Ward plans to add 2,600 additional head of cattle to the Valley Oaks CAFO by the end of 2018.

19. With the permit application, plans were submitted for a facility with six confinement barns and two manure storage sheds that Valley Oaks projects that, when operating at full capacity, the allotted capacity of 6,999 beef cattle raised on the facility would generate approximately 111,134 tons of manure and urine on an annual basis.

20. In its application materials, Valley Oaks projected that it would dispose of approximately 70% of that process waste by land application (under the Nutrient Management Plan), and approximately 30% of that waste by exporting it from the site.

21. Valley Oaks indicated in its application that it would store the process waste in the animal confinement barns and the manure storage sheds.

22. Valley Oaks proposed to have 186 days of temporary manure storage available on site, a conclusion reached by determining that manure will be stacked 2.3 feet high against the stem walls in the animal confinement pens.

23. The stem walls in the animal confinement buildings are also 2.3 feet high.

24. The automatic waterers supplying drinking water to the cattle are located 2.0 feet high on the stem walls. If manure stored in the animal confinement pens reaches the maximum permitted capacity, the manure will completely bury the animals' only source of drinking water.

25. Valley Oaks' storage calculations are based upon 17 pounds of bedding per 100 pounds of waste, resulting in 80% moisture content.

26. Pursuant to 10 CSR 20-6.300(1)(A)11, dry process waste must not exceed 75% moisture content.

27. In order to reduce the process waste to 75% moisture content, 25 pounds of bedding per 100 pounds of waste are necessary.

28. Using 75% moisture content, 4.72 million cubic feet of manure plus bedding will need to be stored rather than the 3.87 million cubic feet used by Valley Oaks in its calculation, an increase of approximately 22%.

29. Using 75% moisture content and Valley Oaks' maximum storage volume of 1,179,210 cubic feet, the facility has 152 days' storage capacity.

30. The Permit requires process waste to be "collected and reused as a soil amendment by spreading onto agricultural fields at agricultural rates," as set forth in the nutrient management plan attached thereto as Attachment A (the "Nutrient Management Plan").

31. The Nutrient Management Plan was submitted to the Department on behalf of Valley Oaks and ultimately approved by the Department.

32. Some of the land on which Valley Oaks has indicated it will land apply manure is in the same watershed (Blackwater) as Powell Gardens.

33. The Nutrient Management Plan projects cool season grass hay yields of 6.0 tons per acre on fields I SA, 18B, 18C, 18D, 19A, 19B, 20A, 36A, 37A, 40A, 40B, 40C, 40D, 76A, 76B, 76C, 76D, 76E, 76F, 76G, 77A, 77B, 77C, 93C, 93D, 93E, 93F, 93G, 93H, and 93I.

34. Valley Oaks' proposed cool season grass hay yields, at 6.0 tons per acre, are approximately three times higher than the Johnson County, Missouri, average, and the State of Missouri average for 2015, 2016, and 2017, which was approximately 2.0 tons per acre.

35. Valley Oaks submitted no field-specific data indicating that 6.0 tons per acre was a realistic, achievable yield goal for cool season grass hay in Johnson County, Missouri.

36. The Department acknowledged that its record on the application contains no documents that show how Valley Oaks arrived at its cool season grass hay yields of 6.0 tons per

acre. The Department's record does not contain any historical records for the particular fields on which cool season grass hay will be grown, any scientific literature that suggests 6.0 was a reasonable tonnage, any explanation of how Valley Oaks came up with 6.0 tons, or any record that Valley Oaks consulted with anyone regarding the cool season grass hay yields.

37. Caldwell determined that the Nutrient Management Plan was reasonable based on his recollection of having seen cool season grass hay yields of 6.0 tons per acre in the annual reports of other CAFOs in the northern part of Missouri.

38. Valley Oaks' application indicates that the facility, as designed, will have 186 days of dry process waste storage. Dry process waste consists of feces, urine, and bedding. Pursuant to 10 CSR 20-6.300(1)(A)11, dry process waste must not exceed 75% moisture content.

39. The capacity of bedding to absorb moisture depends upon the type of bedding used.

40. Valley Oaks' manure storage calculations require storage in the animal confinement areas up to 2.3 feet in depth. The stem walls in the animal confinement areas are 2.3 feet tall. The automatic waterers supplying drinking water to the cattle are located approximately 2.0 feet high on the stem walls.

41. An unnamed tributary to East Branch Crawford Creek bisects the Valley Oaks property, flowing from the North to the South.

42. Valley Oaks' CAFO buildings, including its actual and planned manure storage sheds, are located immediately to the West and uphill from the tributary.

43. In between the CAFO buildings and the tributary, Valley Oaks has a northern pond and a southern pond. The ponds are located within 100 to 200 feet of the tributary. The northern pond is located in the floodplain of the tributary.

44. The topography of the site is such that water will flow downhill from the Valley Oaks CAFO buildings to the ponds.

45. The open design of the Valley Oaks manure storage sheds and the dense population of animals on site make it likely that water from rain events will flow into the ponds.

46. The ponds were not depicted in Valley Oaks' original permit application; therefore, the application contains no information regarding their design or engineering.

47. The Department received between 1,300 and 1,400 public comments, primarily in opposition to Valley Oaks' permit applications. Caldwell reviewed all of the comments and prepared the Department's responses to the comments.

Conclusions of Law

We have jurisdiction to conduct the hearing on appeal from a clean water permit and recommend a decision to the CWC, under contested case procedure. Section 621.250.[2] In all contested case administrative appeals heard by the AHC pursuant to § 621.250, the burden of proof is on the Department of natural resources to demonstrate the lawfulness of the finding, order, decision or assessment being appealed. Section 640.012.

Standing

Valley Oaks again raises the issue of Powell Gardens' standing to bring this action. It argues that Lone Jack is not the permit applicant and thus lacks standing to appeal anything regarding the permit. As we noted in our order denying Valley Oaks' motion to dismiss, this argument finds support in *Craven v. State ex rel. Premium Standard Farms, Inc.*, 19 S.W.3d 160 (Mo. App. W.D. 2000). The court in that case found that a third party did not have standing to challenge permits issued by the Clean Water Commission (CWC) because the language of § 644.051.6 allowed only the Intervenor to appeal a permitting decision. In 2000, however, § 644.051.6 was amended to give the authority to grant or deny permits to the Director of DNR. The Supreme Court, in *Missouri Coalition for the Environment v. Herrmann*, 142 S.W.3d 700

[2] Statutory references are to RSMo 2016.

(Mo. banc 2004), overruled *Craven* and found that because the Director of DNR issues the permits, § 640.010.1 was the applicable statutory provision authorizing appeals. "Section 644.051.6 does not limit the right of appeal to the commission solely to those denied a permit, and 10 CSR 20–6.020(5)(C) [authorizing appeals by those adversely affected] is not in conflict. . . . Therefore, the commission has subject matter jurisdiction to hear the coalition's appeal." *Id.* at 702. Powell Gardens and the Deichs have demonstrated that they are adversely affected by the Department's decision to issue the permit. We therefore conclude that Powell Gardens has standing to appeal the Director's decision.

Evidentiary Rulings

At the hearing, we took a number of objections with the case. Valley Oaks and the Department objected to our consideration of evidence presented at the stay hearing because the purpose for which it was presented – threatened harm – was an operational concern, and therefore not relevant to the sole issue in this case, regulatory permitting requirements. We are able to take official notice of the entire content of the case file; as a result, the objections are overruled at this time. However, with the exception of certain background information and evidence relating to parties and standing, all the evidence reflected in our findings of fact was taken from the August 27-28 hearing.

In addition, the Department filed a motion *in limine* to exclude testimony regarding geological formations underlying the permitted facility; any evidence related to groundwater monitoring systems at the permitted facility, or land application areas potentially utilized by the permitted facility; any evidence or testimony regarding the administration of veterinary drugs to animals at the facility and the potential discharge of such pharmaceutical residue in manure through land application; and evidence or testimony regarding non-point source runoff from the permitted facility or land application areas or storm water runoff from fresh water retention

ponds located at the permitted facility. We denied the motion *in limine* on the first day of the hearing, but permitted a standing objection to evidence and testimony on these topics. Our conclusions of law below reflect our finding that these topics are largely irrelevant. Nonetheless, we include certain summary information in our findings of fact as background for a better understanding of the facility and its operations, and the Petitioners' arguments.

All other objections and motions not specifically ruled upon elsewhere, including Valley Oaks' motion to strike portions of Powell Gardens' first amended complaint, are overruled at this time.

Count I – Nutrient Management Plan

The Department's regulations require that all Class IB CAFO permit applicants develop and implement nutrient management plans that have "realistic production goals." 10 CSR 20-6.300(3)(G)2.A. A nutrient management plan must "include a field-specific assessment of the potential for phosphorus transport from the field to surface waters and address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters[.]" *Id.*

The "Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard approved by the Clean Water Commission on March 4, 2009" ("NMTS"), which is incorporated by reference into the regulations governing CAFO applications (and into Valley Oaks' Permit), requires that "[y]ield goals should be based on crop yield records from multiple years for the field. Good judgment should be used to adjust yield goals to counteract unusually low or high yields. When a field's yield history is not available another referenced source may be used to estimate yield goal." Ex. P, at 3.

10 CSR 20-6.300(3)(G)2.D states that a nutrient management plan must "[i]nclude conditions that will ensure manure, litter, and process wastewater applications are conducted in a

manner that prevents surface runoff of process wastewater beyond the edge of the field. Such measures will include, but not be limited to, restricting the timing, soil conditions, and placement of manure during land application[.]"

Powell Gardens alleges that the Department erred in two ways in approving Valley Oaks' Nutrient Management Plan. First, the Department did not consider any historical data, referenced sources, or other discrete information prior to approving the plan, and second, the cool season grass hay yields are unrealistic.

Valley Oaks proposed yield goals of 6 tons per acre on cool season grass hay fields. The NMTS requires that "yield goals be based on crop yield records from multiple years for the field," and only when a field's yield history is not available may another source be considered to estimate yield goals. The Department did not consider either here. Valley Oaks did not submit historical yields or other referenced sources for the identified fields. Caldwell acknowledged that the Department did not receive any historical yields or other information for the identified fields. Instead, Caldwell relied on his recollection of having seen 6-ton-per-acre yields reported in the annual reports of other CAFOs in the northern part of the state. These reports were not made a part of the record of the review of Valley Oaks' application.

At the hearing, Powell Gardens produced an interrogatory answer showing that Valley Oaks intended to obtain 6 tons per acre through an "intensive management strategy." Ex. 202. Valley Oaks' expert, Darrick Steen, opined that an "intensive management strategy" and/or different species of grass could lead to yields of 6 tons per acre. But the weight of the evidence is to the contrary. Exhibit 1003A is a copy of e-mail correspondence with a Kansas State University Extension Specialist who stated she believed a 4- or 5- ton-per-acre yield would be realistic, absent "a source that has seen 6 tons/acre within the same area....." Patrick Splichal, Powell Gardens' expert, admitted that there is a large margin for error and a wide range of

factors that vary widely in determining a yield goal, such as soil, rainfall, variety of fescue, the presence of other species, and grazing management. But the average cool season grass hay yields in Johnson County, Missouri (as reported by the University of Missouri), ranged from 1.95 tons per acre to 2.20 tons per acre for 2015, 2016 and 2017.

Given the ready availability of data – even assuming that none was available specific to the proposed application fields – we conclude that Valley Oaks' application was deficient in that it failed to provide realistic crop yield goals as part of its Nutrient Management Plan. The Department approved the permit based solely on Caldwell's recollection of having seen anecdotal instances of yields reported in the range of Valley Oaks' submitted figures. The Department failed in its burden to prove that the yield goals it approved – 6 tons per acre for cool season grass hay – are realistic as required by 10 CSR 20-6.300(3)(G)2.A.

Count II – Manure Storage

Powell Gardens alleges that the Department failed to ensure that Valley Oaks has the minimum required manure storage on site. 10 CSR 20-8.300(5)B.1 recommends that CAFOs have at least 365 days of manure storage on site. 10 CSR 20-8.300(5)B.2 requires, at a minimum, the "design storage period for liquid manure, solid manure, and dry process waste to be land applied is one hundred eighty (180) days."

Powell Gardens expert, Dr. John M. Sweeten, essentially worked backward from the permitting documents to find the assumptions upon which Valley Oaks' manure storage calculations were based. He drew two conclusions. First, he found that the amount of bedding to be used in the confinement barns was insufficient to absorb enough moisture to allow for proper handling of the manure and urine stored in the confinement barns. He opined that the mixture would be more liquid than solid, presenting problems with containment and leakage from the barns, and in handling it with heavy equipment to remove it from the barns. Second, in order to

reach a minimum of 180 days' storage, the waste would have to be stacked to the very top of the stem walls of the confinement barns, covering the animals' source of fresh drinking water and allowing waste to spill over the walls.

Pursuant to 10 CSR 20-6.300(1)(A)11., dry process waste is defined as:

> A process waste mixture which may include manure, litter, or compost (including bedding, compost, mortality by-products, or other raw materials which is commingled with manure) and has less than seventy-five percent (75%) moisture content and does not contain any free draining liquids[.]

Valley Oaks' calculations are based upon 17 pounds of bedding per 100 pounds of waste, resulting in 80% moisture content. According to Sweeten's calculations, in order to meet the regulatory requirement of 75% moisture content, 25 pounds of bedding per 100 pounds of waste are necessary. Using Valley Oaks' formula, Sweeten calculated that 4.72 million cubic feet of manure plus bedding will need to be stored rather than the 3.87 million cubic feet used by Valley Oaks to justify its storage capacity, an increase of approximately 22%. Given Valley Oaks' maximum storage volume from Exhibit B, 857 of 1,179,210 cubic feet, Sweeten calculated 152 days' storage capacity.

Valley Oaks argues that 10 CSR 20-8.300(5)B.2 only requires a CAFO facility to be designed to have 180 days of storage for manure that will be land applied by the CAFO itself, not all the manure generated by the CAFO, e.g. waste exported and land applied by third parties. The calculations for the Valley Oaks CAFO include all manure to be generated even though the Valley Oaks CAFO only will land apply 70% of it. This argument ignores the very next subsection of the regulation, which provides:

> 3. Solid manure and dry process waste to be sold or used as bedding shall have a minimum design storage period of ninety (90) days unless justification is given for a shorter time period.

All dry process waste, whether land applied by the CAFO operation or sold, must be accounted for in the storage calculations. Valley Oaks chose to make its calculations, under an engineer's

seal, using 180 days' storage as its benchmark. In doing so, it misapplied the definition of "process waste." No alternate calculation accounting for 180 days' storage for 70% and 90 days' storage for 30% of its waste was before the Department when it approved the permit, and none is in the record here. Although Valley Oaks' expert, Steen, made calculations using the regulatory requirement of 75% to arrive at more than 180 days' storage, he used a lower weight for the cattle in production. This departure from the professional engineer's assumption is not justified because no law or regulation mandates a particular weight per cow. The engineer's assumptions were reasonable in this regard. We conclude that the Department's decision to issue the permit was unlawful because Valley Oaks used facially inaccurate moisture content assumptions in calculating its required storage capacity.

Count III – Groundwater Monitoring

10 CSR 20-8.300(12) requires the Missouri Geological Survey to determine whether a groundwater monitoring program must be implemented at a CAFO and identified land application areas. That section states a determination will be made "by the Missouri Geological Survey on a case-by-case basis and will be based on potential to contaminate a drinking water aquifer due to soil permeability, bedrock, distance to aquifer, etc." However, § 640.710, the statute upon which the regulation is based, allows the Department to require monitoring only when, "in the determination of the division of geology and land survey, **class IA concentrated animal feeding operation lagoons** are located in hydrologically sensitive areas where the quality of groundwater may be compromised." (emphasis added.) An administrative agency may not promulgate a regulation that is broader than the authorizing statute. *See Teague v. Mo. Gaming Comm'n,* 127 S.W.3d 679, 687 (Mo. App. W.D. 2003); *Westwood Country Club v. Director of Revenue*, 6 S.W.3d 885, 887 n.2 (Mo. banc 1999) ("The regulation of course cannot be broader than the statutory language"). Valley Oaks applied for a permit as a Class IB CAFO,

and it is beyond the Department's statutory authority to apply 10 CSR 20-8.300(12) to an application in this class. A case-specific determination was therefore unnecessary, and the Department's decision to issue the permit was not unlawful on this basis.

Count IV – Protection of Water Quality

There is an unnamed tributary to the East Branch Crawford Creek that bisects the property on which the Valley Oaks CAFO is located. Valley Oaks' original CAFO application did not identify any ponds to be constructed near the facility. During the application process, however, Valley Oaks submitted a revised site plan that proposed building two new ponds located downhill and to the east of the confinement buildings, less than 200 feet from the tributary. One of the ponds is located in a flood zone for the tributary. Powell Gardens alleges that due to the design of facility, there is a significant likelihood that rainwater will contact manure and flow into the ponds, making them process wastewater ponds subject to additional regulatory requirements.

10 CSR 20-6.300(2)(E) provides:

> 1. The Department will not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the waste management systems, only adherence to rules and regulations. The issuance of permits will not include approval of such features.

The Valley Oaks application has the required seal and signature of an engineer, and his statement indicating the project was designed in accordance with 10 CSR 20-8.300 as a no-discharge facility. No evidence suggests the ponds are intended to store process wastewater. And although there may be a significant likelihood of some spillage into the ponds, this is an operational concern, not a permitting concern. The Department is not permitted to inquire further into the design. 10 CSR 20-6.300(2)(E). We conclude that the Department's decision to issue the permit was not unlawful on this basis.

Count V – Neighbor Notice

10 CSR 20-6.300(3)(C) requires that certain neighbors be notified of a proposed CAFO, and makes this neighbor notice a prerequisite to filing a permit application with the Department:

> 1. Prior to filing an application for an operating permit with the Department for a new or expanding Class I concentrated animal feeding operation, the following information shall be provided by way of a letter to all the parties listed in paragraph (3)(C)2 of this section:
>
> A. The number of animals designed for the operation;
>
> B. A brief summary of the waste handling plan and general layout of the operation;
>
> C. The location and number of acres of the operation;
>
> D. Name, address, and telephone number of registered agent or owner;
>
> E. Notice that the Department will accept written comments for a thirty- (30-) day period. The Department will accept written comments from the public for thirty (30) days after receipt of the operating permit application; and
>
> F. The address of the Department office receiving comments.
>
> 2. The neighbor notice shall be provided to the following:
>
> A. The Department's Water Protection Program;
>
> B. The county governing body; and
>
> C. All adjoining owners of property located within one and one-half (1 1/2) times the buffer distances specified in subsection (3)(B). Distances are to be measured from the nearest animal confinement building or wastewater storage structure to the adjoining property line.
>
> 3. The operating permit applicant shall submit to the Department proof the above notification has been sent. An acceptable form of proof includes copies of mail delivery confirmation receipts, return receipts, or other similar documentation.

See also § 640.715.

Twenty-four delivery confirmation receipts, as well as a copy of the notice, were provided to the Department in connection with Valley Oaks' permit application. All 24 receipts were stamped as received for certified mailing by the postal service on January 30, 2018. The

notice itself was dated January 30, 2018. The permit application that was reviewed and ultimately approved by the Department was filed by Valley Oaks on December 19, 2017. Caldwell testified on cross examination that neighbor notices are required to be provided prior to the submission of a permit application. The Department did not offer excuse, justification or authority for waiving this requirement. Darrick Steen, a former employee of the Department, testified that in his experience, if there had been residences that did not receive a neighbor notice during his tenure, the Department would have called that to the applicant's attention and allowed the error to be corrected. He did not offer an opinion as to what he thought should happen where, as here, the applicant skipped over the process entirely.

The timelines for review of permit applications set forth by the legislature in § 644.051 mandate a speedy process. We conclude that providing the required neighbor notices before, rather than during, the Department's review is essential to preserving the balance between the legislature's desire that the Department issue a timely and definitive decision and its mandate for a meaningful public participation process. Because Valley Oaks submitted its application before providing the required neighbor notices, the permit was issued unlawfully.

Count VI – Continuing Authority

Counts I and VIII of Powell Gardens' second amended complaint allege that in its application, Valley Oaks failed to furnish proof that a "permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application [was] made" as is required by 10 CSR 20-6.010(3)(A). In *In the Matter of Trenton Farms Re, LLC v. Missouri Dep't of Natural Resources*, the Court of Appeals provided guidance as to what this regulation requires, which is simply to identify the entity that will serve the function. 504 S.W.3d 157, 166 (Mo. App. W.D. 2016). Valley Oaks failed in this

simple task, and the Department failed to ask it to correct the mistake pursuant to 10 CSR 20-6.300.

In his testimony, Caldwell explained that in his review process, he used the search function of the Secretary of State's web site to look for the named entity, Country Club Homes, LLC, and found among the results "Countryclub Homes, LLC." Because this entity was affiliated with David Ward, the signatory to the application, Caldwell assumed this was the correct entity and that it was adequately identified. But the law does not allow for such an assumption. Section 347.020 requires that the name of an LLC "must be distinguishable upon the records of the secretary from the name of any corporation, limited liability company [or other registered business entity]." In other words, a difference of one word – or one space – distinguishes one entity from another. *See, Shipley v. Cates*, 200 S.W.3d 529, 538 (Mo. banc 2006). The statute further provides that an LLC's name, as set forth in its articles of organization, "shall be the name under which the limited liability company transacts business in this state unless [it registers another name as a fictitious name]." In other words, spelling counts.

The entity identified in the application to serve the function of the continuing authority simply did not exist in the records of the Secretary of State. Caldwell's discovery of a similarly named entity is of no import, because he did not have the authority to change or make corrections to the application. The correct course of action would have been to call attention to the mistake to the applicant or its engineer. *See*, 10 CSR 20-6.300(2)(E)4. Instead, the Department granted a permit based on a deficient application. Compounding the error, the permit issued by the Department on June 15, 2018 was issued in the name of "County Club Homes, LLC," a name so obviously wrong that none of the parties bothered to submit evidence as to whether an entity by that name exists in the records of the Secretary of State.

During the pendency of the case before the AHC, the Department re-issued Permit MOG010872 to "Valley Oaks Real Estate, LLC" as owner and continuing authority. The AHC permitted Powell Gardens to amend its complaint to address this change is circumstance. Powell Gardens argues that the rule authorizing such a transfer requires "an application to transfer signed by the existing owner and/or continuing authority and the new owner and/or continuing authority." 10 CSR 20-6.010(11)(A). For the Department, Caldwell testified at the hearing that if the Department discovers a typographical error, then it has the option of an "internal modification." Tr. at 145-46. Authority for such a modification may be found in § 644.052.8. This section refers to "name changes, address changes, or other nonsubstantive changes to the operating permit," and prescribes a fee. But even assuming that Valley Oaks intended to apply for the permit in the name of Countryclub Homes, LLC, the change made by the Department is neither a name change nor nonsubstantive. "Country Club Homes, LLC," a non-existent entity, is listed as both owner and continuing authority on the Form W application. The permit issued on August 9, 2018 was issued to "Valley Oaks Real Estate, LLC," a completely different entity. We agree with Powell Gardens that this was a purported transfer of the permit, and because no one can sign for a non-existent entity, the transfer was ineffective. In any case, for the reasons stated here and below, we have found that the permit was issued unlawfully, and the transfer of a void instrument to a new owner cannot revive it.

Summary

The AHC recommends that the Missouri Clean Water Commission reverse the Department's decision to issue Permit No. MOG010872 because the applicant failed to provide realistic yield goals for the fields it identified for land application of manure in violation of 10 CSR 20-6.300(3)(G)2.A; failed to provide for adequate storage by misapplying the definition of dry process waste in violation of 10 CSR 20-6.300(1)(A)11 and 10 CSR 20-8.300(5)B.2; failed

to provide neighbor notice prior to filing its application in violation of § 640.715 and 10 CSR 20-6.300(3)(C); and failed to identify a continuing authority in violation of 10 CSR 20-6.010(3)(A).

SO RECOMMENDED on October 23, 2018.

BRETT W. BERRI
Commissioner

Exhibit B

AFFIDAVIT OF ELIZABETH DEICH

STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

COMES NOW Elizabeth Deich, after having been duly sworn, and states as follows:

1. I am more than eighteen years old and am competent to give the testimony stated herein.

2. I am married to Ryan Deich. We reside together with our children on the property located at 1993 U.S. Highway 50, Lone Jack, MO 64070.

3. Our property is next door to the proposed concentrated animal feeding operation known as the Valley Oaks CAFO. We were adversely affected by the Missouri Department of Natural Resources' ("MoDNR") decision to issue a Class IB CAFO Permit for that facility, which bore permit number MOG010872 (the "Permit").

4. As such, Ryan and I filed the appeal captioned *In re: Country Club Homes, LLC* (AHC No. 18-0501) before the Administrative Hearing Commission, challenging MoDNR's issuance of the permit. The Administrative Hearing Commission decided that MoDNR issued the permit in error. On or about December 10, 2018, the Clean Water Commission adopted the Administrative Hearing Commission's proposed findings and revoked the permit. Attorneys at the law firm Stinson Leonard Street LLP represented Ryan and I at all times during the above-described proceedings.

5. I have personal knowledge of my finances and those of my husband, Ryan Deich. At no time, during these proceedings or otherwise, have Ryan and I had a net worth exceeding $2,000,000, either separately or as a married couple.

FURTHER AFFIANT SAYETH NOT.

Elizabeth Deich

Elizabeth Deich

Sworn to before me and subscribed in my presence this 5th day of February, 2019.

Suzanne Williams

Notary Public

My commission expires:

SUZANNE WILLIAMS
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
Commission # 13448122
My Commission Expires: 8/22/2021

Exhibit C

Before the
Administrative Hearing Commission
State of Missouri

IN RE COUNTRY CLUB HOMES, LLC, PERMIT NO. MOG010872	)))	Nos. 18-0498 and 18-0501

ORDER

We stay of the Department of Natural Resources' ("Department") action of June 15, 2018 granting Permit No. MOG010872 pending this Commission's findings and determination in the cause.

Procedure

On June 25, 2018, Lone Jack Neighbors for Responsible Agriculture, LLC, filed a complaint appealing the Department's decision to issue Class IB CAFO Permit No. MOG010872 in the name of Valley Oaks Steak Company, LLC ("Valley Oaks"). On June 27, 2018, Powell Gardens, Inc., Ryan and Elizabeth Deich, and the Robert M. Chamness Trust filed a complaint appealing the same permit. On July 3, 2018, Valley Oaks filed a motion to intervene in both cases, which we granted. The Petitioners in both cases filed a motion for a stay of the Department's action granting the permit. On July 9, 2018 we held a combined hearing in both cases on the issue of the stay. Stephen G. Jeffery appeared for Lone Jack Neighbors; Charles W. Hatfield and Aimee Davenport appeared for Powell Gardens, Inc., *et al.*; Assistant Attorneys General Jennifer Hernandez and Shawna Bligh appeared on behalf of the Department; and Jean Paul Bradshaw II and Jennifer Griffin appeared for Valley Oaks.

Findings of Fact for Purposes of the Stay

1. Lone Jack Neighbors is a Missouri limited liability company registered in good standing with the Secretary of State.

2. Lone Jack Neighbors, its members, and its supporters reside in the vicinity of the Valley Oaks CAFO and fields where manure generated by the CAFO may be land applied.

3. Karen Lux, Rachel Foley, and Caroline Wilkinson are members of Lone Jack Neighbors who live in the vicinity of the CAFO Property.

4. Powell Gardens is a botanical garden in the Kansas City, Missouri, area that has 100 acres of gardens and cultivates thousands of species of plants, including some that are endangered.

5. Powell Gardens is located less than three miles from the CAFO property.

6. Tabitha Schmidt has been the CEO/President of Powell Gardens since August 2016, and testified on behalf of Powell Gardens at the stay hearing.

7. Ryan Deich and his family live on property that is adjacent to the CAFO property.

8. Patrick Splichal is a soil scientist who prepared written comments and testified at the stay hearing on behalf of Powell Gardens, *et al.*

9. Greg Caldwell reviewed the permit application. He has been employed by the Department for over 30 years. Caldwell testified on behalf of the Department and Valley Oaks at the stay hearing.

10. Countryclub Homes, LLC, is Missouri limited liability company owned solely by David Ward. Ward testified at the stay hearing.

11. Ward, through business entities owned by him, began operating an animal feeding operation ("AFO") in September 2016.

12. The AFO was comprised of approximately 900 head of cattle.

13. On December 19, 2017, Ward submitted a Permit Application (Form W) to the Department for a proposed concentrated animal feeding operation ("CAFO") to be located on the property comprising the AFO in Johnson County, Missouri. ("the facility" or "Valley Oaks"). "Country Club Homes, LLC" was listed on the application as the continuing authority that is responsible for the operation, maintenance, and modernization of the facility to which the permit is issued.

14. On June 15, 2018, DNR issued Permit No. MOG010872 to "Country Club Homes, LLC, 1120 NE Eagle Ridge Blvd., Grain Valley, Mo 64029" for the operation of a Class IB CAFO.[1] A Class IB CAFO requires a permit from the Department.

15. A "Certificate of No Record," dated June 27, 2018, from the Missouri Secretary of State indicates than no entity named "Country Club Homes, LLC, 1120 NE Eagle Ridge Blvd., Grain Valley, Mo 64029" exists.

16. The holder of a Class IB CAFO permit may hold up to 6,999 animal units in its facility. One cow is equal to one animal unit. No permit is required for a facility holding up to 1,000 beef cattle.

17. As of June 15, 2018, there were approximately 900 head of cattle at the facility, and since that time, the facility has added 1,000 head of cattle. Ward plans to add 2,600 additional head of cattle to the Valley Oaks CAFO by the end of 2018.

18. With the permit application, plans were submitted for a facility with six confinement barns and two manure storage sheds that Valley Oaks projects that, when operating at full capacity, the allotted capacity of 6,999 beef cattle raised on the facility would generate approximately 111,134 tons of manure and urine on an annual basis.

[1] The permit is actually issued in the name of "County Club Homes, LLC."

19. In its application materials, Valley Oaks projected that it will dispose of approximately 70% of that process waste by land application (under the Nutrient Management Plan), and approximately 30% of that waste by exporting it from the site.

20. Valley Oaks indicated in its application that it would store the process waste in two locations: (1) the animal confinement barns, and (2) manure storage sheds.

21. No plan was submitted for operation of the facility in a partially completed state. Valley Oaks did not propose to have, and did not have, the required 180 days of storage as of the date the permit was issued.

22. Valley Oaks proposed to eventually have 186 days of temporary manure storage available on site, a conclusion reached by determining that manure will be stacked 2.3 feet high against the stem walls in the animal confinement pens.

23. The stem walls in the animal confinement buildings are also 2.3 feet high.

24. The automatic waterers supplying drinking water to the cattle are located 2.0 feet high on the stem walls. If manure stored in the animal confinement pens reaches the maximum permitted capacity, the manure will completely bury the animals' only source of drinking water.

25. Stacking manure to the very top of the stem walls will likely lead to manure spilling outside of the open confinement pens and onto the soil.

26. An unnamed Tributary to East Branch Crawford Creek bisects the Valley Oaks property, flowing from the north to the south.

27. Valley Oaks' CAFO buildings, including its actual and planned manure storage sheds, are located immediately to the west and uphill from the Tributary.

28. In between the CAFO buildings and the Tributary, Valley Oaks has two fresh water retention ponds located within 100 to 200 feet of the Tributary. These ponds are not depicted in the site plan in the permit application.

29. The Permit requires process wastes to be "collected and reused as a soil amendment by spreading onto agricultural fields at agricultural rates", as set forth in the nutrient management plan attached thereto as Attachment A (the "Nutrient Management Plan").

30. The Nutrient Management Plan was submitted to the Department on behalf of Valley Oaks and, ultimately, approved by the Department.

31. Some of the lands on which Valley Oaks has indicated it will land apply manure are in the same watershed (Blackwater) as Powell Gardens.

32. The Nutrient Management Plan projects cool season grass hay yields of 6.0 tons per acre on fields 18A, 18B, 18C, 18D, 19A, 19B, 20A, 36A, 37A, 40A, 40B, 40C, 40D, 76A, 76B, 76C, 76D, 76E, 76F, 76G, 77A, 77B, 77C, 93C, 93D, 93E, 93F, 93G, 93H, and 93I.

33. 17. Valley Oaks' projections for cool season grass hay yields at 6.0 tons per acre are nearly three times the state historical average and the historical average for the counties in which the fields are located.

34. In 2017, the average cool season grass hay production in the state of Missouri, as a whole, was 1.95 tons per acre.

35. In 2017, the average cool season grass hay production in Johnson County, Missouri, was approximately 2.20 tons per acre.

36. Caldwell does not know how Valley Oaks calculated its cool season grass hay yield goals.

37. Caldwell testified that "I have seen other hayfield, other cool season grass hayfields achieve that goal and higher." Tr. 206.

38. The Department record does not contain any evidence of how Valley Oaks arrived at its cool season grass hay yields.

39. At the stay hearing, Ward testified that he now plans to dry, bag, and sell commercially approximately half the manure produced at the facility, departing from both the facility design and the Nutrient Management Plan submitted with the permit application.

40. Approximately $20 million has been invested in the CAFO to date. An additional $10 million is needed to complete the remaining two CAFO buildings. Valley Oaks has taken on a loan from FCS Financial for this construction.

41. Valley Oaks has entered into a $55 million, five-year contract with Scavuzzo's Food Delivery Service in Kansas.

42. If a stay is issued, costs for debt service and utilities will not cease, and Valley Oaks may incur additional costs for depopulating the CAFO, and 47 employees may be laid off.

43. The Department received around 1400 public comments, primarily in opposition to Valley Oaks' permit applications. Caldwell reviewed all of the comments and prepared the Department's responses to the comments.

44. Ward admitted that he was a member in Woodbury Homes, LLC, and testified that on May 30, 2007, he entered a guilty plea in the U.S. District Court, District of Kansas, on behalf of Woodbury Homes, LLC, to a charge concerning the submission of a falsified form to the Environmental Protection Agency concerning a storm water permit, and that Woodbury Homes, LLC, paid a fine of over $90,000.

45. Ward testified that he was a partner in Ward Investments, Inc., and that in 2004, Ward Investments, Inc., paid a civil penalty of $13,500 for violations of the Missouri Clean Water Law.

Analysis

Under § 621.035, and 1 CSR 15-3.320, the Commission "may stay or suspend any action of an administrative agency pending the commission's findings and determination in the cause."

Absent a specific statutory framework outlining the conditions for a stay, this Commission follows the guidelines set forth in *State ex rel. Director of Revenue, State of Missouri v. Gabbert*, 925 S.W.2d 838, 839-840 (Mo. banc 1996). The person seeking a stay of an administrative order must justify the stay. An administrative order or decision will not be stayed pending appeal where the applicant has not sustained his or her burden of proof or otherwise has not made the required showings. *Id.* To decide whether to issue a stay, we consider four factors:

(1) the likelihood that the party seeking the stay will prevail on the merits;

(2) the likelihood that the moving party will be irreparably harmed absent a stay;

(3) the prospect that others will be harmed if the court grants the stay; and

(4) the public interest in granting the stay.

To obtain a stay, Petitioners must present evidence to:

> Show that the probability of success on the merits and irreparable harm decidedly outweigh any potential harm to the other party or to the public interest if a stay is issued. . . . Of course, this inquiry should not be rigid or "wooden" and cannot be accomplished with "mathematical precision." . . . "The equitable nature of the proceeding mandates that the court's approach be flexible enough to encompass the particular circumstances of each case."

Id.

(1) Likelihood of Success on the Merits

(A) Continuing Authority

To successfully challenge the issuance of the permit, Petitioners must show that the permit was issued in violation of statute or regulation. 10 CSR 20-6.010(3)(A) provides:

> All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made. Construction and first-time operating permits shall not be issued unless the applicant provides such proof to the department and the continuing authority has submitted a statement indicating acceptance of the facility.

The undisputed evidence at the stay hearing shows that Country Club Homes, LLC, the entity listed in the permit and application as the continuing authority, does not exist. Ward testified that he has submitted a request to the Department to correct this error. But the permit has been issued to an entity that does not exist, and none of the parties have cited authority that would allow the Department to transfer such a permit to a different entity or make such a correction. A brief review of the Department's regulations would seem to require two willing entities with signatory authority to accomplish a transfer. *See*, 10 CSR 20-6.010(11). We conclude that Petitioners have shown a reasonable likelihood of success on this point.

(B) Storage Capacity

Department regulations recommend that Class IB CAFOs such as Valley Oaks provide for manure storage sheds that have at least 365 days of temporary manure storage on site. 10 CSR 20-8.300(5)(B)1. At minimum, the storage period for liquid manure, solid manure, and dry process waste to be land applied is 180 days. 10 CSR 20-8.300(5)(B)2. After revisions to its permit application, Valley Oaks' final submission provided for 186 days' storage. Petitioners put on evidence suggesting that the only way Valley Oaks was able to reach storage of 180 days' of manure was to provide for storage in the confinement barns. After accounting for bedding and compaction of the manure by the animals walking on it, the barns must hold manure to a depth of 2.3 feet, when the walls of the barns designed to confine the animals are only 2.3 feet deep. At this depth, the animals' drinking sources will be buried in compacted manure, and manure will inevitably spill outside of the open confinement pens. We conclude that Petitioners have shown a reasonable likelihood of success on this point.

(C) Nutrient Management Plan

Department regulations require that Class IB CAFOs such as Valley Oaks develop and implement nutrient management plans that have "realistic production goals." See 10 CSR 20-

6.300(3)(G)2.A. The "Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard (NMTS) approved by the Clean Water Commission on March 4, 2009", which is incorporated by reference into the regulations governing Class IB CAFOs and into Valley Oaks' Permit, require that yield goals be justified by historical data:

> Yield goals should be based on crop yield records from multiple years for the field. Good judgment should be used to adjust yield goals to counteract unusually low or high yields. When a field's yield history is not available another referenced source may be used to estimate yield goal.

Petitioners produced evidence indicating that the cool season grass hay yields submitted by Valley Oaks and approved by the Department, as part of its Nutrient Management Plan, are not supported by any historical data. The evidence indicates that Valley Oaks' projected cool season grass hay yields of 6.0 tons per acre are approximately three times the average for the Johnson County, Missouri, and the state of Missouri as a whole. Valley Oaks did not submit any historical data to support its cool season grass hay yields, and no such information exists in the Department's record. The permit approval appears to be based on Caldwell's anecdotal recollection that "I have seen other hayfield, other cool season grass hayfields achieve that goal and higher." Tr. 206. We conclude that Petitioners have shown a reasonable likelihood of success on this point.

(2) Likelihood of Irreparable Harm to the Moving Party

Petitioners submitted evidence that Valley Oaks has ramped up its operation in the weeks since June 15. Ward's testimony was that as of the date of our stay hearing, he had increased the number of cattle on site from approximately 900 to approximately 1,900, and had plans to increase the number further to approximately 4,500 by year's end. He has built additional confinement structures and a manure storage shed, and testified that another storage shed will be completed in about 60 days. Valley Oaks' facility design submitted with its permit application purports to assure the Department and the public that the facility, when constructed, will be able

to accommodate up to 6,999 beef cattle with no discharge of waste into the waters of the state. Further, the design purports to assure the Department and the public that it can store more than 180 days' (111,134 tons) of waste. But neither the permit application nor any evidence adduced at the hearing suggest that any particular lesser phase of completion will accommodate any particular lesser number of animals. In briefing, Valley Oaks has supplied calculations to demonstrate that if it constructs the additional storage shed by September 9, 2018, there will be adequate waste storage for the number of animals it plans to bring onto the site by the deadline for this Commission's recommended decision. This does not change the fact that Valley Oaks is not permitted for a partially completed facility. And its plans for additional construction and additional animals are subject to change at the whim of Ward, a developer who has no experience operating a CAFO. An unnamed tributary runs through the facility to carry animal waste off the property into the watershed. Valley Oaks' *ad hoc* approach to running a CAFO without any significant regard for the plans it submitted to the Department only increases the risk of manure reaching the waters of the state. We conclude Petitioners have shown a significant potential for irreparable harm.

(C) Prospect of Harm to Others

About $20 million has been invested in the CAFO to date. An additional $10 million is needed to complete the remaining two CAFO buildings. Valley Oaks has taken on a loan from FCS Financial for this construction. Additionally, Valley Oaks has entered into a $55 million, five-year contract with Scavuzzo's Food Delivery Service in Kansas. If a stay is issued, costs for debt service and utilities, will not cease, and Valley Oaks may incur additional costs for depopulating the CAFO, and 47 employees may be laid off. Ward speculated that Valley Oaks may go bankrupt. The purpose of a stay of the action of an administrative agency is to preserve the *status quo*. In this case, a stay would temporarily return Valley Oaks to an unpermitted

facility with the ability to keep up to 1,000 beef cattle on the premises. The lion's share of the costs listed by Ward were incurred or contracted-for prior to June 15, 2018 – in other words, when Valley Oaks was an unpermitted facility with the ability to keep up to 1,000 beef cattle on the premises. We conclude that while a stay may result in financial harm to Valley Oaks, the bulk of that harm is the result of Ward's own actions in anticipation of receiving a permit, and as a result, does not outweigh the other factors in our analysis.

(C) Public Interest

The public at large, and the government of the State of Missouri, have an interest in protecting water quality and the environment. The public and the government also have an interest in promoting responsible agriculture and a reliable food supply. The Department received thousands of pages of letters from concerned citizens opposing the CAFO and expressing concern about its environmental impacts. Considered along with the frailties outlined above in Valley Oaks' permit application and the Department's approval process, we conclude that the environmental protection interests outweigh Valley Oaks' interests in accelerating its operations during the time in which this appeal is pending.

Summary

We grant a stay of the Department's action of June 15, 2018 granting Permit No. MOG010872 pending this Commission's findings and determination in the cause.

SO ORDERED on July 26, 2018.

BRETT W. BERRI
Commissioner

Exhibit D

Your Missouri Courts

Search for Cases by: Select Search Method...

Judicial Links | eFiling | Help | Contact Us | Print GrantedPublicAccess Logoff CHUCKHATFIELD

18AC-CC00336 - MO DEPARTMENT OF NATRUAL V COMM. BRETT BERRI, ADMI (E-CASE)

This information is provided as a service and is not considered an official court record.

Click here to eFile on Case
Click here to Respond to Selected Documents

Sort Date Entries: Descending Ascending

Display Options: All Entries

11/26/2018 **Order**
case dismissed as moot. PSJ/rlo

11/09/2018 **Judge/Clerk - Note**
Order of dismissal printed for judge review. rlo

11/07/2018 **Proposed Order Filed**
Proposed Order of Dismissal; Electronic Filing Certificate of Service.Forwarded to Div IV queue for Judge's review. mlf
Filed By: JENNIFER HERNANDEZ
On Behalf Of: MO DEPARTMENT OF NATRUAL RESOURCES

11/05/2018 **Motion Hearing Held**
Petitioner by Attorney Hernandez. Intervenors appear by Attorney Hatfield and Davenport. Homes and Valley Real Estate Country Club is granted leave to intervene. Case continued to 11-9-18. PSJ/rlo
Scheduled For: 11/05/2018; 1:30 PM ; PATRICIA S JOYCE; Cole Circuit

Entry of Appearance Filed
Entry of Appearance; Electronic Filing Certificate of Service.
Filed By: JENNIFER HERNANDEZ
On Behalf Of: MO DEPARTMENT OF NATRUAL RESOURCES

10/29/2018 **Notice of Service**
Notice of Service Complete; Electronic Filing Certificate of Service.
Filed By: SHAWNA MARIE BLIGH
On Behalf Of: MO DEPARTMENT OF NATRUAL RESOURCES

Corporation Served
Document ID - 18-C230-10; Served To - ADMINISTRATIVE HEARING COMMISSION; Server - COLE COUNTY SHERIFF'S DEPARTMENT; Served Date - 22-OCT-18; Served Time - 09:00:00; Service Type - Sheriff Department; Reason Description - Served; Service Text - See return

10/25/2018 **Notice of Hearing Filed**
Notice of Hearing; Electronic Filing Certificate of Service.
Filed By: CHARLES WILLIAM HATFIELD
On Behalf Of: POWELL GARDENS, ROBERT M CHAMNESS TRUST, RYAN DEICH, ELIZABETH DIECH

10/23/2018 **Request Filed**

Countryclub Homes, LLCs and Valley Oaks Real Estate, LLCs Request to Grant Joint Application to Intervene; Electronic Filing Certificate of Service.

Filed By: JENNIFER GRIFFIN

10/22/2018 **Motion Hearing Scheduled**

Associated Entries: 11/05/2018 - Motion Hearing Held

Scheduled For: 11/05/2018; 1:30 PM ; PATRICIA S JOYCE; Cole Circuit

10/10/2018 **Suggestions in Support**

Intervenors Suggestions in Support of Motion to Quash Writ of Preliminary Prohibition and to Dismiss Relators Petition; Exhibit A; Electronic Filing Certificate of Service.

Filed By: CHARLES WILLIAM HATFIELD

On Behalf Of: POWELL GARDENS, ROBERT M CHAMNESS TRUST, RYAN DEICH, ELIZABETH DIECH

Motion to Quash

Motion to Quash Writ of Preliminary Prohibition and to Dismiss Relators Petition; Electronic Filing Certificate of Service.

Filed By: CHARLES WILLIAM HATFIELD

10/09/2018 **Judge Assigned**

Order for Change of Judge

Case assigned to DIV 4. PSJ/rlo

10/03/2018 **Judge/Clerk - Note**

COJ printed for judge review. rlo

09/26/2018 **Ord Transfer P/Judge for Assn**

Intervenor¿s Motion for Change of Judge, timely filed, is sustained as presentment has been waived. File transferred to Presiding Judge for re-assignment. /s/JEB/jw

Filed By: JON EDWARD BEETEM

Hearing/Trial Cancelled

Scheduled For: 10/12/2018; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

09/24/2018 **Application Filed**

Countryclub Homes, LLCs and Valley Oaks Real Estate, LLCs Joint Application to Intervene and Suggestions in Support; Exhibit 1--Countryclub Homes, LLCs and Valley Oaks Real Estate, LLCs Joint Proposed Answer to Petition for Writ of Prohibition; Electronic Filing Certificate of Service.

Filed By: JENNIFER GRIFFIN

09/19/2018 **Notice of Hearing Filed**

Joint Notice of Hearing; Electronic Filing Certificate of Service.

Filed By: CHARLES WILLIAM HATFIELD

On Behalf Of: POWELL GARDENS, LONE JACK NEIGHBORS FOR RESPONSIBLE AGRICULTURE LLC, ROBERT M CHAMNESS TRUST, RYAN DEICH, ELIZABETH DIECH

Motion for Change of Judge

Intervenors Joint Application for Change of Judge; Electronic Filing Certificate of Service.

Filed By: CHARLES WILLIAM HATFIELD

Counsel Status Hrng Scheduled

Associated Entries: 09/26/2018 - Hearing/Trial Cancelled

Scheduled For: 10/12/2018; 9:00 AM ; JON EDWARD BEETEM; Cole Circuit

09/17/2018 **Order**

The Powell Gardens, Inc., Ryan and Elizabeth Deich, the Robert M Chamness Trust and the Lone Jack Neighbors for Responsible Agriculture, LLC Joint Motion to Intervene is granted and deemed the Answer of Intervenors filed. /s/JEB/jw

Filed By: JON EDWARD BEETEM

Order

Case placed on 10-12-2018 law day at 9:00 am to schedule hearing on cause. /s/JEB/jw

Filed By: JON EDWARD BEETEM

09/05/2018 **Motion to Intervene**

Request to Grant Motion to Intervene; Proposed Order; Electronic Filing Certificate of Service.

08/28/2018 **Order**

The Court clarifies it's Writ of Preliminary Prohibition as being limited to barring Commissioner Berri in his official capacity from enforcing the stay order entered on July 26, 2018 in AHC case #'s 18AC-CC00498 and 18AC-CC00501 pending further order of the Court. Nothing in the Preliminary Writ should be interpreted to mean the the underlying AHC case cannot proceed to hearing. /s/JEB/jw

Filed By: JON EDWARD BEETEM

08/27/2018 **Note to Clerk eFiling**

Filed By: CHARLES WILLIAM HATFIELD

Motion to Intervene

Joint Motion to Intervene and Suggestions in Support; Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 5 part 2; Exhibit 5 part 3; Exhibit 5 part 4; Intervenors Joint Proposed Answer to Petition for Writ of Prohibition; Electronic Filing Certificate of Service.

Filed By: CHARLES WILLIAM HATFIELD

08/24/2018 **Writ Issued**

Document ID: 18-C230-10, for ADMINISTRATIVE HEARING COMMISSION.Attorney to print two copies of service document created to issue for service and return. Service copy to include filings to serve, if applicable. msh

08/22/2018 **Other Proposed Document Filed**

Proposed Writ of Prohibition.Forwarded to Div I queue for Judge's review. msh

08/21/2018 **Filing Info Sheet eFiling**

Filed By: SHAWNA MARIE BLIGH

Pet Filed in Circuit Ct

Petition for Writ of Prohibition; Suggestion in Support of Petition in Mandamus; Exhibit A; Exhibit B; Exhibit C; Exhibit D; Exhibit E; Exhibit F. msh

Filed By: SHAWNA MARIE BLIGH

On Behalf Of: MO DEPARTMENT OF NATRUAL RESOURCES

Judge Assigned

11/26/2016 **Dismiss by Ct w/o Prejudice**

Exhibit E

RECEIVED
JAN 07 2019
Water Protection Program

BEFORE THE
MISSOURI CLEAN WATER COMMISSION

In The Matter Of:	)	
	)	
Country Club Homes, LLC	)	**Appeal No. 18-0501**
	)	
	)	
	)	

FINAL DECISION

The Missouri Department of Natural Resources issued general operating permit MOG010872 to Country Club Homes, LLC, for a concentrated animal feeding operation. Powell Gardens, Inc., Mr. Ryan and Ms. Elizabeth Deich and Mr. Robert M. Chamness Trust (collectively referred to as Powell Gardens) filed an appeal. The Administrative Hearing Commission (AHC) heard the appeal on August 27 through 28, 2018, and issued its recommendations to the Commission on October 23, 2018.

The Commission may 1) adopt the AHC's recommendation; 2) change findings of fact or conclusions of law; or 3) vacate or modify the recommended decision.[1] If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s).[2] Commission hereby adopts the AHC's recommended decision. This decision is based on the facts and evidence presented to the Commission pursuant to RSMo 644.026 and its corresponding regulations.

[1]Section 621.250.3, RSMo Supp. 2006
[2]*Id.*

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Ashley McCarty
Chair

Commissioner

Commissioner

Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Commissioner

BEFORE THE
MISSOURI CLEAN WATER COMMISSION

In The Matter Of:	)	
	)	
Country Club Homes, LLC	)	**Appeal No. 18-0501**
	)	
	)	
	)	

FINAL DECISION

The Missouri Department of Natural Resources issued general operating permit MOG010872 to Country Club Homes, LLC, for a concentrated animal feeding operation. Powell Gardens, Inc., Mr. Ryan and Ms. Elizabeth Deich and Mr. Robert M. Chamness Trust (collectively referred to as Powell Gardens) filed an appeal. The Administrative Hearing Commission (AHC) heard the appeal on August 27 through 28, 2018, and issued its recommendations to the Commission on October 23, 2018.

The Commission may 1) adopt the AHC's recommendation; 2) change findings of fact or conclusions of law; or 3) vacate or modify the recommended decision.[1] If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s).[2] Commission hereby adopts the AHC's recommended decision. This decision is based on the facts and evidence presented to the Commission pursuant to RSMo 644.026 and its corresponding regulations.

[1]Section 621.250.3, RSMo Supp. 2006
[2]*Id.*

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

_____	_____
Chair	Commissioner
_____	_____
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

_____

Commissioner

BEFORE THE
MISSOURI CLEAN WATER COMMISSION

In The Matter Of:	)	
	)	
Country Club Homes, LLC	)	**Appeal No. 18-0501**
	)	
	)	
	)	

FINAL DECISION

The Missouri Department of Natural Resources issued general operating permit MOG010872 to Country Club Homes, LLC, for a concentrated animal feeding operation. Powell Gardens, Inc., Mr. Ryan and Ms. Elizabeth Deich and Mr. Robert M. Chamness Trust (collectively referred to as Powell Gardens) filed an appeal. The Administrative Hearing Commission (AHC) heard the appeal on August 27 through 28, 2018, and issued its recommendations to the Commission on October 23, 2018.

The Commission may 1) adopt the AHC's recommendation; 2) change findings of fact or conclusions of law; or 3) vacate or modify the recommended decision.[1] If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s).[2] Commission hereby adopts the AHC's recommended decision. This decision is based on the facts and evidence presented to the Commission pursuant to RSMo 644.026 and its corresponding regulations.

[1]Section 621.250.3, RSMo Supp. 2006
[2]*Id.*

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Chair	Commissioner
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Commissioner

BEFORE THE
MISSOURI CLEAN WATER COMMISSION

In The Matter Of:	)	
	)	
Country Club Homes, LLC	)	**Appeal No. 18-0501**
	)	
	)	
	)	

FINAL DECISION

The Missouri Department of Natural Resources issued general operating permit MOG010872 to Country Club Homes, LLC, for a concentrated animal feeding operation. Powell Gardens, Inc., Mr. Ryan and Ms. Elizabeth Deich and Mr. Robert M. Chamness Trust (collectively referred to as Powell Gardens) filed an appeal. The Administrative Hearing Commission (AHC) heard the appeal on August 27 through 28, 2018, and issued its recommendations to the Commission on October 23, 2018.

The Commission may 1) adopt the AHC's recommendation; 2) change findings of fact or conclusions of law; or 3) vacate or modify the recommended decision.[1] If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s).[2] Commission hereby adopts the AHC's recommended decision. This decision is based on the facts and evidence presented to the Commission pursuant to RSMo 644.026 and its corresponding regulations.

[1]Section 621.250.3, RSMo Supp. 2006
[2]*Id.*

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

_____	Patricia N Thomas
Chair	Commissioner
_____	_____
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

_____

Commissioner

BEFORE THE
MISSOURI CLEAN WATER COMMISSION

In The Matter Of:	)	
	)	
Country Club Homes, LLC	)	**Appeal No. 18-0501**
	)	
	)	
	)	

FINAL DECISION

The Missouri Department of Natural Resources issued general operating permit MOG010872 to Country Club Homes, LLC, for a concentrated animal feeding operation. Powell Gardens, Inc., Mr. Ryan and Ms. Elizabeth Deich and Mr. Robert M. Chamness Trust (collectively referred to as Powell Gardens) filed an appeal. The Administrative Hearing Commission (AHC) heard the appeal on August 27 through 28, 2018, and issued its recommendations to the Commission on October 23, 2018.

The Commission may 1) adopt the AHC's recommendation; 2) change findings of fact or conclusions of law; or 3) vacate or modify the recommended decision.[1] If the Commission either changes findings of fact or conclusions of law or vacates or modifies the recommended decision, it must state the specific reason(s) in writing for the change(s).[2] Commission hereby adopts the AHC's recommended decision. This decision is based on the facts and evidence presented to the Commission pursuant to RSMo 644.026 and its corresponding regulations.

[1]Section 621.250.3, RSMo Supp. 2006
[2]*Id.*

WHEREFORE, THE UNDERSIGNED MEMBERS APPROVE THIS ORDER ON THIS 10th DAY OF DECEMBER, 2018.

MISSOURI CLEAN WATER COMMISSION

MEMBERS VOTING TO APPROVE THIS FINAL DECISION

Chair	Commissioner
Commissioner	Commissioner

MEMBER VOTING TO DISAPPROVE THIS FINAL DECISION

Allen Rowland

Commissioner

Exhibit F

BEFORE THE
CLEAN WATER COMMISSION
STATE OF MISSOURI

IN RE: COUNTRY CLUB HOMES, LLC Permit No. MOG010872	))))	Case No. 18-0501

AFFIDAVIT OF AIMEE D. DAVENPORT

Aimee D. Davenport, of lawful age and being duly sworn upon her oath, states as follows.

1. I have been an attorney licensed to practice law in Missouri since 2001. Currently, I am a partner with Stinson Leonard Street LLP[1] ("Stinson") practicing in the firm's Jefferson City office.

2. I graduated from the University of Missouri-Columbia School of Law in 2001 and have practiced in Missouri for my entire career. Prior to entering private practice, I served as deputy general counsel to the Missouri Department of Natural Resources, where I represented the state in water pollution, public drinking water, and soil and water conservation matters. I also served as an attorney for the Missouri Public Service Commission.

3. I have been named by Best Lawyers in America and Missouri/Kansas Super Lawyers for Environmental Law since 2012. Throughout my career, I have handled a multitude of contested case challenges in both state and federal tribunals, including before the United States Court of Appeals for the Eighth Circuit. Through my public and private sector experience in environmental law, I have developed an intricate understanding of environmental permitting and enforcement, and serve regularly as an educational presenter on environmental issues for trade groups and non-profit organizations and within higher education curricula.

[1] Previously known as Stinson Morrison Hecker and (before that) Stinson Mag & Fizzell.

4. In this case, I relied on the assistance of other professionals at Stinson in the successful litigation of this case. The other professionals at Stinson who rendered services in this matter were partners Charles W. Hatfield, associates Matthew D. Moderson and Brett A. Shanks, and paralegal Marsha Presley. I am personally familiar with the skills and experience of these professionals. These professionals' standard rates are significantly higher than $75.00 per hour.

5. Mr. Hatfield graduated from the University of Missouri-Columbia School of Law in 1993 and has practiced in Jefferson City, Missouri, for his entire career, first with the State of Missouri (1993-2003) and then with Stinson (2003-Present). Prior to joining Stinson, Mr. Hatfield served as Chief of Staff and Counsel to the Missouri Attorney General in Jefferson City where he participated in and supervised a broad range of complex litigation, and represented multiple state agencies to defend the validity of state statutes. Mr. Hatfield is rated AV by Martindale-Hubbell, listed in Best Lawyers in America for Commercial Litigation and Government Relations, and has first-chaired more than 20 appeals to the Missouri Supreme Court on various issues related to Missouri government.

6. Mr. Moderson has been practicing law for more than 7 years. He graduated *cum laude* from Auburn University, with a bachelor's degree in finance. Mr. Moderson attended the University of Missouri-Kansas City School of Law, from which he graduated *cum laude* and with other distinctions in 2011, including serving as an editor on the law review and publishing in both of the school's journals. Mr. Moderson has represented clients in a number of complex commercial matters, including two prior matters in which the construction of CAFOs were at issue. He performed the bulk of associate work on this matter.

7. Mr. Shanks also provided assistance on this case. He graduated *summa cum laude* from Park University in 2008, earned a master's degree from Avila University in 2010, and

graduated from the Washburn University School of Law *magna cum laude* in 2015. Mr. Shanks has represented clients in various commercial and environmental litigation matters.

8. Part of my job responsibilities as an attorney and partner with Stinson is to supervise work done under my direction, including its quality and the quantity of time expended for any given service. I review numerous billing statements monthly and make judgments on a regular basis regarding time that is reasonably and necessarily spent on legal services performed on behalf of clients for whom I am the responsible partner.

9. I was intimately involved in the work performed at my request or under my supervision in this matter as it was ongoing. I engaged in regular monthly reviews of the billing statements. During that regular review process, I identified entries and time that I believed was redundant or excessive, and reduced it accordingly.

10. I have reviewed the billing statement for services performed in this matter. A true and accurate itemization of fees sought in this Action is attached hereto and incorporated herein as **Exhibit 1**. That itemization reflects that the Stinson attorneys identified herein worked 541.50 hours on this Action, resulting in fees totaling $40,612.50 when calculated at the statutory rate of $75.00 per hour as authorized under Section 536.085. All of the time recorded was reasonably and necessarily spent in representing the Petitioners in this matter.

11. Stinson represented Petitioners Elizabeth and Ryan Deich (the "Petitioners") and others in this Action. Through the Action, Petitioners sought to invalidate the permit issued for the Valley Oaks CAFO. Petitioners represented by Stinson achieved complete success in that goal.

12. Although this matter may seem straightforward at first blush, it in fact required a substantial amount of work to successfully pursue this Action. The case itself involved

sophisticated questions of fact and law. It was vigorously contested from the outset by counsel for the State and for Intervenors. During the approximately six months during which it was active, the parties engaged in extensive motion practice on a variety of issues, ranging from motions to dismiss, motions to stay the effectiveness of the permit, and detailed briefing setting forth proposed findings of fact and conclusions of law. Our firm prepared for and successfully represented our clients in three separate evidentiary hearings. In effect, the parties compressed a complex civil case and took it to trial in fewer than six months.

FURTHER AFFIANT SAYETH NOT.

Aimee D. Davenport, Esq.

State of Missouri)
) ss.
County of ~~Cole~~ Boone)

Subscribed and sworn to before me, a notary public, this 6th day of February, 2019.

Notary Public

My commission expires: 6.3.22

STEPHANIE KREITNER
Notary Public - Notary Seal
Boone County - State of Missouri
Commission Number 12723320
My Commission Expires Jun 3, 2022

Exhibit F-1

Timekeeper Name	Tkpr Title	Work Date	Work Hrs	Statutory Rate	Work Amt	Narrative
Shanks, Brett A	Associate	6/6/2018	0.90	75.00	67.50	Research [redacted] for potential expert witness services related to [redacted].
Davenport, Aimee	Partner	6/14/2018	2.70	75.00	202.50	Correspondence to [redacted] regarding issuance of permit; correspond with experts regarding issuance of permit; correspond with [redacted] regarding issuance of permit; begin drafting permit appeal.
Presley, Marsha	Paralegal	6/15/2018	0.70	75.00	52.50	Review and retrieve documents from links provided by Department of Natural Resources in response to Powell Garden's Comments on permit being issued to Valley Oak Steak.
Presley, Marsha	Paralegal	6/15/2018	0.20	75.00	15.00	Draft sunshine request to Department of Natural Resources for all records associated with the actual permit application.
Moderson, Matt	Associate	6/16/2018	2.10	75.00	157.50	Analyze relevant background materials (e.g., [redacted]), as necessary to begin drafting appeal to the Administrative Hearing Commission.
Hatfield, Charles W	Partner	6/18/2018	1.80	75.00	135.00	Confer with Ms. Davenport to prepare for [redacted] call; review motion for preliminary injunction.
Davenport, Aimee	Partner	6/18/2018	3.00	75.00	225.00	Prepare for meeting with the [redacted]; travel to/from [redacted].
Davenport, Aimee	Partner	6/18/2018	0.50	75.00	37.50	Email correspondence with C. Nelson and M. Moderson regarding pending legal matters; email correspondence with [redacted] and team regarding press release for the appeal and injunction.
Moderson, Matt	Associate	6/18/2018	1.70	75.00	127.50	Conference with Ms. Davenport to discuss case strategy; conference with SES regarding [redacted]; prepare petition for appeal to the Administrative Hearing Commission.
Moderson, Matt	Associate	6/18/2018	2.90	75.00	217.50	Continue drafting petition for appeal to the Administrative Hearing Commission (which project was started earlier in the day).
Davenport, Aimee	Partner	6/19/2018	2.20	75.00	165.00	Email correspondence with C. Hatfield and C. Nelson regarding Jackson County litigation matter; conference and email correspondence with [redacted]; revisions to Notice of Appeal and Motion for Stay for the Administrative Hearing matter.
Presley, Marsha	Paralegal	6/19/2018	0.70	75.00	52.50	Review Department of Natural Resources document response to additional Sunshine request and request Practice Support to upload materials into Relativity.
Presley, Marsha	Paralegal	6/19/2018	0.10	75.00	7.50	Telephone call to Mr. Baker to clarify Department of Natural Resources' response to Sunshine request.
Moderson, Matt	Associate	6/19/2018	2.60	75.00	195.00	Revise petition for appeal to the Administrative Hearing Commission, and forward to Ms. Davenport for review; begin drafting Motion for Stay.
Davenport, Aimee	Partner	6/21/2018	1.90	75.00	142.50	Revisions and Review to the final drafts and gathering of supporting evidence for Notice of Appeal and Motion to Stay; email correspondence with M. Moderson.
Presley, Marsha	Paralegal	6/21/2018	1.80	75.00	135.00	Meet with Ms. Davenport regarding materials to be reviewed from Department of Natural Resources; prepare materials to be reviewed by [redacted].
Moderson, Matt	Associate	6/21/2018	3.30	75.00	247.50	Conference with Ms. Davenport regarding AHC appeal; locate additional legal authorities to support petition for appeal; conference with [redacted] regarding [redacted] related to the appeal; review background materials and pertinent state regulations as necessary to draft motion for stay.
Davenport, Aimee	Partner	6/25/2018	1.90	75.00	142.50	Email correspondence with M. Moderson regarding the Petition and Motion for Stay regarding the Permit Appeal; final revisions to appeal and motion for stay.
Presley, Marsha	Paralegal	6/25/2018	0.30	75.00	22.50	Telephone calls with Mr. Moderson regarding Petition and Stay with Administrative Hearing Commission; meet with Mr. Hatfield and Ms. Davenport regarding Petition and Stay to be filed with the Administrative Hearing Commission.
Davenport, Aimee	Partner	6/26/2018	1.60	75.00	120.00	Email correspondence with team to finalize documents for the Administrative Hearing Commission.
Moderson, Matt	Associate	6/26/2018	2.50	75.00	187.50	Finalize Petition and Motion for Stay, and oversee timely filing and gathering of exhibits.

Hatfield, Charles W	Partner	6/26/2018	0.60	75.00	45.00	Review and edit Administrative Hearing Commission Motion for Stay; confer with Ms. Davenport regarding Administrative Hearing Commission [redacted].
Presley, Marsha	Paralegal	6/27/2018	0.60	75.00	45.00	Meet with Ms. Davenport regarding petition filed with the Administrative Hearing Commission; telephone call to the Administrative Hearing Commission regarding the petition not appearing on website to verify received and to discuss potential consolidation with 18-0498.
Davenport, Aimee	Partner	6/27/2018	2.00	75.00	150.00	Conference call with Clean Water Commission counsel; teleconference with AHC.
Presley, Marsha	Paralegal	6/28/2018	0.10	75.00	7.50	Confer with Ms. Ryan regarding hearing and motion to stay.
Davenport, Aimee	Partner	6/29/2018	3.30	75.00	247.50	Prepare direct questions for Stay Hearing.
Davenport, Aimee	Partner	7/2/2018	2.20	75.00	165.00	Prepare for upcoming Stay hearing; telephone conference with [redacted] in preparation for upcoming stay hearing.
Davenport, Aimee	Partner	7/3/2018	2.00	75.00	150.00	Prepare for upcoming Motion to Stay Hearing with the Administrative Hearing Commission; email correspondence with Mr. Moderson and Mr. Hatfield regarding case law.
Moderson, Matt	Associate	7/5/2018	2.40	75.00	180.00	Prepare for hearing on motion to stay [redacted].
Moderson, Matt	Associate	7/5/2018	0.40	75.00	30.00	Review motion to intervene filed by Valley Oaks and Country Club Homes.
Moderson, Matt	Associate	7/5/2018	0.50	75.00	37.50	Conference with Ms. Davenport regarding strategy for hearing at motion for stay.
Moderson, Matt	Associate	7/5/2018	1.80	75.00	135.00	Conference with experts and litigation team to prepare for motion for stay hearing, and gather related documents.
Davenport, Aimee	Partner	7/5/2018	2.70	75.00	202.50	Prepare and attend conference call with attorney Mr. Moderson; prepare and attend conference call with [redacted]; email correspondence with [redacted] regarding [redacted]; email correspondence with Ms. Barrientos regarding [redacted].
Moderson, Matt	Associate	7/6/2018	6.30	75.00	472.50	Conference with Ms. Davenport regarding hearing; conference with experts regarding hearing; revise examination outline; prepare [redacted] exhibits for hearing.
Presley, Marsha	Paralegal	7/6/2018	3.30	75.00	247.50	Confer with Mr. Moderson regarding exhibits; meet with Ms. Davenport regarding order of exhibits; prepare exhibits for Stay hearing.
Hatfield, Charles W	Partner	7/6/2018	3.10	75.00	232.50	Prepare for hearing on stay.
Davenport, Aimee	Partner	7/6/2018	6.20	75.00	465.00	Prepare for upcoming Motion to Stay Hearing with the Administrative Hearing Commission; meet with witnesses; draft questions; prepare exhibits; perform necessary regulatory research.
Presley, Marsha	Paralegal	7/7/2018	2.10	75.00	157.50	Finish preparing exhibits for Stay hearing; prepare exhibit index and working file for Mr. Hatfield.
Moderson, Matt	Associate	7/7/2018	2.60	75.00	195.00	Prepare detailed index of exhibits (with relevant case law and pertinent fact information) for use at hearing.
Moderson, Matt	Associate	7/8/2018	0.30	75.00	22.50	Revise outline and exhibit index to incorporate new photograph [redacted].
Moderson, Matt	Associate	7/9/2018	1.20	75.00	90.00	Review new materials received on July 9, 2018 in response to sunshine request, prior to hearing on motion for stay.
Presley, Marsha	Paralegal	7/9/2018	4.10	75.00	307.50	Prepare additional exhibits for trial; update exhibit list; confer with Mr. Moderson, Ms. Davenport and Mr. Hatfield regarding stay hearing; travel to the Administrative Hearing Commission setting up for stay hearing.
Presley, Marsha	Paralegal	7/9/2018	0.20	75.00	15.00	Retrieve and review documents from Department of Natural Resources for potential exhibits at stay hearing.
Davenport, Aimee	Partner	7/9/2018	8.80	75.00	660.00	Witness preparation for Stay Hearing; Attend Stay Hearing.
Moderson, Matt	Associate	7/10/2018	0.40	75.00	30.00	Begin work on proposed findings of fact and conclusions of law, as required by the Commission at the conclusion of the hearing on Powell Gardens' motion for stay.
Moderson, Matt	Associate	7/10/2018	0.80	75.00	60.00	Conference with [redacted] and Ms. Davenport regarding motion for stay hearing.
Hatfield, Charles W	Partner	7/10/2018	0.80	75.00	60.00	Discuss initial outline of proposed findings with Mr. Moderson.
Davenport, Aimee	Partner	7/10/2018	1.90	75.00	142.50	Conference call with [redacted] and Mr. Moderson regarding hearing discussion; draft; conference call with [redacted] regarding the same, review new material regarding building construction sent by [redacted]; begin drafting proposed order.
Moderson, Matt	Associate	7/10/2018	1.20	75.00	90.00	Conference with Ms. Davenport regarding hearing; conference with Mr. Hatfield regarding hearing.

Moderson, Matt	Associate	7/11/2018	6.40	75.00	480.00	Prepare first version of Findings of Fact and Conclusion of Law, related to July 9, 2018 hearing on motion to stay.
Moderson, Matt	Associate	7/12/2018	0.80	75.00	60.00	Review Valley Oaks' response to motion for stay.
Moderson, Matt	Associate	7/12/2018	4.30	75.00	322.50	Revise proposed findings of fact and conclusions of law, related to July 9, 2018 hearing on motion to stay.
Davenport, Aimee	Partner	7/12/2018	2.90	75.00	217.50	Review and revise draft of Findings of Facts and Conclusions of Law.
Presley, Marsha	Paralegal	7/13/2018	1.60	75.00	120.00	Review file to determine exhibits utilized at the hearing; telephone call to Tiger Court Reporting to request copy of the hearing transcript in ASCII format; load transcript into TextMap; confer with Mr. Moderson, Ms. Davenport and Ms. Ryan regarding the transcript being loaded.
Moderson, Matt	Associate	7/13/2018	2.70	75.00	202.50	Revise findings of fact and conclusions of law, related to July 9, 2018 hearing on motion to stay.
Moderson, Matt	Associate	7/13/2018	1.00	75.00	75.00	Conference with [redacted] regarding his comments to proposed findings of fact and conclusions of law.
Davenport, Aimee	Partner	7/13/2018	2.20	75.00	165.00	Review Transcript of Hearing and make additional revisions to Findings of Facts and Conclusions of Law.
Presley, Marsha	Paralegal	7/16/2018	0.10	75.00	7.50	Confer with Ms. Davenport and Mr. Hatfield regarding Findings of Fact.
Moderson, Matt	Associate	7/16/2018	8.20	75.00	615.00	Review Volumes I and II of transcript from July 9, 2018 hearing; identify transcript citations and exhibits to support findings of fact; revise proposed findings of fact and conclusions of law; phone conference with [redacted] to discuss various matters related to proposed filing.
Davenport, Aimee	Partner	7/16/2018	1.20	75.00	90.00	Review and respond to emails from group regarding upcoming meeting and Stay. Powell Gardens (NPDES) – Review and Respond to ownership and control for land application purposes; follow up with [redacted] regarding the same.
Presley, Marsha	Paralegal	7/17/2018	0.10	75.00	7.50	Telephone call with Ms. Davenport regarding Findings of Fact submission.
Presley, Marsha	Paralegal	7/17/2018	0.20	75.00	15.00	Meet with Ms. Ryan regarding exhibits.
Presley, Marsha	Paralegal	7/17/2018	1.80	75.00	135.00	Revise Findings of Fact, prepare for filing and file; notify [redacted] and opposing counsel that the pleading was filed.
Moderson, Matt	Associate	7/17/2018	7.70	75.00	577.50	Revise findings of fact and conclusions of law related to July 9, 2018 hearing on motion to stay; confirm accuracy of all cited transcripts, exhibits, and legal references; work with Ms. Davenport and Mr. Hatfield to file final brief.
Hatfield, Charles W	Partner	7/17/2018	1.40	75.00	105.00	Confer with Ms. Davenport regarding proposed order; review and edit revisions; two calls with Mr. Moderson regarding edits.
Hatfield, Charles W	Partner	7/17/2018	0.60	75.00	45.00	Review joint proposed judgment from State and Valley Oaks.
Davenport, Aimee	Partner	7/17/2018	3.80	75.00	285.00	Final review and revisions made to Petitioners' Proposed Findings of Fact and Conclusions of Law.
Presley, Marsha	Paralegal	7/18/2018	0.10	75.00	7.50	Confer with Ms. Ryan regarding Findings of Fact.
Presley, Marsha	Paralegal	7/18/2018	0.40	75.00	30.00	Draft Amended Certificate of Service and file; email opposing counsel regarding filing.
Moderson, Matt	Associate	7/18/2018	2.20	75.00	165.00	Review Valley Oaks' and the Department's proposed findings of fact and conclusions of law; review legal authorities cited therein concerning [redacted]; conference with [redacted].
Davenport, Aimee	Partner	7/19/2018	2.40	75.00	180.00	Prepare, travel to/from, and attend meeting with [redacted] to review and discuss [redacted].
Presley, Marsha	Paralegal	7/20/2018	0.40	75.00	30.00	Review and revise amendment; confer with Mr. Hatfield; prepare amendment for electronic filing and file.
Moderson, Matt	Associate	7/20/2018	1.40	75.00	105.00	Conference with Ms. Davenport; prepare amendment to Powell Garden's proposed findings of fact and conclusions of law, to clarify [redacted].
Davenport, Aimee	Partner	7/20/2018	1.70	75.00	127.50	Amend Proposed Findings of Facts [redacted].
Presley, Marsha	Paralegal	7/23/2018	0.20	75.00	15.00	Confer with Ms. Ryan and Ms. Davenport regarding the proposed discovery; prepare materials for Ms. Davenport.

Davenport, Aimee	Partner	7/23/2018	3.50	75.00	262.50	Respond to Valley Oaks discovery requests.
Moderson, Matt	Associate	7/24/2018	0.90	75.00	67.50	Initial review of discovery requests served by Intervenors to Powell Gardens and the Deichs.
Davenport, Aimee	Partner	7/24/2018	1.20	75.00	90.00	Draft discovery to Valley Oaks.
Moderson, Matt	Associate	7/25/2018	0.80	75.00	60.00	Prepare memorandum regarding [redacted].
Moderson, Matt	Associate	7/25/2018	7.90	75.00	592.50	Review and analyze Intervenors' first requests for production, first set of interrogatories, and first requests for admission served to Ryan Deich, Elizabeth Deich, and Powell Gardens; draft responses and objections to said discovery requests; perform legal research to [redacted].
Moderson, Matt	Associate	7/26/2018	4.20	75.00	315.00	Prepare first set of interrogatories, requests for production, and request for entry upon land to be propounded to the Intervenors.
Moderson, Matt	Associate	7/26/2018	0.60	75.00	45.00	Review order granting Powell Gardens' motion for stay; conference with Ms. Davenport to discuss.
Moderson, Matt	Associate	7/27/2018	3.90	75.00	292.50	Phone conference with Mr. Hatfield to discuss discovery requests to Intervenors; revise first set of interrogatories, requests for production, and request for entry upon land, and oversee service of same on July 27, 2018; review correspondence from Commission, setting deadline of July 30, 2018 to respond to Intervenors' motion to shorten discovery.
Presley, Marsha	Paralegal	7/27/2018	0.10	75.00	7.50	Review letter regarding response to Intervenor's Motion to Shorten Time; confer with Mr. Hatfield and calendar.
Presley, Marsha	Paralegal	7/27/2018	0.10	75.00	7.50	Telephone call with Mr. Moderson regarding discovery.
Presley, Marsha	Paralegal	7/27/2018	0.90	75.00	67.50	Prepare certificate of service; prepare verification page; review discovery; telephone call with Mr. Moderson; prepare discovery in PDF; prepare certificate of service for electronic filing and file; email to opposing counsel.
Hatfield, Charles W	Partner	7/30/2018	0.90	75.00	67.50	Review discovery requests with Mr. Moderson; call with Valley Oaks attorney regarding expedited discovery.
Moderson, Matt	Associate	7/30/2018	0.40	75.00	30.00	Review legal authorities concerning the taking of expedited discovery.
Moderson, Matt	Associate	7/30/2018	0.40	75.00	30.00	Phone conference with [redacted] regarding [redacted].
Moderson, Matt	Associate	7/30/2018	0.60	75.00	45.00	Draft response to Intervenors' motion to shorten discovery.
Moderson, Matt	Associate	7/30/2018	1.40	75.00	105.00	Oversee filing of Petitioners' Response to Motion to Shorten Time to Respond to Discovery and Petitioners' Motion to Shorten Intervenors' Time to Respond to Discovery.
Moderson, Matt	Associate	7/31/2018	1.70	75.00	127.50	Conference with [redacted] to discuss [redacted] to Intervenors' first set of discovery requests.
Moderson, Matt	Associate	7/31/2018	0.30	75.00	22.50	Conference with Ms. Davenport regarding various discovery matters, including outgoing discovery to Powell Gardens.
Moderson, Matt	Associate	7/31/2018	0.80	75.00	60.00	Revise Powell Gardens' responses to Intervenors' discovery requests, [redacted].
Davenport, Aimee	Partner	7/31/2018	3.10	75.00	232.50	Prepare for an attend discovery conference call with [redacted] and Mr. Moderson; review and revise discovery responses.
Davenport, Aimee	Partner	8/1/2018	1.20	75.00	90.00	Prepare for and attend discovery conference with [redacted] and Mr. Moderson.
Davenport, Aimee	Partner	8/3/2018	1.50	75.00	112.50	Prepare for and attend conference call with [redacted] regarding scheduling site visit.
Moderson, Matt	Associate	8/5/2018	0.70	75.00	52.50	Phone conference with [redacted] to discuss discovery responses.
Davenport, Aimee	Partner	8/5/2018	2.70	75.00	202.50	Prepare discovery and participate in telephone conference with [redacted] to complete discovery.
Shanks, Brett A	Associate	8/6/2018	0.50	75.00	37.50	Attend and participate in conference to discuss case status and strategy.
Hatfield, Charles W	Partner	8/6/2018	1.80	75.00	135.00	Coordination call with [redacted]; review and finalize interrogatory responses.
Davenport, Aimee	Partner	8/6/2018	3.90	75.00	292.50	Finalize discovery responses to Intervenor Valley Oaks; review documents to be produced; draft correspondence to opposing counsel regarding the same.
Moderson, Matt	Associate	8/7/2018	0.20	75.00	15.00	Address various questions related to [redacted]; address various issues related to Elizabeth Deich's document production [redacted].

Davenport, Aimee	Partner	8/7/2018	3.80	75.00	285.00	Draft responses regarding Valley Oaks motion for protective order; draft witness outlines for upcoming hearing.
Shanks, Brett A	Associate	8/8/2018	0.70	75.00	52.50	Review Intervenors' motion to dismiss for lack of standing and suggestions in support in preparation of drafting response to same.
Davenport, Aimee	Partner	8/8/2018	2.20	75.00	165.00	Prepare for and attend conference call with [redacted]. Draft and revise response to Motion for Reconsider Stay.
Shanks, Brett A	Associate	8/8/2018	7.20	75.00	540.00	Draft framework for suggestions in opposition to Intervenors' motion to dismiss; draft suggestions in opposition to Intervenors' motion to amend answer to include a new affirmative defense; research Missouri statutory, administrative, and case law regarding: [redacted].
Moderson, Matt	Associate	8/9/2018	0.80	75.00	60.00	Finalize Petitioners' first production of documents.
Shanks, Brett A	Associate	8/9/2018	3.70	75.00	277.50	Draft substantive portions of Suggestions in Opposition to Intervenors' Motion for Leave and Motion to Dismiss; review and revise same based on comments from litigation team.
Moderson, Matt	Associate	8/9/2018	7.00	75.00	525.00	Review and prepare response to Intervenors' and Respondent's motion for reconsideration, including legal research to support opposition to same.
Moderson, Matt	Associate	8/10/2018	3.10	75.00	232.50	Finalize Petitioners' opposition to Respondent and Intervenors' motions to reconsider the Order to Stay by, inter alia, reviewing relevant pleadings, revising as necessary, and confirming accuracy of statements made therein.
Shanks, Brett A	Associate	8/10/2018	0.20	75.00	15.00	Incorporate Mr. Hatfield's edits into draft suggestions in opposition to motion to dismiss.
Davenport, Aimee	Partner	8/10/2018	1.80	75.00	135.00	Finalize response to Intervenor's Valley Oaks and Respondent Missouri Department of Natural Resources Motion to Reconsider.
Davenport, Aimee	Partner	8/10/2018	1.60	75.00	120.00	Finalize response to Intervenor's Valley Oaks Motion to Dismiss.
Presley, Marsha	Paralegal	8/13/2018	0.60	75.00	45.00	Confer with Mr. Hatfield regarding deposition of Corporate Representative and if protective order was filed in the Administrative Hearing Commission case; telephone call to Alaris to setup court reporter and confer with Ms. Cox regarding confirmation of conference room for deposition.
Presley, Marsha	Paralegal	8/14/2018	0.90	75.00	67.50	Telephone call with Ms. Davenport regarding status of case; prepare status [redacted]; review orders regarding deadlines for respond to Protective Order and Separate Hearing to notify Ms. Davenport; confer with Mr. Hatfield regarding canceling corporate designee deposition; contact Alaris to cancel court reporter.
Presley, Marsha	Paralegal	8/14/2018	0.10	75.00	7.50	Email to counsel postponing the Valley Oaks Corporate Designee deposition.
Moderson, Matt	Associate	8/14/2018	0.80	75.00	60.00	Review discovery responses served by Intervenors.
Moderson, Matt	Associate	8/14/2018	1.10	75.00	82.50	Prepare initial "Golden Rule" letter to Ms. Griffin regarding Intervenors' discovery responses.
Davenport, Aimee	Partner	8/14/2018	2.30	75.00	172.50	Review discovery responses submitted by Valley Oaks; draft reply.
Moderson, Matt	Associate	8/15/2018	1.50	75.00	112.50	Prepare first draft of Petitioners' opposition to motion for protective order (related to deposition of Valley Oaks).
Shanks, Brett A	Associate	8/15/2018	0.50	75.00	37.50	Attend and participate in team conference call to discuss [redacted].
Shanks, Brett A	Associate	8/15/2018	1.60	75.00	120.00	Draft suggestions in opposition to Intervenors' motion to bifurcate Commission hearing; research statute/administrative law in support of the same.
Presley, Marsha	Paralegal	8/16/2018	0.50	75.00	37.50	Review and prepare for electronic filing response to motion for protective order; confer with Ms. Davenport and Mr. Moderson regarding filing.
Presley, Marsha	Paralegal	8/16/2018	0.70	75.00	52.50	Review and revise opposition for separate trials; prepare for electronic filing and file; send email to opposing counsel; confer with Ms. Ryan regarding [redacted].
Moderson, Matt	Associate	8/16/2018	1.30	75.00	97.50	Finalize Powell Gardens' opposition to Intervenors' motion for protective order.
Shanks, Brett A	Associate	8/16/2018	0.30	75.00	22.50	Incorporate litigation team's suggestions in Opposition to Motion for Separate Commission hearings.
Davenport, Aimee	Partner	8/16/2018	1.80	75.00	135.00	Draft and revise pleadings in response to Valley Oaks pending motions; conference call with [redacted] to prepare for upcoming hearing.

Presley, Marsha	Paralegal	8/17/2018	0.40	75.00	30.00	Confer with Ms. Cusimano and send FTP link to Ms. Weber; review and file designation of record; email notification to counsel; confer with Ms. Cox regarding mailing copies to opposing party.
Presley, Marsha	Paralegal	8/17/2018	0.20	75.00	15.00	Confer with Ms. Davenport, review and provide regulations.
Moderson, Matt	Associate	8/17/2018	0.30	75.00	22.50	Prepare record designation.
Davenport, Aimee	Partner	8/17/2018	4.10	75.00	307.50	Prepare for and attend conference call with [redacted] regarding [redacted]; receive and review affidavits and documents filed by Valley Oaks; begin drafting objections to affidavits for filing; draft pleading designating record for hearing; review regulations regarding the same.
Davenport, Aimee	Partner	8/18/2018	1.10	75.00	82.50	Prepare witness outlines.
Moderson, Matt	Associate	8/20/2018	2.30	75.00	172.50	Review correspondence from Ms. Griffin regarding discovery responses and prepare detailed letter response.
Moderson, Matt	Associate	8/20/2018	0.70	75.00	52.50	Review affidavits served by Intervenors on Friday, August 17, 2018.
Moderson, Matt	Associate	8/20/2018	0.40	75.00	30.00	Perform legal research to support objections to affidavits filed by Intervenors.
Presley, Marsha	Paralegal	8/20/2018	0.50	75.00	37.50	Review and revise suggestions in support of Lone Jack; prepare for electronic filing and file; confer with Ms. Ryan regarding mailing to counsel; email notification to counsel.
Shanks, Brett A	Associate	8/20/2018	0.30	75.00	22.50	Review motions to reschedule merits hearing and for contempt; communication regarding same with Ms. Davenport.
Shanks, Brett A	Associate	8/20/2018	2.20	75.00	165.00	Draft motion to amend pleadings and suggestions in support of Lone Jack's motion to reschedule hearing; communication with Ms. Davenport regarding the same.
Davenport, Aimee	Partner	8/20/2018	5.10	75.00	382.50	Review and draft of Discovery for Powell Gardens and Ryan and Elizabeth Deich for submission to opposing counsel.
Presley, Marsha	Paralegal	8/21/2018	0.20	75.00	15.00	Confer with Mr. Hatfield regarding Intervenor's response to Plaintiff's' suggestions and circulate; confer with Ms. Ryan regarding hearing.
Moderson, Matt	Associate	8/21/2018	2.30	75.00	172.50	Prepare objections to affidavits filed by Intervenors on Aug. 17, 2018.
Moderson, Matt	Associate	8/21/2018	0.40	75.00	30.00	Conference call with [redacted] regarding scope of testimony.
Moderson, Matt	Associate	8/21/2018	0.80	75.00	60.00	Tend to various case issues.
Hatfield, Charles W	Partner	8/21/2018	0.90	75.00	67.50	Prepare for AHC hearing.
Presley, Marsha	Paralegal	8/22/2018	0.90	75.00	67.50	Review and revise Objections to Affidavits for Mr. Flick, Ms. Kempker and Ms. Markley; review discovery responses and prepare exhibits; confer with Mr. Moderson.
Moderson, Matt	Associate	8/22/2018	4.20	75.00	315.00	Prepare supplemental discovery responses, finalizing objections to affidavits reviewing new orders from the AHC and responding accordingly, and overseeing new document production.
Moderson, Matt	Associate	8/22/2018	2.50	75.00	187.50	Identify relevant exhibits for merits hearing.
Moderson, Matt	Associate	8/22/2018	0.70	75.00	52.50	Detailed analysis of records attached to affidavits.
Davenport, Aimee	Partner	8/22/2018	1.50	75.00	112.50	Prepare for and attend the [redacted]
Hatfield, Charles W	Partner	8/22/2018	0.70	75.00	52.50	Review and comment on suggestions in opposition to transfer.
Moderson, Matt	Associate	8/22/2018	0.90	75.00	67.50	Prepare supplemental discovery responses of Petitioners.
Presley, Marsha	Paralegal	8/23/2018	2.20	75.00	165.00	Revise discovery responses; prepare certificate of services; research information for hearing for Ms. Davenport; electronically file certificate of service and send to parties; confer with Mr. Moderson regarding trial exhibits.
Moderson, Matt	Associate	8/23/2018	2.30	75.00	172.50	Multiple conference calls with [redacted], to prepare for hearing.
Moderson, Matt	Associate	8/23/2018	7.20	75.00	540.00	Prepare and revise examination outlines of Mr. Splichal and Mr. Sweeten.
Presley, Marsha	Paralegal	8/24/2018	1.20	75.00	90.00	Prepare exhibits to file with the Amended Petition; confer with Mr. Moderson regarding the Amended Petition and Objections to Affidavits; prepare for electronic filing and file; send to counsel; confer with Ms. Ryan to send paper copies to counsel.
Presley, Marsha	Paralegal	8/24/2018	9.70	75.00	727.50	Prepare exhibits; revise outlines; confer with Ms. Davenport, Mr. Moderson, Mr. Hatfield and Ms. Ryan regarding trial preparation and exhibits; prepare exhibit index.

Moderson, Matt	Associate	8/24/2018	8.50	75.00	637.50	Prepare for hearing by, among other things, finalizing deposition outlines, overseeing preparation of exhibits, reviewing new filings served by Intervenors, reviewing Intervenors' supplemental discovery responses, performing research and gathering cross-examination materials on Intervenors' designated experts, and otherwise.
Hatfield, Charles W	Partner	8/24/2018	2.20	75.00	165.00	Prepare for hearing with Ms. Davenport.
Davenport, Aimee	Partner	8/24/2018	6.10	75.00	457.50	Prepare for AHC hearing; prepare expert cross-examination outlines; draft Motion to Intervene in Cole County.
Presley, Marsha	Paralegal	8/25/2018	0.70	75.00	52.50	Prepare additional exhibits and revise exhibit list.
Presley, Marsha	Paralegal	8/26/2018	2.80	75.00	210.00	Prepare additional exhibits; update exhibit index; confer with Mr. Hatfield and Mr. Moderson.
Hatfield, Charles W	Partner	8/26/2018	0.70	75.00	52.50	Review and comment on suggestions in opposition to motion for stay.
Moderson, Matt	Associate	8/26/2018	7.50	75.00	562.50	Prepare for merits hearing on August 27-28, 2018.
Presley, Marsha	Paralegal	8/27/2018	2.30	75.00	172.50	Prepare additional exhibits and demonstrative exhibits; confer with Mr. Moderson and Mr. Hatfield on final trial preparation; telephone call from Mr. Hatfield and travel to hearing with materials requested.
Presley, Marsha	Paralegal	8/27/2018	1.90	75.00	142.50	Review answers from intervenors, prepare for electronic filing and file; prepare exhibits for motion to intervene and electronically file.
Davenport, Aimee	Partner	8/27/2018	12.10	75.00	907.50	Prepare for and attend AHC trial; [redacted].
Hatfield, Charles W	Partner	8/27/2018	13.50	75.00	1,012.50	Prepare for and attend Day 1 of permit appeal (witnesses Caldwell, Sweeten and Aley); [redacted].
Presley, Marsha	Paralegal	8/28/2018	1.10	75.00	82.50	Meet with Mr. Moderson and prepare additional exhibits for hearing.
Presley, Marsha	Paralegal	8/28/2018	0.80	75.00	60.00	Confer with Mr. Hatfield regarding notice of hearing in Cole County matter; draft notice of hearing; telephone call to Ms. Walters regarding early hearing date than law day; email counsel regarding conversation with Ms. Walters.
Davenport, Aimee	Partner	8/28/2018	11.30	75.00	847.50	Prepare for and attend AHC trial; [redacted].
Hatfield, Charles W	Partner	8/28/2018	4.20	75.00	315.00	Prepare for and participate in Day 2 of hearing; call with Mr. Moderson to outline expert cross.
Moderson, Matt	Associate	8/29/2018	2.50	75.00	187.50	Address various follow-up issues resulting from hearing on August 27-28, 2018, including [redacted].
Davenport, Aimee	Partner	8/29/2018	2.20	75.00	165.00	Draft summary of proceedings [redacted].
Presley, Marsha	Paralegal	9/5/2018	1.10	75.00	82.50	Review email from State regarding notice to court; revise request; meet with Ms. Davenport; revise proposed order; prepare request and order for electronic filing and file; confer with Ms. Davenport regarding due dates of finding of facts; telephone call to Tiger Court Reporter to get ASCII copy of transcripts; load transcript.
Presley, Marsha	Paralegal	9/6/2018	0.20	75.00	15.00	Confer with Ms. Ryan regarding transcripts and case; confer with Mr. Moderson regarding deadlines.
Moderson, Matt	Associate	9/13/2018	3.20	75.00	240.00	Review Volume 1 of transcript from August 27-28, 2018 hearing and excerpt key sections for findings of fact [redacted].
Moderson, Matt	Associate	9/14/2018	4.40	75.00	330.00	Review Volume 2 and part of Volume 3 of transcript from August 27-28, 2018 hearing, and excerpt relevant portions for findings of fact [redacted].
Moderson, Matt	Associate	9/17/2018	2.20	75.00	165.00	Review Volume 3 of transcript from hearing on August 27-28, 2018, and excerpt relevant portions for findings of fact [redacted].
Davenport, Aimee	Partner	9/17/2018	2.80	75.00	210.00	Revise Statement of Facts; draft conclusions of law regarding nutrient management.
Moderson, Matt	Associate	9/18/2018	1.40	75.00	105.00	Review transcript from AHC hearing on August 27-28, 2018 and identify key excerpts for findings of fact [redacted].
Davenport, Aimee	Partner	9/19/2018	2.10	75.00	157.50	Analyze findings of fact and conclusions of law filed by Valley Oaks, prepare response for filing.
Davenport, Aimee	Partner	9/20/2018	2.50	75.00	187.50	Analyze findings of fact and conclusions of law filed by Attorney General's Office, prepare response for filing.
Moderson, Matt	Associate	9/21/2018	5.60	75.00	420.00	Analyze proposed findings of fact filed by DNR and Intervenors; prepare initial outline of response to same.

Davenport, Aimee	Partner	9/24/2018	1.70	75.00	127.50	Perform case law research regarding [redacted].
Shanks, Brett A	Associate	9/25/2018	1.00	75.00	75.00	Attend and participate in [redacted] call to discuss [redacted].
Moderson, Matt	Associate	9/25/2018	5.90	75.00	442.50	Begin drafting proposed findings of fact and conclusions of law.
Moderson, Matt	Associate	9/27/2018	3.30	75.00	247.50	Continue drafting findings of fact and conclusions of law.
Davenport, Aimee	Partner	9/27/2018	2.90	75.00	217.50	Draft findings of fact and conclusions of law.
Moderson, Matt	Associate	9/30/2018	2.30	75.00	172.50	Continue drafting proposed recommended decision.
Moderson, Matt	Associate	10/1/2018	11.30	75.00	847.50	Continue drafting proposed recommended decision.
Davenport, Aimee	Partner	10/1/2018	1.90	75.00	142.50	Perform research regarding [redacted].
Moderson, Matt	Associate	10/2/2018	8.10	75.00	607.50	Revise proposed recommended decision.
Moderson, Matt	Associate	10/3/2018	0.30	75.00	22.50	Phone conference with [redacted] to discuss proposed findings of fact; [redacted] revisions.
Moderson, Matt	Associate	10/3/2018	8.30	75.00	622.50	Revise proposed recommended decision to include, inter alia, citations to record and related arguments.
Davenport, Aimee	Partner	10/3/2018	3.20	75.00	240.00	Draft and revise additional Conclusions of Law.
Moderson, Matt	Associate	10/4/2018	10.20	75.00	765.00	Revise proposed recommended decision.
Davenport, Aimee	Partner	10/4/2018	3.30	75.00	247.50	Revise Findings of Fact and Conclusions of Law.
Moderson, Matt	Associate	10/5/2018	5.90	75.00	442.50	Finalize proposed recommended decision, and oversee timely filing of same.
Presley, Marsha	Paralegal	10/5/2018	4.20	75.00	315.00	Review transcripts and exhibits, revise proposed recommended decision; confer with Ms. Davenport and Mr. Moderson; electronically file recommended decision and email to opposing counsel [redacted].
Hatfield, Charles W	Partner	10/5/2018	1.60	75.00	120.00	Edit proposed findings of fact; calls with Ms. Davenport and Mr. Moderson.
Davenport, Aimee	Partner	10/5/2018	2.10	75.00	157.50	Final edits and revisions to Petitioners Proposed Findings of Fact for filing with AHC.
Davenport, Aimee	Partner	10/8/2018	0.90	75.00	67.50	Draft [redacted] summary for [redacted].
Presley, Marsha	Paralegal	10/9/2018	0.50	75.00	37.50	Continue review of Lone Jack Neighbors' Facebook page and update spreadsheet.
Hatfield, Charles W	Partner	10/9/2018	1.30	75.00	97.50	Strategy call with [redacted].
Moderson, Matt	Associate	10/10/2018	0.70	75.00	52.50	Review and comment on proposed orders filed by Valley Oaks and MoDNR.
Davenport, Aimee	Partner	10/10/2018	1.00	75.00	75.00	Review Valley Oaks Rebuttal to Proposed Finding of Fact/Conclusions of Law, Note areas of disagreement.
Hatfield, Charles W	Partner	10/16/2018	1.30	75.00	97.50	Call with team; review and comment on draft pleadings for Reply brief.
Presley, Marsha	Paralegal	10/19/2018	0.10	75.00	7.50	Confer with Mr. Moderson regarding case status.
Presley, Marsha	Paralegal	10/22/2018	0.10	75.00	7.50	Confer with Mr. Moderson regarding status of case.
Presley, Marsha	Paralegal	10/23/2018	0.30	75.00	22.50	Review order; [redacted]; upload documents into Google Drive.
Hatfield, Charles W	Partner	10/23/2018	0.60	75.00	45.00	Review order from Administrative Hearing Commission; calls with Ms. Davenport and Mr. Moderson regarding same.
Moderson, Matt	Associate	10/23/2018	2.30	75.00	172.50	Analyze the Administrative Hearing Commission's recommended decision of October 23, 2018, and prepare [redacted].
Davenport, Aimee	Partner	10/24/2018	1.50	75.00	112.50	Review Administrative Hearing Commission decision; draft [redacted].
Hatfield, Charles W	Partner	11/3/2018	0.20	75.00	15.00	Ms. Davenport regarding Commission meeting and outline of presentation.
Presley, Marsha	Paralegal	11/13/2018	0.60	75.00	45.00	Conference with Ms. Davenport regarding letter sent to residents near Valley Oaks; search Department of Natural Resources' website for any application.
Presley, Marsha	Paralegal	11/29/2018	0.30	75.00	22.50	Email with [redacted] regarding hearing on December 10.
Hatfield, Charles W	Partner	12/3/2018	0.80	75.00	60.00	Conference with Ms. Davenport regarding CWC exhibits and outline for presentation; review transcripts and exhibits to prepare.
Presley, Marsha	Paralegal	12/5/2018	0.30	75.00	22.50	Meet with Ms. Davenport regarding preparation for Clean Water Commission meeting; conference with Ms. Page regarding preparing documents for meeting.
Presley, Marsha	Paralegal	12/6/2018	1.90	75.00	142.50	Telephone call with Ms. Davenport regarding preparing for Clean Water Commission Hearing; confer with Ms. Page regarding preparing notebooks for hearing; preparing materials for hearing.

Davenport, Aimee	Partner	12/6/2018	5.50	75.00	412.50	Prepare presentation and exhibits for upcoming Clean Water Commission hearing.
Moderson, Matt	Associate	12/6/2018	3.20	75.00	240.00	Perform legal research [redacted] and otherwise assist as necessary with preparations for Clean Water Commission hearing.
Presley, Marsha	Paralegal	12/7/2018	5.30	75.00	397.50	Download complaints submitted to the Department of Natural Resources from sunshine request; prepare materials for hearing; phone calls with Mr. Moderson; meeting with Ms. Davenport and Mr. Hatfield.
Moderson, Matt	Associate	12/7/2018	3.80	75.00	285.00	Assist with preparing for Clean Water Commission hearing, including by gathering relevant legal authorities and revising PowerPoint presentation.
Hatfield, Charles W	Partner	12/7/2018	1.80	75.00	135.00	Review and edit powerpoint and related documents for CWC meeting; general preparation for meeting.
Hatfield, Charles W	Partner	12/7/2018	0.70	75.00	52.50	Call with [redacted].
Davenport, Aimee	Partner	12/7/2018	4.00	75.00	300.00	Prepare presentation and exhibits for upcoming Clean Water Commission hearing.
Presley, Marsha	Paralegal	12/9/2018	0.50	75.00	37.50	Update materials for hearing before the Water Commission.
Presley, Marsha	Paralegal	12/10/2018	1.20	75.00	90.00	Last minute revisions and preparation for hearing before the Clean Water Commission; email from Ms. Davenport regarding needing materials while at hearing; send materials; meet with Ms. Davenport and Mr. Hatfield after Clean Water Commission hearing regarding [redacted].
Moderson, Matt	Associate	12/10/2018	1.60	75.00	120.00	Assist with various issues related to Clean Water Commission hearing, including pulling legal authorities and other documents as necessary.
Hatfield, Charles W	Partner	12/10/2018	6.20	75.00	465.00	Prepare for and attend CWC meeting; obtain revocation of permit; related [redacted].
Davenport, Aimee	Partner	12/10/2018	8.00	75.00	600.00	Prepare for and attend Clean Water Commission hearing on appeal; draft correspondence [redacted]; correspondence with various media outlets regarding the same.
			541.50		**40,612.50**	

Exhibit G

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

POWELL GARDENS, INC., *et al.*	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 18-0501
	)	
MISSOURI DEPARTMENT OF NATURAL RESOURCES,	)	
	)	
Respondent.	)	

Document Number	Date	Matter ID	Type	Event Notes	Action
69888	6/27/2018	18-0501	Complaint	Complaint	Preview document
69889	6/27/2018	18-0501	PDF Copy	Motion for stay with Exhibits A - G	Preview document
69897	6/27/2018	18-0501	Hearing Notice - DNR Non-Applicant	Hearing Notice - DNR Non-Applicant	Preview document
70044	7/3/2018	18-0501	PDF Copy	Motion to intervene filed by Valley Oaks Real Estate and Countryclub	Preview document
70045	7/3/2018	18-0501	PDF Copy	Intervenors' answer to petition for appeal	Preview document
70075	7/5/2018	18-0501	Order - General	Order - grant motion to intervene	Preview document
70362	7/9/2018	18-0501	PDF Copy	Resp. Exhibit B Supporting Documentation	Preview document
70363	7/9/2018	18-0501	PDF Copy	Resp. Exhibit C Comments from Neighbor Notice	Preview document
70401	7/9/2018	18-0501	PDF Copy	Intervenors' Suggestions in Opposition to Motion for Stay	Preview document
70446	7/10/2018	18-0501	PDF Copy	Resp. Ex. A	

70447	7/10/2018	18-0501	PDF Copy	Resp. Ex. D	Preview document
70448	7/10/2018	18-0501	PDF Copy	Resp. Ex. E	Preview document
70449	7/10/2018	18-0501	PDF Copy	Resp. Ex. G	Preview document
70450	7/10/2018	18-0501	PDF Copy	Resp. Ex. H	Preview document
70451	7/10/2018	18-0501	PDF Copy	Resp. Ex. I	Preview document
70452	7/10/2018	18-0501	PDF Copy	Resp. Ex. J	Preview document
70512	7/10/2018	18-0501	Briefing Schedule	Briefing schedule on mtn for stay	Preview document
70843	7/17/2018	18-0501	PDF Copy	Respondent and Intervenor's Proposed Decision on Motion for Stay	Preview document
70849	7/18/2018	18-0501	PDF Copy	Certificate of Service filed by Respondent	Preview document
70850	7/18/2018	18-0501	PDF Copy	Petitioners' proposed findings of fact and conclusions of law on	Preview document
70919	7/19/2018	18-0501	PDF Copy	Amended Certificate of Service filed by Petitioner	Preview document
70984	7/19/2018	18-0501	PDF Copy	Reply to Petitioner's Response to Respondent and Intervenor's	Preview document
70986	7/19/2018	18-0501	PDF Copy	Certificate of Service Filed by Respondent that Reply to Petitioner's	Preview document
71031	7/20/2018	18-0501	PDF Copy	Amended Proposed Findings of Fact and Conclusions of Law filed by	Preview document
71034	7/20/2018	18-0501	PDF Copy	Motion to Shorten Deadline to Respond to Discovery Filed	Preview document

71035	7/20/2018	18-0501	PDF Copy	Certificate of Service Filed	Preview document
71281	7/26/2018	18-0501	Order	Order granting mtn for stay	Preview document
71288	7/27/2018	18-0501	Objection Letter	Objection Letter to Petitioner on mtn to shorten deadline to respond	Preview document
71338	7/27/2018	18-0501	PDF Copy	Certificate of Service	Preview document
71400	7/30/2018	18-0501	PDF Copy	Petitioner's Response to Intervenors' Motion to Shorten Deadline to	Preview document
71401	7/31/2018	18-0501	PDF Copy	Consent Motion to Shorten Deadline for Intervenors to Respond to	Preview document
71402	7/31/2018	18-0501	Order - General	Order granting Intervenors' motion to shorten time to respond to	Preview document
71581	8/2/2018	18-0501	PDF Copy	Entry of appearance for Respondent	Preview document
71623	8/3/2018	18-0501	PDF Copy	Respondent's Answer	Preview document
71628	8/3/2018	18-0501	Order - Grant Motion to File Answ. Out of Time	Order - Grant Motion to File Answer Out of Time	Preview document
71701	8/3/2018	18-0501	PDF Copy	Respondent's Motion to File Answer out of Time	Preview document
71731	8/7/2018	18-0501	PDF Copy	Respondent's Motion to Reconsider Stay Order	Preview document
71732	8/7/2018	18-0501	PDF Copy	Petitioner's Certificate of Service	Preview document

71739	8/7/2018	18-0501	Objection Letter	Objection letter to Petitioners on mtn to reconsider stay order	Preview document
71847	8/7/2018	18-0501	PDF Copy	Intervenor's Motion to Reconsider order Granting Stay	Preview document
71854	8/7/2018	18-0501	PDF Copy	Intervenor's motion for leave to file Amended Answer	Preview document
71855	8/7/2018	18-0501	PDF Copy	Intervenor's amended answer exhibit 1	Preview document
71856	8/7/2018	18-0501	PDF Copy	Intervenor's Motion for Leave, to Dismiss and Suggestions in Support	Preview document
71888	8/8/2018	18-0501	Objection Letter	Objection Letter to Petitioners on Intervenors' mtn to dismiss	Preview document
71898	8/7/2018	18-0501	PDF Copy	Notice of Video Deposition with Exhibit A	Preview document
71926	8/8/2018	18-0501	Order - General	Order - Intervenors' amended answer is filed 8/7/18	Preview document
72069	8/10/2018	18-0501	Order - General	Order - Rescheduled hearing for two days with case no. 18-0498,	Preview document
72080	8/10/2018	18-0501	PDF Copy	Petitioner's Suggestions in Opposition to Intervenors Motion for	Preview document

72092	8/10/2018	18-0501	PDF Copy	Petitioners Suggestions in Opposition to Response to Motions to	Preview document
72176	8/13/2018	18-0501	PDF Copy	Certificate of Service	Preview document
72194	8/14/2018	18-0501	PDF Copy	Intervenor's Motion for Protective Order	Preview document
72200	8/14/2018	18-0501	PDF Copy	Intervenor's Motion to Hold Separate Hearing	Preview document
72202	8/14/2018	18-0501	Objection Letter	Objection letter to Petitioner on mtn for protective order	Preview document
72206	8/14/2018	18-0501	Objection Letter	Objection Letter to Pet and Resp on mtn to hold separate hearings	Preview document
72217	8/14/2018	18-0501	Order	Order on reconsideration of stay order	Preview document
72218	8/14/2018	18-0501	Order	Order denying Intervenors' mtn to dismiss	Preview document
72223	8/14/2018	18-0501	Order	Order on motion for contempt	Preview document
72380	8/16/2018	18-0501	PDF Copy	Petitioner's Suggestions in Opposition to Intervenors' Mtn to Hold	Preview document
72383	8/16/2018	18-0501	PDF Copy	Petitioner's Response to Intervenors' Mtn for PO and or Ps' Mtn to	Preview document
72384	8/16/2018	18-0501	PDF Copy	Powell Exh A	Preview document
72385	8/16/2018	18-0501	PDF Copy	Powell Exh B	Preview document
72386	8/16/2018	18-0501	PDF Copy	Powell Exh C	Preview document

72411	8/16/2018	18-0501	PDF Copy	Interventor's Further Suggestion in Sopport of Motion for Protective	Preview document
72412	8/16/2018	18-0501	PDF Copy	exhibit 1	Preview document
72413	8/16/2018	18-0501	PDF Copy	exhibit 2	Preview document
72428	8/16/2018	18-0501	PDF Copy	Intervenor's Appeal Withdrawal	Preview document
72493	8/17/2018	18-0501	PDF Copy	Intervenor's affidavit of flick	Preview document
72494	8/17/2018	18-0501	PDF Copy	Intervenor's affidavit of kempker	Preview document
72495	8/17/2018	18-0501	PDF Copy	Intervenor's affidavit of kstate	Preview document
72496	8/17/2018	18-0501	PDF Copy	Intervenor's records designation	Preview document
72510	8/17/2018	18-0501	PDF Copy	Petitioner's Record Designaton for Hearing on the Merits	Preview document
72576	8/20/2018	18-0501	PDF Copy	Petitioner's Suggestions in Support of the Lone Jack Neighbors'	Preview document
73116	8/21/2018	18-0501	PDF Copy	Intervenor's Response to Petitioner's Suggestion in Support of	Preview document
73151	8/22/2018	18-0501	Order	Order granting leave to amend complaints; denying motion to	Preview document
73186	8/22/2018	18-0501	Order	Order denying Intervenors' motion for protective order	Preview document

73237	8/23/2018	18-0501	PDF Copy	Petitioner's Certificate of Sercive	Preview document
73279	8/23/2018	18-0501	PDF Copy	Certificate of Service filed that a copy of Intervenors' Countryclub	Preview document
73326	8/24/2018	18-0501	PDF Copy	Exhibit A Permit	Preview document
73327	8/24/2018	18-0501	PDF Copy	Exhibit B Amended Form W	Preview document
73328	8/24/2018	18-0501	PDF Copy	Exhibit C Modified Permit	Preview document
73329	8/24/2018	18-0501	PDF Copy	Powell First Amended Petition for Appeal - Copy	Preview document
73330	8/24/2018	18-0501	PDF Copy	Petitioner's Objection to Kempker Affidavit	Preview document
73331	8/24/2018	18-0501	PDF Copy	Petitioner's Objection Flick Affidavit	Preview document
73332	8/24/2018	18-0501	PDF Copy	Petitioners Objection to Tara Markley Affidavit and Records	Preview document
73336	8/24/2018	18-0501	PDF Copy	Intervenors' Motion to Strike/and Object to Portions of the Stay	Preview document
73337	8/24/2018	18-0501	PDF Copy	Intervenors Supplemental Record Designation for Hearing on the Merits	Preview document
73340	8/24/2018	18-0501	PDF Copy	Motion and Suggestions in Support of Motions in Limine	Preview document

73345	8/27/2018	18-0501	PDF Copy	Intervenors' Answer And Motion to Strike First Amended Petition	Preview document
73500	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit A	Preview document
73503	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit B2	Preview document
73504	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit D	Preview document
73507	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit E	Preview document
73508	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit F	Preview document
73513	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit G	Preview document
73514	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit H	Preview document
73517	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit I	Preview document
73518	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit J	Preview document
73521	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit K	Preview document
73523	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit P	Preview document
73526	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit Q	Preview document
73527	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit R	Preview document
73529	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit S	Preview document
73532	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit T	Preview document
73535	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit U	Preview document
73536	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit V	Preview document
73539	8/29/2018	18-0501	PDF Copy	Respondent's Exhibit W	Preview document
73543	7/9/2018	18-0501	PDF Copy	Respondent's Exhibit B	Preview document

73544	7/6/2018	18-0501	PDF Copy	Respondent's Exhibit C	Preview document
73547	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1010	Preview document
73548	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1009	Preview document
73551	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1008	Preview document
73552	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1007	Preview document
73553	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1006	Preview document
73557	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1005	Preview document
73558	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1004B	Preview document
73561	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1004A	Preview document
73563	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1003A	Preview document
73564	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1002B	Preview document
73567	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1002A	Preview document
73568	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1001	Preview document
73571	8/29/2018	18-0501	PDF Copy	Intervenor's Exhibit 1000	Preview document
73573	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 260	Preview document
73574	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 252	Preview document
73576	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 250	Preview document
73577	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 246	Preview document
73578	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 238	Preview document
73579	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 217	Preview document
73580	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 215	Preview document
73581	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 213	Preview document

73582	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 207	Preview document
73583	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 208	Preview document
73584	8/29/2018	18-0501	PDF Copy	Petitioner's's Exhibit 202	Preview document
73981	9/5/2018	18-0501	Briefing Schedule	Briefing Schedule	Preview document
74972	9/21/2018	18-0501	PDF Copy	Intervenor's brief	Preview document
74976	9/20/2018	18-0501	PDF Copy	Respondent's brief	Preview document
74999	9/21/2018	18-0501	PDF Copy	Intervenor's certificate of service	Preview document
75951	10/5/2018	18-0501	PDF Copy	Petitioner's Proposed Recommended Decision	Preview document
76129	10/10/2018	18-0501	PDF Copy	Intervenors' Amended Brief	Preview document
76130	10/10/2018	18-0501	PDF Copy	Respondent's Reply Brief	Preview document
76980	10/23/2018	18-0501	Decision	Recommended Decision issued (e-m)	Preview document
77279	10/29/2018	18-0501	Certified to the Board	Certified to the Board	Preview document

BEFORE THE
CLEAN WATER COMMISSION
STATE OF MISSOURI

	)	
IN RE: COUNTRY CLUB HOMES, LLC	)	
Permit No. MOG010872	)	Case No. 18-0501
	)	

PETITIONERS' SUPPLEMENTAL
APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

On February 6, 2019, Petitioners Ryan and Elizabeth Deich ("Petitioners") submitted an application for $40,612.50 of attorneys' fees incurred in the above-referenced action. Today, Petitioners submit a supplemental application for an additional $31,302.38 of attorneys' fees and expert witness costs incurred in this matter. This additional figure consists of: (1) $23,727.38 of expert witness fees incurred during the underlying appeal; and (2) $7,575.00 of attorneys' fees incurred to defend the Clean Water Commission's decision at the Court of Appeals for the Western District of Missouri. Altogether, Petitioners seek **$71,914.88** from the Clean Water Commission. Petitioners request that the Clean Water Commission take up this request at its earliest opportunity, as directed by the Court of Appeals.

I. STATEMENT OF ADDITIONAL FACTS

A. Petitioners' expert witnesses were necessary to identify, develop, and prove that Valley Oaks did not meet the Department's permitting requirements.

1. Petitioners filed the above-referenced appeal on June 27, 2018. The appeal challenged the Missouri Department of Natural Resources' ("Department") decision to issue a Class IB Concentrated Animal Feeding Operation permit for the facility known as Valley Oaks.

2. Petitioners alleged that the Department should not have issued the permit because the entity to which it was issued – "Country Club Homes, LLC" – did not exist. Petitioners also

alleged that the Department erred because, among other reasons, Valley Oaks did not have adequate manure storage or a compliant nutrient management plan.

3. Petitioners relied on two experts to identify, develop, and prove their arguments to the Administrative Hearing Commission ("AHC").

4. Petitioners' first expert, Patrick Splichal of SES, Inc. ("Splichal"), reviewed the permitting materials, identified deficiencies in the facility's manure storage and nutrient management plan, and opined that the permit application did not comply with Department regulations. Splichal consulted during the action and testified in person at the July 9, 2018 hearing on Petitioners' motion to stay the permit and the August 28, 2018 merits hearing.

5. Splichal, together with consultants working at his direction, worked 132 hours on this matter. Splichal's fees and related expenses are $16,468.01. A true and accurate copy of Splichal's invoices are attached hereto and incorporated herein as **Exhibit A**.

6. Petitioners' second expert, John M. Sweeten, Ph.D. ("Sweeten"), reviewed the permitting materials, studied Valley Oaks' facility, and opined as to why the facility's manure storage and nutrient management plans were not feasible or in compliance with Department regulations. Sweeten consulted on the action and testified in person at the August 28, 2018 merits hearing.

7. Sweeten worked 53 hours on this matter. Sweeten's fees and related expenses (*e.g.*, travel, lodging, etc.) are $7,259.37. A true and accurate copy of Sweeten's invoice is attached hereto and incorporated herein as **Exhibit B**.

8. Petitioners seek reimbursement of the fees incurred by Splichal and Sweeten, which together total **$23,727.38**. In the opinion and experience of the undersigned counsel, those fees are reasonable as compared to prevailing market rates for the kind and quality of services

furnished. Splichal and Sweeten's work was necessary for the successful preparation of Petitioners' case.

B. <u>Petitioners successfully defended the CWC's determination in a proceeding at the Court of Appeals for the Western District of Missouri.</u>

9. On January 18, 2019, Countryclub Homes, LLC and Valley Oaks Real Estate, LLC ("Valley Oaks") filed a Petition for Review at the Court of Appeals for the Western District of Missouri against the Department and the CWC. *See Countryclub Homes, LLC, et al. v. Missouri Dept. of Resources, et al.*, Case Nos. WD82476 and WD82477. The petition challenged the CWC's decision to revoke the permit and sought an order from the Court of Appeals ordering the Department to reinstate the permit.

10. Both the Department and the CWC chose not to file briefs in the appeals, even though as respondents they were entitled to do so. *See* **<u>Exhibit C</u>** (Feb. 20, 2019 Ltr. from S. Bligh); and **<u>Exhibit D</u>** (May 30, 2019 Letter from T. Duggan). Because the Department and CWC abdicated their duties to defend their decision, Petitioners were forced to intervene and do so themselves.

11. Petitioners filed a motion to intervene on June 6, 2019. *See* **<u>Exhibit E</u>**. The motion explained that, because the Department and CWC decided not to participate in the briefing, "it is up to the [Petitioners] to defend the decision entered in their favor." *Id.* at 2. The Court granted the motion.

12. Petitioners participated in the appeal by, among other things, filing a response to Valley Oaks' seventy-five page brief, moving to dismiss, and making oral argument. Because it is voluminous, Petitioners do not attach the relevant briefing here. It is available to the CWC on CaseNet. Petitioners will provide copies to the CWC, if requested. Had Petitioners not participated, Valley Oaks' appeal would have gone unopposed.

13. On December 24, 2019, the Court of Appeals entered an order affirming the CWC's decision to revoke Valley Oaks' permit. *See* **Exhibit F**. The Court of Appeals found, among other things, "that the CWC properly denied the permit on the ground that the permit application failed to identify a continuing authority." *Id.* at 24.

14. Valley Oaks did not seek transfer to the Missouri Supreme Court. On January 15, 2020, the Court of Appeals issued a mandate to the CWC "for a determination of [the Lone Jack Neighbors'] entitlement to attorney' fees." *See* **Exhibit G**.

15. Petitioners demand $7,575.00 of attorneys' fees (calculated at the steeply discounted statutory rate of $75.00 per hour) that they incurred in the Court of Appeals proceeding. Attached hereto and incorporated herein as **Exhibit H** is a spreadsheet itemizing those fees. If the CWC had participated in the briefing and defended its decision to revoke the permit, it would not have been necessary for Petitioners to intervene and incur those fees.

C. Total Attorneys' Fees and Expenses Sought

16. Pursuant to Section 536.087, RSMo, Petitioners demand the following attorneys' fees and expenses from the CWC: (1) $40,612.50 of attorneys' fees incurred during the AHC and CWC proceedings, as supported in Petitioners' February 6, 2019 application for attorneys' fees, which is incorporated herein by this reference; (2) $23,727.38 of expert witness fees incurred during the AHC and CWC proceeding, as described in this supplemental application; and (3) $7,575.00 of attorneys' fees incurred during the Court of Appeals proceeding, as described in this supplemental application. In total, Petitioners demand **$71,914.88** from the CWC.

II. SUPPLEMENTAL LAW AND ARGUMENT

A. Petitioners are entitled to their expert witness fees.

The work of Petitioners' experts, Splichal and Sweeten, was vital to prevailing in this action. Splichal and Sweeten identified and proved that, among other things, the Department should not have issued a permit because Valley Oaks did not have the requisite manure storage capacity or a compliant nutrient management plan. Petitioners are entitled to recover their fees from the CWC.

Section 536.087(1) states: "A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against any the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust." "Reasonable fees and expenses" are defined to include:

> [T]he reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court or agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees. The amount of fees awarded as reasonable fees and expenses shall be based upon prevailing market rates for the kind and quality of the services furnished, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the state in the type of civil action or agency proceeding, and attorney fees shall not be awarded in excess of seventy-five dollars per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

RSMo. § 536.085(4).

Splichal and Sweeten's fees and expenses are reasonable. Their work was necessary for the preparation of Petitioners' case. To the best of the undersigned counsel's knowledge and belief, their rates are equal to or lower than the prevailing rates for similar work. The undersigned counsel has practiced in the area of environmental law for approximately 19 years,

including as an attorney employed by the Department. Through that work, the undersigned counsel is familiar with the rates charged by similar consultants in Splichal and Sweetens' fields of expertise. *See* Ex. F. to Feb. 6, 2019 Application, Aff. of A. Davenport.

B. **The Court of Appeals agreed with Petitioners that the Department erred in issuing the Permit.**

Petitioners argued, among other things, that the Department should not have issued the permit because "Country Club Homes, LLC" does not exist. Because Department regulations require that CAFO permits be issued to a valid and existing continuing authority, it was error to issue a permit to an entity that does not exist. The Court of Appeals agreed. *See* Ex. F. The Court's opinion is further evidence that the Department's decision was not substantially justified.

III. CONCLUSION

The Court of Appeals has directed the CWC to take up Petitioners' application for attorneys' fees. The issue is now ripe for review. Petitioners demand that the CWC reimburse the **$71,914.88** they incurred in this matter.

[Signature page follows.]

Respectfully submitted,

STINSON LLP

/s/ Aimee D. Davenport

Charles W. Hatfield, No. 40363
Aimee D. Davenport, No. 50989
230 W. McCarty Street
Jefferson City, Missouri 65101
Telephone: 573-636-6263
Facsimile: 573-636-6231
chuck.hatfield@stinson.com
aimee.davenport@stinson.com

Matthew D. Moderson, No. 64035
1201 Walnut Street, Suite 2900
Kansas City, Missouri, 64105
Telephone: 816-842-8600
Facsimile: 816-691-3495
matt.moderson@stinson.com

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

The undersigned hereby states that a copy of the foregoing was served upon the Clean Water Commission on this 14th day of February, 2020 by sending a copy via U.S. Mail and Email to Chris Weiberg and Timothy Dugan.

A courtesy copy was transmitted to the Missouri Department of Natural resources, care of its attorney Joel Reschly.

/s/ Aimee D. Davenport
ATTORNEY FOR PETITIONERS

Exhibit A

SES, INC.
6750 Antioch Road, Suite 112 ◆ Merriam, Kansas 66204 ◆ Phone: (913) 307-0046 ◆ Fax: (913) 307-0059

July 23, 2018

Aimee Davenport
Partner
Stinson Leonard Street LLP
230 West McCarty Street
Jefferson City, MO 65101

Subject: Invoice for Technical Services Related to Valley Oaks Steak Company

Dear Ms. Davenport:

SES, Inc. (SES) is submitting Invoice Number 3865 in the amount of $8,025.60 for providing technical services on behalf of Powell Gardens related to the expansion of the Valley Oaks Steak Company Concentrated Animal Feeding Operation (CAFO). Specifically, SES provided comments regarding deficiencies in the final CAFO NPDES permit and provided technical input for the Motion for Stay and Motion for Appeal of the NPDES permit. Mr. Patrick Splichal of SES provided expert testimony at the Motion for Stay hearing in Jefferson City, Missouri on July 9, 2018. This invoice includes hours and other related expenses billed to the project from May 28 through July 22, 2018.

Please remit payment of $8,025.60 to:

SES, Inc.
6750 Antioch Road, Suite 112
Merriam, KS 66204

Our taxpayer ID # is 48-1200547. If you have any questions about this invoice, please call me at (913) 307-0046, ext. 0016.

Sincerely,

Patrick Splichal
Vice President

Enclosure
Privileged and Confidential, Attorney Work Product, Prepared at the Request of Counsel

SES, Inc.

6750 Antioch Road, Suite 112
Merriam, KS 66204

Invoice

DATE	INVOICE #
7/23/2018	3865

BILL TO
Stinson Leonard Street LLP Aimee Davenport 230 W McCarty Street Jefferson City, MO 65101-1553

DUE DATE	Account #	PROJECT
8/22/2018		036 Powell Gardens

ITEM	DESCRIPTION	QTY	AMOUNT
ExCon 009	Expert Consultant	32	3,680.00
Con009	Consultant	29.5	2,655.00
ExTest	Expert Testimony	8	1,400.00
Reimb Group			
Color copies	Color copies	42	10.50
Copying	Copying	112	11.20
	Aerial Imagery		49.00
	Aerial Imagery		22.50
	PAS - Meals		23.00
	PAS - Personal Mileage		174.40
	Total Reimbursable Expenses		290.60

SES Inc. Tax ID # 48-1200547

Total $8,025.60

SES, INC.
6750 Antioch Road, Suite 112 ◆ Merriam, Kansas 66204 ◆ Phone: (913) 307-0046 ◆ Fax: (913) 307-0059

September 4, 2018

Aimee Davenport
Partner
Stinson Leonard Street LLP
230 West McCarty Street
Jefferson City, MO 65101

Subject: Invoice for Technical Services Related to Valley Oaks Steak Company

Dear Ms. Davenport:

SES, Inc. (SES) is submitting Invoice Number 3878 in the amount of $8,442.41 for providing technical services on behalf of Powell Gardens related to the expansion of the Valley Oaks Steak Company Concentrated Animal Feeding Operation (CAFO). Specifically, SES provided comments regarding deficiencies in the final CAFO NPDES permit, provided comments on the Intervenor's Findings of Fact and Conclusions on the Motion to Stay, reviewed additional documents in preparation for the Motion for Appeal, and provided technical input for the Motion for Appeal of the NPDES permit. Mr. Patrick Splichal of SES provided expert testimony at the Motion for Appeal hearing in Jefferson City, Missouri on August 27 and 28, 2018. This invoice includes hours and other related expenses billed to the project from July 23 – September 2, 2018.

Please remit payment of $8,442.41 to:

SES, Inc.
6750 Antioch Road, Suite 112
Merriam, KS 66204

Our taxpayer ID # is 48-1200547. If you have any questions about this invoice, please call me at (913) 307-0046, ext. 0016.

Sincerely,

Patrick Splichal
Vice President

Enclosure
Privileged and Confidential, Attorney Work Product, Prepared at the Request of Counsel

SES, Inc.

6750 Antioch Road, Suite 112
Merriam, KS 66204

Invoice

DATE	INVOICE #
9/4/2018	3878

BILL TO
Stinson Leonard Street LLP Aimee Davenport 230 W McCarty Street Jefferson City, MO 65101-1553

DUE DATE	Account #	PROJECT
10/4/2018		036 Powell Gardens

ITEM	DESCRIPTION	QTY	AMOUNT
Con009	Consultant	17.5	1,575.00
ExCon 009	Expert Consultant	25	2,875.00
ExTest	Expert Testimony	20	3,500.00
Reimb Group			
	Aerial Imagery-Monthly Fee (June)		49.00
	Aerial Imagery-Monthly Fee (July)		49.00
	PAS - Lodging		220.01
	PAS - Personal Car Mileage		174.40
	Total Reimbursable Expenses		492.41

SES Inc. Tax ID # 48-1200547

Total $8,442.41

Exhibit B

CONSULTING STATEMENT

TO:	Date: 08/31/18	From:

Ms. Aimee D. Davenport, Attorney

e-mail: aimee.davenport@stinson.com

Stinson Leonard Street LLP

230 West McCarty Street

Jefferson City, MO 65101

Phone: Main 573-636-6263

Direct 573-556-3606

John M. Sweeten, PhD, P.E.

Mailing: P. O. Box 828

Physical location: 606 East Austin St.

Rocksprings, TX 78880

Phone: 806/679-5008

e-mail: jsweeten2016@gmail.com

Re: Powell Gardens v. Valley Oaks Steak Co., Lone Jack, MO

Dear Ms. Davenport:

I appreciated the opportunity to work with you in connection with the MDNR hearing in Jefferson City. Following is my statement for August, 2018 reflecting my involvement in the subject case:

A. FEES FOR PROFESSIONAL SERVICES:

Date:	Activity:	Billed hours:
8/1/18	Reviewed Stay Order sent by Stinson, in re: Powell Gardens vs. MDNR;	0.5
8/3/18	Participated in call from Ms. Aimee Davenport, attorney, in reference to case updates and priority information.	0.25
8/3-8/9/18	Drafted spreadsheets to calculate manure loading & analysis for Valley Oaks feedlot so as to present current & permitted cattle numbers, using both MWPS-18 (1985) & ASABE D384.2 (2005) standard reference values.	4.5
8/12/18	Reviewed Valley Oaks CAFO operating permit application, Form W, Part 3; Including findings for manure production, bedding requirement & storage.	1.0
8/13/18	Ordered copy of MWPS-18 (2004) publication from Midwest Plan Service.	0.25
8/15-16/18	Worked on refined calculated values for manure production spreadsheet	

	and storage requirements.	2.5
8/17/18	Searched for wind direction frequency data using U. of MO Climate Center Webpage.	1.5
8/19/18	Preliminary outline of potential key points of testimony; & refined manure production estimates in spreadsheets with adjusted moisture contents.	3.0
8/20/18	Typed updated outline of potential key points of testimony, focusing on manure production, beddinq requirements, & moisture adjustments.	3.0
8/21/18	Searched NOAA/NWS websites for wind direction frequency/wind rose data, Including electronic consultation with the MO State Climatologist. Read applicable sections of MWPS-18 (2004) publication "Manure Characteristics". Added more details to potential points of testimony.	3.0
8/22/18	Telephone discussion of potential testimony with Ms. Aimee Davenport. Library research to locate & print wind rose charts for weather stations in proximity to Valley Oaks operation. Sent first-draft potential points to Stinson law firm. Added spreadsheet to calculate manure load analysis using MWPS-18 (2004) publication.	3.5
8/23/18	Prepared for & participated in conference call involving Ms. Davenport & other experts or attorneys.	4.0
8/24-8/25	Made refinements in planned testimony and underlying data/information, including adjustments in calculations and presentation.	3.0
8/26/18	Traveled by private auto to San Antonio for overnight lodging near Airport.	2.5
8/27/18	Traveled by commercial airlines from SAT airport to Kansas City KCI. Drove rental car to Valley Oaks feedlot and Powell Gardens to observe layouts. Continued driving to Jefferson City MO for meeting with legal team and another expert witness. Using outputs from team meeting, made adjustments to certain calculations and points of testimony.	9.0

8/28/18	Team meeting, reviewed questions, and made further requested adjustments to calculations & testimony . Attended afternoon portion of public hearing on Valley Oaks operating permit and planned feedlot expansion. Testified as expert witness in MDNR permit hearing, including Q/A.	8.0
8/29/18	Return travel by rental car to KCI. Boarded flight to Denver for travel on to another duty station.	4.0
	AUGUST 2018 Subtotal, hrs.=	53.5
	Rate, $/hr 125.00	

SUBTOTAL, Professional Fees = $ 6,687.50

B. DIRECT COSTS:

8/13/18	Ordered publication MWPS-18 (2004) from Midwest Plan Service; invoiced.	$12.25
8/24/18	Gilmer Memorial Library, Rocksprings—printed & copied case materials from internet.	$3.45
8/25/18	Traveled in personal vehicle, from Rocksprings to San Antonio Airport, for overnight lodging. 138 miles @$0.535 mile.	73.83
8/25/18	Meal in route to SAT Airport.	6.86
8/25-8/26	Hotel, Holiday Inn, San Antonio airport, in preparation for next day's flight.	109.80
8/26/18	Commercial airfare, SAT airport to KCI; billed to personal credit card. Total RT airfare=379.10, of which 50% was refunded to credit card after cancelling return flight to San Antonio, due to change of travel plans.	189.55
8/26-8/28	Enterprise Rent a Car, Kansas City airport. 2-days.	81.80
8/28/18	Gasoline, Rental car, KCI airport location.	26.21
8/26/18	Meals, enroute fromSAT – HOU- KCI to Jefferson City. (2.71+18.94+2.72)=	24.37
8/27/18	Double Tree Hotel at Jefferson City, (one meal charged to room); direct billed to Stinson Law Firm.	N/C
8/28/18	Meals, return trip from Jefferson City to KCI Airport. (3.18+10.57=)	13.75

8/26-8/28	Airport parking, San Antonio Airport. 2.5 days @ 12.00	30.00

SUBTOTAL, DIRECT OUT-OF-POCKET COST..... $571.87

C. GRAND TOTAL, This Billing Period, NOW DUE AND PAYABLE.....$ 7,259.37

Thanks for engaaaaging me in this case. Please remit directly to me as soon as possible.

Sincerely,

John M. Sweeten, PhD, P.E.

Exhibit C

Electronically Filed - WESTERN DISTRICT CT OF APPEALS - February 20, 2019 - 03:15 PM

ATTORNEY GENERAL OF MISSOURI

ERIC S. SCHMITT
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-8261

February 20, 2019

Susan C. Sonnenberg
Clerk of the Court
Missouri Court of Appeals – Western District
1300 Oak Street
Kansas City, Missouri 64106

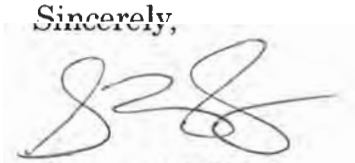
Re: *Countryclub Homes, Apel. v. MDNR, et al., Res.*
Countryclub Homes, LLC and Valley Oaks Real Estate, LLC, Apel. v. MDNR, et al. Res.
Case Nos.: WD82476 and WD82477

Dear Ms. Sonnenberg,

On January 18, 2018, Appellants, Countryclub Homes, LLC and Valley Oaks Real Estate, LLC filed their Petitions for Judicial Review these cases. After review of those petitions, Appellants do not seek any relief against the named Respondent, Missouri Department of Natural Resources ("MDNR"). As such, and after consultation with our client, MDNR will not be filing a separate brief in either of these appeals.

If you have any additional questions regarding this matter, please do not hesitate to let me know.

Sincerely,



Shawna M. Blign

cc: Jennifer Griffin
Doug Nelson
Jean Paul Bradshaw
Stephen Jeffery
Tim Duggan
Chuck Hatfield
Aimee Davenport

Exhibit D

Electronically Filed - WESTERN DISTRICT CT OF APPEALS - May 30, 2019 - 10:02 AM

ATTORNEY GENERAL OF MISSOURI
ERIC SCHMITT

May 30, 2019

Susan C. Sonnenberg
Clerk of the Court
Missouri Court of Appeals, Western District
1300 Oak Street
Kansas City, MO 64106

RE: Countryclub Homes v. MDNR, et al.; Case Nos. WD82476 and WD82477

Dear Ms. Sonnenberg,

On January 18, 2018, Appellants, Countryclub Homes, LLC and Valley Oaks Real Estate, LLC filed their Petitions for Judicial Review on the above cases. The Missouri Clean Water Commission was the administrative tribunal that rendered the decision that is subject to judicial review. The Commission was not a party in the agency proceedings and therefore will not be filing briefs in these cases.

If you have any questions regarding this matter, please do not hesitate to contact me.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

Sincerely,

ERIC S. SCHMITT
Attorney General

/s/ *Timothy P. Duggan*

Timothy P. Duggan
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102-0899
Phone: 573-751-9802
Telefax: 573-751-5660
tim.duggan@ago.mo.gov

c: Counsel of Record via the Court's e-notification system

Electronically Filed - WESTERN DISTRICT CT OF APPEALS - May 30, 2019 - 10:02 AM

Exhibit E

Electronically Filed - WESTERN DISTRICT CT OF APPEALS - June 06, 2019 - 08:09 AM

BEFORE THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COUNTRYCLUB HOMES, LLC, VALLEY OAKS REAL ESTATE, LLC, PETITIONERS, v. MISSOURI DEPARTMENT OF NATURAL RESOURCES, et al. RESPONDENTS.	)))))))))))	Case No. WD82477

MOTION TO BE PARTIES TO APPEAL

Powell Gardens, Inc., Elizabeth and Ryan Deich, and the Robert M. Chamness Trust (collectively, the "Powell Parties") respectfully request to be officially designated as respondents to this case. In support of this motion, the Powell Parties state:

1. This appeal and appeal WD82476 arise out of related administrative appeals concerning the Department of Natural Resources' issuance of CAFO Permit MOG010872.

2. The Powell Parties filed Administrative Hearing Commission Appeal No. 18-0501. At the conclusion of that appeal, Respondent Missouri Clean Water Commission denied the permit. Appellants challenge that ruling in this Court.

3. Despite being referenced in Appellants' Petition for Judicial Review as parties challenging Permit MOG010872, Appellants did not designate the Powell Parties as Respondents.

4. Previously, on March 27, 2019, this Court sustained the Powell Parties' Motion to be Added as Parties to Appeal in Case No. WD82476. The Powell Parties

inadvertently included Case No. WD82476 in their motion instead of Case No. WD82477, which arises from the administrative appeal they originally filed.

5. As the underlying record shows, the Powell Parties have an interest relating to the subject matter of this action, and their interest is so situated that the disposition of this action may, as a practical matter, impair or impede their ability to protect that interest, and their interest is not adequately represented by the existing parties to this action.

6. Indeed, Respondents Department of Natural Resources and the Clean Water Commission have advised the Court in both this case and WD82476 that they do not intend to file any briefs. As a result, it is up to the Powell Parties to defend the decision entered in their favor.

WHEREFORE, Powell Gardens, Inc., Elizabeth and Ryan Deich, and the Robert M. Chamness Trust respectfully request the Court grant this motion and designate them as Respondents in this case, and for such other relief as the Court deems just and proper.

Respectfully submitted,

STINSON LLP

By: */s/ Charles W. Hatfield*
Charles W. Hatfield No. 40363
Aimee D. Davenport No. 50989
230 W. McCarty Street
Jefferson City, Missouri 65101
Telephone: 573-636-6263
Facsimile: 573-636-6231
chuck.hatfield@stinson.com
aimee.davenport@stinson.com

-and-

Electronically Filed - WESTERN DISTRICT CT OF APPEALS - June 06, 2019 - 08:09 AM

Matthew D. Moderson No. 64035
Brett A. Shanks No. 67749
1201 Walnut Street, Suite 2900
Kansas City, Missouri, 64106
Telephone: 816-691-2736
Facsimile: 816-412-8123
matt.moderson@stinson.com
brett.shanks@stinson.com

ATTORNEYS FOR POWELL PARTIES

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's electronic filing system on the 5th day of June 2019, which thereafter served a copy on all counsel of record.

/s/ Charles W. Hatfield
ATTORNEY FOR POWELL PARTIES

Electronically Filed - WESTERN DISTRICT CT OF APPEALS - June 06, 2019 - 08:09 AM

Exhibit F

In the Missouri Court of Appeals
Western District

COUNTRYCLUB HOMES, LLC and VALLEY OAKS REAL ESTATE, LLC, Appellants,	)	
v.	)	
	)	
MISSOURI DEPARTMENT OF NATURAL RESOURCES, MISSOURI CLEAN WATER COMMISSION, LONE JACK NEIGHBORS FOR RESPONSIBLE AGRICULTURE, POWELL GARDENS, INC., ELIZABETH DEICH, RYAN DEICH and THE ROBERT M. CHAMNESS TRUST, COLLECTIVELY KNOWN AS THE POWELL PARTIES, Respondents.	)	**WD82476** **Consolidated with WD82477** **FILED: December 24, 2019**

APPEAL FROM THE CLEAN WATER COMMISSION

BEFORE DIVISION FOUR: KAREN KING MITCHELL, CHIEF JUDGE, PRESIDING, LISA WHITE HARDWICK AND CYNTHIA L. MARTIN, JUDGES

Countryclub Homes, LLC and Valley Oaks Real Estate, LLC (collectively, "Valley Oaks") appeal from the decisions of the Clean Water Commission ("CWC") in two cases to deny Valley Oaks's permit application for a concentrated animal feeding operation ("CAFO") in Johnson County. In case number WD82476 ("Lone Jack case"), the entity opposing the permit was Lone Jack Neighbors for Responsible Agriculture, LLC ("Lone Jack"). In case number WD82477 ("Powell case"), the entities opposing the permit

were Powell Gardens, Inc., Ryan Deich, Elizabeth Deich, and the Robert M. Chamness Trust (collectively, "Powell").

In both appeals, Valley Oaks alleges the same four procedural errors in the CWC's decisions to deny its permit application: (1) Lone Jack and Powell lacked standing to challenge the permitting decision of the Department of Natural Resources ("DNR"); (2) the CWC's written decisions were untimely; (3) the CWC issued its decisions without reviewing all of the record; and (4) the CWC's decisions were not approved by four commissioners because the approvals of two commissioners were void. Also in both appeals, Valley Oaks contends the CWC erred in denying its permit on the grounds that its application failed to identify a continuing authority and that Valley Oaks failed to provide neighbor notice prior to filing its application for the CAFO. Lastly, in its appeal of the decision in the Powell case, Valley Oaks asserts the CWC erred in denying its permit on the additional grounds that Valley Oaks failed to provide realistic yield goals for the fields it identified for land application of manure and that Valley Oaks failed to provide for adequate manure storage.

We consolidated the two cases for appeal. For reasons explained herein, we find no error and affirm the CWC's decisions in both cases to deny Valley Oaks's permit application. We remand the cause to the CWC for a determination of Lone Jack's entitlement to attorneys' fees.

FACTUAL AND PROCEDURAL HISTORY

On December 19, 2017, David Ward submitted an application to the DNR for a proposed Class IB CAFO, comprised of approximately 6,999 head of cattle, to be located on property in Johnson County. Ward filed the CAFO permit application in the

name of “Country Club Homes LLC.” “Country Club Homes LLC” was listed on the application as both the owner and the continuing authority that was to be responsible for the operation, maintenance, and modernization of the facility to which the permit was issued, as required by 10 CSR 20-6.010(3)(A).[1] Ward, however, is the sole member of an entity named “Countryclub Homes, LLC,” and not an entity named “Country Club Homes LLC.”

The permit application was reviewed by DNR employee Greg Caldwell, who determined that the application met all statutory and regulatory requirements. On June 15, 2018, the DNR issued a Class IB CAFO permit to “County [sic] Club Homes, LLC.” Shortly thereafter, Ward applied to the DNR for a transfer of the ownership of the CAFO permit to “Valley Oaks Real Estate, LLC.” Ward signed the transfer application as both the previous owner and the new owner. In August 2018, the DNR transferred ownership of the CAFO permit to Valley Oaks Real Estate, LLC.

Meanwhile, Lone Jack appealed the DNR’s issuance of the permit by filing a complaint in the Administrative Hearing Commission (“AHC”) on June 25, 2018. Lone Jack later filed two amended complaints. In its second amended complaint, Lone Jack alleged that its organization, members, and supporters reside in the immediate vicinity of the location of Valley Oaks’s CAFO and the fields where manure from its operations will be spread, and they are adversely affected and aggrieved by the issuance of the permit and the operation of the CAFO. Lone Jack challenged the issuance of the permit on eight grounds.

[1] All regulatory references are to the Missouri Code of State Regulations (2016).

Two days later, on June 27, 2018, Powell also filed a complaint in the AHC appealing the DNR's issuance of the permit. Powell later filed an amended complaint, in which it alleged that Powell Gardens, Inc., is Kansas City's botanical garden and cultivates more than 20,000 species of plants and attracts more than 100,000 visitors each year. Powell Gardens, Inc., is less than three miles from the Valley Oaks facility. Powell further alleged that the Deichs, whose property is held by the Robert M. Chamness Trust, live 1,900 feet from the Valley Oaks facility on a historic Missouri Century Farm. Powell alleged that, due to the high animal population density, on-site slaughterhouse, unique CAFO design, and minimal owned-acreage for nutrient management, Valley Oaks's operation was unusual and unproven and would have impacts on water quality and the environment that the DNR has not sufficiently quantified. Powell asserted that the DNR erred in issuing Valley Oaks a permit to operate the facility without sufficiently considering these issues. Powell challenged the issuance of the permit on six grounds.

Valley Oaks intervened in the appeals. The AHC held a consolidated evidentiary hearing for the two appeals on August 27-28, 2018. The AHC issued decisions in both cases on October 23, 2018, recommending that the CWC reverse the DNR's decision to issue the permit. In both decisions, the AHC found that denial of the permit was appropriate on the grounds that Valley Oaks failed to identify a continuing authority, in violation of 10 CSR 20-6.010(3)(A), and failed to provide neighbor notice prior to filing its application, in violation of § 640.715, RSMo 2016,[2] and 10 CSR 20-6.300(3)(C). In the Powell case, the AHC found that denial of the permit was appropriate on two

[2] All statutory references are to the Revised Statutes of Missouri 2016.

additional grounds that only Powell raised. These two grounds were that Valley Oaks failed to provide realistic yield goals for the fields it identified for land application of manure, in violation of 10 CSR 20-6.300(3)(G)2.A, and that Valley Oaks failed to provide for adequate manure storage, in violation of 10 CSR 20-6.300(1)(A)11 and 10 CSR 20-8.300(5)(B)2.

As required by the administrative review procedures, the AHC forwarded the administrative record to the CWC for final decision. The record was comprised of the AHC proceedings in the appeals of the Lone Jack and Powell cases but did not include the proposed recommended findings that the parties had submitted to the AHC. On December 10, 2018, the CWC heard oral arguments on both appeals during a single hearing and ultimately voted 4-1 in both cases to adopt the AHC's recommended decisions. The CWC issued its final written decisions in the cases on January 7, 2019. Valley Oaks appeals both decisions, and we consolidated the appeals.[3]

STANDARD OF REVIEW

Pursuant to Section 644.051.6, the CWC's decisions are subject to appellate review pursuant to Chapter 536 of the Administrative Procedure Act. ***In re Trenton Farms RE, LLC v. Mo. Dep't of Nat. Res.,*** 504 S.W.3d 157, 160 (Mo. App. 2016). Our review is limited to determining whether the CWC's action: (1) violates a constitutional provision; (2) exceeds the CWC's statutory authority or jurisdiction; (3) is unsupported by competent and substantial evidence upon the whole record; (4) is unauthorized by law; (5) is made upon unlawful procedure or without a fair trial; (6) is arbitrary, capricious, or unreasonable; or (7) involves an abuse of discretion. § 536.140.2.

[3] In their respective cases, Lone Jack and Powell filed motions to dismiss Valley Oaks's appeal. We deny those motions.

We defer to the CWC's findings of fact so long as they are supported by competent and substantial evidence. ***Trenton Farms***, 504 S.W.3d at 160. We review questions of law ***de novo***. ***Id***. The CWC's decision "is presumed valid, and the burden is on the party attacking it to overcome that presumption." ***Wagner v. Mo. State Bd. of Nursing***, 570 S.W.3d 147, 152 (Mo. App. 2019) (citation omitted).

ANALYSIS

Point I – Standing

In Point I, Valley Oaks asserts that Sections 644.051 and 640.013 allow only permit applicants or potential permit applicants to appeal adverse decisions made by the Director of the DNR ("the Director"), and that Lone Jack and Powell are not included in either class. Therefore, Valley Oaks contends the CWC erred in denying its permit because Lone Jack and Powell lacked standing to appeal from the Director's decision.

Standing is a question of law subject to our ***de novo*** review. ***Manzara v. State***, 343 S.W.3d 656, 659 (Mo. banc 2011). "Standing is a necessary component of a justiciable case that must be shown to be present prior to adjudication on the merits." ***Schweich v. Nixon***, 408 S.W.3d 769, 774 (Mo. banc 2013) (citation omitted). "Reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote." ***St. Louis Ass'n of Realtors v. City of Ferguson***, 354 S.W.3d 620, 622-23 (Mo. banc 2011) (citation omitted).

"Not every person who files a protest and is given an opportunity to be heard by an administrative agency has a right to appeal from the decision of the agency[.]" ***Mo. Nat'l Educ. Ass'n v. Mo. State Bd. of Educ.***, 34 S.W.3d 266, 276 (Mo. App. 2000).

Instead, a party attempting to successfully assert standing must have a legally protectable interest. ***St. Louis Ass'n***, 354 S.W.3d at 623. "A legally protectable interest exists only if the [party] is affected directly and adversely by the challenged action or if the [party]'s interest is conferred statutorily." ***Id***.

The General Assembly, in recognizing the necessity of state action to retain control of its water pollution control programs after Congress made amendments to the Federal Water Pollution Control Act in 1972, enacted the "Missouri Clean Water Law,"[4] which created, ***inter alia***, an elaborate permitting scheme for persons[5] seeking to discharge water contaminants. Under this scheme, the permitting of CAFOs, in the first instance, falls to the Director. ***See*** 10 CSR 20-6.300(E); see ***also*** § 640.715. At issue in this point is who has standing to appeal from the Director's decision.

Section 640.010.1 provides, in pertinent part, that the Director "shall faithfully cause to be executed all policies established by the boards and commissions assigned to the department, ***be subject to their decisions as to all substantive and procedural rules and his or her decisions shall be subject to appeal as provided by law***." (Emphasis added). Valley Oaks asserts that this version of Section 640.010.1 limits standing to appeal the Director's decision to only a narrow class of persons. In support of this contention, Valley Oaks argues that a previous version of Section 640.010 stated that "affected parties" had the right to appeal and that, by amending the section to state

[4] Sections 644.006, ***et seq***.

[5] As used in the Missouri Clean Water Law, the term "person" means "any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties[.]" § 644.016(15).

that appeals may be taken "as provided by law[,]" the legislature signaled its intention to limit the ability to appeal to those persons explicitly contemplated ***by statute***. Valley Oaks then contends that, by enacting Section 644.051.6, the legislature intended the AHC to take appeals only from permit applicants and potential applicants. Section 644.051.6 states, in pertinent part:

> The director shall promptly notify the applicant in writing of his or her action and if the permit is denied state the reasons for such denial. As provided by sections 621.250 and 640.013, the applicant may appeal to the administrative hearing commission from the denial of a permit or from any condition in any permit by filing a petition with the administrative hearing commission within thirty days of the notice of denial or issuance of the permit. After a final action is taken on a new or reissued general permit, a potential applicant for the general permit who can demonstrate that he or she is or may be adversely affected by any permit term or condition may appeal the terms and conditions of the general permit within thirty days of the department's issuance of the general permit.

Valley Oaks's contention that Sections 640.010.1 and 644.051.6 limit the right to appeal to permit applicants or potential applicants is wrong for several reasons.

In 2005, the legislature transferred the authority to hear all contested case administrative appeals granted in Chapter 640 and the Missouri Clean Water Law to the AHC. ***See*** 621.250.1; ***see also Valley Park Props., LLC v. Mo. Dept. of Nat. Res.***, 580 S.W.3d 607, 616 (Mo. App. 2019). Section 621.250.2 states, in pertinent part, that:

> Except as otherwise provided by law, ***any person or entity who is a party to, or who is aggrieved or adversely affected by, any finding, order, decision, or assessment for which the authority to hear appeals was transferred to the administrative hearing commission in subsection 1 of this section may file a notice of appeal with the administrative hearing commission*** within thirty days after any such finding, order, decision, or assessment is placed in the United States mail or within thirty days of any such finding, order, decision, or assessment being delivered, whichever is earlier.

(Emphasis added).

At no point in its brief does Valley Oaks assert that Lone Jack and Powell were not adversely affected by the issuance of a permit to Valley Oaks. Instead, Valley Oaks argues that, despite the legislature's clear expression of intent in Section 621.250.2 to allow "any person or entity who is a party to, or who is aggrieved or adversely affected by" a decision of the Director to appeal, Lone Jack and Powell do not have standing to appeal because Section 644.051.6 provides that a narrower class of persons or entities – only applicants or potential applicants — may take appeals from the Director's decision. This argument, however, has already been specifically rejected by our Supreme Court in ***Missouri Coalition for the Environment v. Herrmann***, 142 S.W.3d 700, 702 (Mo. banc 2004).

In ***Herrmann***, the Court stated that "Section 644.051.6 does not limit the right of appeal to the [CWC] solely to those denied a permit[.]" ***Id.*** Nevertheless, Valley Oaks argues that, after ***Herrmann***, the legislature's amendment of Section 640.010 to remove language that granted "affected parties" the right to appeal signaled the legislature's repudiation of the Court's holding in ***Herrmann***. Valley Oaks misunderstands the effect of the amendment. While the legislature has amended Sections 644.010.1 and 644.051.6 since the Supreme Court's decision in ***Herrmann***, it has neither implicitly nor explicitly abrogated that opinion.[6] Further, the ***Herrmann*** Court did not base its decision on the then-in-force language of Section 640.010.1 or predicate its holding on any language that has since been amended. ***See*** 142 S.W.3d at 702. The Court merely mentioned that Section 640.010.1 provides that the Director's decisions are subject to appeal before it held that Section 644.051.6 did not limit the right to appeal

[6] ***See, e.g.***, § 287.020.10, wherein the Legislature specified that amendments to the Workers' Compensation Law were intended to "reject and abrogate earlier case law interpretations."

the decisions of the Director to any exclusive class. ***See id.*** Put another way, the Court did not state that it was ruling as it did ***because*** of any particular language in Section 640.010.1. ***See id.*** Therefore, ***Herrmann*** still binds this court. ***See*** MO. CONST. art V, § 2. The CWC did not err in holding that Lone Jack and Powell had standing to appeal the Director's decision. Point I is denied.

Point II – Failure to Issue Decision Within 180 Days

In Point II, Valley Oaks contends the CWC exceeded its statutory authority by failing to issue its decision within the statutorily-prescribed time period. Valley Oaks argues that the failure to comply with the statute's deadline rendered the CWC's decision null and void and, therefore, the DNR's decision to issue the permit should be allowed to stand.

As set forth in Section 621.250.2, any party aggrieved by the DNR's decision appeals to the AHC. The AHC is authorized to hold a hearing and send a recommended decision to the CWC along with the record. § 621.250.2-3. The CWC's final decision "shall be issued" within 180 days of the date the notice of appeal to the AHC was filed. § 621.250.3. The date by which the CWC is required to issue its final decision "may be extended at the sole discretion of the permittee as either petitioner or intervenor in the appeal." ***Id***.

Here, after the DNR issued the permit to Valley Oaks, Lone Jack filed its notice of appeal to the AHC on June 25, 2018, while Powell filed its notice of appeal on June 27, 2018. The AHC held hearings and made recommended decisions in both cases, which it then transmitted along with the record to the CWC. Pursuant to Section 621.250.3, the CWC's final decision in the Lone Jack case was due on December 22,

2018, and the CWC's final decision in the Powell case was due on December 24, 2018. The permittee, Valley Oaks, did not extend the time period beyond these dates. On December 10, 2018, all parties were present when the CWC voted 4-1 to deny the permit; however, the CWC did not issue its final decision in both cases until January 7, 2019. Valley Oaks argues that, because Section 621.250.3 states that the CWC's decision "shall be issued" within 180 days of the date the notice of appeal to the AHC was filed, the issuance of the decisions within that time period was mandatory and, consequently, the CWC's untimely decisions reversing the DNR's decision to issue the permit were null and void.

Our Supreme Court has explained that, when the legislature uses the word "shall" in a statute, the issue "is not whether 'shall' means 'shall' but what sanction (if any) the legislature intended to apply" when the required act is not done. ***Frye v. Levy***, 440 S.W.3d 405, 408 (Mo. banc 2014). If the legislature has imposed a sanction or otherwise indicated a consequence for noncompliance, then the statute is a mandatory statute, and courts will enforce the intended sanction or consequence for noncompliance. ***Id***. If, however, the legislature has not approved a sanction or has not otherwise indicated a consequence for noncompliance, then the statute is a directory statute. ***Id***. A directory statute's "terms are limited to what is required to be done," and courts will not create a sanction or consequence for noncompliance where the legislature has not expressed an intent for such sanction or consequence. ***Id***. at 409 (quoting ***Hudgins v. Mooresville Consol. Sch. Dist.***, 278 S.W. 769, 770 (Mo. 1925)).[7]

---

[7] The Court in ***Frye*** explained in detail the difference in the language of mandatory and directory statutes:

> Two examples of when a statute that imposes an obligation will be construed to be "mandatory" are: (a) if the statute explicitly provides what the consequence of non-

The determination as to whether a statute is mandatory or directory turns on the language the legislature has chosen. ***Id***. at 410. Section 621.250.3 imposes an obligation on the CWC to issue its final decision within 180 days of the date the notice of appeal to the AHC is filed. It does not, however, explicitly provide that the CWC may issue its decision only within that 180 days, nor does it explicitly provide that the CWC lacks the authority to issue a decision after the 180th day. "In the absence of such legislative intent, courts have no authority to impose such a sanction on their own." ***Id.***

The Court in ***Frye*** recognized that, while "[t]he lack of statutory approval for a sanction in the event of non-compliance with a statutory obligation, or the lack of any language permitting only acts that are in compliance with that obligation, is an important factor" in distinguishing between mandatory and directory statutes, other factors may be considered. ***Id***. Indeed, the Court noted that, "[u]ltimately, whether a statute is mandatory or directory is a 'function of context and legislative intent.'" ***Id***. at 410-11 (quoting ***Bauer v. Transitional Sch. Dist. of City of St. Louis***, 111 S.W.3d 405, 408 (Mo. banc 2003)).

> compliance will be (e.g., that any act performed after the stated deadline or in a manner different than the required method will be void or ineffective); and (b) if the statute explicitly provides that the required action can be taken ***only*** before the stated deadline or can be performed ***only*** in the stated manner. ***See, e.g., [West v.]Ross***, 53 Mo. [350], 354 [(Mo. 1873)] ("the legislature has not only by the statute directed what shall be done, but has also declared what consequence shall follow disobedience"); ***Greene v. Holt***, 76 Mo. 677, 680 (1882) ("Negative words are imperative.") (citing Sedgwick [on Stat. Const.], at 316, 320, and 325). On the other hand, if a statute imposes an obligation and does not explicitly allow only compliant actions (or explicitly declare non-compliant actions void or ineffective), the statute likely is "directory" and courts are not free to create and impose a sanction that the legislature did not approve.

440 S.W.3d at 410.

Valley Oaks argues that, despite the lack of an explicit sanction or of language allowing only compliant acts, the context of the statute indicates that Section 621.250.3's time limit is mandatory. Specifically, Valley Oaks argues that the legislature has created an "elaborate permitting system with the goal of promoting business and maximizing employment in the State" and, within the statutory scheme, the legislature has "provided a series of rapid deadlines ensuring applicants certainty in applying for permits and planning business operations."[8] Valley Oaks contends that, collectively, this statutory scheme "demonstrates a legislative intent of expedient issuance and review throughout the permitting process."

Notwithstanding this argument, we find nothing in the relevant statutes to indicate that the CWC's final decision must be invalidated if the 180-day time frame is exceeded. It is noteworthy that the Legislature has included consequences for the failure to follow the time deadlines contained in the permit process statutory scheme when it so chooses. For example, Section 640.018.1 provides that, in any case where the DNR "has not issued a permit or rendered a permit decision by the expiration of a statutorily required time frame for any application for a permit . . . , upon request of the permit applicant, the [DNR] shall issue the permit the first day following the expiration of the required time frame[.]" That the legislature explicitly provided a consequence for the DNR's failure to render a permit decision within the statutorily-required time frame – but

[8] Valley Oaks has listed several of these deadlines, including: (1) the DNR shall issue or deny permits within 60 days under Section 644.051.5-6; (2) the DNR shall issue or respond with a letter of comment to CAFO permit applicants within 45 days under Section 640.715.3; (3) appeals of DNR permit decisions must filed with the AHC within 30 days of the decision under Section 621.250.2; (4) the AHC may hold hearings within 90 days of the filing of the notice of appeal under Section 621.250.2; (5) the AHC shall make its recommended decision within 120 days of the filing of the notice of appeal under Section 621.250.2; and (6) the AHC must transmit its record and recommended decision to the CWC within 15 days after the AHC has rendered its recommended decision under Section 621.250.3.

did not do so for the CWC's failure to timely issue its final decision – further supports the conclusion that Section 621.250.3 is a directory, and not mandatory, statute. Therefore, we cannot conclude that the CWC's decisions are null and void because the CWC failed to comply with this directory statute.[9] Point II is denied.

Point III – The CWC's Review of the AHC's Record

In Point III, Valley Oaks contends the CWC committed reversible error by issuing its final decisions before reviewing "missing portions" of the AHC's record, namely, the parties' proposed recommended decisions that they submitted to the AHC. Valley Oaks asserts that, at the end of oral arguments before the CWC, the CWC agreed to receive and review the proposed recommended decisions but never did so.

Administrative appeals of the DNR's permitting decisions are contested cases, which are governed, ***inter alia***, by Chapter 536 and Section 621.250. ***See*** 621.250.1. Section 536.080.2 states:

> In contested cases, each official of an agency who renders or joins in rendering a final decision shall, prior to such final decision, either hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs. The parties to a contested case may by written stipulation or by oral stipulation in the record at a hearing waive compliance with the provisions of this section.

Valley Oaks argues that, by not reviewing the parties' proposed recommended decisions submitted to the AHC, the CWC neglected the statutory prerequisite of

[9] To enforce Section 621.250.3's requirement that the CWC issue its final decisions within the 180-day time limit, Valley Oaks could have sought a writ of mandamus compelling the CWC to do so. ***See, e.g., Am. Civil Liberties Union v. Ashcroft***, 577 S.W.3d 881, 895-96 (Mo. App. 2019).

"personally consider[ing] the portions of the record cited or referred to in the arguments or briefs" before exercising its authority to render a final decision in both cases.

Contrary to Valley Oaks's assertion, the page in the record to which it cited does not indicate that the CWC agreed to receive and review the parties' proposed recommended decisions before rendering its final decisions. In any event, Valley Oaks has not demonstrated how the CWC's failure to review the proposed recommended decisions means that the CWC failed to "personally consider the portions of the record cited or referred to in the arguments or briefs." Valley Oaks argues that the proposed recommended decisions "included the parties' respective positions along with citations to legal authority and evidence on which they relied – and show Powell abandoned one argument." The parties had oral arguments before the CWC, however, during which they were each given an opportunity to argue their respective positions with legal authority and citations to the record. During oral arguments, Valley Oaks used a PowerPoint presentation to "walk through each one of the items" of the AHC's recommended decision that it believed was incorrect. Included in Valley Oaks's presentation was its assertion of Powell's purported abandonment of one of its arguments.

In this appeal, Valley Oaks does not articulate the specific position, legal authority, or citations to the record contained in its proposed recommended decision – but not in its subsequent oral argument to the CWC – that the CWC needed to consider but did not do so because of the CWC's failure to review the parties' proposed recommended decisions. "[T]here is a presumption that administrative decisions are made in compliance with applicable statutes." ***Stith v. Lakin***, 129 S.W.3d 912, 920 (Mo.

App. 2004) (citation omitted). By not specifying the information in the proposed recommended decision that the CWC did not consider, Valley Oaks has failed to rebut this presumption. Valley Oaks has not demonstrated how the omission of the proposed recommended decisions rendered the record before the CWC deficient. "It is not the function of the appellate court to serve as advocate for any party to an appeal." ***See Falls Condo. Owners' Ass'n, Inc. v. Sandfort***, 263 S.W.3d 675, 676 (Mo. App. 2008) (citation omitted).

Moreover, we note that Section 621.250.3, which specifically governs appeals of DNR decisions to the CWC, states that the CWC's final decision "shall be ***based only on the facts and evidence in the hearing record***[.]" (Emphasis added). Valley Oaks does not assert that the parties' proposed recommended decisions constituted either "facts" or "evidence" as contemplated by Section 621.250.3. Indeed, statements made in briefs submitted to the court are generally not considered evidence. ***See State ex rel. Dixon v. Darnold***, 939 S.W.2d 66, 69 (Mo. App. 1997). As the parties' proposed recommended decisions were neither facts nor evidence, the CWC did not err in failing to review them before rendering its final decision. Valley Oaks has not demonstrated that the CWC neglected its statutory obligations under Sections 536.080.2 or 621.250.3. Point III is denied.

Point IV – The Validity of the Commissioners' Approvals

In Point IV, Valley Oaks contends the CWC's decisions were arbitrary, capricious, unreasonable, and in excess of its statutory authority because they were not validly approved by four commissioners as required by Section 644.066.3(3). In the Lone Jack case, Commissioners Ashley McCarty, Patricia Thomas, John Reece, and

Allen Rowland voted to approve and adopt the AHC's recommended decision as the CWC's final decision, while Commissioner Stan Coday voted to disapprove the AHC's recommended decision. In the Powell case, Commissioners McCarty, Thomas, Reece, and Coday voted to approve and adopt the AHC's recommended decision as the CWC's final decision, while Commissioner Rowland voted to disapprove the AHC's recommended decision. Valley Oaks argues that, even though four commissioners approved each decision, the approval of Commissioner Reece was void in both cases, and the approval of Commissioner Coday was void in the Powell case.

With regard to Commissioner Reece, Valley Oaks asserts that his approval was void because he improperly considered information outside the record in making his decision. At the start of the hearing before the CWC, Valley Oaks made an oral motion to disqualify Commissioner Reece because he visited Valley Oaks's proposed facility during the pendency of the appeal. In response, Commissioner Reece stated, "I did visit Valley Oaks, mainly for my own edification to see what was there and to see what type of an operation they had." He further stated, "And if that disqualifies me, then something is wrong. I'm trying to educate myself as to what is going on, and I think visiting the site gave me a lot of insight into this whole proceeding." The remaining four commissioners then voted to deny Valley Oaks's motion to disqualify Commissioner Reece. Valley Oaks further argues that, later in the hearing, Commissioner Reece indicated that he did not have to accept as correct the engineering report submitted with Valley Oaks's permit application simply because the report was sealed by a professional engineer.

On appeal, Valley Oaks does not argue that the CWC erred in refusing to disqualify Commissioner Reece. Instead, Valley Oaks argues that Commissioner Reece's comments show that his decision was contrary to Section 621.250.3's mandate that the CWC's final decision "shall be based only on the facts and evidence in the hearing record[.]" We disagree. Commissioner Reece voted to approve the AHC's recommended decisions in both cases in their entirety and without any modifications. Valley Oaks does not specify ***anything*** in the AHC's recommended decisions – including its explanation in the Powell case for rejecting Valley Oaks's engineering report – that was based upon facts or evidence outside the record. Thus, despite Commissioner Reece's comments during the hearing, it appears that his ***final decisions*** were based only on the facts and evidence in the hearing record, as Section 621.250.3 required.[10] Valley Oaks has not met its burden of demonstrating that Commissioner Reece violated Section 621.250.3.

Regarding Commissioner Coday, Valley Oaks contends that his approval of the AHC's recommended decision in the Powell case was void because he did not approve the AHC's recommended decision in the Lone Jack case. As detailed ***supra***, in the Lone Jack case, the AHC recommended overturning the DNR's permitting decision based on two grounds: Valley Oaks's failure to prove a continuing authority and its

---

[10] Valley Oaks's reliance on ***Hauk v. Scotland Cty. Comm'n***, 429 S.W.3d 459 (Mo. App. 2014), is misplaced. ***Hauk*** was an appeal from the circuit court's decision in a non-contested case. ***Id***. at 461. In explaining their reasons for denying the health permit in ***Hauk***, the commissioners' testimonies during the hearing before the circuit court indicated that they ignored the language of the ordinance they were purportedly applying and, instead, "'each applied their self-determined, unwritten standard' to make their determination with respect to the application of the [ordinance]." ***Id***. at 463. Hence, on appeal, the Eastern District of this court properly affirmed the circuit court's finding that the commission's decision to deny the permit was arbitrary. ***Id***. In these contested cases, regardless of Commissioner Reece's comments during the hearing before the CWC, the CWC's final decisions indicate that the decisions were based solely upon evidence in the record and, therefore, were not arbitrary or capricious.

failure to provide the required neighbor notice. In the Powell case, the AHC recommended overturning the DNR's permitting decision based those same two grounds, plus two other grounds: Valley Oaks's failure to provide a compliant nutrient management plan and its failure to ensure the requisite minimum days of manure storage. Valley Oaks argues that, because the two grounds in the Lone Jack case overlapped with two of the four grounds in this case, Coday's approval in the Powell case was arbitrary and capricious. We disagree.

Valley Oaks points to no statute or regulation requiring commissioners to explain their votes or reasoning. It is only when the CWC modifies or does not adopt the AHC's recommended decision that the CWC must explain the specific reason why. § 621.250.3. While we do not know why Coday did not approve the AHC's recommended decision in the Lone Jack case, a simple explanation could be that he found the other two grounds for denying the permit in the Powell case – the failure to provide realistic yield goals for the fields it identified for land application of manure and the failure to provide for adequate manure storage – more persuasive. Valley Oaks has not demonstrated that Coday's approval of the AHC's recommended decision in the Powell case was arbitrary and capricious. Point IV is denied.

Points V, VI, and VII – Continuing Authority and Transfer

In Points V and VI, Valley Oaks asserts that the CWC erred in determining that its permit application was deficient because it failed to identify a continuing authority. Valley Oaks contends any typographical error associated with its identification of "Country Club Homes LLC" as the continuing authority for the operation and maintenance of the CAFO was not fatal to the permitting process and that, in approving

the permit, the DNR properly followed its “historical application” of the regulations addressing the issuance of permits. In Point VII, Valley Oaks asserts that the CWC erred in determining that, based on the failure to identify a continuing authority in the permit application, the subsequent transfer of the permit was ineffective.

In denying the permit to Valley Oaks, the CWC concluded that Valley Oaks “failed in th[e] simple task [of identifying the entity to serve as a continuing authority], and the DNR failed to ask it to correct the mistake pursuant to 10 CSR 20-6.300.” The CWC made the following findings of fact in support of this ruling: On December 19, 2017, Ward submitted a permit application for a proposed CAFO. Greg Caldwell, an employee of the DNR for more than thirty years, reviewed the application. The application listed “Country Club Homes LLC” as both the owner and continuing authority for the CAFO facility. The CWC determined that a “Certificate of No Record,” dated June 27, 2018, from the Missouri Secretary of State indicates than no entity named “Country Club Homes LLC," with the address [as stated on the permit] exists. Caldwell testified that he had reviewed the Secretary of State’s website and found information for an entity named “Countryclub Homes, LLC” and assumed that the application identifying “Country Club Homes LLC” as the continuing authority merely contained a typographical error. The CWC found that “Caldwell did not communicate with the permit applicant or the [permit applicant’s] engineer concerning the purported typographical error.”

Nevertheless, on June 15, 2018, the DNR issued the instant permit for the operation of a Class IB CAFO. The permit had another typographical error and was issued to “County [sic] Club Homes, LLC.” Ward then requested the permit be transferred to “Valley Oaks Real Estate, LLC.” On August 9, 2018, the DNR issued the

modified permit "for ownership transfer and facility name change" to Valley Oaks Real Estate, LLC.

10 CSR 20-6.010(3)(A), in effect at the time of Valley Oaks's permit application, states:

> All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made. Construction and first-time operating permits shall not be issued unless the applicant provides such proof to the department and the continuing authority has submitted a statement indicating acceptance of the facility.

The term "continuing authority" is not defined in the text of the regulations, ***see*** 10 CSR 20-2.010,[11] but we have previously stated that, under agency interpretations of 10 CSR 20-6.010(3) applicable here, the regulation "requires only a showing that an entity was a permanent organization to satisfy the 'continuing authority' requirements." ***Trenton Farms***, 504 S.W.3d at 164. Thus, 10 CSR 20-6.010(3) necessitates only that the applicant "***identify*** the entity which will serve the function [of operating, maintaining, and modernizing the CAFO facility.]" ***Id.*** at 166.

Here, we agree with the CWC that Valley Oaks failed to identify the entity serving as a continuing authority. As a general matter, to be registered as a limited liability company in the State of Missouri, an entity must, ***inter alia***, have a name that is "distinguishable upon the records of the secretary from the name of any corporation, limited liability company, limited partnership, limited liability partnership, or limited

[11] 10 CSR 20-2.010 has since been amended to include a definition of continuing authority. 10 CSR 20-2.010(19). This amendment is immaterial to the disposition of this appeal, however, as we apply the regulations that were in effect at the time of the permit application. ***See, e.g., State ex rel. Wolfhole, Inc. v. Scott Cty. Soil & Water Conservation Dist.***, 880 S.W.2d 908, 910 (Mo. App. 1994).

liability limited partnership which is licensed, organized, reserved, or registered under the laws of this state as a domestic or foreign entity, unless" one of two inapplicable exceptions excuses the noncompliance. § 347.020(3).

The term "distinguishable" is not defined in the statute, so we look to a dictionary to determine the term's meaning. ***Kader v. Bd. of Regents of Harris-Stowe State Univ.***, 565 S.W.3d 182, 187 (Mo. banc 2019). "Distinguishable" is defined as "capable of being distinguished," ***Distinguishable***, WEBSTER'S THIRD NEW INT'L DICTIONARY 659 (2002), while the term "distinguish" means: (1) "to perceive as being separate or different: [to] recognize a difference in"; or (2) to mark as separate or different (as one thing from another)." ***Distinguish***, WEBSTER'S THIRD NEW INT'L DICTIONARY 659 (2002). There is no doubt that the entities "Country Club Homes LLC" and "Countryclub Homes, LLC" are distinguishable from one another because they are easily perceivable as different from one another. This observation is further supported by the fact that one entity exists on the records of the Secretary of State ***and the other does not***.

Moreover, a limited liability company's name, as set forth in its articles of organization, "shall be the name under which the limited liability company transacts business in this state unless the limited liability company registers another name under which it transacts business as provided under chapter 417 or conspicuously discloses its name as set forth in its articles of organization." § 347.020(1). Valley Oaks does not contend that "Countryclub Homes, LLC" registered the name "Country Club Homes LLC" to transact business pursuant to Chapter 417 or that it conspicuously disclosed its actual name during the permitting process. Instead, Valley Oaks argues that any typographical error was cured because the DNR was able to intuit the correct permit

applicant through context clues and additional investigation. However, this effort to cure the deficiencies was in excess of the DNR's authority because neither the regulation nor statute[12] provides for any such internal correction mechanism. Rather, the regulations provide the following procedure for the DNR to handle incomplete or deficient applications:

> When an application is submitted incomplete or any of the required permit documents are deficient, or if additional information is needed including, but not limited to, engineering design plans, the department ***will act in one (1) of the following ways***:
>
> A. The department may return the entire permit application back to the applicant for re-submittal; or
>
> B. The applicant and/or the applicant's engineer will be notified of the deficiency and will be provided time to address department comments and submit corrections. Processing of the application may be placed on hold until the applicant has corrected identified deficiencies.

10 CSR 20-6.300(2)(E)4 (emphasis added).

The regulation requires that the DNR, when presented with a deficient permit, will either return all permit application documents to be resubmitted or notify the applicant and/or the applicant's engineer of the deficiency and provide the applicant and/or applicant's engineer with the opportunity to cure the deficiency.[13] While we have no doubt that the DNR could, on its own, create fully-compliant permit applications in short

[12] In rendering its decision, the CWC determined that Section 644.052.8, which authorizes the modification of permits, did not give the DNR the authority to make the changes to the permit application at issue here. As Valley Oaks does not challenge this finding on appeal, we will not address it. ***See Lewis v. Fort Zumwalt Sch. Dist***., 260 S.W.3d 888, 890 (Mo. App. 2008); Rule 84.13(a).

[13] In fact, the record contains several examples of Caldwell offering Valley Oaks's engineer the opportunity to correct other deficiencies.

order, nothing in the text of the regulation or in any provided agency interpretation gives the DNR the authority to ***sua sponte*** correct the deficiencies at issue here. ***See id.***

The record supports the CWC's determination that Valley Oaks failed to complete the "simple task" of correctly identifying the permanent entity that would operate as the CAFO's continuing authority and that the DNR did not follow 10 CSR 20-6.300(2)(E)4 when it failed to ask Valley Oaks to correct this mistake. Valley Oaks has not demonstrated how this finding was in conflict with the plain meaning of the regulation or with the DNR's historical application of any regulation. The CWC did not err in denying Valley Oaks's permit application on the ground that the application failed to identify a continuing authority. Consequently, the CWC did not err in further holding that, because the continuing authority on the original permit was a non-existent entity, the transfer of the permit to "Valley Oaks Real Estate, LLC" was ineffective under 10 CSR 20-6.010(11)(A). Points V, VI, and VII are denied.

Having found that the CWC properly denied the permit on the ground that the permit application failed to identify a continuing authority, we need not address Valley Oaks's challenges to the CWC's remaining grounds for denying the permit presented in Points VIII and IX in the appeal of the Lone Jack case and Points VIII-XIV in the appeal of the Powell case. ***See Knight v. Con-Agra Foods, Inc.***, 476 S.W.3d 355, 358-59 (Mo. App. 2015).

Lone Jack's Motion for Attorneys' Fees

Prior to the submission of its case, Lone Jack filed a motion for attorneys' fees on appeal pursuant to Section 536.087.1, which states:

> A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those

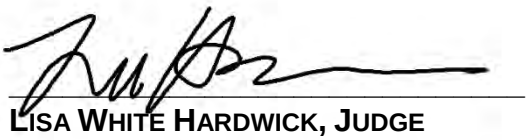
> reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust.

Section 536.087.2 similarly authorizes the award of reasonable fees and expenses "to a party who prevails in any action for judicial review of an agency proceeding . . . unless the court finds that during such agency proceeding the state was substantially justified, or that special circumstances make an award unjust."

A party seeking to recover attorneys' fees and expenses is required to file its application for fees to the body before which it ***first*** prevailed. ***See*** § 536.087.3; ***see also*** § 536.087.4; ***Mo. Real. Estate Appraisers Comm'n v. Funk***, 492 S.W.3d 586, 593-94 (Mo. banc 2016). Here, there is no dispute that Lone Jack has filed the necessary application before the CWC. In light of our affirmance of the administrative decision, we must remand this cause to the CWC to determine whether, pursuant to Section 536.087, Lone Jack is entitled an award of attorneys' fees. ***See also*** § 536.087.4; ***Funk***, 492 S.W.3d at 593-94.

CONCLUSION

The CWC's final decisions in the Lone Jack and Powell cases are affirmed. The cause is remanded to the CWC for a determination of Lone Jack's entitlement to attorneys' fees.



LISA WHITE HARDWICK, JUDGE

ALL CONCUR.

Exhibit G

Mandate
Missouri Court of Appeals
Western District

COUNTRYCLUB HOMES, LLC AND VALLEY OAKS REAL ESTATE, LLC, APPELLANTS,	)	
vs. (CWC)	)	WD 82476 cons WD82477 CASE NO. 18-0498 18-0501
MISSOURI DEPARTMENT OF NATURAL RESOURCES, MISSOURI CLEAN WATER COMMISSION, LONE JACK NEIGHBORS FOR RESPONSIBLE AGRICULTURE, POWELL GARDENS, INC., ELIZABETH DEICH, RYAN DEICH AND THE ROBERT M. CHAMNESS TRUST, COLLECTIVELY KNOWN AS THE POWELL PARTIES, RESPONDENTS.	)	

Now on this day the CWC's final decisions in the Lone Jack and Powell cases are affirmed. The cause is remanded to the CWC for a determination of Lone Jack's entitlement to attorneys' fees.

Opinion filed.

STATE OF MISSOURI – Sct.

I, SUSAN C. SONNENBERG, Clerk of the Missouri Court of Appeals, Western District, certify that the foregoing is a full, true and complete transcript of the judgment of the Missouri Court of Appeals, Western District, entered of record on the 24th day of December, 2019, in the above entitled cause.

Given under my hand and the seal of the Court, at Kansas City, Missouri, this 15th day of January, 2020.

Susan C. Sonnenberg
SUSAN C. SONNENBERG, CLERK

cc: Circuit Court Clerk
Jennifer Griffin
Jennifer Louise Hernandez
Timothy P. Duggan
Stephen G. Jeffery
Charles William Hatfield

MISSOURI COURT OF APPEALS WESTERN DISTRICT

Exhibit H

Timekeeper Name	Tkpr Title	Work Date	Work Hrs	Statutory Rate	Work Amt	Narrative
Davenport, Aimee	Partner	1/17/2019	0.90	75.00	67.50	Review Petition for Judicial Review; draft correspondence [redacted]; review rules to determine [redacted].
Presley, Marsha	Paralegal	1/29/2019	0.30	75.00	22.50	Emails with Ms. Davenport and telephone call with Mr. Barrett regarding appeal.
Shanks, Brett	Associate	3/12/2019	0.90	75.00	67.50	Draft motion to intervene in Court of Appeals review of permit denial.
Presley, Marsha	Paralegal	3/13/2019	0.20	75.00	15.00	Revise motion to be added; prepare for electronic filing and file.
Shanks, Brett	Associate	3/14/2019	0.40	75.00	30.00	Research [redacted]
Davenport, Aimee	Partner	5/15/2019	1.90	75.00	142.50	Analyze brief filed by Valley Oaks in permit appeal; begin drafting response to points relied on by Valley Oaks.
Hatfield, Charles W	Partner	5/15/2019	0.50	75.00	37.50	Review and analyze Valley Oaks' 14 point appeal.
Presley, Marsha	Paralegal	5/16/2019	0.10	75.00	7.50	Email with Mr. Shanks regarding response brief; email with Ms. Page regarding appellants' brief.
Barrett, Alexander	Associate	5/17/2019	0.50	75.00	37.50	Review brief filed by Valley Oaks in NPDES appeal.
Hatfield, Charles W	Partner	5/20/2019	0.80	75.00	60.00	Outline permit appeal issues for Mr. Barrett.
Barrett, Alexander	Associate	5/20/2019	5.40	75.00	405.00	Review Valley Oaks' appellate brief; outline issues on appeal; begin researching [redacted]
Hatfield, Charles W	Partner	5/21/2019	0.50	75.00	37.50	Coordination call with team; email to AAG Duggan regarding appellate briefing on permit.
Davenport, Aimee	Partner	5/22/2019	3.80	75.00	285.00	Review briefs filed by Valley Oaks; draft response brief; research issues related to [redacted]
Barrett, Alexander	Associate	5/23/2019	2.60	75.00	195.00	Draft arguments for response brief.
Barrett, Alexander	Associate	5/24/2019	5.40	75.00	405.00	Draft arguments for NPDES case appellate brief; perform [redacted] research.
Davenport, Aimee	Partner	5/28/2019	1.80	75.00	135.00	Draft arguments for response brief; research issues related to [redacted].
Barrett, Alexander	Associate	5/28/2019	2.40	75.00	180.00	Continue drafting appellate brief arguments.
Barrett, Alexander	Associate	5/30/2019	6.40	75.00	480.00	Draft argument sections for appellate brief.
Presley, Marsha	Paralegal	5/30/2019	0.10	75.00	7.50	Emails to Mr. Moderson after reviewing motion to supplement record on appeal.
Barrett, Alexander	Associate	6/4/2019	3.10	75.00	232.50	Continue drafting appellate arguments.
Presley, Marsha	Paralegal	6/4/2019	1.10	75.00	82.50	Email with Mr. Barrett regarding motion for extension of time; begin drafting motion for extension of time.
Davenport, Aimee	Partner	6/5/2019	1.40	75.00	105.00	Review and revise Motion to be Added as Party; draft Motions for extensions; correspondence with Lathrop and Gage.
Barrett, Alexander	Associate	6/5/2019	4.50	75.00	337.50	Continue drafting appellate brief; prepare pleadings to be designated as respondent and extension of time.
Presley, Marsha	Paralegal	6/5/2019	0.50	75.00	37.50	Telephone call with Mr. Barrett regarding motions to be parties to appeal and motion for extension of time; prepare for electronic filing and file; call to Mr. Barrett regarding rejected filing.
Barrett, Alexander	Associate	6/6/2019	0.30	75.00	22.50	Conduct phone call with Mr. Moderson regarding NPDES appeal issues.
Presley, Marsha	Paralegal	6/6/2019	0.20	75.00	15.00	Telephone call to clerk's office regarding rejected filing of motion for extension of time; meet with Mr. Barrett regarding answer from clerk; revise filing and refile.
Barrett, Alexander	Associate	6/7/2019	2.10	75.00	157.50	Continue drafting appellate brief.
Barrett, Alexander	Associate	6/11/2019	2.40	75.00	180.00	Continue drafting appellate brief.
Hatfield, Charles W	Partner	6/12/2019	0.30	75.00	22.50	Conference with Ms. Davenport regarding appellate filings.
Barrett, Alexander	Associate	6/13/2019	2.90	75.00	217.50	Continue drafting appellate brief.
Barrett, Alexander	Associate	6/14/2019	5.90	75.00	442.50	Finish drafting and revising first draft of appellate brief; send same to Ms. Davenport and Mr. Hatfield for review.
Hatfield, Charles W	Partner	6/21/2019	1.30	75.00	97.50	Review and comment on draft appellate brief.
Barrett, Alexander	Associate	6/26/2019	0.10	75.00	7.50	Phone call with Mr. Hatfield regarding appellate brief issues.
Barrett, Alexander	Associate	6/26/2019	2.20	75.00	165.00	Revise brief with comments from Mr. Hatfield.
Hatfield, Charles W	Partner	6/27/2019	1.60	75.00	120.00	Additional work on appeal response brief.

Barrett, Alexander	Associate	6/27/2019	4.50	75.00	337.50	Revise second draft of appellate brief.
Barrett, Alexander	Associate	6/28/2019	1.20	75.00	90.00	Draft fact section for appellate brief.
Hatfield, Charles W	Partner	7/1/2019	0.30	75.00	22.50	Conference with Mr. Barrett regarding appellate brief.
Barrett, Alexander	Associate	7/1/2019	4.30	75.00	322.50	Draft fact section to appellate brief; finish revising 2nd draft of same.
Barrett, Alexander	Associate	7/2/2019	0.90	75.00	67.50	Prepare appendix to brief and index to same.
Hatfield, Charles W	Partner	7/5/2019	1.70	75.00	127.50	Perform additional work on NPDES brief.
Presley, Marsha	Paralegal	7/5/2019	0.20	75.00	15.00	Meet with Mr. Hatfield regarding Administrative Hearing Commission transcripts and order.
Hatfield, Charles W	Partner	7/11/2019	2.30	75.00	172.50	Detailed review and edits to Court of Appeals brief in permit appeal; edit document 07.01.2019 Powell Brief Revisions.
Barrett, Alexander	Associate	7/12/2019	2.60	75.00	195.00	Revise draft brief with comments from Mr. Hatfield; circulate same for final revisions.
Barrett, Alexander	Associate	7/16/2019	2.00	75.00	150.00	Finalize appendix to brief; add appendix citations; cite check fact section of brief; revise same.
Barrett, Alexander	Associate	7/17/2019	3.00	75.00	225.00	Make final revisions and edits to response brief.
Barrett, Alexander	Associate	7/17/2019	0.40	75.00	30.00	Review reply brief filed by Valley Oaks in related Neighbors' appeal.
Presley, Marsha	Paralegal	7/17/2019	1.40	75.00	105.00	Review and revise appendix; email and meeting with Mr. Barrett; review and revise brief.
Barrett, Alexander	Associate	7/18/2019	0.40	75.00	30.00	Make final edits to response brief.
Presley, Marsha	Paralegal	7/18/2019	1.30	75.00	97.50	Revise brief; meet with Mr. Barrett regarding brief; prepare brief for electronic filing and file; email Mr. Barrett regarding filing; review rules regarding filing paper brief.
Presley, Marsha	Paralegal	7/19/2019	0.10	75.00	7.50	Telephone call to clerk's office regarding paper brief.
Presley, Marsha	Paralegal	7/22/2019	0.40	75.00	30.00	Telephone call to clerk's office; meet with Ms. Page regarding paper briefs; review paper briefs; email with Mr. Moderson regarding briefs; revise certificate of service.
Hatfield, Charles W	Partner	7/29/2019	0.30	75.00	22.50	Consult with paralegal regarding filing appeals briefs and possible Motion to Dismiss as moot due to new permit.
Presley, Marsha	Paralegal	7/29/2019	0.20	75.00	15.00	Telephone call and email with Mr. Moderson regarding attorney fees and Department of Natural Resources not filing a brief.
Barrett, Alexander	Associate	8/2/2019	0.30	75.00	22.50	Review reply brief filed by Valley Oaks.
Davenport, Aimee	Partner	8/20/2019	1.50	75.00	112.50	Draft revisions to Motion to Dismiss.
Presley, Marsha	Paralegal	8/23/2019	1.30	75.00	97.50	Email and telephone call with Mr. Moderson regarding exhibits for motion to dismiss; prepare exhibits for motion to dismiss.
Presley, Marsha	Paralegal	9/5/2019	0.40	75.00	30.00	Prepare exhibit A; emails with Mr. Moderson regarding notice of dismissal; prepare notice of dismissal for electronic filing and file; email to Mr. Duggan.
Hatfield, Charles W	Partner	12/17/2019	4.70	75.00	352.50	Prepare for and arguments at Missouri Court of Appeals; debrief regarding same.
Hatfield, Charles W	Partner	12/24/2019	0.50	75.00	37.50	Review and analyze favorable court of appeals decision; various communications [redacted].
			101.00		**7,575.00**	

Tab H

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Open Comment Session

Issue:

This standing item provides an opportunity for comments on any issue pertinent to the Commission's role and responsibilities. The Commission encourages all interested persons to express their comments and concerns.
General Public

Recommended Action:

Information only.

Tab I

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Springs Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 2, 2020

Future Meeting Dates

Information:

Missouri Clean Water Commission Meeting dates and locations:

July 8, 2020
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette/Nightingale Conference Rooms
Jefferson City, MO 65101

October 7, 2020
Lewis and Clark State Office Building
1101 Riverside Drive
LaCharrette/Nightingale Conference Rooms
Jefferson City, MO 65101

Recommended Action:

Information only.