

**IN THE CIRCUIT COURT OF THE THIRTY-FIFTH JUDICIAL CIRCUIT
OF MISSOURI, DUNKLIN COUNTY, MISSOURI**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 21DU-CC00015
)	
DUNKLIN COUNTY REORGANIZED)	
COMMON SEWER DISTRICT #1,)	
)	
Defendant.)	

SECOND AGREED MOTION TO STAY LITIGATION

NOW COMES the Plaintiff, UNITED STATES OF AMERICA, by and through its attorneys, Saylor A. Fleming, United States Attorney for the Eastern District of Missouri, and Anthony J. Debre, Assistant United States Attorney for said District, and for its second agreed motion to stay this litigation in its entirety, including all proceedings and deadlines therein, states as follows:

1. On March 2, 2021, Plaintiff United States of America (“Plaintiff”) filed its Petition against Defendant Dunklin County Reorganized Common Sewer District #1 (“District”).
2. This action arises from the District’s failure to comply with the terms of a Sewerage System Revenue Bond (“Bond”), which was executed by the District and delivered to Plaintiff. *See*, Petition ¶ 2.
3. The Petition alleges, in relevant part, that the District failed to make principal and interest payments owed to Plaintiff pursuant to the terms of the Bond. *Id.* at ¶ 5, 8. Furthermore, the Petition alleges that the District’s President resigned effective February 26, 2021, and every position on the District’s Board of Trustees is now vacant in violation of the terms of the Bond. *Id.* at ¶ 6-7, 9.

4. The Petition seeks various types of relief, including an order providing for the appointment of the District's Board of Trustees and an order commanding the County Commission to fill the vacancies on the District's Board of Trustees. *Id.* at pg. 4.

5. In light of the District's failure to maintain any officers and board members, the parties agreed the District's sewer system needs to continue providing service while this suit is pending in order to serve the interests of all parties involved, including the District's customers, and the parties jointly moved this Court to appoint a receiver to operate and administer sewage works services for the District. *See, Joint Motion To Enter Receivership Order, filed March 2, 2021.*

6. On March 5, 2021, this Court entered a Receivership Order appointing the City of Malden (hereafter "Receiver") as the receiver for the District to have exclusive possession and control over all assets of the District and the operations of the District, including the responsibility to collect fees from the District's customers and adjust the rates and fees as necessary. *See, Receivership Order, filed March 5, 2021.*

7. On April 16, 2021, Plaintiff served the District with service of process, including a copy of the summons and Petition. *See, Proof of Service, filed April 20, 2021.* Thereafter, Plaintiff sent courtesy copies of the summons, Petition, and proof of service to the Receiver and the Receiver's attorney.

8. Thereafter, the Receiver discovered multiple and serious irregularities in the District's records and finances. For example, most of the District's accounting records were erased or destroyed. Similarly, the District did not have an accurate list of customers to bill. In addition, certain money the District should have in its possession could not be located.

9. Given these circumstances, it was not prudent or beneficial to any party to move forward with this litigation until the above-referenced irregularities could more fully be identified and evaluated.

10. As a result, on April 22, 2021, the parties filed an Agreed Motion To Stay Litigation (“Agreed Motion”) respectfully requesting this Court stay this litigation in its entirety, including any and all deadlines for responsive pleadings and discovery, for a period of six (6) months to evaluate the irregularities mentioned above.

11. On April 26, 2021, this Court entered an Order granting the parties’ Agreed Motion and staying this litigation in its entirety, including any and all deadlines for responsive pleadings and discovery, for a period of six (6) months.

12. The aforementioned stay will expire on or about October 27, 2021.

13. Currently, the Receiver requires additional time to sort out what has transpired, including what occurred before all the District’s board members resigned, and identify the causes of the irregularities mentioned above. On April 19, 2021, the Receiver sent a request to the Missouri State Auditor’s Office (“Auditor”) asking them to conduct an audit of the District due to concerns over financial practices. On April 30, 2021, the Receiver received correspondence from the Auditor agreeing to perform the requested audit. The scope of the audit will be determined by the Auditor after reviewing the concerns raised by the Receiver. Although the Receiver is on the list, the Receiver is still waiting for the Auditor to schedule an entrance conference and begin the audit. At this point, the Auditor controls the timeline, but hopefully the audit will begin in the near future.

14. If Plaintiff pursues its claim now and new board members get appointed too soon before the aforementioned irregularities can be rectified, then the parties are likely to end up in the

same position – with the new board members resigning and Plaintiff having to find a receiver to run the District again.

15. To that end, temporarily staying this litigation again serves the public interest and would save judicial resources.

16. Staying this litigation for another six (6) months should be sufficient time to rectify the irregularities such that a new group of volunteer board members could then step in and run the operations of the District at that time.

17. Missouri law allows this Court to grant the parties' request. First, Missouri Rule of Civil Procedure 44.01(b) allows discretion for this Court to enter an order extending any time periods, including deadlines for responsive pleadings and discovery, and it states in relevant part,

44.01. Time, Computation of – Extension – Expiration of Term – Service of Motions (b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order ...
Mo. Sup. Ct. R. 44.01.

18. Similarly, Missouri Rule of Civil Procedure 56.01(c) allows discretion for this Court to enter a protective order eliminating or postponing the time and nature of discovery, and it states in relevant part,

56.01. General Provisions Governing Discovery

(c) Protective Orders. Upon motion by a party ... and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time and place ...

Mo. Sup. Ct. R. 56.01.

19. The parties have agreed to this motion, and no parties will be prejudiced by the granting of this motion.

WHEREFORE, the Plaintiff, UNITED STATES OF AMERICA, respectfully requests this Court grant its motion, enter an Order staying this litigation in its entirety, including any and all deadlines for responsive pleadings and discovery, for another period of six (6) months, and any further relief this Court deems just.

DATED: October 27, 2021

Respectfully submitted,

SAYLER A. FLEMING
United States Attorney

/s/ Anthony J. Debre

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Attorneys for Plaintiff

Certificate of Service

The undersigned hereby certifies that on October 27, 2021, a true and accurate copy of the foregoing was filed with this Court via Case.Net, and therefore served on all parties of record.

/s/ Anthony J. Debre _____

Anthony J. Debre

Assistant United States Attorney

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FILED
10-29-2021
PAULA S. GARGUS
CIRCUIT CLERK
DUNKLIN COUNTY, MO

AGREED ORDER

Plaintiff's Second Agreed Motion To Stay Litigation is hereby **GRANTED**. This litigation is hereby stayed in its entirety, including any and all deadlines for responsive pleadings and discovery, for a period of six (6) months. Plaintiff shall file a Memo by May 1, 2022 advising this Court as to the current status of this litigation, including the need to set a deadline for Defendant's responsive pleading or the need for an additional stay, if necessary.

DATE: _____

10/29/2021

JUDGE: _____

Robert V. Meyer