

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
et al.,)	
)	
Plaintiffs,)	
)	No. 4:07CV1120 HEA
v.)	
)	
THE METROPOLITAN ST. LOUIS)	
SEWER DISTRICT et al.,)	
)	
Defendants)	
)	
)	

THIRD MATERIAL AMENDMENT TO CONSENT DECREE

WHEREAS, the United States of America (“United States”), the Missouri Coalition for the Environment Foundation (“Coalition”), and the Metropolitan St. Louis Sewer District’s (“MSD”) (collectively “Parties”) are parties to a Clean Water Act (“CWA”) Consent Decree entered by this Court on April 27, 2012 (Dkt. #159), and subsequently modified by non-material modifications, Dkt. ##161 and 165, and by (first) and second material amendments at Dkt. ##164 and 171.

WHEREAS, the Consent Decree requires, among other things, that MSD construct and implement certain CSO Control Measures in accordance with the descriptions, design and performance criteria, and the dates for bid year and achievement of full operation for each CSO Control Measure set forth in Appendix D to the Consent Decree;

WHEREAS, the Consent Decree requires that MSD construct (1) a CSO storage tunnel, Upper River Des Peres Storage Tunnel Serving Lemay Outfalls 064, 066 to 096, 099 to 102, 167, 178 and 180, providing 30 million gallons of storage and resulting in no more than 94 million gallons of untreated overflow during four or less overflow events in a typical year, and achieving full operation by June 30, 2039, and (2) a CSO storage tunnel, River Des Peres Tributaries Storage Tunnel Serving Lemay CSO Outfalls 103, 104, 105, 106, 111, 117 to 128, 130, 131, 134, 136 to 140, 166 and 176, providing 28 million gallons of storage and resulting in four or less overflow events in a typical year, and achieving full operation by June 30, 2035. *See* Appendix D, Consent Decree, as modified by Second Material Amendment to Consent Decree, Dkt. #171, at ¶ 2;

WHEREAS, Paragraph 61 of the Consent Decree provides MSD may request that the Design Criteria for the CSO Control Measures listed in Appendix D be revised if it can demonstrate that the requested revision (1) reflects good engineering practices and (2) will continue to achieve the Performance Criteria set forth in Appendix D.

WHEREAS, this Proposed Amendment replaces the Upper River Des Peres Storage Tunnel and the River Des Peres Tributaries Storage Tunnel with a single storage tunnel (called the “Upper River Des Peres and River Des Peres Tributaries Storage Tunnel”), providing at least 58 million gallons of storage and resulting in no more than 94 million gallons of untreated overflow during four or less overflow events in a typical year, and achieving full operation by December 31, 2037.

WHEREAS, the Parties agree that this Proposed Amendment reflects good engineering practices by reducing the impacts of large tunnel construction projects on nearby communities, increasing constructability and operational/maintenance benefits, and achieving the same

Performance Criteria as the original two CSO storage tunnels. The construction of a single storage tunnel will reduce the construction impacts to the local communities of University City and Richmond Heights. A single storage tunnel will reduce the number of tunnel shafts and eliminate the dewatering pump station in University City. In turn, this will reduce the number of residential properties that need to be purchased and limit the impacts of construction. Similarly, Richmond Heights would also see the elimination of a tunnel shaft in a highly residential area (Claytonia Terrace and Lovella Avenue). The majority of the single storage tunnel will be constructed in the right of way of Big Bend Boulevard, reducing the need for easement acquisition and allowing for easier access and hauling in and out of the construction areas. And, the operational and maintenance benefits include one pump station and one tunnel rather than multiple of each, thereby simplifying operation and maintenance, and allowing more flexibility to manage flows within the CSO system during heavy rainfalls. The consolidation of tunnel projects by MSD will continue to achieve the same Performance Criteria - reduce overflow events to four or less in the typical year in both the Upper River Des Peres and the River Des Peres main channel, and reduce overflow to 94 million gallons of untreated flow volume per year in the Upper River Des Peres. Once constructed, the single storage tunnel would also have a storage volume of at least 58 million gallons – which is the aggregate of storage volumes of the original two tunnels.

WHEREAS, the single storage tunnel accelerates the achievement of full operation for the larger of the two tunnels, the original Upper River Des Peres Storage Tunnel, from June 30, 2039 to December 31, 2037 (as well as the project bid year from 2032 to 2029), but delays the benefits that would have come with the construction of the River Des Peres Tributaries Storage Tunnel from June 30, 2035 to December 31, 2037. However, MSD is addressing the delayed benefits by

removing two CSO outfalls in the River Des Peres Tributaries Storage Tunnel service area significantly earlier than required under the Consent Decree and thereby reducing CSO volumes and demands on the combined sewer system in this area. One CSO outfall (L-111) will be removed by June 2029 and the other CSO outfall (L-106) will be removed by March 2030, which is six and five years, respectively, sooner than required by the Consent Decree. MSD will also continue to promote the use of green infrastructure by storm water retrofitting and greening of properties in this same service area. Moreover, the original Upper River Des Peres Storage Tunnel serves a community with environmental justice concerns. EPA uses an environmental justice screening and mapping tool (called “EJ Screen”) that utilizes standard and nationally-consistent data to highlight places that may have higher environmental burdens and vulnerable populations. The tool combines environmental and demographic information to create a single environmental indicator (called an “EJ Index”) – such as proximity to traffic – that can help identify communities that may have a high combination of environmental burdens and vulnerable populations. This community has EJ Index above the 80th percentile for both Traffic Proximity and Hazardous Waste Proximity. This Proposed Amendment will lessen the traffic and reduce the construction impacts to this area and will accelerate by two years the timeframe for when this community will see the benefits of the single storage tunnel capturing CSO volumes.

WHEREAS, EPA considered the projected residential indicator when evaluating this request by MSD to amend the Consent Decree. The residential indicator assesses the impact of projected costs on the median residential household by measuring the average cost of wastewater bills relative to median household income in the service area to help determine the financial capability of an entity to implement the necessary control measures. EPA’s “Combined Sewer Overflows -

Guidance for Financial Capability Assessment and Schedule Development” provides that a residential indicator greater than 2% signals a “High” financial impact on residents, meaning that the community is likely to experience economic hardship in complying with the federal water standards. Based on information provided by MSD and on MSD’s projected costs, this Proposed Amendment will allow the MSD ratepayers to experience single digit rate increases for the remainder of the Consent Decree program while allowing the projected residential indicator in the City of St. Louis as well as the entire District to remain below 2% through the life of the Consent Decree.

WHEREAS, Paragraph 62 of the Consent Decree provides that if MSD experiences adverse changes to its financial circumstances or other financial or budgetary issues, MSD may request a modification of a CSO Control Measure and/or CSO Critical Milestone in this Consent Decree and Appendix D;

WHEREAS, Paragraph 136 of the Consent Decree provides that the Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all Parties. Where the modification constitutes a material change to the Consent Decree, the modification shall be effective only upon approval by the Court;

WHEREAS, the Parties have agreed, pursuant to Paragraph 136 of the Consent Decree, to this Proposed Amendment to the Consent Decree. This Proposed Amendment made herein constitutes a material change to the Consent Decree, requiring Court approval under Paragraph 136 of the Consent Decree; and

WHEREAS, the Parties recognize, and the Court by entering this Amendment finds, that this Amendment has been negotiated by the Parties at arm’s length and in good faith and that this Amendment is fair, reasonable, and in the public interest.

NOW THEREFORE, with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

1. Except as specifically modified herein and by non-material modifications, Dkt. ##161 and 165, and by (first) and second material amendments, Dkt. ##164 and 171, all provisions of the Consent Decree entered by the Court on April 27, 2012 (Dkt. #159) shall remain unchanged and in full force and effect.

2. The CSO Control Measures: Upper River Des Peres Storage Tunnel and River Des Peres Tributaries Storage Tunnel as set forth at pages 3 & 5 of Appendix D of the Consent Decree shall be amended as follows (deletions are indicated in strikethrough text and additions are indicated in bold and italicized text):

CSO Control Measure	Description	Design Criteria	Performance Criteria	Critical Milestones
Upper River Des Peres <i>and River Des Peres Tributaries</i> Storage Tunnels serving Lemay Outfalls 064, 066 to 096, 099 to 106, 111, 117 to 128, 130, 131, 134, 136 to 140, 166, 167, 176, 178, and 180	Deep storage/conveyance tunnel, near-surface facilities, pump station or direct connection to LMRDP control measure, sewer separation and consolidation sewers	Provide storage volume of 30 at least 58 million gallons in deep tunnel system to capture flows from Lemay CSO Outfalls 064, 066 to 096, 099 to 106, 111, 117 to 128, 130, 131, 134, 136 to 140, 166, 167, 176, 178, and 180	When incorporated with other River Des Peres CSO controls, reduce overflows to 4 events or less, and 94 million gallons of untreated overflow volume to the Upper River Des Peres in the typical year⁽¹⁾ and reduce overflows to 4 events or less in the River Des Peres main channel during the typical year.⁽¹⁾	<ul style="list-style-type: none"> • Bid Year – 2032 2029 • Achievement of Full Operation – 6/30/2039 12/31/2037
River Des Peres Tributaries Storage Tunnels serving Lemay CSO Outfalls 103, 104, 105, 106, 111, 117 to 128, 130, 131, 134, 136 to 140, 166 and 176	Storage/Conveyance tunnel, near-surface facilities, pump station, sewer separation and consolidation sewers	Conveyance tunnel with storage volume of 28 million gallons to capture flows from Lemay CSO Outfalls 103, 104, 105, 106, 111, 117 to 128, 130, 131, 134, 136 to 140, 166 and 176	When incorporated with other River Des Peres CSO controls, reduce overflows to 4 events or less to River Des Peres main channel in the typical year⁽¹⁾	<ul style="list-style-type: none"> • Bid Year – 2028 • Achievement of Full Operation – 6/30/2035

3. The following confirming changes to the top of page 3 of Appendix E, Post Construction Monitoring, shall also be amended as follows (deletions are indicated in strikethrough text and additions are indicated in bold and italicized text):

Upper River Des Peres and River Des Peres Tributaries:

- ~~Storage tunnel to store flows from CSO Outfalls to the Upper River Des Peres.~~
- ***Tunnel to convey/store flows to Lemay WWTF***

~~**River Des Peres Tributaries:**~~

- ~~Tunnel to convey/store flows to Lemay WWTF~~

4. The effective date of this Amendment shall be the date upon which this Amendment is entered by the Court or the motion to enter this Amendment is granted, whichever occurs first, as recorded on the Court's docket.

5. Each undersigned representative of MSD, the Coalition, EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Amendment and to execute and legally bind the Party he or she represents to this Amendment.

6. This Amendment shall be lodged with this Court for a period of at least 30 days for public notice and comment in accordance with 28 C.F.R. 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Amendment disclose facts or considerations indicating that this Amendment is inappropriate, improper, or inadequate. MSD consents to entry of this Amendment without further notice and agrees not to withdraw from or oppose entry of this Amendment by the Court or to challenge any provision of this Amendment, unless the United States has notified MSD in writing that the United States no longer supports entry of the Amendment.

7. This Amendment to the Consent Decree constitutes the final, complete and exclusive

agreement and understanding among the Parties with respect to this Amendment to the Consent Decree, and this Amendment supersedes all prior agreements and understandings, whether oral or written concerning the Amendment embodied herein.

8. This Agreement may be executed in counterparts, and its validity shall not be challenged on that basis.

Dated and entered this ____ day of _____, 2022.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE

The undersigned party hereby consents and certifies that it is authorized to consent to the terms and conditions of this Third Material Amendment to Consent Decree in the matter of *United States, et al. v. Metropolitan St. Louis Sewer District*, No. 4:07-cv-01120-HEA (E.D. Mo.).

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

Date: 8/5/22

KATHRYN
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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII:

Date: 6/29/22

LESLIE HUMPHREY  Digitally signed by LESLIE HUMPHREY
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Date: 6/27/22

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The undersigned party hereby consents and certifies that it is authorized to consent to the terms and conditions of this Third Material Amendment to Consent Decree in the matter of *United States, et al. v. Metropolitan St. Louis Sewer District*, No. 4:07-cv-01120-HEA (E.D. Mo.).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE:

Date: 6/30/22

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Date: 6/3/22

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FOR THE MISSOURI COALITION FOR THE ENVIRONMENT FOUNDATION:

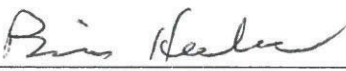
Date: 5/26/22 

Date: 5/26/2022 

The undersigned party hereby consents and certifies that it is authorized to consent to the terms and conditions of this Third Material Amendment to Consent Decree in the matter of *United States, et al. v. Metropolitan St. Louis Sewer District*, No. 4:07-cv-01120-HEA (E.D. Mo.).

FOR THE METROPOLITAN ST. LOUIS SEWER DISTRICT:

Date: 05/26/2022



BRIAN L. HOELSCHER
Executive Director
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Date: 5/26/2022



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