

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

|                                        |   |              |
|----------------------------------------|---|--------------|
| THE METROPOLITAN ST. LOUIS             | ) |              |
| SEWER DISTRICT,                        | ) |              |
|                                        | ) |              |
| Plaintiff,                             | ) |              |
|                                        | ) | Cause No.    |
| v.                                     | ) |              |
|                                        | ) | Division No. |
| MARK R. DeVORE,                        | ) |              |
| St. Louis County Collector of Revenue, | ) |              |
|                                        | ) |              |
| and,                                   | ) |              |
|                                        | ) |              |
| HOWARD BEND LEVEE DISTRICT,            | ) |              |
|                                        | ) |              |
| Defendants.                            | ) |              |

**PETITION**

COMES NOW Plaintiff The Metropolitan St. Louis Sewer District (“MSD” or “Plaintiff”), through undersigned counsel, and for its Petition against Defendants Mark R. DeVore and the Howard Bend Levee District, states as follows:

**NATURE OF THE CASE**

1. This is a lawsuit to protect MSD’s ratepayers from excessive, improper, and unconstitutional taxes levied by the Howard Bend Levee District on MSD. The Howard Bend Levee District and its five member Board of Supervisors (collectively referred to herein as the “HBLD” or “Defendant”) has operated in relative obscurity and largely has been unchecked since it was created by the Circuit Court of St. Louis County in 1987. Since that time, the HBLD has levied, and owners of property within the district have paid, tens of millions of dollars in Levee Taxes that were supposed to be used to construct and maintain certain works (e.g., earthen levees, channels, and pump stations) necessary to protect the land located within the district from flooding.

How these Levee Taxes are calculated and how they have been used by the HBLD have come under scrutiny in recent years because, despite the tens of millions of dollars paid over the years (millions by MSD alone over the past thirty plus years), the works are not complete, land within the district—including MSD’s wastewater treatment plant—still floods, and the HBLD is over \$22 million in debt.

2. MSD is the second largest taxpayer within the district. In 2020, the HBLD announced that it was increasing MSD’s Levee Taxes by approximately 60% due to ongoing litigation with two other taxpayers—the City of Maryland Heights (“Maryland Heights”) and GLP Capital, LP, Penn Tenant, LLC, and St. Louis Gaming Ventures, LLC (collectively, the “Casino”). MSD protested the 60% increase pursuant to RSMo. § 139.031 and began investigating the HBLD. What MSD found was that the HBLD is in significant debt, has not been performing various required statutory and contractual obligations, and has improperly and artificially increased the amount necessary to meet its financial obligations for the year (i.e., the amount it needed to collect from the landowner taxpayers within the district) by a significant amount. MSD further found that the HBLD has spent over \$4 million to build unused sanitary sewer and potable water infrastructure on vacant land, has allowed over 115 acres of impervious area to be constructed without proper consideration for additional flows (i.e., stormwater), and has allowed various landowners within the district to raise their land without consideration of the effect on other landowners. Finally, MSD learned that the HBLD has failed and refused to construct or cause to be constructed a specific Stormwater Pump Station Project that is called for by the Reclamation Plans and that is designed to alleviate flooding within the district in the area where MSD’s wastewater plant is located.

3. MSD attempted to work through these issues with the HBLD prior to filing this suit, but was not able to reach a resolution. Faced with no other alternative, and the time requirements of RSMo. § 139.031, MSD filed this lawsuit with the intention of bringing transparency to the HBLD, compelling performance of certain statutory and contractual obligations by the HBLD, and stopping the improper, unlawful, and unconstitutional taxing of MSD. MSD also seeks to recover \$370,000.00 in uninsured/unreimbursed costs related to the floodings of MSD's wastewater treatment plant in 2016 and 2019 that were caused by contractual breaches, acts, omissions, and other failures of the HBLD.

### **THE PARTIES**

4. MSD is a public entity and political subdivision of the State of Missouri. MSD was created on February 9, 1954, pursuant to Article VI, Section 30 of the Missouri Constitution, and following voter approval of a plan to combine 79 regional sewer districts into one regional system for the collection, treatment, and disposal of wastewater. MSD is managed by an Executive Director hired by the Board of Trustees and operates pursuant to the Charter Plan of the Metropolitan St. Louis Sewer District (the "Charter") created in 1954 and amended and approved by voters in 2000 and further amended in 2012. It's mission is to protect the public's health, safety, and water environment by responsibly providing wastewater and stormwater management.

5. Defendant Mark R. DeVore ("Mr. DeVore") is the elected Collector of Revenue for St. Louis County, Missouri.

6. The HBLD is a public corporation and levee district created on July 27, 1987 pursuant to a Decree of the Circuit Court of St. Louis County and pursuant to RSMo. § 245.010 *et seq.* The HBLD is located in the cities of Maryland Heights and Chesterfield, Missouri, approximately 17 miles west of the City of St. Louis, and extends from about Missouri River mile

38 to Missouri River mile 30.4 above the Mississippi River (the “district”). It is governed and managed by a five person Board of Supervisors and is charged with establishing, constructing, or causing to be constructed certain works pursuant to a plan or plans of reclamation approved by the Circuit Court in order to protect the lands within the district from flooding for the benefit of landowners within the district. The current members of the Board of Supervisors are Edward Ortmann (President), Gary Hente, Jim Carver, Tom Ott, and Doug Jones.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over MSD’s claim for the return of protested assessments pursuant to RSMo. § 139.031.

8. This Court has subject matter jurisdiction over MSD’s breach of contract claim pursuant to Art. 5, § 14 of the Missouri Constitution because circuit courts have original jurisdiction over all civil matters and because MSD seeks recovery of money in excess of \$25,000, so RSMo. § 517.011 does not apply.

9. This Court has subject matter jurisdiction over MSD’s equitable claims pursuant to Art. 5, § 14 of the Missouri Constitution.

10. The Court has subject matter jurisdiction over Plaintiffs’ declaratory judgment claims pursuant to Mo. Rev. Stat. §§ 527.010, 527.020, and 527.030.

11. The Court has personal jurisdiction over Defendants because they are located in St. Louis County, Missouri. Additionally, in regard to HBLD, it is a public corporation of the State of Missouri registered with the Missouri Secretary of State and created by the Decree of the Circuit Court of St. Louis County.

12. Venue is proper in St. Louis County, Missouri pursuant to RSMo. § 139.031 and RSMo. § 508.010.2.

## FACTS COMMON TO ALL COUNTS AND CLAIMS

### A. The Flood Prevention System.

13. The HBLD is required by statute to develop a reclamation plan or plans detailing the works to be constructed to protect the property located within the district from flooding.

14. The HBLD adopted the original reclamation plan in 1988 (the “Original Plan of Reclamation”). Since adopting the Original Plan of Reclamation, the HBLD has adopted multiple supplemental reclamation plans and amendments to those supplemental reclamation plans (the “Reclamation Plans”).

15. The Reclamation Plans require the construction and maintenance of an earthen levee or floodwall system (the “Levee System”) and an interior stormwater management system (the “Stormwater System”).

16. The Levee System consists of an earthen levee or floodwall system (including underseepage protection) purportedly at a level of protection to the 500 year Missouri River flood level. The HBLD financed these various works through the sale of bonds totaling over \$25 million.

17. The Stormwater System includes responsibility for constructing and maintaining a system of public stormwater infrastructure that includes drainage ditches, pumping stations, and other public stormwater infrastructure. The Stormwater System is extremely important because although the Levee System keeps water from the Missouri River, Creve Coeur Creek, and Fee Fee Creek out of the district, it does not allow stormwater from inside the district to escape from the district. The HBLD has not completed the Stormwater System.

18. The Levee System and Stormwater System are supposed to function together to provide a system of flood protection and stormwater management for the benefit and protection of property located within the district (the “Flood Protection System”).

19. The Flood Protection System is subject to regulation by local, state, and federal agencies including the Maryland Heights, St. Louis County, Missouri, MSD, and the Missouri State Emergency Management Agency, the Federal Emergency Management Agency, and the United States Army Corps of Engineers.

20. MSD historically has recognized the unique function of the HBLD in providing stormwater management within the boundaries of the district, and MSD historically has deferred to the HBLD in most aspects of stormwater management, including but not limited to design criteria and plan review.

21. The HBLD has failed and refused to complete construction of the Stormwater System or to effectively manage stormwater flows within the district.

22. In December 2010, the HBLD adopted the Fifth Supplemental Plan for Reclamation. The Fifth Supplemental Plan for Reclamation calls for the construction of a stormwater pump station within the district (the “Stormwater Pump Station Project”) in accordance with plans prepared by Stock & Associates Consulting Engineer, Inc. (the “Original Pump Station Plans”). The Stormwater Pump Station Project was designed to help alleviate internal flooding within the district by channeling stormwater flows to a collection area where it can be pumped out of the district.

23. The HBLD adopted the First Amendment to the Fifth Supplemental Plan for Reclamation in 2012. The First Amendment to the Fifth Supplemental Plan for Reclamation calls for the construction of the Stormwater Pump Station Project in accordance with the specifications

contained in the Original Pump Station Plans, but in a different location within the same watershed (the “Revised Pump Station Plans”).

24. The HBLD adopted the Second Amendment to the Fifth Supplemental Plan for Reclamation in 2018. The Second Amendment to the Fifth Supplemental Plan for Reclamation also calls for the construction of the Stormwater Pump Station Project.

25. The Stormwater Pump Station Project has never been built. As a result, stormwater within certain areas of the district—specifically the Creve Coeur Lake watershed area—cannot escape the district, and, on certain occasions, floods various property within the district, including property owned by MSD.

26. Although it has not built the Stormwater Pump Station Project, the HBLD has authorized and spent over \$4 million to construct sanitary sewer and potable water infrastructure to serve undeveloped property within the HBLD. Those works are currently not in use and are not necessary to preserve or maintain any of the works in the Reclamation Plans. MSD maintains this unused infrastructure and incurs costs to do so.

27. In addition to failing to build the Stormwater Pump Station Projection, between 2008 and 2018, the HBLD allowed the construction of approximately 115 acres of impervious area within the district (an increase of approximately 25%) without consideration of storage or disposal of additional stormwater flows. The HBLD has also allowed the filling and/or raising of various property within the district during that time. These changes to land within the district have changed stormwater flows in a manner detrimental to MSD’s property.

**B. The Agreements Between The Parties And Flood Damage To The MSD Plant.**

28. MSD is an owner of property within the district. Specifically, MSD owns and operates a wastewater treatment plant and other real property located within the territorial

boundaries of the district at 3455 Creve Coeur Mill Rd., St. Louis, Mo 63146 (the “MSD Plant”). The Property Locator Numbers for MSD’s property are 12O130465, 12P120025, 12P140054, 15Q330172, LN0000087, and 12P410030. The MSD Plant is located within the Creve Coeur Lake watershed area of the district.

29. The territorial boundaries of the district overlap or are included within the territorial boundaries of MSD.

30. Pursuant to the Charter, MSD has the power, *inter alia*, to have jurisdiction, control, possession, and supervision to construct, operate, and maintain a drainage system within its territorial boundaries. MSD also had the power to approve, revise, or reject the plans and designs of all private or public stormwater facilities in its boundaries. No such facility shall be constructed or reconstructed within its boundaries without the approval of MSD and any such work shall be subject to the inspection and supervision of MSD. MSD also have the power to contract with other public agencies for the construction, use, or maintenance of stormwater facilities or for the performance of any service required by MSD.

31. On or about February 29, 2008, the HBLD and MSD entered into an Intergovernmental Cooperation Agreement, which, *inter alia*, required the HBLD to provide certain stormwater services and stormwater management within the territorial boundaries of the district in exchange for a certain reduction in rates and fees paid by the HBLD and property owners within the HBLD (the “2008 Intergovernmental Agreement”). A true and accurate copy of the 2008 Intergovernmental Agreement is attached here to as Exhibit A and incorporated herein by this reference.

32. The HBLD and MSD operated under the 2008 Intergovernmental Agreement until March 31, 2017. On March 31, 2017, the HBLD and MSD entered into a new Intergovernmental

Cooperation Agreement (the “2017 Intergovernmental Agreement”). The 2017 Intergovernmental Agreement is substantially similar to the 2008 Intergovernmental Agreement, but expanded the scope of stormwater services required to be provided by the HBLD. A true and accurate copy of the 2017 Intergovernmental Agreement is attached hereto as Exhibit B and incorporated herein by this reference.

33. The 2008 Intergovernmental Agreement and the 2017 Intergovernmental Agreement (together, the “Intergovernmental Agreements”) acknowledge the HBLD’s unique function and role in providing flood control and stormwater management within the territorial boundaries of the HBLD, and that MSD has historically deferred to the HBLD in most aspects of stormwater management, including but not limited to design criteria and plan review.

34. The Intergovernmental Agreements require the HBLD to *inter alia* provide certain stormwater services and stormwater management within the territorial boundaries of the district.

35. In both 2016 and 2019, the MSD Plant sustained significant damage from flood waters. The cost to MSD as a result of the flooding exceeded \$1,000,000.00.

36. The flooding of the MSD Plant in both 2016 and 2019 was the result of acts and omissions of the HBLD and the Board of Supervisors in breach of the Intergovernmental Agreements. These acts and omissions include, but are not limited to: (a) failing to provide the stormwater services the HBLD agreed to provide in the Intergovernmental Agreements, (b) failing to appropriately manage stormwater within the district, (c) failing to construct and maintain an appropriate Stormwater System in the district (including the failure to build or cause to be built the Stormwater Pump Station Project), (d) allowing the filling and raising of land within the district, and (e) allowing the construction of approximately 115 acres of impervious area within the district between 2008 and 2018.

37. The total unreimbursed/uninsured costs to MSD from the two flood events is approximately \$370,000.00 (the “MSD Flood Costs”).

38. MSD anticipates it will be required to expend an additional \$2,000,000.00 or more in future costs to complete a flood protection system for the MSD Plant if the HBLD continues to fail and refuse to provide the Stormwater Services and appropriately manage stormwater within the district (including the construction and maintenance of the Stormwater System, including building the Stormwater Pump Station Project).

**C. The Annual Levee Taxes.**

39. The HBLD is authorized by statute to annually “levy” an Installment Tax and a Maintenance Tax on all lands, railroads, and other property located in the Levee District pursuant to RSMo. §§ 245.180, 245.185, and 245.195 (the “Levee Taxes”).

40. The Installment Tax is to be used by the HBLD to pay the costs of completing the works set out in the Reclamation Plans and the amount of any accrued interest due on bonds sold by the HBLD.

41. The Maintenance Tax is to be used by the HBLD to maintain and preserve the Flood Control System; to strengthen, repair, replace, and restore the same, when needed; and for the purpose of defraying the current expenses of the HBLD.

42. By statute, the Levee Taxes are required to be apportioned to and levied on each tract of land or other property located in the district in proportion to the benefits assessed to each tract of land or other property and not in excess thereof.

43. The benefits assessed to each tract of land or other property within the district is based on a report or reports of court appointed commissioners that have been approved by the Circuit Court of St. Louis County.

44. The HBLD has the statutory authority to file a certificate with the St. Louis County Recorder of deeds making unpaid Levee Taxes a lien on the property against which they were levied.

45. There are currently 355 total landowner taxpayers within the district.

46. The district is highly concentrated, with the top ten landowner taxpayers accounting for over 80% of the total assessed benefits.

47. MSD currently is, and historically has been, the second largest taxpayer in the district.

48. In 2020, the HBLD levied the following Levee Taxes on MSD's property within the district, including the MSD Plant:

| <b>Property Locator Number</b> | <b>Installment Tax</b> | <b>Maintenance Tax</b> | <b>Total Levee Tax</b> |
|--------------------------------|------------------------|------------------------|------------------------|
| 12O130465                      | \$6,785.66             | \$1,510.80             | \$8,296.46             |
| 12P120025                      | \$1,162.75             | \$258.88               | \$1,421.63             |
| 12P140054                      | \$739                  | \$164.70               | \$904.46               |
| 15Q330172                      | \$15,127.87            | \$3,368.15             | \$18,496.02            |
| LN0000087                      | \$4,381.77             | \$975.58               | \$5,357.35             |
| 12P410030                      | \$365,181.07           | \$77,711.76            | \$442,892.82           |
| <b>TOTALS</b>                  | <b>\$393,378.12</b>    | <b>\$83,989.87</b>     | <b>\$477,368.74</b>    |

MSD's total Levee Taxes for 2020 are \$477,368.74 (the "2020 Levee Taxes").

49. The 2020 Levee Taxes were approximately 60% higher than the Levee Taxes assessed by the HBLD in 2019. This dramatic increase (\$180,655.21) is due to the cost incurred by the HBLD in litigating two lawsuits filed against it and to make up the difference for the

shortfall caused by payment (or anticipated payment) of Levee Taxes for 2018, 2019, and 2020 under protest by certain other property owners. In short, upon information and belief, the HBLD artificially and intentionally inflated its budget by approximately the amount of Levee Taxes paid under protest in 2019 causing MSD (and all other property owners) to be taxed in amounts far in excess of the actual amount required to complete the works in the Reclamation Plans, pay accrued interest and costs on outstanding bonds sold by the HBLD, and maintain the Flood Protection System.

50. On or about December 29, 2020, MSD paid a portion of the 2020 Levee Taxes under protest pursuant to RSMo. § 139.031. MSD also filed with Mr. DeVore a written statement setting forth the grounds on which MSD's protest is based. The total amount protested by MSD is \$180,655.21 (the "Protested Amount"), which is the difference between the 2020 Levee Taxes and the amount of Levee Taxes paid by MSD in 2019. True and accurate copies of the written statement and checks filed by MSD are attached hereto as Exhibit C and incorporated herein by this reference.

51. After MSD paid its 2020 Levee Taxes under protest, MSD had various discussions with the HBLD but was not able to reach an agreement to withdraw its protest and release the Protested Amount.

#### **D. The Casino and Maryland Heights Lawsuits.**

52. On or about March 27, 2019, the Casino filed a lawsuit in the Circuit Court of St. Louis County, Missouri against the HBLD captioned *GLP Capital, LP, Penn Tenant, LLC, and St. Louis Gaming Ventures, LLC d/b/a Hollywood Casino Maryland Heights, LLC v. Mark R. Devore and Howard Bend Levee District*, Case No. 19SL-CC01316 (the "Casino Lawsuit"). The current operative pleading in the Casino Lawsuit asserts claims for return of Levee Taxes paid under

protest by the Casino in 2018 and 2019 as well as a claim for breach of a contract between the Casino and the HBLD. The Casino also seeks an order requiring the HBLD to file a petition seeking a full reassessment of benefits for the entire district.

53. The Casino accounts for approximately 30% of the benefits assessed in the district and approximately 30% or more of the Levee Taxes levied each year by the HBLD.

54. On or about February 27, 2020, Maryland Heights filed a lawsuit in the Circuit Court of St. Louis County, Missouri against the Levee District captioned *City of Maryland Heights, Missouri v. Mark R. DeVore and Howard Bend Levee District*, Case No. 20SL-CC01342 (the “Maryland Heights Lawsuit”). The current operative pleading in the Maryland Heights Lawsuit seeks return of Levee Taxes paid by Maryland Heights under protest in 2019.

55. On February 15, 2019, Maryland Heights and the Casino sent a letter to the Missouri State Auditor, Nicole Galloway, requesting that the Missouri State Auditor audit the accounts of the HBLD (the “Auditor Letter”). The Auditor Letter states that “it has come to the Casino’s attention that the [HBLD] has not been maintaining records as required by Statute, has been operating with insufficient oversight, and finds itself in a perilous indebtedness position, and unable to produce records showing how it got into this position.” The Auditor Letter further states that “there is concern the [HBLD] has not been maintaining appropriate records, has not been operating in a transparent manner, has been operating for the benefit of certain interested parties, has been issuing indebtedness contrary to the rules set forth in the Levee Statute, and not levying taxes commensurate with payment of its costs, all of which has resulted in a levee district that is strapped with an enormous amount of debt that it cannot pay.” A true and accurate copy of the Auditor Letter is attached hereto as Exhibit D and incorporated herein by this reference.

**E. HBLD's Finances.**

56. The HBLD does not publish or make available to landowner taxpayers within the district the methodology and calculations used by the HBLD to determine and set the Levee Taxes each year.

57. The HBLD has failed to consistently perform its obligations under RSMo. § 245.090. This includes the failure to file the yearly audit of the finances of the HBLD as required by RSMo. § 245.090 and the failure to consistently publish yearly financial statement showing the amount of money received by the HBLD, the amount paid out by the HBLD, and the amount in the treasury at the beginning and end of each year as required by RSMo. § 245.090.

58. The HBLD's lack of transparency has made it difficult, if not impossible, for landowner taxpayers, including MSD, to understand how Levee Taxes are calculated and used by the HBLD.

59. The Auditor Letter and Casino Lawsuit raise additional concerns regarding the transparency of the HBLD and the HBLD's use of Levee Taxes and management of the district. For example, the Casino Lawsuit contains a number of allegations regarding the HBLD's alleged misuse and commingling of funds, failure to construct improvements the HBLD contractually agreed to construct or have constructed, and using funds paid by the Casino to finance and build projects other than those the HBLD agreed to construct. The Casino alleges it paid the HBLD approximately \$700,000.00 for 20 years (a total of approximately \$14 million), which was supposed to be used to pay for certain "Phase II" improvements and/or "Phase II bond costs," but was not. The Casino Lawsuit further alleges that the HBLD fails and refuses to explain how the funds paid by the Casino have been used.

60. Over the course of many years, landowner taxpayers in the district, including MSD, have paid tens of millions of dollars in Levee Taxes at the insistence of the HBLD. Those tens of millions of dollars in Levee Taxes were to be used by the HBLD to construct or cause to be constructed the works in the Reclamation Plans and to pay debt associated with the construction of works in the Reclamation Plans. Despite years of diligent payments by the landowner taxpayers, the HBLD is in substantial debt (over \$22 million) and the works contemplated in the Reclamation Plans have not been completed. Some works, like the Stormwater Pump Station Project—which is a vital work for the protection of the MSD Plant and other property owned by landowner taxpayers—have never been built (or even started) despite being expressly called for by the Reclamation Plans.

61. Despite not having completed the works called for by the Reclamation Plans and the millions of dollars in Levee Taxes already paid by the landowner taxpayers, the HBLD has now dramatically increased the amount of Levee Taxes levied on the landowner taxpayers. In the case of MSD, the increase in Levee Taxes for 2020 is approximately 60% from the Levee Taxes MSD paid in 2019.

62. The HBLD owes approximately \$22 million in outstanding debt for bonds issued in 2005, 2013, and 2017.

63. On March 1, 2021, the HBLD was required to make a payment on its bond debt (principal and interest) in the amount of \$2,362,449.77. A second bond debt payment of approximately \$554,000.00 is due on September 1, 2021.

64. The HBLD appears to own a number of bank accounts at various different financial institutions, including First National, Midland Bank, and Bank Midwest.

65. As of January 31, 2021, the HBLD had \$2,276,320.52 in available cash to pay its bond debt payments. Another \$388,740.71 in Levee Taxes paid was deposited into HBLD's cash accounts prior to February 16, 2021, giving the HBLD \$2,665,061.23 in available cash to pay its bond debt payments.

66. The HBLD has approximately \$2 million in bond debt reserves.

67. Fitch downgraded the HBLD bonds to CCC from B+ on February 9, 2021.

68. The HBLD does not have the funds necessary to build the Stormwater Pump Station Project.

69. Due to the lack of transparency by the HBLD and failure to comply with RSMo. § 245.090, it is not clear to MSD how the Levee Taxes paid by MSD (and other property owner taxpayers) have been used by the HBLD.

**COUNT I**  
**(Claim Under RSMo. § 139.031 For Recovery**  
**of the Protested Amount Against Defendant Mark R. DeVore)**

70. Paragraphs 1 through 69 above are incorporated herein by reference.

71. MSD is a owner of property located in the district.

72. The HBLD levied the 2020 Levee Tax on MSD.

73. Pursuant to RSMo. § 139.031, MSD timely paid the Protested Amount under protest, and MSD timely filed with Mr. DeVore a written statement setting forth the grounds on which MSD's protest is based.

74. The 2020 Levee Taxes are incorrect, improper, illegal, unconstitutional, and/or unsubstantiated for the following reasons:

a. The 2020 Levee Taxes and assessment of benefits is not rationally related to the costs of the improvements needed to protect the property within the district from flooding;

b. The 2020 Levee Taxes and assessment of benefits is disproportionate to the protection provided to MSD's property located within the district, including, but not limited to the MSD Plant;

c. The 2020 Levee Taxes and assessment of benefits is not uniform amount and between the parcels of real estate located within the district;

d. The 2020 Levee Taxes improperly include amounts to recoup taxes that some property owners have paid or were anticipated to pay under protest pursuant to Section 139.031;

e. The 2020 Levee Taxes and assessment of benefits is arbitrary and capricious, and deprives MSD and its ratepayers of due process of law and equal protection of the law, is an abuse of the HBLD's taxing power, and is otherwise illegal and unconstitutional, in that, among other things, the levy of taxes includes an amount to recoup the taxes that some property owners have paid and are anticipated to pay under protest.

75. MSD seeks a refund of the full amount of the Protested Amount.

76. MSD demands that the full amount of the Protested Amount remain impounded by the St. Louis County Department of Revenue until further order of this Court.

77. The HBLD is not entitled to the Protested Amount, and upon information and belief, does not have the ability to repay the Protested Amount, and is therefore not entitled to the Protested Amount being distributed to it.

78. The Protested Amount must remain impounded until all claims in this lawsuit are adjudicated.

FOR RELIEF, MSD respectfully requests that the Court enter an order (a) finding the 2020 Levee Taxes to be incorrect, improper, illegal, unconstitutional, and/or unsubstantiated, (b) ordering Mr. DeVore to refund the Protested Amount to MSD, (c) awarding MSD its costs associated with filing this lawsuit, and (d) granting such other and further relief as the Court deems necessary and proper under the circumstances.

## **COUNT II (Writ of Mandamus)**

79. Paragraphs 1 through 78 above are incorporated herein by reference.

80. The HBLD is required to perform various ministerial or mandatory duties outlined in various sections of Chapter 245 of the Revised Statutes of Missouri.

81. The HBLD is required by RSMo. § 245.080 to “keep a record of all its proceedings, which shall be open to the inspection of all owners of real estate and other property” within the district, “as well as to all other interested parties.”

82. The HBLD is required by RSMo. § 245.080 to “report to the landowners at the annual meeting . . . what work has been done either by the engineers or otherwise” in the district.

83. The HBLD is required by RSMo. § 245.090 to “audit or have audited” the “books” of the HBLD on June thirtieth of each year and publish a “financial statement within 30 days thereafter showing the amount of money received, the amount paid out during such year, and the amount in the treasury at the beginning and end of such year.”

84. The HBLD is required by RSMo. § 245.165 to keep “a well-bound book, entitled ‘Record of board of supervisors of the Howard Bend Levee district’, in which shall be recorded minutes of all meetings, proceedings, certificates, bonds given by all employees and any and all

corporate acts, which record or records shall at all times be open to the inspection of anyone interested, whether taxpayer or bondholder.”

85. The HBLD is required to construct or cause to be constructed the works described in the Reclamation Plans, including the Stormwater Pump Station Project.

86. Upon information and belief, the HBLD has failed to keep proper books and records, report to the landowners annually, audit or have audited its books, and publish annually a financial statement as required by Chapter 245 and Missouri law.

87. The HBLD also has failed to construct or cause to be constructed all of the works in the Reclamation Plans. For example, the HBLD has failed to construct the Stormwater Pump Station Project, which was first adopted by the HBLD and approved the Circuit Court of St. Louis County in 2012.

FOR RELIEF, MSD respectfully requests that the Court enter writ of mandamus ordering the HBLD to do the following: (a) keep a proper record of all of its proceedings as required by RSMo. § 245.080; (b) report to the landowners at the annual meeting what work has been done either by the engineers or otherwise in the district each year; (c) audit or have audited the “books” of the HBLD on June thirtieth of each year and publish a “financial statement within 30 days thereafter showing the amount of money received, the amount paid out during such year, and the amount in the treasury at the beginning and end of such year;” (d) keep “a well-bound book, entitled ‘Record of board of supervisors of the Howard Bend Levee district’, in which shall be recorded minutes of all meetings, proceedings, certificates, bonds given by all employees and any and all corporate acts, which record or records shall at all times be open to the inspection of anyone interested, whether taxpayer or bondholder;” and (e) construct or cause to be constructed the

Stormwater Pump Station Project and any other works called for the Reclamation Plans that have not yet been constructed.

**COUNT III  
(Equitable Accounting)**

88. Paragraphs 1 through 87 above are incorporated herein by reference.

89. The HBLD exists for the benefit of the owners of property within the district, including MSD.

90. There is a fiduciary or trust relationship between the HBLD and the landowner taxpayers of the district.

91. The HBLD has not been transparent regarding the finances and work of the HBLD. In particular, the HBLD has not been transparent about how the millions of dollars of Levee Taxes paid by landowner taxpayers since the creation of the HBLD have been used. The HBLD has not consistently audited its books or published the financial statement required by Missouri law.

92. Now, after more than thirty years of operation and tens of millions of dollars of Levee Taxes paid by landowner taxpayers, the works in the Reclamation Plans have still not been completed or paid for in total. Moreover, MSD and other owners of property within the district continue to have their property inundated with water.

93. The HBLD is over \$22 million in debt and Levee Taxes have increased by more than 60% for MSD and other landowner taxpayers in the last year alone.

94. Several landowner taxpayers have made a request to the Missouri State Auditor to audit the HBLD.

95. The Casino has filed a lawsuit alleging the HBLD has mismanaged or misused Levee Taxes paid to the HBLD by landowner taxpayers.

96. MSD has discovered recently that the HBLD exceeded its statutory authority by authorizing and spending over \$4 million to construct sanitary sewer and potable water infrastructure to serve undeveloped property within the HBLD. The sanitary sewer and potable water infrastructure is currently not in use and is not necessary to preserve or maintain works in our out of the district.

97. MSD needs discovery into the finances and work of the HBLD in order to understand how the millions of dollars of taxes paid by it and the other landowner taxpayers have been used by the HBLD.

98. The nature of the accounts owned and controlled by the HBLD is complex and complicated.

99. MSD has no adequate legal remedy without an equitable accounting of the HBLD's finances and accounts.

100. An equitable accounting is an appropriate remedy to determine the financial status of the HBLD and how the millions of dollars of Levee Taxes paid by MSD and other landowner taxpayers has been used by the HBLD.

FOR RELIEF MSD respectfully requests that the Court enter judgment in its favor and against the HBLD requiring a full equitable accounting of all finances of the HBLD and granting such other and further relief as the Court deems necessary and proper.

**COUNT IV**  
**(Injunctive Relief – Disbursement of Protested Amount)**

101. Paragraphs 1 through 100 above are incorporated herein by reference.

102. MSD paid the Protested Amount under protest pursuant to RSMo. § 139.031.

103. Pursuant to RSMo. § 139.031, Mr. DeVore is required to impound the Protested Amount in a separate fund.

104. Mr. DeVore is required by statute to invest the Protested Amount in the same manner as assets specified in RSMo. § 30.260 for investment of state moneys.

105. Because MSD timely filed this lawsuit for *inter alia* recovery of the Protested Amount within 90-days of filing its protest, Mr. DeVore must maintain the Protested Amount unless and until he receives an order from this Court directing him to either refund the Protested Amount to MSD or release and disburse the Protested Amount to the HBLD.

106. Upon information and belief, Mr. DeVore has on at least one other occasion released and disbursed protested and impounded Levee Taxes to the HBLD without the HBLD complying with the provisions of RSMo. § 139.031.8 and without notice to the protesting landowner taxpayer.

107. Upon information and belief, the HBLD does not and will not have the financial ability and legal capacity to repay the Protested Amount if they were to be disbursed to the HBLD prior to final adjudication of this lawsuit.

108. If the Court does not enter an order preventing disbursement of the Protested Amount to the HBLD without notice to MSD and a hearing, MSD will have no adequate remedy to obtain refund of the Protested Amount.

FOR RELIEF, MSD respectfully requests the Court enter an order permanently enjoining Mr. DeVore from taking any action to release or disburse the Protested Amount without written advanced notice to MSD, the filing of a proper petition by the HBLD, and the HBLD establishing that it has the specific financial and legal capacity to repay the Protested Amount with interest to MSD in the event a decision ordering a refund to MSD is subsequently made by this Court.

**COUNT V**  
**(Breach of Intergovernmental Cooperation Agreements By HBLD)**

109. Paragraphs 1 through 108 above are incorporated herein by reference.

110. MSD and the HBLD entered into the Intergovernmental Agreements.

111. At the time of the formation of the Intergovernmental Agreements there was an offer, an acceptance, and an agreement between the parties as to all essential terms of the Intergovernmental Agreements.

112. The Intergovernmental Agreements are supported by consideration, do not violate public policy, and otherwise comply with all applicable statutes, regulations, and common law of the State of Missouri.

113. MSD performed all of its obligations under the Intergovernmental Agreements.

114. The HBLD breached the Intergovernmental Agreements by failing to properly manage stormwater and flooding within the district and failing to provide the stormwater services as required by the Intergovernmental Agreements.

115. HBLD's failures and breaches include, but are not limited to, allowing over 115 acres of impervious area to be constructed within the HBLD (an increase of approximately 25% since 2008) without consideration of storage or disposal of additional stormwater flows. The HBLD has also allowed the filling and/or raising of various property within the HBLD during that time without appropriate consideration how those changes affect stormwater flows within the HBLD. HBLD also failed to construct and maintain an appropriate Stormwater System in the HBLD (including the failure to build or cause to be built the Stormwater Pump Station Project).

116. HBLD's breaches of the Intergovernmental Agreements have caused significant damage to MSD, including but not limited to the MSD Flood Costs.

117. MSD anticipates it will be sustain additional damages in excess of \$2,000,000.00 in future costs to complete a flood protection system for the MSD Plant due to the HBLD's breaches and failures.

118. MSD provided written notice to the HBLD regarding the HBLD's breach of the Intergovernmental Agreements.

119. The HBLD failed and refused to cure or remedy the breaches or to commence to cure or remedy the breaches of the Intergovernmental Agreements.

120. Article VI of the Intergovernmental Agreements allows MSD to institute such proceedings as may be necessary or desirable in its opinion to cure and remedy the HBLD's breaches of the Intergovernmental Agreements, including but not limited to proceedings to compel specific performance by the HBLD.

FOR RELIEF, MSD respectfully requests the Court enter judgment in its favor and against the HBLD in the amount of \$370,000.00 together with interest and court costs. MSD further requests that the Court enter judgment directing the HBLD to perform the stormwater services required by the Intergovernmental Agreements and construct the Stormwater Pump Station Project as required by the Reclamation Plans.

### **COUNT VI (Declaratory Judgment)**

121. Paragraphs 1 through 120 above are incorporated herein by reference.

122. This Court has the power to grant a declaratory judgment concerning the rights and obligations of the HBLD and MSD pursuant to RSMo. §§ 527.0010, 527.020, and 527.030, as an actual controversy exists between MSD and the HBLD concerning the parties respective rights and obligations under Missouri law.

123. Missouri law requires the HBLD to the following: (a) keep a proper record of all of its proceedings; (b) report to the landowners at the annual meeting what work has been done either by the engineers or otherwise in the district each year; (c) audit or have audited the "books" of the HBLD on June thirtieth of each year and publish a "financial statement within 30 days thereafter

showing the amount of money received, the amount paid out during such year, and the amount in the treasury at the beginning and end of such year;” (d) keep “a well-bound book, entitled ‘Record of board of supervisors of the Howard Bend Levee district’, in which shall be recorded minutes of all meetings, proceedings, certificates, bonds given by all employees and any and all corporate acts, which record or records shall at all times be open to the inspection of anyone interested, whether taxpayer or bondholder;” and (e) construct or cause to be constructed the Stormwater Pump Station Project and all other works in the Reclamation Plans.

124. The HBLD does not have the power to construct or cause to be constructed infrastructure and improvements that are not necessary to preserve and/or maintain the works required by the Reclamation Plans.

125. The HBLD does not have the power, and Missouri law prohibits, the levying of Levee Taxes that: (a) are not rationally related to the costs of the works in the Reclamation Plans; (b) are disproportionate to the protection provided to MSD’s property located within the district, including, but not limited to the MSD Plant; (c) are not uniform in amount and between the parcels of real estate located within the district; and (d) include amounts to recoup Levee Taxes that some property owners have paid or were anticipated to pay under protest pursuant to Section 139.031.

126. The HBLD cannot levy Levee Taxes that are arbitrary and capricious, deprive MSD and its ratepayers of due process of law and equal protection of the law, are an abuse of the HBLD’s taxing power, or are otherwise illegal and/or unconstitutional.

127. Upon information and belief, the HBLD has failed and refused to keep proper books and records, report to the landowners annually, audit or have audited its books, and publish annually a financial statement as required by Chapter 245 and Missouri law.

128. The HBLD has constructed or caused to be constructed infrastructure and improvements that are not necessary to preserve and/or maintain the works required by the Reclamation Plans. For example, the HBLD constructed or caused to be constructed sanitary sewer and potable water infrastructure to serve undeveloped property within the HBLD that is not necessary to preserve or maintain works in the Reclamation Plans at a cost in excess of \$4 million. The HBLD is now charging landowner taxpayers in the HBLD, including MSD, for the cost of the bonds sold to finance this improperly built infrastructure and/or improvements.

129. The HBLD also has failed and refused to construct or cause to be constructed all of the works in the Reclamation Plans. For example, the HBLD has failed to construct the Stormwater Pump Station Project, which was first adopted by the HBLD and approved the Circuit Court of St. Louis County in 2012, and is necessary to protect property located within the district from flooding.

130. The HBLD has also levied Levee Taxes that (a) are not rationally related to the costs of the works in the Reclamation Plans; (b) disproportionate to the protection provided to MSD's property located within the district, including, but not limited to the MSD Plant; (c) not uniform in amount and between the parcels of real estate located within the district; (d) include amounts to recoup Levee Taxes that some property owners have paid or were anticipated to pay under protest pursuant to Section 139.031; and (e) are otherwise arbitrary and capricious, deprive MSD and its ratepayers of due process of law and equal protection of the law, are an abuse of the HBLD's taxing power, or are otherwise illegal and/or unconstitutional.

131. Justiciable controversies have arisen between MSD and the HBLD concerning the HBLD's powers, authority, duties, and obligations.

132. This actual controversy is definite and concrete, in that the parties' positions are adverse and the HBLD's acts, omissions, and failures cause direct legal injury to MSD.

133. This controversy is real and substantial, and ripe for adjudication. A judicial declaration regarding the HBLD's powers, authority, duties, and obligations will resolve the present controversy, and provide conclusive relief.

134. The harm to MSD if the HBLD is allowed to continue its course of conduct is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment clarifying the powers, authority, duties, and obligations of the HBLD. Without such a declaration,

135. These actual controversies are definite and concrete, in that the parties' positions are adverse and the HBLD's refusal to comply with Chapters 245

FOR RELIEF, MSD respectfully requests that the Court enter judgment in its favor and against the HBLD declaring the following:

- (a) the HBLD must keep a proper record of all of its proceedings; report to the landowners at the annual meeting what work has been done either by the engineers or otherwise in the district each year; audit or have audited the "books" of the HBLD on June thirtieth of each year and publish a "financial statement within 30 days thereafter showing the amount of money received, the amount paid out during such year, and the amount in the treasury at the beginning and end of such year;" and keep "a well-bound book, entitled 'Record of board of supervisors of the Howard Bend Levee district', in which shall be recorded minutes of all meetings, proceedings, certificates, bonds given by all employees and any and all corporate acts, which record or records shall at all times be open to the inspection of anyone interested, whether taxpayer or bondholder;"

- (b) the HBLD must construct or cause to be constructed the Stormwater Pump Station Project and all other works in the Reclamation Plans in a reasonably expedient manner;
- (c) MSD's 2020 Levee Taxes are not rationally related to the costs of the works in the Reclamation Plans; disproportionate to the protection provided to MSD's property located within the district, including, but not limited to the MSD Plant; not uniform in amount and between the parcels of real estate located within the district; include amounts to recoup Levee Taxes that some property owners have paid or were anticipated to pay under protest pursuant to Section 139.031; and are arbitrary and capricious, deprive MSD and its ratepayers of due process of law and equal protection of the law, are an abuse of the HBLD's taxing power, or are otherwise illegal and/or unconstitutional;
- (d) The HBLD cannot construct or cause to be constructed infrastructure and improvements that are not necessary to preserve and/or maintain the works required by the Reclamation Plans;
- (e) the sanitary sewer and potable water infrastructure that the HBLD constructed or caused to be constructed to serve undeveloped property within the district at a cost in excess of \$4 million was not necessary to preserve and/or maintain the works required by the Reclamation Plans and therefore beyond the powers and authority of the HBLD;
- (f) MSD is not required or obligated to pay Levee Taxes associated with the construction of the sanitary sewer and potable water infrastructure built to serve undeveloped property within the district; and
- (g) such other and further declarations regarding the rights, powers, authority, and obligations of the HBLD that the Court deems necessary and proper.

Respectfully submitted,

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