

STATE OF INDIANA	)	FULTON SUPERIOR COURT
	)	
FULTON COUNTY	)	CAUSE NO. 25D01-2305-PL-000287
	)	
TOWN OF MACY,	)	
Plaintiff	)	
	)	
vs.	)	
	)	
NYONA SOUTH MUD LAKE	)	
CONSERVANCY DISTRICT	)	
Defendant	)	

**RESPONSE FOR DECLARATORY JUDGMENT ACTION**

Defendant, Nyona South Mud Lake Conservancy District (NSMLCD), by counsel, in response to the petition for declaratory judgment filed by the Town of Macy (Macy), states as follows that:

1. NSMLCD agrees that Macy is a municipal corporation located in Miami County, Indiana.
2. NSMLCD agrees that it is a conservancy district created pursuant to Indiana law and is located in Fulton County, Indiana.
3. The defendant agrees that on or about October 20, 2010, NSMLCD and Macy executed a contractual agreement (herein “Agreement”) where NSMLCD agreed to process and treat sewage for Macy in exchange for a capital contribution and for ongoing payment by Macy for the treatment of the Macy sewage. However, a copy of the Agreement that was attached to the plaintiff’s petition as Exhibit A was incomplete in that it left out pages 3, 6, and 9. A fully completed contract is attached hereto and made a part hereof as Exhibit “A”.
4. NSMLCD agrees that on or about February 20, 2023 a settling tank owned by Macy which contained sewage originating from Macy discharged sewage but that said discharge was not caused by the negligence of NSMLCD as alleged but rather was caused by a flawed

engineering design and by lack of maintenance by Macy. NSMLCD agrees that the tank is located at the NSMLCD sewage treatment facility and is located between Macy's meter and grinder pump which is located in a building at the NSMLCD facility and the first settling tank of NSMLCD. The tank where the spill occurred is part of the Macy collection system. The spill occurred between the Macy settling tank and the District's settling tank and before any treatment by NSMLCD.

5. NSMLCD agrees that sewage originating from Macy enters a building at the NSMLCD facility where it is metered and goes through a final grinder process. The grinding in the NSMLCD building is pretreatment and is part of the Macy collection system and is Macy's responsibility in accordance with the Agreement.
6. NSMLCD denies that the connection point is where the wastewater affluent enters the building or where it is metered. NSMLCD submits that the language of the Agreement speaks for itself. From reading the entire Agreement, it is clear that Macy is responsible for maintaining its collection system until such point where its wastewater is comingled with that of the District's wastewater and where the treatment process starts.
7. Further, NSMLCD submits that the Court will determine that the Agreement is clear concerning Macy's responsibility to maintain its system to the connection point and denies the Agreement is ambiguous. However, extraneous evidence clearly establishes that the collection system of Macy is the sole and separate responsibility to be maintained by Macy. It is not under exclusive control of NSMLCD. The course of dealing between the parties has not altered the clear language of the Agreement.

8. NSMLCD denies that Macy's treatment expenses may only be increased in the event of suspended solids and BOD studies but rather Macy's treatment expenses can be increased as set out in the Agreement.
9. NSMLCD agrees that any increases to Macy for sewage treatment charges must apply to all users of the system.
10. NSMLCD agrees that any rate changes must be just and equitable.
11. NSMLCD agrees that notice was given to the District ratepayers of a potential increase in the sewer treatment rates.
12. NSMLCD agrees that notice was published in Fulton County pursuant to statute. A letter was sent to counsel for Macy advising Macy of the need to amend the Agreement to reflect an increase in the sewer rates of the Town of Macy in conformance with the charges that would be applied to all users of the system.
13. A letter was sent to counsel for Macy advising of the need for a rate increase.
14. Macy was advised through its attorney of a potential rate increase and that NSMLCD was considering a higher increase for Macy due to the rate increases that had been applied to all of the ratepayers but not to Macy in previous rate increases.
15. NSMLCD denies that the notices of April 10, 2023 of the public hearing were deficient.
16. Notices were sent to the ratepayers in the district for the May 8, 2023 public hearing.
17. NSMLCD based its rate increases based upon calculations by the district's financial advisor, Steven Carter.
18. NSMLCD denies that the sewer rate increase was caused by mismanagement of previous boards.

19. NSMLCD agrees that Macy is not responsible for liabilities due to the management of NSMLCD.
20. NSMLCD agrees that Macy appeared by counsel and by their representatives and stated objections to the rate increase and that a rate increase was tabled pending additional negotiations.
21. NSMLCD agrees that on April 27, 2023 representatives of Macy and representatives of NSMLCD met and discussed a proposed settlement. Macy proposed to agree to a 10% rate increase at said meeting.
22. NSMLCD agreed to adopt a 10% rate increase at its next board meeting for the ratepayers within the district and for the Town of Macy which was consistent with the contract calling for a rate increase of Macy that applied for all users of the system.
23. NSMLCD did not reject the rate increase agreement by Macy but rather only as to the negotiations and offer as it related to the spill at the facility that occurred in February 2023. The parties disagreed on the connection point between the Macy collection system and the district's treatment system.
24. NSMLCD agrees that Macy rejected the district's counterproposal as to the connection point.
25. NSMLCD agrees it forwarded an invoice to Macy with the adopted 10% rate increase.
26. Macy's efforts for a declaratory judgment are not pursuant to the Agreement.
27. Macy is responsible for maintaining its equipment and its collection system even if it is located on the premises of NSMLCD.

28. Macy is responsible for its costs associated with the discharge that occurred from its collection system and prior to the affluent being deposited in the district's treatment facility.
29. NSMLCD denies the rate increase is not defective due to notice. Contrary, the town representatives attended the hearing to consider the rate increase, and then later agreed with the 10% increase.
30. The agreed increase of 10% is in keeping with the Agreement between Macy and NSMLCD.
31. The monthly sewer rate increase to Macy is just and equitable.
32. The monthly sewer rate increase must be made with notice to the Town.
33. The monthly sewer rate increase must be based on suspended solids and BOD.
34. According to the Agreement, any dispute of the Agreement is to be resolved by arbitration. Macy refused to arbitrate this matter. Although the Indiana Declaratory Judgment statute provides that the prevailing party may be entitled to recover attorney fees and costs of the suit, Macy should not be so allowed in this cause.

Respectfully submitted,

/s/ James N. Clevenger  
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#### CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the \_\_\_\_ day of June, 2023 I filed and served the above and foregoing via IEFS upon all parties listed.

/s/James N. Clevenger