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*Application for Pro Hac Vice
Admission Pending*

**MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY**

THE CITY OF MISSOULA, a
Montana municipal corporation,

Plaintiff,

v.

MOUNTAIN WATER COMPANY, a
Montana corporation; and CARLYLE
INFRASTRUCTURE PARTNERS,
LP, a Delaware limited partnership,

Defendants.

Cause No. DV-14-352

Dept. No. 4

**FIRST AMENDED
COMPLAINT FOR ORDER
OF CONDEMNATION
UNDER MONTANA'S LAW
OF EMINENT DOMAIN**

COPY

Plaintiff City of Missoula (the “City” or “Missoula”) seeks a judicial determination entitling it to acquire by eminent domain Missoula’s water supply and distribution system (the “Water System”) currently owned and operated by Defendants, and in support of the relief sought, the City alleges the following facts pursuant to Mont. Code Ann. § 70-30-203:

I. PARTIES

1. Plaintiff Missoula is a municipal corporation of the State of Montana duly organized and existing by virtue of the Constitution and the laws of the State of Montana. As such, Missoula is a municipality with general powers, including the power to acquire by eminent domain certain interests in real and personal property pursuant to Mont. Code Ann. Title 70, Chapter 30. The City is the municipality in charge of the public use for which the property sought to be condemned herein shall be used.

2. Defendant Mountain Water Company is a Montana for-profit corporation with its principal place of business in Missoula, Montana. Mountain Water Company is wholly owned by Park Water Company, a California corporation with its principal place of business in Downey, California. Park Water Company is the sole owner of Mountain Water Company.

3. Defendant Carlyle Infrastructure Partners, LP (“Carlyle Infrastructure”) is a Delaware limited partnership with its principal place of

business in Washington, D.C. It is in the business of investing in private and public infrastructure projects and businesses, including water and wastewater distribution systems. On information and belief, Carlyle Infrastructure is the general partner or managing member of the limited partnership that actually owns Park Water Company and its assets, including Mountain Water Company. Carlyle Infrastructure is directly responsible for any decision regarding a sale of Mountain Water Company or its assets.

4. Defendant Carlyle Infrastructure acquired ownership and took over the operation of Mountain Water Company in December 2011.

5. The Carlyle Group (the "Carlyle Group") is a Delaware limited partnership with its principal place of business in Washington, D.C. The Carlyle Group directly or indirectly owns Carlyle Infrastructure which is responsible for any decision regarding a sale of Mountain Water Company or its assets. Robert Dove, the Carlyle Group's Managing Director of its Infrastructure Fund which owns the Water System, has acted at all times as the person with apparent authority to speak on behalf of Mountain Water Company with regard to the City's efforts to acquire the Water System.

6. Defendants Mountain Water Company and Carlyle Infrastructure own and operate as a privately held business the Water

System that currently serves the citizens and inhabitants of Missoula.

II. JURISDICTION AND VENUE

7. The Court has original subject matter jurisdiction of this proceeding pursuant to Mont. Code Ann. § 70-30-202.

8. The Court has personal jurisdiction over the parties pursuant to Mont. Code Ann. § 70-30-202 based on the fact that the property at issue, the Water System, or some part of it, is situated in the Fourth Judicial District of the State of Montana.

9. Venue is proper in the Fourth Judicial District based on the parties' doing business in Missoula, and is also proper based on the fact that the Water System is located entirely or in part in Missoula County and in the Fourth Judicial District of the State of Montana.

III. FACTS ENTITLING THE CITY TO THE RELIEF SOUGHT

Missoula is entitled to the relief it seeks based on the following facts:

Missoula's Authority to Own, Operate, and Acquire the Water System

10. Missoula is authorized to own and operate a municipal water system and the City has the power under Mont. Code Ann. § 7-13-4402 to contract to own public water works for the benefit of its citizens and inhabitants. The City's authority includes the power to adopt, enter into, and carry out means for securing a supply of water for the public use of the

City and its citizenry. The City's authorization and power includes the right to acquire a private water system either by negotiated purchase or through the exercise of the City's power of eminent domain.

11. Missoula also is empowered under Mont. Code Ann. § 7-1-4124 to acquire by eminent domain any interest in property for a public use authorized by law, and is authorized under Mont. Code Ann. § 7-13-4403 to commence eminent domain proceedings in order to secure a supply of water or an existing system of water supply and water distribution that is desired by the City.

A. The Water System Is Necessary for a Public Use

12. Missoula's Water System constitutes property that is operated for a public use authorized by law and for the benefit of the citizens and inhabitants of Missoula.

13. Missoula desires to acquire the Water System in order to ensure that it will be used in the future for a public purpose and for the benefit of the citizens and inhabitants of Missoula.

14. In order for Missoula to acquire the Water System, it must either be purchased by agreement from Defendants for a negotiated price or it must be condemned and taken by eminent domain in return for appropriate and just compensation to be determined in these proceedings.

15. In order to own and operate its own water supply and distribution systems, it is necessary for the City to acquire Defendants' property in return for just compensation, as the development and construction of a new water supply and distribution system is not practical or feasible. Thus, the proposed taking is necessary to the public use as provided in Mont. Code Ann. § 70-30-111(b), and the public interest requires the taking of such property by eminent domain.

B. The Public Interest, Necessity, Benefit, Convenience, and Advantage

16. A stable, safe, plentiful, and predictable source of clean water is a public resource, to which the citizens and inhabitants of Missoula are entitled. The use of all water within the State of Montana constitutes a public use. Missoula has a paramount interest in managing its natural water resources as well as its water supply and distribution systems in order to ensure that Missoula residents have long-term access to a stable, safe, plentiful, and predictable source of clean water that is available to the public at the lowest reasonable cost.

17. Defendants now own and operate Missoula's Water System and operate it for-profit. The City is the only large urban municipality in Montana that does not operate its own water system at cost for the benefit of its citizens.

18. Missoula's Water System consists of real property interests, water rights, and personal property owned by Mountain Water Company. It comprises the public water supply and transmission and distribution systems for most of the citizens and inhabitants of Missoula. Missoula has the right to condemn such property for public use based on a showing of necessity and a showing that the contemplated use as a municipally owned water system is more necessary than the current use as a privately owned for-profit operation.

19. The taking of the Water System will advance the public purpose of managing for the public benefit a scarce and vulnerable natural resource available for public use. Such use as a publicly owned resource will confer on the citizens of Missoula and the public at large a benefit, convenience, and advantage, thus satisfying the "public necessity" requirement under Montana law. Thus, the Water System owned by Defendants is a "public use" as defined under Montana law.

20. Water and water supply systems are specifically enumerated under Mont. Code Ann. § 70-30-102(6) as a public use for which the right of eminent domain may be exercised. Missoula's identification of this particular resource for public use fully complies with Mont. Code Ann. § 70-30-111(a).

21. Public ownership will ensure that the citizens of Missoula have long-term access to a stable, safe, plentiful, and predictable source of clean water available to the public at the lowest cost. Public ownership is a reasonable, requisite, and proper means for accomplishing the City's intended objective of securing for the future its own management of its natural water resources as well as its water supply and distribution systems.

C. Changed Circumstances over the Past 30 Years

22. Under the current circumstances, it is necessary that Missoula own its water supply and distribution system. Over the last three decades, significant changes have occurred in Missoula in regard to the Water System that now necessitates City ownership of the water rights and distribution system.

23. Unlike 30 years ago, the Water System is now directly or indirectly controlled by the Carlyle Group, which is one of the largest private equity firms in the world, and whose purpose is to maximize profits for its investors. Defendants are directly responsive to, and influenced by, investors' demands and expectations, as opposed to the needs and interests of the citizens of Missoula.

24. The needs and interests of the citizens of Missoula in owning its

water supply and distribution system are long-term. Yet Missoula's Water System is a short-term investment for Defendants because their business model is to purchase assets and hold them only for so long as is necessary to sell such assets for a profit. Thus, there is little incentive for Defendants to make long-term improvements in the assets under management. Defendants' unwillingness to make improvements to the Water System is evidenced by the decaying and leaking condition of the Water System's Infrastructure and the notable decrease in spending on necessary maintenance and repairs since Defendants acquired Missoula's Water System.

25. Among other changes, Missoula has grown tremendously over the past three decades, including a 17 percent population increase from 2000 to 2010. Population growth and the City's future needs have placed a greater burden on the City's water resources and heightened the need for the Water System to be run by a municipality that will look after Missoula's long-term interests in having a stable, safe, plentiful, and predictable supply of clean water now and in the future.

26. Compared to 30 years ago, Missoula residents currently place heightened importance on conservation of natural resources and long-term access to water.

27. Compared to 30 years ago, Missoula's elected leaders consistently express public support for City ownership of the Water System at the present time and have made a judgment that municipal ownership will confer a benefit, convenience, and advantage on the citizens and inhabitants of Missoula.

D. The Contemplated Use of the Water System Is More Necessary than Its Current Use

28. Although the Water System is now privately owned, it already is appropriated to serve the public. Defendants' customers are the citizens and inhabitants of Missoula.

29. The use the City seeks to make of the condemned property upon acquisition of the Water System is more necessary than its current use, as provided in Mont. Code Ann. § 70-30-111(c). Although the Water System has been appropriated for public use, the City's proposed use as a publicly owned and City-operated water supply and distribution system is more necessary than its present use.

30. Unlike the current owners of the Water System, the City is run by elected leaders who are responsive to Missoula residents' long-term interests, including their interest and entitlement to clean and safe water. The City is best able, and has a responsibility, to manage limited water resources, including those that are held in trust for public use. Further, the

City and its elected leaders are responsible for managing the growth and development of Missoula. The adequacy and availability of water resources are essential to those municipal responsibilities. Thus, City ownership and operation of the Water System for the benefit of the citizens of Missoula constitutes a more necessary public use than that to which it has been appropriated in the past, within the meaning of Mont. Code Ann. § 70-30-103.

E. “Public Necessity”—Why Public Ownership Is a Benefit, Convenience, and Advantage to Missoula

31. Missoula’s Water System is currently operated with out-of-state support services provided by its out-of-state owners who charge a high rate for California-based administrative and executive support. On information and belief, the City understands that Missoula’s Water System operated by Defendants currently incurs and pays approximately \$2 million per year to Mountain Water Company’s parent company, Park Water Company, for such “administrative support.”

32. Upon acquiring the Water System, the City will be able to operate it at cost, at rates the present value of which shall be at or below the rates that a for-profit owner is able to offer, and with the ability to provide for ongoing maintenance and capital expenditures to ensure reliability for the future needs of the people of Missoula.

33. Upon acquiring the Water System, the City will operate it without any need or desire to earn a profit for passive investors. The City will not need to charge higher rates to consumers in order to earn a profit that is passed on to absentee owners.

34. Upon acquiring the Water System, the City will operate it with in-state support services and will not need to pay significant administrative costs to an out-of-state holding company such as Park Water Company.

35. Defendants currently include in their costs, and therefore in their calculation of rates charged to consumers, taxes that are paid by Mountain Water Company. Upon acquiring the Water System, the City will operate it as a tax-advantaged and tax-exempt public entity rather than as a private enterprise, resulting in lower costs of operation, maintenance, and capital, all of which will have an advantageous effect on rates charged to consumers.

36. On information and belief, following the City's commencement of this proceeding to condemn the assets of Mountain Water Company, Carlyle has taken the position that it will no longer be responsible for payment of taxes owed for the period prior to the Court's entry of an Order of public necessity entitling the City to proceed as "condemnor" of the property at issue. Carlyle's position is contrary to law and is simply an

attempt to further lower its costs in the short-term without any commensurate reduction in prices charged to ratepayers, all of which has the effect of further increasing profits available to Carlyle Infrastructure's owners and investors. (Carlyle has also suggested that the City somehow becomes responsible for Mountain Water Company's taxes going forward, which is entirely inconsistent with the City's status as a tax-exempt public entity. Carlyle's position appears calculated to generate public distrust in public ownership of the Water System.)

37. Upon acquiring the Water System, the City will be willing and able to pay for all necessary improvements, upgrades, and repairs, and will make such capital expenditures as are necessary to maintain the infrastructure of the existing Water System, and such additional expenditures as are indicated to increase efficiency, reduce costs, and plan for future needs, all of which will result in long-term savings and efficiencies that will inure to the public benefit.

38. Missoula's Water System is currently operated for-profit and on a budget that includes in its overhead an expected internal rate of return or profit for its owners and passive investors.

39. On information and belief, Missoula understands that Defendants' operation of the Water System over the past two years of their

ownership has generated an annual profit or return on investment (“ROI”) for Defendants and their investors funded by the ratepayers and consumers in Missoula. In contrast, upon acquiring the Water System, the City will cease exporting any profits out of state, and will lower the cost of administrative and executive support by utilizing in-state resources and personnel through the City’s existing administrative and executive support structure similar to that used to operate the City’s successful wastewater treatment system.

40. Upon acquiring the Water System, compared to Defendants, Missoula will have lower costs of capital, lower costs of borrowing, and access to tax-exempt bonds that will be available to finance ongoing capital improvements or additional acquisitions.

41. With municipal ownership, the City will be eligible to apply for federal and state grants and federal and state assistance for its operation of Missoula’s Water System, that Defendants are not qualified to receive.

42. The Carlyle Group is one of the largest private equity firms in the world. Its investors entrust their money to the Carlyle Group with the expectation and promise of realizing a greater return than they can expect to earn by alternative investments and which will be superior to average market returns.

43. The Carlyle Group makes money by raising funds from wealthy investors in order to buy companies, with the aim of holding them for a short period of time and then selling them at a profit.

44. The Carlyle Group has more than 1,650 investors who reside in 76 different countries.

45. The Carlyle Group has over \$189 billion of assets under management (including Missoula's Water System) and more than 1,500 employees worldwide.

46. For fiscal year 2013, the Carlyle Group reported distributable earnings to its investors in the amount of \$840 million. Its three founders collectively earned compensation for the year in the amount of \$750 million (or in excess of \$133,000 each per hour, assuming a 50-week year, at 5 days per week and 7.5 hours per day). Their individual earnings for the year were a mix of investment profits, dividends, and base salary, not including the fair market value of their use of private airplanes, an additional benefit of their employment estimated at \$1.1 million.

47. According to the Carlyle Group's Managing Director of its Infrastructure Fund which owns the Water System, Carlyle Group believes it has "a fiduciary duty to . . . investors to create the maximum value." For the year 2013, the Carlyle Group's assets under management firm wide,

experienced a 14 percent appreciation in value.

48. The Carlyle Group's primary business objective as set forth in its mission statement is to invest in order to "create value for our investors" by "generating superior investment returns." The Carlyle Group's goal is to "invest in assets, work to make them better, and . . . sell them for a profit."

49. The Carlyle Group is not in the business of owning Missoula's Water System for the long-term, but rather is in the business of owning it only for so long as is required to resell the assets for the maximum profit available in order to generate the ROI that it and its investors expect.

50. At the time of their purchase of Missoula's Water System in December 2011, it was understood that Carlyle Group would be a short-term owner only, would keep Mountain Water Company in its investment portfolio over a period of just five to seven years, and would attempt to resell the assets within that time frame at a premium in order to recoup its acquisition costs while also generating a handsome ROI in order to meet the investment expectations of its investors.

51. As a result of its focus on creating value in its investment portfolio rather than creating value for its customers and ratepayers, Carlyle Infrastructure is incentivized to operate the Water System in a manner that will achieve the maximum short-term economic return rather than to

operate it for the long-term stability and security of the people of Missoula. This is because the Carlyle Group's investors only do business with the Carlyle Group in order to exploit investment opportunities for high returns on their invested capital.

52. As a strategically designed investment fund operating within the Carlyle Group's family of funds, Carlyle Infrastructure has a business model that requires it to exact as much leverage as possible out of the assets it owns for the benefit of its investors, thus requiring it to focus on the short term rather than the long term, and to be willing to sell assets at a profit any time it is presented with an opportunity to realize a ROI that it deems attractive. Ownership of Missoula's Water System by Defendants therefore creates instability with regard to how much longer Carlyle will actually own the Water System, uncertainty regarding the identity and residency of future ownership, uncertainty with regard to long-term maintenance and reliability, and insecurity with regard to providing for the future needs of the citizens and inhabitants of Missoula.

53. In order to maximize their investors' profits, Defendants have increased customer rates and decreased capital spending on necessary or indicated maintenance and repair of Missoula's ailing Water System. Capital expenditures for the maintenance and improvement of Missoula's

Water System during the first two years of the Carlyle Group's ownership declined from the prior owners' average annual expenditures over the prior period, even though revenue per customer was increased by the implementation of significant rate increases. Upon acquiring the Water System, the City will reverse this trend, to the long-term benefit of the citizens and inhabitants of Missoula.

54. On information and belief, over the past several years Defendants have increased the rates charged to their customers in Missoula by twice the rate of increases charged to the citizens of Missoula by the City for wastewater treatment.

55. During the years 2005-2008, prior to the Carlyle Group's acquisition of Mountain Water Company, the prior owner made capital expenditures in the following amounts:

2005 -- \$4.6 million

2006 -- \$4.5 million

2007 -- \$5.3 million

2008 -- \$4.7 million

Such capital expenditures averaged \$4.7 million per year until two years before the prior owners' sale of Mountain Water Company to the Carlyle Group. (It is not unusual for capital expenditures to decline as the current owner positions an asset for sale.) During the Carlyle Group's

ownership in 2011 and 2012, capital expenditures were made in the following lesser amounts:

2011 -- \$3.0 million

2012 -- \$4.0 million

Such capital expenditures averaged \$3.5 million per year, or \$1.7 million less than the prior owner made during the period 2005-2008. Capital expenditures measured as a percentage of revenues during the Carlyle Group's ownership have fallen even farther below the levels achieved by prior ownership.

56. Since Defendants took over ownership and operation of Missoula's Water System in December 2011, average rates paid by the citizens of Missoula for their residential water have increased. During the years 2005-2010, the prior owner of Mountain Water Company charged residential rates between \$416 and \$504 per year, per customer. In 2011 and 2012, Defendants charged residential rates between \$515 and \$541 per year, per customer.

57. During the years 2005-2010, the prior owner of Mountain Water Company charged commercial rates between \$1,106 and \$1,292 per year, per customer. In 2011 and 2012, Defendants charged commercial rates between \$1,354 and \$1,391 per year, per customer.

F. The Carlyle Group's "Bait and Switch"—Reneging on Its 2011 Promise to Sell Mountain Water Company to the City

58. In 2011, Carlyle Infrastructure agreed to sell Mountain Water Company, or the assets that comprise Missoula's Water System, to the City rather than to any third party who made a competing offer, assuming the City's proposed purchase price met or exceeded the third-party offer received by Carlyle Infrastructure.

59. Carlyle Infrastructure also agreed to consider in good faith any offer received at any time from the City to purchase Mountain Water Company or the assets that comprise Missoula's Water System, regardless of whether a third-party offer had been made.

60. Carlyle Infrastructure made these promises in exchange for the City's public support of Carlyle Infrastructure's purchase of Park Water Company, the entity that owned Mountain Water Company. Such support was deemed necessary in order to obtain regulatory approval of Carlyle Infrastructure's acquisition of Park Water Company and its wholly owned subsidiary, Mountain Water Company. In early 2011, well before its purchase of Park Water Company and Mountain Water Company, Carlyle Infrastructure recognized that it was highly uncertain whether the Montana Public Service Commission ("PSC") would approve its acquisition of Montana Water Company. The City's support of the change of ownership

was considered essential to obtaining PSC approval.

61. The City and Carlyle Infrastructure first discussed Carlyle Infrastructure's desire to acquire Park Water Company and Mountain Water Company in December 2010, at a meeting in Missoula Mayor John Engen's office. In attendance were Mayor Engen, Carlyle Infrastructure's Managing Director Robert Dove, Carlyle's government relations advisor John Flaherty, Carlyle's outside public communications advisor Matt McKenna, and Mountain Water Company's CEO Butch Hillier. At a subsequent dinner meeting attended by Carlyle's Robert Dove, Missoula Mayor John Engen, and Missoula Chief Administrative Officer Bruce Bender, Carlyle Infrastructure agreed that in return for the City's public support before the PSC of Carlyle Infrastructure's purchase of Park Water Company, Carlyle would promise to later sell Mountain Water Company to the City. Carlyle Infrastructure represented that a sale to the City could take place as soon as Sam Wheeler, incumbent owner of Park Water Company, stepped down as a Member of Park Water Company's Board of Directors. At the time, Mr. Wheeler was expected to serve a one-year term on Park Water Company's Board immediately following Carlyle Infrastructure's purchase of Park Water Company. For the entire time Mr. Wheeler and his family had owned Park Water Company and, indirectly,

Mountain Water Company, Mr. Wheeler had been steadfastly opposed to the concept that Missoula's Water System might be municipally owned. His aversion to public ownership was a result of a failed effort on the part of Missoula to condemn the Water System 30 years before. At the dinner meeting with representatives of the City, Carlyle Infrastructure further represented that if Mr. Wheeler learned that Carlyle Infrastructure was willing to subsequently sell Mountain Water Company to the City after it acquired Park Water Company, Mr. Wheeler would not proceed to sell Park Water Company to Carlyle, and the City therefore would lose any opportunity it had to ultimately acquire its Water System. Mr. Dove was insistent that Carlyle's intention to sell Mountain Water Company or its assets to the City at a later date could never be disclosed publicly or otherwise made known to Mr. Wheeler prior to Carlyle's acquisition of Park Water Company. Based on these representations, the City agreed to support Carlyle Infrastructure's purchase of Park Water Company from Mr. Wheeler and his family. The City's investment bankers had a subsequent conversation with Mr. Dove that confirmed this understanding between the parties.

62. Following Carlyle's discussions with Mayor Engen and the City's investment bankers, the City reduced to writing the terms of its

understanding with Carlyle, and presented the term sheet to Mr. Dove. The proposed term sheet between the City and Carlyle stated that Missoula would purchase Mountain Water Company from Carlyle after Mr. Wheeler left Park Water Company's Board of Directors. On behalf of Carlyle, Mr. Dove responded that Carlyle could not put anything in writing, in part because of the risk that Mr. Wheeler would learn of it, but that the City could trust him and Carlyle to keep their word. Accordingly, the proposed term sheet was not signed.

63. Over the course of the summer of 2011, Missoula Mayor John Engen had a number of additional conversations with Mr. Dove and other representatives of Carlyle Infrastructure, in which they consistently repeated and reconfirmed Carlyle's agreement to sell Mountain Water Company to the City at a reasonable, negotiated price after acquisition of Park Water Company, and just as soon as Sam Wheeler left the Park Water Company Board of Directors. Relying on these promises, Mayor Engen set to work garnering community support for the sale of Park Water Company to Carlyle Infrastructure. The Mayor's efforts in this regard were successful.

64. In the fall of 2011, Carlyle Infrastructure, the City, and the Clark Fork Coalition agreed in writing that Carlyle would grant the City the

opportunity to meet any third-party offer to purchase Mountain Water Company and a right of first refusal to acquire Mountain Water Company or its assets. Carlyle also promised that it would consider in good faith any offer received at any time from the City to purchase Mountain Water Company or the assets that comprise Missoula's Water System, regardless of whether any third-party offer had been received by Carlyle.

65. In reliance on Carlyle's promised path to the City's future ownership of the Water System, Missoula's elected leaders testified before the PSC in favor of the sale of Mountain Water Company and the acquisition by Carlyle Infrastructure. As a result, the proposed transaction was approved by the PSC and the acquisition was closed in December 2011. The City and Carlyle Infrastructure agreed to continue their discussions as they waited for Mr. Wheeler to complete his one-year term on the Board of Directors of the new owner of Mountain Water Company, Carlyle Infrastructure.

66. After PSC approval and the closing of the deal, Mr. Dove repeatedly represented to the City that Carlyle Infrastructure intended to sell Mountain Water Company to the City, and repeatedly represented to the City that he and Carlyle Infrastructure could be trusted to do so.

67. In February 2012, a dinner meeting was held in a restaurant

partly owned by Mr. Dove in Washington, D.C. The meeting was attended by Mr. Dove, John Flaherty, Missoula Mayor Engen, Missoula Chief Administrative Officer Bruce Bender, and bond counsel for the City, Roy Koegen. At the meeting, the parties reaffirmed their prior agreement and mutual understanding that when Mr. Wheeler finished his one-year term on the Board of Directors, they would negotiate in good faith and at a reasonable price a sale of Mountain Water Company to the City. Those in attendance agreed on a target date of February 2013 which would comport with Mr. Wheeler's departure from the Park Water Company Board of Directors.

68. Over the course of the next year, the City continued to periodically check in with Mr. Dove regarding the path to City ownership of the Water System. Mr. Dove repeatedly confirmed that the parties' prior agreement and understanding was on track and would be honored by Carlyle Infrastructure. There were a number of witnesses to these promises made by Mr. Dove, including high ranking employees of the Carlyle Group. At all times when Mr. Dove made his promises and representations to the City, he was acting on behalf of Carlyle Infrastructure and the Carlyle Group with actual and apparent authority to do so. In anticipation of the agreed-upon sale of Mountain Water Company or its

assets to the City, the City augmented its team of advisors and professionals to include mergers and acquisition special legal counsel from the law firm of Perkins Coie, Springstead Financial Advisors, and Moelis & Company, all of whom met with the City beginning in January 2013 for the express purpose of proceeding with the transaction as previously understood and agreed by the City and by Carlyle.

69. Also in January 2013, in accordance with the timeline established by the parties and consistent with the promises and representations previously made by Mr. Dove, the City drafted an initial agreement to purchase the Water System and a proposed purchase price for Mr. Dove's review. The offer was reasonable and fair, indeed generous, in light of the purchase price paid by Carlyle just thirteen months prior. In light of the parties' dealings, the City had every expectation that the offer to purchase would be considered in good faith by Carlyle and that the agreed-upon sale would go forward. As set forth more fully below, Carlyle rejected the City's offer. Simply stated, Mr. Dove reneged on the promises and representations that he had previously made to the City and to Mayor Engen.

70. On behalf of Carlyle Infrastructure, Mr. Dove has stated that, rather than selling the Water System to the City at a reasonable, negotiated

price as previously promised, it is now Carlyle's intention to package Missoula's Water System as part of an overall portfolio of infrastructure assets that will be marketed for sale to third parties. If true, not only has Carlyle failed to live up to its word to the people of Missoula, it also has executed a classic "bait and switch" technique by making false promises in order to obtain the City's public approval of its 2011 acquisition of Mountain Water Company without intending to perform such promises. Having sought and received the support it needed from the City in 2011 in order to obtain PSC approval of the sale of Mountain Water Company to Carlyle Infrastructure, it now apparently has no intention of selling Mountain Water Company or its assets to the City despite the many promises and representations previously made by Mr. Dove and Carlyle, all of which were relied upon by the City. Carlyle's decision to sell Missoula's Water System to some unidentified and undisclosed entity or individual other than to the City has been made because the Carlyle Group has decided as a matter of ongoing investment strategy to move away from this particular category of assets and to garner the highest possible ROI as it exits this particular holding. Mr. Dove has indicated that his current mandate is to unload certain assets such as water companies in the Carlyle Infrastructure portfolio in favor of more traditional energy assets

71. The Carlyle Group seeks to avoid selling Mountain Water Company or its assets as a stand-alone business because Carlyle's original acquisition of Park Water Company in December 2011 was as a whole (Park Water Company consisted of three separate water companies, one of which was Mountain Water Company). Carlyle fears that selling one component of Park Water Company alone at this time may trigger a capital gains tax that Carlyle would prefer to avoid.

72. The Carlyle Group also seeks to avoid disposing of Mountain Water Company or its assets as a stand-alone business because the value of the portfolio as a whole, in Carlyle's view, exceeds the value of the sum of Park Water Company's component parts, and also because it may tend to reduce marketability and leave "stranded" costs at the parent company. The Carlyle Group also has indicated that it will not market Mountain Water Company as a stand-alone entity because selling it by itself would expose Carlyle to a "make whole" penalty that it seeks to avoid.

73. A sale of Mountain Water Company by the Carlyle Group as one component of a larger portfolio of assets to be sold, and a purchase of the Water System by yet another investor-driven entity or another for-profit entity, would further exacerbate instability of ownership, uncertainty with regard to long-term maintenance and reliability, and insecurity with regard

to Missoula's ability to provide for the future needs of its citizens and inhabitants.

74. Defendants' marketing of Mountain Water Company as one component of a larger portfolio of assets would make it impossible for the City to purchase the Water System, despite Carlyle's 2011 promise to sell the Water System to the City. This is because the City does not have the authority nor any desire to acquire the two California water companies that, together with Mountain Water Company, make up the portfolio of operating companies owned by Park Water Company. It is commercially impossible for Defendants, on the one hand, to perform their promise to negotiate in good faith a sale of Mountain Water Company or its assets to the City while, on the other hand, marketing for sale to a third party the entire Park Water Company portfolio and refusing to sell Mountain Water Company or its assets as a stand-alone business.

G. Municipal Ownership of the City's Water System Will Create Greater Accountability and Accessibility for Missoula Citizens

75. Missoula's Water System is now solely dependent on one source of water, the Missoula Aquifer, accessed by 37 wells and located just below the surface of the ground, so close to the surface that in some places it is no deeper than 40 feet underground. Such proximity makes the Aquifer susceptible to contamination. Over the years, contamination by

pesticides, heavy metals, and diesel fuel have been found at dangerous levels in Mountain Water Company wells. Prudent long-range planning would suggest that alternative sources of water be accessed, including Rattlesnake Creek which is owned by Mountain Water Company, but which has been unavailable for use since 1984 when the water was found to be contaminated with giardia. Municipal ownership of Missoula's Water System will permit and encourage a longer-term view of the City's needs and will promote careful consideration of and planning for alternative sources of water beyond and in addition to the Aquifer.

76. Responsible management of Missoula's continued growth, while protecting Missoula's sole source of water from contamination and other outside threats, requires Missoula and its citizens to obtain ownership and control over this essential resource. Since the 1980s, Missoula has experienced exponential growth and ever increasing demands for services, including a more than 17 percent increase in population from 2000 to 2010, thereby imposing a greater burden on the City and a greater premium on control and operation of Missoula's Water System. Future growth in Missoula's population is both expected and inevitable.

77. Since the 1980s, issues of water conservation, environmental concerns, and prudence regarding the management and protection of

water resources have increased to the point where the citizens of Missoula expect and deserve to have municipal ownership and control over their natural water resources that will serve their future needs, as a matter of public necessity.

78. Since the 1980s, the prospect and probability of droughts affecting Montana have become a reality, just as they have in California and elsewhere throughout the Western United States. As a matter of public necessity, the citizens of Missoula expect and deserve to have municipal ownership and control over their natural water resources so that they will serve their future needs in times of drought and uncertain climate change.

79. The citizens of Missoula also should have the right to protect their water from potential diversion or sale to other communities.

80. The public's need for long-term access to a supply of clean water in light of today's circumstances and future changes affecting the State of Montana and Missoula makes municipal ownership and control over water more important now than ever before. Safe and dependable access to a supply of water will be a critical need for the foreseeable future and one best managed by the municipality entrusted with providing for the needs of its citizens and inhabitants.

81. As indicated in the City's 2005 Growth Policy Survey, maintaining or improving Missoula's water quality is a high priority for the citizens of Missoula and it is expected to remain a high priority for the indefinite future.

82. Over the past several years under Defendants' ownership and operation, Missoula's Water System has been managed in a less than responsible manner, resulting in manifest inefficiencies, notoriously leaky pipes with perhaps 40% waste due to unrepaired leaks, and deferral of necessary and desired maintenance, repairs, and capital expenses. The integrity and condition of the Water System has declined decidedly under Defendants' ownership and operation. In a recent submission to the PSC, Mountain Water Company indicated that the average age of the pipes in the Water System are 34.06 years old and, in their current condition, the pipes in the Water System lose 40% of their water flow due to leakage. The cost of such leakage is estimated to be more than \$600,000 per year.

83. Over the past several years, the need for Rattlesnake Creek to be a ready and available resource for fresh water has increased. Despite this need, Defendants have not engaged in any long-range planning to ensure that Rattlesnake Creek is a ready and available resource for water.

84. As of today, under Defendants' ownership and operation of

Missoula's Water System, the citizens of Missoula pay among the very highest rates for water of any town or city in the State of Montana due to the current owners' focus on increasing their investors' returns rather than reducing citizens' costs as consumers.

85. As of today, Missoula is the only major city in the State of Montana that does not own and operate its own water system, whereas 129 other cities and towns in the State of Montana own and operate their water supply and distribution systems. Missoula is alone in its reliance on a privately held, for-profit investment fund to meet its citizens' needs for water.

86. Under the City's ownership and operation of Missoula's wastewater treatment facility as a municipal enterprise, today the citizens of Missoula pay among the very lowest rates for sewage treatment of any town or city in the State of Montana due to the City's competent and responsible management of the facility for the long-term interests of its citizens rather than for the short-term profit of investors.

87. Missoula is willing and will be able to operate the Water System efficiently, economically, and securely for the benefit of its citizens who are the consumers of this precious natural resource. This is demonstrated by the City's effective ownership and reliable operation of its own wastewater

treatment facility over the past several decades.

88. Public ownership and operation of the Water System, as opposed to private ownership, will have other beneficial effects on the citizens and inhabitants of Missoula.

89. Public opinion favors municipal ownership of the Water System.

90. The governing body of Missoula, the City Council, has expressed overwhelming support for public ownership of the Water System.

91. Missoula and its elected leaders have consistently indicated that they intend to retain Mountain Water Company's existing employees in Missoula, and that will be the case upon the City's acquisition of the Water System. The City is better equipped to make good on that promise than any unknown and unidentified third-party purchaser or private owner of unknown origin to whom Carlyle might sell the Water System on the open market. The City is better positioned for the long-term to take care of the current Missoula-based employees of Mountain Water Company, to take care of the Water System itself, to take care of its customers, and to take care of the citizens and inhabitants of Missoula who depend on the Water System to meet their needs.

92. Whereas Carlyle Infrastructure is motivated to send profits out

of state to benefit their owners and shareholders, the City of Missoula is motivated to maintain and build a better water system for the people of Missoula. This difference is apparent in the way employees are paid. At the Carlyle Group, the highest paid employee made more than \$250 million in 2013. In contrast, the City's wage structure is much more in line with reality and in line with how Mountain Water Company's Missoula employees are paid. The difference in salary and benefits between the lowest-paid and highest-paid employee at the City is in the tens of thousands of dollars. At the Carlyle Group, the difference between the lowest-paid and the highest-paid employees of Carlyle and its portfolio companies is in the hundreds of millions of dollars.

93. To alleviate any concern that might be felt by any Missoula-based employees of Mountain Water Company regarding the prospect of losing their jobs or their ability to earn a living, the City has stated that, upon its acquisition of the Water System, the City intends to extend employment offers to all existing Mountain Water Company employees who reside in Montana, such offers to match their current wages and benefits unless the City's wages and benefits are considered superior, in which case the City will permit the affected employee to choose whichever option is to his or her advantage.

94. The employment of current Mountain Water Company workers will be more secure with the City than their current employment with Mountain Water Company under Carlyle's ownership because of the City's record as an employer, because the City is committed to reinvesting in its public utilities rather than reselling them to the highest bidder, because the City does not need to make a profit on its operation of the Water System, and because the City is governed by locally elected officials who are accountable to the public and the ratepayers, not to foreign out-of-state investors from around the country and around the world.

95. Mountain Water Company employees are much more at risk today, when large, for-profit, investor-owned companies own and operate Missoula's public water utility, than they will be under municipal ownership. This is because the profit motive and ROI that drives Carlyle's private ownership requires generation of an return that can only be realized through increased revenue (rates charged to consumers that are regulated by the PSC) or by decreased expenses (reduced investment in capital improvements and human resources), or both.

96. For the foregoing reasons, it is necessary that the City acquire Defendants' property in order for Missoula to have its own water supply and distribution system. It is more necessary for the public welfare that the City

operate Missoula's Water System going forward than it is to continue to have the Water System operated as it has been in the past by out-of-state, private owners beholden to third-party investors expecting to achieve a high rate of return on their investment. Public ownership will be more beneficial, more convenient, and more advantageous to the public than is the status quo, thus satisfying the "public necessity" requirements of Montana's law of eminent domain.

H. Missoula's Authorization to Proceed with Acquiring the Water System

97. The City is authorized to bring this action to acquire Missoula's Water System currently owned and operated by Defendants. Such authorization occurred on October 21, 2013, when City Ordinance No. 3509 was passed by the City Council, authorizing the City Administration to acquire the Water System either by purchase or by condemnation. A true and correct copy of Ordinance No. 3509 is attached as Exhibit A.

98. In adopting and approving Ordinance No. 3509, the City gave proper notice to Defendants of the City's intention to acquire Missoula's Water System either through a negotiated purchase or by means of this eminent domain proceeding.

I. Fair Market Value of the Water System

99. In its 2011 acquisition of Mountain Water Company, the Carlyle

Group paid \$102 million for Park Water Company and its subsidiaries, including Mountain Water Company, and assumed approximately \$53 million of Park Water Company's debt. Mountain Water Company accounted for approximately 32 percent of Park Water Company's customer base.

100. The purchase price paid by the Carlyle Group for Park Water Company and all of its assets implies a valuation for Mountain Water Company's assets of approximately \$50 million as of the beginning of 2012.

101. On information and belief, the 2011 purchase of Mountain Water Company by the Carlyle Group is a comparable arm's-length sale between a willing seller and a willing buyer with neither acting under duress. The 2011 purchase price therefore is a useful and reliable indicator of the current fair market value of the assets that comprise Missoula's Water System.

102. The City and the City Administration have a good faith belief that Missoula's Water System can be purchased or acquired for "just compensation" as required under Montana law in the range of \$50 million, given that Mountain Water Company was purchased by the Carlyle Group within the past three years for an implied price of approximately \$50 million.

103. The Carlyle Group, however, has indicated to the City that it will not sell Missoula's Water System for less than \$120 million. Carlyle's valuation and refusal to negotiate in good faith are contrary to its promises made to the City in 2011.

J. The City's Offer to Purchase Has Been Declined

104. On October 29, 2013, the City offered to purchase 100 percent of the equity of Mountain Water Company as an ongoing business, including goodwill, all commercial and employee relationships and administrative infrastructure, and with customary representations, warranties, and other contractual protections and benefits, for \$65 million. The City's written offer was delivered to Defendants for their consideration on October 29, 2013. A true and correct copy of the October 29, 2013, offer letter is attached as Exhibit B.

105. On November 4, 2013, on behalf of Defendants, the Carlyle Group responded to the City's October 29, 2013, offer to purchase Mountain Water Company, and stated that it had no current intention to sell. A true and correct copy of the Carlyle Group's November 4, 2013, letter is attached as Exhibit C.

106. On November 13, 2013, the City responded to the Carlyle Group regarding the potential sale of Mountain Water Company. A copy of

the City's November 13, 2013, letter is attached as Exhibit D.

107. On November 26, 2013, on behalf of Defendants, the Carlyle Group rejected the City's October 29, 2013, offer to purchase Mountain Water Company, and stated that the offer did not reflect the "full value" of Mountain Water Company. A true and correct copy of the November 26, 2013, letter is attached as Exhibit E.

108. On December 5, 2013, the City responded further to the Carlyle Group regarding its potential sale of Mountain Water Company or the City's acquisition of Missoula's Water System under its power of eminent domain. A true and correct copy of the December 5, 2013, letter is attached as Exhibit F.

109. On December 13, 2013, on behalf of Defendants, the Carlyle Group again rejected the City's offer to purchase. A true and correct copy of the December 13, 2013, letter is attached as Exhibit G.

110. On January 28, 2014, the City offered to purchase Mountain Water Company's assets that comprise Missoula's Water System (as opposed to 100 percent of the equity interest of the company) for \$50 million, and the City's written offer was delivered to Defendants for their consideration. A true and correct copy of the January 28, 2013, offer is attached as Exhibit H.

111. The City's January 28, 2014, offer to purchase the assets was a bona fide offer within the meaning of Mont. Code Ann. § 70-30-4404 and 4405, and it fully complied with the requirements of Mont. Code Ann. § 70-30-111(d).

112. The City's January 28, 2014, offer to purchase the assets comprising Missoula's Water System was not accepted and was rejected by Defendants. On January 31, 2014, on behalf of Defendants, the Carlyle Group confirmed its rejection of the City's written offer to purchase the assets comprising Missoula's Water System. A true and correct copy of the January 31, 2014, letter is attached as Exhibit I.

113. Despite its efforts to negotiate a purchase of Missoula's Water System from Defendants, the City has been unable to reach agreement or otherwise succeed in such efforts.

114. Having failed to negotiate a purchase of the Water System by agreement, the City is now entitled to proceed to acquire it by exercise of its power of eminent domain pursuant to Mont. Code Ann. §§ 7-13-4404 and 4405.

K. The City's Ability to Finance Its Acquisition of the Water System

115. The City has the ability to finance the acquisition of the Water System through the issuance of tax-exempt municipal bonds. No property

tax revenue or other monies from the City's General Fund will be used to repay such bonds. Missoula's credit rating for issuance of such bonds is investment grade and its debt service is not an impediment to such financing.

116. The City's nationally recognized financial advisor, Springsted Incorporated, has had direct conversations with Standard & Poor's Ratings Services, which indicated that tax-exempt bonds issued by the City to acquire the Water System will be rated "investment grade."

117. The City has retained Barclays Capital as sole senior managing underwriter with respect to the issuance of such bonds. Given current interest rates, Barclays Capital has advised the City that it is highly confident it will be able to underwrite such bonds in an amount sufficient to pay the purchase price for the Water System offered by the City.

118. Once acquired, the City will pay for the Water System's ongoing operations and will repay the bonds in full over 30 years through revenues generated from consumers who purchase their water from the City. Such financing will provide more than enough revenues to pay for ongoing operations as well as for future capital investments, repairs, and maintenance.

119. Public ownership through the issuance of tax-exempt municipal

bonds will further benefit Missoula residents through the payment of lower interest rates and an extended repayment period. In contrast, under the current private structure, there is an incentive to maximize short-term investors' profits on the backs of the Missoula water ratepayers by frequently leveraging and financing deals consistent with corporate profit motives, rather than based on what is best for the citizens of Missoula.

L. Cause of Action—Condemnation of the Water System by Exercise of the City's Power of Eminent Domain

120. Missoula's Water System currently owned by Defendants is a proper object of eminent domain proceedings under Montana law.

121. The City now seeks to take by eminent domain and to own the Water System in order to establish a municipal water supply and distribution system that is publicly owned and operated, because:

- a. The citizens of Missoula need a stable, safe, plentiful, and predictable source of clean water to meet their future needs; and
- b. Public ownership will accomplish that purpose.

122. Public ownership of the Water System is appropriate and the public interest requires the taking based on the following:

- a. Use of the water supply and distribution system confers a benefit, convenience, or advantage on the citizens and

inhabitants of Missoula, and therefore it constitutes a public use under Mont. Code Ann. § 70-30-102;

- b. The taking is necessary to the public use and is in the public interest;
- c. The proposed public use by the City is a more necessary public use than the status quo today; and
- d. Prior to initiation of these condemnation proceedings, an effort to obtain the property owned by Defendants that the City proposes to take was made by submission of a written offer to purchase the assets of Missoula's Water System for appropriate and just compensation, was made prior to initiation of these condemnation proceedings, and the City's final written offer was either rejected or not accepted.

123. The Water System to be acquired by Missoula's exercise of its power of eminent domain consists of all components that currently comprise the water supply and distribution system used by Missoula and its citizens, including well sites and all other water sources, easements, licenses, water transmission lines and pipes, office buildings, maintenance buildings, equipment, water meters, inventory, tools and spare parts, vehicles, business records, and such property is appropriately taken by the

exercise of eminent domain pursuant to Mont. Code Ann. § 70-30-103. A legal description of each interest in the property to be taken by the City is attached as Exhibit J. To the extent complete legal descriptions are not yet available, the City reserves the right to supplement this pleading and amend its Complaint to include such additional legal descriptions as may be appropriate or necessary.

124. The interests in Defendants' property sought to be taken herein includes the whole of Mountain Water Company's assets, and the interests sought are the minimum necessary to achieve the desired taking.

125. The City does not by this Complaint seek an order immediately transferring ownership of the Water System at issue, but rather seeks a judicial ruling by the Court that the City is entitled to have the fair market value of the Water System determined by a panel of three commissioners to be appointed by the Court pursuant to Mont. Code Ann. Title 70, Chapter 30, Section 207.

126. A copy of the current publication produced by the environmental quality council entitled "Eminent Domain In Montana" is attached to this Complaint as Exhibit K, as required by law.

IV. PRAYER

Based on the foregoing, the City requests the Court grant the

following relief:

A. Setting of a hearing or trial within the next six months pursuant to Mont. Code Ann. § 70-30-202, with the Court according this proceeding expeditious and priority consideration, or as soon thereafter as the parties may agree and as the Court may order, for the Court sitting without a jury to determine that the public necessity and the public interest requires that the City take ownership of Missoula's Water System in this eminent domain proceeding, and all other factual determinations necessary to entitle the City to proceed with condemnation of the Water System at issue;

B. Permitting the parties to take discovery prior to such hearing or trial;

C. Issuance of a Preliminary Condemnation Order pursuant to Mont. Code Ann. § 70-30-206 following such hearing:

1. Finding and concluding that the public interest requires the taking of Missoula's Water System, and confirming the public necessity and that public ownership is more necessary than the status quo pursuant to Mont. Code Ann. § 70-30-206(2);

2. Ordering that the parties present their evidence on valuation to a panel of commissioners who will determine and fix the current fair market value as of the date this proceeding was initiated of the land,

improvements, and other property rights that comprise the Water System in order to fairly compensate Defendants for the City's taking;

3. Appointing three qualified and disinterested commissioners to serve on said panel and to examine the evidence pursuant to Mont. Code Ann. § 70-30-207;

4. Setting a time for said panel to hear and consider the parties' evidence relating to valuation and the amount of compensation to be paid by the City to Defendants in exchange for the Water System, as further instructed by the Court;

5. Reserving to the Court the power to enter a final Order of Condemnation whereby the property at issue shall be transferred to the City in exchange for the compensation fixed by the panel;

6. Awarding such necessary expenses of litigation as authorized by Mont. Code Ann. § 70-30-305 in an amount that is reasonable taking into account the customary hourly rates for attorneys' services in the county in which the hearing or trial is held as provided in Mont. Code Ann. § 70-30-306; and

7. Entering a Final Award of Condemnation in favor of the City and against Defendants on the City's First Cause of Action, effective upon payment of such compensation as has been ordered.

D. Ordering such further relief in favor of the City and against Defendants as the Court deems just and equitable.

DATED this 5th day of May, 2014.

BOONE KARLBERG P.C.



Scott M. Stearns
Natasha Prinzing Jones
Attorneys for Plaintiff

DATED this 5th day of May, 2014.

DATSOPOULOS MACDONALD & LIND, P.C.



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Application for Pro Hac Vice Admission
Pending

Exhibit A

Exhibit A

Ordinance Number 3509

An Ordinance of the City of Missoula, Missoula County, Montana, Providing Notice to The Carlyle Group that the City Desires to Purchase the Water System Owned by The Carlyle Group and Operated by Mountain Water Company; Authorizing the Mayor to Enter Into Negotiations to Acquire such Water System; Determining to Acquire such Water System Either by Purchase or by Eminent Domain; and Providing for Other Matters Properly Relating Thereto

**CITY OF MISSOULA
Missoula County, Montana**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSOULA, MISSOULA COUNTY, MONTANA, as follows:

WHEREAS, the City of Missoula, Missoula County, Montana (the "City"), is a municipality duly organized and existing under and by virtue of the Constitution and the laws of the State of Montana (the "State") now in force;

WHEREAS, the public water supply (including wells and Rattlesnake Creek), transmission and distribution system that provides water service to the City and its residents (the "System") is owned by Mountain Water Company (a Montana corporation and a wholly-owned subsidiary of Park Water Company, a California corporation), which was formed in 1979 to acquire the System from Montana Power Company;

WHEREAS, Park Water Company and Mountain Water Company were acquired in 2011 by The Carlyle Group, which is one of the largest hedge funds in the world, through its subsidiary Carlyle Infrastructure Partners LP, pursuant to Final Order No. 7149d of the Public Service Commission of the State (the "PSC") dated December 14, 2011 (the "Final PSC Order");

WHEREAS, in consideration of the agreement by the City and the Clark Fork Coalition to support the sale of Park Water Company and Mountain Water Company to The Carlyle Group in testimony to the PSC, the City, the Clark Fork Coalition and The Carlyle Group, entered into a letter agreement, dated September 22, 2011, which is attached to the Final PSC Order as Attachment A, wherein, among other things, The Carlyle Group agreed to consider in good faith any offer from the City to purchase the System in its entirety, or the stock in Mountain Water Company, at any time (the "Letter Agreement");

WHEREAS, MCA § 7-13-4402 provides that the City Council of the City (the "Council") has the power to adopt, enter into, and carry out the means for securing a supply of water for the use of the City or its inhabitants;

WHEREAS, pursuant to MCA § 7-13-4403, whenever a franchise has been granted to or a contract made with any person or persons, corporation, or corporations and such person or persons, corporation, or corporations, in pursuance thereof or otherwise, have established or maintained a system of water supply or have valuable water rights or a supply of water desired by a city for supplying the city with water, the city granting such franchise or entering in such contract or desiring such water supply shall, by the passage of an ordinance, give notice to such person or persons, corporation, or corporations that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations;

WHEREAS, MCA § 7-13-4403 further provides that the City shall have the right to so purchase the plant or water supply upon such terms as the parties agree;

WHEREAS, MCA § 7-13-4404 provides that if such agreement is not reached pursuant to MCA § 7-13-4403, then the City shall proceed to acquire the plant or water supply by eminent domain pursuant to Title 70, chapter 30 of the MCA;

WHEREAS, as stated in Mayor Engen's (the "Mayor") testimony to the PSC, as included in the Final PSC Order, clean, safe drinking water is a fundamental resource and should be provided by a municipally-owned public utility;

WHEREAS, City ownership and operation of the System would provide increased accountability and accessibility for customers of the System as rates would be established by the Council, which is elected by residents of the City;

WHEREAS, City ownership and operation of the System would provide increased accountability and accessibility for customers of the System as the compensation paid to System employees, like all City employees, would become public;

WHEREAS, as indicated in a 2005 Growth Policy Survey, maintaining or improving water quality is a high priority for City residents;

WHEREAS, the City has grown significantly over the past decades, including a 14.1 percent population increase from 2001 to 2011, and such population growth places a greater burden on the City's water resources;

WHEREAS, The Carlyle Group effectively charges the rate payers of the System for the expenses associated with its administrative and executive personnel in California, a state with significantly higher compensation, benefits and facility costs than the City;

WHEREAS, after decades of experience owning and operating its wastewater treatment facility efficiently, the City has the management capability and expertise to operate the System and plans to use its existing administrative infrastructure to provide administrative services at a reduced cost;

WHEREAS, the City, unlike the current owners of the System, would not be under an obligation to make a profit and divert System revenues to shareholders and would therefore be able to operate the System more efficiently and use System revenues to invest in capital improvements to the System;

WHEREAS, based on The Carlyle Group's testimony included in the Final PSC Order that The Carlyle Group's ownership of Mountain Water Company will be short term and that The Carlyle Group will attempt to recover an acquisition premium through its sale of the System, the City and its residents have continued uncertainty regarding the System as The Carlyle Group could be the first in a series of short-term, out-of-state owners of the System;

WHEREAS, hedge funds like The Carlyle Group derive much of their investment return through "financial engineering," including by leveraging their investments to the maximum extent possible, which undermine the stability of the System, the owners' ability to maintain the System and invest in improvements, and the solvency of the System in cyclical down turns, as illustrated by the recent bankruptcy of Synagro Technologies, a Baltimore-based waste recycler which was purchased by The Carlyle Group in 2007 with debt financing;

WHEREAS, the City has a greater interest in conservation and long-term access to water than an owner whose primary interest in the System is as a short-term investment;

WHEREAS, the City has determined that it is in the best interest of the City and its residents for the City to acquire the System, whether through purchase from The Carlyle Group or by eminent domain;

WHEREAS, pursuant to MCA §7-13-4403, the City has determined to provide notice to The Carlyle Group, as the owner of the entities that own and operate the System, that it desires to purchase the System;

WHEREAS, the City has determined to enter into negotiations with The Carlyle Group with respect to the purchase price for the System in order to present an offer to the Carlyle Group to purchase the System in its entirety, or the stock in Mountain Water Company which, pursuant to the Letter Agreement, The Carlyle Group has agreed to consider in good faith; and

WHEREAS, if such offer is not accepted by The Carlyle Group, and if the City and The Carlyle Group are not able to reach agreement on the terms of the sale of the System in its entirety, or the stock in Mountain Water Company, then the City has determined to proceed to acquire the System by eminent domain pursuant to Title 70, chapter 30 of the MCA, as provided by MCA §7-13-4404.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED AND ORDERED as follows:

Section 1: Notice of City desire to Purchase the System

The City hereby determines that it is in the best interest of the City and its residents for the City to acquire the System. The Mayor is hereby authorized and directed to give notice to The Carlyle Group of the City's desire to purchase the System.

Section 2: Offer to Purchase

The City hereby determines that it is in the best interest of the City and its residents that the City present an offer to the Carlyle Group to purchase the System in its entirety, or the stock in Mountain Water Company which, pursuant to the Letter Agreement, The Carlyle Group has agreed to consider in good faith. The Mayor is hereby authorized and directed to enter into negotiations with The Carlyle Group with respect to the purchase price for the System, and to present to the Council for its approval, an offer from the City to the Carlyle Group to purchase the System in its entirety, or the stock in Mountain Water Company.

Section 3: Authorization to Proceed with Eminent Domain

If the City is unable to reach an agreement with The Carlyle Group to purchase the System in its entirety, or the stock in Mountain Water Company, then the City shall proceed to acquire the System by eminent domain pursuant to Title 70, chapter 30 of the MCA.

Section 4: Professional Engagements

The City hereby determines that as part of its efforts to pursue the acquisition of the System in its entirety, or the stock in Mountain Water Company, it would be advisable to secure the advice and services of various legal, financial and engineering professionals that have the requisite expertise in such acquisitions. The City has been advised of the professionals who have indicated a willingness to assist the City on a contingent-fee basis, with no fees to be paid unless and until such acquisition is successful in whole or in part. Therefore, the Mayor is hereby authorized to negotiate and enter into engagement agreements with such professionals as he deems necessary, provided that with the exception of the engagement of Perkins Coie LLP (which firm shall be paid on an hourly-fee basis), and the payment of the ongoing costs of such other professionals (e.g. travel, telephone, etc.), no such agreement shall obligate the City to pay any professional fees unless and until the System has been acquired, as such acquisition may be defined in the relevant engagement agreements.

Section 5: Ratification

All actions not inconsistent with the provisions of this Ordinance heretofore taken by the Council and the City's officers, employees and agents in connection with the passage of this Ordinance and the acquisition of the System by the City are hereby and in all respects ratified, approved and confirmed.

Section 6: No Personal Recourse

No recourse shall be had for any claim based on this Ordinance against any Council member or the City, nor any officer or employee, past, present or future, of the City or of any successor body as such, either directly or through the City or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

Section 7: Effective Date

This Ordinance shall be in full force and effect from and after 30 days after its date of passage.

PASSED by the City Council of the City of Missoula, Montana, at a regular meeting thereof, held this 21st day of October, 2013.

CITY OF MISSOULA
Missoula County, Montana

/s/ John Engen

John Engen,
Mayor

ATTEST:

/s/ Martha L. Rehbein

Martha L. Rehbein, CMC
City Clerk

(SEAL)

CERTIFICATE AS TO ORDINANCE AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Missoula, Missoula County, Montana (the "City"), hereby certify that the attached ordinance is a true copy of an ordinance entitled: "An Ordinance of the City of Missoula, Missoula County, Montana, Providing Notice to The Carlyle Group that the City Desires to Purchase the Water System Owned by The Carlyle Group and Operated by Mountain Water Company; Authorizing the Mayor to Enter Into Negotiations to Acquire such Water System; Determining to Acquire such Water System Either by Purchase or by Eminent Domain; and Providing for Other Matters Properly Relating Thereto" (the "Ordinance"), on file in the original records of the City in my legal custody; that the Ordinance was duly adopted by the City Council of the City at a meeting on October 21, 2013, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Ordinance has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Ordinance at such meeting, the Ordinance was adopted by the following vote:

AYES, and in favor thereof: Childers, Copple, Jaffe, Marler, O'Herron, Strohmaier, Taft, Wiener, Wilkins and Wolken

NAYS: Haines, Hertz,

ABSENT: None

ABSTAIN: None

WITNESS my hand officially this 21st day of October, 2013.

/s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

(S E A L)

Exhibit B

Exhibit B



JOHN ENGEN

OFFICE OF THE MAYOR

435 RYMAN MISSOULA, MONTANA 59802-4297

STRICTLY CONFIDENTIAL

October 29, 2013

Robert Dove, Managing Director
Carlyle Infrastructure Partners Western Water, L.P.
1001 Pennsylvania Ave. NW, Suite 220 South
Washington, DC 20004-2505

Dear Robert:

On behalf of the City of Missoula (the "City"), I am pleased to submit this offer to acquire Mountain Water Company (the "Company").

As Roger Wood previously communicated to you, the Missoula City Council voted overwhelmingly on October 21, 2013 to authorize me to pursue the acquisition of the Company through a negotiated sale or condemnation proceeding. Our strong preference is to arrive at a negotiated purchase of the Company, rather than the acquisition of its assets and operations through a condemnation proceeding, which presents risk and uncertainties to both parties. Accordingly, we are prepared to acquire the Company from Park Water Company ("Park Water") upon the terms set forth in the term sheet attached to this letter, the highlights of which are included below.

Purchase Price. The City would purchase 100% of the equity of the Company at a purchase price of \$65,000,000 (the "Purchase Price") on a cash-free, debt-free basis. We believe the offer to be full and fair, and note that it is consistent with the pricing that we previously indicated to you, notwithstanding (i) lower expected profitability for the Company, and (ii) higher interest rates.

We think the price compares very favorably with a number of recent transactions in the sector and with your alternatives for the business. In particular, we note the agreement that was reached by the City of Fort Wayne, Indiana in July 2013 to acquire water systems owned by Aqua Indiana for \$67 million at an implied valuation of 7.3x EBITDA, compared with the 10x EBITDA that we are offering for the Company. We also note the acquisition in July 2012 of United Water Arkansas by Liberty Energy Utilities at 1.2x rate base, compared with the 1.7x implicit in our offer. And we believe that the implied multiple of over 25x net income (after adjustment for interest on the debt allocated by Park Water) is by any standards a high multiple. We would also observe that you would be crystallizing an attractive profit on the pro rata portion of your original acquisition of Park Water attributable to Mountain Water. We would be

delighted to review our analysis in detail with you at your convenience. To the extent that you have additional information about the Company that you believe may not be adequately reflected in our proposal, we would be willing to evaluate whether such information would have an impact on our assumptions regarding valuation and financing.

Financing. Based upon detailed discussions with our financial advisor and with potential underwriters and investors, the City is very confident in its ability to finance the acquisition at this Purchase Price. The financing may be executed either through a traditional underwritten bond offering, or alternatively through a private placement.

Due Diligence. As you know, we have already commenced a due diligence review of the Company based on publicly available information. The City would, of course, be prepared to sign a confidentiality agreement prior to receiving nonpublic information. The City's due diligence efforts would focus on a detailed system condition assessment and corresponding expected future investment requirements, in addition to other customary areas for review.

Timing. We would like to move forward quickly. We believe that the due diligence and financing processes can both be completed (in parallel) in less than four months. We also believe that the transaction would not be subject to approval by the Montana PSC, and could therefore be closed quickly. Any definitive agreement would, however, be subject to approval by the Missoula City Council.

Exclusivity. We will require a six-month exclusivity period beginning on your acceptance of this letter (the "Exclusivity Period") in order to complete our remaining diligence and negotiate definitive documents. We have attached an exclusivity letter as Appendix I, which we would ask you to countersign along with this letter of intent.

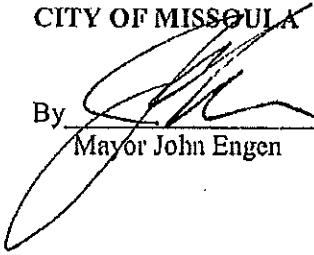
This letter summarizes our present understanding and intent with respect to the proposed transaction. This letter is not intended to, and shall not, create a legally binding agreement or contract in any respect and shall not create any rights, either expressed or implied, in favor of the City, Park Water or any other person. Unless and until written, definitive agreements are executed and delivered (and subject to the conditions expressed therein), neither party is under any obligation of any kind whatsoever with respect to our offer or any other matter referred to herein by virtue of this letter or any oral or other written expression with respect to the foregoing. The failure to execute and deliver any definitive agreements with respect to the foregoing shall not impose any liability on any of the parties, their respective subsidiaries or other affiliates or any of their respective representatives. This letter is provided to you on a strictly confidential basis with the understanding that, except as required by law or regulation, neither Park Water nor the Company, nor their existing equity holders and advisors, will disclose the terms hereof, or our proposed versions of the transaction documents to any other person without the prior written consent of the City.

We are enthusiastic about the opportunity to pursue this transaction and look forward to further constructive discussions. Please indicate your acceptance of the terms of this letter by signing below and returning by fax or PDF an executed copy of this letter to our financial advisers, Moelis & Company, no later than 5:00 p.m. Eastern time on Tuesday, November 5, 2013 at

Carlyle Infrastructure Partners Western Water, L.P.
October 29, 2013
Page 3

(212) 880-4260, Attention: Roger Wood, or to roger.wood@moelis.com (returning an executed physical copy to such person by overnight delivery). Please feel free to contact Roger Wood at (212) 883-4565, or roger.wood@moelis.com, should you have any questions.

CITY OF MISSOULA

By  _____

Mayor John Engen

Accepted and agreed as of the
date first written above:

PARK WATER COMPANY

By _____

Name: _____

Date: _____

APPENDIX I

October 29, 2013

CONFIDENTIAL

Robert Dove, Managing Director
Carlyle Infrastructure Partners Western Water, L.P.
1001 Pennsylvania Ave. NW, Suite 220 South
Washington, DC 20004-2505

Re: Proposed Transaction

Dear Robert:

In consideration of the substantial resources that the City of Missoula (the "City") will expend in further evaluating and negotiating the terms of the potential sale (the "Transaction") to the City of Park Water Company's (the "Seller") wholly owned subsidiary, Mountain Water Company (the "Company"), and of the mutual covenants set forth below, the City, Seller, the Company and Seller's affiliates, Western Water Holdings, LLC ("Western") and Carlyle Infrastructure Partners, L.P. ("Carlyle" and, together with Seller and Western, the "Seller Affiliates") agree to the following terms:

1. **Other Negotiations.** Between the date hereof and 11:59 p.m. (Pacific Time) on _____, 2014, or such earlier time and date as the City and Seller mutually agree (the "Expiration Date"), neither the Company nor any of its officers, directors, employees, stockholders, agents, representatives or affiliates, including the Seller Affiliates (collectively, its "Representatives") will directly or indirectly (including by selling a controlling interest in Seller or another Seller Affiliate), take any action to solicit, initiate, seek, encourage, support or cooperate with any inquiry, proposal or offer from, furnish any information to, or participate in any negotiations with, any corporation, partnership, person or other entity or group (other than the City) regarding any acquisition of the Company or any of its subsidiaries, any merger or consolidation with or involving the Company or any of its subsidiaries, or acquisition of any material portion of the stock, or assets of the Company or any of its subsidiaries (each, an "Acquisition Transaction"). The Company and the Seller Affiliates agree that any such negotiations in progress as of the date hereof will be terminated or suspended during such period. The Company will promptly, and in any event within 24 hours, notify the undersigned regarding any contact with the Company or any of its Representatives by any third party regarding any offer, proposal or inquiry regarding any Acquisition Transaction or any request for nonpublic information or for access to the properties, books, or records of Seller or the Company by any person or entity that informs the Company or any of its Representatives that it is considering

making, or has made, such a proposal or inquiry. Such notice will include the identity of the person making the proposal, the terms of such proposal in reasonable detail and, if applicable, a copy of such proposal. In no event will the Seller Affiliates or the Company accept or enter into an agreement, understanding, letter of intent, term sheet, summary of terms, similar document or agreement concerning any Acquisition Transaction prior to the Expiration Date. Without limiting the foregoing, it is understood that any violation of the restrictions in this letter agreement by any Representative shall be deemed to be a breach of this letter agreement by the Company. The Company and each Seller Affiliate represents and warrants that it has the legal right to terminate or suspend any such pending negotiations and agrees to indemnify the City, its representatives and agents from and against any claims by any party to such negotiations based upon or arising out of the discussion, negotiation or any consummation of the Transaction.

2. Public Disclosure. No party hereto will make any public disclosure of, or otherwise disclose to any person (other than its officers, employees, investment bankers, accountants, attorneys and agents whose duties require them to have access to such information), the existence or terms of the Transaction, this letter agreement or the related Term Sheet without the City's and Seller's written consent, unless such disclosure is required by law. We note that public examination, inspection or reproduction of information relating to the existence and proposed terms of the Transaction may be required by Montana law, which in the case of the City could require disclosure of such information to the public upon request, unless an exemption from such disclosure is available. In any event, the parties will use commercially reasonable efforts to consult with each other regarding the content of any public announcement regarding the Transaction.

3. Confidentiality. Each party recognizes that in order to evaluate the Transaction it has received and will receive confidential information regarding, among other things, the employees, finances, businesses, operations and assets of the other party hereto. Accordingly, subject to applicable laws (including the Constitution of the State of Montana and Montana law), the City, each Seller Affiliate and the Company each agrees to use its best efforts to prevent the unauthorized use or disclosure of any such confidential information concerning any other party that has been disclosed to it previously or is disclosed after the date hereof during any course of the negotiation and investigation contemplated by this letter agreement. The obligations of this paragraph do not apply to information that (a) at the time of an alleged breach hereof is part of the public domain (other than as a result of a breach of confidentiality obligations by the party that is the recipient of the relevant confidential information), (b) has been disclosed, at the time of an alleged breach hereof, by the disclosing party to third parties without restrictions on disclosure, or (c) has, at the time of an alleged breach hereof, been received by the receiving party from a third party without breach of a nondisclosure obligation of the third party. The provisions of this Section 3 are in addition to and not in lieu of any other non-disclosure or confidentiality agreement in effect between the parties.

4. Expenses. Each party shall be responsible for and bear all of its own costs and expenses (including any brokers, bankers, attorneys, accountants or other advisors, as the case may be) incurred at any time in connection with pursuing or consummating the Transaction.

5. General Provisions.

(a) The City, each Seller Affiliate and the Company each represents and acknowledges that it has the power and authority to enter into this letter agreement.

(b) This letter agreement shall be governed by and construed under the internal laws of the State of Montana, without giving effect to its principles or rules regarding conflicts of laws or choice of laws.

(c) This letter may be executed in counterparts.

(d) Without prejudice to the rights and remedies otherwise available to either party hereto, each party hereto shall be entitled to equitable relief by way of injunction, specific performance or otherwise if the other party or any of its Representatives breach or threaten to breach any of the provisions of this letter agreement.

(e) No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

(f) The parties shall have no obligation to consummate the Transaction, unless and until a definitive agreement is reached, and in such case shall be subject in all respects to the satisfaction of the conditions contained therein, and neither party hereto shall have any liability to the other if the parties fail for any reason to execute such a definitive agreement.

(g) This letter agreement contains the entire agreement between the parties regarding the subject matter hereof, and no modification of this letter agreement or waiver of the terms and conditions hereof shall be binding upon either party hereto, unless approved in writing by each such party.

Please indicate your acceptance of the terms of this letter (which terms are intended to be legally binding on the parties hereto as set forth herein) by signing below and returning by fax or PDF an executed copy of this letter to our financial advisers, Moelis & Company, at (212) 880-4260, Attention: Roger Wood, or to roger.wood@moelis.com (returning an executed physical copy to such person by overnight delivery).

THE CITY OF MISSOULA, MONTANA

By: _____

Name: _____

Title: _____

The foregoing letter is agreed to and accepted effective as of October _____, 2013.

MOUNTAIN WATER COMPANY

By: _____

Name: _____

Title: _____

PARK WATER COMPANY

By: _____

Name: _____

Title: _____

WESTERN WATER HOLDINGS, LLC

By: _____

Name: _____

Title: _____

CARLYLE INFRASTRUCTURE PARTNERS WESTERN WATER, L.P.

By: _____

Name: _____

Title: _____

**MOUNTAIN WATER COMPANY
NON-BINDING CONFIDENTIAL TERM SHEET
-- FOR DISCUSSION PURPOSES ONLY --**

This preliminary non-binding term sheet summarizes the principal terms and conditions of the proposed transaction between the City of Missoula, Montana (the "City") and Park Water Company ("Seller") regarding the potential acquisition by the City of Seller's wholly-owned subsidiary, Mountain Water Company (the "Company"). This term sheet is not exhaustive and is intended to facilitate negotiation of the proposed transaction between the City and Seller, does not set forth binding obligations of the parties or create or imply any legal rights or obligations between the parties or with respect to any other person. This term sheet does not address all of the material terms of the proposed transaction, which will only be addressed after all due diligence has been completed and definitive agreements have been executed and delivered by the parties. The proposed transaction is conditioned upon the negotiation and execution of a mutually agreeable definitive acquisition agreement (the "Definitive Agreement"), the approval of such agreement by the City and Seller, and the satisfaction of all closing conditions contained in the Definitive Agreement. Neither this term sheet nor any action taken in connection with the matters referred to in this term sheet will give rise to any obligation on the part of any party to continue any discussions or negotiations or to pursue or enter into any transaction or relationship of any nature. The existence of this term sheet, its contents and any discussions regarding this potential transaction constitute confidential information covered by the "No-Shop" letter agreement between the City and Seller, to which this term sheet is attached. Terms capitalized, but not defined, in this term sheet shall be given the definitions provided in the letter agreement.

Transaction Structure	The City would acquire from Seller all of the issued and outstanding capital stock of the Company (the "Transaction").
Consideration	At the closing of the Transaction (the "Closing"), the City would acquire all of the issued and outstanding shares, warrants and other equity interests of the Company in exchange for \$65 million cash (the "Initial Purchase Price"), subject to the adjustments described below (the "Purchase Price").
Consideration Adjustments	The Initial Purchase Price shall be (i) decreased by the amount of any debt and unpaid Transaction Expenses (as defined below), and (ii) increased by the amount of cash, in each case, on the Company's balance sheet at Closing. Subject to further diligence, the City will expect a reasonable amount of working capital, including appropriate levels of cash working capital, to be delivered on the balance sheet at Closing. To the extent the Company has a net working capital at Closing (after the payment of Transaction Expenses) that is greater than a mutually agreed-upon net working capital target amount ("NWC Target Amount"), the Purchase Price will be increased by such amount. To the extent that the Company's net working capital amount at Closing (after the payment of Transaction Expenses) is

less than the NWC Target Amount, the Purchase Price will be decreased by such amount. The Company's net working capital shall be defined to mean (A) the Company's consolidated total current assets (excluding cash) as of the Closing (as defined by and determined in accordance with GAAP) less (B) the Company's consolidated total current liabilities as of the Closing (as defined by and determined in accordance with GAAP).

"Transaction Expenses" means all fees and expenses of the Company, its stockholders and its employees incurred in connection with the Transaction and that are paid or payable by the Company (including fees and expenses of investment bankers, attorneys and accountants and any change of control or similar payments to be made to employees). The definitions of Company net working capital and Transaction Expenses remain subject to further due diligence by the City.

Employee Agreements

Prior to executing the Definitive Agreement, the City and Seller will mutually agree upon appropriate roles for management, and the City will provide at-will employment offers. Such employment offers will be effective as of and contingent upon the Closing. Subject to diligence, the City may require certain of the Company's management employees to enter into agreements providing for nonsolicitation of the Company's employees.

Due Diligence

Seller and the Company will facilitate customary due diligence investigations by the City with respect to the Company's assets, liabilities, finances and operations, including providing the City and its representatives with reasonable access to the Company's personnel, vendors and customers. Without limiting the foregoing, the City will engage an engineering firm to advise it on infrastructure conditions, capital requirements and the ability of the City to operate the Company on a stand-alone basis, and Seller will cooperate with the reasonable requests of such engineers for access to the Company's and Seller's property, facilities, records and personnel. Seller and the Company will immediately make available to the City copies of third party due diligence reports relating to Mountain Water prepared for Seller for purposes of the Park Water transaction and any similar reports prepared since the closing of that transaction.

Definitive Agreement

The Definitive Agreement will contain representations, warranties, covenants, conditions to closing, indemnities and other typical terms all based upon, and substantially the same as those set forth in the Agreement and Plan of Merger between Western Water Holdings and Park Water dated December 21, 2010 (the "Prior Agreement"), with such changes as are necessary to reflect the terms set forth in this term sheet and additionally subject to the following:

- (i) Seller and the Seller Affiliates, and not the City, shall be responsible for the directors' and officers' insurance matters, referenced in Section 7.4 of the Prior Agreement;
- (ii) the City's obligation to close shall be subject to obtaining financing, on terms satisfactory to the City, in an amount required to complete the transaction and fund the operations of the Company;
- (iii) the City will not be subject to post-closing covenants regarding employee benefits contained in Section 7.3, and Seller's obligations to close shall not be subject to the employment-related matters referenced in Section 8.2(h), of the Prior Agreement; and
- (iv) deductibles, caps and similar thresholds established under the indemnity provisions shall represent the same percentages of the Initial Purchase Price as the percentages of purchase price represented by such amounts in the Prior Agreement.

The Definitive Agreement will be drafted by the City's counsel.

Affiliate Obligations

Any obligations representing advances or borrowings between the Company and any of the Seller Affiliates shall be satisfied or terminated prior to Closing. Subject to further diligence, the City's current expectation is that the Company and certain Seller Affiliates would enter into a transition services agreement at Closing providing the City with a reasonable time to implement independent administrative functions or to integrate such functions into the City's existing administrative infrastructure. In addition, the Seller Affiliates will enter into agreements providing for nonsolicitation of the Company's employees for a defined period following the Closing.

Fees and Expenses

Each of the City, the Company and Seller will pay all of their own expenses (including legal, accounting, investment banking and financial advisory fees and expenses) incident to this transaction, it being understood that any Company Transaction Expenses shall be deducted in the calculation of the Purchase Price.

Exhibit C

Exhibit C

THE CARLYLE GROUP

1001 Pennsylvania Avenue, NW • Washington, DC 20004-2505
Tel (202) 347-2626 • Fax (202) 347-1818

November 4, 2013

The Honorable John Engen
Mayor, City of Missoula
435 Ryman Street
Missoula, MT 59802

Re: Mountain Water Company

Dear Mayor Engen:

I write with reference to your letter dated October 29, 2013, setting forth the offer by the City of Missoula (the "City") to acquire 100% of the equity of Mountain Water Company (the "Company") for \$65 million (the "Offer").

We appreciate your continued interest in the Company. As owner of the Company, we too are very proud of the Company and its employees, and of the great achievements by our Company in serving the Missoula community. Some of the achievements are listed in my letter to you dated October 9, 2013, which you subsequently acknowledged and agreed with.

You have requested a response to the Offer by November 5, 2013. Whilst we have no current intention to undertake a sale of the Company, I would like to reiterate that we will honor our commitment under the letter agreement, dated September 22, 2011, and will consider the Offer in good faith. To that end, in order to help us adequately analyze the Offer, we respectfully request the following additional information:

1. Proposed purchase price – please describe in greater details how the City arrived at the \$65 million proposed purchase price. In your response, please describe the specific valuation methodology and main assumptions.
2. Financing – has the City set aside funds for the proposed acquisition? How much, if any, of the proposed purchase price would be financed in debt? Has the City secured fully committed/underwritten financing? What are the main financing terms: amount, maturity, interest rate, key covenants, targeted bond ratings (if the proposed acquisition debt is to be rated), market of execution, etc.? Which financial institution has been selected as underwriter or agent bank?
3. CAPEX – the Company currently spends approximately \$4 million per annum in replacing and upgrading its infrastructure assets. Does the City intend to change the CAPEX spending going forward? How does the City plan to fund the ongoing CAPEX?
4. Customer impact – what impact would your proposed acquisition financing have on customer rates? Please describe any potential rate impact that the proposed acquisition would have in each of the subsequent five years. In addition, as customary for public utility financing, rating agency and/or

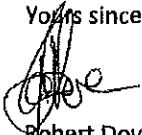
bond investors typically require automatic rate increase in the case of operating shortfall, therefore directly exposing rate payers to operating risk. Please confirm whether your proposed financing would contain such automatic rate increase clause.

5. Employees – our employees are key assets of the Company and they are all long-time Missoula residents. Please describe the City's plan regarding Company staff and management, including their employment, compensation and benefits.

Finally, please note that we cannot provide any confidential information on the Company, Park Water Company, or Carlyle Infrastructure Partners, LP, as we have been advised by counsel that, under Montana law, any information provided to the City is available for public disclosure which makes any attempt at a confidentiality provision uncertain, at best.

We look forward to receiving your written response to the above request for information which would help us conduct good faith consideration of your Offer.

Yours sincerely,



Robert Dove, Managing Director
CARLYLE INFRASTRUCTURE PARTNERS

Exhibit D

Exhibit D



JOHN ENGEN

OFFICE OF THE MAYOR

435 RYMAN MISSOULA, MONTANA 59802-4297

STRICTLY CONFIDENTIAL

November 13, 2013

Robert Dove, Managing Director
Carlyle Infrastructure Partners Western Water, L.P.
1001 Pennsylvania Avenue NW, Suite 220 South
Washington, DC 20004-2505

Dear Robert:

Thank you for your letter of November 4, 2013 in response to our letter of October 29, 2013 which set forth our proposal to acquire 100% of the equity of Mountain Water Company (the "Company") for \$65 million (the "Offer").

We appreciate your confirmation that Carlyle will honor its commitment to consider our Offer in good faith. While we believe that your letter makes numerous requests which are not necessary in order for Carlyle to evaluate our Offer, we are pleased to respond as follows:

1. **Proposed Purchase Price** – We arrived at our proposed purchase price using a number of commonly-used valuation methodologies and based on publicly-available information. These methodologies included a review of comparable recent transactions involving the sale of water companies; a discounted cash flow analysis; and an analysis of publicly-traded water companies. We expect that Carlyle will be thoroughly familiar with each of these methodologies and how they can be applied to an assessment of the value of Mountain Water.

As we pointed out in our October 29th letter, the implied EBITDA multiple of 10x (assuming \$6.5 million of EBITDA for Mountain Water, based on your guidance) compares favorably for Carlyle to recent transactions involving the sale of water companies, including in particular the most recent one which involved the acquisition of Aqua Indiana in July 2013 by the City of Fort Wayne, Indiana for \$67 million at an implied valuation of 7.3x EBITDA. Our Offer also implies a rate base multiple of 1.7x, which compares favorably (for Carlyle) to the 1.2x multiple paid by Liberty Energy Utilities in its purchase of United Water Arkansas in July 2012, the next most recent water company transaction on which information is publicly available. We also note the announcement this week by Avista Corp. that it had agreed to buy Alaska Energy and Resources Co., the parent company of the electric utility serving the City of Juneau, for a price equivalent to 1.5x rate base. And at over 25x net income (after adjusting for interest on the debt allocated by Park Water) the value of our Offer is at a significant premium to publicly-traded water utilities.

By any objective standards we believe that our Offer is unarguably a full and fair one, and it is at a level where Carlyle is clearly obligated to negotiate in good faith. While we understand that a sale of the Company may result in a taxable gain for Carlyle, we note that Carlyle has at least three (3) full tax years following closing of the sale during which it can re-invest the proceeds in a similar business and defer payment of any capital gains. We also note that tax consequences to the owner of an asset would not be considered in any condemnation proceeding.

As part of a good faith negotiation, we will of course review any new information which you bring to our attention which supports a valuation of Mountain Water above \$65 million.

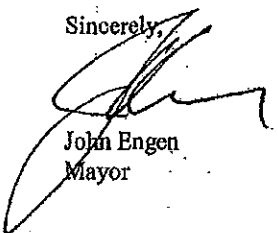
2. Financing – As we also indicated in our October 29th letter, the City is very confident that it will be able to raise the funds necessary to pay for the acquisition. We have already had detailed discussions with our financial advisors and potential underwriters, and since October 29th we have had additional discussions with an investor who has indicated an interest in buying the entirety of the proposed bond offering. We have also had preliminary discussions with credit ratings agencies which confirm our initial expectations that bonds offered to support 100% of the purchase price would likely be rated in the range single A to BBB+. The exact rating would depend on many factors including expected debt service coverage ratios and covenant packages. Maturities would be up to 40 years.
3. CAPEX – For purposes of the analysis underpinning our Offer, we have assumed – consistent with your guidance – that annual capital expenditures remain in line with their current level of approximately \$4 million per year. A thorough assessment of the condition of the Company's system, and corresponding required capital expenditure levels, will represent a key element of the City's due diligence. This would be performed by a recognized national engineering firm. We expect that future capital expenditures will be funded through a combination of existing cash flow and additional debt issuances, as required.
4. Customer Impact – We expect that customer rates will be lower than they would be under continued ownership by Carlyle, assuming the same level of capital investment. The City Council would be responsible for setting rates. Consistent with previous financing transactions for city-owned water utilities, we expect to include a rate covenant which would give investors comfort that rates would be set at a level to ensure sufficient coverage of debt service obligations.
5. Employees – The City agrees that the Company's employees represent key assets of the Company and is fully committed to a smooth transition. The City has not yet been able to review the compensation and benefits currently offered to the Company's employees and therefore cannot provide details of what it would be prepared to offer to individual employees.

6. Confidentiality – While the Company's public filings have provided the City with sufficient information to inform a thoughtful and credible offer, the City will require access to non-public information in order to enter into a binding agreement to acquire the Company. To the extent that Carlyle has relevant information regarding the Company that is not contained in public filings and that has therefore not been adequately reflected in the City's Offer, the City believes it should be in Carlyle's interest to provide such information. We believe that there are procedures for the exchange of such information that should continue to protect its confidentiality, and would be happy to have our legal advisors discuss those procedures with yours.

We hope that this addresses your questions and allows you to respond to the substance of our Offer. If you have any remaining questions, we suggest that you contact Roger Wood of Moelis & Company directly at 212-883-4565.

We would be delighted to meet with you to discuss our Offer in more detail. We believe that moving ahead promptly with a sale of the Company on the basis of our Offer is clearly in the interests of all parties.

Sincerely,



John Engen
Mayor

Exhibit E

Exhibit E

THE CARLYLE GROUP

1001 Pennsylvania Avenue, NW • Washington, DC 20004-2505
Tel (202) 347-2626 • Fax (202) 347-1818

November 26, 2013

The Honorable John Engen
Mayor, City of Missoula
435 Ryman Street
Missoula, MT 59802

Re: Mountain Water Company

Dear Mayor Engen:

I write with reference to your letter dated October 29, 2013 (the "Offer Letter"), setting forth the offer by the City of Missoula (the "City") to acquire 100% of the equity of Mountain Water Company (the "Company" or "Mountain Water") for \$65 million (the "Offer"). This response is based upon and subject to Rule 408, M.R.Evid., and is inadmissible in any proceeding.

I also confirm receipt of your letter dated November 13, 2013 (the "Subsequent Response Letter"), in response to our request for certain additional information regarding the Offer. Regrettably, your response did not address the specific questions that we hoped you would address.

In accordance with the letter agreement dated September 22, 2011, we considered the Offer in good faith. We solicited advice and input from a number of special advisors to supplement our own internal analysis. After careful review and consideration, and based on information received from our advisors as well as our own internal analysis, we concluded that the Offer does not reflect full value of the Company's business and prospects. Therefore, we respectfully decline the Offer.

Specifically, the Offer is inadequate because of low valuation and the lack of evidence that the City can fund the Offer.

Offer price

The Offer price does not reflect the full value of the Company's business and prospects. The City's pessimistic view of the Company's prospects, i.e. "lower expected profitability" as stated in the Offer Letter, is in stark contrast to the reality and the view of the Mountain Water's owner and employees.

We respectfully point out that, of the recent transactions stated in the Subsequent Response Letter, the \$67 million paid by City of Fort Wayne, Indiana does not represent the full value of that transaction which also called for the City of Fort Wayne to become a large sewage customer of Aqua Indiana through a simultaneous 10-year wholesale contract. Also, City of Fort Wayne paid \$67 million to acquire Aqua Indiana's infrastructure serving 12,600 water customer accounts, or \$5,317 per customer account, significantly higher than the \$2,826 per customer account implied in the Offer price.

The Subsequent Response Letter referenced the following valuation methodologies: comparable transactions, discounted cash flow analysis, and publicly traded comparables. We respectfully point out that a common valuation methodology used in public entity's acquisition of private enterprise is based on the methodology of replacement cost less depreciation.

Without prejudice to valuation methodology, we note that other prominent recent transactions in the water sector achieved significantly higher EBITDA multiple. Specifically, the following water utility acquisitions closed within the last three years:

- Corix acquired Utilities Inc. in December 2012 at 13x EBITDA multiple;
- Aqua America acquired Ohio American Water in May 2012 at 14x EBITDA;
- City of Nashua, New Hampshire acquired Pennichuck Corp. in January 2012 at 13.7x EBITDA; and
- Citizens Energy Group acquired Indianapolis Water in August 2011 at 13.1x EBITDA;
- JP Morgan Asset Management acquired Southwest Water Company in September 2010 at 18.5x EBITDA.

We also note that the Offer is identical to the offer submitted by the City through its advisor Moelis in February 2013 which we declined on March 25, 2013 as inadequate. The Company's strong performance since then has reaffirmed our belief that the Offer price significantly undervalues the Company.

Financing

The Offer is not supported by a financing commitment and we derive no comfort that the City would be able to fund the Offer. Currently, Mountain Water has no material direct debt obligation. The City's plan to finance at least 100 percent of the proposed Offer price by issuing debt would burden the Company with significant leverage. Neither the Offer Letter nor the Subsequent Response Letter includes specific financing terms or identity of underwriter, agent bank, or potential investor. There is no evidence that the proposed leverage of at least \$65 million can be supported with the Company's existing operation and rate levels.

Finally, we note that the Subsequent Response Letter stated that the Offer "... is clearly in the interest of all parties." We do not reach the same conclusion.

Mountain Water is currently regulated by the Montana Public Service Commission ("MPSC"), an elected political body with regulatory oversight on investor-owned utilities providing electric, telecom, or water services in the State of Montana. Customer rates are not set by Mountain Water, Park Water Company or Carlyle Infrastructure Partners, L.P. Rates are set by the MPSC, with active participation and input from Montana Consumer Counsel, a division of Montana Legislature whose statutory duties and responsibilities in representing Montana's utility consuming public are provided for under Montana Constitution.

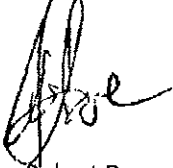
The Honorable John Engen
November 26, 2013
Page 3

Under the current regulatory framework, equity owner and debt investors of an investor-owned utility assume operating risk and losses, if any. A municipally owned utility, particularly one with significant leverage, would be forced to accept automatic rate increase covenant for the benefit of bondholders, a fact that was acknowledged in the Subsequent Response Letter.

The proposed Offer would release the MPSC of any oversight responsibility of Mountain Water and would also discharge the ongoing role of the Montana Consumer Counsel both of which we view as beneficial for the customers of Mountain Water.

Once again, we thank you for your continued interest in the Company. Mountain Water has been a great partner in the Missoula community. We look forward to continuing the tradition of providing excellent water service to the community as a private enterprise.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'RDove', is written over the closing 'Yours sincerely,'.

Robert Dove, Managing Director
CARLYLE INFRASTRUCTURE PARTNERS

Exhibit F

Exhibit F



JOHN ENGEN

OFFICE OF THE MAYOR

435 RYMAN MISSOULA, MONTANA 59802-4297

December 5, 2013

Robert Dove, Managing Director
Carlyle Infrastructure Partners Western Water, L.P.
1001 Pennsylvania Avenue NW, Suite 220 South
Washington, DC 20004-2505

Dear Mr. Dove:

Thank you for your recent correspondence regarding our offer to purchase Mountain Water Company. I'm disappointed in the response, inasmuch as we've been discussing the City of Missoula's purchase of Mountain Water for more than two years and each of our recent exchanges seems to push us farther away from, rather than closer to, a fair transaction. These exchanges are particularly disappointing because we've worked diligently to address impediments raised by you to a negotiated sale, ranging from timing of an offer, to tax implications, to potential make-whole payments to bondholders. In each case, we've done our best to overcome obstacles to a sale that makes sense for Carlyle and Missoula.

I will briefly address the concerns you express in your November 26, 2013, letter.

Price: The City of Missoula stands by its offer, which has nothing to do with pessimism and everything to do with the facts, including the fact that the Montana Public Service Commission recently awarded Mountain Water only a partial rate increase, one that does not reflect the company's stated desires or expectations – and one which has already been challenged by the Montana Consumer Counsel. The “lower expected profitability” of Mountain Water reflects your own guidance to our advisors regarding projected levels of EBITDA for the company – no more, no less.

And while multiples of EBITDA are among the methods we employed in arriving at our offer, we'd be happy to understand what Carlyle believes is a fair price based on the replacement-cost-minus-depreciation model or any other methodology. Today, we only know that in previous conversations, you suggested our offer was a very fair one but for make-whole provisions and tax implications. We'd be interested in knowing what's changed. We would also argue that for every transaction involving a high multiple, we can find more than one involving a low multiple – especially multiples other than EBITDA multiples, though we continue to believe other measures are more relevant when valuing regulated utilities like Mountain Water.

Financing: It is ridiculous to assert that the City of Missoula would begin pursuing the purchase of any asset without being confident in its ability to pay, and we'll be happy to produce evidence of our ability to raise the financing and manage the debt if we ever get to the negotiating table. We're working with eager underwriters today and have had fruitful conversations with rating

agencies, who have considerable faith in the quality of our credit and capacity. To raise this as an objection to our offer, before we have even begun substantive discussions between ourselves, calls into question your assertions that you have considered the offer in good faith.

With regard to the public interest, which is what I assume you cite in the closing paragraphs of your letter, we continue to believe that despite an occasional opinion piece from unsuccessful political candidates or a public service commission member with little experience and understanding of his constituents' interests, public support for this transaction is high in Missoula. All of the candidates who ran for city council and mayor clearly stated their support for municipal ownership of the water utility won their seats by wide margins.

These council members would set the rates for Missoula's water utility. They are all elected and accountable to the people they serve. State law, as a function of the Montana Constitution, provides for municipal ownership and governance of utilities, which is a more common practice in the state than is private ownership. Having Mountain Water's customers vote directly for its board of directors and CEO seems far more beneficial and direct than the structure you cite.

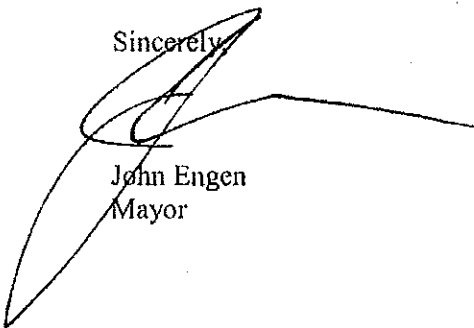
Again, we've worked hard to bring Carlyle to the table, overcome reasonable objections and make a fair offer in good faith, all predicated on a long series of conversations in which you said you'd like to sell me a water company and my efforts to support your purchase of Mountain Water from Sam Wheeler. Fact is, our conversations led me to believe that we'd have a deal done by now, assuming we had all of the necessary approvals.

We're no longer interested in a volley of correspondence that doesn't get us closer to a transaction. At this point, I'd appreciate a clear message from Carlyle that it intends to enter into negotiations to sell Mountain Water to the City of Missoula, that you'll provide a reasonable counter to our offer and that we can move forward on arriving at a price and beginning our diligencce. I believe we both agree that the City of Missoula is a better owner of Mountain Water than Carlyle, and the timing is long overdue for us to be taking concrete steps together to make this happen.

We think it may be constructive to meet in person to set the framework for such a negotiation. We will make our team available on reasonable notice for such a meeting, which we think should take place within the next 3 weeks. I've asked Roger Wood to be in touch with you once you've acknowledged receipt of this letter to discuss next steps.

In lieu of such a clear message, we'll begin pursuing alternatives as authorized by ordinance.

Sincerely,



John Engen
Mayor

Exhibit G

Exhibit G

THE CARLYLE GROUP

1101 Pennsylvania Avenue, NW • Washington, DC 20004-2905
Tel (202) 347-2626 • Fax (202) 347-1818

December 13, 2013

The Honorable John Engen
Mayor, City of Missoula
435 Ryman
Missoula, MT 59802

Re: Mountain Water Company

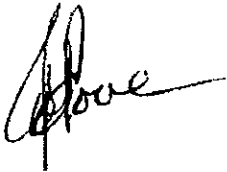
Dear Mayor Engen:

Thank you for your letter of December 5th. We understand your keen desire for the City of Missoula to own Mountain Water Company ("Mountain Water" or the "Company"). With that in mind, and as we pledged to do, we have in good faith carefully considered and evaluated your unsolicited offer to purchase the Company made under a threat of condemnation.

On behalf of Carlyle Infrastructure Partners, I respectfully decline the City's offer. We have only owned the Company for two years, believe the Company has thrived under our ownership, and believe Mountain Water's customers have directly benefitted from our ownership.

To reaffirm, we know this is important to you and have in good faith carefully considered your offer made under a threat of condemnation. However, we must respectfully decline your offer. We have enjoyed getting to know the community and are honored to provide a vital product and service to citizens and businesses. We look forward to continuing to work with your administration and the Missoula community as Mountain Water continues to provide exemplary services to the community.

Yours sincerely,



Robert Dove, Managing Director
CARLYLE INFRASTRUCTURE PARTNERS

Exhibit H

Exhibit H



JOHN ENGEN

OFFICE OF THE MAYOR

435 RYMAN MISSOULA, MONTANA 59802-4297

January 28, 2014

Mountain Water Company
c/o Robert Dove, Managing Director
Carlyle Infrastructure Partners Western Water, L.P.
1001 Pennsylvania Ave. NW, Suite 220 South
Washington, DC 20004-2505

Dear Mr. Dove:

On behalf of the City of Missoula (the "City"), I am pleased to submit this offer to acquire the public water supply, transmission and distribution system and related operating assets described below (collectively, the "System") of Mountain Water Company (the "Company") upon the terms set forth below.

Purchased Assets. The assets purchased will include all real property and improvements owned by the Company, together with all tangible personal property used to support the System and any and all water rights and any other associated rights. The City would assume none of the Company's liabilities.

Purchase Price. The City would purchase the System for a purchase price of \$50 million (the "Purchase Price") on a cash-free, debt-free basis.

Employee Matters. The City and the Company will mutually agree upon appropriate roles for management, and the City will provide at-will employment offers. Such employment offers will be effective as of and contingent upon the closing of the transaction.

Due Diligence. The Company will facilitate customary due diligence investigations by the City with respect to the Company's assets, liabilities, finances and operations, including providing the City and its representatives with reasonable access to the Company's personnel, vendors and customers. Without limiting the foregoing, the City will engage an engineering firm to advise it on infrastructure conditions and capital requirements, and the Company will cooperate with the reasonable requests of such engineers for access to the Company's and its affiliates' property, facilities, records and personnel. The Company will immediately make available to the City copies of third party due diligence reports relating to Mountain Water prepared for purposes of Carlyle's acquisition of Park Water and any similar reports prepared since the closing of that transaction.

Fees and Expenses. Each of the City and the Company will pay all of their own expenses (including legal, accounting, engineering, investment banking and financial advisory fees and expenses) incident to this transaction.

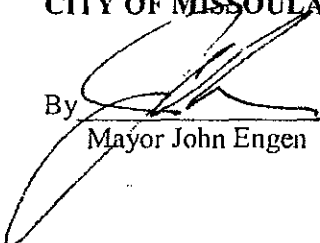
Timing. We would like to move forward quickly. We believe that the due diligence and financing processes can both be completed (in parallel) in less than four months.

Approvals. The Missoula City Council has approved the offer set forth in this letter.

This letter summarizes our present understanding and intent with respect to the proposed transaction. This letter is not intended to, and shall not, create a legally binding agreement or contract in any respect and shall not create any rights, either expressed or implied, in favor of the City, the Company or any other person. Unless and until written, definitive agreements are executed and delivered (and subject to the conditions expressed therein), neither party is under any obligation of any kind whatsoever with respect to our offer or any other matter referred to herein by virtue of this letter or any oral or other written expression with respect to the foregoing. The failure to execute and deliver any definitive agreements with respect to the foregoing shall not impose any liability on any of the parties, their respective subsidiaries or other affiliates or any of their respective representatives.

Please indicate your acceptance of the terms of this letter by signing below and returning by fax or PDF an executed copy of this letter to our financial advisers, Moelis & Company, no later than 5:00 p.m. Eastern time on February 4, 2014 at (212) 880-4260, Attention: Roger Wood, or to roger.wood@moelis.com (returning an executed physical copy to such person by overnight delivery). Your failure to submit an acceptance by that date will constitute a rejection of the City's offer for purposes of Montana law governing condemnation proceedings. Please feel free to contact Roger Wood at (212) 883-4565, or roger.wood@moelis.com, should you have any questions.

CITY OF MISSOULA

By  _____

Mayor John Engen

Accepted and agreed as of the
date first written above:

MOUNTAIN WATER COMPANY

By _____

Name: _____

Date: _____

Exhibit I

Exhibit I

THE CARLYLE GROUP

1001 Pennsylvania Avenue, NW • Washington, DC 20004-2505
Tel (202) 347-2626 • Fax (202) 347-1818

January 31, 2014

The Honorable John Engen
Mayor, City of Missoula
435 Ryman Street
Missoula, MT 59802

Re: Mountain Water Company

Dear Mayor Engen:

We are in receipt of your letter dated January 28, 2014. Thank you for yet another offer by the City of Missoula (the "City") to acquire Mountain Water Company ("Mountain Water" or the "Company"). In light of the discussions regarding this subject matter at the Missoula City Council (the "City Council") public meeting on January 27, 2014, we believe it is important to include the City Council in our response to your latest offer. We hereby copy the City Council on this letter.

First of all, we are surprised that the latest offer of \$50 million for all of Mountain Water's assets (the "Offer"), which the City Council approved at its January 27th public meeting, is significantly below the offer you made previously and which we rejected after careful evaluation and consideration in good faith. We are further surprised to see that the prior offer was characterized as an "informal overture" in your memo to the City Council dated January 27, 2014, as such characterization of the prior offer is in complete contrast to how the prior offer was presented and discussed.

Consistent with our past practice and as we pledged to do, we have in good faith carefully considered and evaluated your latest unsolicited offer, made under a threat of condemnation, to purchase Mountain Water's assets for \$50 million. We respectfully decline your Offer.

You have made it clear that the City will begin condemnation proceedings upon rejection of the Offer. Carlyle Infrastructure Partners, LP ("Carlyle Infrastructure") and Mountain Water will vigorously defend our legal rights. We do not see how condemnation will benefit the ratepayers or the taxpayers of the community, as (a) condemnation is extremely costly, (b) even if the City prevails, the end result is the loss of Mountain Water as one of the County's largest taxpayers. Neither Carlyle Infrastructure nor Mountain Water owns the water. Mountain Water owns the right to use the water, and the necessary and critical infrastructure assets, for the purpose of serving the water users in Missoula. The Company has an exemplary record of serving Missoula under private ownership.

Achievements under Carlyle Infrastructure's ownership

Carlyle Infrastructure acquired Mountain Water as part of its acquisition of Park Water Company in December 2011. Since that time, Carlyle Infrastructure, along with the fine employees of Mountain Water, have more than fulfilled our responsibilities to provide quality water service to this community

and have carried through on our commitments we made at the time of the change in ownership. We are proud of these accomplishments, which you have also acknowledged and applauded on a number of occasions.

Under Carlyle Infrastructure's ownership, Mountain Water has made numerous improvements to its operations and community engagement, building on a fine tradition already in place. Specifically and without limitations:

- We have increased the annual capital investment by more than 40 percent to \$4 million. You may have seen some of the projects being completed, including the Hilltop reservoir (http://www.youtube.com/watch?v=YMNS6bWZZZk&feature=player_embedded), the Madison Street Main Replacement and the Main Street Main Replacement, to name a few. This capital investment helps us improve our quality of service and provide reliability for current and future generations of Missoulians – with a particular focus on reducing leakage throughout the system.
- We have established an Advisory Committee of five well regarded community members with diverse perspectives to provide us input on issues important to this community. We thank these Committee members for the service they are providing to us and the community.
- We have increased our owner-funded charitable contributions to United Way, The Food Bank and other worthy local organizations.
- We continued our support of the University through their Excellence Fund and committed to help with the Montana Groundwater Science Academy.
- We established an open dialogue with the Clark Fork Coalition on issues pertaining to watershed protection as well as funding Kids River Expo and The Hidden Life of Water video.

We believe our relationship with the community is better than ever.

Questions regarding the Offer

Many questions remain unanswered regarding your intention to acquire Mountain Water:

1. Financing and leverage – it is our understanding that you would finance 100 percent of the purchase price with issuance of debt which would heavily burden Mountain Water with increased leverage. Without clear evidence of committed financing, there is no certainty that 100 percent debt financing is achievable or that it would achieve the desired credit rating(s) or cost, particularly when interest rates start to rise in a prolonged condemnation fight. Mountain Water is in great financial shape, which is critical to ensuring service reliability, and it is our intention to keep it that way. Significant increase in leverage could lead to financial distress and service reliability issues.
2. Capital expenditures – an acquisition by the City would result in loss of tax revenue from Mountain Water, which currently is the fifth largest tax payer and contributes \$1.2 million annually towards the County's tax coffers. The Company currently spends approximately \$4 million per year in

replacing and upgrading its infrastructure assets and anticipates a need of at least an equal amount annually going forward. We understand that you intend to borrow additional debt to finance part of the ongoing capital spending, which could potentially put even more financial burden on the Company.

3. Ratepayer impact – we have yet to see any proof that the acquisition of Mountain Water by the City would lead to lower water rates. In addition, as is customary for public utility financing, rating agencies and/or bond investors typically require automatic rate increases in the case of operating shortfalls, therefore directly exposing rate payers to operating risk.

Removal of Montana Public Service Commission ("Montana PSC") Oversight

Mountain Water is currently regulated by the Montana PSC, an elected political body with regulatory oversight on investor-owned utilities providing electric, gas, telecom, or water services in the State of Montana. Customer rates are not set by Mountain Water, Park Water Company or Carlyle Infrastructure. Rates are set by the Montana PSC, with active participation and input from the Montana Consumer Counsel, a division of Montana Legislature whose statutory duties and responsibilities in representing Montana's utility consuming public are provided for under Montana Constitution.

Montana PSC limits the amount of debt that can be incurred to 55 percent of the Company's capital structure. Such protection would go away under the City's ownership. Under the current regulatory framework, equity owners and debt investors of an investor-owned utility assume operating risk and losses, if any. A municipally owned utility, particularly one with significant leverage, could be forced to accept an automatic rate increase covenant for the benefit of bondholders.

An acquisition by the City would release the Montana PSC of any oversight responsibility of Mountain Water and would also discharge the ongoing role of the Montana Consumer Counsel both of which we view as beneficial for the customers of Mountain Water.

I reiterate that Carlyle Infrastructure and Mountain Water will vigorously defend our legal rights in event of condemnation and we urge you and the City Council to carefully consider the points raised in this letter and carefully weigh the cost and benefit of a condemnation. Mountain Water under private ownership has been a great partner in the Missoula community so we believe it is in the best interests of the people of Missoula to keep it that way.

Yours sincerely,



Robert Dove, Managing Director
CARLYLE INFRASTRUCTURE PARTNERS

Cc: Members of Missoula City Council

Exhibit J

Exhibit J

Real Property Listing - Mountain Water Company

Asset Number	Asset Description	Book Value	Job Number	Date Acquired	Acct. Class	Tag Number	Location	Asset Description 2
34473	LAND-INTAKE DAM	118,299.64	3124P001	06/15/1924	100	DAM	5309 RATTLESNAKE DRIVE	44.95 AC
8335	LAND-6TH STREET WELL	6,426.60	31341524	10/28/1935	100	W 01	S 6TH & IVY	10150 SF DRW 020-A
8353	LAND-14TH STREET WELL	2,057.76	31351595	11/24/1935	100	W 02	1900 BLOCK S 14TH W	3250 SF DRW 021-A
8363	LAND-SOUTH AVENUE WELL	2,279.39	31351595	11/24/1935	100	W 03	400 BLOCK SOUTH AVENUE WEST	3600 SF DRW 022-A
8373	LAND-MSLA #1 WELL	2,414.25	31371969	06/30/1937	100	W 04	340 SOMMERS STREET	3813 SF DRW 023-A
7790	LAND-SCHILLING WELL	301.25	315512401	05/16/1955	100	W 08	NE CORNER OF SOUTH & SCHILLING	525 SF DRW 025-A
7829	LAND-DIXON WELL	50.52	315512402	04/24/1957	100	W 09	2333 DIXON AVENUE	310 SF DRW 026-A
7275	LAND-HILDA WELL	1,074.29	315712637	08/23/1957	100	W 10	HILDAN ALLEY BTWN BECKWITH & 333 AGNES AVENUE	208 SF DRW 027-A
7283	LAND-AGNES WELL	119.92	315712638	04/24/1957	100	W 11	333 AGNES AVENUE	400 SF DRW 028-A
6862	LAND-MSLA WELL #12	674.25	316431182	08/08/1964	100	W 12	500 BLOCK JUDI DRIVE	1125 SF DRW 029-A
68670	LAND-E RATTLESNAKE WELL	2	316531218	12/01/1965	100	W 15	4490 RATTLESNAKE DRIVE	3000 SF DRW 032-A
35476	LAND-24TH AVENUE WELL	1,200.84	316631274	08/30/1966	100	W 16	4400 BLOCK 24TH AVENUE	900 SF
30089775	LAND-ENLARGE 24TH ST WELL	1,544.00	317331626	12/01/1973	100	W 16	4400 BLOCK 24TH AVENUE	420 SF
8334	LAND-MOMONT WELL	1.00	316831369	12/16/1968	100	W 17	1/4 MILE W 6400 BUTLER CREEK	5000 SF DRW 210-A
33976	LAND-GHARRETT WELL	1.10	316231147	06/15/1962	100	W 18	2600 BLOCK WILLOWWOOD CT	1100 SF
6822	LAND-N RUSSELL WELL	1,053.56	316931398	11/03/1969	100	W 19	1200 BLOCK N RUSSELL	900 SF DRW 036-A
6123	LAND-CATLIN WELL	1,551.51	316931400	07/21/1969	100	W 20	CATLIN STREET/S 5TH W	5200 SF DRW 037-A
6572	LAND-E CENTRAL WELL	3,522.80	316931401	03/28/1969	100	W 21	336 E CENTRAL AVENUE	900 SF DRW 038-A
6445	LAND-INTERMOUNTAIN WELL	1,312.95	317031453	12/14/1970	100	W 22	WALNUT STREET/W OF MCCORMICK	826 SF DRW 039-A
30098406	LAND-PATTEE CREEK DRIVE WELLS	498.10	317331429	12/01/1973	100	W 23,24	247 PATTEE CREEK DRIVE	12000 SQ FT DRW 040-A
30098407	LAND-STEPHENS AVENUE WELL	629.81	317331429	12/01/1973	100	W 25	3700 BLOCK STEPHENS AVENUE	4900 SF DRW 041-A
32443	LAND-ENLARGE STEPHENS AVE WELL	2,047.81	317031455	12/01/1970	100	W 26	1533 BENTON AVENUE	900 SF DRW 042-A
30093063	LAND-BENTON WELL	1,176.01	317131507	11/30/1972	100	W 27	1333 26TH AVENUE	800 SF DRW 043-A
6149	LAND-26TH AVENUE WELL	231.86	317231555	11/30/1972	100	W 28	7590 INTERSTATE PLACE	2500 SF DRW 044-A
30089829	LAND-ORCHARD AVE WELL	2,231.74	317331585	12/01/1973	100	W 29	4700 BLOCK ORCHARD AVE	2300 SF DRW 045-A
30039559	LAND-ENLARGE ORCHARD WELL SITE	44,305.91	31990060	12/16/1999	100	W 29	4700 BLOCK ORCHARD AVE-SOUTHSI	11587 SQFT
30090179	LAND-BANK ST WELL	1,150.00	317331610	12/01/1973	100	W 30	100 BLOCK KIWANIS STREET	10640 SF DRW 160-B
30086454	LAND-KIWANIS WELL	13,004.68	317631652	12/01/1976	100	W 31	300 BLOCK KIWANIS STREET	1942 SF DRW 047-A
30086475	LAND-ARTHUR WELL	3,527.18	317631653	12/01/1976	100	W 32	600 BLOCK ARTHUR AVENUE	1740 SF DRW 048-A
30086451	LAND-GERALD WELL	4,417.55	317631682	12/01/1976	100	W 33	GERALD AVENUE/S 4TH E	5714 SF DRW 049-A
30086416	LAND-SOUTHGATE MALL WELL	1.00	317831743	10/01/1978	100	W 35	SOUTHGATE MALL	1500 SF DRW 051-A
30084829	LAND-DICKENS WELL	4,203.85	317931763	08/01/1979	100	W 36	800 BLOCK DICKENS AVENUE	1200 SF
30036204	LAND-23RD ST WELLS	13,000.00	3491P007	12/31/1991	100	W 36,39	4400 BLOCK 23RD STREET	5000 SQFT
30089721	LAND-MWV WELL #1	5,096.04	31990084	05/24/2001	100	W 41	3050 PALMER ST	2500 SQFT
30089722	LAND-MWV WELL #2	5,096.04	31990084	05/24/2001	100	W 42	3280 PALMER ST	2500 SQFT
33956	LAND-GHARRETT BOOSTER	131.33	316331155	06/11/1963	200	B 01	4800 BLOCK GHARRETT	437 SF DRW 070-A
33950	LAND-HIGHPARK BOOSTER #4	32.72	316531228	08/10/1965	200	B 04	500 BLOCK HIGHPARK WAY	660 SF DRW 073-A
33960	LAND-WHITAKER BOOSTER	373.57	317331429	12/01/1973	200	B 08	WHITAKER DRIVE/39TH STREET	905 SQ FT DRW 078-A
30035602	LAND-HIGHTON ST BOOSTER	15,191.39	31973922	11/18/1997	200	B 20	HIGHTON STREET-NW OF HIGHWAY 2	.088 ACRE
65667	LAND-BOOSTER #2	5,867.57	3137P001	06/15/1937	401	B 02	4630 DUNCAN DRIVE	.197 ACRES

3

63589 LAND-23RD AVE PRV	4.97	316531213	08/28/1985	401	PRV 01	23RD AVENUE/HILLSIDE	100 SF DRW 072-A
30089778 LAND-RAVENWOOD PRV	2,087.33	317231539	12/01/1972	401	PRV 09	RAVENWOOD/UPPER MILLER CREEK	600 SF DRW 103-A
30089779 LAND-PINEWOOD PRV	2,087.33	317231539	12/01/1972	401	PRV 10	PINEWOOD/MEADOWWOOD LANE	600 SF DRW 102-A
34474 LAND-WATERWORKS HILL	64,412.32	3102P001	08/15/1902	401	R 01	1/4 MILE W OF 900 GREENOUGH DR	19.46 AC
30084405 LAND-3 MG RESERVOIR	87,908.71	31780006	08/01/1979	401	R 03	W OF 500 BLOCK SIMONS DRIVE	4.64 AC
30038455 LAND-MILLER CRK RES 063097	28,000.00	3598P004	08/01/1998	401	R 05	UPPER MILLER CREEK RD/S OF LOR	2.78 ACRE
30080521 LAND-HIGH PARK RESERVOIR	266,836.07	31980081	02/05/1982	401	R 13	1000 BLOCK WHITAKER-LOT SOUTH	69,056 SQFT
33954 LAND-E MSLA TANK #1	250.00	316431182	08/08/1964	401	T 01	END OF JUDI DRIVE	1.73 AC DRW 080-A
33957 LAND-ELK RIDGE	6,275.46	317731730	07/01/1977	401	T 02	5100 BLOCK ELK RIDGE ROAD	15306 SF DRW 091-A
33955 LAND-GHARRETT TANK	1,002.36	316631269	07/14/1966	401	T 04	5400 BLOCK GHARRETT STREET	900 SF DRW 077-A
33952 LAND-ENLARGE GHARRETT TANK	2,811.35	317031395	10/29/1970	401	T 04	5400 BLOCK GHARRETT STREET	6100 SF DRW 077-A
33953 LAND-24TH AVE TANK	12.00	316931300	10/08/1969	401	T 05	5300 BLOCK 24TH AVENUE	1600 SF DRW 092-A
33958 LAND-LINCOLN HILLS	5,435.04	317731730	07/01/1977	401	T 06	2600 BLOCK LINCOLN HILLS DRIVE	12,785 SF
30000936 LAND-ENLARGE LINCOLN HILLS RES	5,721.00	31880011	06/21/1989	401	T 06	LING HLS DR-PARCEL D, TR 1, S 13	14,375 SQFT
33951 LAND-MOMONT TANK	2,025.15	316931374	12/18/1969	401	T 07	1/4 MILE E 6700 BUTLER CRK RD	23 AC
33959 LAND-UPPER ELK RIDGE	621.37	317731730	07/01/1977	401	T 08	5200 BLOCK ELK RIDGE ROAD	1800 SF DRW 093-A
33961 LAND-UPPER FARVIEWS TANK	747.15	317331429	12/01/1973	401	T 10	END OF HIGHLAND PARK DRIVE	1.53 AC DRW 095-A
30089776 LAND-LOWER RAVENWOOD TANK	3,185.16	317231539	12/01/1972	401	T 11	5785 GHARRETT STREET	2500 SF DRW 079-A
30069777 LAND-UPPER RAVENWOOD TANK	3,178.92	317231539	12/01/1972	401	T 12	6710 GHARRETT STREET	2891 SF DRW 080-A
30074254 LAND-CRESTLINE TANKS	21,070.00	31860911	08/01/1986	401	T 13,14	200 BLOCK CRESTLINE DRIVE	21800 SQFT
30082981 LAND-HIGH PARK TANKS	1,483.60	317031228	04/01/1970	401	T 15	1000 BLOCK WHITAKER DR	4000 SF DRW 074-A
31010908 LAND-ENLARGE WHITAKER TANK/BSR	6,088.50	3100A011	03/28/2001	401	T 19	WHITAKER DRIVE/PINTLAR MTN CT	1070 SQFT
30010908 LAND-FELTON LAND PURCHASE	13,959.63	31930921	07/30/1993	401	T 19	WHITAKER DRIVE/PINTLAR MTN CT	.414 ACRE
30043750 LAND-MANSION HEIGHTS TANK	34,121.10	3100A011	03/28/2001	401	T 20	1/2 MILE E OF 1200 WHITAKER	15625 SQFT
A/C # 3100.34010	565,192.19						
30085786 LAND-MAIN OFFICE BUILDING	179,539.00	31790037	10/01/1979	890		1345 W BROADWAY	2.25 AC
8536 LAND-FUEL BASIN	24,051.00	3199P001	12/31/1999	890		1345 W BROADWAY-SERVICE YARD	
A/C # 3100.1160.36900	204,000.00						
30001103 LAND-FUTURE USE-WELLS	11,645.42	31900033	01/15/1991	105	W A	601 E BECKWITH-HAMMOND ADD #3,	4,875 SQFT
A/C # 3100.1701.1	11,645.42						
30001104 LAND-FUTURE USE-WELLS	26,745.43	31900034	01/15/1991	105	W B	701 E BECKWITH-HAMMOND ADD #3,	11,700 SQFT
A/C # 3100.1701.2	26,745.43						
30080522 LAND-FUTURE USE-TANKS	57,148.24	31990080	12/05/1997	105	T B	5200 BLOCK KEIL LOOP	4.5 ACRES
A/C # 3100.1701.4	57,148.24						
Grand Total	1,126,528.34						
** ADD THE FOLLOWING.							
LAND - 314 E. Crestline	\$2,500		09/16/2010			Certificate of Survey No. 1764	6,697 SQFT

EXHIBIT CFC - 031(a)

Water Right	WR Type	Purpose	Diversion ID	Priority Date	Src Name	Means of Diversion	Flow Rate	Volume (Acre-FT/Yr)	COMMENTS
EXISTING WATER RIGHTS									
76H 107536 00	STATEMENT OF CLAIM	MUNICIPAL	Well #39	6/18/1971	GROUNDWATER	WELL	3998.00 GPM	6449.2	
76H 26360 00	STATEMENT OF CLAIM	MUNICIPAL	39th & Russell	6/1/1965	GROUNDWATER	WELL	1000.00 GPM	1613	
76H 35167 00	62-73 GROUND WATER RECORD	MUNICIPAL		8/5/1981	GROUNDWATER	WELL	1200.00 GPM		
76H 40149 00	STATEMENT OF CLAIM	MUNICIPAL	Well #9	5/31/1955	GROUNDWATER	WELL	1000.00 GPM	1613	
76H 40155 00	STATEMENT OF CLAIM	MUNICIPAL	Well #16	6/6/1966	GROUNDWATER	WELL	1000.00 GPM	1613	
76H 40156 00	STATEMENT OF CLAIM	MUNICIPAL	Well #18	8/6/1968	GROUNDWATER	WELL	1000.00 GPM	1613	
76H 40164 00	STATEMENT OF CLAIM	MUNICIPAL	Well #26	9/27/1972	GROUNDWATER	WELL	1000.00 GPM	1613	
76H 40166 00	STATEMENT OF CLAIM	MUNICIPAL	Well #29	6/6/1973	GROUNDWATER	WELL	1000.00 GPM	1613	
76M 108816 00	STATEMENT OF CLAIM	MUNICIPAL	Well #41 & 42	1/16/1963	GROUNDWATER	WELL	2440 GPM	236	
76M 26357 00	STATEMENT OF CLAIM	MUNICIPAL		9/24/1973	GROUNDWATER	WELL	120.00 GPM	194.06	Supply well at Rattlesnake Dam
76M 26358 00	STATEMENT OF CLAIM	MUNICIPAL	Little Lake Dam	8/30/1919	RATTLESNAKE CREEK	DAM	2.50 CFS	300	upper Rattlesnake Storage Reservoir (Little Lake)
76M 26359 00	STATEMENT OF CLAIM	MUNICIPAL	Well #28	12/28/1972	GROUNDWATER	WELL	33.00 GPM	53.37	
76M 26361 00	STATEMENT OF CLAIM	MUNICIPAL	Sanders Lake Dam	8/30/1919	RATTLESNAKE CREEK	DAM	7.54 CFS	905	upper Rattlesnake Storage Reservoir (Sanders Lake)
76M 26362 00	STATEMENT OF CLAIM	MUNICIPAL	Glacier Lake Dam	8/30/1919	RATTLESNAKE CREEK	DAM	1.76 CFS	212	upper Rattlesnake Storage Reservoir (Glacier Lake)
76M 26363 00	STATEMENT OF CLAIM	MUNICIPAL	Sheridan Lake Dam	8/30/1919	RATTLESNAKE CREEK	DAM	431.00 GPM	115	upper Rattlesnake Storage Reservoir (Sheridan Lake)
76M 26364 00	STATEMENT OF CLAIM	MUNICIPAL	Big Lake Dam	8/30/1919	RATTLESNAKE CREEK	DAM	5.22 CFS	623	upper Rattlesnake Storage Reservoir (Big Lake)
76M 26365 00	STATEMENT OF CLAIM	MUNICIPAL	Carter Lake Dam	11/6/1923	RATTLESNAKE CREEK	DAM	1.43 CFS	170	upper Rattlesnake Storage Reservoir (Carter Lake)
76M 26366 00	STATEMENT OF CLAIM	MUNICIPAL	Worden Lake Dam	9/8/1923	RATTLESNAKE CREEK	DAM	398.00 GPM	104	upper Rattlesnake Storage Reservoir (Worden Lake)
76M 26367 00	STATEMENT OF CLAIM	MUNICIPAL	McKinley Lake Dam	8/13/1923	RATTLESNAKE CREEK	DAM	1.64 CFS	195	upper Rattlesnake Storage Reservoir (McKinley Lake)
76M 26368 00	STATEMENT OF CLAIM	MUNICIPAL	Well #17	11/21/1968	GROUNDWATER	WELL	1000.00 GPM	1617.15	
76M 35166 00	62-73 GROUND WATER RECORD	MUNICIPAL	Well #27	8/5/1981	GROUNDWATER	WELL	1467.58 GPM		
76M 40143 00	STATEMENT OF CLAIM	MUNICIPAL	Well #1	5/31/1935	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40144 00	STATEMENT OF CLAIM	MUNICIPAL	Well #2	5/31/1935	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40145 00	STATEMENT OF CLAIM	MUNICIPAL	Well #3A	5/31/1935	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40146 00	STATEMENT OF CLAIM	MUNICIPAL	Well #4	12/31/1937	GROUNDWATER	WELL	1.78 CFS	1291.88	
76M 40147 00	STATEMENT OF CLAIM	MUNICIPAL	Well #7	5/31/1958	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40148 00	STATEMENT OF CLAIM	MUNICIPAL	Well #8	8/31/1954	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40150 00	STATEMENT OF CLAIM	MUNICIPAL	Well #10	6/30/1957	GROUNDWATER	WELL	2.67 CFS	1937.83	

76M 40151 00	STATEMENT OF CLAIM	MUNICIPAL	Well #11	7/31/1957	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40152 00	STATEMENT OF CLAIM	MUNICIPAL	Well #12	9/28/1964	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40153 00	STATEMENT OF CLAIM	MUNICIPAL	Well #13	9/28/1964	GROUNDWATER	WELL	1.78 CFS	1291.88	
76M 40154 00	STATEMENT OF CLAIM	MUNICIPAL	W. Rattlesnake	3/10/1967	GROUNDWATER	WELL	148.00 GPM	239.51	
76M 40157 00	STATEMENT OF CLAIM	MUNICIPAL	Well #19	5/13/1969	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40158 00	STATEMENT OF CLAIM	MUNICIPAL	Well #20	6/21/1969	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40159 00	STATEMENT OF CLAIM	MUNICIPAL	Well #21	7/7/1969	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40160 00	STATEMENT OF CLAIM	MUNICIPAL	Well #22	12/31/1949	GROUNDWATER	WELL	2.67 CFS	1937.83	
76M 40161 00	STATEMENT OF CLAIM	MUNICIPAL	Well #23	7/31/1948	GROUNDWATER	WELL	305.00 GPM	486.67	
76M 40162 00	STATEMENT OF CLAIM	MUNICIPAL	Well #24	3/30/1955	GROUNDWATER	WELL	1.00 CFS	725.78	
76M 40163 00	STATEMENT OF CLAIM	MUNICIPAL	Well #25	11/18/1970	GROUNDWATER	WELL	2.22 CFS	1811.23	
76M 40165 00	STATEMENT OF CLAIM	MUNICIPAL	Well #27	8/5/1981	GROUNDWATER	WELL	3.28 CFS	2380.55	
76M 40169 00	IRRIGATION DISTRICT	MUNICIPAL			RATTLESNAKE CREEK	MULTIPLE			Redundant to Water Rights 76M 40170, 40171, 40171, 40172, 40173, 40174, 40175, 40176
76M 40170 00	STATEMENT OF CLAIM	MUNICIPAL	Rattlesnake Dam, Well #s 3A, 3B, 21, 30, 31, 32, 33, 34	4/1/1866	RATTLESNAKE CREEK	MULTIPLE	23.65 CFS	17164.65	Rattlesnake Direct Flow Rt. also diverted out of Well #s 3A, 3B, 21, 30, 31, 32, 33, 34.
76M 40171 00	STATEMENT OF CLAIM	MUNICIPAL	Rattlesnake Dam, Well #s 3A, 3B, 21, 30, 31, 32, 33, 34	11/16/1868	RATTLESNAKE CREEK	MULTIPLE	4.00 CFS	2903.11	Rattlesnake Direct Flow Rt. also diverted out of Well #s 3A, 3B, 21, 30, 31, 32, 33, 34.
76M 40172 00	STATEMENT OF CLAIM	MUNICIPAL	Rattlesnake Dam, Well #s 3A, 3B, 21, 30, 31, 32, 33, 34	4/1/1871	RATTLESNAKE CREEK	MULTIPLE	152.60 GPM	246.38	Rattlesnake Direct Flow Rt. also diverted out of Well #s 3A, 3B, 21, 30, 31, 32, 33, 34.
76M 40173 00	STATEMENT OF CLAIM	MUNICIPAL	Rattlesnake Dam, Well #s 3A, 3B, 21, 30, 31, 32, 33, 34	5/1/1871	RATTLESNAKE CREEK	MULTIPLE	1.62 CFS	1175.76	Rattlesnake Direct Flow Rt. also diverted out of Well #s 3A, 3B, 21, 30, 31, 32, 33, 34.
76M 40174 00	STATEMENT OF CLAIM	MUNICIPAL	Rattlesnake Dam, Well #s 3A, 3B, 21, 30, 31, 32, 33, 34	4/1/1881	RATTLESNAKE CREEK	MULTIPLE	1.16 CFS	841.9	Rattlesnake Direct Flow Rt. also diverted out of Well #s 3A, 3B, 21, 30, 31, 32, 33, 34.
76M 40175 00	STATEMENT OF CLAIM	MUNICIPAL	Rattlesnake Dam, Well #s 3A, 3B, 21, 30, 31, 32, 33, 34	5/1/1881	RATTLESNAKE CREEK	MULTIPLE	8.70 CFS	6314.27	Rattlesnake Direct Flow Rt. also diverted out of Well #s 3A, 3B, 21, 30, 31, 32, 33, 34.

76M 40176 00	STATEMENT OF CLAIM		Rattlesnake Dam, Well #s 3A, 3B, 21, 30, 31, 32, 33, 34	6/1/1877	RATTLESNAKE CREEK	MULTIPLE	16.13 CFS	11706.8	Rattlesnake Direct Flow Rt, also diverted out of Well #s 3A, 3B, 21, 30, 31, 32, 33, 34.
76H 10179 00	STATEMENT OF CLAIM	MUNICIPAL IRRIGATION		6/1/1877	MILLER CREEK	HEADGATE	364.65 GPM		
76H 10180 00	STATEMENT OF CLAIM	IRRIGATION		9/1/1878	MILLER CREEK	HEADGATE	1.25 CFS		
76H 10181 00	STATEMENT OF CLAIM	IRRIGATION		10/20/1883	MILLER CREEK	HEADGATE	1.23 CFS		
76H 10182 00	STATEMENT OF CLAIM	IRRIGATION		6/7/1878	MILLER CREEK	HEADGATE	1.06 CFS		
76H 105162 00	STATEMENT OF CLAIM	IRRIGATION		6/1/1877	MILLER CREEK	HEADGATE	4.19 CFS		Co-owned with Maloney Ranch Co. and Roy Prock
76H 105163 00	STATEMENT OF CLAIM	IRRIGATION		6/7/1878	MILLER CREEK	HEADGATE	5.19 CFS		Co-owned with Maloney Ranch Co. and Roy Prock
76H 105164 00	STATEMENT OF CLAIM	IRRIGATION		9/1/1878	MILLER CREEK	HEADGATE	6.25 CFS		Co-owned with Maloney Ranch Co. and Roy Prock
76H 105165 00	STATEMENT OF CLAIM	IRRIGATION		5/1/1889	MILLER CREEK	HEADGATE	1.25 CFS		Co-owned with Maloney Ranch Co. and Roy Prock
76H 214431 00	STATEMENT OF CLAIM	IRRIGATION		4/15/1933	MILLER CREEK	HEADGATE	13.2 CFS		Co-owned with Maloney Ranch Co. and Roy Prock
							(Note 1)	(Note 2)	

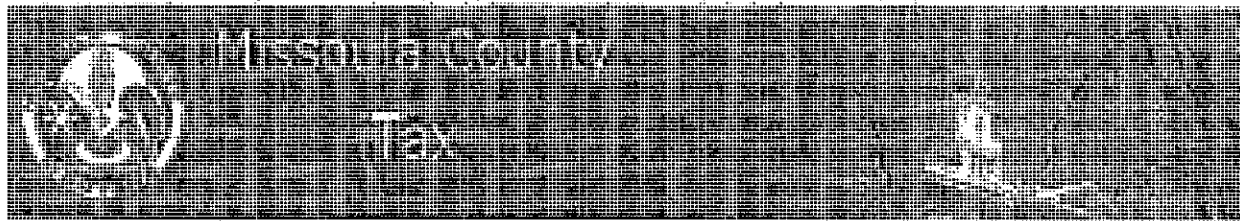
(Note 1):	Flow Rates cannot be totaled as a "TOTAL" Flow Rate because of factors such as redundant Flow Rates, Flow Rates for different purposes, Supplemental Flow Rates, and other factors.
(Note 2):	Volumes cannot be totaled as a "TOTAL" Volume because of factors such as redundant Volumes, Volumes for different purposes, Supplemental Volumes, and other factors.

RE: 2012 Taxes
Witness: John A. Kappes

Below is the revised adjustment for property tax expense based on the actual bills for 2012 along with a detail of the billed amounts. Also attached are copies of each bill.

[illegible]

PROPERTY TAXES		TAXID/ ASSESS CODE	TAXABLE VALUE	MILL. LEVY	SD's, rounding	2012 TAX AMOUNT		
MISSOULA COUNTY								
	McCormick 2, W1-8, etc & Pe	2313002	157,202.00	765.420	1,433.48	121,759.02	61,237.02	60,522.00
	McCormick 2, Lots 25-48	2313108	26,586.00	765.420	1,077.85	23,758.14	11,079.08	11,079.06
	All MWC in SD 1-3	3103403	66,993.00	641.720	345.55	43,336.30	21,668.16	21,668.14
	WATER SYSTEM TANK 9801708	3206506	0.00	-	-	-	0.00	0.00
	All MWC in SD 20-3A	3387703	55,519.00	627.730	263.16	35,114.10	17,557.05	17,557.05
	MWW reservoir site	3415303	9,935.00	740.890	128.09	7,566.31	3,783.16	3,783.15
	All MWC in SD #4-1	3490009	126,102.00	768.400	1,739.59	98,636.37	49,375.67	49,260.70
	All MWC in SD 1-1d	3616604	37,873.00	765.420	2,236.93	31,227.66	15,613.85	15,613.83
	COS 4197 IN WS SWR SWR PL	5813330	37,518.00	745.910	860.780	28,045.83	14,422.93	14,422.90
	All MWC in SD 1-1	5830541	767,985.00	765.420	8,833.55	596,664.62	298,369.74	298,304.88
	All MWC in SD 1-2	5830544	16,662.00	547.210	184.97	-	combined with above	-
	All MWC in SD 1-5	5830547	53,973.00	661.230	256.84	35,945.41	17,972.72	17,972.69
	All MWC in SD 1-7	5830580	21,140.00	596.120	101.22	12,703.20	6,351.61	6,351.59
	All MWC in SD 1-1b, tax incr	5830639	54,015.00	765.420	3,183.99	44,528.15	22,264.09	22,264.06
	All MWC in SD 1-6	5830612	0.00	-	-	-	0.00	0.00
	All MWC in SD 20-3	5830826	18,216.00	627.730	86.34	11,521.07	5,760.54	5,760.53
	Well site 1 & 2	5832049	0.00	-	-	-	0.00	0.00
	Hammond #3-Lots 1 to 3 Blk 46	5907359	0.00	-	-	-	0.00	0.00
					Total:	1,091,606.20		



Shopping Cart: 0 Items [\$0.00]

New Search

Displaying records 1 to 13 of 13
 Search Criteria [Owner: Mountain Water]

TaxID	Status	Type	Owner	Mailing Address	Levy District
2313002	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	CITY, TRANSPORTATION, URB
2313108	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	CITY, TRANSPORTATION, URB
3103403	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	COUNTY, MSLA, RURAL FIRE
3387701	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	DESMET, MSLA RURAL FIRE-A
3415309	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	CITY, HELLGATE
3430809	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	CITY, HELLGATE, TRANSPORT
3616601	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	CITY, TRANS, URBAN RENEWA
5813396	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	CITY
5830561	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	DISTRICT 1.1
5830587	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	MSLA, RURAL FIRE, TRANSP
5830590	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	EAST MISSOULA, RURAL FIRE,
5830609	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	CITY, TRANS, FRONT STREET
5830625	Current	RE	MOUNTAIN WATER CO	PO BOX 4826 MISSOULA, MT 598064826	DESMET, MSLA RURAL FIRE-A

Note: The accuracy of this data is not guaranteed. Property Tax data was last updated 11/12/2012.

If you are sending your payments in by mail, address them to:

Missoula County
 200 W Broadway
 Missoula, MT 59802

Include Taxpayer ID with payments.

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**2012 Real Estate Tax Bill**

Missoula County Treasurer
200 W. Broadway Street
Missoula, MT 59802
www.co.missoula.mt.us/treasurer

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (406)329-1400 for more information.



MOUNTAIN WATER CO
H.H. Wheeler III
PO Box 4826
Missoula, MT 59806-4826

37
1
18128

TAX BILLING DATE: 10/18/12

Tax Payer ID# 2313002

CITY, TRANSPORTATION, 1.1C
Levy District
Mill Levy: 765.420
Taxable Market Value: \$5,980,599
Taxable Value: \$157,202

TOTAL DELINQUENT TAXES DUE**\$0.00****LEGAL DESCRIPTION (MAY BE PARTIAL DESCRIPTION)**

LEGAL ADDRESS GEO CODE
1345 W BROADWAY 04220021220070000
W 1.0' OF LOT 12, ALL OF 13 THRU 20, E 15' OF 21

SUMMARY OF TAXES, LEVIES AND FEES**GENERAL TAXES**

City 19453.08
Citywide School 3526.58
County 11712.68
Dist School 17265.43

Other 1575.53
State School 8277.39

TOTAL GENERAL TAXES: \$61811.49**OTHER TAXES & SPECIAL ASSESSMENTS**

	1ST HALF	2ND HALF	TOTAL
CITY PARK DISTRICT	57.50	57.50	115.00
CITY ROAD DISTRICT	40.00	40.00	80.00
URBAN RENEWAL DIST 2-1-1C	29027.69	29027.69	58055.38
COUNTY OPEN SPACE	261.74	261.74	523.48
UNIVERSITY MILLS (TID)	229.34	229.34	458.67
WATER QUALITY DISTRICT	715.00	0.00	715.00

TOTAL OTHER TAXES & SPECIAL ASSESSMENTS: \$59947.53

This property has the following exempt values:

TOTAL TAXES: \$121759.02

For more detailed information or to pay your bill online,
please go to: <https://csa.co.missoula.mt.us/ltax/>

Please review the back of the tax bill

First Installment Due:
Second Installment Due:

11/30/2012 \$61237.02
05/31/2013 \$60522.00
Cut Here

2012 2ND HALF PAYMENT STUB

Payment Due: 05/31/2013



2313002
MOUNTAIN WATER CO
H.H. WHEELER III
PO BOX 4826
MISSOULA MT 59806-4826

Second Half Amount Due: \$60522.00

- ☐ Check this box if change of address. Indicate change on back of form.
☐ Check this box if paying by credit card. Complete credit card information on back of form.

RETURN THIS STUB WITH YOUR SECOND HALF PAYMENT TO:

MISSOULA COUNTY TREASURER
200 W. BROADWAY STREET
MISSOULA, MT 59802

2012 0002313002 00021695 0006052200 0000000000 3

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (406)328-1400 for more information.

37
1
1.8129

CITY, TRANSPORTATION, USE	1.1C
Mill Levy:	765.420
Taxable Market Value:	\$1,086,913
Taxable Value:	\$28,586

LEGAL ADDRESS	LEGAL DESCRIPTION (MAY BE PARTIAL DESCRIPTION)	GEO CODE
1345 W BROADWAY AND ALL WATER SYSTEM IMPROVEMENTS		04220021220010000
	IN TAX DISTRICT 1-1C	

[illegible]

Get Here

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (406)329-1400 for more information.

37
1
18130

COUNTY, MSLS, RURAL, ETRE	
Levy District:	1.3
Mill Levy:	641.720
Taxable Market Value:	\$2,547,269
Taxable Value:	\$66,993

TOTAL DELINQUENT TAXES DUE
\$0.00

State School 685670

1ST HALF	2ND HALF	TOTAL
14.00	14.00	28.00
111.55	111.54	223.09
47.23	47.23	94.46

Cut Here

1. The first step is to identify the problem. In this case, the problem is that the company is not meeting its sales targets.

MISSOULA COUNTY TREASURER
200 W. BROADWAY STREET
MISSOULA, MT 59802

2012 0003103403 00025249 0002166614 0000000000 6

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (406)328-1400 for more information.

MOUNTAIN WATER CO
PO Box 4826
Missoula, MT 59806-4826

37
J
18131

Tax Payer ID# (3387701

DESMET, HSLA	RURAL FIRE DISTRICT	203A
Mill Levy:		627.730
Taxable Market Value:		\$2,110,977
Taxable Value:		\$55,519

TOTAL DELINQUENT TAXES DUE
\$0.00

LEGAL ADDRESS	LEGAL DESCRIPTION (MAY BE PARTIAL DESCRIPTION)	GEO CODE
IN SW4 NR4 NW4 B ALL MOUNTAIN WATER		04232535402110000

GENERAL TAXES

CntyWide School	181.36
County	753.44
Dist. School	829.78
Other	416.60

State School	425.70
--------------	--------

TOTAL GENERAL TAXES: \$2606.96

AIRPORT INCREMNT DST 203A
COUNTY OPEN SPACE
SOIL CONSERVATION DISTRICT
UNIVERSITY MILLS (TID)

1ST HALF	2ND HALF	TOTAL
5967.89	15967.89	31935.78
92.44	92.44	184.88
39.14	39.14	78.28
154.10	154.10	308.20

TOTAL OTHER TAXES & SPECIAL ASSESSMENTS: \$32507.14

This property has the following exempt values:

TOTAL TAXES:..... \$35114.10

For more detailed information or to pay your bill online,
please go to: <https://csa.co.missoula.mt.us/ltax/>

First Installment Due:	11/30/2012	\$17557.05
Second Installment Due:	05/31/2013	\$17557.05

Please review the back of the tax bill

Payment Due: 05/31/2013



3387701
MOUNTAIN WATER CO
PO BOX 4826
MISSOULA MT 59806-4826

Second Half Amount Due: **\$17557.05**

- ☐ Check this box if change of address. Indicate change on back of form.
- ☐ Check this box if paying by credit card. Complete credit card information on back of form.

RETURN THIS STUB WITH YOUR SECOND HALF PAYMENT TO:

MISSOULA COUNTY TREASURER
200 W. BROADWAY STREET
MISSOULA, MT 59802

2012 0003387701 00028051 0001755705 0000000000 8

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (408)329-1400 for more information.

MOUNTAIN WATER CO
PO Box 4826
Missoula, MT 59806-4826

37
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L8132

Tax Payer ID# 3415309

CITY, HELLGATE	Levy District:	4.6
	Mill Levy:	748.890
	Taxable Market Value:	\$377,756
	Taxable Value:	\$9,935

TOTAL DELINQUENT TAXES DUE
\$0.00

LEGAL ADDRESS	LEGAL DESCRIPTION (MAY BE PARTIAL DESCRIPTION)	GEO CODE
ALL OF MOUNTAIN WATER CO SYSTEM LOCATED IN SD 4-6		04232632303150099

GENERAL TAXES

City	2393.34
CntyWide School	433.86
County	1440.96
Dist. School	2153.70

State School 10118-36

TOTAL GENERAL TAXES: \$7440.22

OTHER TAXES & SPECIAL ASSESSMENTS

CITY PARK DISTRICT
CITY ROAD DISTRICT
COUNTY OPEN SPACE
SOIL CONSERVATION DISTRICT

1ST HALF	2ND HALF	TOTAL
23.50	23.50	47.00
16.00	16.00	32.00
16.54	16.54	33.08
7.01	7.00	14.01

TOTAL OTHER TAXES & SPECIAL ASSESSMENTS:	\$126.09
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This property has the following exempt values:

TOTAL TAXES: \$7566.31

For more detailed information or to pay your bill online,
please go to: <https://csa.co.missoula.mt.us/itax/>

First Installment Due:

11/30/2012	\$3783.16
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Second Installment Due:

05/31/2013	\$3783.15
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Cut Here

2012 2ND HALF PAYMENT STUB

Payment Due: 05/31/2013



3415309
MOUNTAIN WATER CO
PO BOX 4826
MISSOULA MT 59806-4826

Second Half Amount Due:	\$3783.15
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- ☐ Check this box if change of address. Indicate change on back of form.
- ☐ Check this box if paying by credit card. Complete credit card information on back of form.

RETURN THIS STUB WITH YOUR SECOND HALF PAYMENT TO:

MISSOULA COUNTY TREASURER
200 W. BROADWAY STREET
MISSOULA, MT 59802

2012 0003415309 00028325 000037831,5 00000000000 0

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (405)329-1400 for more information.

37
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18133

CITY, HELLEGAARD TRACT	4.1
Mill Levy:	768.400
Taxable Market Value:	\$4,794,746
Taxable Value:	\$126,102

\$0.00

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The seal of Mesquite County, Montana, is a circular emblem. It features a central figure of a Native American man in traditional dress, holding a bow and arrow. The words "MESQUITE COUNTY" are inscribed along the top arc, and "MONTANA" is inscribed along the bottom arc.

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (406)329-1400 for more information.

MOUNTAIN WATER CO
PO Box 4826
Missoula, MT 59806-4826

37
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18134

Tax Payer ID# (3616601

CITY, TRANS. & URBAN REVENUE	1.1D
Mill Levy:	765.420
Taxable Market Value:	\$1,440,038
Taxable Value:	\$37,873

LEGAL ADDRESS	LEGAL DESCRIPTION (MAY BE PARTIAL DESCRIPTION)	GEO CODE
ALL MOUNTAIN WATER IN SD 1-1D		04220029304010000

TOTAL DELINQUENT TAXES DUE
\$0.00

GENERAL TAXES

City	6962.26
CntyWlde School	1262.12
County	4191.80
Diat School	6179.00

Other	563.86
State School	2962.36

TOTAL GENERAL TAXES: \$22121.40

OTHER TAXES & SPECIAL ASSESSMENTS

3 1-10 DISTRICT (ID)

1ST HALF	2ND HALF	TOTAL
879.21	879.20	1758.41
63.00	63.00	126.00
61.50	61.50	123.00
406.76	340.66	6813.52
63.06	63.06	126.12
26.70	26.70	53.40
26.92	26.91	53.83

TOTAL OTHER TAXES & SPECIAL ASSESSMENTS: \$9106.28

This property has the following exempt values:

TOTAL TAXES: \$31227.68

For more detailed information or to pay your bill online,
please go to: <https://csa.co.missoula.mt.us/itax/>

First Installment Due:

11/30/2012 \$15613.85

Second Installment Due:

05/31/2013 \$15613.83

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2012: 2ND HALF PAYMENT STUB

Payment Due: 05/31/2013



3616601
MOUNTAIN WATER CO
PO BOX 4826
MISSOULA MT 59806-4826

Second Half Amount Due: **\$15613.83**

- ☐ Check this box if change of address. Indicate change on back of form.
- ☐ Check this box if paying by credit card. Complete credit card information on back of form.

RETURN THIS STUB WITH YOUR SECOND HALF PAYMENT TO:

MISSOULA COUNTY TREASURER
200 W. BROADWAY STREET
MISSOULA, MT 59802

2012 0003616601 00030367 0001561383 0000000000 7

Cut Here

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (408)328-1400 for more information.

MOUNTAIN WATER CO
PO Box 4826
Missoula, MT 59806-4826

37
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18135

CITY	Levy District:	1.6
	Mill Levy:	745.910
	Taxable Market Value:	\$1,426,521
	Taxable Value:	\$37,518

LEGAL ADDRESS	LEGAL DESCRIPTION (MAY BE PARTIAL DESCRIPTION)	GEO CODE
IN 42 SW4 SW4		04209304303040000

TOTAL DELINQUENT TAXES DUE
\$0.00

City	9030.00
Cntywide School	1630.42
County	5441.62
Dist School	8021.33

State School	3845.60
--------------	---------

TOTAL GENERAL TAXES: \$27985.05

SIDEWALK & CURB 8 YR
CITY PARK DISTRICT
CITY ROAD DISTRICT
FOREST-FIRE PROTECTION
COUNTY OPEN SPACE
SOIL CONSERVATION DISTRICT

1ST HALF	2ND HALF	TOTAL
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191.97	191.97	383.94
88.00	88.00	176.00
61.00	61.00	122.00
0.51	0.50	1.01
62.47	62.46	124.93
26.45	26.45	52.90

TOTAL OTHER TAXES & SPECIAL ASSESSMENTS: \$860.78.

This property has the following exempt values:

TOTAL TAXES: \$28845.83

For more detailed information or to pay your bill online,
please go to: <https://csa.co.missoula.mt.us/itax/>

First Installment Due:	11/30/2012	\$14422.93
Second Installment Due:	05/31/2013	\$14422.90

Please review the back of the tax bill

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Payment Due: 05/31/2013



5813398
MOUNTAIN WATER CO
PO BOX 4826
MISSOULA MT 59806-4826

Second Half Amount Due: \$14422.90

- ☐ Check this box if change of address. Indicate change on back of form.
- ☐ Check this box if paying by credit card. Complete credit card information on back of form.

RETURN THIS STUB WITH YOUR SECOND HALF PAYMENT TO:

MISSOULA COUNTY TREASURER
200 W. BROADWAY STREET
MISSOULA, MT 59802

2012 0005813398 00041768 0001442290 0000000000 5

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (406)328-1400 for more information.

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18136

DISTRICT 1.1 Levy District:	1.1
Mill Levy:	765.420
Taxable Market Value:	29,200,973
Taxable Value:	\$767,985

\$0.00

2012 0005830561 00043290 0029830488 0000000000 1

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (408)328-1400 for more information.

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18137

MSLA, RURAL FIRE, FRANKED	
Levy District:	1.5
Mill Levy:	661.230
Taxable Market Value:	\$2,052,210
Taxable Value:	\$53,973

2012 0005830587 00043291 0001797269 0000000000 9

2012 Real Estate Tax Bill



Missoula County Treasurer
200 W. Broadway Street
Missoula, MT 59802
www.co.missoula.mt.us/treasurer

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (406)329-1400 for more information.



MOUNTAIN WATER CO
PO Box 4826
Missoula, MT 59806-4826

37
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18138

TAX BILLING DATE: 10/18/12

Tax Payer ID# 5830590

EAST MISSOULA RURAL FIRE
Levy District: 1.9
Mill Levy: 596.120
Taxable Market Value: \$803,788
Taxable Value: \$21,140

TOTAL DELINQUENT TAXES DUE
\$0.00

LEGAL ADDRESS LEGAL DESCRIPTION (MAY BE PARTIAL DESCRIPTION)
GEO CODE
ALL OF MOUNTAIN WATER SYSTEM IN SD 1-9 04220024205010000

SUMMARY OF TAXES, LEVIES AND FEES

GENERAL TAXES

CityWide School 923.18
County 3835.20
Dist School 4519.76
Other 1157.00

State School 2166.84

TOTAL GENERAL TAXES: \$12601.98

OTHER TAXES & SPECIAL ASSESSMENTS

FOREST FIRE PROTECTION
COUNTY OPEN SPACE
SOIL CONSERVATION DISTRICT

	1ST HALF	2ND HALF	TOTAL
FOREST FIRE PROTECTION	0.51	0.50	1.01
COUNTY OPEN SPACE	35.20	35.20	70.40
SOIL CONSERVATION DISTRICT	14.91	14.90	29.81

TOTAL OTHER TAXES & SPECIAL ASSESSMENTS: \$101.22

This property has the following exempt values:

TOTAL TAXES: \$12703.20

For more detailed information or to pay your bill online,
please go to: <https://csa.co.missoula.mt.us/itax/>

Please review the back of the tax bill

First Installment Due:
Second Installment Due:

11/30/2012 \$6351.61
05/31/2013 \$6351.59
Cut Here

2012 2ND HALF PAYMENT STUB

Payment Due: 05/31/2013



5830590
MOUNTAIN WATER CO
PO BOX 4826
MISSOULA MT 59806-4826

Second Half Amount Due: \$6351.59

- ☐ Check this box if change of address. Indicate change on back of form.
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RETURN THIS STUB WITH YOUR SECOND HALF PAYMENT TO:

MISSOULA COUNTY TREASURER
200 W. BROADWAY STREET
MISSOULA, MT 59802

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www.co.missoula.mt.us/treasurer

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18139

Tax Payer ID# (5830609

TOTAL DELINQUENT TAXES DUE
\$0.00

GENERAL TAXES

City	9252.96
CntyWide School	1677.38
County	5571.00
Dist School	8212.04

Other	749.38
State School	3937.02

TOTAL GENERAL TAXES: \$29399.78

BUSINESS IMPROVEMENT DIST.
CITY PARK DISTRICT
CITY ROAD DISTRICT
FRONT ST RENEWAL DST 1-1F
COUNTY OPEN SPACE
UNIVERSITY MILLS (TID)

1ST HALF	2ND HALF	TOTAL
1287.06	1287.06	2574.12
127.00	127.00	254.00
88.00	88.00	176.00
5925.38	5925.37	11850.75
89.94	89.93	179.87
46.82	46.81	93.63

TOTAL OTHER TAXES & SPECIAL ASSESSMENTS: \$15128.37

This property has the following exempt values:

TOTAL TAXES: \$44528.15

For more detailed information or to pay your bill online,
please go to: <https://csa.co.missoula.mt.us/itax/>

First Installment Due:

11/30/2012	\$22264.09
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Second Installment Due:

05/31/2013	\$22264.06
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2012.. 2ND HALF PAYMENT STUB

Payment Due: 05/31/2013



5830609
MOUNTAIN WATER CO
PO BOX 4826
MISSOULA MT 59806-4826

Second Half Amount Due: **\$22264.06**

- ☐ Check this box if change of address. Indicate change on back of form.
- ☐ Check this box if paying by credit card. Complete credit card information on back of form.

RETURN THIS STUB WITH YOUR SECOND HALF PAYMENT TO:

MISSOULA COUNTY TREASURER
200 W. BROADWAY STREET
MISSOULA, MT 59802

The seal of Missoula County, Montana, is a circular emblem. It features a central shield with a mountain peak, a river, and a tree. The words "MISSOULA COUNTY" are inscribed along the top arc, and "MONTANA" is inscribed along the bottom arc.

If you are low income, elderly, a veteran or had a large increase in your property taxes due to a re-appraisal, you may qualify for tax assistance. Contact the Department of Revenue at (408)329-1400 for more information.

11/11/1963 (Sun) 11/12/1963 (Mon) 11/13/1963 (Tue) 11/14/1963 (Wed) 11/15/1963 (Thu) 11/16/1963 (Fri) 11/17/1963 (Sat) 11/18/1963 (Sun) 11/19/1963 (Mon) 11/20/1963 (Tue) 11/21/1963 (Wed) 11/22/1963 (Thu) 11/23/1963 (Fri) 11/24/1963 (Sat) 11/25/1963 (Sun) 11/26/1963 (Mon) 11/27/1963 (Tue) 11/28/1963 (Wed) 11/29/1963 (Thu) 11/30/1963 (Fri) 12/1/1963 (Sat) 12/2/1963 (Sun) 12/3/1963 (Mon) 12/4/1963 (Tue) 12/5/1963 (Wed) 12/6/1963 (Thu) 12/7/1963 (Fri) 12/8/1963 (Sat) 12/9/1963 (Sun) 12/10/1963 (Mon) 12/11/1963 (Tue) 12/12/1963 (Wed) 12/13/1963 (Thu) 12/14/1963 (Fri) 12/15/1963 (Sat) 12/16/1963 (Sun) 12/17/1963 (Mon) 12/18/1963 (Tue) 12/19/1963 (Wed) 12/20/1963 (Thu) 12/21/1963 (Fri) 12/22/1963 (Sat) 12/23/1963 (Sun) 12/24/1963 (Mon) 12/25/1963 (Tue) 12/26/1963 (Wed) 12/27/1963 (Thu) 12/28/1963 (Fri) 12/29/1963 (Sat) 12/30/1963 (Sun) 12/31/1963 (Mon)

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18140

Tax Payer ID# (5830625

DESMET, HSLA RURAL STRIP A	
Levy District:	20.3
Mill Levy:	627.730
Taxable Market Value:	\$692,634
Taxable Value:	\$18,216

\$0.00

GENERAL TAXES

SUMMARY OF TAXES, LEVIES AND FEES

Cntywide School	795.50
County	3304.74
Dist School	3639.74
Other	1827.61

State School 1867.14

TOTAL GENERAL TAXES: \$11434.73

OTHER TAXES & SPECIAL ASSESSMENTS

COUNTY OPEN SPACE
SOIL CONSERVATION DISTRICT

1ST HALF	2ND HALF	TOTAL
30.33	30.33	60.66
12.84	12.84	25.68

TOTAL OTHER TAXES & SPECIAL ASSESSMENTS: \$86.34.

This property has the following exempt values:

TOTAL TAXES: \$11521.07

For more detailed information or to pay your bill online,
please go to: <https://csa.co.missoula.mt.us/itax/>

First Installment Due:

11/30/2012	\$5760.54
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Second Installment Due:

05/31/2013	\$5760.53
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2012 2ND HALF PAYMENT STUB

Payment Due: 05/31/2013



5830625
MOUNTAIN WATER CO
PO BOX 4826
MISSOULA MT 59806-4826

Second Half Amount Due: \$5760.53

- ☐ Check this box if change of address. Indicate change on back of form.
- ☐ Check this box if paying by credit card. Complete credit card information on back of form.

RETURN THIS STUB WITH YOUR SECOND HALF PAYMENT TO:

MISSOULA COUNTY TREASURER
200 W. BROADWAY STREET
MISSOULA, MT 59802

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Exhibit K

Exhibit K

Eminent Domain in Montana

Revised by
Sonja Nowakowski 2012

Published by

Legislative Environmental Policy Office
Environmental Quality Council
P.O. Box 201704
Helena, MT 59620-1704
Phone: 406/444-3742, Fax: 406/444-3971
<http://leg.mt.gov/eqc>

ACKNOWLEDGMENTS

In 2001, the *Eminent Domain in Montana* handbook was developed by the legislative Environmental Quality Council (EQC) in an effort to help Montana's citizens better understand our eminent domain laws. The handbook was originally authored by Krista Lee Evans. In 2007 Joe Kolman updated the handbook, and this is the third edition of the publication. The information contained in this handbook is the result of input and review from legislators, industry representatives, and special interest groups. This handbook is not all-inclusive, rather it provides a brief overview of the eminent domain laws in Montana.

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DISCLAIMER

This handbook should not be used as a legal reference. It was developed to serve solely as an educational tool. When in doubt, always refer to the statutes (Title 70, chapter 30, MCA) or case law or seek legal counsel.

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FOREWORD

Eminent domain has been part of the Montana Constitution and statutes since statehood. As Montana moves forward, the concept remains in place. Most land acquisitions and transactions are negotiated agreements and do not go through the formal eminent domain process. Eminent domain can fundamentally impact private property by allowing the State of Montana and its agents to condemn private property for a public use. It is critically important that Montanans understand the eminent domain process so that they can actively participate in that process.

In 1999, the 56th Montana Legislature concluded that because legislators and citizens alike were confused or not fully versed on the statutes relating to eminent domain, a careful and deliberate study was warranted. House Joint Resolution No. 34 (HJR 34) was passed, and the Legislative Council assigned HJR 34 to the Environmental Quality Council (EQC), an interim, bipartisan, 17-member committee that includes both legislators and public members.

HJR 34 stated that the "use of the power of eminent domain is not well-understood". The Subcommittee agreed with this statement and, to resolve the issue, voted to create an easy-to-understand handbook.

Eminent Domain in Montana was developed to describe the eminent domain laws in a format that is user-friendly and that answers the most frequently asked questions.

The Premise of Eminent Domain

By virtue of being a government, the **sovereign** has **inherent powers** that are fundamental to the legitimacy and durability of the government. Eminent domain is an inherent right of statehood, similar to the state's police power and the right of the state to tax. The right of eminent domain was given to the 13 original states, and each state thereafter received this same authority. Laws relating to eminent domain do not authorize its existence, but rather place limits on its use and provide for due process in condemnation procedures. Montana's eminent domain laws are, in

essence, laws that limit the state's exercise of the power of eminent domain. Without the eminent domain laws, there would be no limits on how the state or its agents could use the power of eminent domain.

Eminent domain is essential to the independent existence of the nation and its sovereign states. It is through eminent domain that the state ensures that it can provide for the needs of its citizens for activities such as transportation, economic development, access to markets and services, and many other needs.

EMINENT DOMAIN IN GENERAL

What is eminent domain?

Eminent domain, as defined in Montana statute, is the right of the state to take private property for public use. This right may be exercised in the manner provided in Montana law.

Where are the eminent domain laws found?

United States Constitution →

Eminent domain laws are contained in both the United States Constitution and the Montana Constitution. The U.S. Constitution refers to eminent domain in the 5th and 14th Amendments. These amendments discuss a person's right to just compensation and due process of law when condemnation occurs.

Fifth Amendment

No person shall be held to answer for . . . nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Montana's Constitution and Statutes —————→

Eminent domain is addressed in the Montana Constitution. Article II, section 29, of the Montana Constitution states that:

"Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into the court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails."

Article II, section 17, of the Montana Constitution further states that:

"No person shall be deprived of life, liberty, or property without due process of law."

Laws relating to the use of eminent domain are located throughout the **Montana Code Annotated** (MCA). However, the main body of statutory law regulating the use of eminent domain is Title 70, chapter 30, MCA.

What Does All This Legal Language Really Mean? —————→

A more comprehensive review of the meaning of these laws is provided later in the handbook. Simply put, these laws state that:

1. The state or its designated agents can take private property through condemnation actions.
2. There are limitations, provided in law, on the exercise of the right of eminent domain.
3. The basic limitations are:
 - a. The property taken must be for a public use as determined by the Legislature.
 - b. Just compensation must be made to the property owner.
 - c. The property owner must be provided due process of law in any eminent domain action.

For what purposes can eminent domain be exercised?

Public Uses →

Eminent domain may be exercised only if the purpose for which it is being exercised is a public use. Those public uses are identified and listed in statute by the Legislature. As technology and the types of services available continue to be developed, the Legislature may choose to update or change the public uses that are outlined in the law. The power of delineating or listing the public uses lies wholly with the Legislature.

A public use does not have to be a project that directly benefits the entire public or even the landowner whose property is taken through eminent domain. It may be a project that benefits Montana citizens as a whole through greater economic development or increased access to communications.

Montana's Public Uses in Statute →

Section 70-30-102, MCA, outlines the legislatively listed public uses for which eminent domain may be exercised and enumerates the specific statutory references under which certain uses, such as highways, are exercised.

The right of eminent domain may be exercised for the following uses:

- ⇒ all public uses authorized by the government of the United States;
- ⇒ public buildings and grounds for the use of the state and all other public uses authorized by the Legislature of the state;
- ⇒ public buildings and grounds for the use of any county, city, town, or school district;
- ⇒ canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of inhabitants of any county, city, or town;

- ⇒ projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- ⇒ roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- ⇒ As provided by other sections of law for:
 - water and water supply systems;
 - acquisition of road-building material;
 - stock lakes;
 - parking areas;
 - airport purposes;
 - urban renewal projects, except that private property may be acquired for urban renewal through eminent domain only if the property is determined to be a blighted area and may not be acquired for urban renewal through eminent domain if the purpose of the project is to increase government tax revenue;
 - housing authority purposes;
 - county recreational and cultural purposes;
 - city or town athletic fields and civic stadiums;
 - county cemetery purposes, cemetery association purposes, and state veterans' cemetery purposes;
 - preservation of historical or archaeological sites;
 - public assistance purposes;
 - highway purposes;
 - common carrier pipelines;
 - water supply, water transportation, and water treatment systems;
 - mitigation of the release or threatened release of a hazardous or deleterious substance;
 - the acquisition of nonconforming outdoor advertising;
 - screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills;
 - water conservation and flood control projects;
 - acquisition of natural areas;
 - acquisition of water rights for the natural flow of water;

- property and water rights necessary for waterworks;
 - conservancy district purposes;
- ⇒ wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;
- ⇒ canals, ditches, flumes, aqueducts, and pipes for:
- supplying mines, mills, and smelters for the reduction of ores;
 - supplying farming neighborhoods with water and drainage;
 - reclaiming lands;
 - floating logs and lumber on streams that are not navigable;
- ⇒ sites for reservoirs necessary for collecting and storing water.
However, reservoir sites must possess a public use demonstrable to the District Court as the highest and best use of the land.
- ⇒ roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;
- ⇒ outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;
- ⇒ an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the District Court as the highest and best use of the land.
- ⇒ private roads leading from highways to residences or farms;
- ⇒ telephone or electrical energy lines, except that local government entities, municipal utilities, or competitive electricity suppliers may not use Title 70, chapter 30, MCA, to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public

utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services;

⇒ telegraph lines;

⇒ sewerage of any:

- county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;
- settlement consisting of not less than 10 families; or
- public buildings belonging to the state or to any college or university;

⇒ tramway lines;

⇒ logging railways;

⇒ temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

⇒ underground reservoirs suitable for storage of natural gas. The laws governing the use of eminent domain to acquire underground reservoirs suitable for the storage of natural gas are very specific. Please refer to Title 70, chapter 30, MCA, for additional information with regard to the use of eminent domain to acquire underground gas storage reservoirs.

⇒ projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

⇒ projects to restore and reclaim lands that were strip-mined or underground-mined for coal and not reclaimed in accordance with

state law and to abate or control adverse affects of strip or underground mining on those lands.

Who can exercise the power of eminent domain?

Eminent domain, as outlined in the Montana Code Annotated, grants the State of Montana and its agents the right to condemn private property for a public use.

In 2010 District Judge Laurie McKinnon found that the developer of a proposed merchant transmission line could not invoke any legislative grant of eminent domain authority and did not have the authority to condemn land (*MATL, LLP v. Salois, Cause No. DV-10-66, Dec. 12, 2010*). The District Court held that 70-30-102, MCA, which provides for "public uses," does not, itself, delegate eminent domain authority to a private entity. The Court held that there must be a separate statutory delegation—or that a specific type of corporation, individual, or entity would need a specific grant of power. In late summer 2011, the case was dismissed because the landowner and the developer of the transmission line reached an agreement.

The Montana Legislature, however, had already responded to the 2010 decision by passing and approving House Bill No. 198 (Chapter 321, Laws of 2011). HB 198 sought to clarify that a regulated utility has the power of eminent domain for public uses to provide service to the customers of its regulated service (69-3-113, MCA). It also clarified that people with a Major Facility Siting Act certificate issued by the Department of Environmental Quality have the power of eminent domain for a public use to construct a facility in accordance with that certificate (75-20-113, MCA).

With that interpretation of the law and HB 198, private entities that are explicitly granted the power of eminent domain in Montana include rural electric and telephone cooperatives, common carrier pipelines that accept Public Service Commission authority, private nonprofit water associations, railroad corporations, open-pit mining corporations—excluding coal corporations, cemetery corporations, ferry owners (largely through local governments), natural gas public utilities, public utilities serving customers

of regulated services, and entities with a Major Facility Siting Act certificate.

On May 20, 2011, 11 plaintiffs in Pondera and Teton counties filed a lawsuit in Teton County District Court contending that HB 198 was unconstitutional. Judge William Nels Swandal of the Sixth Judicial District Court was the judge in the HB 198 case (*Maurer Farms, Inc. v. State, Cause No. DV-11-024*) and in a merchant transmission line's countersuit for condemnation of the property of the plaintiffs in the case.

On January 11, 2012, Judge Swandal awarded summary judgment in favor of the owner of the merchant transmission line and concluded that HB 198 did not violate procedural or substantive due process guarantees or the prohibition on special legislation. Judge Swandal stated that the construction of an electric transmission line has long been expressly included in Montana law as an exercise of a legitimate governmental objective. The issues of "public use" and "necessity" would have been considered in the related condemnation proceedings. By May 2012 easement agreements, however, were reached with most landowners, and related eminent domain trials were canceled.

HB 198 was centered around whether public utilities and entities granted Major Facility Siting Act certificates had the right to condemn property for projects. Whether HB 198 is upheld or overturned in the future, it remains unclear whether an entity must expressly be granted the authority to condemn in Montana since that was not the question raised in the HB 198 case. As noted in the "Disclaimer", this handbook is not intended to be used as a legal reference, and at this time the issue of public uses and whether or not an entity must expressly be granted the authority to condemn property in Montana remains murky.

What property may be taken through eminent domain?

The property that may be taken under the eminent domain laws includes:

⇒ **real property** belonging to any person;

- ⇒ land that belongs to this state or to any county, city, or town and that is not appropriated to some public use;
- ⇒ property appropriated to a public use, but the property may not be taken unless for a more necessary public use than that to which it has already been appropriated;
- ⇒ franchises for roads, bridges, and ferries and all other franchises; but the franchises may not be taken unless for free highways, free bridges, railroads, or another more necessary public use;
- ⇒ a **right-of-way** for any public use defined by the Legislature and any structures and improvements on the right-of way. The land held and used in connection with the right-of-way must be subject to being connected with, crossed, or intersected by any other right-of-way improvements or structures on the right-of-way. The improvements or structures must also be subject to a limited use in common with the owner of the improvements or structures when necessary. However, the uses, crossings, intersections, and connections must be made in the manner that is most compatible with the greatest public benefit and least private harm.
- ⇒ all classes of private property not described above, which may be taken for public use when law authorizes the **taking**.

What estates and rights in land may be taken?

Below is a classification of the **estates** and **rights in land** that may be taken for public use. The condemnor must prove to the court that the estate or right in land that is being taken is appropriate. An easement is presumed to be a sufficient interest in property for a project for a public use unless the parties agree that a greater interest should be taken or the condemnor shows by a preponderance of the evidence that a greater interest is necessary. The provision that an easement is the preferred interest does not apply to the Department of Transportation in those instances where the Department is acquiring property for present or future highway uses. It falls within the powers of the court to limit the estate or right in land that

is taken. This section outlines specific uses for which the Legislature has found it necessary to take a specific type of interest.

Estates and Rights That Are Necessary, up to and Including Fee Simple →

Estates and rights that are necessary, up to and including fee simple, can be taken when the taking is for:

- ⇒ public buildings or grounds;
- ⇒ permanent buildings;
- ⇒ an outlet or flow or a place for the deposit of debris or tailings of a mine;
- ⇒ the mining and extracting of ores, metals, or minerals when the ores, metals, or minerals are owned by the condemnor but are located beneath or upon the surface of property where the title to the surface vests in others;
- ⇒ the underground storage of natural gas by a natural gas public utility.

These are uses for which the Legislature has determined that fee simple is usually the appropriate interest. This does not preclude a condemnor from taking fee simple interest for other public uses if the condemnor can prove to the court that fee simple interest is necessary for the project.

Estate or Rights Necessary for a Reservoir or Dam →

When property is taken for a reservoir or dam, the condemnor may take the estate or rights in the surface property that are necessary for a reservoir or dam and for the permanent flooding that results from the reservoir or dam, up to the edge of the maximum pool of the reservoir. This would include fee simple interest if necessary.

The Legislature has recognized that for the purpose of a reservoir or dam, the property taken must include the property that is affected by the dam or reservoir; i.e., property that will be flooded.

Easement, Leasehold, or Other Interest →

An easement, leasehold, or other interest may be taken in property for as long as the interest is necessary for the purpose described in the condemnation complaint.

The Legislature recognizes that in some instances the condemnation is only for a certain period of time. For those public uses that require the use of the property only for a certain amount of time, an easement, leasehold, or other interest may be acquired.

Right of Entry for Purposes of the Project →

The condemnor has the right to enter upon and occupy land and has the right to take from the land any earth, gravel, stones, trees, and timber that may be necessary for some public use. Whether or not the right of reentry is defined in the contract or condemnation order, the condemnor has the right to enter the property to perform maintenance on the installed project.

How is the survey of property to be taken conducted?

In all cases in which land is required for public use, the state or its agents in charge of the public use may survey and locate the land to be used. The location or route of the public use must be chosen in the manner that will be most compatible with the greatest public good and the least private injury.

The location is subject to provisions in law regarding powers of the court. Section 70-30-206(1)(a), MCA states that in a condemnation proceeding the court may regulate and determine the place and manner of: (1) making the connections and crossings and enjoying the common uses outlined in statute and (2) occupying canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States.

Prior to or at the time that the condemnee rejects the final written offer, the condemnee may provide the condemnor with the condemnee's claim of appropriate measures that the condemnee considers necessary to: (1) minimize damages to the property directly affected by the project and (2) minimize damages incurred to the remaining parcel of property.

When is the survey conducted?

The state or its agents in charge of the public use are required to provide written notice to the landowner and persons in possession of the land 30 days prior to entry upon the land. After that 30-day period, the state or its agents in charge of the public use may enter upon the land and make examination, surveys, and maps of the land.

Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of the owner's land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish written notice to the listed persons.

The entry onto the land does not constitute a cause of action in favor of the owners of the land except for injuries resulting from negligence or intentional acts.

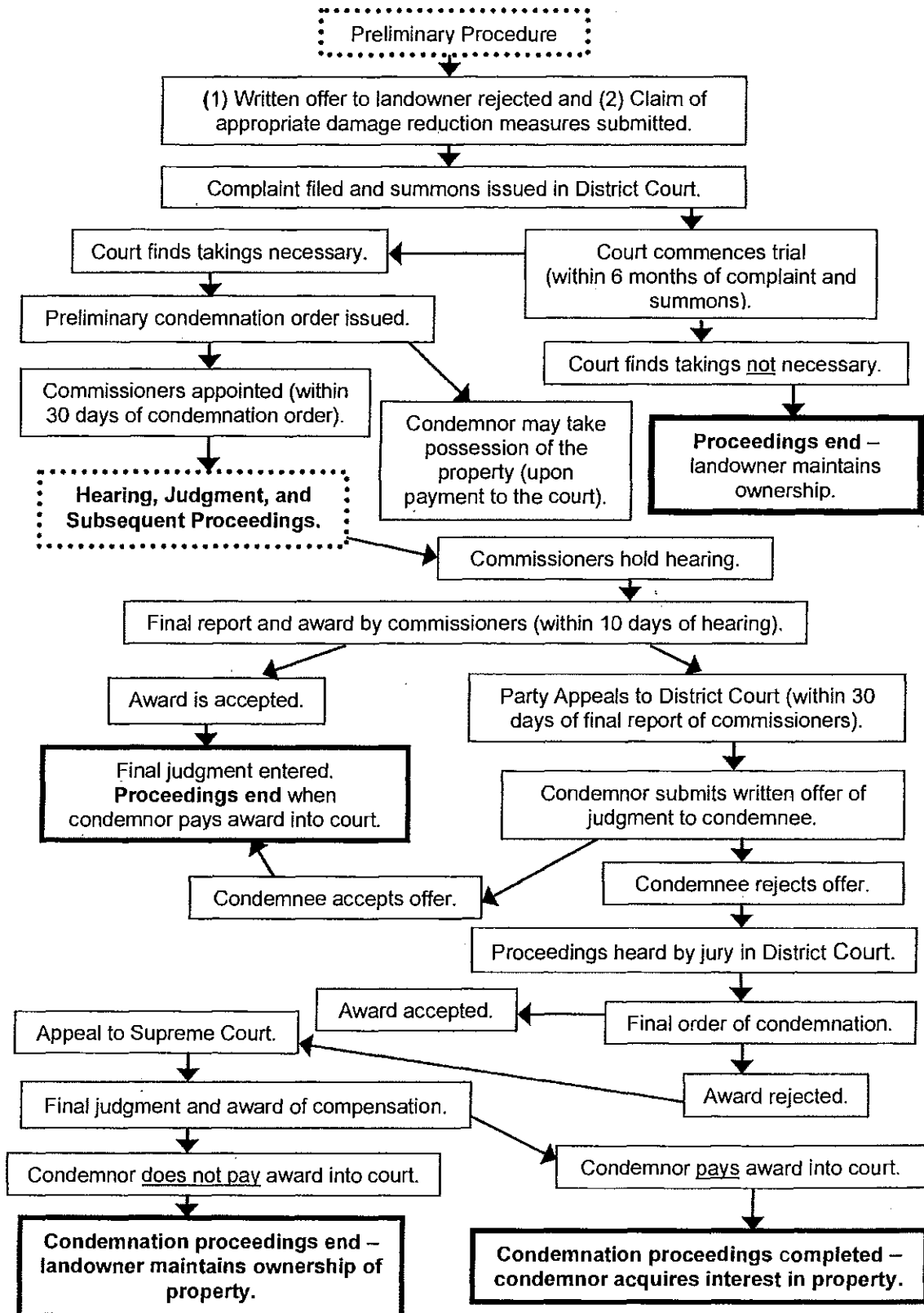
What facts must be found before condemnation?

Before property can be taken, the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

- ⇒ the use to which the property is to be applied is a use authorized by law;
- ⇒ the taking is necessary to the use;

- ⇒ if already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use;
- ⇒ an effort to obtain the property interest sought to be taken was made by submission of a written offer and the offer was rejected.

THE EMINENT DOMAIN PROCESS



The Preliminary Process

What is a preliminary condemnation proceeding?

A preliminary condemnation proceeding takes place after a preliminary condemnation complaint is filed and prior to issuance of the preliminary condemnation order. The preliminary proceeding is when the court, sitting without a jury, reviews the proof that both sides present in regard to the need of the taking. If the court finds and concludes from the evidence presented that the public interest requires the taking of an interest in real property and that the condemnor has met the burden of proof established in 70-30-111, MCA, the court shall enter a preliminary condemnation order. The preliminary condemnation order must provide that the condemnation of the interest in real property may proceed in accordance with the provisions outlined in the eminent domain laws. There are other powers that the court may exercise that will be discussed later.

Where are court proceedings for eminent domain cases heard?

All eminent domain proceedings must be brought in the District Court of the county in which the property or some part of the property to be taken is situated. Additional appeals will be held in the appropriate court.

How are court proceedings started?

A proceeding is started by filing a complaint and issuing a summons. A summons served under Title 70, chapter 30, MCA, must contain a notice to the condemnee to file and serve an answer. Within 6 months from the date that the summons is served, unless the court shortens or lengthens that time for good cause, the court, sitting without a jury, shall commence a trial on the issue of whether a preliminary condemnation order should be issued.

What needs to be in the complaint?

The complaint for condemnation must contain the following information:

- ⇒ the name of the corporation, association, commission, or person in charge of the public use for which the property is sought to be taken, who is the plaintiff;
- ⇒ the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of record of the property sought to be taken, if known, or a statement that they are unknown, who are the defendants;
- ⇒ a statement of the right of the plaintiff (condemnor) to take the property for public use;
- ⇒ statements from the condemnor showing by a preponderance of the evidence that the public interest requires the taking based on the following findings:
 - the use to which the property is to be applied is a use authorized by law;
 - the taking is necessary to the use;
 - if already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use; and
 - an effort to obtain the property interest sought to be taken was made by submission of a written offer and the offer was rejected.
- ⇒ a description of each interest (fee simple title, easement, etc.) in real property sought to be taken and whether the interest includes the whole piece of property or only a part of the entire **parcel** or tract. It must also include a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate court proceedings, at the option of the condemnor. The court may

consolidate or separate the proceedings to suit the convenience of the parties.

- ⇒ a statement of the condemnor's claim of appropriate payment for damages to the property proposed to be taken as well as to any remaining parcel of property.
- ⇒ if a right-of-way is sought, in addition to the items listed above, the location, general route, and termini. The complaint must also be accompanied with by a map of the route, so far as the route is involved in the action or proceeding.

What happens in a condemnation proceeding?

After a condemnation complaint is filed and before the issuance of the preliminary condemnation order, all parties shall proceed as quickly as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding, including discovery and trial. The court is required to give the proceedings priority consideration. The preliminary condemnation proceeding is tried by the court sitting without a jury.

In a condemnation proceeding, the court may:

- ⇒ regulate and determine the place and manner of:
 - making the connections and crossings and enjoying the legislatively defined common uses; and
 - occupying canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;
- ⇒ limit the interest in real property sought to be taken if in the opinion of the court the interest sought is not necessary. The court is limited by statutory language in 70-30-104, MCA, which states that an easement is the preferred interest to be taken unless the parties agree otherwise or the condemnor shows by a preponderance of the evidence that a greater interest is necessary. The Department of Transportation is

excluded from the easement restriction and the proof required to obtain an interest greater than an easement for highway purposes.

If the court finds and concludes from the evidence presented that the public interest requires the taking of an interest in real property and that the condemnor has met the burden of proof required by law, then the court shall enter a preliminary condemnation order. The preliminary condemnation order shall provide that the condemnation of the interest in real property may proceed in accordance with the provisions of Montana's eminent domain laws, Title 70, chapter 30, MCA.

If the property to be taken is for use as an underground natural gas storage reservoir, there are specific requirements outlined in 70-30-206, MCA.

What is a preliminary condemnation order?

The court issues a preliminary condemnation order when the preliminary condemnation hearing finds that the taking is required for the public interest. The preliminary condemnation order states that the condemnation of an interest in real property may proceed in accordance with the provisions of the eminent domain laws, Title 70, chapter 30, MCA.

What powers does a preliminary condemnation order give?

The preliminary condemnation order provides at least two different powers.

The preliminary condemnation order starts the process of determining just compensation. Within 30 days of entry of a preliminary condemnation order, the condemnee shall file a statement of the condemnee's claim of just compensation. If within 20 days of service of the condemnee's claim the condemnor fails to accept the claim, the court will appoint condemnation commissioners.

Once the condemnor has applied for the preliminary condemnation order, the condemnor may take possession of the property. In order to take possession of the property, the condemnor must make application to the court and the court must still retain jurisdiction (i.e., there is no pending appeal and on preliminary issues the case is still in the same court). The court may make an order allowing the condemnor to take possession of the property and use the property while the case is in court and until the final conclusion of the proceedings and litigation.

The order may also state that all actions and proceedings against the condemnor on account of the possession are stopped until the conclusion of the proceedings. However before the condemnor can take possession of the property, the condemnor must pay into court the amount of compensation claimed by the condemnee in the condemnee's statement of claim of just compensation.

Hearing and Judgment

Who are the condemnation commissioners?

Who Are the Condemnation Commissioners? →

The condemnation commission is a three-member panel that determines the amount of just compensation. Within 30 days of entering a preliminary condemnation order, the condemnee files a statement of the condemnee's claim of just compensation (the amount of compensation the condemnee feels is appropriate). The condemnor has 20 days to file an answer to the condemnee's claim of just compensation. If the condemnor fails to accept the claim within this 20-day time limit, the court will then appoint condemnation commissioners. The commission hearing may be waived by written consent of both parties, in which case the proceeding must be conducted in the District Court as if the case had been appealed from an award by the commissioners.

How Are Condemnation Commissioners Selected? →

The court will appoint three qualified disinterested condemnation commissioners, unless appointment of the commissioners has been waived. The condemnor nominates one of the commissioners. The condemnee nominates one of the commissioners. The two commissioners nominate the third commissioner. This third commissioner serves as the presiding officer of the commission. However, if the two commissioners fail to make the choice at the time of their appointment, then the presiding judge makes the nomination of the third commissioner.

At the time of the meeting and nominations, each nominating party or the judge must file with the court an affidavit of the person nominated. This affidavit must state the following:

- ⇒ that the person has not formed an unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the

fairness or unfairness of the condemnor's offer for the lands and improvements of the condemnee;

- ⇒ that the person has no enmity against or bias in favor of any party and has not discussed, communicated, overheard, or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;
- ⇒ that if selected as a condemnation commissioner, the person is willing to serve and will try the issues of compensation and render a decision according to the evidence and in compliance with the instructions of the court; and
- ⇒ that the person will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

What Are the Qualifications of a Commissioner? —————→

Each commissioner:

- ⇒ must have sufficient knowledge of the English language;
- ⇒ must be a resident of a county within the judicial district in which the action is pending;
- ⇒ may not be related within the sixth degree of consanguinity to any party (i.e., great-great-grandnephew or niece; first cousin twice removed); and
- ⇒ may not stand in the relation of guardian and ward, master and servant, debtor and creditor, principal and agent, or partner or surety to any party.

**In a condemnation hearing, what are the roles of the judge
and the condemnation commissioners?**

The condemnation commissioners meet at the time and place stated in the order appointing them. The meeting must take place within 10 days of the order of appointment. The commissioners shall examine the lands sought to be taken. At a time appointed by the judge and within the 10-day period, the commissioners shall hear the allegations and evidence of all persons interested in each parcel of land.

The hearing must be attended by and presided over by the presiding judge, who shall make all necessary rulings upon procedure and the admissibility of evidence.

At the conclusion of the hearing, the judge will instruct the commissioners as to the law applicable to their deliberations. The judge will also instruct them that their duty is to determine the appropriate findings, based solely upon their examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court.

The Role of the Condemnation Commissioners

- ⇒ The commissioners will determine the current fair market value of the real property sought to be taken, the current fair market value of all improvements pertaining to the real property, and the current fair market value of each separate estate and interest in the real property and improvements. If the real property consists of different parcels, the current fair market value of each parcel and each estate or interest in the real property must be assessed separately.
- ⇒ If the property sought to be taken constitutes only part of a larger parcel, the commissioners will determine the depreciation in current fair market value that will accrue to the remaining parcel. This depreciation can be a result of the condemnation and the construction of the improvements.

⇒ The commissioners shall also determine how much the remaining parcel and each estate or interest in the remaining parcel will be benefited, if at all, by the construction of the improvements proposed by the condemnor. This will determine if the condemnee receives compensation for the remaining parcel in addition to what is received for the land actually taken. If the project decreases the value of the remaining parcel, after the benefit of the project is considered, the condemnee is entitled to compensation for this loss in value in addition to the compensation received for the property that is actually taken.

- If the benefit of the project is equal to the amount initially assessed for the remaining parcel, the compensation to the condemnee is limited to the value of the portion taken.
- If the benefit of the project is less than the amount assessed for the remaining parcel, the benefit to the condemnee must be deducted from the amount assessed for the remaining parcel, and the resulting number is the amount allowed in addition to the current fair market value.

This provision is included in law to provide compensation to the condemnee if the installation of the project leaves the condemnee with a piece of property that does not have an economically feasible use or a remnant that is decreased in value because of the project.

⇒ If the property sought to be taken is for a railroad, the commissioners shall also determine the cost of good and sufficient fences along the line of the railroad and the cost of cattle guards where fences may cross the line of the railroad.

⇒ The commissioners also determine the appropriate payment for damages to the property taken, as well as to any remaining parcel of property that may be adversely impacted by the project. This determination will assist the court in making a final determination regarding the final condemnation order, which is further explained in 70-30-309, MCA.

⇒ When the piece of property that is sought to be taken has two or more estates or divided interests, the condemnor is entitled to have the amount of the award for the entire property determined first. This determination is conducted between the condemnor and all condemnees claiming any interest in the property (as if all condemnees were one person). After the whole amount of compensation is determined, the respective rights of each of the condemnees in some amount of the whole compensation is determined. Once those who are entitled to some amount of compensation are determined, then the right to a certain percentage of the total compensation must be determined by the commissioners, under supervision and instruction of the court, and the award must be apportioned accordingly.

Assessing Compensation, Date and Measure, and Interest →

For the purpose of assessing compensation, the right to compensation is considered to have accrued at the date of the service of the summons. The property's current fair market value as of the date of the summons is the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected (the remaining parcel).

If an order is made allowing the condemnor to take possession, as provided in 70-30-311, MCA, the full amount of compensation finally awarded must draw interest at the rate of 10% a year from the date of the service of the summons to the earlier of the following dates:

- ⇒ the date on which the right to appeal to the Montana Supreme Court expires or, if an appeal is filed, the date of a final decision by the Supreme Court; or
- ⇒ the date on which the condemnee withdraws from the court the full amount finally awarded.

If the condemnee withdraws from the court part of the amount finally awarded, interest on that part ends on the date it is withdrawn. Interest on the remainder of the amount finally awarded continues to the earlier of

the dates outlined above, until the full amount is withdrawn from the court.

None of the amount finally awarded draws interest after the date on which the right to appeal to the Montana Supreme Court expires.

Improvements upon the property after the date of the service of summons may not be included in the assessment of compensation or depreciation in current fair market value and may not be used as the basis of computing compensation or depreciation.

The final report and award of the commissioners is the report that the commissioners compile that states the amount of compensation that will be awarded to the condemnee.

The report of the condemnation commissioners must be made on forms that are provided for their use by the court. The report must be filed within 10 days after the completion of the hearing or within any additional time allowed by the judge upon a clear showing of necessity. The report must be filed with the clerk of court. The clerk shall notify the parties that the report has been filed. The notice, together with a copy of the report, must be served upon all the parties in the same manner as a summons.

The report of the commissioners must include a statement of the number of days or portions of days worked by the commissioners in performance of their duties.

What if at least two commissioners can't agree?
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A concurrence of two commissioners is necessary before a final report or award can be made with regard to any parcel of property or interest in a parcel of property. If at least two of the commissioners are unable to agree as to the amount of any award, the commissioners shall report the fact to the judge or court within 10 days after the completion of the hearing—the amount of time allotted for the commissioners to file a report. After the court is informed that at least two of the commissioners cannot come to an agreement, the court shall impanel and appoint new commissioners.

The new commissioners shall proceed as provided in law to determine any award upon which the previous commissioners failed to agree.

Optional Steps

Can the assessment of the commissioners be appealed?

Any party may appeal from any assessment made by the condemnation commissioners in the court where the report of the commissioners is filed. The appeal must be taken within 30 days after the parties are served notice of the filing of the award. The appealing party shall serve notice of the appeal upon the opposing party or the opposing party's attorney and shall file the notice of appeal in the District Court in which the action is pending. The appeal must be tried upon the same notice and in the same manner as other civil actions. Unless a jury is waived by the consent of all parties to the appeal, a jury must hear the appeal. When the jury hears the appeal, it must reassess the amount that the condemnation commissioners determined was just compensation for the taking of the condemnee's property.

Upon any verdict or assessment by the commissioners becoming final, judgment must be entered declaring that upon payment of the amount of the verdict or assessment, together with the interests and costs allowed by law, if any, the condemnor has the right to construct and maintain the public use project and to take the property described in the verdict or assessment for the use and purposes for which the property has been taken. The rights granted in the verdict or assessment remains in the condemnor and the condemnor's heirs, successor in interest, or assigns forever.

If the party appealing from the award of the commissioners does not succeed in changing to the appellant's advantage the amount finally awarded in the proceeding, the appellant may not recover the costs of the appeal. However, all the costs of the appellee in the appeal must be taxed against and recovered from the appellant. But upon the trial of the appeal, the appellant may contest the right of any party to any of the property mentioned and set forth or involved in the appeal that was located after the preliminary survey of any highway or railroad, seeking to condemn a

right-of-way pursuant to the provisions of Title 70, chapter 30, MCA, if the condemnation proceedings are begun within 1 year after the preliminary survey.

What is the final offer upon appeal?

Within 30 days after an appeal is perfected from the condemnation commissioners' award or report or not more than 60 days after the waiver of appointment of commissioners, the condemnor shall submit to the condemnee a written final offer of judgment for the property sought to be taken. The offer must also include compensation for the accrued necessary expenses of the condemnee. If at any time prior to 10 days before trial of the appeal the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service of the acceptance, and judgment must be entered. An offer not accepted is considered withdrawn and evidence of the offer is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

What are litigation expenses?

Litigation begins when the complaint is filed and the summons is issued.

Who Pays Litigation Expenses?

In the event of litigation and when the condemnee prevails by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee. Otherwise, each party bears that party's own costs and attorney fees. If the condemnee receives an award in excess of the last amount offered by the condemnor, then the condemnor must pay the necessary expenses of litigation.

What Are the Necessary Expenses of Litigation?—————→

Necessary expenses of litigation, as authorized by 70-30-305, MCA, means reasonable and necessary attorney fees, expert witness fees, exhibit costs, and court costs.

Reasonable and necessary attorney fees are the customary hourly rates for an attorney's services in the county in which the trial is held. Reasonable and necessary attorney fees must be computed on an hourly basis and may not be computed on the basis of any contingent fee contract.

Reasonable and necessary expert witness fees may not exceed the customary rate for the services of a witness of that expertise in the county in which the trial is held.

COMPENSATION

When and how is the payment of compensation made?

Payment may be made to the condemnee, or the money may be deposited in court for the condemnee and may be distributed pursuant to the assessment or judgment. However, at the option of the condemnee, payments may also be made:

- ⇒ on an annual basis, using the installment contract method; or
- ⇒ by means of a land exchange between the condemnee and condemnor, if other land is reasonably available and the condemnor consents. A land exchange may occur if the land to be provided by the condemnor in the exchange is of equal or greater value than the land being condemned.

If the money is not paid or deposited, the condemnee may file suit against the condemnor in court as in civil cases. If the money cannot be obtained through these court proceedings, the court, upon a showing to that effect, shall set aside and annul the entire proceedings and restore possession of the property to the condemnee if the condemnor has taken possession.

When a taking is for the purpose of a railroad, the condemnation commissioners must assess the amount of compensation required for the building of adequate fences and cattle guards. In a proceeding for condemnation for a railroad, the condemnor shall, within 30 days after **final judgment**, pay the sum of money assessed for building the fences and cattle guards. The condemnor may, at the time of or before the payment, elect to build any required fences and cattle guards as outlined in 70-30-301, MCA.

When is a bond necessary?

If a railroad is the public use for which property was taken, a condemnor who elects to build the required fences and cattle guards shall execute to the condemnee a **bond**, with sureties to be approved by the court, in an amount double the assessed cost of the fences and cattle guards. The bond must be conditioned upon building the fences and cattle guards within 8 months from the time the railroad is built on the land taken. If the bond is given, the condemnor is not required to pay the cost of the fences and cattle guards through compensation. In an action on the bond, the condemnee may recover reasonable attorney fees.

What is current fair market value?

Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration but not limited to the following factors:

- ⇒ the highest and best reasonably available use and its value for such use, provided current use may not be presumed to be the highest and best use;
- ⇒ the machinery, equipment, and fixtures forming part of the real estate taken; and
- ⇒ any other relevant factors as to which evidence is offered.

FINAL CONDEMNATION

What is a final order of condemnation?

The **final order of condemnation** is issued by the court and serves the purpose of transferring the subject property into the name of the condemnor.

When payments have been made and the bond, if appropriate, has been given, the court shall make a final order of condemnation. The order must describe the property condemned, the purposes of the condemnation, and any appropriate payment for damages to the property that is actually taken as well as to any remaining parcel of property that may be adversely affected by the taking. The condemnor may take property only for the public use specified in the condemnation order. The condemnation order can also spell out rights and duties concerning **mitigation measures**, access, etc.

A copy of the order must be filed in the office of the county clerk and recorder, and upon filing, the property described in the order vests in the condemnor for the purposes specified in the order.

If the award of the commissioners is appealed, the court makes the final order of condemnation after the jury's decision on the award.

Can the final order of condemnation be appealed?

Any party interested in the proceedings can appeal to the Montana Supreme Court from any finding or judgment made or rendered under Title 70, chapter 30, MCA, as in other cases.

Does an appeal to the Supreme Court prohibit further proceedings?

An appeal to the Supreme Court does not prohibit any further proceedings under Title 70, chapter 30, MCA, except that the District Court, on motion by a party to the proceedings or the judge, may stop the proceedings for a period of time and under conditions that the court considers proper. However, depending upon the issue appealed, the condemnor would be at risk for proceeding on a project.

When can the condemnor take possession of the condemned property?

The condemnor can make application to the court, at any time after the filing of the preliminary condemnation order and while the court retains jurisdiction, to take possession of the subject property. The court may make an order that the condemnor is authorized:

- if already in possession of the property of the condemnee that is sought to be taken, to continue in possession; or
- if not in possession, to take possession of the property and use the property during the pendency and until the final conclusion of the proceedings and litigation and all actions and proceedings against the condemnee on account of the possession are halted until that time.

However, before the condemnor can take possession of the property, the condemnor must pay into court the amount of compensation claimed by the condemnee in the condemnee's statement of claim of just compensation.

If the condemnee fails to file a statement of claim of just compensation within the 30 days allowed by law, the condemnor may obtain an order for possession. The possession is subject to the condition that a condemnor's payment into court must be made within 10 days of receipt of the condemnee's statement of claim.

When an appeal is taken by the condemnee, the court may require the condemnor, before continuing or taking possession, in addition to paying into court the amount assessed, to give a bond or undertaking. The bond or undertaking must have sufficient sureties approved by the court in an amount that the court may direct. The bond must be conditioned to pay the condemnee any additional damages and costs above the amount assessed, which is finally determined as the amount that the condemnee is entitled to for the taking of the property. The bond or undertaking must also be sufficient to compensate for all damages that the condemnee may sustain if for any cause the property is not finally taken for public use.

The amount assessed by the commissioners or by the jury on appeal is considered, unless reassessed or changed in further proceedings, as just compensation for the property taken.

The condemnor may pay into court either the amount claimed in the answer or the amount assessed, or the condemnor may give security in the form of a bond or undertaking. The condemnor may not be prevented from appealing from the assessment. If the condemnor chooses to appeal the assessment, the condemnor may do so as if money had not been deposited or security had not been given.

If money is deposited, the condemnee may withdraw money from the amount deposited so long as the condemnor is in possession of the property and there is no dispute as to the ownership of the property. The amount that may be withdrawn is subject to special requirements that are discussed below. A withdrawal or request for withdrawal does not affect the condemnee's right to appeal from the amount of compensation. However, if the amount of compensation is reduced below the amount withdrawn, the condemnee must repay the difference plus interest. If the commissioners' award is appealed to a jury, the jury may award any amount that it considers appropriate fair market value.

The court may not order the delivery to any condemnee of more than 75% of the money deposited on the condemnee's account except upon posting of bond by the condemnee equal to the amount in excess of 75%. The bond must include sureties to be approved by the court to repay to the

condemnor amounts withdrawn that are in excess of the condemnee's final award in the proceedings.

Is there a limit on property owner liability?

A condemnee or a condemnee's successor in interest is not liable for damages that result from the construction, use, or maintenance of a project on property in which the condemnee or successor in interest has an interest unless the negligence or intentional conduct of the condemnee or the successor in interest is a cause of the damages.

If a condemnee or condemnee's successor in interest is found to be liable because of intentional conduct or negligence that caused the damages, the condemnee or successor in interest is liable only for that portion of the damages that the condemnee or successor in interest caused.

The project owner or operator is liable for costs and attorney fees if the condemnee or condemnee's successor in interest is joined in an action for damages that are alleged to result from the construction, use, or maintenance of a project on property in which the condemnee or successor in interest has an interest. The project owner or operator is not responsible for costs and attorney fees if the condemnee or condemnee's successor in interest is found liable for damages as a result of the condemnee's or successor in interest's negligence or intentional conduct.

Who controls weeds on condemned property?

The condemnor, upon taking possession of the land, is responsible for the control and destruction of noxious weeds on the land until natural grasses have taken over the property and noxious weeds have ceased to exist.

What about taxes on property taken?

The condemnor must be assessed the condemnor's prorated share of taxes for the land being taken as of the date of possession or summons,

whichever occurs first. The condemnor must be assessed for all taxes accruing after the date of possession or summons, whichever occurs first.

ABANDONMENT OF USE

What happens if the public use is abandoned?

Whenever a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons the public use and places the property interest for sale, the seller may sell the interest to the highest bidder at public auction.

The seller shall publish notice of the public sale in a newspaper published in the county in which the real property is located once a week for 4 successive weeks. The sale must be held in the county where the real property is located. The notice of sale must contain the information required by law.

The owner from whom the real property interest was originally acquired or the owner's successor in interest must be notified of the sale by the seller by certified mail. The original owner or successor in interest has a 30-day option from the date of a sale provided for in 70-30-321, MCA, to purchase the interest by offering an amount of money equal to the highest bid received for the interest at the sale. If more than one person claims an equal entitlement, the option may not be exercised.

If bids are not received by the seller and the optionholder indicates in writing to the seller that the optionholder wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

What if the interest is not a fee simple interest?

When an interest other than a fee simple interest in property, such as a lease, is abandoned or the purpose for which it was acquired is terminated, the property reverts to the original owner or the original owner's successor in interest.

CONCLUSION

Eminent domain is essential to the independent existence of the nation and its sovereign states. It is through eminent domain that the state ensures that it can provide for the needs of its citizens, such as transportation corridors. Montana's eminent domain laws have evolved since the first laws relating to eminent domain in Montana were passed in 1877. It has taken years for the laws to become what they are today. As the needs of Montana's citizens have changed, the Legislature has made deliberate efforts to address these needs and structure the eminent domain laws accordingly. Because of increased exposure and concern, the 56th Legislature of the State of Montana established the study committee that developed this handbook.

This handbook is an overview of Montana's eminent domain laws. There are volumes of court cases establishing precedent and providing a better understanding of the court's interpretation of the statutes. A majority of land acquisitions for projects that could use the power of eminent domain are handled through private negotiations. It has been the Eminent Domain Subcommittee's feeling that it is not the place of the state or the Legislature to limit or impede these private negotiations. The Subcommittee felt it was important that landowners understand, as stated in its draft recommendations, that "the landowner has the responsibility and legal recourse to negotiate a settlement and mitigation measures".

Some issues that have been discussed with regard to eminent domain do not relate directly to eminent domain, but rather to potential impacts of projects that can use the power of eminent domain to acquire property. One example is mitigation measures. Mitigation measures are not addressed in the eminent domain statutes themselves. It is recommended that landowners who are concerned about mitigation measures work with the regulatory entity that grants permits and any mitigation measures associated with those permits to ensure that their concerns are adequately addressed. The landowner may also negotiate to include mitigation measures related to various phases of the project in the contract or settlement agreement.

It was the intention of the Eminent Domain Subcommittee of the EQC that this handbook be a stepping stone to better understanding of Montana's eminent domain law.

GLOSSARY

This handbook and these glossary terms should not be used as legal references. This handbook was developed to serve solely as an educational tool. When in doubt, always refer to the statutes (Title 70, chapter 30, MCA) or case law or seek legal counsel.

Glossary definitions obtained from the following sources:

- ***Black's Law Dictionary, Special Deluxe, Fifth Edition***, West Publishing Company, 1979.
- ***Dictionary of Selected Legal Terms***, Margaret C. Jasper, Oceana Publications, Inc., 1996.
- ***Law Dictionary for Laymen***, John Cotton Howell, Citizens Law Library, Inc., 1980

Award -- To grant, concede, or adjudge to. To give or assign by judicial determination after careful weighing of evidence. Thus, a jury awards damages.

Bond -- In law, any written and sealed obligation, especially one requiring payment of a stipulated amount of money on or before a given date. A sum of money paid as bail or surety.

Cause of action -- The factual basis for bringing a lawsuit. The basis upon which a right to judicial relief is claimed. It is the right a party has to institute a judicial proceeding. In common terms a cause of action is frequently referred to as an action, suit, cause, proceeding, or lawsuit.

Complaint -- The first pleading on the part of the plaintiff in a civil action. Its purpose is to give the defendant information of all material facts on which the plaintiff relies to support his demand or case.

Condemnee -- An entity whose property has been taken or is being taken through the use of eminent domain.

Condemnor -- An entity who has been granted the right to use the power of eminent domain to take private property for public use.

Current fair market value -- The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. The price in cash, or its equivalent, that the property would have brought at the time of taking, considering its highest and most profitable use, if at that time it was offered for sale in the open market, in competition with other similar properties at or near the location of the property taken, with a reasonable time allowed to find a purchaser.

Due process of law -- Law in its regular course of administration through courts of law.

Easement -- The right to use or control the use of another's land. A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with the general property in the owner. An example of an easement would be a right-of-way.

Eminent domain -- The power of the state or its designated agents to take private property for a public use.

Estate(s) -- The degree, quantity, nature, and extent of interest that a person has in real and personal property.

Evidence -- Any type of proof or probative matter legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to each party's contention.

Fee simple -- An absolute or fee simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during the owner's life, and descending to the owner's heirs and legal representatives upon the owner's death. This estate is unlimited as to duration, disposition, and descendibility.

Final judgment -- A judgment that finally disposes of rights of parties, either involving the entire controversy or some definite and separate branch of the controversy. Judgment is considered "final" only if it determines the rights of the parties and disposes of all the issues involved so that no future action by the court will be necessary in order to settle and determine the controversy.

Final order of condemnation -- The order that terminates the litigation between the parties and merits of the case and leaves nothing to be done but to enforce what has been determined by the court.

Inherent powers -- An authority possessed without its being derived from another. A right, ability, or faculty of doing a thing, without receiving that right, ability, or faculty from another. Powers originating from the nature of government.

Intentional acts -- Something done purposely as opposed to negligently.

Interest in real property -- The most general term that can be employed to denote a right, claim, title, or legal share in property.

Jury -- A group of individuals summoned to decide the facts in issue in a lawsuit. A certain number of men and women selected according to law and sworn to inquire of certain matters of fact and declare the truth upon evidence presented to them.

Just compensation -- Compensation that is fair to both the owner and the public when property is taken for public use through condemnation. Consideration is taken of such criteria as the cost of reproducing the property, its market value, and the resulting damage to the remaining property of the owner.

Leasehold -- An estate in property held under a lease.

Mitigation measures -- The actions or steps that must be taken for the alleviation, reduction, abatement, or diminution of an impact.

Montana Code Annotated -- A compilation of Montana's statutes organized by subject matter and application.

Negligence -- The failure to exercise the degree of care that a reasonable person would exercise given the same circumstances.

Parcel -- A piece of real property the description of which is formally set forth in a conveyance, including the boundaries, in order to allow its easy identification.

Preliminary condemnation order -- An order issued by the court sitting without a jury after reviewing the condemnation complaint and hearing evidence in the preliminary hearing allowing condemnation to proceed based upon a finding that the public interest requires the taking of the specific property.

Preponderance of the evidence -- Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it. Evidence that as a whole shows that the fact sought to be proved is more probable than not.

Proceeding -- In a general sense, the form and manner of conducting business before a court or judicial officer.

Real property -- Land and generally whatever is erected or growing upon or affixed to the land. Property that passes to the owner's heir on the death of the owner.

Right of entry -- The right of taking or resuming possession of land by entering on it in a peaceable manner. With regard to eminent domain, right of entry refers to the right of the condemnor to enter upon the land to conduct maintenance, project improvements, etc.

Right-of-way -- As used with reference to eminent domain, the right to pass over another's land. It is only an easement, and the grantee acquires only the right to a reasonable and usual enjoyment of the right-of-way with the owner of the property still retaining the rights and benefits of

ownership consistent with the easement. When it is the result of a contract, its extent and the mode of use is regulated by the contract.

Rights in land -- Rights associated with the type of interest held.

Sovereign -- A person, body, or state in which independent and supreme authority is vested.

Successor in interest -- One who follows another in ownership or control of property. In order to be a "successor in interest", a party must continue to retain the same rights as the original owner without change in ownership.

Summons -- A written instrument used to commence a civil action or special proceeding. It is a means of acquiring jurisdiction over a party.

Survey -- To survey land is to ascertain corners, boundaries, and divisions, with distances and directions, and not necessarily to compute areas included within defined boundaries. The term can also mean to appraise as to value or condition.

Takings -- The transfer of possession, dominion, or control without just compensation.

Trial -- The judicial procedure whereby disputes are determined based on the presentation of issues of law and fact. Issues of fact are decided by the trier of fact, either the judge or jury, and issues of law are decided by the judge.

Undertaking -- A promise, engagement, or stipulation.

INFORMATION RESOURCES

In an effort to make information on eminent domain more available, a list of information resources is provided below. Please refer to the resources outlined below if you have questions on eminent domain in general or on a specific project.

Written Resources

MONTANA CODE ANNOTATED
Title 70, chapter 30

NICHOLS ON EMINENT DOMAIN, Revised 3rd Ed., J. Sackman, 1999.

Agency Resources

STATE AGENCIES

Eminent domain laws

Environmental Quality Council --- (406) 444-3742

Issues regarding school trust lands

Montana Department of Natural Resources and Conservation ---
(406) 444-2074

Issues regarding state highway or road projects

Montana Department of Transportation --- (406) 444-6090

Issues regarding compliance and enforcement on private lands

Montana Department of Environmental Quality --- (406) 444-2544

FEDERAL AGENCIES

United States Department of Interior, Bureau of Land Management

Montana State Office (Billings) --- (406) 896-5000

United States Department of Agriculture, Forest Service
Regional Office (Missoula) --- (406) 329-3511

**SENATE BILL NO. 120
PUBLICATION REQUIREMENTS**

**Environmental Quality Council Members
1999-2000**

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Representative Paul Clark
Representative Monica Lindeen*
Representative Doug Mood
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Senate Members

Senator Mack Cole*
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Senator Ken Mesaros
Senator Barry "Spook" Stang*
Senator Jon Tester

Public Members

Mr. Tom Ebzery*
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Mr. Jerry Sorensen*
Mr. Howard F. Strause

**Law, Justice, and Indian Affairs Committee Members on
Eminent Domain Subcommittee
1999-2000**

Representative Gail Gutsche*
Representative Dan McGee*
Representative Jim Shockley*

*Eminent Domain Subcommittee members

Environmental Quality Council Members 2011-2012
--

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. EQC members can serve up to three 2-year terms, if reappointed by leadership. New members must be appointed before the 50th legislative day in accordance with 5-16-101, MCA.*

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* This information is included in order to comply with Senate Bill No. 120 (Chapter 236, Laws of 2011).