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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.

Dept. No.

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

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

8. This 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.

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 which is operated 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 that the City 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.

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 is 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 an 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.

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. 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 it takes to sell at 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 City's Water System is evidenced by the decaying and leaking condition of the System's Infrastructure and Defendants' notable decrease in spending on necessary maintenance and repairs.

25. Among other changes, the City has grown tremendously over the past three decades, including a 17 percent population increase from 2000 to 2010. Population growth has 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 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.

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 Defendants' 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 is 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.

“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’s parent company, Park Water Company of California, for “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 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. Nor will

the City need to charge higher rates to consumers in order to earn a profit to be 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.

35. 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.

36. 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.

37. 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.

38. 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 for Defendants and their investors funded by the rate payers 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.

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

40. With municipal ownership, Missoula's Water System will be eligible to apply for federal and state grants and federal and state assistance that it is not now qualified to receive.

41. The Carlyle Group is one of the largest private equity firms in the world. The Carlyle Group's 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.

42. 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.

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

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

45. 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 their use of private airplanes, an additional benefit of their employment valued at \$1.1 million.

46. The Carlyle Group's assets under management, firm-wide, experienced a 14 percent appreciation in value for the year 2013. According to the Carlyle Group's Managing Director of its Infrastructure

Fund which owns the Water System, Carlyle believes it has “a fiduciary duty to . . . investors to create the maximum value.”

47. The Carlyle Group’s 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.”

48. 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.

49. At the time of their purchase of Missoula’s Water System in December 2011, it was understood that Defendants would be short-term owners over a period of only 5-7 years, and that they would attempt to resell the assets within that time frame at a premium in order to recoup their acquisition costs plus a handsome return in order to fund the investment expectations of their investors.

50. As a result of its focus on creating value for its investors rather than creating value for its customers and rate payers, 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.

51. As part of an investment fund, 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 return rather than the long-term. Ownership of Missoula's Water System by Defendants therefore creates instability with regard to 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.

52. In order to maximize their investors' profits, Defendants have increased rates and decreased spending on maintenance and repair of the 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 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.

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

54. 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 the two years prior to sale of Mountain Water to the Carlyle Group. (It is not unusual for capital expenditures to decline as the current owner positions the 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.

55. 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 rates generating revenues between \$416 and \$504 per year for residential customers. In 2011 and 2012, Defendants charged residential rates generating revenues between \$515 and \$541 per year.

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

The Carlyle Group's 2011 Promise to Sell Mountain Water Company to the City

57. 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.

58. 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.

59. On information and belief, the Managing Director of Carlyle Infrastructure, has stated that it is his firm's intention to market the Water System for sale in the near future as part of an overall portfolio of infrastructure assets. This decision 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. Moreover, the Carlyle Group intends to avoid selling Mountain Water Company or its assets as a stand-alone business because the original acquisition in December 2011 of Park Water Company was as a whole (consisting of three separate water companies) and selling one component of Park Water Company may trigger a capital gains tax that Carlyle would prefer to avoid. 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 would 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.

60. Sale of Mountain Water Company by the Carlyle Group as one component of a larger portfolio of assets, and purchase of the Water System by yet another investor-driven entity or another for-profit entity, would further exacerbate the 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. Marketing Mountain Water Company as one component of a larger portfolio of assets would make it impossible for the City to purchase its Water System, despite Carlyle's 2011 promise to sell the Water System to the City, because the City does not have authority nor any desire to acquire the two California water companies that are in the Park Water Company portfolio. It is inconsistent for Defendants to, on the one hand, promise to negotiate with the City in good faith, while at the same time refusing to sell Mountain Water Co. as a stand-alone system.

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

61. 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 and, 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 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.

62. Responsible management of Missoula's continued growth, while protecting Missoula's sole source of water from contamination and other outside threats, requires the City of Missoula and its citizens to obtain 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 expected and inevitable.

63. 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.

64. 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 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.

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

66. 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.

67. 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.

68. 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 decidedly declined under Defendants' ownership and operation. In a submission to the Public Service Commission, Mountain Water Company recently indicated that the average age of the pipes in the Water System are 34.06 years old and, in their current condition, the System loses 40% of its water flow due to

leakage in the pipes. The cost of such leakage is estimated to be more than \$600,000 per year.

69. 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.

70. 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.

71. 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.

72. 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.

73. Missoula is willing and able to operate Missoula's 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.

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

75. Public opinion favors municipal ownership of Missoula's Water System.

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

77. Upon acquiring the Water System, the City will retain current employees of Mountain Water Company who reside in the State of Montana, and will maintain their current levels of compensation and benefits. But over time, and as normal attrition permits and circumstances require, the City will fill open positions, adjust compensation, and hire new

personnel at levels of compensation and benefits commensurate with other municipal employees, all of which will inure to the long-term benefit of the citizens and rate payers of Missoula.

78. 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, and it is more necessary for the public welfare that the City operate the Water System going forward rather than to continue to have it 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.

Missoula's Authorization to Proceed with Acquiring the Water System

79. 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 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.

80. 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.

Fair Market Value of the Water System

81. 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's customer base.

82. 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.

83. On information and belief, the 2011 purchase of Mountain Water Company by the Carlyle Group is a comparable arms-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.

84. Missoula and the City Administration have a good faith belief that Missoula's Water System can be purchased or acquired for just compensation 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.

85. 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 promise made to the City in 2011.

The City's Offer to Purchase Has Been Declined

86. 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, and the City's written offer was delivered to Defendants for their consideration. A true and correct copy of the October 29, 2013, offer letter is attached as Exhibit B.

87. 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.

88. 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.

89. 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.

90. 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.

91. 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.

92. 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.

93. 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).

94. The City's January 28, 2014, offer to purchase the assets 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.

95. 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.

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

The City's Ability to Finance its Acquisition of the Water System

97. 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 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.

98. 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."

99. 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.

100. 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.

101. 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 rate-payers by frequently leveraging and financing deals consistent with corporate profit motives, rather than based on what is best for the citizens of Missoula.

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

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

103. 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.

104. 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 public, 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 which 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.

105. The Water System to be acquired by 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 G. 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.

106. 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.

107. 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 this 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.

108. A copy of the current publication produced by the environmental quality council entitled “Eminent Domain In Montana” is attached to this Complaint as Exhibit J.

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 supply 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 supply and distribution 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, after 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 attorney's 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 ____ day of March, 2014.

BOONE KARLBERG P.C.

Scott M. Stearns
Natasha P. Jones
Attorneys for Plaintiff

DATED this ____ day of March, 2014.

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Application for Pro Hac Vice Admission
Pending