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**MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY**

MONTANA CONSUMER COUNSEL,
Petitioner,

v.

THE MONTANA DEPARTMENT OF
PUBLIC SERVICE REGULATION,
MONTANA PUBLIC SERVICE
COMMISSION,

Respondent.

and

MOUNTAIN WATER CO.,

Intervenor,

and

CITY OF MISSOULA,

Intervenor.

Cause No. DV-14-49

Dept. No. 1

**CITY OF MISSOULA'S
INTERVENOR BRIEF**

INTRODUCTION

The Montana Public Service Commission's ("PSC") Final Order No. 7251c ("Final Order") should be reversed, and the requested rate increase should be denied. The Petitioner, Montana Consumer Counsel ("MCC"), has demonstrated at least three grounds requiring reversal of the Final Order that granted Mountain Water Company ("Mountain Water") a rate increase of more than half a million dollars. The City will not repeat the MCC's arguments, but rather incorporates the same by reference. The City writes to provide additional support for reversal of the PSC's Final Order and to request additional, alternative relief.

In addition to the reasons set forth by the MCC, the PSC's Final Order should be reversed because procedural irregularities marred the agency proceedings. Recently discovered evidence demonstrates unlawful *ex parte* communications occurred between the PSC and Mountain Water's counsel while this case was pending. In addition, previously unavailable evidence demonstrates the PSC harbors a pervasive bias in favor of Mountain Water's current owner, Carlyle Infrastructure Partners, LP ("Carlyle"). In fact, a majority of the PSC's Commissioners have publicly voiced their support for Carlyle and against the City in the pending eminent domain case. Although judicial review of an agency decision is generally

confined to the record, the Court may consider proof of alleged procedural irregularities in the underlying proceedings. Mont. Code Ann. § 2-4-704(1).

Also, the PSC's Final Order was clearly erroneous, requiring reversal, because it did not take into account the excessively high water rates Missoulians already pay (despite Carlyle's promise to use its access to capital and lower interest markets to improve rates) or the critical infrastructure problems that still persist (despite Carlyle's promise to increase capital expenditures to fix the problems). Mont. Code Ann. § 2-4-702(2). The City has submitted additional evidence in this regard, most of which was not available at the time of the underlying hearing. Again, while judicial review of an agency decision is typically limited to the record, the Court may order additional evidence be taken before the PSC upon conditions determined by the Court when it is shown the additional evidence is material and there were good reasons for failure to present it in the proceeding before the agency. Mont. Code Ann. § 2-4-703.

The PSC's Final Order should be reversed and Mountain Water's requested rate increase should be denied. Alternatively, if the case is remanded to the PSC for further proceedings, the Court should enter an order: (1) requiring the PSC to take and consider the evidence discussed herein relating to Missoula's exceedingly high water rates and Carlyle's

failure to increase capital expenditures as promised; (2) ordering the PSC to cease all unlawful *ex parte* communications with the entities it purportedly regulates, and (3) directing those Commissioners who have publicly voiced their predisposed support for Carlyle to recuse themselves from any further proceedings in this case.

BACKGROUND

In 2011, Carlyle, an international multi-billion dollar company, acquired Mountain Water. Carlyle did so by making a number of promises. Important to this case, Carlyle loudly promised “concrete benefits” to Missoula’s water customers because it was “bringing capital to the table.” (Administrative Record Index Item (“Admin. Rec.”) 68, Transcript of Sept. 26, 2011 Public Hearing (“TR”) 366:17-24; Carlyle Post Hearing Brief in Docket No. D2011.1.8, pp. 6-7.)¹

Since making these promises, however, “concrete benefits” have only flowed to Carlyle’s own corporate investors. Indeed, the only real change for Missoulians has been a further increase in water rates that are already far too high. Just seven months after its acquisition of Mountain Water, Carlyle sought a rate increase. (Admin Rec. 1.) The PSC authorized an increase of more than half a million dollars on November 21, 2013.

¹ Carlyle also made false promises that it would negotiate in good faith to sell Missoula’s water system to the City. (TR 86:6-10.)

(Admin. Rec. Item 74.) As explained by the MCC, the PSC's Final Order should be reversed because, *inter alia*, the PSC failed to hold Carlyle accountable for its earlier promises, and unbelievably determined that, despite the addition of Carlyle's \$199 billion in assets, "not much has changed for Mountain as a result of the Carlyle acquisition." (Admin. Rec. 74, ¶ 35 (emphasis added).)

On January 16, 2014, the MCC filed its Petition for Judicial Review. On May 23, 2014, the City moved to intervene. The Court granted the City's motion on August 7, 2014. As set forth below, in addition to the reasons outlined by the MCC, reversal of the PSC's Final Order is necessary because the PSC's process was marred by procedural irregularities and because the PSC's decision was clearly erroneous in light of the record.

STANDARD OF REVIEW

Judicial review of an agency decision is governed by the Montana Administrative Procedures Act ("MAPA"). Mont. Code Ann. § 2-4-704. In cases of "alleged irregularities in procedure before the agency not shown in the record, proof of the irregularities may be taken in the court." Mont. Code Ann. § 2-4-704 (1). Otherwise, the court may "reverse or modify" the agency decision if substantial rights have been prejudiced because the

agency's findings, inferences, conclusions, or decisions are made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or are arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Mont. Code Ann. § 2-4-704(2)(a)(iii)-(vi). Where a district court's review of the record leaves a firm conviction that a mistake was made, reversal is warranted. *Montana Solid Waste Contractors v. Montana Dept. of Public Service Regulation*, 161 P.3d 837, ¶ 17 (Mont. 2007).

ANALYSIS

I. THE PSC'S FINAL ORDER SHOULD BE REVERSED DUE TO DEMONSTRATED PROCEDURAL IRREGULARITIES AND BIAS.

Although the PSC claims to act in the "public interest," it seems concerned about the interests of only certain corporate members of the public. Newly discovered evidence shows the PSC coordinates with Carlyle and Mountain Water's attorneys in connection with rate filing issues and the City's attempt to gain control of its water system. Also, since the underlying agency hearing, a majority of the PSC Commissioners have come out publicly in support of Carlyle. Under the MAPA, this Court may consider proof of alleged procedural irregularities in the underlying

proceedings not otherwise contained in the record. Mont. Code Ann. § 2-4-704(1).

A. *Ex Parte* Communications.

On July 25, 2014, the City served a subpoena duces tecum on the PSC, requesting all communications between the PSC and any representative of Mountain Water, Park Water, or Carlyle. (See July 25, 2014 Subpoena, attached as **Exhibit A**.) Although the PSC's response was deficient, being comprised primarily of a laundry list of objections, it was just enough to demonstrate the cozy relationship that exists between the PSC and the entities it claims to regulate. The few emails produced also suggest they are only the "tip of the iceberg," as the PSC appeared to withhold all of the Commissioners' emails and perhaps many more emails of PSC staff as well. (In this regard, the City has demanded that the PSC fully comply with the earlier subpoena and has also issued an expanded subpoena to the extent any doubt remains that the City of Missoula wants all information and emails relating to Carlyle, Park Water, and Mountain Water. (See August 14, 2014 Subpoena, attached as **Exhibit B**.)

When it comes to the PSC and its relationship to Carlyle, Park Water, and Mountain Water, Montana law is clear: *Ex parte* communications about a pending matter between an agency and the regulated entity during an

ongoing contested case are illegal. Montana Code Annotated § 2-4-613 states: “[T]he person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, may *not* communicate with any party or a party’s representative in connection with any issue of fact or law in the case.” Those individuals at the PSC charged with a duty of rendering a decision, of course, include the PSC’s legal counsel, analysts, and other representatives who participate in the decision making process.

Despite the prohibition on *ex parte* communications, on April 29, 2014 (as this rate case was pending), the PSC’s senior legal counsel (Justin Kraske), the PSC’s rate analyst (Leroy Beeby), and Mountain Water’s legal counsel (John Alke), exchanged emails discussing the reasons Mountain Water decided to pull a rate increase request and Alke’s plans for future rate filings depending on the outcome of the City’s condemnation action.²

(4/29/14 Email Exchange, attached as **Exhibit C.**) Alke said in part:

We take the tax proration statute so seriously we pulled our rate case filing because of it. If it had not been for the City filing the condemnation action, and the tax proration statute, we would have filed by the end of this month for a rate increase somewhat larger than the first year tax reduction (2014 tax

² Beeby, a PSC rate analyst, analyzes the appropriate rates and increases in PSC rate cases. Kraske provides legal opinions and examines and cross-examines witnesses on behalf of the PSC.

year, 2014/2015 payments). If the City dismisses its condemnation action, and the tax proration does not go into effect, we would have to file a rate case.

(Ex. C.)

As Alke confirms, the tax proration statute is directly addressed in the course of rate increase cases. The instant case is an actively contested case regarding the 2012 rate increase request by Mountain Water. There has been no final adjudication, yet legal counsel for Mountain Water and multiple individuals at the PSC have been communicating regarding rate increases, the tax proration statute and its impact on rates, as well as future rate decisions and plans. Each of these topics bear directly on the issues pending before this Court and, as such, should not have been shrouded from the people of Missoula behind the cloak of illegal and improper *ex parte* communications between the PSC and counsel for Mountain Water.

In addition, the recently produced emails demonstrate that Beeby, the PSC's rate analyst, routinely emails articles and legal pleadings to Alke and even engages in discussions of the PSC's legal strategy with him. (See, e.g., 4/29/14 Beeby Email, attached as **Exhibit D**.) For example, in an April 2, 2014 email to Alke, Beeby attached the City's condemnation Complaint with the following note: "For your reading pleasure ☺." (4/2/14

Email Exchange, attached as **Exhibit E.**) While the PSC analyst's use of a smiley-face emoticon would seem harmless enough, Mountain Water's counsel Alke responded by asking Beeby if the PSC was planning to intervene in the eminent domain action. (Ex. E.) Beeby then freely shares the PSC's litigation strategy and analysis with Mountain Water's counsel, stating, "I believe we are. They [the City] are violating the stipulation and letter agreements that they signed." (Ex. E.)

After suggesting to the PSC that it should intervene in the City's eminent domain action, Mountain Water's counsel appears to have been successful in placing that agenda item on the PSC's agenda. In an email exchange on June 26, 2014 between Alke and PSC legal counsel Kraske, a voicemail is referenced wherein Alke again brought up the PSC's potential intervention. The PSC has not released the voicemail, but Kraske's reply states:

Thanks John [Alke], we decided to schedule a work session on the agenda for next Tuesday. I may call you in the next day or so to check in on a few things.

(See 6/26/14 Email Exchange, attached as **Exhibit F.**)

Sure enough, just a few days later (presumably after the PSC's legal counsel "check[ed] in on a few things" with Mountain Water's attorney), the PSC decided to intervene in the City's eminent domain case in a hearing in

which both Beeby and Kraske testified. Interestingly, only the PSC and Mountain Water had any idea the issue of intervention would even be on the table at the PSC's July 1, 2014 meeting. The entirety of the PSC's public "notice" was found in one of eight agenda items, and simply stated: "Missoula and Mountain Water Condemnation District Court Case – Update Commission on Mountain Water District Court condemnation case and receive direction." (PSC Agenda, attached as **Exhibit G**.) A more accurate agenda item could have read: "Mountain Water counsel's *ex parte* request that the PSC intervene in the Mountain Water eminent domain lawsuit." As noted by the Missoulian Editorial Board in its July 14 editorial: "Before our elected officials get involved in a lawsuit, shouldn't they pause to hear from the people who elected them? Especially when it concerns an issue as vital to Missoulians as our local water utility?" (*Missoulian* Editorial: Open meeting reminder for PSC (July 14, 2014), attached as **Exhibit H**.) As it turns out, the PSC only heard *ex parte* from the Helena-based attorney for Mountain Water when it decided to intervene in the lawsuit.

Thus, through its *ex parte* communications, Mountain Water was not only able to prod the PSC into intervening in the City's eminent domain case, but it was the only entity or person that had any meaningful notice of

the PSC's impending decision.

The PSC has also communicated *ex parte* with Mountain Water Counsel Alke and Carlyle's counsel, Bill Mercer, regarding the City's requests for documents. (See 7/16/14 Email Exchange, attached as **Exhibit I.**) Indeed, the manner in which the PSC has helped protect from public disclosure the exorbitant salaries of Mountain Water's executives presents another prime example of the PSC's willingness to coordinate with Mountain Water and Carlyle against the public interest. (See, e.g., City's Memorandum Opposing Mountain Water's Motion for Protective Order, *In the Matter of Mountain Water Company's Annual Report for 2013*, Docket No. n2014.2.21 (June 13, 2014), attached as **Exhibit J.**) Concealing this information from the very rate payers who must pay every penny of those salaries is a peculiar way to protect the public interest, particularly when the salaries of every other Montana community's water system operators are public record because they are all owned by municipalities. See Mont. Code Ann. § 69-3-203(2).

The above-referenced communications, even if they were not unlawful *ex parte* communications, cast a dark shadow over PSC's purported regulation of Mountain Water and Carlyle in the "public interest." They call into doubt the PSC's ability to conduct a fair and impartial

adjudication of rate increases or perform other regulatory functions in an appropriate manner. See Admin. R. Mont. 38.2.3602 (hearings before the PSC are to be done fully, fairly, and impartially). When the regulator and the regulated utility have effectively joined forces against the people of Missoula, the entire purpose of regulation is undermined and no one is looking out for the “public interest.”

B. Bias.

Make no mistake: The PSC voted to intervene in the City’s condemnation action to oppose the City and support Carlyle. We know this because a majority of the PSC (Commissioners Roger Koopman, Bob Lake, and Bill Gallagher) have all publicly voiced their support for Carlyle in opposing the City’s condemnation action. In fact, during the vote to intervene, Commissioner Koopman noted the Commissioners all had “philosophical interests” and their own, strongly held, personal opinions regarding the condemnation. (7/1/14 PSC Work Session, http://psc.mt.gov/Docs/WorkSessions/WorkSessionVideo/20140701_Work_Session.wmv.) He further stated his view that “the motion was to be in opposition to the condemnation.” (7/1/14 PSC Work Session, *supra*, (emphasis added).)

In addition to Commissioner Koopman’s stated opposition,

Commissioner Lake has submitted two op-eds that have been published to statewide audiences opposing the condemnation action. On November 15, 2013, Commissioner Lake called the condemnation action an “affront to private property rights;” rights he views as sacred. (Bob Lake, *Don’t Rush to Conclusions on Potential Purchase*, attached as **Exhibit K.**)

PSC Chairman Gallagher has likewise expressed his displeasure with the City and its condemnation action. On February 13, 2014, he compared it to the government taking someone’s home and acting like a third-world country. (Bill Gallagher, *Mayor Taking Wrong Route to Water Ownership*, attached as **Exhibit L.**)

Commissioners Koopman, Lake, and Gallagher all have pre-disposed opinions regarding the City’s efforts to protect and more effectively manage Missoula’s vital natural resource, and seem unwilling to hear the arguments or any evidence before making judgments contrary to the interests of the people of Missoula. For a public entity tasked to act in the “public interest,” decisions made without hearing the evidence clearly violate that spirit.

Missoula’s ratepayers, pursuant to the PSC’s own internal rules, are entitled to a full, fair, and impartial hearing and decision on regulatory matters. Admin. R. Mont. 38.2.3602. Bias is grounds for recusal, and a commissioner’s duty to recuse himself is not discretionary if his impartiality

is reasonably questioned. *Bus. & Prof'l People for Pub. Interest v. Barnich*, 614 N.E.2d 341, 345 (Ill. App. Ct. 1993). The citizens of Missoula have not been given a full, fair, or impartial hearing or decision and, for this additional reason, the PSC's Final Order should be reversed. In addition, if remanded to the PSC, the Court should order a cessation of the *ex parte* communications between the PSC and Carlyle and Mountain Water and for the Commissioners with publicly-expressed predisposed opinions to recuse themselves.

II. THE PSC'S FINAL ORDER WAS CLEARLY ERRONEOUS BECAUSE THE PSC DISREGARDED MATERIAL FACTS.

Since Carlyle purchased Mountain Water in 2011, it has systematically broken its promises to the people of Missoula while happily watching its profits increase. Carlyle promised increased capital revenues to fix the infrastructure problems in Missoula's water system, but capital expenditures have fallen below past averages and prior estimates. Carlyle promised to use its access to capital and lower interest markets to help improve rates for Missoula's water customers. Rates have only increased. Although evidence of these facts was submitted to the PSC, the City has submitted, with this brief, additional evidence that was not available at the time of the underlying hearing.

In this regard, in the event the Court remands the case for further proceedings, it should order this additional evidence be taken before the PSC and considered. Mont. Code Ann. § 2-4-703. There were good reasons for failing to present the evidence in the underlying proceeding before the PSC – either the evidence was not yet in existence and/or Carlyle’s intention not to honor its promises was not yet apparent. Mont. Code Ann. § 2-4-703.

There can be no dispute that during its purchase of Mountain Water in 2011, Carlyle made numerous promises – under oath before the PSC – that it would bring considerable access to capital and access to lower interest rates for debt. These promises are already part of the record. Robert Dove, Carlyle’s Managing Director, testified that Carlyle would “help going forward” by increasing the amount of capital investment because “Carlyle has the ability not only to put in more equity but also to raise debt.” (TR 53:18-24.) Dove specifically promised Carlyle would “be able to raise debt at considerably lower interest rates than what is the current debt today.” (TR 53:18-24.)

Carlyle represented it understood the problems facing Missoula’s water system and would invest substantial amounts to fix them. Dove stated repeatedly that Carlyle would bring capital expenditures with a

targeted focus on leaks and excessive consumption due to non-metered lines. (TR 34-35, 45, 51, 72, 117-119.) Dove testified “[w]ater is a very precious resource” and “there is tremendous leakage of the water in Missoula – in the Missoula system.” (TR 51, 45.) Dove stated system leakage was at 40%, a number supported by Mountain Water’s 2010 survey of the Missoula system. (TR 71; Admin Rec. 74, ¶ 3, Mountain Water’s Answer to PSC-033, Docket No. D2010.4.41 (“Mountain Water’s 2010 Answer”).) In fact, Mountain Water calculated the cost of pumping the wasted water out of the aquifer at more than \$350,000 per year, a cost ultimately borne by Missoula ratepayers. (Admin Rec. 74, ¶ 3, Mountain Water’s 2010 Answer.)

Despite Carlyle’s promises in 2011, the very same infrastructure problems persist today. In 2014, Park Water stated in its Sustainability Report: “Water loss due to leakage at Mountain Water remains high.” (2014 Park Sustainability Report, p. 11, attached as **Exhibit M**.)

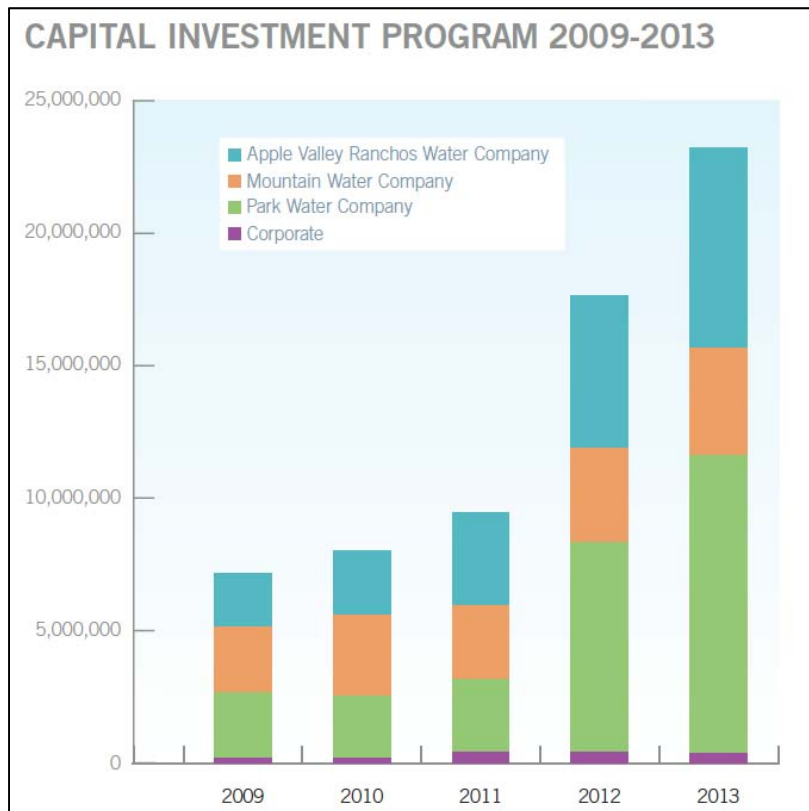
Interestingly, in the same report, Park Water highlights improvements on leakage rates made at its two California companies, and boasts how each meet the criteria set by the Partnership for Safe Water, but no such improvement is touted for Mountain Water. (Ex. M, p. 11.) Instead, the report acknowledges Mountain Water’s leakage has only been reduced by

18%, meaning approximately 33% of all water pumped out of the Missoula aquifer leaks out of the system. (Ex. M, p. 11; Admin Rec. 74, ¶ 3, Mountain Water's 2010 Answer.) As if this were not bad enough, the Park Water Sustainability Report appears to paint a rosier picture of leakage reduction than Mountain Water's recent testing. In this case, Mountain Water submitted testing that showed a leakage reduction over the past two years of a mere 5%. (Admin Rec. 18, p. 2121.)

In addition to the high leakage rate, of the 8.5 billion gallons used by Mountain Water consumers annually, only 3.5 billion is metered – approximately 60% of all water usage is unmetered and, therefore, unknown. (Admin. Rec. Item 2, p. 3; Mountain Water 2013 Annual Report.) Further, net expansion of laid water lines has been only 3,241 feet (.62 miles) in 2012 and 8,366 feet (1.58 miles) in 2013. (Admin. Rec. Item 2, p. 3; Mountain Water 2012 Annual Report (Mountain 2012 Annual Report), http://psc.mt.gov/Docs/AnnualReports/2012_Mountain_Water.pdf; Mountain Water 2013 Annual Report (Mountain 2013 Annual Report), http://psc.mt.gov/Docs/AnnualReports/2013_Mountain_Water.pdf.)

That is not to say Mountain Water has not spent any money on infrastructure since its acquisition by Carlyle, but the amounts spent have dwindled and not increased as promised. Contrary to the earlier made

promises, the numbers provided by Carlyle demonstrate it has reduced the amount of capital spent on Mountain Water and, rather than spending the necessary money on maintaining the Missoula water system, it has



chosen instead to concentrate its capital expenditures on Park Water's two California water companies. (Ex. M, p. 7, Chart 1.) Mountain Water, the oldest water distribution system under Carlyle's ownership, has received just a fraction of the total capital expenditures Carlyle has made at the other Park Water companies. The amounts spent at Apple Valley Ranchos and Park Water are double to triple what has been spent in Missoula.

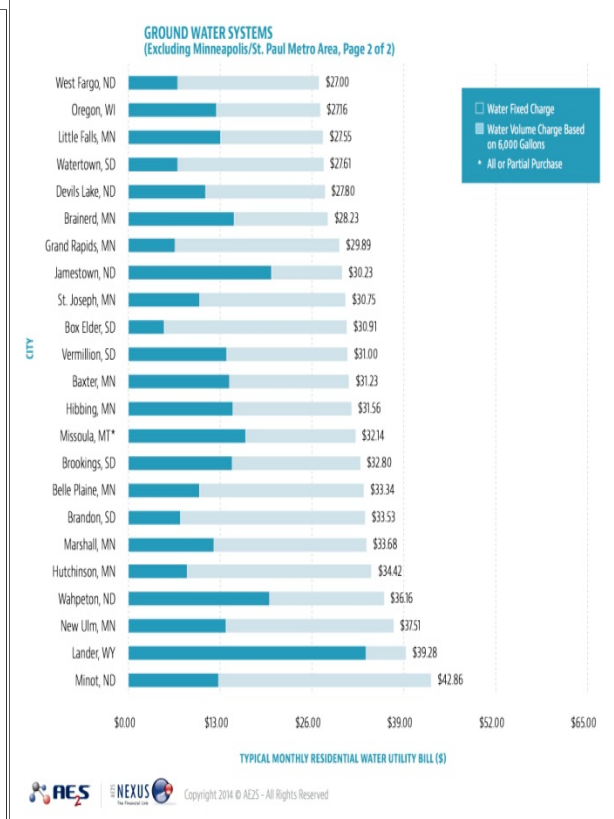
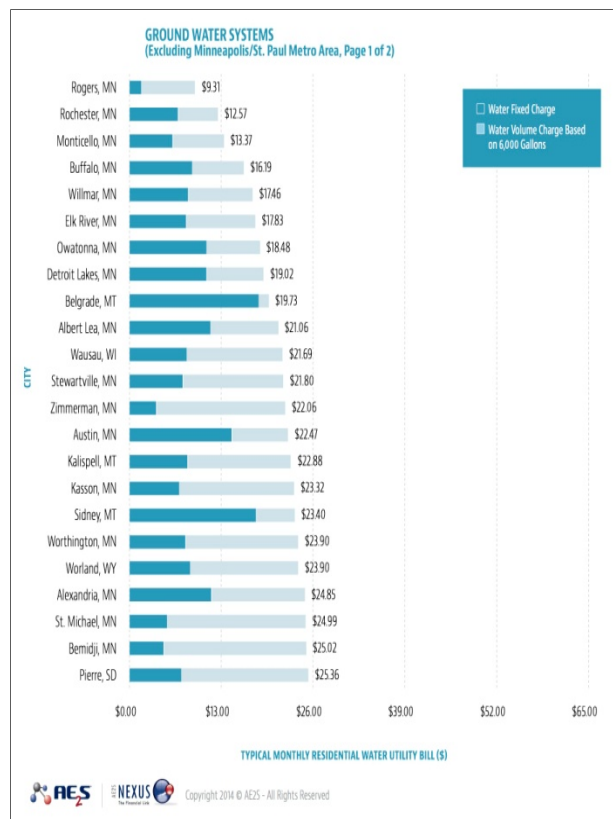
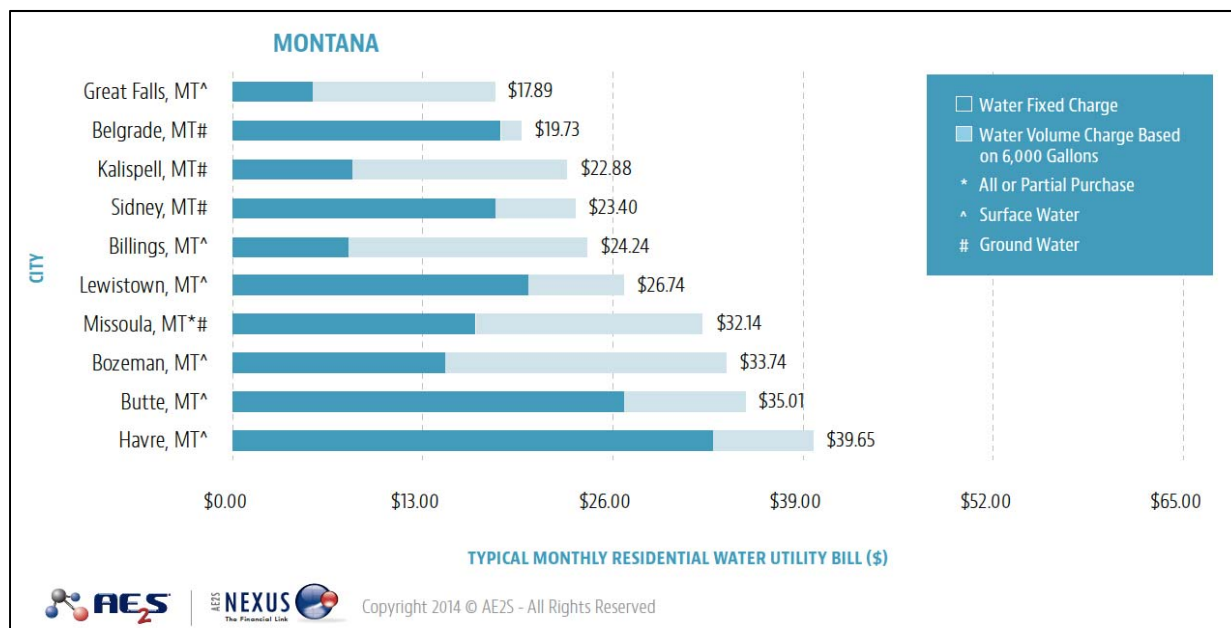
Capital expenditures at Mountain Water, which were approximately \$3.87–\$4 million annually over the past three years, are significantly lower than the prior average spent by Park Water, and lower than the amounts budgeted in 2010 for future capital expenditures. Prior to Carlyle's

ownership, from 2000 to 2011, the average capital expenditure at Mountain was \$4.1 million, with a high of \$5.7 million. (See Mountain Water Company, *Giving Back to the Community*, attached as **Exhibit N**.) Documents released in Mountain Water's 2010 rate case before the PSC noted that Mountain Water planned to spend \$5.1 million in 2013 and \$5.3 million in 2014 capital expenditures. (Admin Rec. 74, ¶ 3, Mountain Water's 2010 Answer.) After buying the system, it appears Carlyle eliminated the planned capital expenditure increases for Missoula and instead sent the money to California.

With this backdrop, it is nothing short of remarkable that, as capital expenditures have gone down and are less than what the people of Missoula were promised, the PSC has allowed Carlyle to increase Missoula water rates, even though Missoula ratepayers already pay among the highest water ground water rates in the state and region. (See AES Water Survey, attached as **Exhibit O**.)

Mountain Water's system is considered a "ground water" system, meaning it draws water directly from a clean aquifer with no need to treat or clean the water before distribution. Ground water systems are, not surprisingly, much cheaper to operate than surface systems, which must treat the water before distribution. Nevertheless, Missoula pays by far the

most for groundwater in Montana and has some of the highest rates in the region. (Ex. P, Charts 2 and 3.)



As demonstrated above, there has been no corresponding infrastructure spending to match the high rates paid by Missoulians. The PSC has seen these numbers, the lack of spending, the lack of progress in fixing problems in Missoula, and nonetheless approved Carlyle and Mountain Water's request for a rate increase. In addition, the PSC has continued to allow \$2 million per year in "administrative costs" (approximately 11% of Mountain Water's gross revenues) to be sent to California, despite the lack of improvements being made in Missoula. (Admin. Rec. Item 2, p. 3; Mountain Water 2013 Annual Report.) This evidence only further buttresses the conclusion that the PSC's Final Order was clearly erroneous.

CONCLUSION

For the reasons stated, the PSC's Final Order should be reversed and the requested rate increase should be rejected. If remanded for further proceedings, however, the Court should enter an order: (1) requiring the PSC to take and consider the evidence discussed herein relating to Missoula's exceedingly high water rates and Carlyle's failure to increase capital expenditures as promised; (2) ordering the PSC to cease all unlawful *ex parte* communications with the entities it purportedly regulates, and (3) directing those PSC Commissioners who have publicly voiced their

predisposed support for Carlyle to recuse themselves from any further proceedings in this case.

Dated this 20th day of August, 2014.



Scott M. Stearns
Natasha Prinzing Jones
BOONE KARLBERG, P.C.

Jim Nugent
City of Missoula

Attorneys for Intervenor

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served upon the following
counsel of record at their address this 20th day of August 2014:

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Kate Whitney Laura J. Farkas Justin W. Kraske Montana Public Service Commission 1701 Prospect Ave. P.O. Box 20260 I Helena, MT 59620-2601	Tim Fox Attorney General of Montana Department of Justice 215 North Sanders Street, 31 st Floor P.O. Box 201401 Helena, MT 59620-1401

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Tina Sunderland

EXHIBIT “A”

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**MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY**

THE CITY OF MISSOULA, a
Montana municipal corporation,

Plaintiff,

vs.

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

Defendants,

and

THE EMPLOYEES OF MOUNTAIN
WATER COMPANY, et al.

Intervenors.

Cause No. DV-14-352

Dept. No. 4

SUBPOENA DUCES TECUM

TO: Montana Public Service Commission
1701 Prospect Avenue
PO Box 202601
Helena, MT 59620

Pursuant to Montana Rule of Civil Procedure Rule 45(a), you are hereby directed and required to provide and/or permit inspection of all documents identified and described below pursuant to this Subpoena by August 11, 2014, to Boone Karlberg P.C., 201 West Main Street, Suite 300, Missoula, MT 59802. Please provide the following information, whether in hard copy or electronic format:

- For Docket D2011.1.8, non-redacted copies of **all** materials protected by Order No. 7149a, including, but not limited to the answers to data requests:
 - CFC-013, CFC-019, MCC-004;
 - All digital materials submitted for all supplemental responses to MCC-004;
 - Park Water Company Investment Memo attached to MCC-004;
 - PSC-014(a), CFC-002(a), CFC-002(b), and CFC-003(a);
 - PSC-014(d), CFC-002(c), MCC-001; and
 - PSC-020(d).
- For Docket N2013.3.16, a non-redacted copy of:
 - Mountain Water Company's 2012 Annual Report, including copies of all materials protected or withheld from

the above noted annual report, including, but not limited to, salary information.

- For Docket N2014.2.21, non-redacted copy of:
 - Mountain Water Company's 2013 Annual Report, including copies of all materials protected or withheld from the above noted annual report, including, but not limited to, salary information.
- For Docket D2012.7.81, non-redacted copies of **all** Mountain Water data\audit answers (PSC-001 to PSC-075 and MCC-001 to MCC-103), including those protected by Order No. 7251a, all supplemental answers to data requests, and copies of any digital information not provided in the documents. This request especially includes, but is not limited to, the answers provided by Mountain Water to the following data requests:

○ PSC-001	○ MCC-058
○ PSC-017	○ MCC-059
○ PSC-018	○ MCC-076
○ PSC-023	○ MCC-079
○ PSC-031	○ MCC-083
○ PSC-033	○ MCC-098(b)
○ PSC-046	
- All documents, emails and correspondence, electronic or not, regarding the value of the Mountain Water Company water system, including all documents submitted by the Carlyle Group and/or Carlyle Infrastructure to the PSC in 2010 and 2011.

- All documents, emails and correspondence, electronic or not, regarding the amount spent on maintaining the Mountain Water Company water system, including all documents submitted by the Carlyle Group and/or Carlyle Infrastructure to the PSC in 2010 and 2011.
- All emails and correspondence, electronic or not, between the following individuals regarding the *City of Missoula v. Mountain Water Co. et al.* eminent domain action or the PSC's decision to intervene in the *City of Missoula v. Mountain Water Co. et al.* action:
 - Any PSC Commissioners and John Alke;
 - Any member of the PSC's legal department and John Alke;
 - Any other employee of the PSC and John Alke;
 - Any PSC Commissioners and any employee of Mountain Water Company or Park Water Company;
 - Any member of the PSC's legal department and any employee of Mountain Water Company or Park Water Company;
 - Any other employee of the PSC and any employee at Mountain Water Company or Park Water Company;
 - Any PSC Commissioners and any employee of the Carlyle Group and/or Carlyle Infrastructure;

- Any member of the PSC's legal department and any employee of the Carlyle Group and/or Carlyle Infrastructure; and
- Any other employee of the PSC and any employee of the Carlyle Group and/or Carlyle Infrastructure.
- Please provide all documentation relating to the following questions:
 - What benefits are conferred to Mountain Water ratepayers for the estimated \$2 million a year spent on "administrative and support services" provided by Mountain Water's parent company in California? See Carlyle Infrastructure Partners, LP's Answer in *City of Missoula v. Mountain Water Co.*, Exhibit A.
 - How is the PSC monitoring the executive salaries of Mountain Water's parent corporations?
 - What is the benefit conferred upon Mountain Water's ratepayers for the approximately \$6.4 million spent annually on executive and upper-level salaries of employees at Park Water Company? See Park Water Company, PUC General Order 77, Dec. 31, 2013, Exhibit B.
 - Has the PSC monitored the amount of capital expenditures made by Mountain Water? If so, how much has been spent on capital expenditures for the Mountain Water system for the past 10 years?

You are further advised that Montana Rule of Civil Procedure 45 specifies certain protections for and duties upon persons subject to subpoenas. In accordance with the requirements of Rule 45(a), the texts of Rules 45(d) and (e) are below.

Disobedience of this order may be deemed contempt of the court.

DATED this 25th day of July, 2014.



Scott M. Stearns
Natasha Prinzing Jones
BOONE KARLBERG P.C.

William K. VanCanagan
Phil L. McCreedy
Datsopolous, MacDonald & Lind

Harry H. Schneider, Jr.
PERKINS COIE LLP
Application for *Pro Hac Vice* Admission
Pending

Attorneys for Plaintiff

Rule 45. Subpoena.

(d) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction -- which may include lost earnings and reasonable attorney fees -- on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance not Required. A person commanded to produce designated documents, electronically-stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) Objections. A person commanded to produce designated materials or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the designated materials or to inspecting the premises -- or to producing electronically-stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expenses resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person -- except that, subject to Rule 45(d)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically-Stored Information. These procedures apply to producing documents or electronically-stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form of Producing Electronically-Stored Information Not Specified. If a subpoena does not specify a form for producing electronically-stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically-Stored Information Produced in Only One Form. The person responding need not produce the same electronically-stored information in more than one form.

(D) Inaccessible Electronically-Stored Information. The person responding need not provide discovery of electronically-stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of the undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly assert the claim; and
- (ii) describe the nature of the withheld documents, communications, or things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by email upon the following counsel of record at their addresses this 25th day of July 2014:

William T. Wagner Stephen R. Brown Peter J. Arant GARLINGTON, LOHN & ROBINSON, PLLP P.O. Box 7909 Missoula, MT 59807-7909 wtwagner@garlington.com srbrown@garlington.com pjarant@garlington.com	Joe Conner Adam Sanders W. Patton Hahn BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C. Suite 1800, Republic Centre 633 Chestnut Street Chattanooga, TN 37450-1800 jconner@bakerdonelson.com asanders@bakerdonelson.com phahn@bakerdonelson.com
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Tina Sunderland

EXHIBIT “A”

EXHIBIT “A”

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ATTORNEYS FOR DEFENDANT
CARLYLE INFRASTRUCTURE PARTNERS, LP

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.

THE EMPLOYEES OF MOUNTAIN
WATER COMPANY, (Shanna M.
Adams, Heather M. Best, Dennis M.
Bowman, Kathryn F. Datsopoulos,
Wayne K. Davis, Valarie M. Dowell,
Jerry E. Ellis, Greg A. Gullickson,
Bradley E. Hafar, Michelle Halley,

Cause No. DV-14-352

Judge Karen S. Townsend
Dept. No. 4

**DEFENDANT CARLYLE
INFRASTRUCTURE PARTNERS,
LP'S ANSWER TO FIRST
AMENDED COMPLAINT FOR
ORDER OF CONDEMNATION
UNDER MONTANA'S LAW OF
EMINENT DOMAIN**

Jack E. Heinz, Josiah M. Hodge, Clay	)
T. Jensen, Kevin M. Johnson, Carla E.	)
Jones, Micky A. Kammerer, John A.	)
Kappes, Susan M. Lowery, Lee	)
Macholz, Brenda K. Maes, Jason R.	)
Martin, Logan M. McInnis, Ross D.	)
Miller, Beate G. Newman, Maureen L.	)
Nichols, Michael L. Ogle, Travis Rice,	)
Eric M. Richards, Gerald L. Schindler,	)
Douglas J. Stephens, Sara S. Streeter,	)
Joseph C. Thul, Denise T. Tribble,	)
Patricia J. Wankier, Michael R.	)
Wildey, Angela J. Yonce, and Craig	)
M. Yonce),	)
	)
Intervenors.	)
	)

COMES NOW Defendant Carlyle Infrastructure Partners, LP (together with its affiliates, “Carlyle Infrastructure”), through its counsel of record, and answers the First Amended Complaint for Order of Condemnation Under Montana’s Law of Eminent Domain (“Amended Complaint”) as follows:

FIRST DEFENSE

With respect to the allegations in the opening paragraph of the Amended Complaint and in other numerous other paragraphs of the pleading, Plaintiff City of Missoula (“City” or “Plaintiff”) incorrectly defines and describes the water supply and distribution system owned and operated by Mountain Water Company (“Mountain Water”) inside and outside the municipal boundary of the City as “Missoula’s Water System.” Carlyle Infrastructure specifically and expressly

denies any suggestion that Plaintiff has a direct or indirect ownership interest in the water supply and distribution system owned by Mountain Water nor does the City have a franchise with Defendants. Therefore, the water supply and distribution system that is owned and operated by Mountain Water and serves customers who reside inside and outside the City's municipal boundary will be referred to as the "Mountain Water System" in this Answer.

I. PARTIES

1. Carlyle Infrastructure admits the allegation in the first sentence of paragraph 1. The second sentence of paragraph 1 contains a conclusion of law for which no response is required. To the extent a response is required, the allegation is denied. Carlyle Infrastructure denies the allegations in the third sentence of paragraph 1.

2. Carlyle Infrastructure admits the allegations in paragraph 2.

3. Carlyle Infrastructure admits the first two sentences of paragraph 3. For the third sentence of paragraph 3, Carlyle Infrastructure admits that it is the managing member of Western Water Holdings, LLC and that Western Water Holdings, LLC wholly owns Park Water Company, but denies any inference that it owns property in Montana utilized to operate Mountain Water System. For the fourth sentence of paragraph 3, Carlyle Infrastructure denies the allegation that it is "directly responsible", but admits that its representatives constitute a majority on

the Park Water Company board of directors and exercises decision-making authority in that capacity.

4. Carlyle Infrastructure denies the allegations in paragraph 4, but admits that it is the managing member of Western Water Holdings, LLC, which wholly owns Park Water Company, which in turn wholly owns Mountain Water Company. Carlyle Infrastructure admits that this ownership configuration has been in existence since December, 2011.

5. Carlyle Infrastructure affirmatively states that the correct legal entity is The Carlyle Group L.P. and denies Plaintiff's incorrect reference to the "Carlyle Group" in this paragraph and throughout the Amended Complaint. Carlyle Infrastructure will answer all allegations regarding the Carlyle Group with the assumption "Carlyle Group" means "The Carlyle Group L.P." Carlyle Infrastructure admits the first sentence of paragraph 5. Carlyle Infrastructure denies the second sentence of paragraph 5, but affirmatively states that Carlyle Infrastructure's representatives constitute a majority on the Park Water Company board of directors and exercises decision-making authority in that capacity. Carlyle Infrastructure admits the third sentence of paragraph 5, although it affirmatively states that Robert Dove is "a" Managing Director of The Carlyle Group L.P.'s Infrastructure Fund and it expressly denies the statement or inference

that Carlyle Infrastructure Fund owns the Mountain Water System or property in Montana utilized to operate Mountain Water System.

6. With respect to the allegations in paragraph 6, Carlyle Infrastructure denies that it owns or operates the Water System that currently serves the citizens and inhabitants of Missoula. Carlyle Infrastructure admits that Mountain Water Company (“Mountain Water”) owns and operates the privately-held, regulated Water System that, among other things, currently serves the citizens and inhabitants of Missoula.

II. JURISDICTION AND VENUE

7. To the extent the averments apply to Mountain Water, Carlyle Infrastructure admits the allegation in paragraph 7. Carlyle Infrastructure denies that the Court has subject matter jurisdiction over any property of Carlyle Infrastructure because it does not own property in Montana utilized to operate the Mountain Water System.

8. Regarding the allegations contained in paragraph 8, Carlyle Infrastructure denies that the Court has personal jurisdiction over it on the basis asserted by Plaintiff because Carlyle Infrastructure has no ownership interest in the Water System.

9. To the extent the averments in paragraph 9 apply to Carlyle Infrastructure, it denies the allegations.

III. FACTS ENTITLING THE CITY TO THE RELIEF SOUGHT

10. Paragraph 10 contains conclusions of law for which no response is required. To the extent a response is required, the allegations are denied.

11. Paragraph 11 contains conclusions of law for which no response is required. To the extent a response is required, the allegations are denied.

A. The Water System is Necessary for a Public Use

12. Regarding the allegations contained in paragraph 12, Carlyle Infrastructure admits that the Water System owned by Mountain Water has long been devoted to public use as authorized by law and for the benefit of Mountain Water's customers that reside both inside and outside of the municipal boundaries of the City of Missoula, but denies the remainder of the paragraph based upon the first unnumbered paragraph under First Defense on page 1 of this Answer.

13. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations of paragraph 13, but denies that municipal ownership is necessary to ensure that the Mountain Water System will be used in the future for a public purpose and to the benefit of Mountain Water's customers, both inside and outside the municipal boundaries of the City of Missoula.

14. Regarding the allegations contained in paragraph 14, Carlyle Infrastructure denies that Plaintiff may acquire the Mountain Water System through eminent domain by simply paying just compensation as determined in this

litigation. The same allegation is denied as containing a conclusion of law for which no response is required. To the extent a response is required, the allegations are denied. Finally, Carlyle Infrastructure admits that the City could acquire the assets owned by Defendant Mountain Water to operate the Mountain Water System if it could acquire those assets in a transaction with Park Water, but not the Defendants.

15. Carlyle Infrastructure denies the allegations in paragraph 15.

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

16. The first and second sentences of paragraph 16 contain conclusions of law for which no response is required. To the extent responses are required, the allegations are denied. Carlyle Infrastructure denies the remaining allegations in the third sentence because municipal ownership is not necessary 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. Regarding the allegations contained in paragraph 17, Carlyle Infrastructure denies that it owns and operates the Mountain Water System. Carlyle Infrastructure is without sufficient information to form a belief as to the remaining allegations and, therefore, denies them.

18. Carlyle Infrastructure admits that Mountain Water owns the Mountain Water System. Carlyle Infrastructure further admits that the Water System includes, without limitation, real property interests, water rights, and personal property that comprise the public water supply, transmission, and distribution systems serving most of the citizens and inhabitants of Missoula in addition to those customers who reside outside the municipal boundaries. Carlyle Infrastructure further admits that Plaintiff has the burden of proving that its proposed taking of the Mountain Water System is a more necessary public use. Carlyle Infrastructure denies the remaining allegations in the third sentence of paragraph 18.

19. Carlyle Infrastructure denies the allegations in paragraph 19.

20. Paragraph 20 contains conclusions of law for which no response is required. To the extent a response is required, the allegations are denied.

21. Carlyle Infrastructure denies the allegations in paragraph 21.

C. Changed Circumstances over the Past 30 Years

22. Carlyle Infrastructure denies the allegations in paragraph 22.

23. Carlyle Infrastructure denies the allegations in paragraph 23.

24. Carlyle Infrastructure denies the allegations in paragraph 24, although it admits that the timing of its sale of an interest in Park Water Company is based upon market conditions for mergers and acquisitions, as well as performance of the

underlying company, which can occur relatively soon after the acquisition of the interest. As an additional basis for denying the remainder of the allegations in paragraph 24, Carlyle Infrastructure asserts that terms “short-term” and “long-term” are vague and ambiguous.

25. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in the first sentence of paragraph 25 and, therefore, denies them. Carlyle Infrastructure denies the remaining allegations in paragraph 25.

26. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 26 and, therefore, denies them.

27. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 27 and, therefore, denies them.

D. The Contemplated Use of the Water System is More Necessary than its Current Use

28. Carlyle Infrastructure admits that Mountain Water System is privately owned and that Mountain Water’s ownership and operation of the Water System is already a public use. Carlyle Infrastructure denies the allegations in the second sentence of paragraph 28 because (1) it does not own the Mountain Water System and (2) the customers of Mountain Water are not customers of Carlyle Infrastructure.

29. Carlyle Infrastructure denies the allegations in paragraph 29.

30. Carlyle Infrastructure denies the allegations in paragraph 30.

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

31. Carlyle Infrastructure admits that Mountain Water System utilizes support services provided by Park Water as part of its operations. Charges associated with any contracted services provided by third parties and/or affiliated companies must be approved by the Montana Public Service Commission before those costs are charged to consumers. Carlyle Infrastructure denies the remainder of the allegations in the first sentence of paragraph 31. With respect to the allegations in the second sentence of paragraph 31, Carlyle Infrastructure admits that approximately \$2 million is spent annually by Mountain Water for administrative and support services provided by Park Water, but it denies that Carlyle Infrastructure operates Mountain Water or Mountain Water System.

32. Carlyle Infrastructure denies the allegations in paragraph 32.

33. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 33 and, therefore, denies them.

34. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 34 and, therefore, denies them.

35. Carlyle Infrastructure denies the first sentence of paragraph 35 because it does not charge customers or get rates approved by the Public Service Commission. Carlyle Infrastructure denies the second sentence of the paragraph

because municipal ownership will not have an advantageous effect on rates charged to consumers.

36. Carlyle Infrastructure denies the allegations in the first sentence of paragraph 36. It does not pay property taxes in Montana and, therefore, has taken no position with the Department of Revenue regarding a responsibility to pay taxes during the pendency of the above-captioned case. Carlyle Infrastructure denies the allegations in the second sentence of paragraph 36, including the parenthetical.

37. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 37 and, therefore, denies them.

38. In response to the allegations in paragraph 38, Carlyle Infrastructure admits that the rates charged to its customers are based on the cost of service as approved by the Public Service Commission in rate case orders. Carlyle Infrastructure denies the remaining allegations.

39. Carlyle Infrastructure denies the allegations in the first sentence of paragraph 39 because it does not operate or own the Mountain Water System and receives no distribution directly from Mountain Water Company. Carlyle Infrastructure admits that the Montana Public Service Commission establishes rates for customers of the Mountain Water System, which dictates the revenue to be received by Mountain Water. Carlyle Infrastructure is without sufficient

information to form a belief as to the truth of the allegations in the second sentence of paragraph 39 and, therefore, denies them.

40. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 40 and, therefore, denies them.

41. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 41 and, therefore, denies them.

42. Carlyle Infrastructure admits the allegations in paragraph 42. Carlyle Infrastructure denies any attempt by Plaintiff to characterize The Carlyle Group L.P. as an entity which exclusively seeks profits without considering other impacts affecting stakeholders.

43. Carlyle Infrastructure denies the allegations in paragraph 43 because (a) The Carlyle Group L.P.'s investors include, among others, employee pension funds, insurance companies, and other institutional investors, and (b) the term "a short period of time" is vague and ambiguous. Carlyle Infrastructure denies any attempt by Plaintiff to characterize The Carlyle Group L.P. as an entity which exclusively seeks profits without considering other impacts affecting stakeholders.

44. Carlyle Infrastructure admits that the allegations in paragraph 44 were accurate as of the beginning of 2014, but further states that they will fluctuate and are, therefore, an approximation of the current and future status of The Carlyle Group L.P.

45. Carlyle Infrastructure admits that the allegations in paragraph 45 were accurate as of the beginning of 2014, but further states that they will fluctuate and are, therefore, an approximation of the current and future status of The Carlyle Group L.P. It denies any averment or inference from the language within the parenthesis that the property owned in Montana to operate the Mountain Water System is owned by an entity other than Mountain Water Company or that The Carlyle Group L.P. manages the operations of Mountain Water Company.

46. Carlyle Infrastructure admits the allegations in the first sentence of paragraph 46. The second and third sentences in Paragraph 46 sets forth Plaintiff's characterization of The Carlyle Group L.P.'s 10-K report to the Securities and Exchange Commission, which speaks for itself and is the best evidence of its content. To the extent that a denial or admission is necessary, Carlyle Infrastructure thereby denies the allegations in the second and third sentences given the existence of the document to which those allegations refer. In addition, Plaintiff includes calculations and speculations in the second and third sentences in paragraph 46 for which Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the matters asserted and, therefore, denies them.

47. Carlyle Infrastructure admits the allegations in paragraph 47, but denies any attempt by Plaintiff to paraphrase and/or take information from documents out of context as part of the allegations. Specifically, Carlyle

Infrastructure asserts that it has a fiduciary duty to its investors and that it endeavors to create the maximum value for its investors on funds invested with Carlyle Infrastructure. Carlyle Infrastructure denies any attempt by Plaintiff to characterize The Carlyle Group L.P. as an entity which exclusively seeks profits without considering other impacts affecting stakeholders.

48. The allegations in Paragraph 48 set forth Plaintiff's characterization of The Carlyle Group L.P.'s mission statement, which speaks for itself and is the best evidence of its content. To the extent that a denial or admission is necessary, Carlyle Infrastructure thereby denies the allegations given the existence of the document to which those allegations refer. Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from said document out of context as part of its allegations to create a misleading impression. Carlyle Infrastructure denies any attempt by Plaintiff to characterize The Carlyle Group L.P. as an entity which exclusively seeks profits without considering other impacts affecting stakeholders.

49. Carlyle Infrastructure denies that the The Carlyle Group L.P. owns Missoula's Water System and, therefore, denies the allegations in paragraph 49. However, Carlyle Infrastructure admits that the timing of its sale of an interest in Park Water Company is based upon market conditions for mergers and acquisitions, as well as performance of the underlying company, which can occur

relatively soon after the acquisition of the interest. As an additional basis for denying the remainder of the allegations in paragraph 49, Carlyle Infrastructure asserts that term “long-term” is vague and ambiguous.

50. Carlyle Infrastructure denies that the The Carlyle Group L.P. became the owner of Missoula’s Water System in December 2011 and, therefore, denies the allegations in paragraph 50. Carlyle Infrastructure admits that (1) when it acquired the interest in Park Water in 2011, it anticipated maintaining the interest for five to seven years and (2) the timing of its sale of an interest in Park Water Company is based upon market conditions for mergers and acquisitions, as well as performance of the underlying company, which can occur relatively soon after the acquisition of the interest. As an additional basis for denying the remainder of the allegations in paragraph 50, Carlyle Infrastructure asserts that term “short-term” is vague and ambiguous.

51. Carlyle Infrastructure admits that the rate of return on equity invested and the rates charged to customers and ratepayers are approved by the Montana Public Service Commission. Carlyle Infrastructure denies the remaining allegations in paragraph 51. In addition, as a separate denial of the allegations in the first sentence of paragraph 51, Carlyle Infrastructure denies that it operates the Mountain Water System.

52. Carlyle Infrastructure admits that Mountain Water Company's operation is subject to regulations by the Montana Public Service Commission, including, among others, investments, return on equity, and customer rates. Carlyle Infrastructure denies the remaining allegations in paragraph 52. In addition, as a separate denial of the allegations in the second sentence of paragraph 52, Carlyle Infrastructure denies that it owns the Mountain Water System.

53. Carlyle Infrastructure admits that Mountain Water Company's operation is subject to regulation by the Montana Public Service Commission, including, among others, investments, returns on equity, and customer rates. Carlyle Infrastructure denies the remaining allegations in paragraph 53. In addition, Carlyle Infrastructure specifically reasserts that it does not operate Mountain Water System and therefore does not charge rates, spend capital, or pay for maintenance and repairs of the Mountain Water System. It also denies the second sentence of paragraph 53 in part because it does not own the Mountain Water System. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegation in the third sentence of paragraph 53 and, therefore, denies it.

54. Carlyle Infrastructure admits that customer rates charged by Mountain Water Company are approved by the Montana Public Service Commission.

Carlyle Infrastructure denies the remaining allegation in paragraph 54 because it does not charge rates for customers of the Mountain Water System. In addition, Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations pertaining to wastewater treatment charges and the validity of such comparisons and, therefore, denies them.

55. Carlyle Infrastructure denies that The Carlyle Group L.P. acquired Mountain Water Company or owns or operates Mountain Water Company and, therefore, denies the allegations in paragraph 55. Carlyle Infrastructure further denies the allegations in paragraph 55 based on invalidity of the comparison as the amounts for 2005 - 2008 also include funding by others (advances from developers, etc.) while the amounts for 2011 and 2012 are funded by Mountain Water Company alone.

56. Carlyle Infrastructure admits that customer rates charged by Mountain Water Company are approved by the Montana Public Service Commission. Carlyle Infrastructure denies the remaining allegations in paragraph 56 because it does not own or operate the Mountain Water System or charge customers for residential rates. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

57. Carlyle Infrastructure admits that customer rates charged by Mountain Water Company are approved by the Montana Public Service Commission.

Carlyle Infrastructure denies the second sentence of paragraph 57 because it does not own or operate the Mountain Water System or charge rates to customers of the Mountain Water System. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the remaining allegations and, therefore, denies them.

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

58. Carlyle Infrastructure denies the allegations in paragraph 58 that it had reached an agreement to sell Mountain Water System to Plaintiff in 2011. Carlyle Infrastructure admits that the City, Carlyle Infrastructure Partners, and the Clark Fork Coalition entered into a letter agreement on September 22, 2011, outlining rights and obligations among themselves, which speaks for itself and is the best evidence of its content. To the extent that a denial or admission is necessary, Carlyle Infrastructure thereby denies the allegations given the existence of the document to which those allegations refer. Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from the letter agreement out of context as part of the allegations.

59. In paragraph 59, Plaintiff attempts to characterize language in the letter agreement described in paragraph 58, which speaks for itself and is the best evidence of its content. To the extent that a denial or admission is necessary.

Carlyle Infrastructure thereby denies the allegations given the existence of the document to which those allegations refer. If the allegation in paragraph 59 asserts an agreement by Carlyle Infrastructure with the City in oral or written form other than the Letter Agreement of September 22, 2011, Carlyle Infrastructure denies the allegation. Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from the letter agreement out of context as part of the allegations.

60. Carlyle Infrastructure denies the allegation in the first sentence of paragraph 60 because the words “these promises” are vague and ambiguous. However, Carlyle Infrastructure admits that the City, Carlyle Infrastructure Partners, and the Clark Fork Coalition entered into a letter agreement on September 22, 2011, outlining rights and obligations among themselves, which speaks for itself and is the best evidence of its content. To the extent that a denial or admission is necessary, Carlyle Infrastructure thereby denies the allegations given the existence of the documents to which those allegations refer. With respect to the first sentence of paragraph 60, Carlyle Infrastructure further admits that it believed a letter agreement with the City and the Coalition would be viewed positively by stakeholders and members of the Public Service Commission. Carlyle Infrastructure denies the allegations in the second, third, and fourth sentences of paragraph 60. Carlyle Infrastructure denies any attempt by Plaintiff to

paraphrase and/or take information from the letter agreement out of context as part of the allegations.

61. Carlyle Infrastructure admits the allegations in the first and fifth sentences of paragraph 61. With respect to the second sentence of paragraph 61, Carlyle Infrastructure admits that Mayor Engen and Mr. Dove attended the meeting, but is without sufficient information to form a belief as to the truth of the remainder of the allegations in the sentence. Carlyle Infrastructure denies the allegations in the third, fourth, and ninth sentences of paragraph 61. With respect to the fourth sentence, Carlyle Infrastructure specifically denies that its representative(s) advised “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.” However, with respect to the same sentence, Carlyle Infrastructure admits that it communicated that an offer from the City could be entertained once Mr. Wheeler’s term on the Park Water Board had concluded. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in the sixth, seventh, and tenth sentences of Paragraph 61 and, therefore, denies them. With respect to the eighth sentence in paragraph 61, Carlyle Infrastructure admits that its representative(s) stated that Mr. Wheeler’s willingness to sell Park Water to Carlyle Infrastructure might be altered if he knew that Carlyle intended to sell Mountain Water to the City, but it denies

the remainder of the sentence. Carlyle Infrastructure denies the allegation in the last sentence of paragraph 61 because the words “this understanding” are vague and ambiguous.

62. With respect to the allegation in the first sentence of paragraph 62, Carlyle Infrastructure admits the City presented a term sheet to Mr. Dove, but denies that it reflected an “understanding with Carlyle” or that any negotiation took place. Plaintiff attempts to characterize language in the term sheet described in paragraph 62, which speaks for itself and is the best evidence of its content. To the extent a response is required to the allegations in paragraph 62 other than the acknowledgement of the existence of the term sheet, the allegations in the second sentence of paragraph 62 are denied. Carlyle Infrastructure denies the third sentence of paragraph 62. Carlyle Infrastructure admits that the term sheet was not signed, but denies the remainder of the fourth sentence of paragraph 62. Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from the term sheet out of context as part of the allegations.

63. Carlyle Infrastructure denies the allegations in paragraph 63 that it had reached an agreement with the City in the Summer of 2011 to sell Mountain Waters System to Plaintiff. Carlyle Infrastructure admits that the understanding it had with Mayor Engen is reflected in the letter agreement between the City, Carlyle Infrastructure, and the Clark Fork Coalition dated September 22, 2011,

outlining rights and obligations among themselves, which speaks for itself and is the best evidence of its content. To the extent that a denial or admission is necessary, Carlyle Infrastructure thereby denies the allegations given the existence of the document to which those allegations refer. If the allegation in the first sentence of paragraph 63 asserts an agreement by Carlyle Infrastructure with the City in oral or written form in the summer of 2011 other than the Letter Agreement of September 22, 2011, Carlyle Infrastructure denies the allegation. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in the second and third sentences of Paragraph 63 and, therefore, denies them. Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from the letter agreement out of context as part of the allegations.

64. With respect to paragraph 64, Carlyle Infrastructure admits that the City, Carlyle Infrastructure, and the Clark Fork Coalition entered into a letter agreement on September 22, 2011, outlining rights and obligations among themselves. In paragraph 64, Plaintiff attempts to characterize language in the letter agreement, which speaks for itself and is the best evidence of its content. To the extent a response is required to the allegations in paragraph 64 other than the acknowledgement of the existence of the letter agreement and the parties to it, the allegations in paragraph 64 are denied. Carlyle Infrastructure denies any attempt

by Plaintiff to paraphrase and/or take information from the letter agreement out of context as part of the allegations.

65. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in the first sentence of Paragraph 65 and, therefore, denies it. Carlyle Infrastructure specifically denies the assertion in the first sentence of paragraph 65 that a promise of a sale of Mountain Water to the City had been made to the City in 2011. Carlyle Infrastructure denies the second sentence of paragraph 65. Carlyle Infrastructure admits that the City and Mr. Dove agreed to continue communications after the acquisition was closed in December, 2011, but denies the remainder of the third sentence of paragraph 65.

66. Carlyle Infrastructure denies the allegations in Paragraph 66. Carlyle Infrastructure admits that “[a]fter PSC approval and the closing of the deal”, Mr. Dove adhered to the understanding Carlyle Infrastructure had with Plaintiff as reflected in the letter agreement between the City, Carlyle Infrastructure, and the Clark Fork Coalition dated September 22, 2011.

67. Carlyle Infrastructure admits the allegations in the first and second sentences of paragraph 67, although it cannot recall whether all of the attendees listed were present at the dinner. With respect to the third sentence of paragraph 67, Carlyle Infrastructure admits that it expressed a commitment to comply with the terms of the letter agreement. The City, Carlyle Infrastructure Partners, and the

Clark Fork Coalition entered into the letter agreement on September 22, 2011, outlining rights and obligations among themselves, which speaks for itself and is the best evidence of its content. To the extent that a denial or admission is necessary, Carlyle Infrastructure thereby denies the allegations given the existence of the document to which those allegations refer. If the allegation in the third sentence of paragraph 67 asserts the existence of an agreement by Carlyle Infrastructure with the City in oral or written form other than the Letter Agreement of September 22, 2011, Carlyle Infrastructure denies the allegation. Carlyle Infrastructure denies the allegation in the last sentence of paragraph 67 because the term “target date” is vague and ambiguous. In addition, Carlyle Infrastructure denies the allegations in the last sentence of paragraph 67 because the City decided that no offer for Mountain Water would be made before February 2013. Carlyle Infrastructure had nothing to do with that decision, and no such agreement was made at the dinner meeting.

68. Carlyle Infrastructure admits that there were continuing communications with the City on various subjects, although the subjects of the communications are not completely and accurately described in the first sentence to paragraph 68. With respect to the second, third, and fourth sentences of paragraph 68, Carlyle Infrastructure admits that it expressed a commitment to comply with the terms of the letter agreement. The City, Carlyle Infrastructure

Partners, and the Clark Fork Coalition entered into the letter agreement on September 22, 2011, outlining rights and obligations among themselves, which speaks for itself and is the best evidence of its content. To the extent that a denial or admission is necessary, Carlyle Infrastructure thereby denies the allegations given the existence of the document to which those allegations refer. If the allegations in the second, third, and fourth sentences of paragraph 68 assert the existence of an agreement by Carlyle Infrastructure with the City in oral or written form other than the Letter Agreement of September 22, 2011, Carlyle Infrastructure denies the allegation. Carlyle Infrastructure denies the third sentence of paragraph 68. With respect to the allegations in the fourth sentence of paragraph 68, Carlyle Infrastructure admits that Mr. Dove's interactions with the City were undertaken with actual and apparent authority to act on behalf of Carlyle Infrastructure and The Carlyle Group L.P.. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in the fifth sentence of Paragraph 68 and, therefore, denies them.

69. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in the first sentence of Paragraph 69 and, therefore, denies them. Carlyle Infrastructure denies the second sentence of paragraph 69. With respect to the third sentence of paragraph 69, Carlyle Infrastructure admits that the City had an expectation that the offer would be

considered in good faith by Carlyle Infrastructure, which it was, but it denies the remainder of the allegations in paragraph 69. Carlyle Infrastructure admits the allegation in the fourth sentence of paragraph 69. Carlyle Infrastructure denies the fifth sentence of paragraph 69. Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from the letter agreement or correspondence out of context as part of the allegations.

70. With respect to the first sentence of paragraph 70, Carlyle Infrastructure admits that all of the assets of Park Water may be sold as a whole, but it denies that it has failed to comply with the letter agreement with the City and the Clark Fork Coalition. Carlyle Infrastructure denies the second and third sentences of paragraph 70. With respect to the third sentence of paragraph 70, Carlyle Infrastructure asserts that it has complied and will comply with the terms of the letter agreement. The City, Carlyle Infrastructure Partners, and the Clark Fork Coalition entered into the letter agreement on September 22, 2011, outlining rights and obligations among themselves, which speaks for itself and is the best evidence of its content. To the extent that a denial or admission is necessary, Carlyle Infrastructure thereby denies the allegations given the existence of the document to which those allegations refer. If the allegations in the paragraph 70 assert the existence of an agreement by Carlyle Infrastructure with the City in oral or written form other than the Letter Agreement of September 22, 2011, Carlyle

Infrastructure denies the allegation. Carlyle Infrastructure denies the fourth and fifth sentence of paragraph 70, although it admits that its portfolio is expanding with power generation assets.

71. Carlyle Infrastructure denies the allegations in the first sentence of paragraph 71. Carlyle Infrastructure admits the allegations in the second sentence of paragraph 71.

72. Carlyle Infrastructure denies the allegations in the first sentence of paragraph 72. Carlyle Infrastructure admits the allegations in the second sentence of paragraph 72.

73. Carlyle Infrastructure denies the allegations in paragraph 73.

74. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in the first and second sentences in Paragraph 74 and, therefore, denies them. Carlyle Infrastructure affirmatively denies the representation in the first sentence of the paragraph that Carlyle Infrastructure “promised to sell” the Mountain Water System to the City. Carlyle Infrastructure denies the last sentence of the paragraph.

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

75. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in the first, second, third and fourth

sentences in Paragraph 75 and, therefore, denies them. Carlyle Infrastructure denies the allegations in the last sentence of paragraph 75.

76. Carlyle Infrastructure denies the allegations in paragraph 76.

77. Carlyle Infrastructure denies the allegations in paragraph 77.

78. Carlyle Infrastructure denies the allegations in paragraph 78.

79. The allegation in paragraph 79 contains a conclusion of law for which no response is required. To the extent a response is required, the allegation is denied.

80. Carlyle Infrastructure denies the allegations in paragraph 80.

81. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 81 and, therefore, denies them.

82. Carlyle Infrastructure denies the allegations in the first two sentences of paragraph 82 and reiterates that it does not own or operate the Mountain Water System. In the third sentence of the paragraph, Plaintiff attempts to characterize a submission to the Public Service Commission, which speaks for itself and is the best evidence of its content. To the extent that a denial or admission is necessary, Carlyle Infrastructure thereby denies the allegations given the existence of the document to which those allegations refer. Carlyle Infrastructure denies any remaining allegations.

83. Carlyle Infrastructure denies the allegations in paragraph 83 and reiterates that it does not own or operate the Mountain Water System.

84. Carlyle Infrastructure denies the allegations in paragraph 84 and reiterates that it does not own or operate the Mountain Water System.

85. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 85 and, therefore, denies them.

86. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 86 and, therefore, denies them. Carlyle Infrastructure also denies any attempt by Plaintiff to compare the Water System to a municipal sewage treatment system.

87. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 87 and, therefore, denies them. Carlyle Infrastructure denies any attempt by Plaintiff to compare the Water System to a municipal water waste treatment facility.

88. Carlyle Infrastructure denies the allegations in paragraph 88.

89. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 89 and, therefore, denies them.

90. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 90 and, therefore, denies them.

91. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in the first two sentences of paragraph 91 and, therefore, denies them. Carlyle Infrastructure denies the last sentence of paragraph 91.

92. Carlyle Infrastructure denies the allegations in the first, second, third, and sixth sentences of paragraph 92. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in the fourth and fifth sentences of paragraph 92 and, therefore, denies them.

93. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 93 and, therefore, denies them.

94. Carlyle Infrastructure denies the allegations in paragraph 94.

95. Carlyle Infrastructure denies the allegations in paragraph 95.

96. Carlyle Infrastructure denies the allegations in paragraph 96. Carlyle Infrastructure affirmatively states that it owns no property owned in Montana that is the subject of this condemnation action.

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

97. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 97 and, therefore, denies them.

98. Paragraph 98 contains a conclusion of law for which no response is required. To the extent a response is required, the allegation is denied.

I. Fair Market Value of the Water System

99. Carlyle Infrastructure denies the allegations in the first sentence of paragraph 99. Carlyle Infrastructure admits the allegations in the second sentence of paragraph 99.

100. Carlyle Infrastructure denies the allegations in paragraph 100 and affirmatively avers that The Carlyle Group L.P. did not purchase Mountain Water.

101. Carlyle Infrastructure denies the allegations in paragraph 101 and affirmatively avers that The Carlyle Group L.P. did not purchase Mountain Water in 2011.

102. Carlyle Infrastructure denies the allegations in paragraph 102.

103. Carlyle Infrastructure denies the allegations in paragraph 103.

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

104. Carlyle Infrastructure admits that Exhibit B is a true and correct copy of correspondence. The document speaks for itself and Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from said correspondence out of context as part of the allegations. Further, Carlyle Infrastructure denies the representations made by Plaintiff in its correspondence.

105. Carlyle Infrastructure admits that Exhibit C is a true and correct copy of correspondence. The document speaks for itself and Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from said

correspondence out of context as part of the allegations. Further, Carlyle Infrastructure denies the representations made by Plaintiff in its correspondence.

106. Carlyle Infrastructure admits that Exhibit D is a true and correct copy of correspondence. The document speaks for itself and Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from said correspondence out of context as part of the allegations. Further, Carlyle Infrastructure denies the representations made by Plaintiff in its correspondence.

107. Carlyle Infrastructure admits that Exhibit E is a true and correct copy of correspondence. The document speaks for itself and Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from said correspondence out of context as part of the allegations. Further, Carlyle Infrastructure denies the representations made by Plaintiff in its correspondence.

108. Carlyle Infrastructure admits that Exhibit F is a true and correct copy of correspondence. The document speaks for itself and Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from said correspondence out of context as part of the allegations. Further, Carlyle Infrastructure denies the representations made by Plaintiff in its correspondence.

109. Carlyle Infrastructure admits that Exhibit G is a true and correct copy of correspondence. The document speaks for itself and Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from said

correspondence out of context as part of the allegations. Further, Carlyle Infrastructure denies the representations made by Plaintiff in its correspondence.

110. Carlyle Infrastructure admits that Exhibit H is a true and correct copy of correspondence. The document speaks for itself and Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from said correspondence out of context as part of the allegations. Further, Carlyle Infrastructure denies the representations made by Plaintiff in its correspondence.

111. Carlyle Infrastructure denies the allegations in paragraph 111.

112. Carlyle Infrastructure admits that Exhibit I is a true and correct copy of correspondence. The document speaks for itself and Carlyle Infrastructure denies any attempt by Plaintiff to paraphrase and/or take information from said correspondence out of context as part of the allegations. Further, Carlyle Infrastructure denies the representations made by Plaintiff in its correspondence.

113. Carlyle Infrastructure admits that Plaintiff has not negotiated a purchase of the Water System and affirmatively states that Plaintiff's offer was not reflective of the fair market value of the Mountain Water System.

114. Carlyle Infrastructure denies the allegations in paragraph 114.

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

115. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 115 and, therefore, denies them.

116. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 116 and, therefore, denies them.

117. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 117 and, therefore, denies them.

118. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 118 and, therefore, denies them.

119. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 119 and, therefore, denies them.

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

120. Carlyle Infrastructure denies that it owns or operates the Water System. Carlyle Infrastructure denies the remaining allegations in paragraph 120.

121. Carlyle Infrastructure denies the allegations in paragraph 121.

122. Carlyle Infrastructure denies the allegations in paragraph 122.

123. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 123 and, therefore, denies them. Carlyle Infrastructure affirmatively states that it does not own any property that Plaintiff is seeking to condemn as shown on Exhibit J to the Amended Complaint.

124. Carlyle Infrastructure is without sufficient information to form a belief as to the truth of the allegations in paragraph 124 and, therefore, denies them. Carlyle Infrastructure affirmatively states that it owns no property in Missoula County that is subject to this condemnation action.

125. Paragraph 125 contains Plaintiff's characterization of this lawsuit to which no response is required. To the extent a response is required, the allegations are denied.

126. Carlyle Infrastructure admits the allegation in paragraph 126. Carlyle Infrastructure denies that Plaintiff is entitled to any of the relief requested in the Amended Complaint.

127. Any allegation in the Amended Complaint that was not specifically addressed, admitted, or denied is hereby generally denied.

WHEREFORE, Carlyle Infrastructure prays:

A. That Plaintiff take nothing by the Amended Complaint;

B. That Carlyle Infrastructure be awarded its costs and fees incurred in defending this action;

C. And for such other relief as the Court may deem just and proper.

SECOND DEFENSE

No franchise exists between the Plaintiff and one or both Defendants, which precludes relief for Plaintiff.

THIRD DEFENSE

Plaintiff's First Amended Complaint fails to state a cause of action upon which relief may be granted.

FOURTH DEFENSE

The letter agreement between Plaintiff, Carlyle Infrastructure, and others require that arbitration be pursued to resolve violations of the letter agreement.

FIFTH DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

SIXTH DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

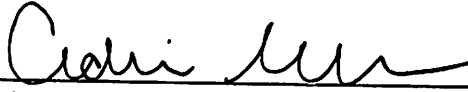
SEVENTH DEFENSE

Plaintiff's claims are barred by the principle of collateral estoppel and/or res judicata.

EIGHTH DEFENSE

Plaintiff's claims are barred by the law of the case doctrine.

Dated this 17th day of July, 2014.

A handwritten signature in black ink, appearing to read "William W. Mercer", is written over a horizontal line.

William W. Mercer

Adrian A. Miller

Holland & Hart LLP

401 North 31st Street

Suite 1500

P.O. Box 639

Billings, Montana 59103-0639

ATTORNEYS FOR DEFENDANT CARLYLE
INFRASTRUCTURE PARTNERS, LP

CERTIFICATE OF SERVICE

This is to certify that the foregoing was mailed to the following persons by United States mail, postage prepaid on the date herein.

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6979178_6

Dated this 17th day of July, 2014.



EXHIBIT “B”

EXHIBIT “B”

**PARK WATER COMPANY
PUC GENERAL ORDER 77
AS OF DECEMBER 31, 2013**

Officers & Compensation During 2013

	<u>Salary</u>	<u>Utility</u>	<u>Non-Utility</u>
President/CEO	539,419.00	539,419.00	
Executive Vice President/Corporate Secretary	337,728.00	337,728.00	
Senior Vice President/General Manager	281,086.00	281,086.00	
Senior Vice President	281,944.00	281,944.00	
Senior Vice President/CFO	291,862.00	291,727.00	135.00
Vice President	217,661.00	217,661.00	
Vice President - Retired 3/29/2013	45,718.00	45,718.00	
Assistant Vice President	163,927.00	163,927.00	
Senior Vice President	281,620.00	0.00	281,620.00
Vice President - Retired 10/31/2013	138,417.00	138,417.00	
Assistant Vice President	185,975.00	185,975.00	
	<u>2,773,337.00</u>	<u>2,481,582.00</u>	<u>291,755.00</u>

Names and titles of Employees receiving more than \$85,000 in 2013

	<u>Salary</u>	<u>Utility</u>	<u>Non-Utility</u>
Director of Revenue Requirements	188,729.00	188,729.00	
Director of Information Technology	172,805.00	172,805.00	
Director of Accounting	165,724.00	165,724.00	
Division Chief Engineer	144,493.00	144,493.00	
Enterprise Application Manager	141,392.00	141,392.00	
Communications Center Foreperson	124,853.00	124,853.00	
Senior Network Engineer	124,628.00	124,628.00	
GIS Project Coordinator	123,438.00	123,438.00	
Programmer Analyst	121,883.00	121,883.00	
Manager of Financial Services	120,762.00	120,762.00	
Production Supervisor	120,005.00	120,005.00	
Manager of Financial Reporting and Applications	119,898.00	119,898.00	
Field Foreperson - Retired 12/27/2013	115,191.00	115,191.00	
General Accounting Supervisor	114,810.00	114,810.00	
Cross Connection Control Specialist	112,481.00	112,481.00	
Utility Service Supervisor	112,188.00	112,188.00	
Rate Analyst	108,939.00	108,939.00	
Programmer Analyst	103,637.00	103,637.00	
Engineer Technician	101,838.00	101,838.00	
Production Foreperson	101,421.00	101,421.00	
Transportation Equipment Foreperson	101,107.00	101,107.00	
Manager of Safety Services	99,353.00	99,353.00	
Director of Human Resources	99,249.00	99,249.00	
Systems Engineer	97,708.00	97,708.00	
Benefits Manager	94,828.00	94,828.00	
Production Technician 3	94,248.00	94,248.00	
Civil Engineer 2	93,478.00	93,478.00	
Senior Public Affairs Specialist	92,831.00	92,831.00	
General Plant Lead	89,809.00	89,809.00	
Production Technician	88,994.00	88,994.00	
Production Technician	88,048.00	88,048.00	
	<u>3,578,765.00</u>	<u>3,578,765.00</u>	<u>0.00</u>

Other Fees paid to officers or Employees

None.

Fees

EXHIBIT “B”

EXHIBIT “B”

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HSchneider@perkinscoie.com

Admitted Pro Hac Vice

Attorneys for Plaintiff

**MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY**

THE CITY OF MISSOULA, a
Montana municipal corporation,

Plaintiff,

vs.

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

Defendants,

and

THE EMPLOYEES OF MOUNTAIN
WATER COMPANY, et al.

Intervenors.

Cause No. DV-14-352

Dept. No. 4

SUBPOENA DUCES TECUM

TO: Montana Public Service Commission
1701 Prospect Avenue
PO Box 202601
Helena, MT 59620

Pursuant to Montana Rule of Civil Procedure Rule 45(a), you are hereby directed and required to provide and/or permit inspection of all documents identified and described below pursuant to this Subpoena by August 28, 2014, to Boone Karlberg P.C., 201 West Main Street, Suite 300, Missoula, MT 59802.

DEFINITIONS & INSTRUCTIONS

In the case of doubt, as to the scope of a clause including "any," "all," "each," or "every," the intended meaning is inclusive rather than exclusive.

As used herein, "including" shall be construed to mean "including but not limited to" or "including without limitation."

For the purpose of this Subpoena Duces Tecum, unless otherwise specified, the following definitions and instructions shall apply:

Mountain Water Company. Mountain Water Company is commonly referred to as "Mountain," "Mountain Water," "MW" or "MWC." Any reference to Mountain Water Company in this document includes all abbreviations, shorthand, or any possible reference that would mean Mountain Water Company.

Park Water Company. Park Water Company is commonly referred to as “Park,” “Park Water,” or “PW.” Any reference to Park Water Company in this document includes all abbreviations, shorthand, or any possible reference that would mean Park Water Company.

The Carlyle Group. The Carlyle Group and Carlyle Infrastructure Partners, LP are commonly referred to together or as the same entity. Terms include “Carlyle” or “CIP.” Any reference to the Carlyle Group or Carlyle Infrastructure Partners, LP in this document includes all abbreviations, shorthand, or any possible reference that would be Carlyle or Carlyle Infrastructure Partners, LP. Further, the terms are considered interchangeable for this document.

Emails. The term “emails” includes any and all electronic messages, whether sent through a personal or government e-mail address.

Voicemail. “Voicemail” means a digital recording, but if digital recordings are unavailable, a narrative of the content of each will suffice.

Communication. “Communication” means any manner of communication between persons either electronic or not.

If the production of any documents responsive to this subpoena duces tecum are objected to on the grounds of privilege or work product, or for any other reason, with respect to each such document state: (1) the

identity of its author(s) or creator(s); (2) the identity of its recipient(s); (3) its subject matter; (4) the identity of the person(s) to whom the document or any portion thereof has already been revealed; (5) the source of the document; (6) the date of the document; and (7) the basis upon which it is being withheld.

If any document that would have been responsive has been destroyed or is otherwise no longer in your possession, custody or control: (1) describe the content of the document, and state the location of all copies of it; and (2) state the date of, and identify the person responsible for, its destruction, loss, transfer, or other action by which the document left your possession, custody or control.

SUBPOENA DUCES TECUM

Please provide the following information, whether in hard copy or electronic format:

- All emails between any Commissioner, employee, attorney, or representative of the PSC that reference or mention Mountain Water Company ("Mountain"), Park, and/or Carlyle from January 1, 2010 to present.
- All emails between John Alke and any Commissioner, employee, attorney, or representative of the Montana Public Service Commission ("PSC") that reference or mention Mountain, Park, and/or Carlyle from January 1, 2010 to present.

- All emails between any employee, attorney, or representative of Mountain, Park Water Company ("Park"), or Carlyle (excepting John Alke) and any Commissioner, employee, attorney, or representative of the PSC that reference or mention Mountain, Park, and/or Carlyle from January 1, 2010 to present.
- A copy of all voicemails from John Alke left with any Commissioner, employee, attorney, or representative of the PSC that reference or mention Mountain, Park, and/or Carlyle from January 1, 2010 to present.
- A copy of all voicemails from any employee, attorney, or representative of Mountain, Park, or Carlyle (excepting John Alke) left with any Commissioner, employee, attorney, or representative of the PSC that reference or mention Mountain, Park, and/or Carlyle from January 1, 2010 to present.
- A call log of all phone calls between John Alke and any Commissioner, employee, attorney, or representative of the PSC that discussed Mountain, Park, and/or Carlyle in any manner from January 1, 2010 to present.
 - The call log shall contain the following information: all parties to the call, date of call, length of call, and subject and content of the call.
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- A detailed table of all meetings between John Alke and any Commissioner, employee, attorney, or representative of the PSC that mentioned or discussed Mountain, Park, and/or Carlyle since January 1, 2010.
 - This table shall list the people present at the meeting, the date of the meeting, the length of the meeting, and the subject and content of the meeting.
- A detailed table of all meetings between any employee, attorney, or representative of Mountain, Park, or Carlyle (excepting John Alke) and any Commissioner, employee, attorney, or representative of the PSC that mentioned or discussed Mountain, Park, and/or Carlyle since January 1, 2010.
 - This table shall list the people present at the meeting, the date of the meeting, the length of the meeting, and the subject and content of the meeting.
- Provide a copy of all PSC ethics rules, ethics training materials, including manuals, power point presentations, or any other ethics guidelines used by the PSC.
- Provide a list of the number of times and instances where John Alke was able to call the Commission and, in the wake of the call, an item was placed onto the PSC's meeting schedule or agenda since January 1, 2010.
- Provide a table or list of all ex parte communications between any Commissioner, employee, attorney, or representative of the PSC and any employee, attorney, or representative of Mountain, Park, and/or Carlyle from January 1, 2010 to present.

You are further advised that Montana Rule of Civil Procedure 45 specifies certain protections for and duties upon persons subject to

subpoenas. In accordance with the requirements of Rule 45(a), the texts of Rules 45(d) and (e) are below.

Disobedience of this order may be deemed contempt of the court.

DATED this 14th day of August 2014.



Scott M. Stearns
Natasha Prinzing Jones
BOONE KARLBERG P.C.

William K. VanCanagan
Phil L. McCreedy
Datsopolous, MacDonald & Lind

Harry H. Schneider, Jr.
PERKINS COIE LLP
Application for *Pro Hac Vice* Admission
Pending

Attorneys for Plaintiff

Rule 45. Subpoena.

(d) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction -- which may include lost earnings and reasonable attorney fees -- on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance not Required. A person commanded to produce designated documents, electronically-stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) Objections. A person commanded to produce designated materials or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the designated materials or to inspecting the premises -- or to producing electronically-stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expenses resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person -- except that, subject to Rule 45(d)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically-Stored Information. These procedures apply to producing documents or electronically-stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form of Producing Electronically-Stored Information Not Specified. If a subpoena does not specify a form for producing electronically-stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically-Stored Information Produced in Only One Form. The person responding need not produce the same electronically-stored information in more than one form.

(D) Inaccessible Electronically-Stored Information. The person responding need not provide discovery of electronically-stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of the undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly assert the claim; and

(ii) describe the nature of the withheld documents, communications, or things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by email upon the following counsel of record at their addresses this 14th day of August 2014:

William T. Wagner Stephen R. Brown Peter J. Arant GARLINGTON, LOHN & ROBINSON, PLLP P.O. Box 7909 Missoula, MT 59807-7909 wtwagner@garlington.com srbrown@garlington.com pjarant@garlington.com	Joe Conner Adam Sanders W. Patton Hahn BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C. Suite 1800, Republic Centre 633 Chestnut Street Chattanooga, TN 37450-1800 jconner@bakerdonelson.com asanders@bakerdonelson.com phahn@bakerdonelson.com
John L. Alke HUGHES, KELLNER, SULLIVAN & ALKE, PLLP P.O. Box 1166 Helena, MT 59624-1166 johnalke@hksalaw.com	William W. Mercer Adrian A. Miller HOLLAND & HART LLP P.O. Box 639 Billings, MT 59103-0639
Gary M. Zadick UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C. P.O. Box 1746 Great Falls, MT 59403 gmz@uazh.com	Justin W. Kraske Jeremiah Langston Montana Public Service Commission 1701 Prospect Avenue P.O. Box 202601 Helena, MT 59620-2601 jkraske@mt.gov jlangston@mt.gov

BOONE KARLBERG P.C.

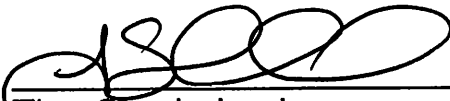

Tina Sunderland

EXHIBIT “C”

EXHIBIT “C”

Solem, Aleisha

From: John Alke <jalke@hksalaw.com>
Sent: Tuesday, April 29, 2014 10:57 AM
To: Beeby, Leroy
Cc: Kraske, Justin
Subject: RE: Mountain Water article

Either the City did not realize the statute was on the books, or it did not think Mountain would have the courage to raise it. We take the tax proration statute so seriously we pulled our rate case filing because of it. If it had not been for the City filing the condemnation action, and the tax proration statute, we would have filed by the end of this month for a rate increase somewhat larger than the first year tax reduction (2014 tax year, 2014/2015 payments). If the City dismisses its condemnation action, and the tax proration does not go into effect, we would have to file a rate case. But, it doesn't sound like the Mayor is going to pull his lawsuit.

From: Beeby, Leroy [mailto:lebeeby@mt.gov]
Sent: Tuesday, April 29, 2014 10:28 AM
To: John Alke
Subject: FW: Mountain Water article

Thought you'd enjoy this.

From: Kraske, Justin
Sent: Tuesday, April 29, 2014 10:17 AM
To: PSC_Comm'nrs
Cc: Whitney, Kate; Beeby, Leroy; Langston, Jeremiah
Subject: Mountain Water article

http://missoulain.com/news/local/article_943aaf90-cf41-11e3-bfc6-0019bb2963f4.html

Attorney says city responsible for \$900K a year in Mountain Water taxes

TOM BAUER/Missoulain

Mayor John Engen's bid to condemn Mountain Water Co. will cost the city of Missoula an estimated \$900,000 a year in property taxes while the eminent domain case is in litigation in Missoula County District Court, according to a letter from a Mountain Water lawyer and data from the company.

"Under Montana's laws governing eminent domain, it is now the responsibility of the city of Missoula to pay the property taxes that would have been paid by Mountain," reads the April 28 letter from attorney John Alke of the Helena firm Hughes, Kellner, Sullivan and Alke.

Mountain Water pays an estimated \$1.2 million in property taxes a year, with an estimated \$300,000 going to the city of Missoula, according to the water utility. In late 2011, the global investment firm the Carlyle Group took ownership of Mountain Water and its parent company in California.

In a bullish retort Monday, Engen blasted the Carlyle Group for trying to strong-arm the city and other taxing jurisdictions in Missoula. He said his acquisition team anticipated that “Carlyle would behave honorably” through the eminent domain proceeding, “but that was a mistake.”

“We have never anticipated paying this money in advance, and frankly, I think this is just one of the many tactics we may see from Carlyle in an effort to intimidate us,” Engen said.

Last year, Engen made several unsuccessful attempts to negotiate with Carlyle to purchase Mountain Water, including an offer of \$65 million. Carlyle declined the city of Missoula’s overtures, though, and this year, the city of Missoula filed an eminent domain proceeding in an attempt to force a sale in court.

In the letter to the Montana Department of Revenue, Alke notes the condemnation filing makes the city of Missoula, as condemnor, responsible for paying the property taxes of the entity it seeks to control. The assessment to the city begins as of April 2, the date of summons, according to the letter citing MCA 70-30-315.

“I need confirmation from you, as soon as possible, that the Montana Department of Revenue is now aware of the city’s condemnation action against Mountain, and will have in place a process for assessing the city for the property taxes due and owing on Mountain’s property during the pendency of this litigation,” Alke wrote.

Called “proration of taxes,” the Montana code reads as follows: “The condemnor must be assessed the condemnor’s pro rata 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.”

According to the letter, Mountain Water will pay the property taxes due on May 30 since the bill covers the second half of 2013. However, the correspondence notes that on Nov. 30, 2014, the city of Missoula will be responsible for a payment of roughly \$293,045.70, an estimate based on 2013 taxes and a summons date of April 2.

“If the litigation is still pending during the second half of 2014, the city will be responsible on May 30, 2015, for all of the property taxes due on Mountain’s property for the second half of 2014,” Alke said in the letter.

The condemnation attempt affects local schools, he wrote: “In 2013, Mountain paid \$356,722.39 in local property taxes to support Missoula area schools, and another \$137,369.99 in statewide levies for schools and state universities. For the first half of 2014, these property tax receipts from Mountain will be slashed in half because of the city’s condemnation action.”

In the past, Engen said the city of Missoula would make payments in lieu of taxes should the city succeed in acquiring Mountain Water Co. On Monday, though, he said the city did not budget to make payments during litigation.

The mayor also said the amount ostensibly due is based on a “clinker in state law,” and it is easily paid by just one individual at Carlyle: “One of the founders of Carlyle makes \$120,000 an hour, and he could pay this property tax bill by handing over about three hours of his paycheck. But these guys want to be bullies, and they want to intimidate.”

In the past, Carlyle had represented itself as willing to sell Mountain Water to the city of Missoula, Engen said. Now, Carlyle changed its tune, and he decried as gamesmanship its attempt to pit the school district against the city’s effort to secure a water supply for its citizens.

“It’s a great way to punish other taxing jurisdictions in the city of Missoula for trying to stand up for the purchase of this facility,” Engen said. “So I’m wondering: What’s next?”

Carlyle spokesman Christopher Ullman declined to respond to the mayor’s characterizations of the global firm. However, in an earlier letter to the city of Missoula, Carlyle infrastructure fund managing director Robert Dove promised to fight for the company’s property.

“Carlyle ... and Mountain Water will vigorously defend our legal rights,” read the letter declining one of the city’s offers. “We do not see how condemnation will benefit the ratepayers or the taxpayers of the community as ... condemnation is extremely costly.”

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"We simply didn't believe that, based on our reading of the statute, it would be an issue," Engen said. "We don't own the facility today. We're not even close to owning the facility today. We're not collecting a nickel in rate on the facility today, but Carlyle sure as hell is."

State Revenue Director Mike Kadas declined Monday to comment on the matter through public information officer Mary Ann Dunwell. Kadas served as Missoula mayor for nearly a decade, from late 1996 through 2005. In 2006, he passed the torch to Engen, whose campaign he supported.

In a brief interview, Dunwell said the DOR was aware of the issue, but she did not believe Kadas had received his copy of the letter from Mountain Water's legal counsel. However, she said the department would thoroughly review the request once it was in hand, and staff would act quickly.

"We're going to have somebody from legal look at it for their interpretation of the law," Dunwell said. "We want to interpret it effectively to benefit Montana citizens."

She also said the Department of Revenue's role is limited. The agency assesses property values and keeps ownership records, but it isn't the DOR that bills property owners, she said.

"We assess the value of a property, but the Missoula County treasurer sends out the tax bills," Dunwell said.

She said the DOR would need to analyze the law to determine its role if the responsible party was in dispute.

Missoula County treasurer Vickie Zeier said she hasn't seen such a dispute in the past, but she also would seek the advice of legal counsel if the situation arises. However, she said under normal circumstances, the DOR provides the county with values as well as names and addresses of recipients.

"They even tell us who to mail the bill to," Zeier said.

The DOR's Dunwell said the department would like to move quickly in its review. Engen said if the city of Missoula is deemed responsible for the payments, the acquisition team and community will have to evaluate options.

"We have to make a choice at that point," Engen said. "This is a question of whether we're going to be bullied into backing away from acquiring this essential service that should be in the hands of the citizens who are paying the bills."

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EXHIBIT “D”

EXHIBIT “D”

Solem, Aleisha

From: Beeby, Leroy
Sent: Tuesday, April 29, 2014 10:28 AM
To: John Alke (jalke@hksalaw.com)
Subject: FW: Mountain Water article

Thought you'd enjoy this.

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Sent: Tuesday, April 29, 2014 10:17 AM
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Cc: Whitney, Kate; Beeby, Leroy; Langston, Jeremiah
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EXHIBIT “E”

EXHIBIT “E”

Solem, Aleisha

From: Beeby, Leroy
Sent: Wednesday, April 2, 2014 4:17 PM
To: 'John Alke'
Subject: RE: Mountain Water

I believe we are. They are violating the stipulation and letter agreements that they signed.

From: John Alke [mailto:jalke@hksalaw.com]
Sent: Wednesday, April 2, 2014 4:12 PM
To: Beeby, Leroy
Subject: RE: Mountain Water

You guys going to intervene?

From: Beeby, Leroy [mailto:lebeeby@mt.gov]
Sent: Wednesday, April 02, 2014 03:41 PM
To: John Alke
Subject: Mountain Water

For your reading pleasure ☺

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EXHIBIT “F”

EXHIBIT “F”

Solem, Aleisha

From: John Alke <jalke@hksalaw.com>
Sent: Thursday, June 26, 2014 4:16 PM
To: Kraske, Justin
Subject: RE: voicemail

You bet

From: Kraske, Justin [mailto:JKraske@mt.gov]
Sent: Thursday, June 26, 2014 04:15 PM
To: John Alke
Subject: voicemail

Thanks John, we decided to schedule a work session on the agenda for next Tuesday. I may call you in the next day or so to check in on a few things.

Email Disclaimer: The information contained in this transmission is confidential, may be subject to the attorney-client and/or work product privileges and is intended only for use of the recipient named above. If the reader is not the intended recipient, or the employee or agent responsible for delivery of this information to the intended recipient, you are notified that this is not a waiver of privilege, and unauthorized review, use, disclosure, copying, or distribution of this information is strictly prohibited. If you have received this transmission in error, please immediately notify the sender by telephone at (406) 442-3690, and return this transmittal to the sender, by United States Postal Service, at the address above.

EXHIBIT “G”

EXHIBIT “G”

**MONTANA PUBLIC SERVICE COMMISSION
AGENDA NO. 14-07-01**

Date Published: June 26, 2014
For Work Week Commencing: June 30, 2014
Commission Meeting: July 1, 2014, 9:00 a.m.

General Introduction *This agenda is the Commission's agenda for the work week designated. In the latter part of each week (generally, Thursday by 2:00 p.m.) prior to the work week to which an agenda pertains, the agenda is posted on the public information bulletin board at the Commission offices, emailed to all persons who have properly requested notice by email, and posted to the Public Service Commission's worldwide web site located at <http://psc.mt.gov>.*

Place of Meetings *All meetings are held at the Commission offices, 1701 Prospect Avenue, Helena, Montana, unless otherwise noted.*

Live webcast *Unless otherwise noted on this agenda, all Commission meetings held during regular business hours that are noticed on this agenda will be webcast live via the audio and video feed links on the PSC website at <http://psc.mt.gov> (go to "Agendas & Meetings" then "Audio/Video Archives"). The audio feeds of meetings are also archived at the same website location.*

Inquiries *General inquiries concerning this agenda and subscribing to electronic notice may be made to Kate Whitney at (406) 444-3056. She may refer inquiries to another person within the agency.*

Accommodation for Persons with Disabilities *Anyone needing an accommodation for physical, hearing, or sight impairment in order to attend a scheduled meeting should contact the Commission secretary at (406) 444-6199 sufficiently prior to the meeting to allow accommodations to be made.*

9:00 a.m. Weekly Scheduling (Commission Conference Room – No Web Audio Feed)

9:30 a.m. Business (Bollinger Room)

Public Comments

Action Items All items identified below are for action at the Commission business meeting.

1. Approval of Commission Minutes (Aleisha)

Approval of the Commission Minutes for the week of June 23, 2014

2. Out-of-state staff travel (Justin)

Request approval for Jason Brown to travel to Denver, CO to be a presenter and attend the EUCI conference "Rate Design Strategies for Meeting Regulatory Objectives," July 22-23, 2014. Probable Motion: Move to approve the travel request.

3. Amendments to Telecommunications Interconnection Agreements (Mike)

The following amendments to interconnection agreements have been filed with the Commission. Each has been voluntarily negotiated by the parties involved. The amendments have been properly noticed, and no comments or objection to the amendments have been received by the Commission. Details of the amendments have been included with the filing and are available on the Public Service Commission's website at <http://psc.mt.gov> under the respective docket number.

D2002.6.67 – Qwest Corporation dba CenturyLink and Sprint Spectrum L.P. (filed April 3, 2014)

D2002.3.28 – Qwest Corporation dba CenturyLink and T-Mobile USA fka Voice Stream Wireless Corporation (filed April 9, 2014)

Probable Motion: Move to approve the amendments to the interconnection agreements.

Work Sessions All items identified below are for Commission discussion or action on the day designated.

1. N2014.5.49 – FCC Ordered July 1, 2014 Transition of Intrastate Access Charges – CenturyLink and CenturyLink QC – Approve Transitional July 1, 2014 Access Tariffs. (7/1/14)
2. Placeholder - D2014.6.57 – Glacier Point Water and Sewer, LLC – Implement Standard Tariff Rates - Act on interim rate request. (7/1/14)

3. Missoula and Mountain Water Condemnation District Court Case – Update Commission on Mountain Water District Court condemnation case and receive direction. (7/1/14)
4. Placeholder - D2014.4.43 – NorthWestern Energy – NorthWestern Energy’s Petition to Set Contract Terms and Conditions for Greenfield Wind, LLC – Discuss/act on NorthWestern Energy’s objections to PSC data requests. (7/1/14)
5. Federal Energy Regulatory Commission Notice of Intent Not to Act and Declaratory Order regarding the petition of Hydrodynamics et al. for enforcement pursuant to Section 210(h) of PURPA – Brief the Commission on FERC’s Declaratory Order and discuss rescinding Order 7199e. (7/1/14)
6. Placeholder - D2013.12.85 – NorthWestern Energy – Discuss/act on any procedural or discovery matters that arise, including, but not limited to, objections to moving data requests into the record. (7/1/14)
7. D2013.12.85 – NorthWestern Energy – Discuss/decide on the form and content of the Commission’s prehearing memorandum. (7/1/14)
8. Communications and Research Director Year End Performance Evaluation and Review – Discuss all matters relative to this exempt position. (Closed Session) (7/1/14)

Other Meetings

Weekly Scheduling, Review of Monthly Calendars, and Docket Status Updates (if requested by a Commissioner).

Notice Items All items identified below are noticed for public participation purposes. Unless otherwise stated in the text of the notice, the items will be action items on the next following agenda or a subsequent agenda and participation may be had by submitting written comments to the Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601, within 5 calendar days following publication of this agenda. Public comments on a noticed matter may also be submitted within the required time through the PSC's web-based comment form at <http://psc.mt.gov/Consumers/comments>. Comments should reference the docket number of the matter.

Protective Orders – Notice Items The Commission has received the following requests for protective order pursuant to ARM 38.2.5007. Comments on the requests may be submitted at any time prior to ruling. Copies of these requests may be viewed on the Commission's web site at <http://psc.mt.gov>

Protective Orders – Information Items The Commission has issued the following protective orders. These orders may be challenged pursuant to ARM 38.2.5008. Copies of these orders may be viewed on the Commission's web site at <http://psc.mt.gov>

Information Items All items identified below are for information only.

New Filings Received in Past Week

D2014.6.57 - Application of Glacier Point Water and Sewer, LLC to Implement Standard Rate Tariffs for Water and Sewer Service to Glacier Point Subdivision in Helena, MT

EXHIBIT “H”

EXHIBIT “H”

MISSOULIAN EDITORIAL: Open meeting reminder for PSC

JULY 14, 2014 8:15 AM

For those in need of a reminder, here is Article II, Section 8 of the Montana Constitution again:

“Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.”

By “those in need of a reminder,” we mean, of course, the Montana Public Service Commission. On the first day of this month, commissioners took action on an item of significant public interest without posting proper public notice first. And that means they violated the state Constitution.

Missoulians in particular will be interested to know that the action they’ve been deprived of the right to comment on concerns the highly controversial – and hugely expensive – Mountain Water case. All five commissioners voted for the PSC to intervene in City of Missoula v. Mountain Water Co. and Carlyle Infrastructure Partners through a petition filed in District Court.

Whether Missoulians or any other member of the Montana public agrees with the commission’s intervention is apparently of little concern to commissioners. The agenda posted the week before their July 1 meeting says, simply, “Missoula and Mountain Water Condemnation District Court Case: Update Commission on Mountain Water District Court condemnation case and receive direction.”

Hmm. Update? Receive direction? That barely hints at the possibility of filing an intervention in district court. Before our elected officials get involved in a lawsuit, shouldn’t they pause to hear from the people who elected them? Especially when it concerns an issue as vital to Missoulians as our local water utility?

There’s ample precedent to suggest that Missoulians are keenly interested in this case. In 2010, the Carlyle Group’s bid to buy Mountain Water attracted large crowds of residents eager to learn more about the global investment firm, the role of the water company and plans for both. Now, the city of Missoula, which has made repeated offers to buy the water utility from Carlyle, is seeking to force a sale through condemnation – and public interest is at least as strong, if not more so, with ratepayer and taxpayer dollars on the line.

Clearly, Missoulians have a significant interest in this case. That’s been sufficiently demonstrated by strong turnout to public meetings and ongoing public discussion in letters and columns in this newspaper. Had Missoulians been given notice, a few concerned citizens may have exercised their right to comment on the issue BEFORE commissioners made their decision.

Failure to provide adequate notice deprives the public of the right to participate in government. Since that didn't happen, the only thing to do now is to void the action – as demanded in the Montana Code Annotated – and start over. If not, they risk the very real possibility of being challenged in court and forced to nullify the vote.

But it shouldn't take the lawsuit. Hopefully, the commissioners understand now that they have deprived the people they were elected to serve of the very important right of participation in their government.

The commission can make this right by putting the matter on an upcoming agenda, posting an adequate notice of that agenda – and then listening closely to anyone who offers a comment before making any further decisions.

EDITORIAL BOARD: Publisher Jim McGowan, Editor Sherry Devlin, Opinion Editor Tyler Christensen

EXHIBIT “I”

EXHIBIT “I”

Solem, Aleisha

From: John Alke <jalke@hksalaw.com>
Sent: Wednesday, July 16, 2014 1:58 PM
To: Kraske, Justin
Subject: RE: Mountain Water Company - Private Information - City Requests For Access

Thanks

From: Kraske, Justin [mailto:JKraske@mt.gov]
Sent: Wednesday, July 16, 2014 01:40 PM
To: John Alke
Cc: Bill Mercer; nsstoffel@hollandhart.com
Subject: RE: Mountain Water Company - Private Information - City Requests For Access

John,

I just got off the phone with Bill Mercer and Nikolas Stoffel. I indicated I would follow-up with you and them by email shortly extending the deadline for a response, then I received your email. During that phone call, I indicated that staff would be reviewing the request further and decide later this week whether staff would like briefing from the parties or whether staff was ready to make a decision. I will get back to everyone later this week.

Thanks,

Justin

From: John Alke [jalke@hksalaw.com]
Sent: Wednesday, July 16, 2014 1:21 PM
To: Kraske, Justin; sstearns@boonekarlberg.com
Cc: Bill Wagner (wtwagner@garlington.com); Conner, Joe (jconner@bakerdonelson.com); 'wwmerc@hollandhart.com'; johnk@mtwater.com; 'Christopher Schilling' (CSchilling@parkwater.com)
Subject: Mountain Water Company - Private Information - City Requests For Access

Justin:

On July 15, 2014, I received three letters from Scott Stearns on behalf of the City of Missoula dated July 11, 2014. Each of them had as an attachment a letter to the Commission demanding access to what may be confidential or proprietary information. One letter was submitted with respect to information filed in what is now a closed docket, PSC Docket D2012.7.81, Mountain's last general rate case. The other two letters refer to Mountain's 2012 and 2013 annual reports. With respect to the last two Stearn letters, Mountain has not provided to the Commission the information demanded by the City. Mountain cannot provide it until the Commission first issues a protective order which prevents it public disclosure.

With respect to the first request, Mr. Stearns has referenced materials provided by Mountain in response to thirteen data requests submitted by either the PSC or the MCC, and identified in his letter. At least the first four of those data requests asked for federal and state income tax returns, and the compensation paid to individual employees of both Mountain and Park Water Company. I have not yet had time to review the other nine identified data responses to determine what information is being requested.

I believe the City's request is governed by the provisions of the Commission's administrative rule 38.2.5028, as the proceedings in PSC Docket D2012.7.81 are over, and a final rate order has been issued. Moreover, although the City intervened in the proceeding, it specifically informed the Commission that it was only monitoring the proceeding. In

short, the City is not requesting access to these documents for purposes of the proceeding in which they were furnished to the Commission. I believe that makes ARM 38.2.5028 the controlling provision.

As the Commission knows, the City has filed a condemnation case against Mountain, and is seeking the requested information for purposes of that condemnation proceeding. I believe that Mountain is entitled to challenge the City's request in accordance with the procedure set forth in ARM 38.2.5028. If that is correct, Mountain has ten business days from July 15, 2014, to respond to the City's request.

In the event the Commission determines the provisions of ARM 38.2.5028 do not apply to the City's requests for documents provided in a completed rate case, I respectfully request the same 10 business days to respond.

John Alke
Hughes, Kellner, Sullivan & Alke, PLLP
40 West Lawrence Street, Suite A
P. O. Box 1166
Helena, MT 59624-1166

(406) 442-3690 

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Solem, Aleisha

From: Bill Mercer <WWMercer@hollandhart.com>
Sent: Wednesday, July 16, 2014 12:31 PM
To: Kraske, Justin
Cc: Nik Stoffel
Subject: Re: City of Missoula confidential document request

Can we use a call-in line? If so, Nik Stoffel will join the call.

877 270-3379

Passcode: 2018330672
Bill Mercer
Holland & Hart LLP
406.896.4607 Office
406.647.3223 Mobile
wwmerc@hollandhart.com

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From: Kraske, Justin [mailto:JKraske@mt.gov]
Sent: Wednesday, July 16, 2014 11:51 AM
To: Bill Mercer
Subject: RE: City of Missoula confidential document request

Let's go with 12:45. I will give you a call on your cell phone. Thanks.

From: Bill Mercer [WWMercer@hollandhart.com]
Sent: Wednesday, July 16, 2014 11:45 AM
To: Kraske, Justin
Subject: Re: City of Missoula confidential document request

12:30 or 12:45? 406 647-3223 

Bill Mercer

Holland & Hart LLP

406.896.4607  Office

406.647.3223  Mobile

wwmerc@hollandhart.com

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From: Kraske, Justin [mailto:JKraske@mt.gov]
Sent: Wednesday, July 16, 2014 11:29 AM
To: Bill Mercer
Subject: RE: City of Missoula confidential document request

I'm in the NorthWestern Energy Hydro hearing all day, but I should be available on the break for lunch around 12-1 and possibly I can step out later this afternoon. Did you have available time on the lunch hour, if so I can give you a call. Should I call your office or mobile number?

From: Bill Mercer [WWMercer@hollandhart.com]
Sent: Wednesday, July 16, 2014 11:08 AM
To: Kraske, Justin
Subject: Re: City of Missoula confidential document request

Do you have time for a brief call today?
Bill Mercer
Holland & Hart LLP
406.896.4607 Office
406.647.3223 Mobile
wwmerc@hollandhart.com

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From: Kraske, Justin [mailto:JKraske@mt.gov]
Sent: Wednesday, July 16, 2014 11:03 AM
To: Bill Mercer
Subject: FW: City of Missoula confidential document request

Bill,

Since you are the Carlyle attorney in the condemnation case, I wanted to make sure you were kept aware of confidential information request from the City of Missoula. Please see the email below to John Aike. ~~If you have any objection from your client's position, please let me know.~~

Thanks,

Justin

From: Kraske, Justin
Sent: Tuesday, July 15, 2014 11:41 AM

To: jalke@hksalaw.com

Subject: City of Missoula confidential document request

John,

I assume you have seen the City of Missoula's request for confidential information in the sales docket. If you have any objection or response please file a letter or statement in the sales docket by the end of the day on Thursday, if that is a reasonable time frame for you to meet. I think the City wants a decision as soon as possible. We plan to have the City's request posted online in that docket. I'm really busy with the hydro case, but if you have questions, let me know.

Justin

EXHIBIT “J”

EXHIBIT “J”

Scott M. Stearns
Natasha Prinzing Jones
BOONE KARLBERG P.C.
201 West Main, Suite 300
P.O. Box 9199
Missoula, MT 59807-9199
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sstearns@boonekarlberg.com
npjones@boonekarlberg.com

Attorneys for City of Missoula

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

Docket No. n2014.2.21

IN THE MATTER OF MOUNTAIN)	
WATER COMPANY'S ANNUAL)	
REPORT FOR 2013)	CITY OF MISSOULA'S
)	MOTION AND SUPPORTING
)	MEMORANDUM CHALLENGING
)	MOUNTAIN WATER'S MOTION
)	FOR PROTECTIVE ORDER

The City of Missoula ("City") respectfully submits this motion challenging Mountain Water Company's ("Mountain Water") request for protective order, in accordance with ARM 38.2.5008(3). The City integrates with this challenge its supporting memorandum.

To effectively regulate public utilities in Montana, the Montana Public Service Commission ("PSC") must know the salaries of the top officers of the utilities in the state, and the public has the corresponding right to know this information. Under Montana's Constitution, no person shall be

deprived of the right to examine documents the PSC relies upon to make its regulatory decisions. There is no reasonable expectation of privacy in the top level salaries paid to utility executives – virtually every aspect of the utility's operation is reported to the PSC and subject to regulation. The PSC should deny Mountain Water's request for a protective order and allow ratepayers in Missoula to know whether the monopoly utility that provides their only source of water is using PSC-approved rate increases to provide excessive pay to their top officers.

BACKGROUND

Pursuant to the 1984 National Association of Utility Regulatory Commissioners Uniform System of Accounts for Water Utilities, and to perform its duty to "supervise and regulate the operations of public utilities, common carriers, railroads, and other regulated industries" under Mont. Code Ann. § 69-1-102, the PSC requires each utility in Montana to provide an annual report. This report includes information about the regulated utility's income, expenses, corporate structure, the names and salaries of each utility's "officers and managers," and a long list of other information. Under the Information Transparency Rule in ARM 38.2.5031, any information held by the Commission is open to the public for inspection unless the Commission has issued a protective order for the information or

the information is internal Commission non-utility information or other information protected by law.

Mountain Water has refused to report the salaries of its officers and directors to the PSC and is demanding a protective order to hide the salary information from public view. The PSC has discretion to issue a protective order under only two scenarios: 1) when necessary to preserve trade secrets or 2) for “other information that must be protected under law, as required to carry out its regulatory functions.” Mont. Code Ann. § 69-3-105(2). Mountain Water has not claimed a protective order is necessary to protect trade secrets, but argues the salaries of its officers and directors are private and confidential information under Montana law. To perform its regulatory function, the PSC has long required utilities in Montana to report the salaries of officers and directors, and there is no authority – no statute, court opinion, or anything else – that supports the notion that the salaries of officers and directors of monopoly public utilities are “private and confidential information under Montana law.” In fact, the Montana Constitution is clear: the public has a right to know the information.

ANALYSIS

I. RATEPAYERS HAVE A RIGHT TO KNOW HOW MUCH THEY PAY TOP EXECUTIVES OF PUBLIC UTILITIES.

Article II, Section 9 of the Montana Constitution states “[n]o person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy *clearly exceeds* the merits of public disclosure.” (Emphasis added.) In interpreting Section 9, the Court has held there is a constitutional presumption that all documents of every kind in the hands of public officials are amenable to inspection. *Great Falls Tribune v. Mont. Public Service Comm’n*, 2003 MT 359, ¶ 54, 319 Mont. 38, 82 P.3d 876.

The Montana constitutional provisions guaranteeing the public’s right to know and individuals’ right of privacy are often in tension. *See Billings Gaz. v. City of Billings*, 2013 MT 334, ¶ 12-14, 372 Mont. 409, 313 P.3d 129. These conflicting interests must be “balanced in the context of the facts of each case, to determine whether the demands of individual privacy clearly exceed the merits of public disclosure.” *Id.* at ¶ 14 (citing *Missoulian v. Bd. of Regents of Higher Educ.*, 207 Mont. 513, 529, 675 P.2d 962, 971 (1984)).

Mountain Water is a “regulated company” under Montana law (Mont. Code Ann. § 69-1-201) and because of its unique relationship with the public, is subject to a more intrusive level of regulation than other private entities. Contrary to Mountain Water’s assertion that “[t]he Commisison has no regulatory authority of any kind over Mountain . . . employees” (Mountain Water Mtn. Protective Order ¶ 7 (May 15, 2014)), Montana law has long required Mountain Water to provide an annual report to the PSC that includes “all the information that the commission considers necessary to the proper performance of its duties.” Mont. Code Ann. § 69-3-203(2). An officer, agent, or employee of any public utility that “willfully fails or refuses to answer any questions” requested by the PSC as part of the annual report is subject to penalties. Mont. Code Ann. § 69-3-208. Every public utility must file with the Commission schedules showing all rates, tolls, and charges for any service they provide, and such schedules are to be printed and available to the public. Mont. Code Ann. § 69-3-301. In recent years, the Montana Supreme Court has rejected efforts to narrow the PSC’s authority to investigate utilities, holding that the PSC has broad investigatory power in Montana and should not be denied access to information necessary to perform its statutory investigative duties. *Qwest Corp. v. Montana Dep’t of Pub. Serv. Regulation*, 2007 MT 350, ¶ 38, 340

Mont. 309, 174 P.3d 496 (citing *Montana Human Rights Div. v. City of Billings*, 199 Mont. 434, 444–45, 649 P.2d 1283, 1288–89 (1982)).

Mountain Water has not explained why other utilities in Montana must fully comply with Montana law and the Montana PSC's reporting requirement while Mountain Water and its owner, the Carlyle Group, should receive special treatment. Major utilities such as Northwestern Energy regularly report salary information for their top executives to the Montana PSC. Mountain Water and the Carlyle Group should do the same because they, like all other utilities in Montana, must comply with Montana law.

The Montana Constitution guarantees that no person may be deprived of the right to access executive salary information once provided to the PSC. Mont. Const, Art. II, § 9. The language of the Montana Constitution is clear: The public's right to know trumps privacy concerns unless the "demand of individual privacy clearly exceeds the merits of public disclosure." *Id.* Here, there can be no question the merits of public disclosure are exceedingly strong, and the demand of individual privacy is exceedingly weak.

Mountain Water and the Carlyle Group are owners and operators of a private utility company with monopoly power over Missoula's water system. If the PSC approves a rate increase proposed by Mountain Water and the

Carlyle Group, Missoula residents are obligated to pay that rate.

Consumers in Missoula cannot negotiate independently with Mountain Water and the Carlyle Group over water rates. They cannot seek an alternate water provider. The market provides no check against Mountain Water executives and their corporate overlords lining their pockets at the expense of Missoula ratepayers. The public has no recourse under the law to protect their interests other than through the PSC. Accordingly, the public should have access to the same information as the PSC to know the full context of whether a rate increase should be approved. The Montana Constitution firmly rejects the notion that the public should blindly trust an agency's regulatory decision while being denied access to the data that formed the basis of that decision.

Importantly, the California Public Utilities Commission ("PUC") requires one of Mountain Water's parent companies – Park Water – to disclose the salaries of those employees earning \$85,000 or more. See Ca. PUC Code § 583. By demanding this protective order, Mountain Water is seeking an absurd result: the public can know what executives make in California, but the public is denied any information about what the executives are making in Montana.

The critical nature of the subject information to Missoula ratepayers is underscored by recent developments. The City has brought a condemnation action against Mountain Water and its owner, the Carlyle Group, in no small part out of concerns that excessive executive pay (the Carlyle Group's three founding members each earned \$250 million last year) gouges both Missoula ratepayers and deprives the Missoula water system of resources for the regular employees of Mountain Water and the investments in Mountain Water's infrastructure.

Price gouging and excessive executive compensation is a serious concern for Missoula residents. Seventy-four percent of those responding to a May, 2014 survey of Missoula voters stated that they felt a City-owned water service would do a better job of avoiding excessive bonuses and salaries than a private for-profit company like Mountain Water/Carlyle Group. See Harstad Strategic Research, Inc. "Missoula City Voter Survey", May 5-11, 2014, Exhibit A, page 3. Respectfully, the people of Missoula need and deserve more than hollow "trust us" assurances that top Mountain Water and Carlyle Group executives are not lining their pockets at the expense of Missoula ratepayers. The people of Missoula are the best judge of whether they are being taken advantage of and, as such, they need to see the executive salary figures for themselves.

II. MOUNTAIN WATER'S TOP EXECUTIVES DO NOT HAVE A REASONABLE EXPECTATION OF PRIVACY IN HOW MUCH THEY DRAW FROM REVENUE GENERATED BY STATE-SANCTIONED RATES.

Mountain Water has not alleged any facts that would distinguish the salary information it seeks to protect from the salary information of any executive at any other public utility. Thus, granting a protective order in this case would be to acknowledge a patently unsupportable premise – that *all* executive compensation information for *all* utilities must be shielded from public view. Mountain Water's argument fails, first and foremost, because it disregards the fact that no top executive of a public utility would reasonably expect their salary to remain secret when the PSC has required disclosure of such information for years and such information is critical to protect the public from price gouging.

To evaluate a claimed privacy interest, the Montana Supreme Court considers: 1) if the person has a subjective or actual expectation of privacy; and 2) if society is willing to recognize the expectation as reasonable.

Billings Gaz. v. City of Billings at ¶ 18 (citing *Mont. Human Rights Div. v. City of Billings*, 199 Mont. 434, 442, 649 P.2d 1283, 1287 (1982)); *State v. Brooks*, 2012 MT 263, ¶ 14, 367 Mont. 59, 289 P.3d 105. Whether or not one has a subjective expectation of privacy is a question of fact. *Havre Daily News v. City of Havre*, 2006 MT 215, ¶ 23, 333 Mont. 331, 142 P.3d

864. Whether an individual's expectation would be deemed reasonable by society involves consideration of a number of factors, including: 1) attributes of the individual, especially whether that person holds a position of trust; 2) the nature of the information; 3) the relationship between the information and the person's public duties; and 4) the merits of public disclosure versus the demand of individual privacy. *Havre Daily News*, at ¶ 23. Individuals in positions of public trust have a lessened expectation of privacy. *Great Falls Tribune Co. v. Cascade County Sheriff*, 238 Mont. 103, 107, 775 P.2d 1267, 1269 (Mont. 1989).

With the request for protective order, Mountain Water executives have manifested a subjective expectation of privacy in how much they are paid by a heavily regulated public utility. See *Aff. John Kappes and Leigh Jordan* (Feb. 13, 2014). However, that expectation could never be deemed reasonable by society, meaning there is no constitutionally protected privacy interest. Public disclosure of top executive pay at public utilities is common and essential to effective oversight over a utility with monopoly power and government-sanctioned rate structures. See *again*, the California PUC example requiring Park Water to disclose the salaries of those employees earning \$85,000 or more pursuant to Ca. PUC Code § 583.

Disclosure of executive salary is also common in other contexts where excessive executive compensation has historically been problematic, such as is the case with publicly traded companies. Federal securities laws require full disclosure of compensation paid to Chief Executive Officers, Chief Financial Officers, and certain other high-ranking executive officers of public companies. 17 C.F.R. § 229.402. Congress passed these disclosure requirements after executives at companies like Enron repeatedly betrayed investor trust and lined their own pockets at the expense of investors and the health of the companies they worked for. Executive compensation is well understood as a clear signpost to show an investor or stakeholder whether a company is managed properly or if top company officers are taking them for a ride. Like the shareholders of a public company, Missoula ratepayers should know how much top officers of Mountain Water are paying themselves.

In its brief, Mountain Water badly mischaracterizes a 1989 Attorney General opinion by splicing quotes from the opinion out of context. Fortunately, that opinion, which involved the claimed privacy of the Buyers Affidavit and Certification submitted to the Board of Housing pursuant to the Mortgage Credit Certificate Program, is available for public view. The opinion is clear that the demands of individual privacy *did not* outweigh the

merits of public disclosure when the public had a substantial interest in ensuring the government board administered a public program properly and participants in a government program complied with the program's requirements. 43 Attorney General Opinions, No. 25 at p. 5. Attorney General Marc Racicot wrote,

[U]pon submission to the Board, the information is integrated into a governmental function that directly benefits the borrower, and his objective expectation of privacy is thereby reduced. In comparison, the public has a substantial interest in verifying continued compliance of MCC participants, since the program involves the public treasury. Public disclosure is an added safeguard to assure that the Board administers the MCC program properly and that participants comply with the program's requirements.

Id. at 4-5 (emphasis added).

This opinion not only fails to support Mountain Water's position, it refutes it. Indeed, the opinion ordered the release of information relating to individual property owners' annual household income – individuals who might expect a far greater right to privacy in their financial information than top officials of a monopolistic public utility. That Mountain Water was forced to rely so heavily on an opinion that actually cuts against its position is telling.

Every *Havre Daily News* factor points convincingly to the conclusion that a top executive does *not* have a reasonable expectation of privacy in

the salary they are paid by a public utility. The executive of a public utility holds a position of public trust, the salary information is essential to protecting ratepayers from price gouging, and details about executive pay are directly related to executives' duties owed to ratepayers. The merits of public disclosure of salary information clearly outweigh the demand of executives' individual privacy rights, especially in the context of a monopolistic utility.

CONCLUSION

The Commission should reject Mountain Water's request to hide its executives' salaries from public view. The Commission should require Mountain Water to fully comply with its obligations under Montana law, including by providing prompt public disclosure of the names and salaries of its officers and managers.

DATED this 13th day of June, 2014.

BOONE KARLBERG P.C.



Scott M. Stearns
Natasha Prinzing Jones
Attorneys for City of Missoula

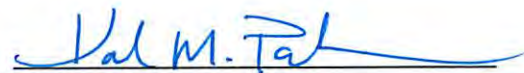
CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by U.S. Mail upon the following counsel of record at their addresses this 13th day of June, 2014:

John Alke
HUGHES, KELLNER, SULLIVAN & ALKE
40 W. Lawrence, Suite A
P.O. Box 1166
Helena, MT 59624-1166

Attorneys for Mountain Water Company

BOONE KARLBERG P.C.



Kate M. Palmer
Paralegal



**HARSTAD STRATEGIC
RESEARCH, INC.**

510 Active Voters who
Are registered to vote
in the City of Missoula
May 5-11, 2014

Missoula City Voter Survey — May 2014

Hello, may I speak with *[FIRST NAME ONLY]* please?

My name is _____. First, I'm not selling anything or asking for money. I'm from Harstad Research, the national public opinion research firm. We are doing a survey in the Missoula area and would like to ask your opinion on some local topics. *[If R asks:]* Your name was selected purely at random from a list of registered voters, and this survey is being conducted for research purposes only.

I would like to confirm that I'm speaking with *[FULL NAME FROM LIST]*.

SCREENER

- A. First, does anyone in this household work for a radio station, a TV station, or a newspaper?
- | | |
|---------------------|----------------------|
| No | 100% |
| Yes | - ⇒ <i>Terminate</i> |
| Refused/DK/NS | - ⇒ <i>Terminate</i> |
- B. Sex *[Do Not Ask] [n=510]*
- | | |
|--------------|-----|
| Male | 46% |
| Female | 54% |
1. Generally speaking, do you think that things in Missoula are going in the right direction, or do you feel things are pretty seriously off on the wrong track? *[n=510]*
- | | |
|-----------------------|-----|
| Right direction | 70% |
| Wrong track | 18% |
| DK/NS | 12% |

2. I'm going to read you the names of several people and organizations. I'd like you to rate your feelings toward each one as very positive, somewhat positive, neutral, somewhat negative, or very negative. If you don't know the name, just say so. [Randomize] [Probe to distinguish between "Neutral" And "DK/NS"] [n=510]

	<u>V+S</u> <u>Pos</u>	<u>V+S</u> <u>Neg</u>	<u>Very</u> <u>Positive</u>	<u>Smwht</u> <u>Positive</u>	<u>Neutral</u>	<u>Smwht</u> <u>Negative</u>	<u>Very</u> <u>Negative</u>	<u>DK/NS</u>
a. Mayor John Engen	53	21	27%	25%	15%	11%	10%	11%
b. The City Council	39	22	7%	32%	28%	14%	8%	11%
c. Mountain Water Company	38	18	13%	26%	31%	15%	3%	13%
d. Missoula Urban Transit District	34	8	14%	20%	19%	6%	2%	38%
e. Mountain Line bus service	78	7	49%	29%	10%	5%	3%	5%
f. Northwestern Energy, Gas and Electric Company	48	14	13%	35%	33%	10%	3%	5%
g. The Carlyle Group	7	24	2%	5%	19%	12%	13%	50%

3. To the best of your knowledge, is Missoula's water service provided by a private, for-profit company, or is it provided by the city of Missoula? If you are unsure, just say so. [n=510]

Private, for profit company	65%
City-owned service	8%
DK/NS	28%

4. Think for a moment about the water system in Missoula that delivers drinking water to homes and businesses and maintains local water pipes and storage tanks. Do you think this water system in Missoula [rotate] should be owned by the city or should it be owned privately by a corporation? [If 'city / private', ask:] And do you feel strongly about that or not? [n=510]

Owned by city	65%
Owned privately by a corporation	20%
Owned by city - strongly	48%
Owned by city - not strongly	17%
Owned privately by a corporation - strongly	13%
Owned privately by a corporation - not strongly	6%
DK/NS	15%

5. And do you favor or oppose the city purchasing the Missoula water system at a fair price and operating it as a city-owned utility? [If 'favor / oppose', ask:] And do you feel strongly about that or not? [n=510]

Favor	70%
Oppose	21%
Favor - strongly	46%
Favor - not strongly	24%
Oppose - strongly	16%
Oppose - not strongly	5%
DK/NS	9%

6. Next, I'm going to ask you how satisfied you are with several different things locally. For each one, please tell me if you are very satisfied with it, somewhat satisfied, somewhat dissatisfied, or very dissatisfied. *[Randomize after first] [n=510]*

	<u>Satisfied</u>	<u>Dissat.</u>	<u>Very Satisfied</u>	<u>Smwht Satisfied</u>	<u>Smwht Dissat.</u>	<u>Very Dissat.</u>	<u>DK/NS</u>
a. The overall quality of life in Missoula	96	4	65%	30%	3%	1%	-
b. The economy in Missoula ...	61	37	10%	51%	25%	12%	2%
c. Missoula city government....	68	26	12%	56%	15%	10%	6%
d. Northwestern Energy, Gas and Electric service	78	15	23%	54%	12%	3%	7%
e. Mountain Water Company service	75	10	24%	52%	7%	3%	15%
f. City of Missoula waste water and sewage treatment service.....	77	9	21%	57%	8%	1%	14%

7. Let me read you various aspects of water service. Please tell me who you think would do a better job on each one – a private, for-profit company or a local city-owned system? *[Randomize] [n=510]*

	<u>Private For-Profit</u>	<u>Local City-Owned</u>	<u>[D/n read] Neither</u>	<u>DK/NS</u>
a. Holding down the cost of water for homeowners.....	21%	69%	3%	6%
b. Protecting the quality and safety of drinking water	20%	70%	2%	8%
c. Providing reliable uninterrupted service.....	31%	57%	2%	11%
d. Avoiding bonuses and excessive salaries	14%	74%	3%	9%
e. Investing in the water pipelines and infrastructure upgrades.....	30%	61%	1%	8%
f. Having the best interests of Missoula residents in mind.....	15%	80%	2%	4%
h. Protecting Missoula's water from being sold in bulk to other communities or states.....	11%	78%	2%	9%
i. Protecting the water supply from drought	19%	65%	5%	11%
j. Protecting the water supply from contamination.....	22%	66%	4%	8%
k. Keeping the water supply safe from natural disaster, sabotage, and terrorist attack.....	23%	62%	5%	10%
l. Providing ownership stability so the water system is not being regularly bought and sold.....	13%	79%	1%	7%

8. Mountain Water Company – the owner of Missoula's water system – is a private, for-profit company. Just as your best guess, do you think this private company is owned by a local company, a Montana company, a regional company, a national company, or an international company?
[n=510]

Local company	7%
Montana company	7%
Regional company	18%
National company	33%
International company	24%
DK/NS	11%

[Rotate Q9 / Q10 Batteries]

9. Now, let me read you several concerns some people have raised about the city purchasing the Missoula water system from the private corporation that now owns it. For each one, please tell me how much it concerns you about the city purchasing the water system using a zero-to-10 scale. A 10 means the item concerns you a great deal. A zero means it does not concern you at all. You may choose any number from zero-to-10 depending on how much the item concerns you.
[Randomize] [n=510]

	10-8	Concern						DK/NS
		10	9	8	7-6	5	4-0	
a. Government can't do anything right, and the last thing we need is more government ownership and spending in our city	25	16%	3%	6%	13%	15%	46%	1%
b. Why fix something that isn't broken? There have been no problems with service, water quality, or management of the Mountain Water Company. So there is no reason to change anything	23	15%	3%	5%	13%	20%	42%	2%
c. The Mountain Water Company has been a good corporate citizen in Missoula, contributed to the community, and kept its promises	22	13%	2%	7%	15%	24%	34%	5%
d. When the Rattlesnake Creek was thought to be contaminated with giardia, Mountain Water did a good job of switching us from the creek water to underground water – and protected the public health in the process	29	15%	4%	10%	14%	18%	30%	9%
e. City government has no idea how to run a water system, nor does it have the capital or resources to make needed improvements in the water delivery system	30	18%	3%	9%	15%	16%	37%	2%
f. The private Mountain Water Company currently invests 4 million dollars a year in replacing and upgrading its water delivery facilities, and it plans to continue these needed ongoing improvements	25	12%	3%	9%	17%	24%	30%	4%

		Concern							
		10-8	10	9	8	7-6	5	4-0	DK/NS
g.	The private Mountain Water Company is now the fifth largest taxpayer in Missoula County. Buying out the private company would cost the county more than a million dollars a year in lost tax revenue that would fall on the backs of taxpayers	42	25%	3%	14%	18%	16%	23%	2%
h.	The city does not have a realistic plan for borrowing and buying the water system in Missoula. The city's plan doesn't come close to paying for the water system and it would end up leaving local tax payers and rate payers responsible for covering the actual cost of this ill-conceived plan	38	22%	4%	12%	14%	15%	29%	3%
i.	The fact is, our water rates have held pretty steady recently. Mountain Water Company is a private company and knows they can't ask for too much. But if the city owns the system, water rates will be controlled by politicians and -- like taxes -- rates will always be going up.....	35	22%	5%	9%	14%	16%	34%	1%
j.	It will cost the city of Missoula -- and taxpayers -- over 60 million dollars to purchase Mountain Water Company. There is nothing wrong with our water system, and this money would be better used to deal with actual problems in the city -- like fixing the streets and improving our parks.....	39	22%	4%	13%	13%	15%	31%	2%
k.	A city owned water system will be bad for business in Missoula. Mountain Water Company knows how the private sector functions and sees local businesses as partners. For water customers, the reality is that quality falls when government gets involved and starts to pick winners and losers	21	12%	2%	7%	14%	17%	45%	3%

10. Now, let me read you several reasons people have given to support the city purchasing the Missoula water system from the private corporation that now owns it. For each one, please tell me how strong a reason you find it using a zero-to-10 scale. A 10 means it is a very strong reason. A zero means it is not strong at all. You may choose any number from zero-to-10 depending on how strong a reason you find the item. [Randomize] (n=510)

		Persuasiveness							
		10-8	10	9	8	7-6	5	4-0	DK/NS
a.	Under a city-owned water system, everything will stay the same – the employees, the infrastructure, and the same service. The only thing that will change is that it will be city-owned by the people of Missoula rather than privately-owned for profit by corporate investors.....	47	26%	7%	13%	19%	12%	21%	2%
b.	Missoula is the only city in Montana that does not own its water system. All other cities have chosen to own their water systems because through local control our city government is best able to understand and meet the needs of our residents and businesses.....	53	29%	9%	15%	16%	13%	16%	2%
c.	A city-owned water system is looking out for local interests, and it would never bottle-up our fresh water and ship it out of state to sell for profit.....	48	26%	7%	14%	17%	12%	21%	2%
d.	It's in our best interest to control our local water system. No matter what happens with the global economy, corporations, on Wall Street, and droughts elsewhere, we will control our most precious resource – our water.....	64	38%	9%	16%	12%	9%	14%	1%
e.	Under today's private corporate ownership, our current rates for water in Missoula are more than almost all other water system in the state. Our local rates have increased lately at twice the rate of Missoula's city-owned sewer system	42	21%	8%	13%	20%	16%	15%	7%
f.	The international private equity firm that now owns Missoula's water system actually offered to sell it to the city. Then when the city tried to purchase the water system at their price – the private equity firm reneged and backed out. The city is showing good faith, but the current corporate owners are not	38	20%	6%	13%	16%	17%	24%	5%
g.	Because it does not have to pay profits to corporate investors, the city of Missoula is best equipped to provide our residents and businesses a stable, safe, and predictable source for clean water at the lowest reasonable cost.	51	25%	8%	18%	16%	13%	18%	1%

		Persuasiveness							
		10-8	10	9	8	7-6	5	4-0	DK/NS
h.	According to their own public records, the founders of the international private equity firm that owns Missoula's water system actually earned 250 million dollars each last year. The profits that come from Mountain Water Company in Missoula are helping to pay these obscene salaries -- instead of being invested back into the water system in the form of maintenance and improvements.....	51	29%	10%	12%	16%	13%	17%	2%
i.	The business model for the international private equity firm that owns Missoula's water system is to create value for its investors -- not for its customers or rate payers. Its goal is to maximize short-term economic gains rather than long-term stability and affordable water rates for the people of Missoula	49	27%	7%	15%	16%	14%	17%	3%
j.	To maximize profits, the corporate owners of our water system have increased our rates, but decreased spending on local maintenance and repairs. A city-owned water system would not need to pay profits to investors and would better invest in the system's long-term stability	51	28%	10%	13%	19%	12%	15%	3%
k.	What we now pay in water rates in Missoula is actually subsidizing the operations of the international private equity firm that owns our water system. Our rates are paying for over 30 corporate offices around the world -- mostly in Europe and Asia. It's better to keep our money in our local economy, than to pay for corporate profits and bureaucracy, foreign executives, and sky-high bonuses -- which is exactly what we're doing now.....	59	34%	11%	15%	15%	8%	16%	2%
l.	The corporate owners of our water system are on the record saying they plan to sell Mountain Water Company in the next few years. Since they are going to sell, the current owners have little incentive to really invest in developing new sources of water for Missoula, or in the long-term maintenance we need to ensure a safe and reliable water supply.....	50	25%	8%	16%	20%	12%	16%	2%

11. Thinking about everything we've discuss do you think this water system in Missoula [rotate] should be owned by the city or should it be owned privately by a corporation? [If 'city / private', ask:] And do you feel strongly about that or not?

	Q11. After Pros & Cons [n=510]	Q4. Initial Choice [n=510]
Owned by city.....	69%	65%
Owned privately by a corporation.....	21%	20%
Owned by city - strongly.....	52%	48%
Owned by city - not strongly.....	16%	17%
Owned privately by a corporation - strongly.....	16%	13%
Owned privately by a corporation - not strongly.....	6%	6%
DK/NS.....	10%	15%

12. And do you favor or oppose the city purchasing the Missoula water system at a fair price and operating it as a city-owned utility? [If 'favor / oppose', ask:] And do you feel strongly about that or not?

	Q12. After Pros & Cons [n=510]	Q5. Initial Choice [n=510]
Favor.....	73%	70%
Oppose.....	20%	21%
Favor - strongly.....	54%	46%
Favor - not strongly.....	19%	24%
Oppose - strongly.....	15%	16%
Oppose - not strongly.....	5%	5%
DK/NS.....	6%	9%

[Ask demographics of everyone]

And finally, just a few questions for statistical purposes only...

- D1. May I ask your age? [Read list if necessary] [n=510]

18-34.....	36%
35-49.....	23%
50-64.....	22%
65 or over.....	19%
Refused/DK.....	-

- D2. And do you currently rent or own your residence? [n=510]

Own.....	56%
Rent.....	41%
Live with parents / other person / don't pay rent [Do not read].....	3%
DK/NS.....	2%

D3. What is the last grade you completed in school? *[Do not read choices]* (n=510)

Less than high school degree	1%
High school graduate.....	14%
Some college, no degree	17%
2-year college graduate/AA degree	11%
4-year college graduate/BA/BS degree.....	28%
Postgraduate work, no degree	5%
Master's degree.....	19%
Doctoral/law degree/PhD/MD	5%
Refused/DK/NS	*%

D4. And generally speaking, do you think of yourself as a Democrat, a Republican, an Independent, or something else? *[If Democrat, ask:]* Would you call yourself a strong Democrat, or a not very strong Democrat? *[If Republican, ask:]* Would you call yourself a strong Republican, or a not very strong Republican? *[If Independent, ask:]* Do you think of yourself as closer to the Democratic Party, closer to the Republican Party, or do you think of yourself as strictly Independent? (n=510)

Strong Democrat	27%
Not strong Democrat	13%
Independent / lean Democrat.....	15%
Strictly Independent.....	12%
Independent / lean Republican.....	5%
Not strong Republican	5%
Strong Republican	9%
Other party.....	7%
DK/NS / Refused	6%



Methodology

The May 2014 Missoula City Survey of Active Voters was conducted by Harstad Strategic Research, Inc, the national public opinion research firm in Boulder, Colorado. The results of this survey are based upon 510 random telephone interviews among active voters registered to vote in the city of Missoula. Sample was obtained from a list of registered voters in the city of Missoula. Interviews were conducted by live interviewers reaching land lines and cell phones from May 5-11, 2014. This random sample of 510 has a worst-case 95% confidence interval of plus or minus 4.3% about any one reported percentage.

EXHIBIT “K”

EXHIBIT “K”

Don't rush to conclusions on potential purchase

NOVEMBER 15, 2013 7:30 AM • [GUEST COLUMN BY BOB LAKE](#)

There is a great deal of conversation and misinformation swirling around Missoula these days concerning the potential purchase of Mountain Water by the city of Missoula. Residents deserve to be provided correct information about the circumstances and procedure.

Before any sale can take place, there must be a willing seller and a willing buyer. Missoula's mayor has expressed interest in acquiring Mountain Water, but as of right now, by all indications, the Carlyle Group – Mountain Water's parent company – has expressed no interest in selling to the city of Missoula.

By previous agreement, the city of Missoula will have the first opportunity to purchase Mountain Water if the Carlyle Group ever decides to sell. This right of first refusal was specified contractually when Carlyle initially acquired Mountain Water. If such a hypothetical sale were to occur, legal and historical precedence requires the Public Service Commission to first approve the deal, ensuring that customers receive fair and equitable treatment and continued water quality, as dictated by federal water quality standards.

The following conclusion of law applies: "Pursuant to its authority, the Montana Public Service Commission has jurisdiction over any sale or transfer of a public utility; acquisition of its stock, assets, or utility obligations, in order to assure that utility customers will receive adequate services and facilities, that utility rates will not increase as a result of the sale or transfer, and that the acquiring entity is fit, willing, and able to assume the service responsibilities of a public utility."

This is the guiding principle the commission follows, regardless of ownership.

If this hypothetical sale fails to take place, Missoula's mayor has threatened to take drastic action. In an affront to private property rights, the mayor publicly alluded to the possible condemnation of Mountain Water if the Carlyle Group does not agree to a sale. History is not on the mayor's side with such an idea. A similar attempt was made in the 1980s, but the courts recognized the sanctity of private property rights and determined that using eminent domain for the takeover was not acceptable.

To wield the harsh governmental power of eminent domain requires an entity to prove both need and necessity and to show that the action is in the best interest of the consumer. The threat of using eminent domain to accomplish such a task is thoroughly unwise.

Missoula's city attorney has tried to turn this issue into a political football, but partisan politics has nothing to do with this decision. The role of the PSC is to assure that the customers of the water provider receive a quality, fair and equitably priced product, available both for expected use and in emergencies.

The people of Missoula deserve the facts on an issue as critical as their water supply and the

cost of service needed to provide it to them. The PSC's obligation is to consumers and that will be what guides the commission in the event of any potential Mountain Water ownership transfer.

Bob Lake is the Montana Public Service Commission's vice-chair and Commissioner representing Missoula and the Bitterroot Valley.

EXHIBIT “L”

EXHIBIT “L”

Mayor taking wrong route to water ownership

FEBRUARY 13, 2014 7:30 AM • [GUEST COLUMN BY BILL GALLAGHER](#)

Imagine a knock at the door and the government agent on your porch telling you that, since you declined to sell, the government is now condemning your home via the power of eminent domain. You will be compensated at fair market value, but you must move and your home will henceforth be owned by the government and used as rental housing. Multiply your feelings of betrayal times 10 and you may empathize with Henry Wheeler, whose small water business was threatened with condemnation by your Missoula city government in 1984.

Wheeler was so angry and hurt that he vowed to never sell his company to the city of Missoula. As a result, Wheeler's water business, Mountain Water, is now owned by the Carlyle Group, which, with the support of Missoula Mayor John Engen, acquired it two years ago.

Now, Engen seems to think that the confiscation approach worked so well in the past that he should give it another go. Listen up, Missoula! Confiscating or even threatening the privately held Mountain Water business is a bad idea for several reasons:

- If he has not already done so, Engen is only going to alienate and anger the new owners. They, like Wheeler, will likely dig in their heels and there may never again be an opportunity for city ownership. Engen, what are you thinking? If you want to make certain the city never has a realistic chance for acquisition, your idea to retry the failed condemnation/confiscation route is genius. If not, it is quite the opposite.
- Taking a private business away from private citizens so that the government can profit from it has, in the past, been something that only happened in communist and third world countries. We in America allow the power of eminent domain in limited circumstances. But, we expect government to use restraint and exercise its power only when all other options are exhausted, and only when it is truly necessary to fulfill a need of the public interest such as highway construction. Mayor Engen is only threatening to use condemnation power because the city of Missoula wants to take the profitable business for the city and he is neither patient nor creative enough to make a fair bargain with the owners.
- Oddly enough, the mayor supported the sale of the system from Wheeler to Carlyle. While I personally voted against approving the sale, it was the support of Mayor Engen and city officials that convinced commissioners Gail Gutsche, John Vincent and Travis Kavulla to vote approving the sale to Carlyle. The only reason Missoula does not own the water system today is the reckless 1984 attempt at condemnation, plus Engen's support for the sale to Carlyle. Now the mayor chooses to threaten confiscation rather than fairly and honorably negotiate with the new owners?
- The city of Missoula may not be the best route to public ownership of the system. Residents of Missoula, you have at least two other options besides city ownership: A) Create a water district with which to purchase, hold and manage the system; or B) Create a utility cooperative

similar to the many electric and telephone cooperatives in the state so that the users may buy and manage the system.

Five years ago, Mountain Water came to the state Public Service Commission with a complaint that the city of Missoula was taxing residents for fire hydrant maintenance, but was neither maintaining Missoula fire hydrants nor giving any of the money collected to Mountain Water. The PSC granted Mountain Water the right to charge its customers for the hydrant maintenance, since it was actually maintaining the hydrant system. We are told the city of Missoula continues to tax its residents for fire hydrant maintenance that it neither provides, nor supports financially. Is that the kind of government owner you want running your water system?

I support public ownership of the water system, but Engen's threat of government confiscation is not the way to get there.

Bill Gallagher, chairman of the Montana Public Service Commission, represents District 5 which includes Lake, Flathead, Lewis and Clark, Glacier, Teton and Pondera counties.

EXHIBIT “M”

EXHIBIT “M”

Delivering Quality Water Is Just Part Of Our Commitment

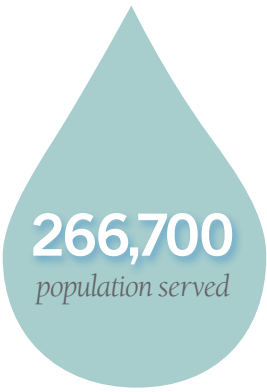


APPLE VALLEY RANCHOS
WATER COMPANY™



Since 1937, Park Water Company (Park Water) has delivered reliable, quality water to our customers with every simple turn of the faucet. During our early years, we provided service to residents and businesses in a vibrant fast-growing region of Southeast Los Angeles County. Building on the corporate values that defined our founding—safety and service—our operations have grown to include three regulated water utilities that now serve about 267,000 residents and business owners in California and Montana.

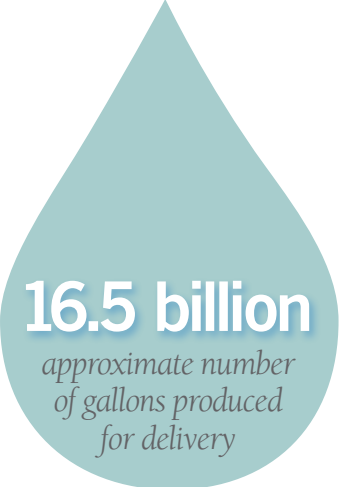
We recognize the tremendous responsibility entrusted in us by the communities we serve. Safe, reliable water service is essential for every community. Reliable water service protects public health, bolsters economic development, enhances quality of life, and stands ready to offer protection in the event of a fire emergency.



266,700
population served

Operating a utility that provides a vital service requires the commitment that we consider how our actions may have a ripple effect—on our customers, on our employees and on the planet that we share. Toward that end, we dedicate ourselves to making informed decisions that will support the long-term well-being of every person and every community to which we are connected.

In this document, we are pleased to share key initiatives and activities of Park Water and our sister operations, implemented to ensure our organization's long-term commitment to sustainability and enhancement of the quality of life of our customers. We are committed to delivering an essential resource with safety and service for generations to come.



16.5 billion
*approximate number
of gallons produced
for delivery*

~160 *number
of employees*

MESSAGE FROM OUR CHIEF EXECUTIVE

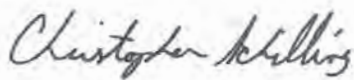
Our daily responsibilities involve decision-making around a vital natural resource—water. With population growth, recurring droughts, effects of climate change, environmental contamination and pollution, this resource is becoming increasingly stressed. Operating in this environment, the concept of sustainability takes on a completely different emphasis. At Park Water, we embraced adopting sustainable practices early in our Company history. As a result, today all of our employees have a shared commitment to do what is in the best interest of the environment, our customers, the communities we serve, and our fellow employees.

This corporate culture of commitment is deeply rooted and permeates all three of our utility operations, which serve distinctly different communities with unique issues and concerns. When I meet with employees at our different operations and discuss the challenges that they face, I am continually impressed by the singularity of focus on identifying and executing the best solutions for all concerned. “Do the right thing” is a Company mantra. As simple as it sounds, oftentimes this requires a very thoughtful and challenging weighing of competing considerations.

I am pleased to report that we have made tremendous progress in our long-standing efforts to be the most sustainable company that we can be. The publication of this *Sustainability Report* is our first effort to formally present what we are doing to position our Company for long-term, sustainable success. While we are delighted to share the positive progress we have made to date, we fully acknowledge that our commitment to more sustainable practices is ongoing.

We will use this report to refine our efforts on issues of greatest importance and benefit to our many stakeholders. Aligning our business goals with societal, environmental and other critical issues will enable us to prioritize our continued investment in our water production and distribution facilities, adopt new technologies and innovations for more efficient operations, and respond appropriately to the ever-challenging environmental issues which we all face.

All of our operations are important partners in the communities that we are honored to serve. With this *Sustainability Report* and the ones that will follow, we hope to demonstrate the depth of our commitment to continue to be a trusted provider of an essential service that enhances the quality of life of our customers.



Christopher Schilling
President and Chief Executive Officer
June 2014

OUR COMMITMENTS

With responsibility for delivering a natural resource that is limited in supply, the impact of our activities on the environment is always foremost in our minds. Therefore, we consider ourselves not only water stewards but also stewards of the environment.

At Park Water, we are committed to Corporate Social Responsibility through:

- Providing safe, reliable, quality service to our customers
- Being a responsible steward of water resources and the environment
- Being an engaged community partner that addresses the social needs of the communities we serve
- Operating the company on the basis of a sustainable economic model



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OUR CHALLENGES

We are not alone in the challenges we face. With climate change and other environmental issues, all water utilities—particularly those operating in warmer-weather regions that have endured years of recurring drought conditions—must address limited availability and adequacy of water resources. Ironically, at the same time, we must prepare for increased demand due to anticipated population and economic growth.

Issues related to sources of water are further complicated by the fact that much of the nation's water infrastructure has been in service for up to 100 years and sometimes longer.¹ The pipes and other critical components that treat and deliver drinking water and also transfer wastewater are at or near the end of their useful life. There are approximately 240,000 water main breaks each year in the United States, and upwards of one million gallons of drinking water can be lost with each break.



37,601
*feet of new pipe
installed in 2013*

The 2011 “Drinking Water Infrastructure Needs Survey and Assessment,”² published by the United States Environmental Protection Agency (USEPA), estimates that \$384.2 billion in infrastructure investments will be needed over the next 20 years for thousands of miles of pipe, as well as thousands of treatment plants, storage tanks and other key assets.

The pressing needs and related costs of infrastructure investments also require that the water industry demonstrate prudence to ensure quality service now and in the future. Much of this infrastructure is underground, out of sight, and taken for granted by many. However, given the essential nature of quality reliable water service and how we impact the lives of the customers and communities we serve, it is imperative that we make informed decisions about what facilities to improve or replace and how best to accomplish our mission to provide reliable, quality water to our customers’ taps.

¹ American Society of Civil Engineers, 2013 Report Card for America's Infrastructure.
<http://www.infrastructurereportcard.org/>

² 2011 Drinking Water Infrastructure Needs Survey and Assessment.
http://water.epa.gov/grants_funding/dwsrf/upload/epa816r13006.pdf

WHAT WE DO

Recognizing that water is a resource essential to the health, safety and quality of life of our customers and the communities we serve, we continually focus our efforts on providing quality water and excellent service at a reasonable price. Delivered at less than a penny a gallon whenever a customer turns on their faucet, it is an extraordinary value that is often overlooked or taken for granted. The importance of reliable water service though is acutely noticed in its absence.

Managing Water Resources. As trusted water stewards, we strive to deliver water to our customers 24/7 now and in the future. This can only be achieved with careful planning and responsible investment. State regulations in California require an ongoing review and reporting process through our Urban Water Management Plans to ensure reliable water service regardless of potential environmental challenges, such as multiple dry years. The most recently produced reports detail how each of our California operations, Park Water and Apple Valley Ranchos Water Company (Ranchos Water), expects to meet customer demand for the next 25 years. In Montana, Mountain Water Company (Mountain Water) works with the defined long-standing water rights dedicated for the public good to efficiently plan to meet the current and future water needs of our customers.

Ensuring Quality. We understand that water is perhaps the most important component of public health for a community. We are proud of our long history of providing water service that continually receives high marks for its water quality from independent and regulatory sources. We continually monitor water quality to ensure its safety and look to preemptively identify issues that can interfere with water quality in the future.

Operating Reliably. Our philosophy for providing reliable service is centered around a three-fold approach to addressing risks:

- Protect water sources
- Be prepared for the unexpected
- Minimize planned and emergency downtime

We strive to be proactive and address issues quickly. We monitor our operations around the clock and have alarms that activate if parameters begin to fluctuate beyond normal baselines. Operators respond at any time if the system needs adjustments. We routinely conduct emergency drills and table-top exercises to prepare our response to a multitude of potential situations. To further ensure service reliability during emergencies, such as a power outage, all of our operations have back-up diesel-powered generators placed throughout the system and at critical facilities and each maintains an emergency supply of diesel fuel.

Optimizing Energy Use. Delivering water requires a tremendous amount of energy to extract, treat and distribute. We proactively look to optimize the amount of energy we use by investing in infrastructure to minimize both water loss and the need for energy-intensive emergency repairs; upgrading to more energy-efficient equipment and renewable technologies; and incorporating innovative changes into our operations.

Leveraging Our Experience And Knowledge. Responsibility for an essential community service requires the experience of a group of trained professionals dedicated to maintaining and enhancing the quality of life of each and every customer. We recognize that our employees are one of our most valuable resources—and we are committed to retaining and further developing their talent.

We currently employ over 160 professionals among our three regulated utilities and corporate operations. The average tenure with the Company is 13 years. In addition, senior management collectively have centuries of experience in the water industry and include many of the industry's most respected thought leaders in the delivery and protection of this vital resource.

URBAN WATER MANAGEMENT PLANS FOR OUR CALIFORNIA UTILITIES

To view the most recently produced reports, visit:

For Park Water Company
www.parkwater.com/uwmp

For Apple Valley Ranchos Water Company
www.avrwater.com/pdf/AVRWC_2010UWMP

This knowledge and experience is invaluable in protecting the public health and interest. Company executives offer their expertise to numerous national and local organizations, including advisory committees of the USEPA. We look to share our knowledge by participating in public meetings, working with community partners in the public, private and non-profit sectors and educating consumers on variety of topics including conservation and water resource protection.

Responsibly Managing And Investing In Our Assets. A critical component of our operations is effective maintenance and planned improvement of our water delivery infrastructure. We invest prudently to maintain a viable water utility to ensure a sustainable future for all of our stakeholders. We carefully evaluate all aspects of our water systems and strive to make informed investment decisions as to how best to accomplish our mission of providing reliable, quality water to our customers' taps.

In 2013, we invested over \$23 million in our water systems, bringing our total investment for the past five years to more than \$65 million. This investment outlay represents:

- New pipelines, valves and hydrants
- New wells and booster pump stations
- New automated meter-reading (AMR) systems
- New software and computers
- State-of-the-art water treatment systems
- Supervisory Control and Data Acquisition (SCADA) systems
- New chemical feed systems
- Water rights
- Pumping facility upgrades
- New fuel-efficient pool vehicles and service trucks
- New emergency generators
- New water-quality testing instruments

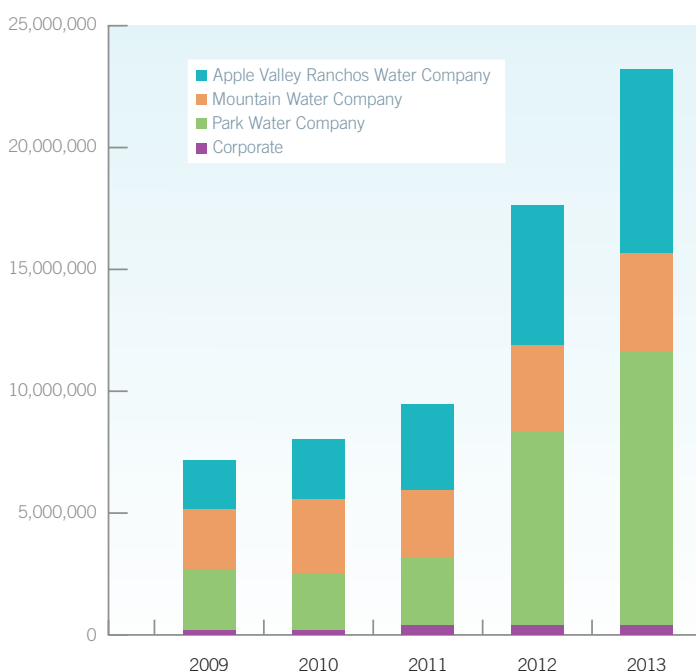
Park Water is in an excellent position to effectively address the issues related to needed infrastructure replacement as well as water resources in our service areas. Prudent financial and operational oversight

has resulted in a strong financial position for the Company. Our financial strength has allowed us to complete this sizable capital investment program, which reaffirms our commitment to the safe and reliable delivery of quality drinking water well into the future.

Our ability to make fiscally sound infrastructure investments has been enhanced by an academic partnership forged with the University of California at Berkeley by our operation in Montana. Mountain Water enlisted the support of Dr. Arpad Horvath, a professor in the Department of Civil and Environmental Engineering and head of the Energy, Civil Infrastructure and Climate graduate program.

Leveraging Dr. Horvath's research interests in the environmental and economic analysis of civil infrastructure systems, he and his team of Ph.D. students are investigating a number of initiatives, including the Water Energy Sustainability Tool, which applies life-cycle analysis to water systems. This specifically focuses on the life-cycle effects of manufacturing major infrastructure components.

CAPITAL INVESTMENT PROGRAM 2009-2013



OUR PERFORMANCE: water

With our goal to provide high-quality water to our customers whenever they turn on the tap, we focus on water-supply reliability, quality protection, customer usage, and system leakage and other water loss as key drivers of our performance.

Each of Park Water's utility operations has multiple source points for providing a reliable water supply. However, climate change, recurring droughts of varying and unpredictable durations, and population growth place more demands on a finite resource. This makes us all more mindful of the importance of protecting and preserving our water resources.

In addition to a reliable supply, our customers fully expect the water we deliver to be trusted for potable use, all the time. To ensure that drinking water is to quality standards, our water quality professionals continually sample and test the water supply both at source points and in the distribution system. Throughout our operations, more than

20,000 samples are drawn and tested on an annual basis. These sample results are compared to nearly 100 drinking water standards set by the USEPA and our state health departments.

We have a long history of complying with all USEPA and state health-related drinking water standards and have had no water quality violations for more than 17 years. This careful monitoring of water quality provides confidence to our customers and businesses in their community water system.

To preserve and conserve the water resource, Park Water's utility operations have actively encouraged water use efficiency by our customers. In California all of our customers are billed based on metered consumption, using conservation-oriented rate designs, including a tiered rate structure for residential service, which sends clear price signals regarding excess water consumption. In Montana, most of our customers are on metered service. For the portion of our customers that remain unmetered, the cost of service is established to incentivize customers to transfer to metered service.

We conduct ongoing customer education programs on protecting water quality and efficient use of water. Many of the programs are regionally tailored to educate the community on the health and protection of their local aquifer, and on conservation measures suited for their area. In addition, often in coordination with other local water agencies, we offer a number of water conservation incentive programs. These include no- or low-cost ultra-high efficiency toilets, rebates for high-efficiency clothes washers and landscape sprinklers, rebate programs such as "Cash for Grass" and conservation fairs.



17

*consecutive
years of no water
quality violations*

2,500,000

square feet of grass removed
with Ranchos Waters' 'Cash
for Grass' conservation
program

We also conduct residential audits in which a trained conservation specialist visits a customer's home to create an individualized plan for reducing water consumption.

Conservation gardens have been created by our utilities in Southeast Los Angeles County and Missoula. These gardens showcase a variety of drought-resistant plants and demonstrate how a water-wise garden can be both beautiful and beneficial. We have also installed water-wise landscaping at many of our well sites, greatly reducing our own internal water use. Our hope is that members of our communities will follow our lead and create similar gardens that are aesthetically pleasing and in keeping with the local flora at their homes and businesses.

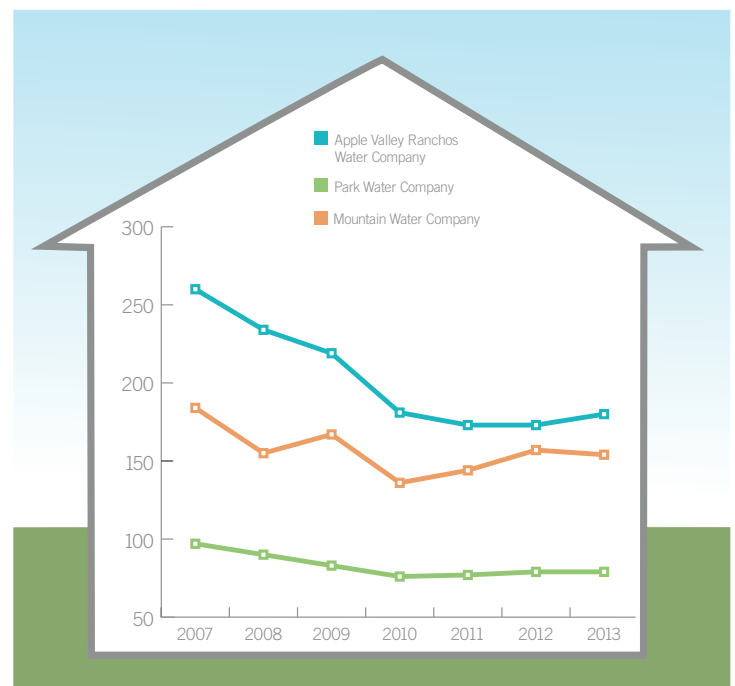


Conservation garden with drought-resistant plants at Park Water's corporate headquarters in Downey, Calif.

Water conservation by our customers has been dramatic. At Ranchos Water, in conjunction with the "Cash for Grass" program, our customers have removed more than 2.5 million square feet of turf and installed desert adaptive landscaping. This amounts to an area equivalent to 50 football fields and results in annual water savings in excess of 138 million gallons.

Our customers continue to respond to educational efforts on ways to reduce their water use. This is occurring most substantially in our Southern California operations where water scarcity is most acute. The reductions in average residential consumption are reflected on the chart below.

RESIDENTIAL WATER CONSUMPTION GALLONS PER CAPITA PER DAY

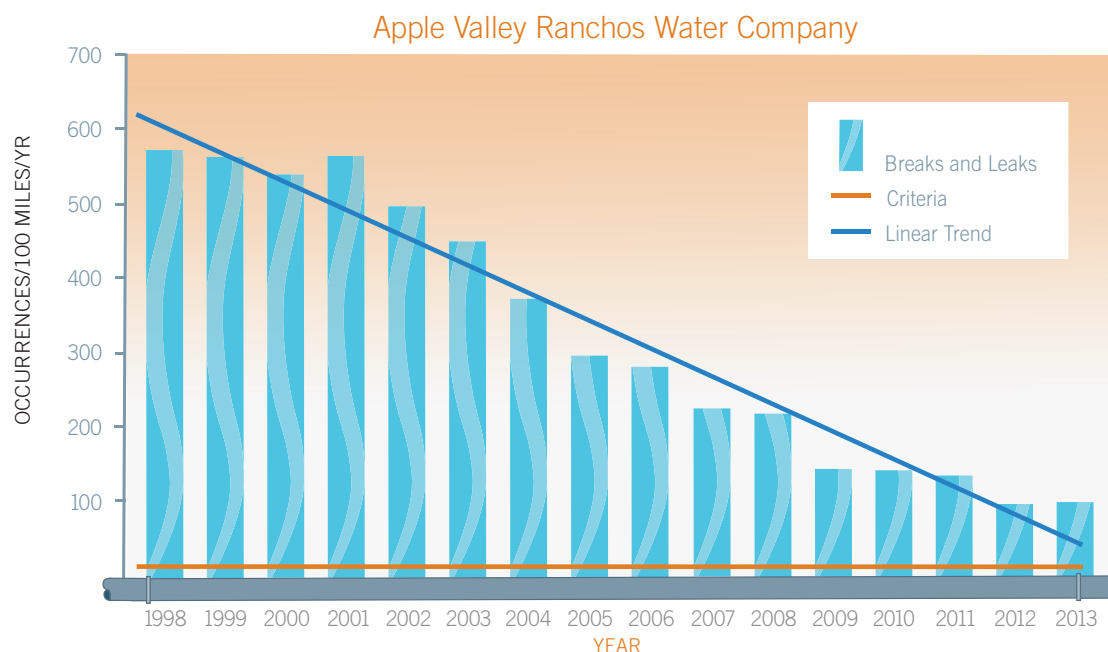
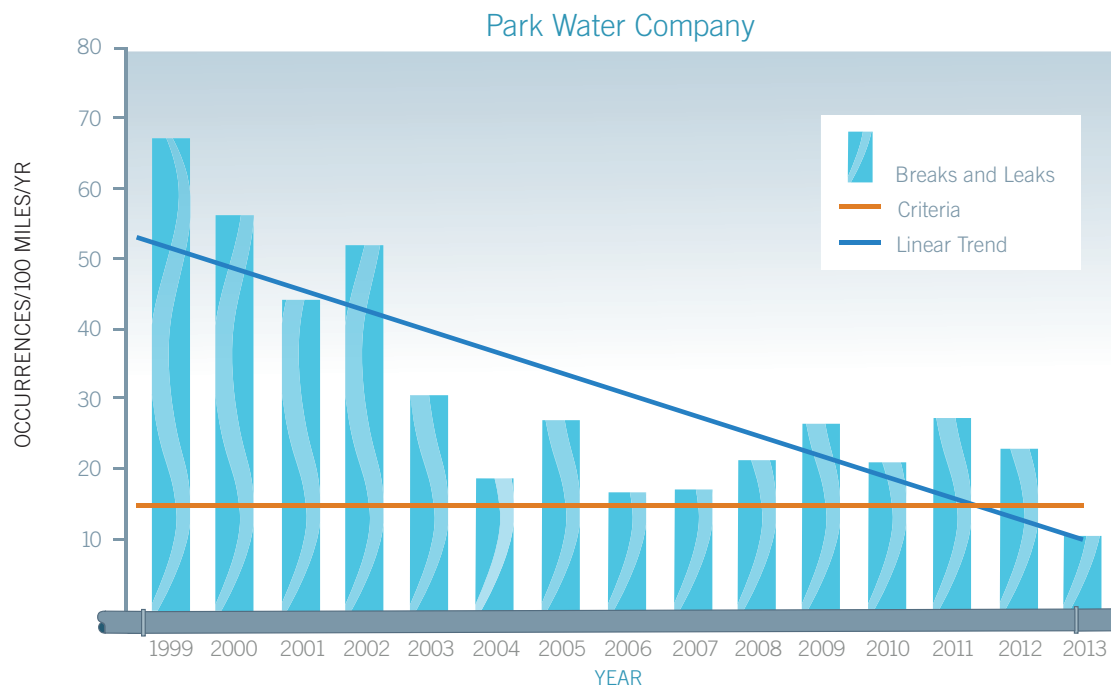


OUR PERFORMANCE: water *cont.*

Our ongoing infrastructure investment has allowed us to reduce system leakage as well as reduce emergency service outages when pipe breakages occur. A tremendous amount of water can be lost when there are undetected leaks or a water main break occurs, not to mention the possibility for

significant property damage. Many of the water mains are nearing the end of their useful lives. Much of the system was installed several decades ago when construction methods and materials were not of the same higher standards as they are today. In addition, usage, corrosion, ground

REPORTED BREAKS AND LEAKS PER 100 MILES



NOTE: The "criteria" line represents the target for optimization—15 or less leaks per 100 miles of pipeline—an industry benchmark established by the Partnership For Safe Water.

movement and seasonal changes in the thermal environment all ultimately require the water pipelines to be replaced.

We have made steady progress in reducing water main breaks and water loss due to system leakage. As a result of our pipeline replacement program, main breaks have been dramatically reduced in our California operations, as can be seen in the graphs on the previous page. Water loss due to system leakage is lower than industry standards.

Water loss due to leakage at Mountain Water remains high. The water system was installed beginning in 1885. While we no longer have wooden water mains, which were the preferred material when the system was first constructed, a large portion of the system is targeted for replacement. The system is largely constructed above a shallow aquifer in very rocky and porous soil. This means the leaked water returns readily to the aquifer. It also means identifying leaks is challenging since they generally do not surface. Using new technologies and techniques, such as acoustic monitoring, we are now able to more readily locate and access leaks. Using these new approaches we have been able to reduce water loss due to leakage by 18 percent in our Missoula operation.

A Fun-Filled Day In The High Desert Dedicated To Conservation

For the third year in a row, Ranchos Water presented its Spring Conservation Fair to encourage water conservation in the high desert communities. The family-friendly event included conservation workshops, native plant displays, desert-gardening demonstrations and children's activities. A highlight was voting for the "People's Choice Award," in which attendees viewed "before" and "after" pictures of high desert residents' yards that had been transformed as part of the "Cash for Grass" program, where customers receive a rebate for replacing turf with desert adaptive plantings.

The success of this fair, attended by over 400, was one of the reasons Ranchos Water received the Exemplar Award for environmental stewardship and sustainability from the Mojave Desert Air Quality Management District.



"Before" and "after" photos of a "People's Choice Award" winner for landscapes transformed with desert adaptive plantings.

OUR PERFORMANCE: energy

Energy usage is inextricably tied with delivering water. Water is pumped from underground aquifers, oftentimes hundreds of feet below the surface. This water is then treated and further pumped long distances to storage facilities or to our customers. Without energy, water would simply not reach customers faucets nor have adequate pressure when the tap is opened.

Customer conservation and reduced water loss from system leakage directly reduce our energy consumption. We have also made a number of operational changes and improvements to increase our energy efficiency and reduce cost of operations. These include:

- Installing control systems allowing us to reduce system operating pressure.
- Identifying system bottlenecks with the use of hydraulic analysis and upsizing transmission mains to reduce system backpressure and friction.
- Upgrading pumps and booster stations with more energy-efficient equipment.
- Maximizing time-of-use electric rates, pumping into our storage facilities in the evening when power rates are lower.
- Utilizing more-efficient high-capacity wells for base demand.
- Replacing less-efficient high-maintenance gas engines with energy-efficient electric motors.
- Upgrading our facilities with high-output/low-energy lighting and room occupancy sensors.



Our approach to energy efficiency has also involved many simple solutions, such as painting rooftops white in order to reflect light and reduce cooling costs, particularly at our Southern California locations. Our efforts have also involved more sophisticated approaches such as the underground installation of pump facilities (as further noted on the next page), which reduces heating and cooling costs, along with other benefits. We regularly conduct energy consumption and efficiency audits at our production and pumping facilities, allowing us to identify opportunities to reduce energy consumption. Often when we upgrade to more energy-efficient production equipment we are eligible to receive rebates from the electric utility, further lowering costs to our customers.

Looking to the future, we are currently evaluating hydro-generators, or micro turbines, which will allow us to generate energy as we distribute water and sell the energy back to our local suppliers. A number of renewable energy projects, such as solar energy panels, are being evaluated. In addition, an academic partnership with the University of California at Riverside is evaluating other equipment improvements to save energy, as well as possible improvements to heating, ventilation and air conditioning (HVAC) and lighting units.



OUR PERFORMANCE: greenhouse gases

Recognizing the impact of climate change on our water sources has led us to evaluate how to reduce the impact of our operations on the planet.

Of particular concern is our multi-year effort to upgrade our water infrastructure, as construction is one of the top-emitting sectors of greenhouse gases (GHGs).

We made significant progress in minimizing the impact of construction by employing new technologies for water main replacement projects. Three technologies employed were horizontal directional drilling, pipe bursting and pipe lining, which are estimated to produce a 50-percent reduction in GHG emissions as compared to more traditional methods of pipe replacement.³ These techniques also reduce the impact on the community by minimizing surface street disruptions during construction.

Initiatives in 2013 to reduce GHGs from our operations focused on not only infrastructure construction, but also acquisition of lower GHG-emitting equipment and process improvement.

A variety of customer-oriented initiatives significantly reduced vehicle miles driven and fuel consumption. In 2013, we invested more than \$2 million in AMR systems. This technology uses radio waves to transmit all meter readings within the radius of a block to a truck-mounted computer, eliminating the need for personnel to individually read meters at homes and businesses. AMR technology greatly reduces the miles driven, time idling

³ According to Tommy Hendrickson, Ph.D., University of California at Berkeley.

Boosting Energy Efficiency With Underground Engineering

Ranchos Water's new Mockingbird booster pump station was constructed underground to maximize the environmental integrity of the California high desert. The facility takes advantage of the natural insulating properties of the surrounding earth to reduce operating costs—in particular, cooling and heating in a region that has maximum temperatures in excess of 100 degrees much of the year. While the underground station is less visible in its desert setting, noise and humming sounds from operations are also greatly reduced.



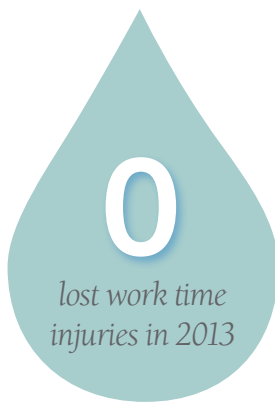
Construction of the Mockingbird Pump Station (top photo) and the completed underground station (bottom photo).

OUR PERFORMANCE: greenhouse gases *cont.*

and start and stops for our vehicles while reading meters. For Park Water's service area, 80 percent of all meters are AMR, while virtually all meters in the service areas for both Ranchos Water and Mountain Water utilize this technology. Mountain Water is piloting a program to outfit all service trucks with meter-reading capability, allowing these vehicles to capture meter reads while on unrelated service calls. This program is showing promise to further reduce the number of vehicle miles. Additionally, Ranchos Water has significantly reduced the number of vehicle trips to its 21 wells and 11 reservoirs by relying more on the SCADA system for operational control and condition assessment. This has eliminated over 8,500 annual company vehicle miles and the associated vehicle emissions.

We are also now delivering discontinuation of service notices by regular U.S. mail. Prior to 2013, we hand delivered almost 40,000 of these notices each year. Again, this greatly reduces miles driven by Company personnel.

Since 2006, we have participated in the Climate Registry, a nonprofit collaboration that sets consistent and transparent standards to calculate, verify and publicly report GHG emissions into a single registry. We voluntarily report direct emissions from mobile and stationary combustion and indirect emissions from purchased electricity. Our involvement has earned us the designation of a "Climate Leader," and resulting accounting will help us monitor and benchmark our future performance to reduce GHGs related to operations.



OUR PERFORMANCE: waste

As every responsible company strives to find ways to achieve zero waste, 2013 was designated as the year that our operations would address paper reduction through process improvement. The “e-2013” initiative aimed to reduce paper handling and storage with the scanning of important documents and provide increased accessibility through document sharing via keyword access and desktop sharing. The program was implemented with minimal investment, by utilizing the Microsoft SharePoint software that we had already licensed. The Year 1 results were impressive—achieving a 50-percent reduction of paper and a directly proportional reduction in printer toner.

Other process changes that reduced waste included more electronic customer communications. We have also promoted the convenience of automatic customer payment options with expanded options such as “PayNearMe,” which allows bill payment at convenience stores throughout the service area. This allows customers to save time and money associated with car travel, and places fewer burdens on the environment by reducing customer visits and associated travel time to our offices.

As part of our environmental stewardship, we also implemented customer awareness programs that encourage the “ditching” of the single-use water bottle. Mountain Water’s “Hit the Tap”® program provided inexpensive reusable aluminum water bottles for sale. Both Park Water and Ranchos Water have offered reusable water bottles at public events. One of our most visible efforts was Mountain Water’s “Water Wagon,” which rolled up to more than 16 community events in 2013 and dispensed on average the equivalent of 1,200 twelve-ounce water bottles per event, offsetting bottles which often end up as landfill if not recycled.



Mountain Water’s “Water Wagon” dispensed water—and encouraged use of reusable water bottles—at more than 16 events in 2013.

19,200

number of plastic bottles offset by Mountain Water’s ‘Water Wagon’ at 2013 community events

OUR PERFORMANCE: citizenship

The nature of our business requires ongoing consideration of quality of life issues for our customers.

Focus On Our Customers And Community. As a trusted water service provider, we strive to be a good neighbor and partner to the communities we serve. Part of delivering an essential service is responding to community needs.

To make life a little easier for those that need assistance, we are proud to offer a number of Customer Assistance Programs. These include a monthly discount on water bills for qualified customers, as well as our Military Relief Program, which suspends water service cut-off for a specified number of days for families of service members called for active service.

Other helpful programs offered in California only include language translation services to answer customer questions in a language other than English, large-print bills for visually impaired customers, Telecommunications Device for the Deaf (TDD) capability, and third-party notification, which allows customers to request that a friend or relative also receive billing notices in order to avoid service disconnection.

We also give back to the communities we have been privileged to serve, by taking active roles in community celebrations and events, ranging from Safety and Disaster Preparedness Fairs to support of schools and service activities of local youth groups. Employees of Mountain Water also give generously through an employee-matching program to Missoula United Way to provide much needed funds to local charities.

30

*percentage of women
in managerial positions*

23

*number of
employees with 25 or
more years of service
with the Company*

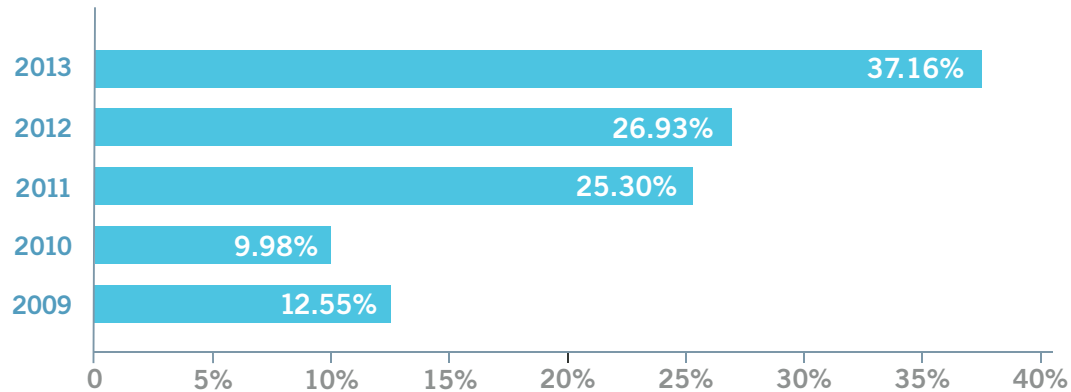
Since the past few years have brought challenging financial times to many in our communities, Park Water's shareholder has stepped in to reduce some of the burdens of daily life for families in need. Donations were made to civic agencies to support local food banks, providing resources that helped families living below the poverty line to place nourishing food on their tables. Other worthy programs supported included toy drives for underprivileged children and intervention programs for at-risk youth. Because these contributions were shareholder funded, there was no cost to our customers for these charitable activities.

Our community efforts extend to creating business relationships with minority- and women-owned businesses, enterprises led by disabled veterans, as well as local businesses. In 2013, spending by our California utilities with diverse vendors represented over 37 percent of products and services purchased—far exceeding the 21.5 percent goal established by the California Public Utilities Commission. Many of these businesses are local to the communities we serve, employing individuals who not only work but also live in the communities.

In Missoula, Mountain Water established an Advisory Committee of community leaders that represent diverse interests in the community. This new Advisory Committee is helping to review long-term water resource considerations for the community, and will help guide community discussions to be sure water resource planning is at the forefront.

UTILITY SUPPLIER DIVERSITY PROGRAM RESULTS 2009-2013

Percent Spend With Diversity Vendors Per Year



Our Commitment To Employees. Being a sustainable company means also considering the well-being of all the individuals whose lives we touch—which includes our employees, whose invaluable contributions have helped us earn a reputation as a company that cares.

To attract and retain dedicated talent, we place a strong emphasis on preparing employees for advancement, enabling us to promote from within and encourage gender equality. Currently nearly 30% of employees in managerial positions are women and more than two-thirds of them were promoted to their current positions.

To promote ongoing learning among employees, we support on-the-job training, attendance of seminars and workshops, and college and professional certification coursework. In addition, we invest in and place a high priority on safety training, because by keeping our employees safe, we keep our communities safe. In 2013, we had another exceptional year related to employee safety, with no lost-time injuries.



We want our Company to reflect the richly diverse communities that we serve and strive to hire qualified job candidates from those communities. We make a concerted effort to reach out to local colleges to find talent, and for many years have recruited their engineering students for internship positions as well as roles in other important disciplines.

Other employee retention efforts focus on wellness and education. Our comprehensive wellness program—offered at no cost to employees—is now in its eighth year. The program features a wellness portal that allows employees to customize their wellness goals and track their progress.

OUR PERFORMANCE: citizenship *cont.*

Awards And Recognition. We are very proud of the dedicated work of our employees, which continues to earn us recognition.

In 2013, the Governing Board of the Mojave Desert Air Quality Management District—responsible for the second largest air district out of 35 in California—awarded Ranchos Water with the Exemplar Award for environmental stewardship and sustainability. It singles out innovative, resource-efficient projects that reduced air pollution emissions within the area, leading to cleaner, better air-quality in the high desert. This was awarded on the results of the “Cash for Grass” program, as well as the remote monitoring (SCADA) equipment installed, which eliminated over 8,500 annual company vehicle miles driven, both of which were previously noted.

Both Park Water and Ranchos Water have been designated “Climate Leaders” by the Climate Registry.



PARK WATER COMPANY'S OPERATIONS

	Park Water Company	Apple Valley Ranchos Water Company	Mountain Water Company
Service Areas	Southeast Los Angeles County, California	Apple Valley and Victorville, California	Missoula, Montana
Population Served	133,000	61,700	72,000
Year Established	1937	1947	1885
Year Acquired	N/A	1986	1979



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Front Cover Photos: Rain garden to capture water for the Park Water conservation garden.
Certified operators monitoring treatment plant operations (inset).

Back Cover Photo: Construction of the Mockingbird Pump Station

Design: C. Santillan, Inc.

Paper: 30% Post Consumer Waste (PCW)/Forest Stewardship Council (FSC) certified stock





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APPLE VALLEY RANCHOS
WATER COMPANY™



EXHIBIT “N”

EXHIBIT “N”

Water is our most valuable shared resource and together we can keep it that way for generations to come.

QUIFER

Missoula's Clean
Water Source

BLUE

The Environment &
Conservation

OUR

Mountain Water &
the Community

PURE, FRESH
WATER

Customer Service

- [About Us](#)

- [Our Culture / What we believe in](#)

- [History](#)

- [Giving Back to the Community](#)

- [Education](#)

- [Fire Hydrants](#)

- [Emergency](#)

Giving Back to the Community

Mountain Water Company is proud to be a member of the Missoula community. We recognize the importance of civic responsibility and strive to support programs that enhance the quality of life for all valley residents.

Navigate to our community projects below:

- [Rattlesnake Creek Fishladder](#)
- [Rattlesnake Bridge Project](#)
- [Missoula's Water-Wise Garden](#)
- [Trout Friendly Lawn Program](#)

Reinvestment Back Into the Community:

Each year, Mountain Water Company reinvests capital back into the system's infrastructure to maintain and improve water lines, wells and pumps, and we do so by using local contractors and vendors. Over the last seven years, we have additions of over forty million dollars. See below for our total investment dollars since 1979.

<u>Year</u>	<u>Total (Millions)</u>
2000	\$3.10
2001	\$5.70
2002	\$3.10
2003	\$4.30
2004	\$5.70
2005	\$4.60
2006	\$4.50
2007	\$5.30
2008	\$4.70
2009	\$2.70
2010	\$3.00
2011	\$3.00
2002-2011	\$40.90
1979-2011	\$80.00

Time and Dollars Donated to the Community:

The management and staff of Mountain Water have spent generous amounts of time over the past 34 years to local organizations. Employees are encouraged and supported when volunteering time to the community. Our philosophy is well known throughout the company that we strive to build long-term relationships with the community through personal involvement with service organizations.

Mountain Water employees have been members of the following organizations and contributed in various capacities:

- Missoula Rotary Club
- Montana Ambassadors
- Missoula Food Bank Board of Directors
- United Way of Missoula County Board of Directors
- United Way of Missoula County Campaign Cabinet
 - United Way of Missoula County Campaigner
 - Garden City Exchange Club
 - Missoula Sunrise Rotary
- Big Sky Chapter of the Society for Human Resource Management
 - East Missoula Fire Department
- Missoula Area Safety & Health Coalition (MASH)
 - JSEC (Job Service Employer's Committee)
 - Leadership Missoula
 - West Side Little League

Local Awards Received:

Mountain Water Company and its employees have received awards from local organizations such as:

United Way of Missoula County

Heart Award--recognizing the workplace giving campaign
Highest per capita contribution for a major corporation
Highest per capita contribution for a utility
Torchbearer award
Outstanding leadership and service
Leadership and Pacesetter award

Missoula Area Economic Development Association

Members sustaining the community's economy

Missoulain Newspaper

Newspaper in Education program

Missoula Food Bank

Outstanding contribution to local well-being

Missoula Chamber of Commerce

The Circle of Excellence
Family Friendly Business Recognition Award

These areas reflect Mountain Water Company's contribution and involvement in the local community. Mountain Water has also received more than 15 safety awards at state and national levels which we feel demonstrate our commitment to safety in Missoula. Mountain Water recently received the Governor's Safety Award for a small business for the third time.

EXHIBIT “O”

EXHIBIT “O”

MONTANA



TYPICAL MONTHLY RESIDENTIAL WATER UTILITY BILL (\$)



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