

Notice of Meeting

County Water District of Billings Heights Regular Board Meeting

Wednesday, December 15, 2021 6:00 pm REVISED

District Office 1540 Popelka Dr., Billings, MT 59105

The meeting is open to any interested member of the public. Agendas are prepared for the meetings; please request an agenda from the Board Recording Secretary Pam Ellis, pamelliscwdbh@gmail.com and are available at <https://www.yellowstonecountynews.com/county-water-district-of-billings-heights/>

Agenda items will include Ratification of Board Actions on November 29, 2021 including:

- Removal of Board President and Vice-President and election of new board members for these positions
- Approval of the bylaws reviewed and dated November 19, 2021
- Approval of a contract with Attorney Mark Noennig
- Approval of Board Direction for resolving the fee dispute with the City of Billings
- Approval of a new legal committee to meet with legal counsel Mark Noennig
- Approve of the consent agenda in the November 29, 2021 meeting agenda
- Approval of Annexation on behalf of Zackery D. Michalies, Homestead Subdivision submitted 10-19-2021
- Approval of Platinum Blue Cross-Blue Shield Policy for staff, P910PFR
- Job Description and Job Posting for General Manager
- Policies: Rules and Procedures for Meetings of the Board, Policy Records Access and Procedure, Uniform Complaint Procedure, and approval of contract from Civics Plus-Municode for hosting a Standard Design Website and Board Management Software

Additional agenda items may include:

- Approval of the consent agenda including minutes of the November 29, 2021 meeting, November prepaid bills for approval, November bills for approval, Profit and loss statement November 2020-November 2021
 - Review of the audit report prepared by Anderson ZurMuehlen
 - Finance Committee Report: Laura Drager, Chair
 - Review of applications received for General Manager
 - Bylaws and Governance Committee Report: Pam Ellis, Chair Approval of proposed procedure for interviewing and hiring a new General Manager
 - Contract and appointment of an interim manager and hiring Justin Stark and Hendrickson Law firm to respond to Cause No.D V 2 1 0 1 4 9 filed by Plaintiffs JEFF ENGEL, BRANDON HURST, DENNIS COOK, and TOM ZURBUCHEN against the County Water District of Billings Heights in MONTANA THIRTEENTH JUDICIAL DISTRICT COURT YELLOWSTONE COUNTY on December 10, 2021
 - Discussion with Andrew Rheem, rate consultant with Raftelis
 - Safety Committee Report: Jeff Engel, Chair
 - Other agenda items included from staff or Board members
- Discussion with Andrew Rheem, rate consultant with Raftelis
 - Safety Committee Report: Jeff Engel, Chair
 - Other agenda items included from staff or Board members

COUNTY WATER DISTRICT OF BILLINGS HEIGHTS Board of Directors Meeting Agenda

Supporting Documents maybe downloaded

<https://www.dropbox.com/sh/a07viwhq1wrago5/AACTsEclSq6n1ukMRarxDYiUa?dl=0>

Location: Board Room, County Water District of Billings Heights 1540 Popelka Dr.

Date: December 15, 2021

Time: 6:00 p.m.

BOARD MEMBERS PRESENT: Ming Cabrera, Laura Drager, Pam Ellis, David Graves,

ALSO PRESENT: Attorney Mark Noennig, Attorney Justin Stark, Staff: Josh Simpson and Dianne Crees, Consultants
Josh Jabalara, Andrew Rheem and Harold Smith,

GUESTS: Larry Brewster, Delbert Bailey, Kelly Brookshire, Frank Ewalt, Charles Felton, Mike Macki,, Jonathan
McNiven, Ed Melcher, Tom Zurbuchen

CALL MEETING TO ORDER: President Ming Cabrera @ 6:00 pm

WELCOME AND INTRODUCTIONS Ming Cabrera introduced himself as President of the Billings Heights Water
Board. Introductions

PRESIDENT'S REMARKS: Ming Cabrera

Thank you to every one for coming here tonight. At this point, I'm going to give a few comments about how the proceedings are going to go. During the course of the meeting the Public may be head before a vote is cast by the Board. The President will acknowledge the Public once the motion has been made and discussed by Board for their input. The President will recognize speakers who raise their hand. Once recognized, the speaker should move to the side of the board table so comments can be heard, identify yourself by name, and limit your comments to two minutes. Each speaker will have one opportunity to speak on any agenda item.

Members of the public who did attend the May 29th meeting may comment on any of the board actions for November 29th, preferably no repeating the comments made by that individual on November 29th. The Board will approve by unanimous consent any items not receiving public comment. The board will vote again on any items receiving public comment. Each member of the public may comment once on any given item. This is a seven member board. Four members are present, three are absent. One had an excuse; the two others Jeff Engel and Brandon Hurst are supposed to be here and are not present. Dennis Cook had surgery and he has an excuse at this time.

The reason we are going to do this in this order is because we have to recertify many things because there was a lawsuit against us in regards to our meeting. We were summoned to answer the complaint and this action was filed by the Office of the Court. Jeff Engel, Dennis Cook, Brandon Hurst and Tom Zurbuchen plaintiffs vs the County Water District of Billings Heights sent a summons saying more or less that the meeting was illegal for November 29th. Attorney Mark Noennig commented that we do not concede that the meeting was illegal. We are doing that this is over so that the public can see the actions once again and we can recertify all the actions.

NOTE: Dennis Cook requested an excused absence for pre-planned foot surgery to repair an Achilles tendon for Dec. 14th which will require him to miss the Dec. 15th meeting. Seven to eight week recovery time expected.

I. PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items

1. Any member of the Public may be heard on any subject that is not on the Agenda.
2. The board will not take action on these items at this time but may choose to add an item to the next meeting’s Agenda for discussion.

Tom Zurbuchen, Heights resident and District consumer of water. Clearly this board has consistently done everything in its power to side step laws and rules starting in May. A lawyer was hired to get 5 people seated on the Board when the June Board meeting clearly showed those hiring the lawyer clearly knew the terms started June 1st. The board has hired an attorney to represent them, then done the opposite of his instructions causing him to resign. They have adopted bylaws and policies, even raised water rates, and they made no serious attempt to notify ratepayers. They have a monthly bill that has a provision for putting notices on. They have access to every mailing address of every user. They have easy access at the county elections office to every registered voter in the District and there are over 11,000. None of those means were done. Clearly this violates MCA 2-3-103 which clearly charges this district with encouraging public comment. They have done nothing to encourage public comment. I have received 3 copies of agendas, all different. One with 19 pages, one with 33 pages and the last with 29 pages. Which one is being used tonight? I please would like an answer to that question.

Dianne Crees, staff member. This place is not broken and it did not need to be fixed. Could we have done better in areas, definitely. Any business could or any person could. But the four came in here with its own agenda, demanding, degrading, not asking questions. When the legal committee met with the city and wanted to wait for a further meeting to tell what was happening. It was like, “you won’t tell us your secret even though the legal counsel advised that. You can’t be president any more. You are like kids who throw a tantrum if they don’t get their way. I have never if my 29 ½ years of working here seen a board make such a shamble of things. You have micro-managed and politicized everything. I believe a

board should provide oversight and act on recommendations from a qualified, positive, experienced person. Not make up their own rules. You have taken a place that was run like a fine oiled machine and made it into a place where no one knows what is going on, what we should do, or who we should listen to. It feels like we are kids in the middle of a custody battle. We have already lost one qualified person. Is it your intention to keep going like this until we quit and then you can hand it over to the city and then you can say, "well, I did my job."

Pam Ellis noted that we are following Dianne Crees' advice from the November 17th meeting to have people come to the front to speak so everyone can hear.

Butch Bailey, resident. My comments basically pertain to economics. I want to direct them to Laura and to Ming. You people were voted in to represent the people of Billings Heights. Is that correct? I assume that's your deal. In a view of the economic actions which is going on right now, most of it is political. Your price of gasoline has doubled, the price of my natural gas at my house doubled, inflation is way out of control, totally out of control. And we all think that we know the reason for this and that's no beating around the bush. The fact of the matter is on the last meeting, I believe it never finished off that Pam made two attempts to change our contract with the city of Billings. That has nothing to do with our infrastructure or anything else. It has to do with the City of Billings controlling our water rates out here. There are a lot of people that are retired and live on fixed incomes and that's all they need to get hit with another bill for some glorious dam thing out there on the west end that has nothing to do with us. The city of Billings never paid for none of our infrastructure. Not one penny. Why should we pay for that thing out there? The reason I know that is because I own property in the city of Billings. I know what happens. You drive around town in Billings last summer. How many people were not watering their lawns? It was unbelievable. (Time)

Mike Macki, Billings Heights resident. Do you have a resume here for me for Peyton Brookshire and I would like the board to review that one time or another. I have talked to numerous people down here and we have never had a problem like we have right now. For some reason, this board right here has alienated the whole staff. Now if you think that's correct that you can come in as new board members no knowing anything about managing a water district? Do you? Do you? (Ming Cabrera said, "don't ask questions sir, just make your comments). None of you. (Ming Cabrera said, "please sir, no alienation, no screaming at people") The alienation of this is not appropriate for any board member to do this to somebody. And if you guys think you can do that, boy, you are going to have a heck of a time up here. Because we will have petitions.

Ming Cabrera asked if there were any other public comments? (silence) Thank you very much.

- II. Ratification of Board Actions on November 29, 2021** Members of the Public who were not present at the Board Meeting on November 29, 2021 may comment on any of the Board actions listed below. The Board will approve by unanimous consent any items not receiving public comment. The Board will vote again on any items that receive public comment. Each member of the public can comment once on any given agenda item.

1. **By-laws** Pam Ellis noted that the Bylaws which were approved at the November 29, 2021 meeting are included in the minutes for the November 29th meeting which were in the Board packet and were printed and available to all attendees. No public or board comments. Attorney Mark Noennig said that after the Board had listened to public comment on any of the items from the November 29, 2021 meeting, they needed to vote again on the whole slate of items.
 1. Pam Ellis made the motion: Having conducted a public hearing, considered written and spoken public testimony, I move to adopt the By-Laws of the County Water District of Billings Heights dated November 19, 2021.
 2. Motion Seconded by David Graves
 3. MOTION TO APPROVE THE BYLAWS drafted on November 19, 2021:
Approved 4:0

After all decisions were reviewed and public comments received, the Board votes separate on each item receiving public comment or question:

4. Pam Ellis made the motion: Having conducted a public hearing, considered written and spoken public testimony, I move to adopt the By-Laws of the County Water District of Billings Heights dated November 19, 2021.
5. Motion Seconded by David Graves
6. MOTION TO APPROVE THE BYLAWS drafted on November 19, 2021:
Approved 4:0

2. REMOVAL OF PRESIDENT

Kelly Brookshire had a question. I don't recall off the top of my head the exact number, but I believe public board officials have exact dates of when they take office. So the Vice-President is elected at a certain time and it's one year and I believe that is in state statute regarding that. What is your take on how you can change these now, not when they come up for review, which is roughly nine months? Thank you.

Ming Cabrera said we had a motion on the board for removal of the President and the Vice-President from their office. By unanimous consent it was done because of the issues that we had at that point.

Pam Ellis said the bylaws allow us to remove the president and vice-president. That is true on any board. When you elect somebody, you can remove them from the office.

Kelly Brookshire responded, "for gross misconduct."

Pam Ellis said you cannot remove them from the Board. But you can remove them as president of the group when they no longer have the support of the majority. We passed the bylaws on November 29th and then we removed the president.

1. Pam Ellis made the motion: having conducted a public hearing, considered written and spoken public testimony, I move to remove Dennis Cook as President of the County Water Board of Billings Heights. I nominate Ming Cabrera as President of the County Water Board of Billings Heights.
2. Seconded by David Graves.
3. MOTION TO Removing Dennis Cook as President and appointing Ming Cabrera: Approved 4:0

After all decisions were reviewed and public comments received, the Board votes separate on each item receiving public comment or question:

4. Pam Ellis made the motion: having conducted a public hearing, considered written and spoken public testimony, I move to remove Dennis Cook as President of the County Water Board of Billings Heights. I nominate Ming Cabrera as President of the County Water Board of Billings Heights.
5. Seconded by David Graves.

MOTION TO Removing Dennis Cook as President and appointing Ming Cabrera:
Approved 4

3. REMOVAL OF THE VICE PRESIDENT **No Public Comment**

1. Pam Ellis made the motion: Having conducted a public hearing, considered written and spoken public testimony, I move to remove Brandon Hurst as Vice-President of the County Water Board of Billings Heights. I nominate David Graves as Vice President of the County Water Board of Billings Heights.
2. Seconded by Ming Cabrera.
3. MOTION Removing Brandon Hurst as Vice-President and appointing David Graves: Approved 4:0

4. APPROVAL OF CONTRACT FOR ATTORNEY MARK NOENNIG **No Public Comment**

1. Laura Drager made the motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve Resolution 006-21 to Authorize Engagement of Mark Noennig, HENDRICKSON LAW FIRM, P.C.208 NORTH BROADWAY, SUITE 324 P.O. BOX 2502 BILLINGS, MT 59103-2502 as Counsel for meeting protocol and bylaws, settlement of pending litigation with the City of Billings, and preparation of contracts for general and interim managers.
2. Seconded by David Graves.
3. MOTION to hire Mark Noennig as Counsel for meeting protocol and bylaws, settlement of pending litigation with the City of Billings, and preparation of contracts for general and interim managers was approved unanimously.

5. APPROVAL OF BOARD DIRECTION FOR RESOLVING THE FEE DISPUTE WITH THE CITY OF BILLINGS **No Public Comment**

1. Laura Drager made the motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approving Resolution 007-21 to Direct Mark Noennig, Counsel for meeting protocol and bylaws, settlement of pending litigation with the City of Billings, and preparation of contracts for general and interim managers, to prepare a settlement agreement in cooperation with representatives from the City of Billings to settle the fee dispute for the amount due for unbilled water provided to the District TOTAL: \$2,970,599.35 with no additional late fees or penalties, pending a review of the court records and discussion with prior counsel. The settlement agreement will include an agreement to renegotiate the contract in 2022 when the new General Manager has been hired and may

include resolution of the right-of-way issues and other issues identified by either party.

2. Seconded by Ming Cabrera.
 3. Laura Drager called the question to approve Resolution 007-21 to Direct Mark Noennig, to prepare a settlement agreement in cooperation with representatives from the City of Billings to settle the fee dispute for the amount due for unbilled water provided to the District TOTAL: \$2,970,599.35 with no additional late fees or penalties, pending a review of the court records and discussion with prior counsel. The settlement agreement will include an agreement to renegotiate the contract in 2022 when the new General Manager has been hired and may include resolution of the right-of-way issues and other issues identified by either party. Approved unanimously.
6. APPROVAL OF A NEW LEGAL COMMITTEE TO MEET WITH LEGAL COUNSEL MARK NOENNIG

Kelly Brookshire said she doesn't understand why you would change the legal committee because you don't agree with the other legal committee? They don't agree with you.

David Graves responded, first of all, they didn't represent us correctly. (Kelly Brookshire interrupted—David responded, you have to let me finish, I didn't interrupt you). Dennis called us all and did a straw vote on what we wanted to do with the city and who we wanted on the legal committee. He didn't go with what we recommended. He chose his own people and then they went from there. Dennis was told what to do by the majority of the Board to do with the fee dispute with the city. Water that we drank, watered our lawns with and showered with. We owe the city for that. We all agreed to that. But Dennis didn't go along with us and he appointed his own legal committee.

Ming Cabrera said if you look at the straw vote, he had 5 votes for Jeff Engel. Four of us voted for Pam Ellis. He had three for Brandon Hurst. None of us voted for Brandon Hurst. None of us voted for Jeff Engel. When you have seven people on a board and he just appoints his own people, that's what the problem was. He appointed his own people. Dennis is just like everybody else on the board—we each just have one vote. Let me remind everybody here, this public utility has assets every month of \$400,000; \$5,000,000 per year from the ratepayers every year. We need to make sure that we are a public utility, not a private utility. That has been hard for people to understand. As a public utility, voted in by the public. We have to be open with all records to the public. Not what they have done for 58 years, they haven't even changed the charter for that period of time 58 years.

Pam Ellis clarified 63 years, 63 years without bylaws.

1. Laura Drager made the motion to appoint David Graves, Pam Ellis and Jeff Engel

2. Pam Ellis seconded the motion.
3. Motion to Approve a New Legal Committee approved unanimously.
Peyton Brookshire clarified difference between a public hearing vs a public meeting. For a public hearing, you would have to send a notice out to every ratepayer in the Heights.

After all decisions were reviewed and public comments received, the Board votes separate on each item receiving public comment or question:

4. Laura Drager made the motion Having conducted a public hearing, considered written and spoken public testimony, I move to appoint David Graves, Pam Ellis and Jeff Engel
 5. Pam Ellis seconded the motion.
 6. Motion to Approve a New Legal Committee approved unanimously.
7. Approval of the Consent Agenda from November 29, 2021 **No Public Comment**
- Minutes of the October 20, 2021 Meeting (2)
 - October Prepaid bills for approval
 - October Bills for Approval
 - October Bank Statements: First Interstate Bank (5) & 5a) Summary from accounting
 - Stifel Statement October provided by Stifel (NOT RECEIVED)
 - Profit and Loss Statement – Oct 2020 and Oct 2021
 - Approve the resignation of Jeff Weldon (8) and Consent to Withdraw Counsel
1. Laura Drager made the motion to approve the consent agenda.
 2. Seconded by David Graves
 3. Pam Ellis made a friendly amendment to add the bills from Main Street Printers for printing the documents for this meeting and the documents for November 17th. For November 17th, \$116.10. The documents for this meeting were \$194.10
 4. Laura Drager accepted the friendly amendment
 5. The Consent Agenda was approved unanimously.
8. Approval of the Annexation on behalf of Zackery D. Michalies, Homestead Subdivision submitted 10-19-2021 **No Public Comment**
1. MOTION BY DAVID GRAVES: Having conducted a public hearing, considered written and spoken public testimony, I move to approve petition for annexation of behalf of Zackery D. Michalies, 1637 Sagebrush Rd., Billings, MT 59105 Homestead Subdivision, Submitted 10-19-2021 and accept the fees paid of \$13,002.71.
 2. Seconded by Laura Drager
 3. Motion Approved Unanimously
9. Approval of Platinum Blue Cross-Blue Shield Policy P910PFR and Renewal of Guardian Dental and Vision Insurance

Butch Bailey: that was accepted the way it was?

Ming Cabrera: yes sir.

Butch Bailey: we took care of the guys? That was important to me.

Laura Drager: we gave them what the staff asked for

Butch Bailey: very good, very good

1. Motion: Laura Drager made the motion, having conducted a public hearing, considered written and spoken public testimony, I move that we keep the insurance as is for 2022. RESOLUTION 009-21

2. Seconded by Ming Cabrera.

3. Discussion: Ming thanked the staff and public for attending the meeting. This board is trying to make the decisions in public. We want you here and we want you happy. That's why I seconded the motion knowing it is really important.

4. Motion approved unanimously

10. Approval of Job Description for the General Manager **No Public Comment**

1. MOTION Laura Drager moved that we accept the General Manager Job Description as written.

2. SECOND David Graves

3. MOTION APPROVED UNANIMOUSLY

11. Approval of Job Posting for General Manager and Payment of Fees Required to Post **No Public Comment**

a) MOTION Pam Ellis made a motion which was clarified by Laura Drager to advertise in the Yellowstone County News, AAWA, Montana Rural Water, Indeed, Zip Recruiter, Linked In, and Job Service. The position will be opened until filled. The Board will begin reviewing applications on December 15th.

b) SECONDED by David Graves

c) MOTION APPROVED UNANIMOUSLY

d) CLARIFY WHO IS GOING TO DO THE POSTING Pam Ellis will send the posting to John Rife. Pam Ellis will send to the Yellowstone County News. Laura will complete the additional posting with assistance from Pam Ellis if needed. Laura said the fee for AAWA is \$699. Ming said that would be the group with the most clout because they are the most involved with water districts. That posting would be disseminated nation wide.

e) MOTION Pam Ellis made the motion to pay the \$699 to AAWA and any other fees required to post the job.

f) SECOND Laura Drager

g) MOTION APPROVED UNANIMOUSLY

12. Adoption of TRUSTEE AND MANAGER POLICIES Rules and Procedures for Meetings of the CWDBH Board **No Public Comment**

1. Recommended motion by Pam Ellis: Having conducted a public hearing, considered written and spoken public testimony, I move to approve the

TRUSTEE AND MANAGER POLICIES Rules and Procedures for Meetings of the CWDBH Board.

2. SECOND by David Graves
 3. MOTION APPROVED UNANIMOUSLY
13. Adoption of Policy Records Access and Procedure **No Public Comment.**
1. Recommended motion by Pam Ellis: Having conducted a public hearing, considered written and spoken public testimony, I move to approve the Policy Records Access and Procedure.
 2. SECOND by David Graves
 3. UNANIMOUS APPROVAL
14. Adoption of Uniform Complaint Procedure **No Public Comment**
1. Recommended motion by Pam Ellis Having conducted a public hearing, considered written and spoken public testimony, I move to approve the Uniform Complaint Procedure.
 2. SECOND by Laura Drager
 3. UNANIMOUS APPROVAL
15. Approval of Contract from Civics Plus-Municode for hosting a Standard Design Website and Board Management Software

Peyton Brookshire, Assistant Manager As he stated before and I know there was disconnect in the Board receiving stuff, he had analytics on the website that we've had since 2014. He looked at Municode many years ago. Too expensive. We had Zee Creative set it up. She said whatever kind of board items they wanted on there she could probably do for a quarter of that price. The analytics on that show the average user, about 85% go to "Pay my Bill" and the average time is about 30 seconds. There's not a whole lot of traffic. Most people are looking at signing up for water. He pulled the analytics for the last year. Out of 2296 views on the main page, 1700 went to pay my bill, 503 to the residential page, 244 to the contractor page, contact us 188, ask questions 132. The Board of directors received 127 and employment that I just put up there 51. Board meeting 1. Bear in mind that some of this is us putting stuff on their too. Engagement time 19 seconds on the main page, 38 seconds on contractor, 15 seconds to get over to pay my bill. To me it seems like the traffic on there is not worth an \$8000 bill and another \$4500. Zee Creative only charges when we need something. That is usually hourly. She sends me a notification when I have to pay the domain name. Which is about \$80 per year. That is up to you guys.

Tom Zurbuchen These are the questions I asked last month at the 29th meeting. They went unanswered. So we have 2000 people going to a website that we are now going to be charged \$4500 a year to maintain. My god that is \$2 a piece for each person going there. I am a cheap tight wad SOB and I am proud to admit it. This is wrong. This expenditure is just wasting money. 30 seconds, the average time somebody is on the website. They are not lost, they are finding what they

want and going elsewhere. They are doing their business. This website is working. We don't need to waste all this money on a new website.

Ming Cabrera asked if somebody on the board wanted to answer those questions. Pam Ellis said, "no, we answered them (at the last meeting)."

Pam Ellis asked Attorney Mark Noennig if we needed to vote separately on each item that received public comment. Tom Zurbuchen shouted out, "you said you would. Mark Noennig recommended that at the end the Board vote on the entire slate of decisions from the November 29th agenda. If you want to vote on the items that had public comment individually, that is probably just as fine. But at a minimum, you need to vote on the whole agenda.

1. Recommended motion by Pam Ellis: Having conducted a public hearing, considered written and spoken public testimony, I move to approve Resolution 008-21, the contract from Municode for hosting a Standard Design Website and Board Management Software for a total of \$8250 for year 1; year 2 and beyond \$4500 per year.
2. SECOND by Ming Cabrera
3. UNANIMOUS APPROVAL

After all decisions were reviewed and public comments received, the Board votes separate on each item receiving public comment or question:

4. Recommended motion by Pam Ellis: Having conducted a public hearing, considered written and spoken public testimony, I move to approve Resolution 008-21, the contract from Municode for hosting a Standard Design Website and Board Management Software for a total of \$8250 for year 1; year 2 and beyond \$4500 per year.
5. SECOND by Ming Cabrera
6. UNANIMOUS APPROVAL

Recommended motion by Pam Ellis : having conducted a public hearing, considered written and spoken public testimony, I move to reaffirm all the motions approved by the Board at the November 29, 2021 Board meeting.

Second by David Graves.

UNANIMOUS APPROVAL

Pam Ellis noted that for people who were not at the November 29th meeting, the minutes are very detailed. Meetings are recorded and the minutes are almost verbatim though statements are translated from first person to third person. If you

want to understand the rationale of what we discussed, you can read the minutes that were provided.

Ming Cabrera said there was a lot of thought. We were here for three hours. A lot of you were here at that point in time and made public comments. There was no need to rehash your comments even with the Municode and what we are looking at in terms of our ability to be in front of our ratepayers and at the same time transparent as a public utility. Not keep everything within the District itself. That maybe one of the things that maybe a little bit hard for people to understand; this is a public utility. It's not a private corporation; it is a public utility that is open and must maintain that open system to the people.

Ming Cabrera: Now we are going to go to Old Business, Raftelis. We decided to move that up on the agenda with Raftelis at this point.

III. **OLD BUSINESS: Discussion with Andrew Rheem, Raftelis**

1. **BACKGROUND** The Board voted 3:2 in June to hire Raftelis and take a look at the City of Billings rate study and make sure it was properly done. The laws for establishing water rates are not your choice; there is a huge book published by AAWA that establishes the process. To date, we have spent \$16,684 and have had absolutely no information. The Board was pretty frustrated. Ming Cabrera called Andrew Rheem and spoke with him after the meeting to let him know that the Board does not authorize any additional work until they have a report and understand if what we are doing makes any sense. An undated email from Andrew Rheem was left at the Board table on October 20, 2021 said that we needed to begin our own rate review because on July 1, 2022, the cost of wholesale water from COB increases 30.6%. At the November 29, 2021 meeting, the board unanimously approved the motion by Pam Ellis and seconded by Laura Drager: Having conducted a public hearing, considered written and spoken public testimony, I move to direct Raftelis to stop further work on the proposed City of Billings wholesale water rate increase of 30.6%, scheduled to begin July 1, 2022. The General Manager may review the work completed by Raftelis with the Board and make a recommendation to the Board at a later date. President Ming Cabrera called Andrew Rheem on November 30, 2021, sharing the Board's concern and the direction to do no further work until the Board met with Andrew.

Andrew Rheem said we were retained to look at the city's rate study. We have. It is complicated. Any time the city sets rates for the wholesale process. We identified some questions. Ultimately the goal as we understood it was wanting to make sure that as the rates were changing, that they were fair and equitable and consistent with the agreement and standard practices. That is basically the back drop. We posed some questions to the city. The city provided some responses and some additional information. We have been reviewing that and we have had some additional questions. In some of the responses we received from the city a few weeks ago, they did identify that there were some substantial modifications in terms of the timing of things. Ultimately whether as proposed and the city adopted at a 30.6% increase, if that was still what was intended to go forward. Certainly that is a big single increase for any single ratepayer. That was the essential primary concern: was it fair and equitable going through that and raising some questions. Certainly the district has the option of accepting the rates as proposed as was laid out. Certainly the District has the option to raise questions or concerns. Ultimately, the District has the option to file for arbitration and those are the three things we laid out as the potential options. Getting some additional information seemed to be a reasonable first start. We got some additional

information that maybe some of the costs could change a little bit. So that was a little bit of information there. It may be an indication that the city is looking at this rates; they may not be. So that is potentially where our understanding and try to improve that in terms of where that is at.

Going back to potential options, it does seem that the city has things they are planning to build and construction. As a minimum it seems like the costs are increasing rather the 30.6% goes into effect or something different. It certainly seems prudent for the District to prepare for some level of increase whether it is that amount of something potentially different or lower that may happen if the District pursues a review process.

Ming Cabrera wants to verify the fact, does the Heights Water District buy water from anybody but the city? Andrew Rheem said he didn't believe so.

Pam Ellis commented that Jennifer Duray attended our meeting on November 17, 2021 with the city manager and two city council members. One of the things that had come up at the city council meeting that week was the possibility that things would be delayed a little bit because of the federal infrastructure bill in hopes that there would be some money available. Pam Ellis asked the city manager, Chris Kukulski if there was a chance that the 30.6% increase would be delayed. His response was possibly, but we are talking weeks or months, not years. Right now we are looking at 30.6%. The City of Billings got some money from Round 1 of the ARPA grants, but very minimal considering the cost of the west end reservoir.

Laura Drager asked "in the research you have done, is there any opportunity for us to dispute this 30.6% rate increase.

Andrew Rheem: "When you say an opportunity, what exactly do you mean?"

Laura Drager: I don't want to pay an increase of 30.6% on my water bill. So are there options for us?

Andrew Rheem: "As I understand it yes, the contract as revised does have a provision for a dispute resolution process if the District feels that the rates are inequitable, then there is an arbitration process where the city and the District go through a process.

Laura Drager: I understand all that. What I'm asking you is, through your research, are there any grounds for disputing that rate increase?"

Andrew Rheem: It does seem like there are reasonable grounds to better understand and how are these new facilities benefiting the Heights Water District. The other part of it is also the timing of it too because things are being built. The once those projects are in service, that's when the city has the ability to recover the costs of construction from the District through their rates.

Pam Ellis said the city residents have been paying 5-10%, they will have paid the 30.6%. In FY 23 and 24 will also have new projects coming on line which may result in large increases and the city is starting another rate study for FY23 where they anticipate that the rates will be significantly higher because they are going to try to incentivize conservation. Our ratepayers are at a disadvantage because we have not been increasing our rates gradually even though we saw this rate increase coming.

Peyton Brookshire said we have. They have increased our rates well over 20% in the past 7 years. If this rate increase goes in, that will be 50% since 2007. So we have been getting charged more and more and more. If you read the report, you will see several places in there where it specifically states that it cannot fill the reservoirs in the Heights. It is an 18 million gallon per day plant and it takes a lot of acts of God to get water to the Heights from it. And if you can't fill the reservoirs, you cannot fill the Heights.

Ming Cabrera said, Peyton, isn't that why you built the big tank out there? Is that correct?

Peyton said we built the tank to have our redundancy. To take pump stations off line and to gravity feed to a major portion of the users.

Pam Ellis said that Jennifer was concerned that the HWD didn't always work with the city in terms of when they filled the tanks and it put the city's equipment at risk. They want some ability to control when the tanks are filled in the Heights. Peyton said he does coordinate with Zoe Smith. Pam clarified that that was a passing conversation and that maybe she didn't totally understand it and she may not be reporting correctly.

Ming Cabrera said his concern was that Raftelis is charging \$30,000 to come up with a report and we still don't have anything from them.

Peyton said they got the first response from the November 19th, 2021. We just got a response yesterday for the questions we sent to the city today. It's a process. It doesn't just disappear in 30 days. We tried to see if Jennifer Duray could meet with us when Andrew came to Billings but she didn't have time.

Ming Cabrera said he agreed that we need to look at the numbers before we go to arbitration on anything. Because that sounds like more attorney fees to me.

Peyton said, no, we just ask questions and put their response in with the study they had. "This is how you are trying to justify what you are going to charge and we just don't see it." And that is when we can get down to having some talks.

Ming Cabrera said his question was to Andrew: "When did you first send your questions to the city in terms of what you needed? Was it before November 19th?"

Pam Ellis said Andrew Rheem sent his questions to Jennifer Duray on November 5, 2021. Jennifer Duray responded in writing to Andrew Rheem, Peyton and Pam Ellis on the same email. "What concerns me Peyton is that in your report to the Board you gave us the questions, but you did not provide Jennifer Duray's November 19th response.

Peyton said, "because I just got them." Pam said, "we got them at the same time Peyton. Jennifer provided her written response to both Peyton and Pam Ellis on November 19th. Pam provided a copy of the emails to the Board on November 29th. Peyton did not provide the complete information in his report to the Board for the December 15, 2021 meeting. Today you gave us a copy of Andrew Rheem's questions and you say Jennifer responded, but you don't provide her answer. Peyton said he provided all the information, did Pam fail to include it? Pam said she provided all the information to the Board on November 29th and again for this meeting. Today you gave us more questions and you tell us she already gave you an answer.

Peyton said not for those, those were just sent.

Pam Ellis responded, "OK, well the questions you gave us are not dated."

Peyton said, "OK, I will forward you the emails. I went over them too with Lowell at Interstate to make sure if there was anything more they wanted to revise. I told Andrew it was OK to send them, they looked good and then we will go from there.

Ming Cabrera said he doesn't have any further questions. Everybody is in a hurry to get things done. We have hired you to do this and at the same time we are waiting for answers and more questions are being

asked all the time. You were here in May. You walked in and you walked out without even introducing yourself.

Andrew Rheem corrected that it was in July. The amount that we have invoice is roughly \$12,500. Pam Ellis clarified that the rest of the amount she quoted was charged by Interstate Engineering to assist in gathering information for Raftelis. Andrew said as we go through the engineering analysis and operation. Our total costs continue to rise.

Andrew said in terms of the July meeting, I did come to that, I was in town. I had a public hearing scheduled at 7:00 so I had to leave simply because I had to get across town for a previously scheduled public hearing that was starting. As the meeting was going on, I didn't come up on the agenda. As I recall, many of the Board members were getting seated; that was the first meeting.

Pam Ellis said no, the first meeting was June (actually May). Peyton said Andrew Rheem had emailed from his personal email but it went into his junk folder and he had never met Andre before or he would have caught that and introduced him. Andrew said that was his mistake.

Pam Ellis said it was our error too because the Board President at that point did not allow people to introduce themselves because he was trying to save time on the meeting and that was an intense start to the meeting.

Laura Drager asked, based on the work that you have currently done, do you have a timeline where we could have an expectation of answers.

Andrew Rheem said that the understanding that helps is, "is the city reevaluating the timing of things?". His understanding if we are looking at the document as it was published in April or are they delaying a little bit. It doesn't make as much sense to review something that is going to change. If we find out that no, nothing is going to change then the information, the time of facilities and how that may benefit the district. You have that information, you have that document. We can proceed to see if it is some sort of discussion/negotiation with the city or some other outcome in terms of how to dispute. Maybe there is no dispute, I don't know. I say we need to get a better understanding of that first before saying this is the schedule and these are the next steps that we are going to be pursuing and the dates. And it is going to be subject to more than one person.

Laura Drager: Can you provide an update monthly that can be provided to the board, "here is where we are" and he can forward on to us.

Andrew Rheem said he didn't see a problem with that.

Pam Ellis said she would like to see Andrew work with Peyton and the new Interim General Manager who is on the agenda to hire tonight. The Board approved by a 3:2 vote to allocate \$50,000 to study whether the 30.6% increase in the cost of wholesale water is justified. We have no rate study for this District. We have a ton of complaints about how the rates are set for this District. We have to do a professional rate study. Josh Jabalara can help us with that and work with the new Interim General Manager. My preference would be that you stop working until the current Interim can meet with you and Peyton and bring back a recommendation. I would much rather that the additional money if we are going to spend it go to helping us design a professional rate study. We have never done that and we have been asked repeatedly to do so. I could be wrong because we just do not have enough information. I think this Board does not want to be in a constant fight mode with the City of Billings. We don't want to fight everything. If things are unreasonable, fine. But if things are reasonable, we want to move forward and do our job.

Harold Smith is Vice President with Raftelis; he owns the company. He is a little disturbed that the Board seems to be dissatisfied. We could have gotten in a fight with the City. We could have said this is wrong, let's go to arbitration. We felt it was better to communicate with the City to fully understand their reasoning behind what they were doing and get to the bottom of it before we went down the arbitration/mediation route involving lawyers. So that takes time, back and forth, to get the answers we need to make a thorough assessment of the way they are calculating their rates. I believe that we are operating in that same spirit of cooperation with the City that you seem to be advocating.

Pam Ellis said, "we don't know anything about your work. That's the issue. We have not had any communication from you, that's the problem."

Harold Smith said, "well, I know we have been communicating with Peyton, we have communicating with Duke, we have communicated with Mr. Cook and I don't know why it has not made it to the Board."

Pam Ellis said, "either do we."

Ming Cabrera said it never ever gets to the Board, It stops with Dennis and Dennis wanted to run everything through him. That was the reason we have seven members on the Board. What we are trying to accomplish here is that not one person will be the dictator over this Board and makes the decisions without consultations with the rest of the Board. We know it's not your concern. Raftelis has not communicated with the Board, nor has Peyton, nor has Duke. That's been how it dropped off. We voted on it; after that there was no communication. This helps.

Peyton said he gave us an email at the October meeting. And at the November meeting a report and then the meeting did not happen. But I had sent the report to Brandon who was supposedly having the meeting. That was the city's report and all the pdf's. These guys are studying that so I don't know what you're looking for. They have to study it and develop the questions. Peyton goes with Interstate Engineering and we all get together and we just got the report the 5th of the November. I am going through it just as well to see what other questions we can come up with as to where they are getting their structure. I don't see where they are not doing their job to try to get the best out of their report to figure out where we can attack or look at, "hey, that doesn't look right on your rates, we want to dispute that."

Pam Ellis said all County Water District district ratepayers who live in the City have helped pay the \$250,000 for the city to do a thorough rate study from FCCS. The city did a professional rate study. Now we are spending an additional \$50,000 to review the city's rate study and then we still haven't started on our own rate study for the District which Josh Jabalara maybe able to help us do for free but we may also have to hire a professional firm. I would like to make a motion that Raftelis not continue working until the Interim General Manager has worked with Peyton and Raftelis and can make a recommendation to the Board. Certainly to give the General Manager to move forward; we want another pair of eyes looking at it. Dennis Cook complained vociferously at the October 20th meeting about Raftelis. So he did not feel that he was receiving communication.

Peyton said until we have their study completed to know what rate is fair and just and what rate we are going to be charged if it is going to be changed, you need that before you can do your CIP and rate study to determine what your rates need to be to cover that. That's why these gentlemen do their job first to get that out there. See we get it down to 12.5% over the next two years, just throwing out a number.

Ming Cabrera recognized Josh Jabalara. Josh can you please tell them what you do.

Josh Jabalara said he works for Midwest Assistance Programs. We are a technical assistance provider for water, waste water and solid waste. We are part of a larger network called The Rural Community Assistance Partnership (RCAP). We are based out of DC; we are a non-profit and we look at all 50 states. We help with everything from emergency response plans to operations and maintenance, capital improvement plans, help the Board with a rate study at no cost to the Board. Did I hear correctly that if the wholesale rate increase goes in, it will be a 59% increase since 2007? (confirmed). As we do rate studies, everything goes up in price so we want to raise them 2-3% per year so we don't get to the point where we have the sticker shock of 30 some percent and everybody goes, "wow, it just went up exponentially," But if you increase about 3% per year and inflation is way higher than that right now, 2007 to 2022, you are looking at 42% during that time. If you add the increased inflation now, you are really not far off that rate. Billings, I am not sure the exact agreement for delivering water to the District. For most folks that don't know, the District would be considered a consecutive assistant to Billings.

David Graves asked, "Peyton, you are making the recommendation that we keep these gentlemen doing this study?" Peyton said he is because he thinks it is important to have someone on our team. We don't know what we can do and what we can't. I know if we get a 30% rate increase, this District is gone. That is 30% below what the residents are paying."

David Graves said, "I believe we should keep them because I think we need somebody checking out our rates on this and if we do have to go to mediation then we are already to go. I am with you on this one Peyton because we do need someone on our team."

Pam Ellis said we still have to do our own study and the rates rise July 1, 2022.

Laura Drager says that remains to be seen. There are some extenuating circumstances. Supply of just some materials. Josh has even just talked about that minutes ago. She is also in agreement that we should keep Raftelis moving forward and we get reports for the Board and have that information provided. You have already started the work and I don't see a reason to stop. We need to get these answers and that is really the only way we can move forward.

David Graves said he does believe that Peyton sent the information to Brandon but Brandon didn't send it on to us. Peyton said we all know the November issues and that is correct.

Public Comment

Tom Zurbuchen agrees with Peyton. We have to keep Raftelis. We can't stop them. That is just slowing down the process. The city's own report they paid HDR to prepare said the West End plant cannot sustain water to the Heights. Cannot sustain delivery to the Heights. Yet they want us to pay full bore as though it is serving the Heights. I can understand paying partial. But they want us to pay our full share of over 10% of the West End plant when it cannot sustain water to us. I think Raftelis is on the right track. They need to get more answers to the questions, understand it and be able to present why it's proper for us to pay 10% for a plant that can't produce water for us on a sustained basis? That's what the contract claims.

David Graves asked Pam to withdraw her motion. Pam Ellis responded there wasn't a second.

David Graves repeated his motion that we continue with this group.

Seconded by Laura.

Ming Cabrera said that his question is that people don't think the city pays water. The water we get right now comes from the city at the Belknap plant. So this is an addition. The one in the west end, from what I

understand, pays not only for additions out the Heights but also frees up what we have from the Belknap Plant.

Three yes votes; Pam Ellis voted no.

OLD BUSINESS:

1. Raftelis Summary prepared for November 29, 2021 meeting (16) attached

BACKGROUND: Amount remaining on the Raftelis contract (10/15/2021) \$39,667.50

Interstate Engineering	10/18/2021	\$2,771.00	Project support to Raftelis for Rate Study & NW Transmission Modeling
Interstate Engineering	9/23/2021	\$2,440.50	Project support to Raftelis for Rate Study & NW Transmission Modeling
Raftelis	10/11/2021	\$10,332.50	Billings to date
Raftelis	12/9/2021	\$1,140.00	
	TOTAL	\$16,684.00	

SUPPORT DOCUMENTS: emailed to Duke Nieskens, Peyton Brookshire and Pam Ellis by Jennifer Duray, November 19, 2021 Digital copies should be available from the district

- 2_Water System Overview Final Draft
- 3_Water Demand Forecasting Final Draft
- 4_Water System Evaluation Criteria Final Draft
- 05_Hydraulic Water Model Final Draft
- 06_Operation Analysis_Final Final Draft
- 08_Storage Analysis Final Draft
- 09_Distribution System Expansion Final Final Draft
- 10_Water System Resiliency Final Draft
- Water Map
- WTP to Distribution
- Pages from 06_Operation Analysis_Final Final Draft
- WO1942 WEWTP Preconstruction Contract (executed)
- WO1912 WERWP Pre-Construction Contract, COP (executed)

IV. NEW BUSINESS

1. Approval of Contract for Interim Manager (3)

i. Larry's Background

Larry was born in southern Idaho and was the 4th of 9 children. He has been happily married to his beautiful wife for 47 years. He has raised two great kids who went to grade school in the heights and graduated from Skyview High School. Larry attended the VO tech at Idaho State University and served in the US Army 1969-1972.

After serving in the military, Larry worked for Cable TV in Helena for 5 years. He was hired by NorthWestern Energy (Montana Power at the time) in 1982 and transferred to Billings in 1987. Larry retired in 2017 after nearly 35 years of work. The last 12 years Larry worked as the manager of the telecom department.

Larry was elected to the school board in 1993 served for six years. While on the school board, he served as a board member of the Montana School Boards association with one year as President of the organization.

Larry was appointed to the Billings City Council and served there for 11 years, including as two terms as Deputy Mayor.

Larry has been an active member of the Heights task force since it was founded. He believes it is a great organization that helps people connect on Heights issues.

- ii. Recommended Motion: Pam Ellis moved to employ Larry Brewster an Interim General Manager for the County Water District of Billings Heights, effective December 16, 2021 and direct President Ming Cabrera and Attorney Mark Noennig to sign the employment agreement. Seconded by David Graves.

Attorney Mark Noennig recommended an addition to the original motion. Ming Cabrera moved to employ Larry Brewster an Interim General Manager for the County Water District of Billings Heights, effective December 16, 2021 and direct President Ming Cabrera and Attorney Mark Noennig to sign the employment agreement subject to legal review. SECOND Pam Ellis. VOTE unanimous

DISCUSSION

Mike Macki said he didn't have anything against Larry, but he would like to have a resume for this job. Heights people deserve this. I have kids here. I don't want my water shut off by somebody who hasn't run a water system. It is a little more complicated to the water system then you actually think. To arbitrarily just hire somebody who doesn't have any experience. So I would just like to have a resume.

Larry Brewster said he doesn't have Water District experience, I'm not going to fool you about that. But I have worked in a utility, I understand operations, I managed a department employing 17 people in 2 states, 500 sites that they maintained, I worked with engineering firms, I know how to manage people.

Mike Macki asked if Larry has an engineering degree?

Larry Brewster said, no, I'm like most people that work here. I have a lot of experience in a public utility. If you advance to management in a public utility, it means you are kinda bright and worked hard. I have a pretty good vision for what I need to accomplish here in a short time. I think I can do it.

Laura Drager asked, "are you applying for the General Manager's position, the permanent position?"

Larry Brewster responded no, just the Interim.

Dianne Crees asked how we got the salary because it is more than Duke was being paid with over 30 years of experience?

Laura Drager used the number she got from Dianne Crees for his salary of \$95,000 plus benefits plus bonus pay. That's what Dianne told her Duke was making. She dropped the salary to \$90,000 for Interim, no benefits, no additions,

Dianne interrupted "no experience". Mr. Macki chuckled.

Ming Cabrera said Larry Brewster has experience at a public utility managing people.

Dianne said even with retirement, you cannot even put in for retirement or vacation until after a year.

Laura Drager said, "thank you Dianne."

Tom Zurbuchen said, "first this goes exactly the opposite of what this board campaigned on to get on the Board. You hollered and screamed that the old board was cherry picking people to put on the Board without advertising for positions. The old board just put people on. I backed you up on that. Here you haven't advertised for an Interim Manager at all. You have cherry picked who you want without any competition.

Second, hiring Larry Brewster is a violation of state law. You have already adopted the manager's policies. He is responsible for supervising all employees; you cannot operate this system without Larry Brewster's direction. That makes him the operator. You can't operate a water distribution under state law MCA 37.42.3 It is quite clear and there is an exception if the man operating was operating before July 1, 1967. I know a little bit about Larry. 1967, you were still in grade school.

Larry Brewster said, believe me, I was much older than that.

Tom Zurbuchen said he seriously doubts he was operating a water treatment plant. Larry said he was irrigating (a lot of laughing).

Tom Zurbuchen said this District is in violation of state code and clearly in state code 37.42.3-22, says a District operating in violation each day is a new offense.

David Graves said Tom, your 2 minutes are up.

Tom Zurbuchen responded, next....

Several voices: Tom, that is your 2 minutes.

Pam Ellis noted that Peyton and the 5 people working in the yard are all certified operators so there is no problem operating the District.

Kelly Brookshire was asked for the clarification on the side conversation you were all having. Yes, they are all certified but Larry is not, so how does that work?

Side comments: "what if everybody got sick?"

Pam Ellis: call for the question

THE MOTION PASSED UNANIMOUSLY.

- iii. Recommended Motion Pam Ellis moved to approve Resolution 010-21 to Authorize Employment Agreement for Interim General Manager appointing Larry Brewster with compensation of \$7500 per month pursuant to the procedures regularly established and as they may be amended by the District in its sole discretion subject to legal review. (4) Seconded by Ming Cabrera.

BOARD DISCUSSION Ming Cabrera asked Laura Drager to explain again why she recommended the compensation. Duke Nieskens received \$95,000 per year. He also received bonuses and incentives plus retirement benefits. She felt that as the manager \$90,000 would be a fair salary to start for an interim manager of \$7500 per month.

PUBLIC COMMENT Will this be a contract or will the District be responsible for his withholding for state and federal income taxes, worker's comp and Social Security?

Pam Ellis responded, it is a contract, so yes. Larry Brewster is an employee

THE MOTION PASSED UNANIMOUSLY

2. Response to Cause No.D V 2 1 0 1 4 9 filed by Plaintiffs JEFF ENGEL, BRANDON HURST, DENNIS COOK, and TOM ZURBUCHEN against the County Water District of Billings Heights in MONTANA THIRTEENTH JUDICIAL DISTRICT COURT YELLOWSTONE COUNTY on December 10, 2021 (13)

Background General Allegations

1. Plaintiffs Jeff Engel, Brandon Hurst, and Dennis Cook are board members for the Billings Heights Water District.
3. Plaintiff Tom Zurbuchen is a resident who receives services from the Billings Heights Water District.
4. Defendant County Water District of Billings Heights ("District") is a county water district located in Yellowstone County, Montana and is duly incorporated.
5. This Court has jurisdiction over this matter and venue is proper.
6. On November 29, 2021 the District held a meeting not in conformance with its operating rules and without providing proper notice.
7. Further the District failed to properly furnish an agenda to the public and to Tom Zurbuchen which would have enabled him to participate in the public meeting.
8. District's actions were made in violation of the provisions of Montana Code
9. Annotated, Title 2, Chapter 3.

JURY TRIAL DEMANDED

Prayer for Relief

WHEREFORE, Plaintiff prays for Judgment as follows:

1. Any actions taken by the District on November 29, 2021 be declared void;
2. For such costs of suit, fees, such other and further relief as the Court deems just in equity and law on the facts established in this cause;
3. Attorney's fees; and
4. For such other relief as the Court deems just and proper.

DATED this 9th day of December 2021.

TOLLIVER LAW FIRM, P.C.

P.O. Box 1913

Billings, MT 59103-1913

DISCUSSION Mark Noennig introduced himself and said he is with Hendrickson Law Firm. He doesn't want to comment on anything related to this litigation because it is litigation and we haven't gotten there yet. But I do want to introduce my associate, Justin Stark who will be handling the defense in this matter. Mark Noennig will participate if in fact this motion is approved. Do you have questions for Mark Noennig or Justin?

Laura Drager asked what the hourly rates were. Justin Stark's are \$185 per hour; Mark's are \$275 per hour. That is why Justin is going to do all the work. Justin Stark said he is just doing the response.

Ming Cabrera noted that we got a letter today from these people that we were in violation of the Complaint. Normally, when there is a summons you are allowed 21 days to respond. They wanted relief immediately and a response, but the District has 21 days to respond. Besides the letter they sent wasn't even dated as far as that goes. Laura Drager said it also wasn't on attorney letter head. Ming Cabrera said to keep that in mind. Any other comments from the Board.

PUBLIC COMMENT None

Pam Ellis made the motion, having conducted a public hearing, considered written and spoken public testimony, I move to employ Justin Stark and the HENDRICKSON LAW FIRM, P.C. 208 NORTH BROADWAY, SUITE 324 P.O. BOX 2502 BILLINGS, MT 59103-2502 @ an hourly rate of \$185 per hour and to approve Resolution 013-21 to Authorize a contract for representation with Justin Stark and the Hendrickson Law Firm. SECOND David Graves THE MOTION PASSED UNANIMOUSLY.

Pam Ellis said that all board members and staff received all the documents for the meeting on November 29, 2021 well in advance. Peyton or Suzie were asked to post the documents on the website but didn't do it. For this meeting, we had a verbal contract with Yellowstone County News to create a page on the Yellowstone County News website with all of the documents for this meeting. We ran an ad in the Yellowstone County News for 2 weeks announcing the meeting and listing the items to be reaffirmed for the November 29, 2021 meeting and the agenda items for the December 15, 2021 meeting. Jonathan McNiven spoke with several of us and he understood that we couldn't make a binding agreement without approving a motion tonight.

Pam Ellis made the motion Having conducted a public hearing, considered written and spoken public testimony, I move to approve a monthly fee of \$100 per month for the Yellowstone County News to maintain a separate page at <https://www.yellowstonecountynews.com/county-water-district-of-billings-heights/> that includes the agenda and minutes and other notices for the County Water District of Billings Heights until cancelled and to approve Resolution 014-21 to approve a monthly payment to Yellowstone County News for maintaining a page on their website.

Background We are anticipating that with Larry on board as General Interim Manager this will not be a problem going forward but until we are confirmed, we will maintain the page at the Yellowstone County News. SECOND Laura Drager.

PUBLIC COMMENT Peyton has an opinion on that. Shame on you for putting me in a position to where we were told that everything came down from the President. When he approved it, that's when we would post it. I have been removed so I was told not to post it. So that's what I did. I'm not supposed to be in the middle of the Board spat.

Pam Ellis said that a written directive signed by a legal quorum of the Board was given to the staff and all Board members. Ming Cabrera said we had a quorum at that period of time and they ignored it.

Laura Drager wanted to acknowledge that we have put the staff in a very awkward position and we need to acknowledge that. They were getting directives from two different sides of the Board and that is unfair to the staff.

Peyton said he appreciates that. Ming agreed with that too Peyton.

Mike Macki are we hiring him as a subcontractor or are we paying him on an hourly fee.

Laura Drager said it is a salaried position.

Mike Macki: so are we going to be responsible for all the legal fees that you incurred.

Larry Brewster said the District would have to indemnify him. If there was a legal cause associated with working here. We are going to check the statute.

Mike Macki said I don't think the Heights residents want to be responsible for his legal fees for being an Interim General Manager if there is a lawsuit brought against him according to his representation of the Billings Heights Water District.

Attorney Mark Noennig said if he is acting on behalf of the Board, then it is the Board's responsibility to pay the legal fees. That is for any officer or employee or Board member. There is no sub-contract when you are being employed as an agent of the Board; it is not relevant.

Tom Zurbuchen this is \$1200 a year additional over the \$8000 to start a website. For less than 3000 hits. I'm cheap, I'll admit it. No, we don't need to waste more money on more websites. We have one. One is enough. Please hold back on this affluent spending.

THE MOTION PASSED UNANIMOUSLY

V. CONSENT AGENDA (# supporting documents available at the dropbox link above)

1. Minutes of the November 29 2021 Meeting (2)
2. November Prepaid bills for approval (5)
3. November Bills for Approval (6)

4. November Bank Statements: First Interstate Bank (7)
5. Stifel Statement November provided by Stifel(8)
6. Profit and Loss Statement – November 2020 and November 2021 (9)
7. Main Street Printers (print Minutes of November 29, 2021 meeting and agenda for December 15, 2021)
Pam Ellis sent two bills from Main Street Printers. Our attorney recommended we print enough copies for attendees since we could not guarantee that people could access them. The first bill is \$446.85 and the second for \$82.80; the board and staff have received copies of the bills.
8. Reimburse Laura Drager for expenses incurred posting the job notice for General Manager
Laura Drager moved to approve the consent agenda. Pam Ellis made a friendly amendment. Pam Ellis also submitted turned in a bill for \$31.23 because I needed to buy binder slips; I had used up all my personal binder clips. Suzie has already printed the check but I need to make sure we add it to the consent agenda.
SECOND David Graves.

PUBLIC COMMENT Tom Zurbuchen has a wonderful printer. Why aren't we using it? Paper is cheap. This printer is so much cheaper. Why are we being ridiculous in spending?

Ming Cabrera said he would like the answer to that too. We can't use the printer.

THE MOTION PASSED UNANIMOUSLY

VI. BOARD REPORTS

1. FINANCE COMMITTEE: Laura Drager

1. Treasurer's Summary Report as of November 30, 2021

County Water District Billings Heights Treasurer's Summary Report as of 31-Oct-21				
	31-Aug-21	30-Sep-21	31-Oct-21	30-Nov-21
Meters				
Previous total meter count	5,914	5,917	5,917	5884
Residential	5,456	5,461	5,455	5436
Commercial	458	456	429	401
New Residential	12	10	4	9
Total # Meters	5,926	5,917	5,884	
			*Irrigation meters offline	
Checking				
FIB Gross Income Account	\$1,217,953.82	\$1,176,986.93	\$1,276,204.33	\$975,473.17
FIB Operational & Maintenance	\$24,768.61	\$28,604.91	\$38,498.06	\$18,491.07
FIB Payroll Account	\$3,568.44	\$24,414.15	\$4,480.16	\$3,986.35
Total Checking	\$1,246,290.87	\$1,230,005.99	\$1,319,182.55	\$997,950.59
				.
Investments				
Stifel - Cash & Equivalent	\$473,100.00	\$1,153,146.99	\$1,410,231.76	

Stifel - Fixed Income CD's	\$8,448,932.00	\$7,747,956.58	\$7,481,322.97	
Total Stifel Investments	\$8,922,032.00	\$8,901,103.57	\$8,891,554.73	\$8,858,269.89
First Interstate Bank Savings		\$250,926.03	\$250,929.02	\$250,931.22
Yellowstone Bank Reserve CD	\$250,000.00	\$205,267.50	\$205,267.50	\$205,267.50
Total Investments	\$9,172,032.00	\$9,106,371.07	\$9,096,822.23	\$9,063,537.39
Total Cash Position	\$10,418,322.87	\$10,336,377.06	\$10,416,004.78	\$10,061,487.98

(the audio recording stopped at **1:34:06.41**)

2. AZ Audit Discussion and Review Laura Drager contacted the auditor by email five times and by phone four times. The firm has had a staffing issue with part time employees no longer available. The auditor will apply for an extension and plans to have the audit completed by mid-January. Laura Drager asked Dianne Crees if the auditors had requested any information that was not provided. Dianne said they had requested copies of the loan agreements for outstanding loans. Those documents are more than 300 pages. Dianne had suggested that Duke Nieskens bring the original documents to their office so they could identify which pages they actually needed. The auditors did not respond.

3. Insurance Update (10)

Background: In speaking with other General Manager's of water districts in Montana, Laura Drager discovered the one area we are lacking in employee benefits is our disability insurance. Eric Allen, the Insurance Specialist with Allen & Associates Insurance wrote: "The rates look really good as well. \$216.66/month for Short Term Disability and \$280.21/month for Long Term Disability. Looks like they did a 60% benefit up to \$6K/month on Long Term and 60% up to \$1K/week for Short Term." (11)

DISCUSSION Larry Brewster recommended that the proposal be postponed until he had an opportunity to review the sick leave policy and make a recommendation as to the benefits of the proposed policy. The recommendation was tabled until a future meeting.

Recommended motion: Having conducted a public hearing, considered written and spoken public testimony, I move that the Board approve Resolution 011-21 to provide short-term disability insurance with Guardian Insurance for 8 employees for a monthly premium of \$216.66; and an annual premium of \$2,599.92.

Recommended motion: Having conducted a public hearing, considered written and spoken public testimony, I move that the Board approve

Resolution 012-21 to provide long-term disability insurance with Guardian Insurance for 8 employees for a monthly premium of \$280.21; and an annual premium of \$3,362.52 (12)

2. BYLAWS AND GOVERNANCE COMMITTEE: Pam Ellis

1. Report from Ming Cabrera, Laura Drager, Pam Ellis regarding Posting the Notice to Hire a General Manager and updates on responses to date. The Committee will review applications beginning December 16, 2021.
2. Appointment of Committee to Work with Interim General Manager to establish the process including:
 - a) Checklist to review written applications for thoroughness and rating for review
 - b) Procedure for initial reference check to affirm employment history and recommendations
 - c) Review of applications by the full board in executive session
 - d) Interview process for finalists selected including specific interview questions to be asked of each candidate
 - e) Opportunity for the public to observe interviews with the finalists and comment
 - f) Verification of verification of educational certifications and official education transcripts, pass a medical exam including a drug and alcohol screen, and a complete background check prior to the Board approving an Employment Contract.

Recommended Motion: Ming Cabrera moved that the Board approve appointment of Ming Cabrera, Laura Drager and Pam Ellis to draft a procedure for hiring a General Manager to be approved by the Board at the January 2022 meeting or a properly noticed special meeting. SECOND by Pam Ellis. DISCUSSION comments by Mike Macki and Josh Jabalara. THE MOTION PASSED UNANIMOUSLY

3. Safety: Jeff Engel

Jeff Engel sent the Board via email a reference to a book related to the Safety Committee. Jeff hadn't reviewed and discussed with Clay McCaffree when he filed his report for the November Board mtg. The field manual is a standard book for utilities and contains 52 weekly subjects for safety meetings. Exceptions to this order of events would be any specific subject matter that may come about as a result of a specific daily activity or emergency. Possibly office staff could make copies so all can see some of the safety meeting procedures currently in place by field staff.

- *Let's Talk Safety: A Series of 52 Talks on Common Utility Safety Practices 2009 AAWA*
- *Week 49: Hypothermia A Winter Safety Hazard, p 113*

At the November 29, 2021 Board meeting David Graves asked what the staff recommends to help with the safety committee. The response is that the record speaks for itself. Weekly meetings keep us up to date and training on the job site.

Josh Simpson recommended that the staff submit a quarterly report to the Board prepared by Jeff Engel.

MOTION: Ming Cabrera moved that the Board Safety Chair prepare a quarterly safety report in March, June, September and December.

SECOND David Graves

UNANIMOUS APPROVAL

THIS AGENDA ITEM WAS TABLED BECAUSE JEFF ENGEL DID NOT ATTEND THE BOARD MEETING.

VII. GENERAL MANAGER OR ASSISTANT MANAGER REPORTS: RECEIVED 4 HOURS LATE; ADOPTED BOARD POLICY REQUIRES INFORMATION FOR THE AGENDA TO BE RECEIVED BY NOON FRIDAY BEFORE THE NEXT MEETING (15) See final pages of this document

VIII. ANNOUNCEMENTS

The County Water District advertised for bids of the Water System Improvement Project to provide upgrades to the District's potable water reservoirs until Three O'Clock Local Time on Wednesday, January 19th, 2022.

- Pre-Bid Conference held at the Ox Bow Reservoir site, 3500 Hawthorne Lane, Billings MT on Wednesday, January 12th, 2022 at 1:30 PM
- Bids will be publicly opened and announced by the County Water District of Billings Heights at Three O'clock Local Time on Wednesday, January 19th, 20200

IX. ITEMS TO BE CONSIDERED AT FUTURE BOARD MEETINGS

Note: No action can be taken on items that were not on the agenda.

- Disability insurance
- Audit
- General Manager Hiring Process

X. The meeting was adjourned at 8:04

Signed:  _____

Ming Cabrera, President

Date: January 19, 2022

Attested:  _____

ATTACHMENTS:

- COUNTY WATER DISTRICT OF BILLINGS HEIGHTS EMPLOYMENT AGREEMENT – INTERIM GENERAL MANAGER
- Resolution 010-21 to Authorize Employment Agreement for Interim General Manager with Larry Brewster with compensation of \$7500 per month pursuant to the procedures regularly established and as they may be amended by the District in its sole discretion.
- Resolution 013-21 to Authorize a contract for Justin Stark and the Hendrickson Law Firm to represent the District in responding to Cause No.D V 2 1 0 1 4 9 filed by Plaintiffs JEFF ENGEL, BRANDON HURST, DENNIS COOK, and TOM ZURBUCHEN against the County Water District of Billings Heights in MONTANA THIRTEENTH JUDICIAL DISTRICT COURT YELLOWSTONE COUNTY on December 10, 2021
- Resolution 014-21 to Authorize a contract with Yellowstone County News to maintain a page for the County Water District of Billings Heights on maintain a separate page at <https://www.yellowstonecountynews.com/> that includes the agenda and minutes and other notices for the County Water District of Billings Heights until cancelled
- NOVEMBER/DECEMBER MANAGERS REPORT
- Email from Jennifer Duray to Andrew Rheem, Peyton Brookshire and Pam Ellis dated Friday, November 19, 2021 4:30 PM
- Email from Andrew Rheem to Jennifer Duray, Harold Smith Peyton Brookshire dated Wednesday, December 15, 2021 7:17 AM

COUNTY WATER DISTRICT OF BILLINGS HEIGHTS
EMPLOYMENT AGREEMENT – INTERIM GENERAL MANAGER

This Employment Agreement (herein, "Agreement") is made and entered into as of the 15TH day of December, 2021 by and between COUNTY WATER DISTRICT OF BILLINGS HEIGHTS (hereinafter, the "District") and LARRY BREWSTER (hereinafter, "Employee").

District and Employee are each referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, District wishes to engage the services of Employee as the General Manager of the District and to induce the Employee to remain in such position on the terms and conditions set forth in this Agreement;

WHEREAS, Employee represents and warrants that he has the skill and ability to serve in such position and wishes to accept such employment on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals (which are hereby incorporated by reference into this Agreement) the mutual covenants herein contained, and other good, valuable, and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION I . EMPLOYMENT.

A. The District hereby offers and the Employee hereby accepts the position of Interim General Manager of the District. Employee shall perform the duties and responsibilities imposed by law, industry standards, and responsibilities and duties as specified in Exhibit A, and such legally permissible further duties and functions as shall, from time to time, be assigned by the Board of Directors of the District.

B. Employee shall devote such time, interest, and effort to the performance of his duties as may be reasonably necessary to fulfill the above requirements, Employee agrees to perform such services to the best of his ability, in an efficient and competent manner. Without limiting the generality of the foregoing, Employee understands and agrees that this position is an exempt, salaried, full-time position.

SECTION 2 DUTIES AND OBLIGATIONS OF EMPLOYEE

A. Employee shall serve as the Interim General Manager of the County Water District of Billings Heights. In his capacity as Interim General Manager, Employee shall be the Chief Executive Officer of the District. Employee shall do and perform all services, acts, or things necessary or advisable to manage and conduct the business of District, including hiring and firing of all employees other than the officers of District, subject at all times to the policies set by District's Board of Directors, and to the Rules, Regulations, Policies, and Ordinances of the District, and in conformance with State and Federal laws.

SECTION 2. TERM AND RENEWAL.

A. This Agreement shall be effective as of December 16, 2021 (the "Anniversary Date"). The term of this Agreement shall be until the Board of Directors of the District hires a General Manager, unless sooner terminated or extended by the Parties as set forth in this Agreement. Until and unless Employee is hired as permanent General Manager, the entire term of employment hereunder shall be considered the probationary period.

SECTION 3. TERMINATION AND SEVERANCE PAY.

A. It is expressly understood that Employee, in his capacity as Interim General Manager, is a contracted employee serving at the pleasure of the Board, subject to termination pursuant to the terms of this Agreement, and with no right to any hearing or appeal, other than the rights expressly provided in this Agreement.

B. This Agreement shall automatically terminate upon Employee's death, retirement, or permanent incapacity.

C. The Employee serves at the will and pleasure of the Board. At any time during the term of this Agreement or any extension thereof, the Board reserves the right to terminate the employment of Employee, with or without cause, and determine his last day of employment upon the vote of four or more Board members at a duly called and noticed Board meeting. The District agrees, however, to refrain from voting on the issue of Employee's termination without cause in any sixty (60) day period immediately following a new Board member's installation so that said new Board member may have sufficient time to apprise himself or herself of Employee's performance prior to vote.

D. The Employee may terminate this Agreement upon written notice to the Board and shall give sixty (60) days prior written notice. The District shall have the option, in its complete discretion, to terminate the Employee any time prior to the end of such notice period, provided the District pays the Employee all compensation due and owing through the last day actually worked, plus an amount equal to the base salary the Employee would have earned through the remainder of the notice period. Thereafter, all the District's obligations under this Agreement shall cease.

SECTION 4. COMPENSATION.

The District agrees to pay Employee for services rendered pursuant hereto at a rate of \$7500 per month, pursuant to the procedures regularly established and as they may be amended by the District in its sole discretion. Any agreed salary increase must be expressly memorialized in a subsequent written and executed Amendment to this Agreement. All compensation and comparable payments to be paid to Employee shall be less withholdings required by law.

SECTION 5. BENEFITS

In addition to the compensation set forth in Section 4 the Employee shall be entitled to the following benefits:

A. Retirement Benefits. None

B. Vacation. None

C. Sick Leave None

D. Job-Related Expense Reimbursement. The District will pay the Employee's business expenses incurred in connection with District business.

E. Technical Equipment. Upon commencement of employment, the District shall provide the Employee with a cell phone and such technical equipment as may be necessary for the performance of his duties.

F. Automobile Allowance. The Employee agrees to use his the district owned vehicle purchased for use by the General Manager.

G. Other Benefits, Where not in conflict with the provisions of this Agreement, Employee shall be eligible and participate in the same benefits offered to employees at the District, including but not limited to paid holidays and other such ancillary benefits. Nothing about the provision of such other benefits shall be interpreted to prevent the performance of any duty set forth in this Agreement.


SECTION 7. OFFICE HOURS.

Employee shall report to District's offices during normal business hours consistent with the District's schedule and at such other times as may be necessary to discharge his duties, except when away on approved business for the District, as otherwise excused by use of approved leave, or during District-granted holidays. However, Employee agrees and understands that he will report to work when necessary to District operations, regardless of regularly scheduled hours, scheduled leave, or holiday, to the extent such attendance is reasonably possible.

IN WITNESS WHEREOF, COUNTY WATER DISTRICT OF BILLINGS HEIGHTS has caused this Agreement be duly executed by its President and the Employee has signed and executed this both in duplicate , as the day and year first above written.

DISTRICT:

COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

BY: 

Ming Cabrera

President of the Board of Directors of the District


EMPLOYEE

LARRY BREWSTER

BY: 

Larry Brewster

APPROVED AS TO FORM:



Mark Noennig

BY: District Counsel

EXHIBIT A – JOB DESCRIPTION INTERIM GENERAL MANAGER

County Water District of Billings Heights

GENERAL MANAGER DUTIES AND EVALUATION

BOARD POLICY NO.

Job Title: General Manager
Reports To: Board of Directors
FLSA Status: Exempt
Prepared by: District Board
Prepared date: November 29, 2021

Primary Objective

This General Manager serves as the chief executive officer of the District under the direction of the District Board of Directors. The General Manager is responsible for all aspects of the efficient and cost-effective operations and administration of the District.

In accordance with the policy guidelines of the Board of Directors and consistent with Federal and State regulations, the General Manager plans, implements, and directs the operations of the District's water system in a manner that insures service to customers, ongoing maintenance of systems and equipment, and sound development for the future. Quality decision making and judgment are expected and required.

Essential Skills Required

- Possess the ability to analyze, evaluate, write, and understand budgets and rate structures.
- Be able to monitor construction projects, as well as the maintenance and operation of water facilities.
- Possess the ability to handle accounting and payroll functions in accordance with government accounting guidelines.
- Be available for 24-hour on-call for emergencies except when previous arrangements are made with other district employees.
- Submits to random alcohol and drug testing per District regulations.
- Ability to work with mathematical concepts such as probability and statistical inference, and fundamentals of plane and solid geometry and trigonometry. Ability to calculate figures and amounts such as proportions, percentages, area, circumference, and volume. Ability to apply concepts such as fractions, percentages, ratios, and proportions to practical situations.

- Ability to solve practical problems and deal with a variety of concrete variables in situations where only limited standardization exists. Ability to interpret a variety of instructions furnished in written, oral, diagram, or schedule form.
- Physical requirements include the ability to reach, twist, stand, balance, bend, stoop, crouch, crawl, walk, or climb in a variety of indoor and outdoor environments and weather conditions, and lift weights up to 50 lbs. (greater with assistance), and manual dexterity to perform computer and cell phone tasks. Sensory abilities include smelling, hearing, close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus. Reasonable accommodations may be made to enable individuals with disabilities to perform essential functions.

Areas of Accountability and Performance:

Following directions from the Board of Directors the General Manager will:

- Develop rate structures as required by Montana law.
- Develop projections for current and future needs in the areas of staff, capital improvement projects and finances for 2 years, 5 years and 10 years.
- Monitor construction projects, as well as the maintenance and operation of water facilities.
- Maintain accounting and payroll functions in accordance with government accounting guidelines.
- Administer, supervise, plan, direct, and coordinate the water systems and office, delegating tasks as needed.
- Maintain familiarity with the rules and regulations of the District in order to enforce them and to answer questions from customers or developers.
- Meet and work with consultants and/or engineers to further the goals and needs of the District and its projects.
- Demonstrate the ability to read and interpret plans and specifications, and to locate lines for construction purposes.
- Work closely with Montana Rural Water and other agencies, attending related onsite and off-site meetings, seminars and training as often as possible in order maintain certifications and to be current on regulations and legislation at the state and federal levels in the water and wastewater fields.
- Is responsible for the timely filing of any necessary District reports to County, State and Federal agencies.
- Assists in preparation of the agenda and resolutions for the monthly Board meetings in compliance with board policy. Attends every board meeting and is prepared to discuss in detail the implications on District operations of any agenda item.
- Initiates, plans, develops, and implements records and reports for the Board of Directors
- Organizes and prepares financial reports, minutes, correspondence and other documents for board action, and performs other duties as assigned by the Board of Directors
- Is responsible for all facilities, property, and equipment of value.
- Provides thought-out and sound advice and counsel to the Board of Directors in relation to projects, developments, and improving District functions
- Recommends priorities for short- and long-range projects, and coordinates implementation as required.
- Is responsible for developing, preparing, and recommending a comprehensive budget and rate structure with supporting data for the District.
- Serves as a liaison and advisor for the District with consulting engineers, government agencies, developers, and any others as need arises.
- Recommends purchases of new and replacement equipment as the result of continuous appraisal of the working and functionality of District facilities and equipment.

- Is responsible for timely and accurate meter reading, accounting and payroll tasks for the District as well as the billing and collection of accounts.
- Is responsible for establishing a high level of customer service and maintaining quality contacts with the public, District customers and the Board

Supervision-Responsibility for Work of Others

The General Manager

- Administer all personnel matters of the District including supervision and direction, orienting, training, discipline, evaluation of performance and related matters, delegating tasks as needed. (Exception: The Board Secretary reports directly to the Board of Directors) • Prepares written job descriptions for each employee and an annual employee evaluation
- Develop and maintain job descriptions for all district personnel
- Assign employee tasks to assure effective use of personnel, equipment, and facilities.
- Is responsible for using and instructing others in the proper use of safety equipment and procedures to prevent injury.
- Help maintain a professional atmosphere and positive morale among employees.
- Cross-train with other employees to maintain staffing requirements during periods of transition, vacations, or other absences.
- Periodically reviews logs and journals completed by other personnel.
- Is responsible for employee hiring, evaluations, additional training, advancement, promotions, wage increases, and terminations.
- Is responsible for preliminary review and management of all employee related plans and insurance programs, which are a part of the employee compensation package.
- Assess and suggest changes to the rate and structure of employee pay scales and compensation.
- Is responsible for ensuring employees obtain certification in the water field, and continue and maintain their education as required for their certifications.

Education, Training and Experience Requirements:

The General Manager possesses

- Any combination of education and experience equivalent to high school graduation and some college training in the areas of business administration. A degree in engineering is preferred.
- At least five years of progressively responsible experience involving the management of materials, personnel, budgets, rates, and purchasing in a water system.
- Valid Montana Water Operator Certifications appropriate for the District's classifications (certified within 180 days of position acceptance)
- Technical proficiency with computers and software
- Must possess a valid state of Montana driver's license with an insurable record

Evaluation of the General Manager

At least annually, at or near the employment anniversary date of the General Manager, the Board will meet in executive session for the purpose of evaluating the performance of the General Manager.

The Board will summarize the results of their individual evaluations and arrive at a consensus as to the overall performance of the General Manager. The results of the evaluation will be communicated to the General Manager.

The Board President shall ensure that the provisions of this policy are followed.

Adopted: November 29, 2021


Revised:

Reference: CWBDH Policy

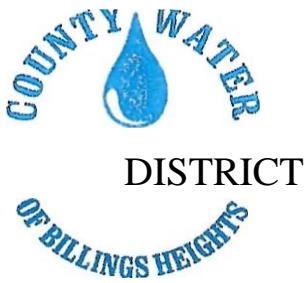
Review Date:

Attest: /s/ 

Board President Ming Cabrera

Attest: /s/ 

Secretary



Resolution 010-21 to Authorize Employment Agreement for Interim General Manager with Larry Brewster with compensation of \$7500 per month pursuant to the procedures regularly established and as they may be amended by the District in its sole discretion.

WHEREAS, the County Water District of Billings Height Board interviewed Larry Brewster as a candidate for Interim General Manager and reviewed the County Water District of Billings Heights Employment Agreement — Interim General Manager:

The Board authorized signing the contract to employ Larry Brewster as Interim General Manager.

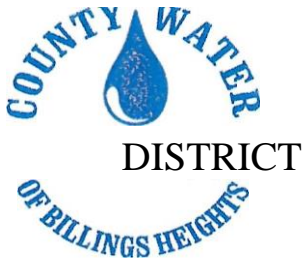
That, the President of the County Water District of Billings Heights, sign the employment agreement and resolution on behalf of the boards

Signed:  _____

Ming Cabrera, President

Date: December 15, 2021

Attested:  _____




Resolution 013-21 to Authorize a contract for Justin Stark and the Hendrickson Law Firm to represent the District in responding to Cause No.D V 2 1 0 1 4 9 filed by Plaintiffs JEFF ENGEL, BRANDON HURST, DENNIS COOK, and TOM ZURBUCHEN against the County Water District of Billings Heights in MONTANA THIRTEENTH JUDICIAL DISTRICT COURT YELLOWSTONE COUNTY on December 10, 2021

WHEREAS, the County Water District of Billings Height Board consider written and spoken testimony at a meeting of the County Water District of Billings Heights Water Board on December 15, 2021.

The Board authorized signing the contract to hire Justin Stark and the Hendrickson Law Firm of the HENDRICKSON LAW FIRM, P.C. 208 NORTH BROADWAY, SUITE 324 P.O. BOX 2502 BILLINGS, MT 59103-2502 @ an hourly rate of \$185 per hour

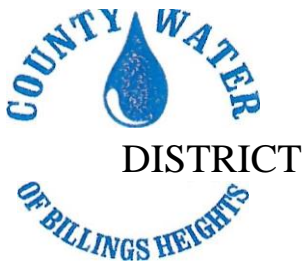
That, the President of the County Water District of Billings Heights, sign the resolution and an employment agreement on behalf of the board.

Signed:  _____

Ming Cabrera, President

Date: December 15, 2021

Attested:  _____




Resolution 014-21 to Authorize a contract with Yellowstone County News to maintain a page for the County Water District of Billings Heights on maintain a separate page at <https://www.yellowstonecountynews.com/> that includes the agenda and minutes and other notices for the County Water District of Billings Heights until cancelled

WHEREAS, the County Water District of Billings Height Board consider written and spoken testimony at a meeting of the County Water District of Billings Heights Water Board on December 15, 2021.


The Board authorized signing the contract Authorize a contract with Yellowstone County News to maintain a page for the County Water District of Billings Heights on maintain a separate page at <https://www.yellowstonecountynews.com/county-water-district-of-billings-heights/> that includes the agenda and minutes and other notices for the County Water District of Billings Heights until cancelled

That, the President of the County Water District of Billings Heights, sign the resolution on behalf of the board.

Signed:  _____

Ming Cabrera, President

Date: December 15, 2021

Attested:  _____

NOVEMBER/DECEMBER MANAGERS REPORT

- ONE ANNEXATION PETITION FOR ZACH MICHALIES (SEE ATTACHED). ALL FEES PAID. \$13,022.71
- AFTER MANY MONTHS OF BADGERING THE TRUCK DRIVERS' INSURANCE COMPANY. IT HAS FINALLY
- REIMBURSED THE DISTRICT FOR THE FIRE HYDRANT DAMAGE ON MAIN STREET. WE HAD TO ASK IF IT NEEDED TO GO TO OUR ATTORNEY BEFORE FINALLY GETTING THE RESPONSE THAT THE PAYMENT WAS SENT. THE CHECK FOR \$52,661.13 WAS RECEIVED ON 11/2/2021
- RAFTELIS UPDATE: QUESTIONS HAVE BEEN SUBMITTED TO THE CITY FROM RAFTELIS. SEE LETTER. PLANNING ON DECEMBER 15TH TO BE AT THE BOARD MEETING TO DISCUSS WITH BOARD OR SOONER DEPENDING ON PROGRESS WITH THE CITY. see Report
- SERVICEMEN HAVE TRAINING ON THE AFTERNOONS OF NOVEMBER 30TH AND DECEMBER THIS SHOULD HAVE EVERYONE CAUGHT UP ON CEC'S FOR THE BIENNIUM.
- INTERSTATE ENGINEERING VIA BRAD BOEHM AND LOWELL THINK WE SHOULD LOOK AT ROUND TWO OF ARPA DUE TO NEW INFORMATION:
 - o FOR ROUND THE STATE DOC WILL COVER UP TO \$3,000 PER PROJECT FOR CONSULTING LABOR (OUR TIME) TO COMPLETE THE APPLICATION PROCESS ON YOUR BEHALF. WE WOULD HAVE A CONTRACT DIRECTLY
 - o WITH THE STATE FOR EACH OF YOUR APPLICATIONS. THE SECOND ROUND WILL BE DUE JANUARY 14TH, 2022
 - o THE STATE HAS OFFERED A DEBRIEFING CALL WITH ALL OF US TO DISCUSS WHY THE 1ST ROUND
 - o APPLICATION SCORED THE WAY IT DID AND THE BEST APPROACH TO MAXIMIZE YOUR SCORE IN THE 2ND
 - o ROUND. THE WORD ON THE STREET IS THAT THE DEBRIEFING IS VERY BENEFICIAL AND THEY HAVE BEEN PROVIDING HELPFUL ADVICE. ONCE WE HAVE THE DEBRIEF, WE CAN DECIDE HOW TO PROCEED WITH REVISING THE TWO 1ST ROUND APPLICATIONS TO INCREASE THEIR SCORES IN THE 2ND ROUND.
 - o ON 11/8/2021 MYSELF AND INTERSTATE ENGINEERING MET WITH ARPA OUTREACH PROGRAM SPECIALIST
 - o AND REVIEWED OUR APPLICATIONS AND RECEIVED RECOMMENDATIONS TO GET MORE POINTS AND WHAT THEY WERE LOOKING FOR AND THE SCORING METHOD IN EACH CRITERIA. UPON QUESTIONING DURING THE MEETING IT WAS ASKED WHY THE SPECIFICS WITHIN THE CRITERIA WAS NOT KNOWN PRIOR TO THE APPLICATION PROCESS AND IF IT WAS WHERE WAS IT AS NOBODY HAS FOUND IT YET AND WE ARE WAITING TO HEAR BACK.
- CREW REPLACED SERVICE LINE AT 2039 WILLET DRIVE.

- CANAL VISTA IS IN HYDRAULIC MODELING STAGES AND PLAN REVIEW. THIS PROJECT RESURFACED AFTER LANGUISHING IN COURT DISPUTES BETWEEN PROPERTY OWNERS FOR TWO YEARS.
- HR 3684 INFRASTRUCTURE AND JOBS ACT PASSED. DRINKING WATER STATE REVOLVING FUNDS 14.65 BILLION THROUGH 2026. 11.7 BILLION OF DRINKING WATER SRF, 49% IN FORM OF GRANTS OR LOANS WITH PRINCIPAL FORGIVENESS, ONLY 10% STATE MATCH REQUIRED IN FY'S 2022-2023. WE WILL BE IN TOUCH TO BE ON THEIR RADAR FOR UPCOMING POSSIBILITIES. SEE ATTACHED.
- THERE ARE LESS THAN 200 ACCOUNTS THAT RECEIVE THEIR BILLS VIA EMAIL SO THAT OPTION IS NOT VIABLE. WE MAY HAVE TO LOOK AT THE FACT THAT PEOPLE DID NOT OPT IN TO RECEIVE NOTIFICATIONS VIA TEXT OR EMAIL WHEN SIGNING UP FOR THE SERVICE SO MAY HAVE TO START FROM SQUARE ONE WHEN AND IF ENOUGH PEOPLE WANT BILLS.
- CREW MOVED THE 8 SERVICES ON GLENEAGLES INTO THE BOULEVARD.
- CREW DID REPAIRS ON LYNCH DRIVE AS WELL AS JOYCE ST AND CONTINUING LOCATES FOR CEC FOR THE FIBER JOB
- COP CONSTRUCTION COMPLETED PUNCHLIST ON HIGH SIERRA 10TH FILING. WALKTHROUGH COMPLETED WAITING ON SANDERSON STEWART FOR SIGN OFF.

- Legislative Advisory
- Who: U.S. Congress
- What: Infrastructure Investment and Jobs Act When: Passed Friday
- Late Friday, U.S. Congress passed HR3684, the Infrastructure Investment and Jobs Act. The act reauthorizes a number of existing drinking water programs, appropriates expanded funding, and commits \$15 billion for lead service line replacement.
- AV'MIA issued a statement today thanking Congress and President Biden for their support for water infrastructure renewal.
- AIAM, /A is grateful to its many members who actively supported this legislation through e-mails and calls to their members of Congress urging action on water infrastructure. Water infrastructure was a key topic during the virtual AWWA Water Matters! Fly In in April of this year.
- Below are highlights from Title I, the section authorizing drinking water programs and spending, as well as Division J, which actually makes money available:
- TITLE I - Drinking Water
 - \$75 million for technical assistance and grants for emergencies affecting public water systems, including natural hazards and cybersecurity
 - \$14.65 billion authorized for Drinking Water State Revolving
 - Fund (DWSRF) through 2026
 - \$510 million in assistance for small and disadvantaged communities
 - \$500 million for reducing lead in drinking water

- \$250 million to improve operational sustainability of small water systems
- \$250 million for the mid-size and large drinking water system resilience and sustainability program
- Authorizes needs assessment for a nationwide low-income water assistance program
- Authorizes 40 pilot low-income water assistance programs within 2 years of passage
- • \$200 million for lead testing and remediation in schools \$50 million for a study assessing emerging technologies that could address cybersecurity and water monitoring issues and a grant program to deploy technologies
- Appropriations (Division J)
 - • \$75 million for WIFIA, with \$11 million for administrative purposes, to be available until expended \$11.713 billion for the wastewater SRF
 - \$11.713 billion for the drinking water SRF; 49 percent to be in the form of grants or loans with principal forgiveness; only 10 percent state match required in FY2022 and FY2023
 - • \$15 billion for lead service line replacement, with 49 percent to be in the form of grants or loans with principal forgiveness; no state match required; \$3 billion annually for FY2022-20226 \$4 billion to be channeled through the drinking water SRF for emerging contaminants, all in the form of grants or principal forgiveness
 - \$5 billion to deal with emerging contaminants in economically distressed communities
 - \$1.126 annually in additional funding for the drinking water
 - • SRF through FY2026 \$1.6 billion annually in additional funding for the wastewater SRF through FY2026
 - □ Questions can be directed to Tommy Holmes or Nate Norris in AV%M/A's Government Affairs Office.

RAF TE LIS

November 5, 2021

Jennifer Duray, CPA

Deputy Public Works Director

City of Billings

210 North 27th Street

Billings, MT 59101

Subject: FY 2022 and FY 2023 City of Billings Water Rate Report Review

Dear Ms. Duray,

As you are aware, the County Water District of Billing Heights (Heights Water District or District) retained Raftelis to review the City's most recent water rate study report completed by AE2S

Nexus. The District would like to ensure that the rate recommendations are fair and equitable and consistent with the cost of providing wholesale water services to the District.

We were provided a copy of the Retail/Resale Water Rate Study Report FY 2022 and 2023 dated March 31, 2021. We have reviewed the report including the appendices and resulting recommendation to adjust the water rate assessed to the Heights Water District effective July 1, 2021 and July 1, 2022. On behalf of the District, Raftelis is requesting additional data not incorporated within the report as well as additional clarification questions regarding the underlying cost and rate drivers. The request is to better understand the basis and justification underlying the rate recommendations.

Please see the below for the requested items.

1. Please provide an electronic copy of the City's current Water System Master Plan. Please also provide a map of City water facilities including the connection point with the Heights water system.

2. Please provide monthly water production at City Water Treatment Plant for 2016 through 2020.

3. How much of the capacity of planned West End facilities are for growth and how much is for existing customers? Which zones will be served by the existing Water Treatment Plant and which zones will be served by the new West End Water Treatment Plant?

4. With regard to the timing and sequencing of the West End Capital projects:

a. What is the driver or need for each new major facility?

b. Why is the Water Treatment Plant being constructed before the reservoir?

c. How are District customers being served from West End facilities?

d. When will each project be completed and be in service?

e. The Water Treatment Plant and Reservoir include design costs with a one-year construction completion for these major projects. Which contracts have been issued and what is the construction schedule included in the signed contracts?

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COUNTY WATER DISTRICT OF BILLING HEIGHTS 2

f. What is the City's practice for accounting for capital facilities under construction and when facilities are formally booked as City assets?

5. In addition to what the City has identified in the adopted capital plan, what grant funding has been applied for by the City? Have any grants been approved? Are there applications submitted that are pending approval?

6. Table 2.3 of the March 2021 Retail / Resale Water Rate Study Report identifies peaking factors for Owner and Non-Owner customer classifications. What is the basis for the Resale water customer classification maximum day peaking factor of 2.60 times average day and maximum hour peaking factor of 3.83 times average day?

We appreciate your willingness to provide the requested information and address the questions we have posed. The District's goal is to better understand the major drivers of the substantial rate increases proposed to be effective July 1, 2022 to ensure that the rates are just and equitable. Toward that end, Raftelis, District staff, and District representatives are willing to meet with City staff and City representatives to discuss the rate report and the requested items after receiving a response from the City.

Please do not hesitate to contact me or the District if you have questions regarding this request and/or to schedule a time to meet in person or virtually.

My contact information is arheem@raftelis.com or 303.305.1137.

Sincerely,

Andrew A. Rheem

Senior Manager

From: Duray, Jennifer

Sent: Friday, November 19, 2021 4:30 PM

To: Andrew Rheem <arheem@raftelis.com>

Cc: duke@heightswaterdistrict.com; peyton@heightswaterdistrict.com; Harold Smith <hsmith@raftelis.com>; Pam Ellis <pamellis50@gmail.com>

Subject: RE: City of Billings FY 2022 and FY 2023 Water Rate Study Report Review - Data and Clarification Questions

Andrew,

The following are the responses to your request for information.

1. The water master plan is not complete yet; however, it is fairly close and I have attached all of the chapters that are finished. A map of the water system is also attached.
2. Water production for 2016-2020 is attached.
3. The west end project provides both redundancy in the system and growth. During the winter, we will be able to take the old plant offline and serve the entire community (approximately 90% existing and 10% growth). During the summer, we are almost exceeding capacity already as we saw this summer. Thus, during the summer months when we have both plants running, a portion of the west end project is needed to service existing customers (approximately 10%) and the remaining is for growth. This is only taking into consideration actual new plant capacity. The plant, reservoirs, intake, and pipeline also provides redundancy for existing and future customers. The West End plant will feed Zone 2 which is the same pressure zone that the Heights Water District is fed from. Large Pipelines (42" and 36") connect the West End WTP and existing WTP and Walter Pump Station, which is location of the connection to the Heights Water District. A bypass will be installed in the "HSPS Improvements Project" in FY23 allowing connection between Zone 2 and Zone 2E at the existing WTP. Effectively Zone 2E and Zone 2 will become one pressure zone which can be fed by either the existing WTP or the West End WTP. A schematic of the process flow is shown on the attached (black arrows) indicating how this will work (Pages from 06_Operational Analysis Final Draft). Both plants are capable of serving the entire City.
4.
 - a. See FY22-26 CIP at <https://ci.billings.mt.us/2662/Capital-Improvement-Plan-CIP>.
 - b. We changed the order of construction to construct the plant first because a reservoir without a plant to be able to use that water did not make sense. The plant will be able to function along with the intake/pump station/pipeline before the reservoir is constructed.
 - c. See #3 above.
 - d. The following is the current schedule for construction completion:
 - Pipeline March 2023
 - Intake & PS May 2023
 - WTP June 2023
 - Reservoir June 2024
 - e. Contracts are attached.

f. We book assets when they are substantially complete/in-use. Thus, if the schedule changes from above, we would revise the FY23 rates for the HWD. We are currently value engineering the project in an attempt to reduce costs because our estimates are much higher than budgeted with the inflationary #s that we are

seeing. Thus, it is quite possible that the schedule changes. We will have an updated schedule in the next 2-3 months.

5. We applied for several ARPA grants. The District already has that list so I will not repeat it. We received \$2M for the west end plant. We also applied for a \$50M BRIC grant and were not successful. We are in the process of applying for the BRIC grant again and will not know whether or not we are successful until July 2022.

6. The peaking factors are based on recent historical maximums. A peak hour value of 2.6 times average day was recorded for both 2014 and 2015, and a peak hour value of 3.83 time the average day was recorded for 2011.

Please let me know if you have additional questions.

	<p>Jennifer Duray, CPA Deputy Public Works Director durayj@billingsmt.gov</p> <p>EXCELLENCE INNOVATION INTEGRITY</p>
<p>billingsmtpublicworks.gov facebook@billingsmtpublicworks</p>	<p>PUBLIC WORKS ADMINISTRATION 2251 Belknap Ave Billings, MT 59101 P 406.657.8239</p>



Jennifer Duray, CPA

Deputy Public Works Director

durayj@billingsmt.gov

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From: Andrew Rheem <arheem@raftelis.com>

Sent: Wednesday, December 15, 2021 7:17 AM

To: Duray, Jennifer <DurayJ@billingsmt.gov>

Cc: Harold Smith <hsmith@raftelis.com>; peyton@heightswaterdistrict.com

Subject: [EXTERNAL] RE: City of Billings FY 2022 and FY 2023 Water Rate Study Report Review - Data and Clarification Questions

Good morning Jennifer,

I hope you are doing well. Thank you for the replies to questions we had submitted and the additional data provided. Attached includes a few follow up clarification items based on the responses and additional items provided.

Unfortunately, Harold and I are on the early morning flight back to Denver tomorrow morning. Please let us know if you'd like to set up a separate discussion and/or phone call as you have a chance to review the attached.

Thanks!

Andrew



5619 DTC Parkway, Suite 850 Greenwood Village, CO 80111 www.raftelis.com

Jennifer Duray, CPA
Deputy Public Works Director
City of Billings
210 North 27th Street
Billings, MT 59101

Dear Ms. Duray,

Thank you for your responses to the questions and clarification items we submitted on November 5, 2021 as well as the additional information provided as part of the responses. We have had an opportunity to review both the responses and the additional information provided and have identified the following questions and/or clarification requests.

1. Please confirm if 18 million gallons per day (MGD) is the ultimate size of the new water treatment plant or if there are future expansions from 18 MGD. If 18 MGD is not the ultimate design capacity, are there initial capital expenses included related to a larger future capacity? If so, please provide the portion of the total costs associated with a larger future footprint.

2. Based on the City's response #3 and the draft master plan information, it appears that the City plans to combine pressure zones 2 and 2E into a single pressure zone with completion of capital improvements to interconnect and provide additional capacity and redundancy. Please confirm the City's plans for these two pressure zones and the timing of capital improvements necessary to combine these two pressure zones as it appears to be scheduled to be completed in FY 2022-23.

3. Based on the revised schedule for construction completion, please confirm the dates below: a. Pipeline to be completed in March 2023

b. Intake & Pump Station to be completed in May 2023

c. New water treatment plant to be completed in June 2023

d. Reservoir to be completed in June 2024

4. Please summarize the portion of the individual capital projects the City has submitted for potential grant funding including the amount of grant funding requested of the total project, the grants applied for and the anticipated timeline for award. If the City is awarded grant funding, how will this funding be incorporated within the rate analysis and water rate assessed to the District?

5. Is the City planning to update the FY 2022-23 rates for Billing Heights based on the revised project schedule for the major facilities, value engineering and revised capital costs and capital funding sources? If so, please detail the schedule for this update and when information regarding the updated rates will be provided to Billing Heights for review?

We appreciate your willingness to provide the requested information and address the follow up questions posed. The District's goal remains to better understand the major drivers of the substantial rate increases proposed to be effective July 1, 2022 to ensure that the rates are just and equitable.

Toward that end, Raftelis, District staff, and District representatives remain willing to meet with City staff and City representatives to discuss the anticipated water rates for the District to be effective July 1, 2022.

Please do not hesitate to contact me or the District if you have questions regarding this request and/or to schedule a time to meet in person or virtually.

My contact information is arheem@raftelis.com or 303.305.1137.

Sincerely,
Andrew A. Rheem
Senior Manager