

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

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<b>IN THE MATTER OF</b> the Joint Application )	
of Liberty Utilities Co., Liberty WWH, Inc., )	REGULATORY DIVISION
Western Water Holdings, LLC, and Mountain )	
Water Company for Approval of a Sale and )	DOCKET NO. D2014.12.99
Transfer of Stock )	

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**WESTERN WATER HOLDINGS' AND MOUNTAIN WATER COMPANY'S  
MOTION FOR PROTECTIVE ORDER**

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Western Water Holdings, LLC (“Western Water”) and Mountain Water Company (“Mountain Water”), by and through their counsel, Holland & Hart LLP, respectfully submit this Motion for Protective Order and Brief and Support (“Motion”). Western Water and Mountain Water respectfully request the Montana Public Service Commission (“Commission”) to issue a protective order pursuant to Mont. Admin. R. 38.2.5001 through 38.2.5030 to govern the use and disclosure of the confidential information identified herein. In support of this Motion, Western Water and Mountain Water provide the Affidavit of Robert Dove (“Affidavit”).

**I. INTRODUCTION**

Western Water and Mountain Water seek a Protective Order from the Commission to keep confidential certain financial, organizational, and other information contained in the Confidential Information Memorandum and Management Presentation that were prepared for and provided in support of the marketing effort for the sale of Park Water Company (“Park Water”) and its subsidiaries, including Mountain Water. All of the information for which protection is requested is trade secret. For the reasons set forth below, each item of trade secret information that is the subject of this request is (1) information; (2) secret; (3) subject to efforts

reasonable under the circumstances to maintain its secrecy; (4) not readily ascertainable by proper means; and (5) independent economic value or a competitive advantage is derived from its secrecy.<sup>1</sup> Accordingly, the information is entitled to protection through an order from this Commission.

Western Water and Mountain Water have considered that the Commission is a public agency and that there is a presumption of access to documents and information in the Commission's possession.<sup>2</sup> Western Water and Mountain Water understand they have the burden of demonstrating that the identified information is confidential information and they must, with this Motion, establish a prima facie showing of confidentiality, factually and legally, and make clear the basis for the claim of confidentiality.

Western Water and Mountain Water recognize the challenge presented to the Commission in balancing the public's broad access to documents and information in the Commission's possession with the importance of preserving the confidentiality of sensitive information such as trade secrets. Western Water and Mountain Water respectfully represent that, with this Motion, they have overcome the presumption that the public should have unrestricted access to documents and information in the Commission's possession. Western Water and Mountain Water provide herein a prima facie showing of confidentiality, both legally and factually, and explains the basis for the claim of confidentiality.

## **II. CONTACT PERSON**

The contact persons regarding this Motion and items to be protected are:

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<sup>1</sup> Admin. R. Mont. 38.2.5007(4)(b)(ii)-(vi).

<sup>2</sup> Admin. R. Mont. 38.2.5007(4)(b)(i).

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### **III. IDENTIFICATION OF THE CONFIDENTIAL INFORMATION**

Western Water and Mountain Water seek a protective order for certain information contained in the Confidential Information Memorandum (“CIM”), requested by the Commission in PSC-028(b), and the Management Presentation, requested by the Commission in PSC-029(b). Specifically, Western Water and Mountain Water seek protection for the following types of information contained in the CIM and Management Presentation:

- Western Water’s analysis of the current market for investment in privately-owned water utilities, including comparisons against publicly traded utilities;
- Western Water’s analysis of Park Water and its subsidiaries as a potential prospect for acquisition in the privately-owned water utility investment market;
- Western Water’s analysis, from an investment perspective, of the California and Montana regulatory environments for privately-owned water utilities;
- Western Water’s analysis, from an investment perspective, of the opportunities for growth within the privately-owned water utility industry within Park Water Company’s areas of operation;
- Certain operational and financial information regarding Park Water’s subsidiaries; and
- The key assumptions underlying Western Water’s analysis and forecasts.

This list of information is a complete and specific nonconfidential identification of the information for which protection is requested.<sup>3</sup> The information in the CIM and Management Presentation identified above is hereafter referred to as the “Confidential Information.”

#### **IV. FACTUAL AND LEGAL BASES FOR PROTECTION**

For each item listed above, a complete and specific factual basis, including thorough identification and explanation of specific facts, and a complete and specific legal basis and application of the law to the facts supporting the claim of confidentiality follows.<sup>4</sup> Further, the supporting affidavit of a qualified person, Robert Dove, is attached.<sup>5</sup>

##### **A. The Confidential Information is “information.”**

“Information,” as defined by the Commission’s regulations, includes knowledge, observations, opinions, data, facts, and the like, whether recorded or communicated in writing, orally, electronically, or otherwise, and whether provided through pleadings, reports, exhibits, testimony, work papers, or similar items or attachments to such items, or in response to discovery, subpoena, order, audit, investigation, or other request.<sup>6</sup> Each item for which protection is sought constitutes written data, including valuation, financial, due diligence, capital expenditure, and organization data in the form of reports, work papers, or similar items, which have been requested through the discovery process in this proceeding. Therefore, each item meets the definition of “information.”<sup>7</sup>

##### **B. The Confidential Information is secret.**

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<sup>3</sup> Admin. R. Mont. 38.2.5007(3)(b).

<sup>4</sup> See Admin. R. Mont. 38.2.5007(3)(c) and (d).

<sup>5</sup> See Admin. R. Mont. 38.2.5007(3)(c).

<sup>6</sup> Admin. R. Mont. 38.2.5001(3).

<sup>7</sup> See Affidavit at ¶ 6.

All of the Confidential Information for which protection is requested is, in fact, secret, and the Confidential Information has been protected by whatever means available.<sup>8</sup> In addition to being secret, the Confidential Information is trade secret information from which independent economic value is derived. Montana law provides “[t]he commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, or other information that it must be protected as a matter of law as required to carry out its regulatory functions.”<sup>9</sup> “Trade secrets,” as defined by Mont. Code. Ann. § 30-14-402(4), means:

information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

As articulated in the remainder of this Motion, the Confidential Information is trade secret information, which is subject to efforts reasonable under the circumstances to maintain its secrecy, not readily available by proper means, and derives independent economic value from its secrecy. Further, Western Water maintains a competitive advantage by virtue of keeping the Confidential Information secret.

**C. The Confidential Information is subject to efforts reasonable under the circumstances to maintain its secrecy.**

Consistent with normal industry practices, Western Water protects the Confidential Information by whatever means available.<sup>10</sup> Specifically, prior to providing third-parties access to the CIM and Management Presentation, Western Water required those third-parties to execute

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<sup>8</sup> See Affidavit at ¶¶ 5, 10.

<sup>9</sup> Mont. Code. Ann. § 69-3-105(2) (2013).

<sup>10</sup> Affidavit at ¶ 10.

a Confidentiality Agreement, which included the obligation to keep strictly confidential the information contained in the CIM and Management Presentation.<sup>11</sup> After issuance of a protective order from this Commission, Western Water will continue to maintain the secrecy of the information provided. Because Western Water maintains the secrecy of the Confidential Information, and will continue to do so after the issuance of a protective order pursuant to this Motion, the information maintains its status as trade secret as defined by Montana law.<sup>12</sup>

**D. The Confidential Information is not readily ascertainable by proper means.**

Since the Confidential Information to be protected is not within the public domain, it is not readily ascertainable by any other person or entity. No public documents exist which could reveal the information to be protected. No one could reasonably ascertain this information through a public source or any other proper means.<sup>13</sup>

**E. The Confidential Information derives independent economic value from its secrecy or a competitive advantage is derived from its secrecy.**

The Commission's rules specify that the secret information must derive independent economic value from its secrecy, or that a competitive advantage is derived from its secrecy. As discussed below, the Confidential Information derives both independent economic value and a competitive advantage from its secrecy.

Western Water is a portfolio investment subsidiary of Carlyle Infrastructure Partners, L.P. ("Carlyle"), which operates in the highly competitive alternative investment management sector. The Confidential Information, if revealed to competitors, would disclose Carlyle's

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<sup>11</sup> Affidavit at ¶ 5.

<sup>12</sup> Mont. Code. Ann. § 30-14-402(4).

<sup>13</sup> See Affidavit at ¶ 10.

investment strategies and analysis, as well as sensitive financial and operational information regarding Park Water and its subsidiaries.

The value of the Confidential Information in the CIM and Management Presentation derives independent value from not being generally known to the public. It is commercially valuable because it contains information regarding Western Water's investment approach and strategies, and other commercially sensitive information regarding Western Water's analysis of the Park Water asset. Due to the strategic nature of this information, revealing the Confidential Information to competitors would damage Western Water's and Carlyle's competitive position by providing competitors a competitive edge or an economic advantage regarding other similar projects. Disclosure of Western Water's and Carlyle's strategy and analysis could also impair its competitive place in the marketplace for future investments.

In addition to the independent economic value of information regarding Western Water's and Carlyle's investment strategies and analysis, Western Water also derives a competitive advantage from the secrecy of the Confidential Information to the extent it applies to Park Water's utility operations in California. Specifically, the Town of Apple Valley has indicated its intent to condemn Park Water's water utility operations in Apple Valley. Due to this threat of condemnation, the Town of Apple Valley is most appropriately viewed as a known competitor to Western Water. Accordingly, Western Water derives a competitive advantage by protecting financial and operational information regarding the Park Central Basin and Apple Valley assets.

In conclusion, the Confidential Information requested both derives its independent economic value by being secret, and provides Western Water and Carlyle a competitive advantage by it staying secret.

**V. CONCLUSION**

For the reasons stated above, Western Water and Mountain Water respectfully request the Commission grant this Motion and issue a protective order for the Confidential Information contained in the CIM and Management Presentation.

Respectfully submitted this 21st day of April, 2015.

**HOLLAND & HART LLP**

*s/ Thorvald Nelson*

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**ATTORNEYS FOR MOUNTAIN WATER  
COMPANY AND WESTERN WATER  
HOLDINGS**

**DEPARTMENT OF PUBLIC SERVICE REGULATION  
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**AFFIDAVIT OF ROBERT DOVE**

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I, Robert Dove, being duly sworn upon oath, depose and state as follows:

1. I am the Chairman of the Board of Western Water Holdings LLC (“Western Water”), a portfolio investment subsidiary of Carlyle Infrastructure Partners, L.P (“Carlyle”).

2. Western Water and Mountain Water Company (“Mountain Water”) have been asked to provide commercially-sensitive, confidential written data and other information in response to discovery requests in the above-captioned proceeding and is seeking a protective order for this information. On behalf of Western Water, I am familiar with the information requested, its role in Western Water’s business strategies, and the controls in place to maintain the confidential status of the information.

3. I have personal knowledge of the facts stated herein. Any opinions expressed herein are based on my experience, as well as my knowledge of the treatment of the information requested generally.

4. The information requested to be provided and for which Western Water and Mountain Water seek protection includes the Confidential Information Memorandum and the

Management Presentation (together, the “Confidential Documents”) that were provided to prospective purchasers of Western Water’s subsidiary, Park Water Company (“Park Water”).

5. Prior to providing the Confidential Documents to third-parties, Western Water and Mountain Water required those parties to execute a Confidentiality Agreement governing the use and disclosure of the information contained in Confidential Documents. Additionally, the Confidential Information Memorandum and Management Presentation include statements that the access to the Confidential Documents was provided pursuant to, and under the terms of, the Confidentiality Agreement.

6. The Confidential Documents contain sensitive information, including: Western Water’s analysis of the current market for investment in privately-owned water utilities; Western Water’s analysis of Park Water and its subsidiaries as a potential prospect for acquisition in the privately-owned water utility investment market; Western Water’s analysis, from an investment perspective, of the California and Montana regulatory environments for privately-owned water utilities; Western Water’s analysis, from an investment perspective, of the opportunities for growth within the privately-owned water utility industry within Park Water’s areas of operation; certain financial and operational information regarding Park Water’s subsidiaries; and the key assumptions underlying Western Water’s analysis and forecasts.

7. Western Water is a portfolio investment subsidiary of Carlyle which operates in the highly competitive alternative investment management sector. If revealed, the information in the Confidential Documents for which protection is being sought would disclose information regarding Carlyle’s investment strategies and analysis, as well as sensitive financial and operational information regarding Park Water and its subsidiaries.

8. The requested information derives independent value from not being generally known to the public. It is commercially valuable because it contains information regarding Western Water's analysis of the Park Water asset. Revealing this information to competitors would damage Western Water's and Carlyle's competitive position by providing competitors with a competitive edge to use for economic gain related to Park Water, or, due to the strategic nature of the information, to provide economic advantage regarding other projects or investments.

9. Western Water also derives a competitive advantage from the secrecy of the information for which protection is being sought to the extent it applies to Park Water's utility operations in California. Specifically, the Town of Apple Valley has indicated its intent to condemn Park Water's utility operations in Apple Valley. Due to this treat of condemnation, Western Water views the Town of Apple Valley as a competitor. Accordingly, Western Water and Park Water derive a competitive advantage by protecting the financial and operational information regarding the Park Central Basin and Apple Valley assets.

10. The information requested is, in fact, secret. Western Water protects this information by whatever means available, including the use of confidentiality agreements as described above. After issuance of a protective order by the Commission, Western Water will continue to maintain the secrecy of the information.

11. The information requested is not within the public domain nor is it readily ascertainable by any other person or entity. No public documents exists which could reveal the information by other means. No one could access this information contained in the Confidential Documents by accessing publicly available information.



**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 21st day of April, 2015, **WESTERN WATER HOLDINGS' AND MOUNTAIN WATER COMPANY'S MOTION FOR PROTECTIVE ORDER** was filed with the Montana PSC and served via U.S. Mail and e-mail, unless otherwise noted, to the following:

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