

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

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

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

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”). In response to the Montana Public Service Commission’s (“Commission”) Order No. 7392c, Western Water and Mountain Water respectfully request a protective order pursuant to Admin. R. Mont. 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

Mountain Water and Western Water seek a protective order from the Commission to keep confidential certain compensation information that was redacted from the documents produced in response to PSC-015. As the Commission recently affirmed, individual employee compensation information is protected by Montana’s right to privacy.¹ Consistent with the Commission’s recent decision, the individual compensation information identified in this Motion

¹ See Docket No. N2014.2.21, Order No. 7385b; *see also* Mont. Const. Art. II, § 10 (“The right to individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.”)

is entitled to protection because (1) Mountain Water and Western Water have made a reasonable effort to contact their employees to ascertain whether they waive the right to privacy for their compensation information, (2) the employees with potential privacy interests have actual, subjective expectations of privacy in the information at issue, (3) society recognizes such expectations of privacy are reasonable, and (4) the demand of individual privacy for the compensation information clearly exceeds the merits of public disclosure.

Mountain Water and Western 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. Mountain Water and Western Water also 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 individual employee compensation. Mountain Water and Western 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. Mountain Water provides 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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III. IDENTIFICATION OF THE CONFIDENTIAL INFORMATION

In Order No. 7392c issued in this proceeding, the Commission ordered Mountain Water and Western Water to either produce unredacted versions of the documents provided in response to PSC-001 through PSC-027 (where relevant) or to seek a protective order for the information redacted from those documents. Consistent with the Commission's order, with this Motion Mountain Water and Western Water seek a protective order for the following information that was redacted from the documents provided in response to PSC-015:

- The base salary for Nyri A. Wheeler on page 2 of Ms. Wheeler's Employment Agreement (WWH000182-WWH000188);
- The number of units granted in the Class B Unit Agreements for Mr. Schilling (WWH000233-WWH000244), Mr. Alario (WWH000245-WWH000256), Ms. Bruno (WWH000260-WWH000268), Mr. Jordan (WWH000269-WWH000282), Mr. Kappes (WWH000283-WWH000292), Mr. Lynch (WWH000293-WWH000301), Mr. Martinet (WWH000302-WWH000310), Mr. Weldy (WWH000311-WWH000319), and Ms. Young (WWH000320-WWH000327); and
- The number of Class B Units listed in the First Amendment to Mr. Alario's Class B Unit Grant Agreement (WWH000257-WWH000259).

This salary and number of Class B Units can all be generally categorized as individual compensation information,² and will be referred to in this Motion as the "Confidential Information."

IV. FACTUAL AND LEGAL BASES FOR PROTECTION

For the Confidential Information, a complete and specific factual basis, including thorough identification and explanation of specific facts, and a complete and specific legal basis

² Admin. R. Mont. 38.2.5007(3)(b); Affidavit at ¶ 2.

and application of the law to the facts supporting the claim of confidentiality follows.³ Further, the supporting affidavit of a qualified person, Robert Dove, is attached.⁴

A. The employees do not waive their rights to individual privacy in their compensation information.

In order to protect individual privacy information, Mountain Water and Western Water must make a reasonable effort to contact the individuals whose privacy rights are at issue to ascertain whether the individuals waive their right to the privacy of the information at issue.⁵ Mountain Water and Western Water have made a reasonable effort to contact the employees whose Confidential Information is at issue, and these employees do not waive their rights to individual privacy in their compensation information.⁶

B. The employees have actual, subjective expectations of privacy in their compensation information.

To determine whether individuals have an actual, subjective expectation of privacy in their compensation information, the Commission has examined whether the information is already available to the public.⁷ In making this examination, the Commission determined that where no definitive notice of possible disclosure of salaries has been provided, employees have actual, subjective expectations of privacy in their salaries.⁸ The employees whose Confidential Information is at issue have an actual, subjective expectation of privacy in their compensation information, as this information has always been treated as confidential information and is not available to, or otherwise ascertainable by, the public.⁹

³ See Admin. R. Mont. 38.2.5007(3)(c) and (d).

⁴ See Admin. R. Mont. 38.2.5007(3)(c).

⁵ Admin. R. Mont. 38.2.5007(4)(a)(i).

⁶ Affidavit at ¶ 5.

⁷ Docket No. N2014.2.21, Order No. 7385b at ¶ 14.

⁸ *Id.* at ¶ 16.

⁹ Affidavit at ¶ 4.

C. Society recognizes the individual expectation of privacy for compensation information is reasonable.

The Commission recently recognized that “[d]espite the public nature” of manager and officer positions in a public utility, “reasonable expectations of privacy are not determined by mere job status and people do not automatically waive their right to privacy by accepting a job position.”¹⁰ In light of the traditional recognition of a right to privacy in salaries, the Commission found that “society is presently willing to recognize a privacy expectation as reasonable for regulated utility employees.”¹¹ Accordingly, the employees whose Confidential Information is at issue have a subjective and actual expectation of privacy in their compensation information that is reasonable.

D. The demand for maintaining the privacy of employee compensation information exceeds the merits of public disclosure.

In Docket No. N2014.2.21, the Commission found that “the individual right to the privacy of a salary clearly exceeds the public’s right to know it.”¹² Consistent with the Commission’s decision, the demand of individual privacy for the Confidential Information clearly exceeds the public’s right to know that information. This is even more true in this instance, where the Confidential Information relates to compensation that will be paid from the proceeds of the sale of Western Water or was paid from other non-utility revenues.¹³

V. CONCLUSION

Consistent with the Commission’s recent precedent, the Confidential Information subject to this Motion must be protected as confidential because the employees whose Confidential Information is at issue have chosen not to waive their actual, subjective expectation of privacy in their compensation information; society recognizes their expectation of privacy as reasonable;

¹⁰ Docket No. N2014.2.21, Order No. 7385b at ¶ 19.

¹¹ *Id.*

¹² Docket No. N2014.2.21, Order No. 7385b at ¶ 26.

¹³ Affidavit at ¶ 6.

and the demand of individual privacy clearly exceeds the merits of public disclosure. For the reasons stated above, Mountain Water and Western Water respectfully request the Commission grant this Motion and issue a protective order for the Confidential Information.

Respectfully submitted this 27th 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
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

IN THE MATTER OF 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)	

AFFIDAVIT OF ROBERT DOVE

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”). As Chairman, I am personally knowledgeable about Western Water’s business records, and 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.

2. In response to PSC-015, Western Water and Mountain Water Company (“Mountain Water”) provided documents that contain sensitive personal financial information. Specifically, among other documents, Western Water and Mountain Water provided an Employment Agreement for Ms. Wheeler that contains her base salary; Class B Unit Grant Agreements for Mr. Schilling, Mr. Alario, Ms. Bruno, Mr. Jordan, Mr. Kappes, Mr. Lynch, Mr. Martinet, Mr. Weldy, and Ms. Young that contain the number of Class B Units granted to each individual; and a First Amendment to Mr. Alario’s Class B Unit Grant Agreement that contains the initial and amended number of Class B Units granted to Mr. Alario.

3. Mountain Water and Western Water are seeking a protective order to maintain the confidentiality of the compensation information for individuals listed above. On behalf of Western Water, I am familiar with the information requested and the controls in place to maintain the confidential status of the information.

4. The compensation information identified above is the private information of the affected individuals. This specific compensation information is treated by Western Water and its subsidiaries as the private and confidential information of our employees, and Western Water does not currently provide compensation information publicly in any forum.

5. This matter has been discussed with the affected individuals (with the exception of Ms. Wheeler), and none of the individuals wish to waive their right to maintain the privacy of this financial compensation information. Ms. Wheeler is retired and therefore is no longer an employee of Western Water or its subsidiaries. Despite the reasonable effort made to contact Ms. Wheeler regarding a waiver, Western Water and its subsidiaries were unable to confirm whether Ms. Wheeler was willing to waive her individual right to privacy in her base salary compensation.

6. Any compensation under the Class B Unit Agreements will be paid from the proceeds generated by the sale of the stock in Western Water. Prior to her retirement, Ms. Wheeler's compensation was paid using non-utility revenues.

FURTHER AFFIANT SAYETH NOT.

Dated this 24 day of April, 2015



Robert Dove
Chairman
Western Water Holdings LLC

Commonwealth
STATE OF Virginia)
) SS.
COUNTY OF Arlington)

I, Pamela R. Parsons, a Notary Public, do hereby certify that on this 24th day of April, 2015, Robert Dove personally appeared before me, who, being first duly sworn by me, declared that s/he read and signed the foregoing affidavit and that the statements therein contained are true.

In witness whereof, I have hereunto set my hand and seal this 24th day of April 2015.



NOTARY PUBLIC

My Commission Expires: My Commission Expires June 30 2018



CERTIFICATE OF SERVICE

I hereby certify that on this, the 27th 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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s/ Adele C. Lee _____

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