

**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 (PSC-014)**

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 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 being produced in response to PSC-014. 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 information redacted from the documents produced in response to PSC-014. Specifically, the amount of the loans provided by Western Water to six employees and names of the employees should be protected as confidential, as this information is analogous to compensation information because the loans represent private financial transactions between Western Water and the individual employees. The Commission recognizes that individual

employee compensation information is protected by Montana’s right to privacy.¹ Consistent with the Commission’s recent decision, the identities and individual compensation information identified in this Motion 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:

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.”)

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III. IDENTIFICATION OF THE CONFIDENTIAL INFORMATION

In PSC-014, the Commission Staff requested a number of promissory notes that were referenced in Schedule 4.1 to the Plan and Agreement of Merger before the Commission in this proceeding. With this Motion, Mountain Water and Western Water seek a protective order for (A) the loan amounts made to individual employees in connection with the Class B Unit Grant agreements that were produced in response to PSC-015 (and are subject to a pending motion for protective order), and (B) the identities of the employees who received loans from Western Water. Although the promissory notes memorialize loans between Western Water and the subject employees that must be repaid, there is a direct, mathematical relationship between the amount of the loans in the promissory notes and the number of Class B Units granted to each employee, such that the Commission should treat the loan amounts as compensation for purposes of evaluating confidentiality. Additionally, only some of the employees who were granted Class B Units took loans to cover the tax liability resulting from the grant of Class B Units, and the identities of the recipients should also be protected. Accordingly, the names and loan amounts contained in the promissory notes produced in response to PSC-014 can all be generally categorized as individual compensation information,² and will be referred to in this Motion as the “Confidential Information.”

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

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 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 examines whether the information is already available to the public.⁷ In making this examination, the Commission recognizes an exception to the right to privacy where information is publicly available.⁸ Here, the employees whose Confidential Information is at issue have an actual, subjective expectation of privacy in their

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 ¶ 6.

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

⁸ *Id.*

compensation information, as this information has always been treated as confidential information and is not available to, or otherwise ascertainable by, the public.⁹

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 “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. Additionally, the Confidential Information at issue here relates to a form of compensation that will ultimately be repaid with interest and that is not being recovered through Mountain Water’s rates, ultimately reducing the public interest in knowing who received loans from Western Water and the amount of the loans.¹³

⁹ Affidavit at ¶ 5.

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 ¶ 3.

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; 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 14th day of May, 2015.

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s/ Thorvald Nelson

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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-014, Western Water and Mountain Water Company (“Mountain Water”) provided documents that contain sensitive personal financial information. Specifically, Western Water and Mountain Water provided an Unsecured Intercompany Promissory Note between Western Water and Park Water Company (WWH000002-WWH000005) and six promissory notes between Western Water and individual employees (WWH000006-WWH000035). The Intercompany Promissory Note contains lists the employees receiving loans from Western Water and the amount of the loan provided to each employee, and the six promissory notes include the amount of the loan provided to each individual employee named in the specific promissory note.

3. The loans under the promissory notes were made to assist the employees in paying tax obligations arising from the Class B Unit Agreements that were produced in response to PSC-015. Although the loans must be repaid with interest, because of the direct relationship to the Class B Unit Agreements, these promissory notes are analogous to salary information and the loans represent private financial transactions between Western Water and the individual employees. Thus, the loan amounts in the promissory notes should be considered a form of compensation for purposes of evaluating confidentiality.

4. Mountain Water and Western Water are seeking a protective order to maintain the confidentiality of the compensation information contained in the Unsecured Intercompany Promissory Note and the six individual promissory notes. 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.

5. 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. Neither the identities of the recipients nor the amount of the loans are publicly available.

6. This matter has been discussed with the affected individuals, and none of the individuals wish to waive their right to maintain the privacy of this compensation information.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of May, 2015 **WESTERN WATER HOLDINGS' AND MOUNTAIN WATER COMPANY'S MOTION FOR PROTECTIVE ORDER (PSC-014)** 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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