

**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)	

**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”). 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 Christopher Schilling (“Affidavit”).

I. INTRODUCTION

Western Water and Mountain Water seek a Protective Order from the Commission to keep confidential certain financial, organizational, and other commercially sensitive information contained in portions of the Confidential Information Memorandum and Management Presentation that were previously redacted on the basis of discoverability when those documents were initially produced in response to PSC-028(b) and PSC-029(b). 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.¹ 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.² 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 explain the basis for the claim of confidentiality.

II. CONTACT PERSON

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

¹ Admin. R. Mont. 38.2.5007(4)(b)(ii)-(vi).

² 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 previously redacted portions of 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 portions of the CIM and Management Presentation describing Park Water Company’s California utilities, Park Central Basin and Apple Valley:

- Information regarding Park Central Basin’s and Apple Valley’s historical and projected financial performance;
- Information regarding the existing market and growth opportunities for Park Central Basin and Apply Valley;
- Information regarding Park Central Basin’s water sourcing strategy/water rebalancing plan; and
- Details regarding planned capital investment for Apple Valley.

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

³ Admin. R. Mont. 38.2.5007(3)(b).

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.⁴ Further, the supporting affidavit of a qualified person, Christopher Schilling, is attached.⁵

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.⁶ Each item for which protection is sought constitutes written data, including financial, capital expenditure, and operational information, contained in documents which have been requested through the discovery process in this proceeding. Therefore, each item meets the definition of “information.”⁷

B. The Confidential Information is secret.

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.⁸ 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

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

⁵ See Admin. R. Mont. 38.2.5007(3)(c).

⁶ Admin. R. Mont. 38.2.5001(3).

⁷ See Affidavit at ¶¶ 2-3.

⁸ See Affidavit at ¶¶ 7-8.

it must be protected as a matter of law as required to carry out its regulatory functions.”⁹ “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 and its subsidiary, Park Water Company, derive 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 and Park Water protect the Confidential Information by whatever means available.¹⁰ Specifically, prior to providing third-parties access to the CIM and Management Presentation, Western Water required those third-parties to execute a Confidentiality Agreement, which included the obligation to keep strictly confidential the information contained in the CIM and Management Presentation.¹¹ Additionally, prior to providing the CIM and Management Presentation in response to discovery in California, the portions of the documents containing the Confidential Information were redacted entirely.¹² After issuance of a protective order from this Commission, Western Water

⁹ Mont. Code. Ann. § 69-3-105(2) (2013).

¹⁰ Affidavit at ¶ 7.

¹¹ Affidavit at ¶ 4.

¹² Affidavit at ¶ 7.

will continue to maintain the secrecy of the information provided.¹³ 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.¹⁴

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.¹⁵

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. In this instance, both a competitive advantage and independent economic value is derived from the secrecy of the Confidential Information regarding Park Water's Park Central Basin and Apple Valley utility operations in California.

Specifically, the Town of Apple Valley has indicated its intent to condemn Park Water's utility operations in Apple Valley.¹⁶ In this circumstance, information regarding any California water utility's financial performance, opportunities for growth, water sourcing strategies, or capital investment plans derives economic value (actual or potential) from not being known by the Town of Apple Valley nor readily ascertainable by proper means. This is even more true when that information is specific to the target of a potential condemnation attempt, or a similar

¹³ Affidavit at ¶ 7.

¹⁴ Mont. Code. Ann. § 30-14-402(4).

¹⁵ See Affidavit at ¶ 10.

¹⁶ Affidavit at ¶ 6.

utility owned by the same parent company and controlled and managed by the same corporation. Additionally, due to the threat of condemnation, the Town of Apple Valley is most appropriately viewed as a known competitor to Western Water.¹⁷ Accordingly, aside from the economic value derived from maintaining the secrecy of information regarding financial performance, capital investment, growth opportunities, and water sourcing strategies, Western Water and Park Water derive a competitive advantage vis-à-vis the Town of Apple Valley by maintaining the secrecy of this specific financial, capital expenditure, and operational information regarding the Park Central Basin and Apple Valley operations, both of which are regulated water utilities operating in California. In short, both a competitive advantage and independent economic value is derived from the Confidential Information remaining 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 previously redacted portions of the CIM and Management Presentation.

¹⁷ Affidavit at ¶ 6.

Respectfully submitted this 27th day of May, 2015.

HOLLAND & HART LLP

s/ Thorvald Nelson

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**ATTORNEYS FOR MOUNTAIN WATER
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HOLDINGS**

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

I, Christopher Schilling, being duly sworn upon oath, depose and state as follows:

1. I am the Chief Executive Officer at Park Water Company (“Park Water”) and President of Western Water Holdings, LLC (“Western Water”). As CEO, I am personally knowledgeable about Park 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-028(b) and PSC-029(b), Western Water and Mountain Water Company (“Mountain Water”) provided a Confidential Information Memorandum and Management Presentation containing sensitive financial information. When these documents were initially produced in response to data requests, portions regarding Park Water’s Park Central Basin and Apple Valley operations in California were redacted on the basis of discoverability. In light of the Commission’s recent decision regarding the partial redaction of documents on the basis of relevance, copies of the entire Confidential Information Memorandum and Management Presentation are being produced.

3. Mountain Water and Western Water are seeking a protective order to maintain the confidentiality of certain information contained in the previously redacted portions of the

Confidential Information Memorandum and Management Presentation. Specifically, Western Water and Mountain Water are requesting a protective order to maintain the confidentiality of:

- Information regarding Park Central Basin's and Apple Valley's historical and projected financial performance;
- Information regarding the existing market and growth opportunities for Park Central Basin and Apple Valley;
- Information regarding Park Central Basin's water sourcing strategy/water rebalancing plan; and
- Details regarding planned capital investment for Apple Valley.

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

5. The information contained in the Confidential Information Memorandum and Management Presentation subject to Western Water's and Mountain Water's motion for a protective order derives independent economic value from not being generally known to the public. It is commercially valuable because it contains information regarding Park Central Basin's and Apple Valley's historical and projected financial performance, information regarding the existing utility market surrounding Park Central Basin and Apple Valley and an assessment of opportunities for growth for those utilities, information regarding Park Central Basin's water sourcing strategy/water rebalancing plan, and details regarding planned capital investment for Apple Valley.

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

7. The information requested is, in fact, secret. Western Water and Park Water have protected this information by whatever means available, including the use of confidentiality agreements as described above. Additionally, when the Confidential Information Memorandum and Management Presentation were produced in response to discovery requests in California, the portions of these documents containing the information for which protection is being sought were redacted entirely. After issuance of a protective order by the Commission, Western Water will continue to maintain the secrecy of the information.

8. The information for which protection is being sought 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 obtain the information contained in the previously redacted portions of the Confidential Information Memorandum and Management Presentation by accessing publicly available information.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 26th day of May, 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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