

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

IN THE MATTER OF 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

**CITY OF MISSOULA’S REPLY BRIEF TO LIBERTY’S REPLY TO THE CITY’S
MOTION TO DISMISS OR STAY THE PSC PROCEEDINGS**

The City of Missoula (“City”) moved the Montana Public Service Commission (“PSC”) to stay the instant proceedings because the City has obtained a Preliminary Order of Condemnation (“Preliminary Order”) and is now entitled to pursue valuation and purchase of Mountain Water Company (“Mountain Water”), therefore making the instant proceeding moot. A stay or dismissal of these proceedings would conserve judicial economy and minimize the disruption to Mountain Water and the Employees of Mountain Water (“Employees”).¹

This brief is a reply to both the briefs filed by Liberty Utilities (“Liberty”) and Western Water Holdings (“Western Water”), the Employees, and Mountain Water.

¹ The opposing parties will be collectively known as “Defendants.” “Defendants” means Carlyle Infrastructure Partners, LP, Mountain Water Company, the Employees of Mountain Water, and Liberty Utilities (in their own capacity in the PSC proceeding and as represented by Carlyle in the condemnation action).

I. The PSC should Dismiss this Proceeding

While the PSC has jurisdiction to regulate the *operations* of Mountain Water until the sale to the City is finalized, upon entry of a preliminary order of condemnation, the PSC's implied jurisdiction over regulatory transfers is removed. The PSC's authority over utility sales is only implied from the PSC's other powers and not expressly granted. "The Commission's authority over sale and transfers of assets or utilities can be inferred from the unique status of public utilities," Order No. 7149c, ¶ 27, and the PSC's role is to ensure the utilities provide the public with "reasonably adequate service and facilities while charging just and reasonable rates." Order No. 6754e, ¶ 23; Mont. Code Ann. § 69-3-201. As such, the PSC ensures a transfer of ownership, at the bare minimum, does not negatively impact consumers. Order No. 7149c, ¶ 21. Like express grants of power, where there is ambiguity regarding jurisdiction, it must be resolved *against* such power. Order No. 7149c, ¶ 19.

The implied status of the PSC's jurisdiction over utility sales removes jurisdiction – or, at the minimum, injects ambiguity and therefore removes jurisdiction – when that power conflicts with other express statutes. First, the PSC has no statutory authority over utilities owned or controlled by municipalities. Mont. Code Ann. § 69-3-102. The PSC used to have authority over municipally owned utilities, but the Montana Legislature expressly removed that authority in the 1981. *See* Test. of Alec Hansen, *City of Missoula v. Mountain Water Co.*, p. 30-36 (Mont. 4th Dist. Ct. Mar. 20, 2015) (DV-14-352) (attached as Exhibit A). Second, Montana's eminent domain statutes – even though they contemplate the condemnation of utilities – never invoke

PSC authority in the process; power is exclusively given to the District Court. Mont. Code Ann. § 70-30-102, 7-13-44. This is further expressly defined in the condemnation statutes directing the District Court's next steps following a preliminary entry of condemnation. Within 30 days, the condemnee must present a claim of fair compensation and, if not accepted by the condemnor, the District Court must begin selecting commissioners for a valuation hearing, which can then be appealed to a valuation in front of a jury. Mont. Code Ann. § 70-30-201 to 70-30-323. In fact, the only statutory power given to the PSC relating to eminent domain is Montana Code Annotated § 69-3-113, which does not grant any actual power, but rather simply affirms a *public utilities'* own authority to use the power of condemnation in service of customers through the District Court, not the PSC.

The above should make it obvious the PSC lacks jurisdiction regarding the instant proceeding. Since the City's condemnation action would transfer ownership from a private owner to a municipality, the PSC does not have jurisdiction to review the transfer. Upon an entry of condemnation, Mountain Water's legal status is in the City's hands. The City could act immediately to 1) take possession; 2) pay the demanded fair compensation and purchase the system, or 3) pursue the fair value determination and then purchase the system. There is no role for the PSC in any of those actions.

The PSC's implied power, however, cannot hold when Mountain Water's ownership status is subject to the City's decision on which route to proceed, each of which will inevitably result in City ownership and therefore, complete loss of PSC jurisdiction. At worst, there is ambiguity regarding the PSC's jurisdiction, which *must*

resolve against such power. Therefore, the City respectfully asks the PSC to dismiss this proceeding.

II. A Stay of the Instant Proceedings is Appropriate

Both briefs filed in response to the City's opening brief spent considerable time explaining the process and procedure for the City to be placed in possession of Mountain Water pending the determination of fair market value. This response is premature; the City has taken no steps to exercise its statutory authority to take possession. The City believes the Preliminary Order is quite strong and disagrees with Liberty's conclusion it contains "numerous legal and factual errors." The arguments regarding whether or not the City could move to be placed in possession are red herrings and should be treated as such. By "constructive owner," the City means it can: 1) take immediate possession if it desires to; 2) pay Mountain Water's claim of just compensation—due in District Court by July 15, 2015—and purchase Mountain Water; or 3) move forward with valuation, pay the determined fair market value, and purchase Mountain Water. Depending on the City's choice, the City is either in control or ownership; hence it is the "constructive owner."

As an adjudicatory body, the PSC has the authority to control its own dockets and therefore has "broad discretion to stay proceedings as an incident to its power to control its own dockets." Order No. 7392b; *Clinton v. Jones*, 520 U.S. 681, 706 (1997). To grant a stay, the PSC must consider the following: 1) if there will be damage to someone else or legal rights decided by one case, there must be a clear case of hardship or inequity; and 2) in cases of rare public moment, an "individual may be required to

submit to delay and not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted.” *Henry v. Dist. Ct. of Seventeenth Jud. Dist.*, 645 P.2d 1350, 1353 (Mont. 1982). Similarly, *Lair v. Murray* outlined four factors to evaluate:

- (1) stays should not be indefinite in nature and should not be granted unless it appears likely the other proceeding will be concluded within a reasonable time;
- (2) courts more appropriately enter stay orders where a party seeks only damages, does not allege continuing harm, and does not seek injunctive or declaratory relief since a stay would result only in delay in monetary recovery;
- (3) stays may be appropriate if resolution of issues in the other proceeding would assist in resolving the proceeding sought to be stayed; and
- (4) stays may be appropriate for courts' docket efficiency and fairness to the parties pending resolution of independent proceedings that bear upon the case.

871 F. Supp. 2d 1058, 1068 (D. Mont. 2012). A stay of the instant proceedings meets the above requirements.

A. A Stay of the Instant Proceedings will not Damage Algonquin or Liberty, but Rather will help the Employees and Facilitate a Better Transition to the City

Neither Liberty nor Carlyle will have damages from a stay because their legal rights have been adjudicated by the District Court. Judge Townsend’s entry of the Preliminary Order has vested the City with legal rights regarding Mountain Water. Carlyle cannot sell something it does not own and, therefore, these proceedings are moot. *See Schara v. Anaconda Co.*, 610 P.2d 132 (1980). The City, as constructive owner, has several options provided by law. In short, Mountain Water’s legal status rests in

the City's hands and Carlyle no longer has the authority to sell Mountain Water.

Therefore, a stay does not damage the instant parties whatsoever.

The Employees argue at length that the City's takeover of Mountain Water will be devastating, but at the same time support a transition into the Liberty corporate structure. This position is inconsistent. When the City purchases Mountain Water, there will be a reorganization and restructuring in line with the business plan noted at the condemnation trial. If the merger with Liberty is approved by the PSC, however, there will be one transition to Liberty, then another to the City. One transition is far easier than two.

A transition to Liberty would involve extensive changes. Unlike Carlyle, Liberty will integrate Mountain Water into its corporate structure as it does with other utilities it purchases. Carlyle held the stock of Park Water as an investment, but Park Water still controlled its own cash flow, debt, IT systems, etc. An integration with Liberty will change all of that. Liberty will provide cash flow, IT, human resources, accounting, engineering, retirement, etc. Mountain Water will be required to convert all those systems over to the Liberty versions and the Employees will have to transition every one of the retirements and benefits over to the Liberty equivalent. Regardless of the PSC's actions, the City still has the right to purchase Mountain Water and will be doing so; therefore, the Employees will need to make the given transition twice if the Liberty merger is approved.

Further, in addition to being disruptive, transitions are also costly, and will therefore remove money from much needed infrastructure work. The District Court

held in its Preliminary Order of Condemnation that “maintenance of key assets has been deferred, including the Rattlesnake dams, equipment for operating wells, metering, service lines and main replacement,” to the point that Mountain Water’s leakage rate reflects “poor utilization of a valuable resource, failure to conform operations to industry standards, and to the extent that leaks may occur in portions of the delivery system not under Mountain Water's control, is an indicator of failed coordination with the City and other stakeholders.” Findings of Fact, Conclusions of Law and Preliminary Order of Condemnation, *City of Missoula v. Mountain Water Co.*, ¶ 60-62 (Mont. 4th Jud. Dist. June 15, 2015) (No. DV-14-352). The District Court concluded that “[s]ignificant capital expenditures will be required in the future regardless of the identity of the owner of the Water System.” *Id.* at ¶ 63.

A transition to Liberty will expend vast sums of money in various, non-infrastructure ways and then, when the City completes its acquisition of Mountain Water, those sums will have to be spent again. For example, there will be substantial changes in IT transitions (email, website, accounting, billing, benefits, etc), retirement rollover, healthcare benefits changeover, and a whole host of others. Liberty also renames its subsidiaries to conform to its naming nomenclature, therefore there will be filing fees for the corporate change as well as work to change over property and other records. Liberty also changes signage across the company after it acquires it. Liberty only recently acquired the Pine Bluff, Arkansas water system and it has already changed the signage across the entire company. *See* Exhibit B. In fact, even Mountain Water and Carlyle are currently claiming the costs of transition will be substantial in the

District Court condemnation case in an attempt to pause the valuation phase.

Defendants' Brief in Support of Motion to Stay Valuation Proceedings Pending Appeal, *City of Missoula v. Mountain Water Co.*, p. 10-11 (Mont. 4th Jud. Dist. June 15, 2015) (No. DV-14-352). It is illogical to claim costs of transition are substantial and damaging, yet support the ongoing PSC action which would force you to endure those costs twice.

B. A Stay will not be Indefinite or Lengthy

Defendants' argument that the District Court proceedings will take years is simply erroneous and pure speculation. (Western Water Holdings', Mountain Water Company's and the Employees of Mountain Water's Response to the City of Missoula's Motion to Dismiss or Stay, p. 6 (June 30, 2015); Liberty Utilities Co. and Liberty WWH, Inc.'s Response to City of Missoula's Renewed Motion to Dismiss or Stay the Proceedings, p. 6 (June 30, 2015)). The Defendants have consistently referred to the 1980s condemnation case against Mountain Water as the standard to judge the instant case. However, these two cases are dramatically different. In the 1980s case, the timeline was far more extended:

- Late 1984 – City files condemnation action;
- March 1986 – 4 day trial on condemnation;
- August 1986 – District Court finds against City;
- April 1987 – briefs submitted to Montana Supreme Court;
- September 1987 – Montana Supreme Court decides appeal; remands;
- December 1987 – Rehearing at District Court;
- January 1988 – District Court's order;
- September 1988 – briefs submitted to Montana Supreme Court; and
- March 1989 – Montana Supreme Court decides against City.

City of Missoula v. Mountain Water Co., 743 P.2d 404 (1987); *City of Missoula v. Mountain Water Co.*, 771 P.2d 103 (1989). Unlike the almost two years for the 1980s condemnation case, this one proceeded to trial in under a year. The District Court took five months to decide the case in the 1980s; Judge Townsend's order was a little over two months. The District Court in the 1980s issued an opinion with findings exclusively in favor of Mountain Water. Judge Townsend's order is 68 pages, almost entirely full of findings of fact—subject to the very high “clearly erroneous” standard of review—and in the City's favor. *City of Missoula*, 743 P.2d at 417. The same benefits Mountain Water enjoyed in the 1980s go in the City's favor on appeal this time.

The Montana Supreme Court has radically changed since the 1980s—especially regarding speed of review. The Montana Supreme Court had been known in the past for slow resolution of cases. However, since Chief Justice McGrath took a seat on the Court, this has no longer been the case. The Court has dramatically improved the turnaround time for decisions. In fact, as of the last quarterly report of 2014, 98% of civil cases in the Court's docket had been there less than 180 days. Montana Supreme Court, *Case Processing Measures*, <http://courts.mt.gov/portals/113/supreme/measures/2014/4thquarter.pdf> (accessed July 2, 2015). Further, the 2014 practitioner survey regarding the Court's performance found that 92% of practitioners said “the Court completes its overall workload in a timely manner.” Montana Supreme Court, *Montana Supreme Court Performance Measures*, <http://courts.mt.gov/portals/113/supreme/measures/2014/bar-survey14.pdf> (accessed July 2, 2015). Statements

that the appeals process will “take years” neglect an actual examination of the Court’s docket.

Conclusions that final resolution is “years away” also reflects an inaccurate understanding of Montana’s condemnation structure. First, at any time, Carlyle could offer to sell Mountain Water to the City and both could reach a negotiated sale before proceeding further. The City has maintained they are open to such discussions. Second, the condemnees are required by statute to provide their claim of just compensation by July 15, 2015 to the City. If the City believes the offer is fair, the City can simply accept, pay the amount, and the City becomes owner of Mountain Water. Or, third, the proceedings could move into the valuation phase, which, if the Court follows prior precedent, will be quite quick.

Simply put, the Defendants’ conclusion that resolution is a long time away is a reflection of their commitment to make the condemnation as expensive as possible, not a reflection of how the proceedings have actually gone. A stay would not be indefinite, it would only last until there is a final decision that the PSC does not have jurisdiction because the City has completed its purchase of Mountain Water.

C. The Status of the Merger Agreement is not the City’s Responsibility

Western Water, Mountain Water, and the Employees argue a stay of the PSC proceedings would hold the three utilities “hostage” and “could certainly have the impact of terminating the proposed sale.” (Western Water Holdings’, Mountain Water Company’s and the Employees of Mountain Water’s Response to the City of Missoula’s Motion to Dismiss or Stay, p. 6-7 (June 30, 2015); *see also* Liberty Utilities Co. and

Liberty WWH, Inc.'s Response to City of Missoula's Renewed Motion to Dismiss or Stay the Proceedings, p. 6 (June 30, 2015) (claiming the City has failed to overcome the PSC's conclusion a stay would be oppressive)). Nevertheless, it is not the City's responsibility to help Carlyle with poor business decisions. This argument is simply an attempt to use a contract to strong-arm the PSC into pushing this case along. The City was not a party to the Merger Agreement. Those who are parties to the Merger Agreement went into the agreement with their eyes wide open knowing the City's eminent domain action was pending. They agreed to a requirement that the PSC approve, disclaim jurisdiction, or refuse to exercise jurisdiction before the sale could close. The parties should have anticipated the City's prevailing when doing the deal—the fact that they did not is no fault of the City's.

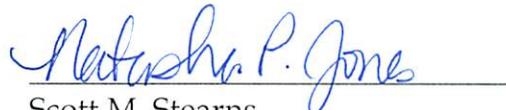
Further, both Carlyle and Liberty have multiple options under their contract. First, the termination clause in Section 9.1 allows an extension of time for the PSC's actions to 18 months if both parties reasonably believe the regulatory consent will be achieved. Second, the amendment provisions allow both parties to amend the agreement if done in writing. Merger Agreement, § 10.17. Surely, both parties could amend the Merger Agreement to, for example, let the California utilities be sold while the PSC takes the appropriate time and the condemnation suit is finalized. There is no need to barrel through a sale of Mountain Water when it is subject to a condemnation order and the City has effective right to purchase the system. Any argument that a stay by the PSC proceedings will inhibit the Merger Agreement misunderstands the amendment and termination process in the actual agreement.

III. Conclusion

Ultimately, a stay will allow the condemnation action to proceed to its final end without unnecessary resources being expended at the PSC, prevent an unnecessary (and possibly unwanted) transition to Liberty and then to the City, and, as noted above, allow the condemnation action, which ultimately will remove *all* PSC jurisdiction, to come to its final end and make this instant proceeding moot.

For the above reasons, the City respectfully requests the PSC either dismiss the instant action or stay it until the condemnation case has been fully resolved.

Dated this 6th day of July 2015.



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CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail and email upon the following counsel of record at their addresses this 6th day of July 2015:

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Kate M. Palmer

EXHIBIT

A

09:37AM **1** **more efficiencies rather than segregated services.**

09:38AM **2** **Q.** And will it also create efficiencies of time for

09:38AM **3** city -- for these city departments?

09:38AM **4** **A. Yes.**

09:38AM **5** **Q.** All right. Thank you.

09:38AM **6** THE COURT: Mr. Zadick, do you have anything

09:38AM **7** further?

09:38AM **8** MR. ZADICK: No.

09:38AM **9** MR. CONNER: Your Honor, the only thing -- I need

09:38AM **10** to stop the clock -- is introduce, I believe 2545 may not have

09:38AM **11** been admitted yesterday.

09:38AM **12** THE COURT: I thought it was.

09:38AM **13** MR. CONNER: I thought it was, too, but think -- I

09:38AM **14** thought I heard you say it wasn't.

09:38AM **15** MS. JONES: No, it was. Yeah.

09:38AM **16** MR. CONNER: Okay. I want to make sure. Thank

09:38AM **17** you, Your Honor.

09:38AM **18** THE COURT: Mr. Zadick, anything additional?

09:38AM **19** MR. ZADICK: No, Your Honor.

09:38AM **20** THE COURT: All right. Mr. Conner, anything

09:38AM **21** additional recross?

09:38AM **22** MR. CONNER: No, Your Honor.

09:38AM **23** THE COURT: Mr. Mercer, I take it no?

09:38AM **24** MR. MERCER: No, Your Honor.

09:38AM **25** THE COURT: Thank you, Mr. Bender. You may step

09:38AM **1** down.

09:38AM **2** THE WITNESS: Thank you, Your Honor.

09:38AM **3** THE COURT: You're free to go. Right. Additional

09:38AM **4** witnesses for The City?

09:38AM **5** MR. SCHNEIDER: At this time, Your Honor, The City

09:38AM **6** would call Mr. Alec Hansen to the stand. He's in the courtroom

09:38AM **7** and ask him to come forward and present himself.

09:38AM **8** Thereupon,

09:38AM **9** ALEC HANSEN,

09:38AM **10** a witness of lawful age, having been first duly sworn to tell

09:38AM **11** the truth, the whole truth, and nothing but the truth,

09:39AM **12** testified upon his oath as follows:

09:39AM **13** THE COURT: Mr. Hansen, please make yourself as

09:39AM **14** comfortable as possible. Make sure the mic is close enough so

09:39AM **15** we can all hear you. Please state your full name, spell your

09:40AM **16** last name for us.

09:40AM **17** THE WITNESS: My name is Alec Hansen, H-A-N-S-E-N.

09:40AM **18** THE COURT: All right. Thank you. You may

09:40AM **19** inquire.

09:40AM **20** DIRECT EXAMINATION

09:40AM **21** BY MR. SCHNEIDER:

09:40AM **22** **Q.** Mr. Hansen, where do you live?

09:40AM **23** **A. Missoula, Montana.**

09:40AM **24** **Q.** How long have you lived in Montana?

09:40AM **25** **A. Since 1941.**

09:40AM **1** **Q.** How long do you intend to stay?

09:40AM **2** **A. As long as I can.**

09:40AM **3** **Q.** Mr. Hansen, are you in the business of testifying as an

09:40AM **4** expert witness?

09:40AM **5** **A. No, I'm not.**

09:40AM **6** **Q.** How do you like it so far?

09:40AM **7** **A. Pretty good so far.**

09:40AM **8** **Q.** Let me ask you three major areas. First a little bit

09:40AM **9** about your background so The Court can understand what

09:40AM **10** experience you may have had which would enable you to provide

09:40AM **11** an opinion in this case. Second, I would like to ask you a

09:40AM **12** little bit about your responsibilities in your most recent

09:40AM **13** occupation. And third, I would like to ask you if you reached

09:40AM **14** any opinions in this case and what they are. Let's start with

09:40AM **15** the background. Describe generally what type of work you have

09:40AM **16** done over the course of your life in chronological order.

09:41AM **17** **A. Well, I started out -- I was born and raised in Butte,**

09:41AM **18** **Montana. I started out like most people over there, I worked**

09:41AM **19** **on the Butte Hill as a miner in a warehouse, and then I came**

09:41AM **20** **down here and went to college. I spent a couple of years in**

09:41AM **21** **the Navy in 1967 and '68. I worked as a newspaper reporter in**

09:41AM **22** **Butte at the Montana Standard, in Helena at the Associated**

09:41AM **23** **Press. I was an administrative assistant of the Governors**

09:41AM **24** **Forrest Anderson and Thomas Judge, and also the U.S. Senator**

09:41AM **25** **Paul Hatfield. I was a communications director of the Anaconda**

09:41AM **1** **Company, Montana operations for four years from 1972 to 1976.**

09:41AM **2** **I worked as a contract lobbyist for the Montana League of**

09:41AM **3** **Cities in the 1981 legislature. Based on that work I was then**

09:42AM **4** **hired as the full time executive director in May of 1982 and I**

09:42AM **5** **held that position until I retired last August after 32 years.**

09:42AM **6** **Q.** 32 years with the League of Montana Cities and Towns?

09:42AM **7** **A. Yes, sir.**

09:42AM **8** **Q.** Where were you stationed in the Navy?

09:42AM **9** **A. Home port was San Diego. I was on an amphibious**

09:42AM **10** **assault ship. We spent one tour of duty in the Republic of**

09:42AM **11** **Vietnam.**

09:42AM **12** **Q.** With respect to the position you held for 32 years with

09:42AM **13** the League of Montana Cities and Towns, tell The Court

09:42AM **14** generally, if you would, what your responsibilities were, what

09:42AM **15** type of -- what type of information you acquired over those 32

09:42AM **16** years.

09:42AM **17** **A. Well, as the executive director of the League my**

09:42AM **18** **principle responsibility was represent 129 cities and towns**

09:42AM **19** **before the legislature. I did all the lobbying for all the**

09:43AM **20** **cities in the State of Montana over that 32-year period of**

09:43AM **21** **time. I think I represented cities and towns in the**

09:43AM **22** **legislature in 16 regular sessions and probably six or seven**

09:43AM **23** **special sessions. And if you're going to lobby the legislature**

09:43AM **24** **on behalf of the cities, you've got to have a broad range of**

09:43AM **25** **information. You got to be able to deal with a very broad**

09:43AM **1** range of subjects. In a normal session of the legislature we

09:43AM **2** would deal with as many as 200 bills, that would cover every

09:43AM **3** aspect of municipal operations from annexation to zoning. I

09:43AM **4** mean, we covered the whole alphabetical scale, everything out

09:43AM **5** there. And so if you're going to go before the legislature and

09:43AM **6** testify on a bill, you don't have to be an expert, but you have

09:43AM **7** to have a working understanding of the subject at hand and you

09:43AM **8** have to be able to make points quickly and effectively to

09:43AM **9** defend or promote your position.

09:44AM **10** Q. You said expert. In this Court an expert can be

09:44AM **11** someone that's acquired information by experience. Did you

09:44AM **12** have 32 years of experience dealing with this subject?

09:44AM **13** A. Under that definition I would qualify.

09:44AM **14** Q. You mentioned municipalization of services and

09:44AM **15** annexation. Did you become familiar over those 32 years with

09:44AM **16** city services delivered by the cities and towns of Montana?

09:44AM **17** A. Yes, I did. You know, it was a Montana league of

09:44AM **18** cities and towns but a lot of the time most of the work

09:44AM **19** centered around what was going on here in Missoula. And

09:44AM **20** annexation was a big issue in this town. A lot of it related

09:44AM **21** to water and sewer issues. And I became very familiar with,

09:44AM **22** you know, those issues as they apply here in Missoula. I had

09:44AM **23** the opportunity in meeting just about every angry citizen in

09:44AM **24** this valley at one time or another.

09:44AM **25** Q. Both of them?

09:44AM **1** A. There are more than that. And, you know, so yeah, I'm

09:45AM **2** familiar with, you know, the operation of municipal utilities.

09:45AM **3** In fact, when I worked as a contract lobbyist in 1981 we had

09:45AM **4** three bills that we were working on. Two of them got killed.

09:45AM **5** And the one that passed was the one that allowed our municipal

09:45AM **6** utilities water and sewer to set their own rates. In the

09:45AM **7** passage of that --

09:45AM **8** Q. Was that in 1981?

09:45AM **9** A. 1981.

09:45AM **10** Q. Before you describe it, could you tell The Court what

09:45AM **11** the situation was before that bill was enacted?

09:45AM **12** A. Well, before 1981 if a city wanted to adjust its water

09:45AM **13** or sewer rates you had to go to the Public Service Commission,

09:45AM **14** you had to hire expert witnesses and attorneys. The City of

09:45AM **15** Bozeman spent \$80,000 going to the PSC to get a rate increase.

09:45AM **16** And we persuaded the legislature in 1981 that that was an

09:45AM **17** unnecessary expense of the rate payer, that the City Council

09:45AM **18** could set the rates. The City Council is familiar with what's

09:46AM **19** going on in the town. They're directly connected with the

09:46AM **20** community and the constituents. And so the legislature agreed

09:46AM **21** in 1981 to allow cities and towns to increase their rates by 12

09:46AM **22** percent a year. What's magic about 12 percent a year? Well,

09:46AM **23** 12 percent in 1981 was the rate of inflation. So they said you

09:46AM **24** guys can raise your rates by the rate of inflation without

09:46AM **25** going to the PSC. Subsequently the 12 percent was removed and

09:46AM **1** cities and towns now can set their own rates.

09:46AM **2** Q. Following the enactment of that bill in 1981, did you

09:46AM **3** have an interest in following how that worked over the last 34

09:46AM **4** years?

09:46AM **5** A. Yes, I have. I mean, that's how I got the job. That's

09:46AM **6** an important piece of legislation to me. We got that in the

09:46AM **7** scrapbook at home. Yeah, I followed that. And what's

09:46AM **8** interesting is since that happened there's not been a bill

09:46AM **9** seriously considered by the Montana legislature to go back to

09:47AM **10** PSC regulation. In the statement that I submitted before the

09:47AM **11** trial I said there's never been a bill, and a bill was

09:47AM **12** introduced in the 2015 legislature, to put the PSC back in the

09:47AM **13** game of regulating municipal utilities and that bill did not

09:47AM **14** get out of the committee.

09:47AM **15** Q. You mentioned the piece you wrote for purposes of this

09:47AM **16** trial. You mean the written report you submitted?

09:47AM **17** A. Yes, sir.

09:47AM **18** Q. The Court will not receive a copy of that report, I'll

09:47AM **19** ask you questions about it.

09:47AM **20** A. Certainly.

09:47AM **21** Q. First, how many cities and towns? 129?

09:47AM **22** A. 129 cities and towns.

09:47AM **23** Q. How many of those have publically-owned water systems?

09:47AM **24** A. 128.

09:47AM **25** Q. How many cities and towns have publically-owned

09:47AM **1** utilities of one kind or another? The one town that doesn't

09:47AM **2** own its water system is Missoula, right?

09:47AM **3** A. That's correct.

09:47AM **4** Q. But it does own its wastewater system?

09:47AM **5** A. That's correct.

09:47AM **6** Q. So over the course of the last 34 years, cities and

09:48AM **7** towns of Montana setting their own rates, what's your view of

09:48AM **8** how that's working? Well or not so well?

09:48AM **9** A. I think it's worked very well. We've got, you know,

09:48AM **10** when we got this law passed, and the subsequent revisions, we

09:48AM **11** set up a procedure where you come in and, you know, any citizen

09:48AM **12** can appear at a public hearing. You notify the people ahead of

09:48AM **13** time, you know, the proposed rate increase, they can come into

09:48AM **14** the City Council, sit down and make their case. I mean, this

09:48AM **15** is local government at its best. You are proposing to add a

09:48AM **16** cost to a person's home ownership, they can come in and agree

09:48AM **17** or disagree. A lot of these rate hearings there's not a lot of

09:48AM **18** discussion. And, you know, the cities are very careful about

09:48AM **19** keeping their rates in line with what's absolutely necessary.

09:48AM **20** You know, and during the debate on this bill, you give

09:49AM **21** the cities this authority, they'll raise the rates sky high.

09:49AM **22** Well, that hasn't happened. And the reason is a person sitting

09:49AM **23** on a city council is no different than somebody in the

09:49AM **24** legislature or conference. They listen to the people. And a

09:49AM **25** city, particularly with the rate payers sitting in the audience

09:49AM **1** is very careful about the rate adjustments that they make

09:49AM **2** because they know that those people are the ones that are going

09:49AM **3** to pay the freight. These people aren't a mystery. They are

09:49AM **4** not phantoms. They are not, you know, people that nobody ever

09:49AM **5** sees. These are your neighbors and you got to be careful of

09:49AM **6** their interest.

09:49AM **7** Q. That's your opinion based on your experience over the

09:49AM **8** last 34 years?

09:49AM **9** A. Yes, it is.

09:49AM **10** Q. Mr. Hansen, during the course of your responsibilities

09:49AM **11** as executive director, did you learn anything about how cities

09:49AM **12** and towns finance public utilities?

09:49AM **13** A. Well, that's always -- public finance and, you know,

09:50AM **14** utilities is a big challenge. I mean, and there's an emerging

09:50AM **15** understanding in Montana and across this country that the rate

09:50AM **16** payers alone cannot finance water and sewer utilities. They

09:50AM **17** need help. There's a new word that's gained a lot of

09:50AM **18** popularity recently. Infrastructure. There are infrastructure

09:50AM **19** bills in congress. You know, for 30 years in Montana we have

09:50AM **20** been developing public assistance programs to help cities and

09:50AM **21** towns and the rate payers that live in those places pay for

09:50AM **22** improvements in water and sewer systems. And there are a lot

09:50AM **23** of mandates that come from the state and federal government.

09:50AM **24** You have to improve your wastewater system. We have to meet

09:50AM **25** numeric nutrient standards. A city and town cannot do that.

09:50AM **1** We put x amount of parameters in some of the rules and

09:51AM **2** regulations that we have worked on. Where it says that the

09:51AM **3** cost of compliance cannot be anymore than two percent of median

09:51AM **4** household income. This is a very delicate and very sensitive

09:51AM **5** issue. And it's something that requires an awful lot of work.

09:51AM **6** And the legislature, over time, has stepped up and provided a

09:51AM **7** lot of assistance to cities and towns and water and sewer

09:51AM **8** districts across Montana.

09:51AM **9** Q. In a few minutes I will ask you what types of

09:51AM **10** opportunities might give -- are available to Missoula if it

09:51AM **11** owns its water system. First I'd like to ask you if in your

09:51AM **12** experience any of those other 128 cities and towns had the

09:51AM **13** benefit of federal and state funding, grants, loans, low

09:51AM **14** interest loans, yes or no?

09:51AM **15** A. Yes.

09:51AM **16** Q. Okay. During your time at the League of Cities and

09:51AM **17** Towns did you have occasion to provide information and guidance

09:51AM **18** to various city leaders around the state?

09:52AM **19** A. Almost every day, yes.

09:52AM **20** Q. And it was a full-time job?

09:52AM **21** A. Yes. When I wasn't working at the legislature the

09:52AM **22** other part of the job was, you know, we kind of ran an informal

09:52AM **23** technical assistance program.

09:52AM **24** Q. Did you ever put any of the cities and towns -- by the

09:52AM **25** way, what's the range of those cities and towns from largest to

09:52AM **1** smallest?

09:52AM **2** A. Largest city in Montana is Billings with 106,000

09:52AM **3** people. And the smallest is Ismay out in Custer County.

09:52AM **4** There's two families down there. They got 26. The population

09:52AM **5** changes.

09:52AM **6** Q. By the time you retired in August of last year, had

09:52AM **7** every one of those cities and towns become a member of the

09:52AM **8** league?

09:52AM **9** A. Yeah, every city and town in Montana is a member of the

09:52AM **10** league.

09:52AM **11** Q. Did you ever put any of those city leaders in touch

09:52AM **12** with the City of Missoula as an example of how to run a

09:53AM **13** particular program, deliver a particular city service, yes or

09:53AM **14** no?

09:53AM **15** A. Yes.

09:53AM **16** Q. When?

09:53AM **17** A. All of the time. Almost every day.

09:53AM **18** Q. Why?

09:53AM **19** A. Well, because the City of Missoula is probably one of

09:53AM **20** the best members we had. They have some outstanding mayors in

09:53AM **21** this town, very effective and committed city attorney. And,

09:53AM **22** you know, people would call and ask me a legal question. Mr.

09:53AM **23** Nugent is sitting here this morning, and I would call him and

09:53AM **24** he would, you know, give me the answer to the question or I

09:53AM **25** would have people call him directly. I think his, you know,

09:53AM **1** willingness to help cities was greatly appreciated. He's one

09:53AM **2** of the only people in the history of our organization that ever

09:53AM **3** served two terms as president. And no, I relied heavily on the

09:53AM **4** City of Missoula because they have very -- you know, they got a

09:53AM **5** very professional staff down there.

09:53AM **6** Q. What about transportation? Did you ever recommend any

09:54AM **7** city or town around The State to others as an example of how to

09:54AM **8** do it right?

09:54AM **9** A. I can't remember specifically about transportation. I

09:54AM **10** know -- I cannot answer that question positively.

09:54AM **11** Q. Do you have an opinion of Missoula's transportation?

09:54AM **12** MR. MERCER: Your Honor, this is well beyond the

09:54AM **13** scope of the opinion and the deposition testimony offered by

09:54AM **14** Mr. Hansen.

09:54AM **15** MR. SCHNEIDER: I'll withdraw the question.

09:54AM **16** THE COURT: Very well.

09:54AM **17** MR. SCHNEIDER: I won't charge Mr. Mercer for that

09:54AM **18** time.

09:54AM **19** Q. (By Mr. Schneider) Did you ever put any other city and

09:54AM **20** town in touch with Missoula with respect to how to do it right

09:54AM **21** with respect to a public utility?

09:54AM **22** A. Yes, I did, numerous times.

09:54AM **23** Q. Why?

09:54AM **24** A. Well, because City of Missoula, over the years, has

09:54AM **25** done a remarkable job of protecting the sole source aquifer

EXHIBIT

B



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Pine Bluff, Arkansas
Street View - Apr 2014

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