

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

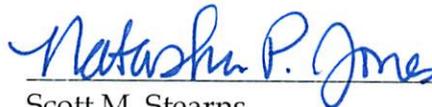
IN THE MATTER OF Joint Application
of Liberty Utilities Co., Liberty WWH,
Inc., Western Water Holdings, LLC, and
Mountain Water Company for
Approval of a Sale and Transfer of
Stock.

REGULATORY DIVISION
DOCKET NO. D2014.12.99

CITY OF MISSOULA'S RESPONSES TO MOUNTAIN WATER'S AND
WESTERN WATER'S FIRST SET OF DATA REQUESTS TO THE
CITY OF MISSOULA

The City of Missoula provides the attached responses to Mountain Water and
Western Water Holdings, LLC Data Requests to the City of Missoula.

Dated this 24th day of November 2015.



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GENERAL OBJECTIONS

The City continues to maintain that its condemnation has deprived the Public Service Commission (“PSC”) of jurisdiction over this joint application—especially in light of the condemnation commissioner’s recent determination of fair market value. At a minimum, this proceeding should be stayed in light of the condemnation act.

The merits of the condemnation action are not before the PSC. Therefore, questions regarding the condemnation action, the City’s actions during and after, and the City’s future plans are not relevant to this proceeding. Only Algonquin’s purchase is before the PSC and, thus, the only relevant information is that related Algonquin’s proposed purchase. As Mountain Water Company (“Mountain Water”), Western Water LLC (“Western Water”), Liberty Utilities Company (“Liberty”), and Algonquin Power and Utilities Corporation (“APUC”) have repeatedly stated, the merits of the City’s condemnation action are not before the PSC:

Issues regarding the City’s condemnation litigation must not be injected into this docket.

Response of Liberty Utilities Co. and Liberty WWH, Inc. to Petitions to Intervene of the City of Missoula and the Clark Fork Coalition, D2014.12.99 (Jan. 23, 2015) (emphasis added).

Reviewing and approving the sale and transfer in no way changes the current use or ownership of Mountain Water’s utility property, and **therefore the issues in this proceeding are independent from those in the condemnation action.**

Western Water Holdings and Mountain Water Company’s Response to the City of Missoula’s Motion to Stay, D2014.12.99 (Feb. 23, 2015) (emphasis added).

The number and volume of these data requests is overly broad and unduly burdensome. Mountain Water and Western Water have served over 200 separate requests on the City, many of which are not relevant nor do they request information that will aid the PSC in determining whether or not the proposed Algonquin merger should be approved.

These data requests are designed to harass the City and increase the costs and burden associated with its continued participation in this docket. Many of the requests are not relevant to the instant proceeding and seek information that will not aid the PSC in its determination of whether or not to approve the Liberty/ Algonquin purchase.

The City has no burden of proof in this proceeding. The burden to prove this transaction should be approved rests solely on the Joint Applicants. Any questions seeking information regarding the City actions, past or present, or how the City would operate Mountain Water are not relevant and seek to inappropriately shift the burden to the City.

The PSC lacks jurisdiction to consider the benefits of public ownership versus private ownership. The District Court has already ruled on this matter and it has been determined that it is “more necessary” that the City own Mountain Water.

Many of Mountain Water and Western Water Holdings’ data requests seek information protected by attorney-client privilege and/or work product protection.

All responses provided below are provided without waiving these objections or waiving further, specific objections asserted along with the responses.

DATA REQUESTS

MW/WWH-001 RE: Public Ownership of Mountain Water

- a. Please provide all documents related to the City's due diligence, analysis, and valuation supporting the City's \$65 million offer for Mountain Water.
- b. Please provide all documents related to the City's due diligence, analysis, and valuation supporting the City's \$50 million offer for Mountain Water.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This question requests information not relevant to this proceeding. The City's offers to purchase the Water System presently owned by Mountain Water are not the subject of these proceedings, rather, the question before the PSC is whether or not Liberty's proposal to purchase Park Water should be approved by the PSC.

This request seeks attorney/client privileged information.

MW/WWH-002 RE: Public Ownership of Mountain Water

Admit that the sale and transfer of Western Water stock will have no impact on the City's effort to condemn Mountain Water's assets. If your answer is anything other than an unqualified admission, please explain in detail.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding. This request seeks attorney/client privileged and work product information, calls for a legal conclusion and calls for speculation.

MW/WWH-003 RE: Direct Testimony of Mr. Bickell, page 3, line 9.

- a. Please define “the system” as used in the referenced testimony.
- b. Please explain in detail Mr. Bickell’s understanding of the transaction presented in the Joint Application.

RESPONSE TO MW/WWH-003:

a. Mr. Bickell is using “system” to refer to the collection of entities that comprise the water distributions systems owned by Western Water Holdings, LLC , which is Park Water and the three operating subsidiaries: Mountain Water, Apple Valley Ranchos, and Central Basin. In sum, it is what Algonquin Power and Utilities Corporation is proposing to acquire.

b. Mr. Bickell understands that APUC, a Canadian entity, through its American subsidiary, Liberty Utilities, is proposing to acquire Western Water and, through that, the entities Western Water owns: Park Water and its associated subsidiaries.

MW/WWH-004 RE: Direct Testimony of Mr. Bickell, page 4, line 21 through page 4, line 2.

- a. Does Mr. Bickell believe the filing of annual rate cases with the PSC is prohibited by Montana law? Please explain your answer in detail.
- b. Please identify any rules, regulations, statutes, Commission decisions, and other authority used, referred to, or relied upon to support your answer in subpart (a).

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding. The request calls for a legal conclusion.

Question (a) mischaracterizes Mr. Bickell's testimony. Mr. Bickell's testimony was factual in nature, merely noting what Algonquin/Liberty proposes to do, not arguing for a specific legal conclusion regarding annual versus biannual rate cases. Mr. Bickell's testimony was:



Question (a) requests a legal conclusion; Mr. Bickell is not an attorney.

MW/WWH-005 RE: Direct Testimony of Mr. Bickell, page 6, lines 2-4.

- a. Please explain in detail Mr. Bickell's understanding of the concept of "rate base" as used in regulated utility ratemaking.
- b. Please explain in detail how capital investment in Western Water's California water systems will increase Mountain Water's rate base in Montana.

- c. Please explain Mr. Bickell's understanding of the concept of a "regulatory capital structure" as used in regulated utility ratemaking.

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Question (b) mischaracterizes Mr. Bickell's testimony by implying that capital investment in California increases Mountain Water's rate base. Mr. Bickell's testimony was factual in nature, merely noting the capital expenditures being invested in Mountain Water – and the corresponding increase in rate base – as compared to the other two Park Water subsidiaries. The testimony cited by WWH/MWC for this question reads in full:

Additionally, Project Orchard indicates that between 2014 and 2019, the rate base for MWC will increase 43% while Apple Valley Ranchos increases 98% and Park Central Basin increases 95%. Test. of Dale Bickell, 6:2-4.

Mr. Bickell's testimony did not claim Mountain Water's rate base would increase due to capital investments in the California companies.

RESPONSE TO MW/WWH-005:

- a. "Rate Base" is the value of property the utility is allowed to earn a return on. Broadly, it is calculated by subtracting accumulated depreciation from gross investment.
- b. See objections.
- c. A "regulatory capital structure" is the debt to equity ratio in a given utility.

MW/WWH-006 RE: Direct Testimony of Mr. Bickell, page 6, lines 2-4.

Does Mr. Bickell believe Mountain Water's rate base should be increased by 95-98% by 2019? Please explain your answer in detail.

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request is beyond the scope of Mr. Bickell's testimony and mischaracterizes his testimony.

RESPONSE TO MW/WWH-006:

Mr. Bickell's testimony was factual in nature and demonstrates Liberty Utilities intent regarding capital investment in the three subsidiary companies. It was not making a comment one way or another regarding whether or not Mountain Water's rate base "should" be increased by 95-98%.

MW/WWH-007 RE: Direct Testimony of Mr. Bickell, page 6, lines 2-4.

- a. Please explain in detail Mr. Bickell's understanding of the relationship between capital investment and rate base.
- b. Please explain in detail Mr. Bickell's understanding of a regulated utility's right to the return of and a return on its capital investment.
- c. Please explain in detail Mr. Bickell's understanding of the concept of "rate gradualism" as used in regulated utility ratemaking.
- d. Please explain in detail Mr. Bickell's understanding of the concept of "rate shock" as used in reference to regulated utility rates.

RESPONSE TO MW/WWH-007:

a. Capital investment, if allowed by the regulatory body, is included in rate base.

b. Regulated utilities are allowed to earn a return on the value of their rate base. So, if a utility's rate base is \$100 and it is allowed to earn a 10% rate of return by its regulators, part of calculating the revenue requirement (because there would be other elements including taxes, operating costs, depreciation expenses, etc.) is computing the allowed rate of return. In this hypothetical, it would be $\$100 \times .1 = \10 .

c. "Rate gradualism" is the concept of increasing rates in a gradual manner.

d. "Rate shock" is the concept whereby a utility drastically increases rates, for example, where Liberty Utilities proposed to increase customer rates by 28% in Pine Bluff, Arkansas or by 47% for this upcoming winter in New Hampshire.

MW/WWH-008 RE: Direct Testimony of Mr. Bickell, page 7, lines 2-3.

Please produce all documents referred to or relied upon by Mr. Bickell as a basis for his statement about the "PSC's ongoing concerns about leakage."

RESPONSE TO MW/WWH-008:

The documents requested are publicly available via <http://psc.mt.gov> and documents that Mountain Water should be familiar with.

Specifically, Mr. Bickell relied upon Order No. 6954c, where the PSC noted:

The Commission notes Mountain's significant (approximately \$11,500,000) investment in storage; new meters; periodic meter replacements; new water mains; replacement of older, leaking mains; and expansion of system telemetry capabilities. However, the Commission remains concerned about the continual and substantial loss of water occurring between the production sources and the end-user delivery points.

The Commission encourages Mountain to continue its efforts to mitigate water supply losses with additional investments and upgrades to its delivery system. In addition, the Commission encourages Mountain to explore, either independently or in collaboration with the American Water Works Association or other industry experts, cost-effective leak detection methods and products, other than those currently employed by Mountain (e.g., Itron's Water SaveSource that combines simple fixed network architecture, meter data management software and leak detection to offer an effective advanced metering solution for water utilities). Reducing water supply losses will not only reduce production costs, but may defer the date when additional water production facilities will be needed to meet future customer demand.

The Commission will continue to monitor Mountain's water supply loss mitigation efforts, and contemplates additional measures should it determine that Mountain is not making sufficient progress. The Commission directs Mountain to include in its future general rate cases, commencing with the general rate case anticipated to be filed in 2010, an action plan that includes projected dates for starting and completing projects to mitigate water supply losses in a cost effective manner.

Docket No. D2008.9.119, Order No. 6954c, ¶¶ 24-26, available at http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/20089119_6954c.pdf.

In 2010, the PSC requested the information regarding main replacements and leaks. See D2010.4.41, PSC-033 to PSC-036, available at http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2010-4-41_OUT_20100723_DR.pdf.

Leakage was also a concern raised during in the Carlyle purchase docket. Docket No. D2011.1.8, Order No. 7149d, available at http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2011-1-8_FinalOrder.pdf.

Finally, leakage was raised and discussed during the 2012 rate case docket. *See* Docket No. D2012.7.81, PSC-052 to PSC-054, available at http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2012781_OUT_20121119_DR_52-54.pdf.

MW/WWH-009 RE: Direct Testimony of Mr. Bickell, page 7, lines 7-8.

Please explain in detail Mr. Bickell's rationale for claiming ratepayers in Missoula will fund increased debt service for improvements in California.

RESPONSE TO MW/WWH-009:

The question mischaracterizes Mr. Bickell's testimony. Mr. Bickell's testimony was factual in nature stating that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MW/WWH-010 RE: Direct Testimony of Mr. Bickell.

Admit Mr. Bickell does not claim that Mountain Water has provided inadequate service while owned by Western Water. If your answer is anything other than an unqualified admission, please explain in detail and identify the specific portions of Mr. Bickell's testimony where adequacy of service is addressed.

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant

information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This question is beyond the scope of Mr. Bickell's testimony.

RESPONSE TO MW/WWH-010:

Deny. According to Mountain Water's documents and the analysis of HDR, the system leaks more water than it delivers to customers. Leakage of 4.6 Billion gallons per year is unprecedented, in violation of industry standards and indicates Mountain Water is not an effectively utilizing water as a resource. Necessary repairs, maintenance and capital investments has been deferred and delayed. The system is aged and inefficient. The system is rated fair to poor and needs \$60 to \$95 Million in additional capital expenditures to bring the system up to industry standards.

MW/WWH-011 RE: Direct Testimony of Mr. Bickell.

Admit Mr. Bickell does not claim that Mountain Water will provide inadequate service if Liberty acquires the stock in Western Water. If your answer is anything other than an unqualified admission, please explain in detail and identify the specific portions of Mr. Bickell's testimony where adequacy of service is addressed.

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This question is beyond the scope of Mr. Bickell's testimony.

MW/WWH-012 RE: Direct Testimony of Mr. Close, page 2, lines 15-20.

- a. Does Mr. Close believe the Commission is evaluating a sale of Mountain

Water to the City in Docket No. D2014.12.99? Please explain your answer in detail.

- b. Is it Mr. Close's position that the Commission has authority to require a private utility to be publically owned? Please explain your answer in detail and produce all documents used, referred to, or relied upon in formulating your response to subpart (b).
- c. Please explain in detail Mr. Close's understanding of the relationship between the sale of Western Water stock and public ownership of Mountain Water.
- d. Does Mr. Close believe the sale of Western Water stock will impact the City's acquisition of Mountain Water's assets through condemnation? Please explain your answer in detail and produce all documents used, referred to, or relied upon in formulating your response to subpart (d).

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding. The request calls for a legal conclusion.

RESPONSE TO MW/WWH-011:

Deny. Accordingly to the testimony of Liberty officials and review of the due diligence materials, there is no indication Liberty intends to remedy the serious system deficiencies.

RESPONSE TO MW/WWH-012:

- a. See objections above.

b. See objections above.

c. Mr. Close has used public ownership as a comparison point for areas of his testimony because of the proximity of the City's condemnation of Mountain Water. Missoula County District Court has issued a Preliminary Order of Condemnation of Mountain Water. See Findings of Fact and Conclusions of Law, *City of Missoula v. Mountain Water Co.*, Mont. 4th Jud. Dist. (DV-11-352). This past week, Mountain Water, Carlyle, and the City presented evidence regarding valuation. The Commissioners determined Mountain Water was worth \$88.6 million. As such, the comparison is merely a data point for the PSC to consider.

d. See objections above.

MW/WWH-013 RE: Direct Testimony of Mr. Close, page 3, lines 5-10.

- a. Admit you were retained by the City of Missoula for the primary purpose of assessing the condition of Mountain Water's assets, reviewing Mountain Water's financial operations, and comparing those to industry standard to support the City's condemnation case. If your answer is anything other than an unqualified admission, please explain in detail.
- b. Please provide a copy of the agreement (including any amendments and exhibits) between HDR and the City of Missoula for the work described in the referenced portion of Mr. Close's testimony.

RESPONSE TO MW/WWH-013:

a. Deny. It is inaccurate to say Mr. Close was hired "primarily" for the condemnation case. He was first hired for the condemnation action, but has also been hired to testify in this proceeding. In the condemnation case, Mr. Close did a system condition report of Mountain Water and testified in both the necessity and valuation trials. In this proceeding Mr. Close has provided expert testimony and he is expected to

testify at the PSC hearing, if any.

b. A copy of HDR's contract is provided at CITY-PSC 00000001. Also provided is a copy of HDR's Supplemental Report (CITY 00136795-00136809), Facility Inspection Reports (CITY 00136922-00137152), and HDR Summary Chart (CITY 00136908-0136910).

MW/WWH-014 RE: Direct Testimony of Mr. Close, page 3, lines 19-22.

Please provide any studies performed by HDR regarding government-owned water systems that were prepared in the last five years.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request is overly broad and unduly burdensome in that it requests "any studies" performed by HDR "prepared in the last five years." HDR is a worldwide engineering firm with 225 locations in the Americas, Asia, Australia, Europe, and the Middle East and it employees over 10,000 employees. HDR has performed water system related work for numerous entities and providing copies of each and every study created by HDR would be overly burdensome.

This question also seeks information not relevant to this proceeding. The work

prepared by HDR for all its government clients is not before the PSC. Rather, the work HDR has prepared and presented to this proceeding (system condition analysis and a rate study) are before the PSC as testimony.

This question is designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

This question requests HDR client information that is confidential.

MW/WWH-015 RE: Direct Testimony of Mr. Close, page 3, line 19 through page 4, line 1.

- a. Please explain Mr. Close's statement that a utility takes depreciation as an additional profit. Produce any documents used, referred to, or relied upon in responding to subpart (a).
- b. Please explain how publicly-owned utilities recover the principle amount, not just the interest and issuing costs, of debt that they issue to fund investment in utility infrastructure. Produce any documents used, referred to, or relied upon in responding to subpart (b).
- c. Please provide all documents used, referred to, or relied upon by Mr. Close to support the position that regulated utilities defer routine maintenance to any greater extent than publicly-owned utilities.
- d. Please provide any studies Mr. Close prepared or conducted comparing deferred maintenance in regulated versus public-owned utilities.
- e. Please provide any studies Mr. Close prepared or conducted comparing the condition of water systems owned by regulated utilities versus publicly-owned utilities.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly

burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

a. Mischaracterizes Mr. Close's testimony in that it implies that he is comparing how regulated utilities act versus publicly owned utilities. Mr. Close is merely stating how regulated utilities may maximize profits.

d. Mischaracterizes Mr. Close's testimony in that it implies he is comparing how regulated utilities act versus publicly owned utilities. Mr. Close is merely stating how regulated utilities may maximize profits.

RESPONSE TO MW/WWH-015:

a. A water utility is allowed depreciation of its utility assets and is considered an operating expense. This expense is recovered through customer rates and is a component of water revenues. However depreciation is a non-cash expense resulting in water revenues received and no payout of expenses, thus additional earnings. If the water utility prematurely depreciates its assets or accelerates depreciation then depreciation expenses increases as well as customer rates to recover that expense.

b. If a public utility is using the "cash basis" approach, then they would recover the cost of debt through customer rates. This is the most common approach for municipal utilities. However, if they are using the "utility basis", or if they are a regulated municipal utility, then debt costs are essentially funded through the return component or annual depreciation expense. Here is a simple chart that shows the difference in calculating the cash basis and utility basis.

- a. Please explain in detail Mr. Close's understanding of the relationship between capital investment and rate base.
- b. Please explain in detail Mr. Close's understanding of a regulated utility's right to the return of and return on its capital investment.
- c. Please explain in detail Mr. Close's understanding of the concept of "rate gradualism" as used in regulated utility ratemaking.
- e. Please explain in detail Mr. Close's understanding of the concept of "rate shock" as used in reference to regulated utility rates.

RESPONSE TO MW/WWH-016:

a. Capital investment, if allowed by the regulatory body, is included in rate base.

b. Regulated utilities are allowed to earn a return on the value of their rate base. So, if a utility's rate base is \$100 and it is allowed to earn a 10% rate of return by its regulators, part of calculating the revenue requirement (because there would be other elements including taxes, operating costs, depreciation expenses, etc.) is computing the allowed rate of return. In this hypothetical, it would be $\$100 \times .1 = \10 .

c. "Rate gradualism" is the concept of increasing rates in a gradual manner.

d. "Rate shock" is the concept whereby a utility drastically increases rates, for example, where Liberty Utilities proposed to increase customer rates by 28% in Pine Bluff, Arkansas or by 47% for this upcoming winter in New Hampshire.

MW/WWH-017 RE: Direct Testimony of Mr. Close, page 4, lines 8-10.

Please explain Mr. Close's understanding of the depreciation methodology employed by Mountain Water for use in its accounting depreciation.

RESPONSE TO MW/WWH-017:

Mountain Water employs a straight-line depreciation of assets bundled by asset

class or utility plant account and based on an assumed useful life of that asset type at the time it was entered in to the books. The useful life of the asset classes are approved by the PSC as part of their depreciation analysis. This serves as the basis for MWC's annual 6.4% depreciation expense it records and recovers that cost through customer rates. Depreciation is supposed to represent the condition of the assets and the value of the assets to the ratepayer and investors. MWC does not include any condition assessment of its assets as part of its depreciation methodology. The proper way to calculate depreciation is to assess the individual asset (and not bundle them) condition and adjust the remaining useful life for each individual asset and then depreciate the remaining non-depreciated value over the projected remaining useful life.

MW/WWH-018 RE: Direct Testimony of Mr. Close, page 4, lines 15-17.

- a. Please provide all documentation supporting all requests HDR made to Mountain Water's counsel, the City, or Mountain Water requesting to observe Mountain Water's underground assets.
- b. Please provide all internal and external documentation regarding HDR's plans to sample Mountain Water's underground assets.
- c. Please provide all cost estimates that HDR provided to the City for actually sampling Mountain Water's underground assets.
- d. Please provide documentation showing the City's approval for HDR to do underground sampling.

RESPONSE TO MW/WWH-018:

- a. HDR verbally requested access on September 10, 2014, but Mountain Water legal counsel, Joe Conner, refused access.
- b. HDR did not develop plans because Mountain Water refused to let HDR have such access as such there are no documents responsive to this request.

c. HDR did not develop cost estimates because Mountain Water refused to let HDR have such access as such there are no documents responsive to this request.

d. The City approved the condemnation action, see Missoula City Ordinances 3509 and 3535, which includes the authority for the City's legal counsel to obtain expert testimony. There are no specific documents from the City Council authorizing HDR's underground work because Mountain Water refused to let HDR have such access.

MW/WWH-019 RE: Direct Testimony of Mr. Close, page 5, lines 1-2.

- a. Please explain all failures and service outages on Mountain Water's system that Mr. Close is aware of.
- b. Please provide all documentation used, referred to, or relied upon in responding to subpart (a).

RESPONSE TO MW/WWH-019:

a. Mr. Close's testimony did not include specific failures or service outages. His testimony was that Mountain Water's deferred maintenance and failure to replace assets leaves the major assets "more susceptible to unexpected failures and service outages." Test. of Craig Close, 4:21 to 5:3.

b. There are no documents responsive to this request since Mr. Close's testimony did not include specific failures or service outages.

MW/WWH-020 RE: Direct Testimony of Mr. Close, page 5, lines 5-6.

Please produce all documents used, referred to, or relied upon by Mr. Close to support his statement that the industry average for leakage is 20-25%.

RESPONSE TO MW/WWH-020:

The industry average of annual water loss is based upon years of working within the water industry both as Vice President of Operations for American Water subsidiary

companies and a consultant performing numerous water master plans and water audits for water agencies/utilities in the past 35 plus years. In communicating with water agencies and operators an average of 20%-25% water loss is generally accepted as the current condition of water utilities today. Of note, Mountain Water's expert Mr. Mantua from Black & Veatch agrees this is the industry standard. (See CITY-PSC 0000623; Trial Testimony of Mantua, 92: 10-25 (March 30, 2015).

MW/WWH-021 RE: Direct Testimony of Mr. Close, page 6, lines 1-8.

- a. Please provide the calculations supporting Mr. Close's claim that considerable cost savings could be achieved if Mountain Water upgrades its well and booster pumps.
- b. Did Mr. Close or HDR perform an analysis of the potential impact on Mountain Water's rates from upgrading well and booster pumps? If yes, please provide all documents related to that analysis in native format with links and formulae intact.

RESPONSE TO MW/WWH-021:

a. The recorded booster and well pump efficiencies in the two Energy Resource Management (ERM) Energy Optimization Studies revealed that a considerable number of MWC's pumps are significantly below generally acceptable pump efficiencies. Only 6 of the 42 booster pumps tested by ERM had pump efficiencies greater than 70% and only 7 of the 35 wells tested had efficiencies greater than 75% (Vertical turbine well pumps are typically in the 80%-85% range if sized correctly). ERM indicates a savings of \$100,000 in energy savings in their report and they don't recommend replacing all low efficient pumps. In addition ERM indicates that \$265,000 in energy incentives from Northwestern Energy are available. HDR could not perform a detailed energy savings calculation as the actual historical pump runtimes were not available to

us. However HDR does anticipate that the projected annual energy savings would be in excess of \$100,000 based on the actual pump efficiencies recorded in the ERM report. See *Exhibits 1248 and 1249*.

b. HDR's rate analysis includes the addition of \$60 to \$95 million in additional capital expenditures to bring the Mountain Water system up to industry standards as determined from HDR's on-site inspection of Mountain Water included in response to MW/WWH-013. The rate analysis was provided as Exhibit C in Mr. Close's opening testimony and a copy is provided in response to MW/WWH-038.

MW/WWH-022 RE: Direct Testimony of Mr. Close, page 6, lines 9-12.

- a. Please provide all available documentation supporting Mr. Close's statement regarding "obvious limited resources...authorized by the owners to properly maintain and prolong the life of the assets."
- b. Does Mr. Close believe the Commission has any authority over a regulated utilities' capital investment? Please explain your answer in detail.

RESPONSE TO MW/WWH-022:

a. Mr. Close's statement is based on his expertise in water utility management, a review of Mountain Water's own capital expenditures, and an inspection of the Mountain Water system. Mountain Water and the other parties in this docket already have the capital expenditures and Mr. Close's report is included in response to MW/WWH-013.

b. The PSC does not have direct authority over a utility's capital expenditure decisions, but it does have the authority to include or not include the expenditure in the rate base, which governs the size of the utility's allowed rate of return. As Mr. Close noted in his testimony, the "owners" have the authority over what to spend and not

spend in capital expenditures. Test. of Craig Close, 6:9-12.

MW/WWH-023 RE: Direct Testimony of Mr. Close, page 7, lines 13-14.

- a. Please provide a list of all developer funded sites referred to in Mr. Close's testimony.
- b. Please produce all documents used, referred to, or relied upon by Mr. Close to support his statements regarding developer contributed assets.

OBJECTION:

a. Is supposedly based on Mr. Close's testimony on page 7, lines 13-14, however, there is no testimony regarding developer funded sites on that page, so it is unclear what Mountain Water/Western Water is actually referencing.

b. Is supposedly based on Mr. Close's testimony on page 7, lines 13-14, however, there is no testimony regarding developer funded sites on that page, so it is unclear what Mountain Water/Western Water is actually referencing.

RESPONSE TO MW/WWH-023:

a. To respond to the substance of the request, please see Mr. Close's report provided in response to MW/WWH-013.

b. To respond to the substance of the request, please see Mr. Close's report provided in response to MW/WWH-013.

MW/WWH-024 RE: Direct Testimony of Mr. Close, page 7, lines 15-16.

Please produce all documents used, referred to, or relied upon by Mr. Close to support his statement that "pay backs" to developers (a) add to Mountain Water's rate base, and (b) increase charges to customers.

OBJECTION:

This question is supposedly based on Mr. Close's testimony on page 7, lines 15-

16, however, there is no testimony regarding “pay backs” to developers on that page, so it is unclear what Mountain Water/Western Water is actually referencing.

RESPONSE TO MW/WWH-024:

Responding to the substance of the request, when Mountain Water pays back the developer for the funded infrastructure, that amount is generally included in rate base, which then increases the rates paid by customers. There are no specific documents to support this request beyond Mr. Close’s industry experience.

MW/WWH-025 RE: Direct Testimony of Mr. Close, page 7, lines 1-10.

- a. Admit that the PSC and Montana Consumer Counsel have supported a cost of service allocation methodology to support the voluntary change over from flat rate to metered billing. If your answer is anything other than an unqualified admission, please explain in detail.
- b. Admit that the number of flat rate customers has been reduced each and every year since Western Water acquired Park Water. If your answer is anything other than an unqualified admission, please explain in detail.
- c. Admit that Mountain Water began replacing all of its meters and adopting automated meter reading in 2001. If your answer is anything other than an unqualified admission, please explain in detail.
- d. Admit that all of the meters in Mountain Water’s system are now automated. If your answer is anything other than an unqualified admission, please explain in detail.

RESPONSE TO MW/WWH-025:

a. Insufficient information to either admit or deny. As of the date of Mr. Close’s report, 19% of Mountain Water customers are still not metered, and those 19% of customers account for 60% of water usage (a number which includes leakage, highlighting the need for metering so accurate leakage amounts can be calculated).

- b. Admit.

c. Insufficient information to either admit or deny. HDR was not provided with a detailed listing of all customer accounts associated with the meter type installed and the installation date.

d. Insufficient information to either admit or deny.

MW/WWH-026 RE: Direct Testimony of Mr. Close, page 7, lines 1-7, page 9, line through page 12, line 15, and Commission Order No. 7149d in Docket No. D2011.1.8.

- a. Admit that in paragraph 72 on page 24 of Order No. 7149d the PSC found that the rate of leakage on Mountain Water's is a service related issue to be dealt with in rate cases. If your answer is anything other than an unqualified admission, please explain in detail.
- b. Provide an explanation of why Mr. Close believes leakage is no longer a service related issue that should be dealt with in rate cases.
- c. Is Mr. Close advocating for increased or accelerated capital investment? Please explain your answer in detail.

RESPONSE TO MW/WWH-026:

a. Admit that Order No. 7149d, ¶ 72 states that Mountain Water's leakage is a service related issue.

b. Mr. Close did not provide an opinion on whether leakage was a service related issue dealt with only in rate cases. His opinion is that leakage is a serious issue. Mountain Water's leakage rate of over 50% is unprecedented in the water industry.

c. Mr. Close has recommended that Mountain Water needs \$60 to \$95 million of capital investment over the next 10 years to bring the system up to industry standards as noted in the report provided in response to MW/WWH-013. Mountain Water's past infrastructure investment has left the system in a poor condition. Investment should be increased to remedy these failures.

MW/WWH-027 RE: Direct Testimony of Mr. Close, page 7, lines 11-15.

- a. Admit that the service lines connecting customers to Mountain Water's system are owned by, and are the responsibility of, customers. If your answer is anything other than an unqualified admission, please explain your answer in detail.
- b. Please produce all documents used, referred to, or relied upon by Mr. Close to support his statement that it would be "almost impossible" for 2.25 billion gallons to leak through service lines.
- c. Please provide all documents used, referred to, or relied upon by Mr. Close to support the position that service lines should be owned and replaced by the utility rather than the customer.

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Question (c) purports to rely on Mr. Close's testimony on page 7, lines 11-15, but it mischaracterizes his testimony in implying he stated that service lines "should be owned and replaced by the utility rather than the customer." Mr. Close's testimony stated the service lines are beyond their useful life, but that Mountain Water has provided no support for their claim that the service lines are 50% of Mountain Water's overall leakage. Test. of Craig Close, 7:11-15.

RESPONSE TO MW/WWH-027:

- a. Admit. However, the service lines are also part of the overall water delivery system owned and operated by Mountain Water.
- b. Based on the MWC's 2013 ILI analysis it indicates that approximately 4.6

Billion Gallons of water was lost. Assuming that 50% of that water loss is from leakage in the service lines, that would equate to 2.3 BG/yr. MWC has an estimated 23,000 services and that would result in each and every service losing 100,000 gallons/yr . To have that amount of leakage and not have any evidence of excess water on residential properties for every service line or even 75% of the services lines is unrealistic even if the water loss was equal among all services, which everyone can agree each service line will have varying degrees of leakage. See Exhibits 39, 40, 59, 74, 77, 1260, 1261, 1496, 1501-024, 1501-065, 1502-037, 1502-079, 1503-180, 1503-222 and 1504-003.

c. See objection.

MW/WWH-028 RE: Direct Testimony of Mr. Close, page 9, lines 3-7.

Please provide documentation supporting Mr. Close's position that a small system like Mountain Water should have a lower percentage of leakage than a larger system.

OBJECTION:

This question mischaracterizes Mr. Close's testimony by implying Mr. Close stated that a percentage is not a scalable number across large or small systems. Mr. Close stated that 50% leakage was unprecedented in terms of "the size, the amount of water by volume that Mountain Water is losing, and considering how small a system this is with only roughly 319 miles of main." Test. of Craig Close, 9:3-7. He compared the length of mains in the system to the volume of water lost and found that it was greater than he had "seen anywhere else in the country." *Id.* He did not say Mountain Water should have a lower percentage than a larger system.

MW/WWH-029 RE: Direct Testimony of Mr. Close, page 9, lines 8-9.

Please produce all documents used, referred to, or relied upon by Mr.

Close to support his position that Mountain Water's water loss worsened from 2013 to 2014.

RESPONSE TO MW/WWH-029:

See documents provided in response MW/WWH-027.

MW/WWH-030 RE: Direct Testimony of Mr. Close, page 8, line 20 through page 11, line 5.

- a. Admit that the water audit software is provided free of charge from AWWA. If your answer is anything other than an unqualified admission, please explain in detail.
- b. Please produce all calculations Mr. Close made in the water audit software to support his testimony regarding the outputs contained in Mr. Close's testimony.

RESPONSE TO MW/WWH-030:

- a. Admit.
- b. Mr. Close did not do independent ILI calculations using the AWWA software, but rather, reviewed Mountain Water's own internal calculations using the AWWA software, that have, to the best of his knowledge, never been disclosed to the PSC. Those documents are provided in response to MW/WWH-027.

MW/WWH-031 RE: Direct Testimony of Mr. Close, page 11, lines 4-21.

- a. Please explain Mr. Close's definition of the phrase "producing more water."
- b. Admit Mr. Close did not perform any hydraulic modeling of Mountain Water's system to determine its operation supply and storage needs. If your answer is anything other than an unqualified admission, please explain in detail and provide copies of the modeling performed in native format with all links and formulae intact.

RESPONSE TO MW/WWH-031:

- a. The amount of water a water utility pumps out of the ground is the

amount of water it “produces.” The amount of water that flows through a customer’s meter is the water “delivered.” Therefore, “producing more water” means that Mountain Water is actually pumping out of the ground more water to leak back into the ground than is actually delivered to customers.

b. Admit.

MW/WWH-032 RE: Direct Testimony of Mr. Close, page 11, lines 18-21.

- a. Explain how “closing wells” will reduce Mountain Water’s rate base.
- b. Describe how much you contend “closing wells” will save ratepayers.
- c. Please provide all documents related to the analysis described in response to subpart (b) in native format with all links and formulae intact.

RESPONSE TO MW/WWH-032:

a. Assets not used to produce and deliver water to the customers cannot be included in rate base, therefore, if one were to close the excess wells in Mountain Water’s system, they would no longer be used for water production and their value must be removed from rate base.

b. Mr. Close did not conduct a specific analysis of the financial savings to be obtained from closing Mountain Water’s excess wells. Such an analysis would depend on a myriad of factors, however, it is undisputed that reducing rate base would reduce rates.

c. No documents responsive.

MW/WWH-033 RE: Direct Testimony of Mr. Close, page 11, lines 8-13.

- a. Please provide Mr. Close’s calculations to support his claim that Mountain Water has excess wells.
- b. Please explain how the calculations provided in response to subpart (a)

follow the guidance found in Circular DEQ-1 for sizing pumping and storage facilities and show that each storage zone in the system can meet the requirements of peak hour demand concurrent with (a) fire flows, and (b) the largest pumps out of service.

- c. Please provide Mr. Close's calculations supporting his claim that Mountain Water has invested millions of dollars into additional facilities just to pump water for leakage and showing that the cost to customers is significant.
- d. Admit that additions to Mountain Water's rate base must be authorized by the PSC. If your answer is anything other than an unqualified admission, please explain in detail.

Response to MW/WWH-033:

a. Mr. Close's calculations regarding excess wells are based on the amount of leakage Mountain Water acknowledges is in its system (approximately 50%) and the ensuing water needs if it did not need the associated wells to provide the leaking water.

b. Mr. Close acknowledges that Circular DEQ-1 requirements serve as the basis for meeting peak hour demand plus fire flow from wells, boosters, and storage facilities. However each pressure zone is experiencing leakage that is contributing to the approximate 4.6 billion gallons of water lost from the distribution system. Reducing leakage would reduce the average day demand of each pressure zone as well as the peak hour flow thus requiring less well pumping capacity with maintaining the same storage and booster station capacities. Reducing leakage has a direct impact on demands and needed well capacity.

c. Mr. Close's calculations are based on the fact that if the 50% leakage was eliminated from Mountain Water's system (or significantly reduced), there would have been no need to build the additional wells that provide the leaking water. These facilities are expensive, with replacement costs in the millions of dollars, as noted by HDR's

report provided in response to MW/WWH-013.

d. Admit.

MW/WWH-034 RE: Direct Testimony of Mr. Close, page 11, lines 11-12 and page 12, line 3-5.

Please explain how “excess” wells that are used to augment the lack of storage and support fire flows can by definition be “excess.”

RESPONSE TO MW/WWH-034:

The question mischaracterizes Mr. Close’s testimony in that it implies that “excess” wells are used to augment storage. The intent of Mr. Close’s comments is that MWC has very limited storage capacity for a water system with this level of demand. MWC currently has only 10 MG in distribution storage. Typical industry standards in determining the reasonable storage capacity is Maximum Day Demand (MDD) + 20% Operating Volume (20% of MDD for peak hr) + Fire Flow storage. HDR acknowledges that a storage analysis has to be performed from each pressure zone, however just by estimating MDD (HDR was not given actual MDD historical demands by MWC) an overall projection of reasonable storage volume for the system would be 30 to 35 MG. Therefore MWC is using its wells to augment storage requirements to provide adequate storage for peak operating conditions plus required fire flows. Mr. Close does contend that MWC has “excess” wells to produce water that is lost through distribution system leakage and in the event water losses/leakage is reduced to the point that all of the approximately 70 MGD of well capacity is no longer needed and taken out of service, then a detailed analysis of storage requirements for each pressure zone will have to be conducted and it may result in the need to either build additional storage or maintain wells for the sole purpose of maintaining adequate distribution system storage. Mr.

Close never indicated that required fire flow storage was an “excess;” this is mischaracterized in the question.

MW/WWH-035 RE: Direct Testimony of Mr. Close, page 12, lines 8-10.

Admit Mr. Close did not perform any studies or analysis to support his statement that water leakage could cause contamination. If your answer is anything other than an unqualified admission, please explain in detail and provide copies of the studies or analysis performed by Mr. Close.

OBJECTION:

This request for admission mischaracterizes Mr. Close’s testimony regarding leakage by implying he stated “leakage could cause contamination.” Mr. Close’s testimony stated there were concerns associated with the levels of leakage in that “leaking water may convey ground contaminants down into the aquifer.” Test. of Craig Close, 12:8-10. Stating that leaking water could “convey ground contaminants” is fundamentally different from the implied statement of “leakage could *cause* contamination.” (emphasis added).

MW/WWH-036 RE: Direct Testimony of Mr. Close, page 12, lines 18-19.

- a. Please define “industry standards” as used by Mr. Close.
- b. Please provide all documents used, referred to, or relied upon in responding to subpart (a).

OBJECTION:

This question is overly broad and unduly burdensome.

This question is designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

Response to MW/WWH-036:

a. Mr. Close's statement is based on his own experience and expertise in water system operations and maintenance as he served as the Vice President of Operations for four American Water subsidiary companies as well as his experience as a consultant reviewing and optimizing maintenance practices and business practices for numerous private and public agencies across the country.

b. No responsive documents.

MW/WWH-037 RE: Direct Testimony of Mr. Close, page 13, lines 14.

- a. Please explain why the total capital investment of \$66-95 million included \$20-30 million of cost associated with service lines which are owned by customers and not Mountain Water?
- b. Please explain whether the City intends to pay for replacement of the service lines should it acquire Mountain Water's system.
- c. Please explain why the City has not used its enforcement powers to pass an ordinance requiring customers to replace service lines.
- d. Please explain why the City could not pass such an ordinance at any time and pay for the replacement of service lines using tax dollars.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Question (a) mischaracterizes Mr. Close's testimony by implying the \$20 to \$30

million is *only* for service lines. This is incorrect. Mr. Close's testimony noted the \$20 to \$30 million was for "service lines **and** meters." Test. of Craig Close, 13:14.

Question (b), (c), and (d) request material not relevant to this proceeding.

RESPONSE TO MW/WWH-037:

a. The \$20 to \$30 million is not solely "service lines," but also includes **meters**. However, in responding to the substance of the question, service lines were included as part of Mountain Water's distribution system because they complete the delivery of water to the customer. They are owned by the customer, but their condition is also something that must be addressed.

b. See objections.

c. See objections.

d. See objections.

MW/WWH-038 RE: Direct Testimony of Mr. Close, page 13, lines 15-16.

Did Mr. Close or HDR prepare an analysis of the impact on Mountain Water's rates associated with \$66-95 million of capital investment? If no, please explain why not. If yes, please provide all documents related to that analysis in native format with links and formulae intact.

RESPONSE TO MW/WWH-038:

Yes, HDR's rate analysis was included in Mr. Close's original testimony. The calculations supporting that rate analysis are included as a response. *See* City-PSC 00000003 - 00000393.

MW/WWH-039 RE: Direct Testimony of Mr. Close, page 14, lines 48.

Please explain Mr. Close's understanding of the phrase "acquisition adjustment."

RESPONSE TO MW/WWH-039:

An acquisition adjustment is the amount of the purchase price of the utility less the amount of rate base approved by the commission as part of the sale. The adjustment if approved by the commission allows the purchaser to amortize this “goodwill” amount over a 30 or 40 year period and credit rate base annually 1/30 or 1/40 of the “premium” paid for the utility.

MW/WWH-040 RE: Direct Testimony of Mr. Close, page 14, lines 12 -13.

- a. Please explain Mr. Close’s understanding of the time period over which a “prudent prospective owner of a water utility” would expect to recover its acquisition costs.
- b. Please provide all documents referred to or relied upon in formulating your answer to subpart (a).

RESPONSE TO MW/WWH-040:

- a. 30 to 40 years if approved by the commission.
- b. This is based on actual experience with receiving acquisition adjustments for California American Water Company from the CPUC and other American Water Subsidiaries.

MW/WWH-041 RE: Direct Testimony of Mr. Close, page 15, lines 1-3.

- a. Please explain in detail Mr. Close’s understanding of capital structure as used in regulated utility ratemaking.
- b. Please explain in detail Mr. Close’s understanding of how the Commission establishes the return on equity for a regulated utility.
- c. Please explain in detail Mr. Close’s understanding of how the Commission establishes the revenue requirement for a regulated utility.

RESPONSE TO MW/WWH-041:

- a. The capital structure of a regulated utility is the basis for the utility’s rate

of return. The capital structure is established based on how the utility attracts new capital. Capital can be funded through debt capital or shares of stock. This is typically used by the regulator to establish the utility's rate of return.

b. The rate of return is the percentage which the regulator finds should be earned on the rate base in order to cover the cost of capital. The rate of return on invested capital is based on the utility's cost of capital, i.e., the investor's compensation for exposing their cash investment to risk. Depending on the type of financing investment (long-term debt, common equity, preferred stock), the additional cost of that investment is the rate of return that investors require for similar investments with similar risk characteristics.

c. The revenue requirement is determined by the regulator and includes the total cost that needs to be collected through rates in order for the utility to recover its costs and earn a reasonable rate of return. Basically, the Commission will establish the rate base times the allowed rate of return to equal the required return. Then it will add allowable operating expenses to get to a total revenue requirement. Allowable operating expenses include operations and maintenance expenses, depreciation, and all taxes, including income taxes.

MW/WWH-042 RE: Direct Testimony of Mr. Close, page 15, lines 12-16;
page 17, lines 4-10.

- a. Please provide a copy of all of the financial models developed by HDR in native format with all links and formulae intact.
- b. Please provide all documents referred to or relied upon in developing the financial models produced in response to subpart (a).

OBJECTION:

These requests are overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. They seek “all of the financial models developed by HDR.” HDR has 225 locations worldwide, over 10,000 employees, and does work for thousands of clients across the globe. Producing all financial models that HDR has ever developed is unduly burdensome and overly broad.

RESPONSE TO MW/WWH-042:

a. The specific financial model developed by HDR for the City is the rate analysis included in Mr. Close’s original testimony and provided in response to MW/WWH-038.

b. See documents provided in MW/WWH-038.

MW/WWH-043 RE: Direct Testimony of Mr. Close, page 15, lines 11-12.

- a. Please explain in detail how the sale and transfer of Western Water stock alone will necessitate “substantial rate increases.”
- b. Please produce all documents used, referred to, or relied upon in developing your response to subpart (a).

RESPONSE TO MW/WWH-043:

a. Regardless of who owns Mountain Water, significant capital expenditures are needed to bring the system up to industry standard. As demonstrated by HDR’s rate analysis provided in Mr. Close’s original testimony, if the PSC approves Liberty’s purchase, rate increases will be necessary. [REDACTED]

[REDACTED].

b. See HDR’s rate analysis provided in Mr. Close’s original testimony.

MW/WWH-044 RE: Direct Testimony of Mr. Close, page 16, lines 4-6.

- a. Please explain Mr. Close's understanding of the concept of a "regulatory capital structure" or "hypothetical capital structure" as used in the context of regulated utility rates.
- b. Please provide the basis for Mr. Close's assertion that a debt to equity ratio of 60% debt to 40% equity "must" be maintained.
- c. Please produce all documents used, referred to, or relied upon in responding to subpart (b).

RESPONSE TO MW/WWH-044:

- a. A "regulatory capital structure" is a utility's debt to equity ratio.
- b. Mr. Close's statement is based on his experience and expertise in working for a private investor owned water utility, American Water, and his involvement with numerous rate case filings and proceedings in several states. Further, Mr. Close attended the NARUC rate making course in 1994. Based on this experience and rulings by the various commissions, a 60/40 debt equity ratio is generally accepted by commissions as the maximum level a water utility should be leveraged. Lower debt-equity ratios, say 50/50 are certainly acceptable.
- c. No responsive documents.

MW/WWH-045 RE: Direct Testimony of Mr. Close, page 17, line 21 through page 18, line 7.

- a. Please explain in detail how the \$6-9 million amount was determined for annual capital investment in the models.
- b. Please explain whether the \$6-9 million amount includes replacement of service lines.
- c. If the \$6-9 million amount includes the replacement of service lines, please identify the amount of the projected annual investment that is attributable to the replacement of service lines.

RESPONSE TO MW/WWH-045:

a. HDR believes that \$60 to \$95 million in capital investments above depreciation expense are needed over the next ten years in Mountain Water's system. The \$6 to \$9 million is merely the total amounts divided by ten to get a yearly amount HDR believes needs to be spent over the next ten years. For further details, see the full report provided in response to MW/WWH-013.

b. Yes, the \$6 to \$9 million includes service lines.

c. HDR calculated service lines and meters together as \$20 to \$30 million over ten years. The service lines were in the range of \$14 to \$20 million over ten years, so \$1.4 to \$2 million a year.

MW/WWH-046 RE: Direct Testimony of Mr. Close, pages 17-18.

- a. Please identify all assumptions regarding the Commission's likelihood of approving Option 1 and Option 2 that were factored into the models.
- b. Please explain how the assumptions identified in subpart (a) were factored into the models.
- c. Please produce all documents referring or related to the assumptions identified in subpart (a).

OBJECTION:

These questions are overly broad and unduly burdensome. These questions are designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

RESPONSE TO MW/WWH-046:

a. No assumptions regarding the likelihood the PSC would approve Options 1 or 2 were included in the model.

b. Since there were no assumptions made, no assumptions were factored into the model.

c. No relevant documents.

MW/WWH-047 RE: Direct Testimony of Mr. Close, page 18, lines 3-7.

- a. Please identify and explain the amount of reduction to payroll and benefits under City ownership as compared to private ownership made in the model.
- b. Please produce all documents used, referred to, or related to the reduction in payroll and benefits identified in subpart (a).

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

MW/WWH-048 RE: Direct Testimony of Mr. Close, page 18, lines 3-7.

- a. Did Mr. Close or HDR prepare an analysis similar to Option 4 where the City's legal and administrative expenses associated with its acquisition Mountain Water's system were included in the model? If yes, please produce a copy of that analysis and all related documents in native format with links and formulae intact.
- b. Please identify the interest rate used in Option 4 to model the finance cost associated with the City's acquisition of Mountain Water's system.
- c. Please explain in detail how the City intends to recover its legal and administrative acquisition-related expenses.

- d. Admit that including the City's legal and administrative expenses in Option 4 would increase the rate impact associated with the city-owned option. If your answer is anything other than an unqualified admission, please explain in detail.
- e. Did Mr. Close or HDR prepare an analysis of the impact on taxes associated with City-ownership under Option 4? If no, please explain why not. If yes, please produce a copy of that analysis and all related documents in native format with links and formulae intact.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

MW/WWH-049 RE: Direct Testimony of Mr. Close, page 18, lines 3-7.

- a. Did Mr. Close, HDR, or the City conduct any analysis of the impact on other taxpayers from the property tax shift created by the City's ownership and removal of Mountain Water from tax base? If not, explain why in detail. If yes, describe your conclusions and provide all documents related to that analysis in native format with links and formulae intact.
- b. Does Mr. Close's "Option 4" reflect any increased property tax cost on ratepayers and other taxpayers caused by removing Mountain Water's current and future property from the tax base? If not, explain why in detail. If yes, describe your conclusions and produce all documents related to that analysis in native format with links and formulae intact.

OBJECTION:

The City objects to this request. The request is directed at the merits of the

condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Questions (a) and (b) are not relevant to this proceeding. The tax changes resulting from the condemnation action are not before the PSC.

MW/WWH-050 RE: Direct Testimony of Mr. Close, page 19, Table 1.

- a. Admit that Mr. Close's rate base could have been \$1 or \$1 billion in the first three options and the revenue requirement for Options 1 through 3 would have been the same. If your answer is anything other than an unqualified admission, please explain in detail.
- b. Please provide all documentation used, referred to, or relied upon to show that the City's debt coverage ratios shown in Table 1 are allowed.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

RESPONSE TO MW/WWH-050:

- a. This statement that differences in rate base would not have an impact on

the revenue requirements for Options 1, 2, 3 of HDR's rate analysis is completely incorrect. HDR's analysis actually did evaluate alternative rate bases in the 3 options. Option 1 including a \$100 million purchase price in rate base if approved by the PSC would result in an estimated rate increase in year 1 of 36%. Option 2 included an acquisition adjustment of \$62 million (\$100 M purchase price less \$38 M in rate base) amortized over 30 years, resulting in an additional \$2.1 million being added to rate base in year 1 through 10, resulting in a rate increase of about 9.3% in year one. And in Option 3 HDR only included \$38 million of rate base in the analysis with no "premium" approved in rates and resulted in an estimated rate increase of 8.4%. Therefore HDR's analysis did demonstrate that changes in rate base did have a significant impact on annual revenue requirements and required rate increases to achieve the current Return on Equity of 9.25% through the 10 proforma analysis.

b. For public agencies, debt coverage is typically required in the 1.15 to 1.25 ranges. HDR used a minimum debt coverage ratio of 1.25 in the rate analysis, which is conservative by HDR's expertise in the industry.

MW/WWH-051 RE: Direct Testimony of Mr. Close, page 25, lines 15-19.

- a. Please explain Mr. Close's understanding of the effect of depreciation on rate base.
- b. Please provide all documents used, referred to, or relied upon in formulating your response to subpart (a).

RESPONSE TO MW/WWH-051:

a. The depreciation of utility assets is an allowed expense to reflect the deterioration (wear and tear) on utility equipment, facilities, and other infrastructure used to provide water service to its customers. Depreciation expenses are accumulated

and are deducted from the original cost of the assets/utility plant when initially placed in service. The net difference is considered rate base. Therefore if in a given year no capital improvements were made to the utility system then rate base would be reduced by the amount of depreciation expense accrued in the that year.

b. Mr. Close's statement is based on this experience and expertise in working in the water industry for 35+ years.

MW/WWH-052 RE: Direct Testimony of Mr. Close, page 27, lines 1-5.

- a. Please identify all documents Mr. Close believes were withheld by Western Water and Mountain Water.
- b. Please identify all of Mountain Water's and Western Water's discovery responses where Mr. Close believes Western Water withheld documents relevant to his testimony.
- c. Please identify all data requests in this proceeding where a motion to compel is still pending PSC decision.

RESPONSE TO MW/WWH-052:

a. Throughout this proceeding, Mountain Water, Western Water, and Liberty have repeatedly withheld documents, even though, in many instances, the PSC has expressly found the requested documents relevant and ordered production of those documents.

With respect to Mountain Water and Western Water specifically, see the City's briefing for its Motion to Compel Responses to its Data Requests to Western Water Holdings, Mountain Water Company, Liberty Utilities Co., and Liberty WWH, Inc. and Stay the Proceeding Pending Responses (filed May 18, 2015).

Moreover, Liberty has refused to provide all of its financial analysis and due diligence and has refused to provide a complete privilege log. The City has a pending

motion to compel production of that material, as well as a renewed motion to join Algonquin in the proceedings. That motion was fully briefed on October 26, 2015.

b. See response to a.

c. See response to a.

MW/WWH-053 RE: Direct Testimony of Mr. Close.

Admit Mr. Close does not claim that Mountain Water has provided inadequate service while owned by Western Water. If your answer is anything other than an unqualified admission, please explain in detail and identify the specific portions of Mr. Close's testimony where adequacy of service is addressed.

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

RESPONSE TO MW/WWH-053:

Deny. According to Mountain Water's documents and the analysis of HDR, the system leaks more water than it delivers to customers. Leakage of 4.6 Billion gallons per year is unprecedented, in violation of industry standards and indicates Mountain Water is not an effectively utilizing water as a resource. Necessary repairs, maintenance and capital investments has been deferred and delayed. The system is aged and inefficient. The system is rated fair to poor and needs \$60 to \$95 Million in additional capital expenditures to bring the system up to industry standards.

MW/WWH-054 RE: Direct Testimony of Mr. Close.

Admit Mr. Close does not claim that Mountain Water will provide

inadequate service if Liberty acquires the stock in Western Water. If your answer is anything other than an unqualified admission, please explain in detail and identify the specific portions of Mr. Close's testimony where adequacy of service is addressed.

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

RESPONSE TO MW/WWH-054:

Deny. Accordingly to the testimony of Liberty officials and review of the due diligence materials, there is no indication Liberty intends to remedy the serious system deficiencies.

MW/WWH-055 RE: Direct Testimony of Mr. Hayward, page 3, lines 1-3.

Please provide the flowchart and user manual used to explain Mr. Hayward's model used in his valuation of Mountain Water.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

MW/WWH-056 RE: Direct Testimony of Mr. Hayward, page 10, line 16.

Please identify all Public Service Commission decisions supporting Mr. Hayward's assertion that the "principal criterion" for approval is that the merger serve the public interest.

RESPONSE TO MW/WWH-056:

The public interest doctrine is one of the guiding principles in utility regulation throughout the U.S. and not necessarily limited to Montana. This principal is traced back to English Common Law and later discussed in the U.S. Supreme Court's decision in *Munn v. Illinois*.

MW/WWH-057 RE: Direct Testimony of Mr. Hayward, page 11, lines 11-13.

- a. Please provide documentation supporting Mr. Hayward's statement that the CPUC uses the net-benefits standard.
- b. Is it Mr. Hayward's position that the CPUC only uses the net-benefits standard? Please provide all documents used, referred to, or relied upon in responding to subpart (b).

RESPONSE TO MW/WWH-057:

- a. CPUC Decision 14-11-033 regarding the purchase of Ramona Water System. See City-PSC 00000394 - CITY-PSC 00000416.
- b. No. In the above-referenced decision, the CPUC also cites the "ratepayer indifference" standard.

MW/WWH-058 RE: Direct Testimony of Mr. Hayward, page 11, lines 23-25.

- a. Please explain in detail Mr. Hayward's understanding of the California Public Utilities Commission's authority to shift "costs away from California customers to Montana customers."
- b. Please produce all documents used, referred to, or relied upon in answering subpart (a).

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Question (a) mischaracterizes Mr. Hayward's testimony in that it assumes he stated that CPUC had the "authority" to shift such costs. Mr. Hayward's testimony is that "If the CPUC and PSC apply different standards, a stricter standard used by the CPUC *could result* in shifting costs away from California customers to Montana customers to justify the merger." Test. of David Hayward, 11:23-25 (emphasis added). This is not a statement that the CPUC has such authority and this question is, therefore, in applicable.

MW/WWH-059 RE: Direct Testimony of Mr. Hayward, page 11, line 25 through page 12, line 2.

- a. Please explain Mr. Hayward's understanding of the binding effect of California laws or regulations on the Commission.
- b. Please produce all documents used, referred to, or relied upon in answering subpart (a).

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Question (a) mischaracterizes Mr. Hayward's testimony by assuming he stated

California laws had a “binding effect” on the PSC. This is inaccurate. Mr. Hayward’s testimony was as follows: “At a minimum, since the applicants must meet the net-benefits-to-customers standard in California, it should also meet this more stringent test in Montana.” Test. of David Hayward, 11:25–12:2. Mr. Hayward is making a policy recommendation as noted by his language stating “should also,” which is his argument that different standards between jurisdictions as applied to the same utility do not function well. He did not state that California laws had a “binding effect” in Montana. As such, there is no answer to MW/WWH’s question.

MW/WWH-060 RE: Direct Testimony of Mr. Hayward, page 12, lines 4-5.

- a. Please define “traditional regulatory ratemaking” as used in Mr. Hayward’s testimony.
- b. Is it Mr. Hayward’s position that the no-harm to consumers standard and the public interest standard are inconsistent with traditional regulatory ratemaking?
- c. Please produce all documents used, referred to, or relied upon in responding to subpart (a).
- d. Please produce all documents used, referred to, or relied upon in responding to subpart (b).

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

RESPONSE TO MW/WWH-060:

- a. Traditional regulatory ratemaking is also referred to as “rate of return

regulation,” or “cost of service regulation.” Cost-of-service regulation is defined by the Public Utility Research Center, University of Florida as: “a form of regulation that determines prices based on the costs of serving different customers and producing different services.”

b. No.

c. See the attached pages from the “Glossary for the Body of Knowledge on the Regulation of Utility Infrastructure and Services,” Public Utility Research Center, University of Florida at City-PSC 00000417 - CITY-PSC 00000512.

d. Not applicable.

MW/WWH-061 RE: Direct Testimony of Mr. Hayward, page 14, Table 1.

Please provide all documents used, referred to, or relied upon by Mr. Hayward to support his assertion that Carlyle began planning its exit strategy in 2013.

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

RESPONSE TO MW/WWH-061:

Documents responsive to this request are in Mountain Water and Western Water’s custody and control. Such documents have been produced to the City and marked “attorney eyes only.” Upon order by the PSC, Mountain Water and Western Water should produce such documents to the PSC.

MW/WWH-062 RE: Direct Testimony of Mr. Hayward, page 15, lines 7-10.

Please produce all documents used, referred to, or relied upon by Mr. Hayward to support his assertion that “it is clear from the history of mergers and acquisitions in the water utility industry that the acquiring entity often divests the assets of the target company within a few years of the acquisition date.”

OBJECTION:

This question is overly broad and unduly burdensome.

These questions are designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

RESPONSE TO MW/WWH-062:

See Table 1, page 14 of Mr. Hayward’s testimony and the non-exhaustive list of sources reviewed in preparation for this testimony provided in response to this request at CITY-PSC 00000513 - 00000515.

MW/WWH-063 RE: Direct Testimony of Mr. Hayward, page 16, 19-21.

Admit that the City’s financial projections show reductions in payroll, benefits, and labor in connection with the City’s acquisition of Mountain Water’s assets. If your answer is anything other than an unqualified admission, please explain in detail and provide all documents used, referred to, or relied upon in answering this request.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This question is not relevant to the instant proceeding. The City's financial projections are not before the PSC for review.

MW/WWH-064 RE: Direct Testimony of Mr. Hayward, page 17, lines 13-15.

Admit that if the services of Mountain Water or Park Water can be consolidated with those of Liberty, cost savings could result. If your answer is anything other than an unqualified admission, please explain in detail.

RESPONSE TO MW/WWH-064:

Neither Mr. Hayward, nor Liberty (to Mr. Hayward's knowledge), have done this analysis, so it would be speculation to admit or deny the statement. For reference, as noted in Mr. Hayward's testimony on page 36:11-17, page 55 of Liberty's financial model contains a note stating: [REDACTED]

MW/WWH-065 RE: Direct Testimony of Mr. Hayward, page 17, lines 9-15.

- a. Please identify all services provided by Park Water to Mountain Water.
- b. Please identify all employees of Park Water who are involved in providing service to Mountain Water.
- c. Does Mr. Hayward believe that the services currently being performed by Park Water could be performed by Mountain Water without requiring additional Mountain Water employees? Please explain your answer in detail and provide all documents used, referred to, or relied upon in formulating your response.

OBJECTION:

These questions are overly broad and unduly burdensome.

These questions are designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

RESPONSE TO MW/WWH-065:

- a. See the Administrative Services Agreement entered into between Mountain Water and Park Water.
- b. Mr. Hayward does not know the specific list of employees who provide services under the Administrative Services Agreement.
- c. Not necessarily. Due to the cost of goods and labor in California, services provided in Montana would likely be cheaper and there could be some of the California services absorbed internally in the existing work force. Further, Mr. Dove in his testimony in the valuation trial stated:

In this dialogue we were having with the Mayor when we were looking at the offers that he made, one of the aspects which came across was the fact that Mountain Water was contributing \$2 million a year to Park Water for Central Services, **which could be perhaps performed for less cost or even for no cost in the City of Missoula.**

Test. of Robert Dove, *City of Missoula v. Mountain Water Co.*, 1100:19-1101:1 (Nov. 5, 2015) (See CITY-PSC 00000516-00000517).

MW/WWH-066 RE: Direct Testimony of Mr. Hayward, page 18, lines 11-13.

Please produce all documents used, referred to, or relied upon by Mr. Hayward to support his assertion that “the overwhelming evidence in the U.S. regarding all companies is that M&As have failed to produce the anticipated benefits.”

OBJECTION:

This question is overly broad and unduly burdensome.

This question is designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

RESPONSE TO MW/WWH-066:

Mr. Hayward partially relied on the book, Valuation for Mergers and Acquisitions: An Overview, by Kenneth Ferris and Barbara Petitt.

MW/WWH-067 RE: Direct Testimony of Mr. Hayward, page 18, lines 17-18.

Please provide all documents used, referred to, or relied upon by Mr. Hayward to support his position that there are limited opportunities for synergies and growth for Mountain Water in Montana.

OBJECTION:

These questions are overly broad and unduly burdensome. These questions are designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

RESPONSE TO MW/WWH-067:

As the question to Mr. Hayward's answer notes, this was a "conclusion," which is fully explained later on in his testimony. On page 36:11-17, he cites Liberty's own conclusion on page 55 of its financial model where it appears to say its expected synergies are doubtful: [REDACTED]

[REDACTED] Research by the University of Montana, Bureau of Economic Research, 2014 indicates that the population of Missoula is growing at a rate less than 2% per year. (See CITY-PSC 00000518) In addition, Mr. Hayward notes the comment from Value Line that growth for a water utility is correlated with the growth rate of the population of the utility's service territory. Finally, as the result of a decline in the number of employees from 45 to 39, possible synergies have already been achieved.

MW/WWH-068 RE: Direct Testimony of Mr. Hayward, page 18, lines 18-20.

a. Please explain the basis for Mr. Hayward's position that the sale and

transfer of Western Water stock alone will necessitate substantial future rate increases.

- b. Please produce all documents used, referred to, or relied upon in responding to subpart (a).

RESPONSE TO MW/WWH-068:

a. This is a mischaracterization of Mr. Hayward’s testimony. Nowhere in Mr. Hayward’s testimony does he state “the sale and transfer of Western Water stock alone will necessitate substantial future rate increases.” Future rate increases are likely to stem from investment in Mountain’s infrastructure.



MW/WWH-069 RE: Direct Testimony of Mr. Hayward, page 19, line 23 through Page 31, line 15.

Please identify all Mountain Water-related PSC proceedings where the City intervened since 2011. Please include the docket numbers for each proceeding identified in this response.

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

RESPONSE TO MW/WWH-069:

- D2011.1.8 – Carlyle purchase
- D2012.7.81 – Mountain Water’s 2012 Rate Increase
- D2014.12.99 – Liberty proposed purchase

MW/WWH-070 RE: Direct Testimony of Mr. Hayward, page 20, lines 17-20.

- a. Please produce all documents used, referred to, or relied upon by Mr. Hayward to support his assertion that Mountain Water's operating performance declined after Carlyle's acquisition.
- b. Is it Mr. Hayward's position that Carlyle's ownership caused the alleged decline in Mountain Water's operating performance? Please explain your answer in detail and provide all documents used, referred to, or relied upon in formulating your response to subpart (b).

RESPONSE TO MW/WWH-070:

a. Mr. Hayward relied on Craig Close's system assessment provided in response to MW/WWH 013 and the Findings of Fact and Conclusions of Law from the necessity phase of *City of Missoula v. Mountain Water Co.*, which have been noticed in this docket.

b. Yes, to the extent that the continued problems outlined in Mr. Close's system examination continued after Carlyle assumed ownership.

MW/WWH-071 RE: Direct Testimony of Mr. Hayward, page 21, lines 4-8.

- a. Please produce all documents used, referred to, or relied upon by Mr. Hayward to support his assertion that the PSC approved the application for Carlyle to obtain indirect control of Mountain Water based on an expected benefit of a "lower cost of capital" under Carlyle's ownership.
- b. Please produce all documents used, referred to, or relied upon by Mr. Hayward to support the statement that the PSC approved the transfer to Carlyle based on expected benefits, one of which was "lower cost of capital."

OBJECTION:

Both questions ask the same question, therefore, only Question (a) is answered as it goes to the substance of MW/WWH's inquiry.

RESPONSE TO MW/WWH-071:

- a. See the following non-exhaustive list of documents, available at

http://psc.mt.gov for Mountain Water and Western Water's own promises during the 2011 acquisition docket and the 2012 rate case:

- Order No. 7149d, D2011.1.8;
- Test. of Robert Dove, D2011.1.8 (Sept. 2011) (filed and certified by Mr. Nelson);
- Carlyle Infrastructure Partners, LP's Post-Hearing Brief, D2011.1.8 (filed and certified by Mr. Nelson); and
- Dissenting Opinion of Commissioner Travis Kavulla, D2012.7.81.

b. See a.

MW/WWH-072 RE: Direct Testimony of Mr. Hayward, page 22, lines 12-14.

- Please explain Mr. Hayward's understanding of the phrase "equity ratio restrictions" as used in his testimony.
- Please produce all documents used, referred to, or relied upon in answering subpart (a).
- Please provide all documents used, referred to, or relied upon to support Mr. Hayward's assertion that the "other ring-fencing measures...have not been effective."

OBJECTION:

These questions are overly broad and unduly burdensome. These questions are designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

RESPONSE TO MW/WWH-072:

- An "equity ratio restriction" is a minimum percentage of equity in the utility's capital structure.
- Mr. Hayward's understanding of "equity ratio restrictions" is based on his own expert knowledge, but for an illustration used by the PSC, see e.g. Order No. 7149d,

D2011.1.8 (Dec. 13, 2011). This document is publicly available at <http://psc.mt.gov>.

c. Mr. Hayward based his conclusion regarding the effectiveness of the ring-fencing provisions on a review of the annual reports provided by Mountain Water and Apple Valley Ranchos. A copy of Apple Valley Ranchos' annual report to the CPUC is provided at CITY-PSC 00000519 -00000621.

MW/WWH-073 RE: Direct Testimony of Mr. Hayward, page 23, line 8 though page 27, line 4.

Is it Mr. Hayward's position that the adequacy of the PSC's annual reports is at issue in this proceeding? Please explain your answer in detail, including an explanation of the relationship between the PSC's annual reports and the sale of Western Water stock to Liberty.

RESPONSE TO MW/WWH-073:

No. As explained in Mr. Hayward's testimony, however, the PSC's ability to regulate (including the documents it requires its entities file and what those documents communicate to the PSC) the utility in the proposed form if the Liberty acquisition is approved is a factor the PSC must consider when determining whether the transaction should be approved.

MW/WWH-074 RE: Direct Testimony of Mr. Hayward, page 23, line 8 through Page 27, line 4.

- a. Admit that Mountain Water's annual reports to the PSC are not relied on and should not be relied on for rate analysis. If your answer is anything other than an unqualified admission, please explain in detail.
- b. Admit that Mountain Water includes financial information in all of its general rate case applications that meets or exceeds the Minimum Filing Requirements of the Montana Administrative Rules. If your answer is anything other than an unqualified admission, please explain in detail including an explanation of the extent to which Mr. Hayward has reviewed Mountain Water's previous rate case applications.

OBJECTION:

Questions (a) and (b) mischaracterize Mr. Hayward's testimony in that they set up an assertion that his testimony did not say. Mr. Hayward was providing a critique of the Annual Report itself used to monitor utilities by the PSC on an annual basis as compared to the SEC required 10-K reports. Test. of David Hayward, 23:8-27:4.

RESPONSE TO MW/WWH-074:

a. Admit. However, Mr. Hayward did not assert that the annual report was the only document used for rate making. Instead, his criticism is broadly of the annual reporting requirements imposed by the PSC on its utilities.

b. Mr. Hayward has insufficient information to answer this question as it would require a legal analysis of the Montana Administrative Regulations and the associated filing requirements for rate cases. However, again, Mr. Hayward did not assert that Mountain Water's filing somehow failed to meet the Montana Administrative Regulations in its *rate cases*. It was a criticism of the annual reporting requirements imposed by the PSC on its utilities.

MW/WWH-075 RE: Direct Testimony of Mr. Hayward, page 25, lines 6-8.

Please provide the name(s), title(s), and Division or Branch affiliation(s) of the "senior member of the CPUC staff" referenced in Mr. Hayward's testimony.

RESPONSE TO MW/WWH-075:

Mr. Bruce DeBerry, Manager, Division of Water and Audits; and Mr. James Boothe, Program and Project Supervisor, Division of Water and Audits.

MW/WWH-076 RE: Direct Testimony of Mr. Hayward, page 27, lines 8-11.

a. Please provide all documents used, referred to, or relied upon by Mr.

Hayward to track the flow of funds from ratepayers through the Mountain Water, Park Water, and Western Water organizational structure.

- b. Please provide all documents used, referred to, or relied upon by Mr. Hayward to show that the loans to employees were ever included in Mountain Water's rate base.
- c. Please provide all documents used, referred to, or relied upon by Mr. Hayward to show that the provision of loans to employees impacted Mountain Water's customers.
- d. Is it Mr. Hayward's position that once payment has been received under PSC-approved rates, the utility's ratepayers continue to have a say over how those funds are used? Please explain your answer in detail and provide all documents used, referred to, or relied upon in responding to this request.

OBJECTION:

These questions are overly broad and unduly burdensome. These questions are designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

Question (b) mischaracterizes Mr. Hayward's testimony by implying he stated that the loans were paid for through additions to rate base. This is inaccurate. Mr. Hayward said that funds flowed from Mountain Water through Park Water to Western Water to fund the loans. Test. of David Hayward, 27:5-18. He did not say it came from rate base, he stated that the *operating companies* were acting as bankers, and merely stated the obvious fact that the operating company's get all their revenues from the ratepayers, so ultimately, the ratepayers did pay for loans to corporate executives.

Question (c) mischaracterizes Mr. Hayward's testimony by implying he stated the loans "impacted Mountain Water's customers." This is inaccurate. Mr. Hayward stated: "Clearly, this type of business [loans to corporate executives] is unrelated to the

normal operations of a water utility.” Test. of David Hayward, 27:12-13. Mr. Hayward made no claim the loans impacted customers.

RESPONSE TO MW/WWH-076:

a. Mr. Hayward did not base that statement upon a specific review of documents. Western Water and Park Water’s only source of revenue are the three operating companies, one of which is Mountain Water. Therefore, the appropriate documentary history (which MW/WWH should have) would be the annual fee paid by Mountain Water to Park Water, the Park Water’s board minutes where it approved dividends to Western Water and its financial records, and the Western Water’s board minutes approving dividends to Carlyle Infrastructure Partners, LP. Specific documents that would trace this path include:

- Mountain Water’s financial records (although not the Annual Report, because it does not list the fee it pays to Park Water under the Administrative Services Agreement);
- Park Water’s financial records and board minutes; and
- Western Water’s financial records.

b. See objection. To the best of Mr. Hayward’s knowledge, the loans were not included in the rate base, so there are no responsive documents.

c. See objection. Mr. Hayward did not allege there were impacts, so there are no responsive documents.

d. No. Mr. Hayward is merely commenting on the obvious impropriety that arises from corporate executive loans to pay the income tax consequences of Class B shares used to financially align those executives with Carlyle’s goals and objectives. As

Mr. Hayward noted: "Clearly, this type of business [loans to corporate executives] is unrelated to the normal operations of a water utility." Test. of David Hayward, 27:12-13.

MW/WWH-077 RE: Direct Testimony of Mr. Hayward, page 28, lines 21-22.

- a. Admit that Mountain Water and Park Water have audited financial statements prepared every year. If your answer is anything other than an unqualified admission, please explain in detail and provide all documents used, referred to, or relied upon in answering subpart (a).
- b. Admit that Mountain Water and Park Water's audited financial statements are made public in every rate application. If your answer is anything other than an unqualified admission, please explain in detail and provide all documents used, referred to, or relied upon in answering subpart (b).
- c. Admit the City has never requested audited financial statements in the years when Mountain Water did not file an application for a rate increase. If your answer is anything other than an unqualified admission, please explain in detail and provide all documents used, referred to, or relied upon in answering subpart (c).
- d. Admit nothing precludes the PSC from requesting audited financial statements from Mountain Water at any time. If your answer is anything other than an unqualified admission, please explain in detail and provide all documents used, referred to, or relied upon in answering subpart (d).

OBJECTION:

These questions are designed to harass the City and increase the costs and burden associated with its continued participation in this docket. The City has no burden of proof in this proceeding.

Question (c) is not relevant to this proceeding nor is it based on Mr. Hayward's testimony.

RESPONSE TO MW/WWH-077:

a. Mr. Hayward does not have sufficient information to either admit or deny this request for admission. Mr. Hayward believes there are audited financial statements at the Park Water level, but he has not seen any at the operating company level. Further, the Annual Report does not provide a certification that the numbers contained therein were audited.

b. Mr. Hayward does not have sufficient information to admit or deny. Although rate cases includes financial statements, upon a review of the documents publicly filed in Mountain Water's 2012 rate application, it does not appear that Mountain Water's financial statements are provided to the PSC with an auditor's statement.

c. Admit.

d. Mr. Hayward does not have sufficient information to know whether or not the PSC can ask for audited financial statements from Mountain Water.

MW/WWH-078 RE: Direct Testimony of Mr. Hayward, page 29, lines 7-30 and page 31, lines 10-15.

- a. Please explain exactly how the transition of Mountain Water to a stand-alone publicly traded water system would be accomplished, including (1) the mechanism(s) by which that transition would occur, and (2) the costs associated with that transition.
- b. Please provide all documents used, referred to, or relied upon by Mr. Hayward in responding to subpart (a).

OBJECTION:

These questions are overly broad and unduly burdensome. These questions are designed to harass the City and increase the costs and burden associated with its

continued participation in this docket.

Question (a) is not relevant to this proceeding. Mr. Hayward is not advocating that Mountain Water must become a stand-alone publicly traded water system, merely that such a structure is ideal in comparison to Liberty's proposed multi-national conglomerate.

RESPONSE TO MW/WWH-078:

Without waiving these objections, Mr. Hayward did not conduct a financial assessment of the transition from Mountain Water's current structure to a publicly traded stand-alone system so he is unaware what that transition would cost or the specific process for doing so as he is not a corporate attorney. The substance of his testimony was that the information provided by a publicly traded entity is the type and substance of information that should be provided to the PSC, not that Mountain Water *must* become a publicly traded entity. Mountain Water should act as transparent as publicly traded entities.

MW/WWH-079 RE: Direct Testimony of Mr. Hayward, page 30, line 11 through page 31, line 8.

- a. Please provide the annual cost of compliance with SEC filing requirements.
- b. Please provide all documents used, referred to, or relied upon in responding to subpart (a).

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, and designed to harass the City and increase its costs.

Moreover, the City has no burden of proof in this proceeding.

It is unclear how much companies across the United States spend, in total, on SEC filings. Or, if not seeking the entirety of SEC filing costs, who's specific costs.

RESPONSE TO MW/WWH-079:

- a. This information is not available. Further, it is unclear what those costs would be for Mountain Water compliance if it were a publicly traded company.
- b. No responsive documents.

MW/WWH-080 RE: Direct Testimony of Mr. Hayward, page 32, lines 6-8.

Please explain how water fits the first characteristic of "Public Goods" in basins such as the Clark Fork Basin and the Bitterroot Basin where water rights are required to divert surface water or pump ground water and one party's use of those water rights does deprive others from using those water rights.

OBJECTION:

This question is designed to harass the City and increase the costs and burden associated with its continued participation in this docket. Moreover, the City has no burden of proof in this proceeding.

RESPONSE TO MW/WWH-080:

Water in the State of Montana is a public resource and owned by the public. As such, restrictions such as pumping ground water from an aquifer are necessary to protect the public interest (hence a public good) as well as private holders' water rights.

MW/WWH-081 RE: Direct Testimony of Mr. Hayward, page 32, lines 18-21.

- a. Please explain the connection between the type of ownership of a water system and cases where a polluter damages or contaminates a water aquifer.
- b. Admit that examples of contamination of a water aquifer can and do occur with at least equal occurrence if the water utility is government-owned. If your answer is anything other than an unqualified admission,

please explain your answer in detail and provide all documents used, relied upon, or referred to in responding to subpart (b).

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Questions (a) and (b) mischaracterize Mr. Hayward's testimony in that they imply he stated that only privately owned utilities are impacted by pollutants. Mr. Hayward said "Examples of where this has occurred with investor-owned water utilities can be found." Test. of David Hayward, 32:20-21. He noted that was an "example" not a broad statement claiming privately owned utilities are the only type of utility impacted by pollutants.

RESPONSE TO MW/WWH-081:

a. There is no connection between the type of utility (private or public) and cases where a polluter damages or contaminates a water aquifer.

b. Mr. Hayward does not have sufficient information to provide a categorical admission that contamination of a water aquifer "can and do occur with at least equal occurrence if the water utility is government-owned."

MW/WWH-082 RE: Direct Testimony of Mr. Hayward, page 33, line 5.

- a. Please identify all of Mountain Water's assets that were constructed using public funds.
- b. Please identify the source of funds for the assets identified in subpart (a).
- c. Please produce all documents used, referred to, or relied upon in responding to subparts (a) and (b).

OBJECTION:

The City objects to this request. This request, along with others, is vague, overly broad, unduly burdensome, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

These questions mischaracterize Mr. Hayward's testimony in that they imply he stated that *Mountain Water's* assets were publicly funded. This is inaccurate. Mr. Hayward stated, broadly, that "Many water-related assets (e.g., dams) are constructed using public funds." Test. of David Hayward, 32:5. This is a broad statement regarding water infrastructure as a whole and his example is illustrative.

RESPONSE TO MW/WWH-082:

- a. Mr. Hayward does not know if any of Mountain Water's assets were publicly funded. However, Mountain Water's only source of funds is rates collected from rate payers.
- b. Not applicable.
- c. No responsive documents.

MW/WWH-083 RE: Direct Testimony of Mr. Hayward, page 33, lines 10-12.

Admit that in government-owned water systems, decisions about rate increases which can impact future service quality are subject to political pressures and the desires of local politicians to get re-elected. If your answer is anything other than an unqualified admission, please explain your answer in detail and provide all documents used, referred to, or

relied upon in answering this request.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This question is not relevant to this proceeding. Liberty is seeking approval to purchase Mountain Water. Mr. Hayward's comments are merely providing a comparison point to note the differences between a Canadian conglomerate owning Missoula, Montana's water supply or the local government.

RESPONSE TO MW/WWH-083:

Without waiving these objections, it is not possible to admit or deny the categorical statement that "rate increases which can impact future service quality are subject to political pressures and the desires of local politicians to get re-elected." There could be political pressure or there could not be, further, a politician may choose to not bend to such pressures and not seek re-election. If such pressures do exist for a given area, the PSC—as a publicly elected, partisan body—is also subject to the exact same pressures regarding approving or denying rate increases.

No documents were used to formulate this response.

MW/WWH-084 RE: Direct Testimony of Mr. Hayward, page 33, lines 12-14.

Admit that the members of government boards and councils are subject to change at every election, or if recalled, and therefore have a time horizon that is shorter than the long-term time horizon applicable to planning and operating a water utility. If your answer is anything other than an unqualified admission, please explain your answer in detail and provide all documents used, referred to, or relied upon in answering this request.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership.

This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

RESPONSE TO MW/WWH-084:

It is impossible to categorically admit or deny this request for admission. It is possible that political shifts could change who comprises the leadership of a municipal body. However, the same is also true of the PSC and even corporate boards. For example, Mountain Water's and Park Water's boards changed drastically when Carlyle took ownership. Further, for comparison, Mayor Engen has been Mayor of Missoula since 2005, which if this transition to Liberty is approved, is over four years longer than Carlyle owned Mountain Water. Additionally, while public elected leadership may change, non-elected public employees do not change with the election cycle.

No documents were used to respond to this request.

MW/WWH-085 RE: Direct Testimony of Mr. Hayward, page 33, lines 18-19.

- a. Please provide all documents used, referred to, or relied upon by Mr. Hayward to support his position that water rights in Montana could be transferred to unknown parties.
- b. Please explain in detail the basis for Mr. Hayward's knowledge of and experience with the transfer of water rights in Montana.

RESPONSE TO MW/WWH-085:

a. Mountain Water claims it has excess water rights and it has affiliate transactions with its affiliates (e.g., intercompany receivables). While the DNRC must review any water right transfers, the Annual Report would not provide this information to the PSC, if such a transaction occurred. Thus, the PSC may not know until a rate case is filed, which, by then it could be too late. Ultimately, it would be learned, but might be too late. Therefore, it is possible for critical assets (e.g., water rights) to be transferred to Mountain's affiliates and ultimately to unknown parties. Unless there is PSC monitoring, transactions could occur before the PSC knew of them. The documents used to support this assertion were Mountain Water's annual reports, which are available at <http://psc.mt.gov>.

b. Mr. Hayward does not have specific knowledge in Montana water rights. He is aware, however, of water markets having been developed in several Western states. It is unclear the status of such markets in Montana; however, such markets could be developed.

MW/WWH-086 RE: Direct Testimony of Mr. Hayward, page 33, lines 14 through page 34, line 11.

- a. Is it Mr. Hayward's position that the issue before the PSC is whether Mountain Water's water system should be publicly or privately owned? Please explain your answer in detail.

- b. Please produce all documents used, referred to, or relied upon in answering subpart (a).

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership.

This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

RESPONSE TO MW/WWH-086:

- a. No. Mr. Hayward is merely explaining the problems associated with private ownership, especially those that come with the multi-national corporate ownership proposed by Liberty.

- b. No relevant documents.

MW/WWH-087 RE: Direct Testimony of Mr. Hayward, page 34, lines 1-11.

Admit that government-owned water systems have a worse record for compliance with the Safe Drinking Water Act than privately-owned water systems. If your answer is anything other than an unqualified admission, please explain your answer in detail and provide all documents used, referred to, or relied upon in responding to this request.

OBJECTION:

The City objects to this request. The request is directed at the merits of the

condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This question mischaracterizes Mr. Hayward's testimony by implying he testified that government-owned water systems have a worse record for compliance with the Safe Drinking Water act than privately-owned water systems. This is incorrect.

MW/WWH-088 RE: Direct Testimony of Mr. Hayward, page 35, lines 5-7.

Please provide all documents used, referred to, or relied upon by Mr. Hayward to support his position that the public interest or net-benefit to consumers standards are the appropriate standards for the PSC's review of the sale of Western Water stock.

OBJECTION:

This question is overly broad and unduly burdensome. This question is designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

RESPONSE TO MW/WWH-088:

Mr. Hayward's opinion regarding the appropriate standard is based on his expertise in this industry and as such there are not specific documents relevant to this question. For a survey of the documents and materials reviewed see the answer provided in MW/WWH-063 and Appendix A of Mr. Hayward's testimony which provides his expert qualifications and publications.

MW/WWH-089 RE: Direct Testimony of Mr. Hayward, page 36, line 1.

Admit that Liberty has not requested an increase in Mountain Water's rates in this proceeding. If your answer is anything other than an unqualified admission, please explain in detail.

RESPONSE TO MW/WWH-089:

Admit. [REDACTED]

[REDACTED].

MW/WWH-090 RE: Direct Testimony of Mr. Hayward, page 36, lines 18-21.

- a. Please identify the relevant rule, regulation, decision, or statute that requires applicants to provide a business plan in connection with an application for the approval of the sale or transfer of stock in Montana.
- b. Please provide all documents regarding the City's business plan for its potential ownership of Mountain Water's assets.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Question (b) is not relevant to this proceeding. The City's plan for its ownership of Mountain Water is not before the PSC.

RESPONSE TO MW/WWH-090:

a. There is none. However, as Mr. Hayward's testimony noted, it is concerning that Liberty appears to not even have the basic structure of one. This is something other regulators require.

b. See objection.

MW/WWH-091 RE: Direct Testimony of Mr. Hayward, page 38, lines 19-21.

- a. Is it Mr. Hayward's position that the potential for economies of scale associated with Liberty's acquisition of Western Water are solely limited to the number of connections? Please explain your answer in detail.
- b. Please produce all documents used, referred to, or relied upon in answering subpart (a).

RESPONSE TO MW/WWH-91:

a. No. Economies of scale could result from increased consumption, lower costs, or a combination of the above.

b. There are no specific documents relied upon this for this answer.

MW/WWH-092 RE: Direct Testimony of Mr. Hayward, page 38, line 24 through Page 39, line 2.

Is Mr. Hayward advocating for increased or accelerated capital investment? Please explain your answer in detail.

RESPONSE TO MW/WWH-092:

Not necessarily. [REDACTED]

MW/WWH-093 RE: Direct Testimony of Mr. Hayward, page 38, line 24 through Page 39, line 2.

Please identify the source of the \$66 million to \$96 million amount provided by Mr. Hayward in the referenced testimony.

RESPONSE TO MW/WWH-093:

See the HDR report provided in response to MW/WWH-013.

MW/WWH-094 RE: Direct Testimony of Mr. Hayward, page 41, lines 8-10.

Please identify the relevant rule, regulation, decision, or statute that requires applicants to demonstrate that a prospective utility owner will achieve better results than the current owner in Montana.

OBJECTION:

This question is overly broad and unduly burdensome. This question is designed to harass the City and increase the costs and burden associated with its continued participation in this docket.

RESPONSE TO MW/WWH-094:

There is none. However, Mr. Hayward's testimony is given in light of the fact that Mountain Water has been sold twice in just a few years and the significant system problems identified by HDR as noted in MW/WWH-013.

MW/WWH-095 RE: Direct Testimony of Mr. Hayward, page 41, lines 6-10.

- a. Please provide all documents used, referred to, or relied upon to support Mr. Hayward's conclusion that the citizens of Missoula have gone through a very expensive legal proceeding.
- b. Please provide the total of all legal and expert costs accrued and invoiced to date to the City. In providing this total, please separate the City's condemnation expenses, PSC expenses, and any expenses associated with the City's threatened litigation against Carlyle regarding the Letter Agreement.
- c. Please provide all costs accrued and invoiced in the condemnation case and the PSC case by Mr. Hayward to the City.
- d. Please provide all costs accrued and invoiced by Mr. Hayward to the City for books and other educational materials used in the condemnation case

and this PSC proceeding.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Questions (b), (c), and (d) request information not relevant to this proceeding. The City's costs in the condemnation case have no bearing on whether or not the Liberty purchase should be approved.

RESPONSE TO MW/WWH-095:

a. The cost of the condemnation action is publicly known. For example, the *Missoulian* noted it had cost nearly \$3.4 million as of July 18, 2015. See Keila Szpaller, *Missoula has Paid Nearly \$3.4 Million in Condemnation Costs*, *Missoulian* (July 18, 2015), available at http://missoulian.com/news/local/missoula-has-paid-nearly-million-in-condemnation-costs/article_773ef48c-4122-50de-a4cb-1efa9ee38a1e.html.

Further, Mountain Water and Carlyle have stated they would make the proceeding as expensive as possible. See Keila Szpaller, *Legal bill for Missoula Water Fight Could Exceed \$1M*, *Missoulian* (Mar. 10, 2014), available at http://missoulian.com/news/local/legal-bill-for-missoula-water-fight-could-exceed-m/article_0c3fe3e2-a711-11e3-9b5f-0019bb2963f4.html; Keila Szpaller, *Carlyle Response to*

Missoulian Qs, Missoula Red Tape (Mar. 3, 2014), available at <http://www.missoularedtape.com/wp-content/upload/CarlyleQs.pdf>.

b. See copy of Mr. Hayward's bill for the PSC proceeding at CITY-PSC 00000622.

c. See objection.

d. See objection.

MW/WWH-096 RE: Direct Testimony of Mr. Hayward, page 41, lines 6-10.

Please provide City payroll records detailing payroll charges and costs related to time spent by City administration and employees, including the mayor and city council, pertaining to (a) the condemnation case, and (b) this PSC transfer proceeding.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

The PSC has no jurisdiction over the City. *See* Mont. Code Ann. 69-3-102.

MW/WWH-097 RE: Direct Testimony of Mr. Hayward.

Admit Mr. Hayward does not claim that Mountain Water has provided inadequate service while owned by Western Water. If your answer is anything other than an unqualified admission, please explain in detail and identify the specific portions of Mr. Hayward's testimony where adequacy of service is addressed.

OBJECTION:

This is beyond the scope of Mr. Hayward's testimony.

RESPONSE TO MW/WWH-097:

Deny. According to Mountain Water's documents and the analysis of HDR, the system leaks more water than it delivers to customers. Leakage of 4.6 Billion gallons per year is unprecedented, in violation of industry standards and indicates Mountain Water is not an effectively utilizing water as a resource. Necessary repairs, maintenance and capital investments has been deferred and delayed. The system is aged and inefficient. The system is rated fair to poor and needs \$60 to \$95 Million in additional capital expenditures to bring the system up to industry standards.

MW/WWH-098 RE: Direct Testimony of Mr. Hayward.

Admit Mr. Hayward does not claim that Mountain Water will provide inadequate service if Liberty acquires the stock in Western Water. If your answer is anything other than an unqualified admission, please explain in detail and identify the specific portions of Mr. Hayward's testimony where adequacy of service is addressed.

OBJECTION:

This is beyond the scope of Mr. Hayward's testimony.

RESPONSE TO MW/WWH-098:

Deny. Accordingly to the testimony of Liberty officials and review of the due diligence materials, there is no indication Liberty intends to remedy the serious system deficiencies.

MW/WWH-099 RE: System Leakage/Public Ownership/Ring Fencing/Water Rights

- a. Please provide all communications and correspondence between the Clark Fork Coalition and the City of Missoula referring or related to Mountain Water, Carlyle, Western Water, Park Water, Liberty, Algonquin, or any of their respective employees from January 1, 2013 until today.
- b. Please provide a list of all meetings between the Clark Fork Coalition and the City of Missoula pertaining to Mountain Water, Carlyle, Western Water, Park Water, Liberty, Algonquin, or any of their respective employees from January 1, 2013 until today.
- c. Please provide copies of all notes taken and other documents provided during the meetings identified in (b).

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Question (a) requests information that is not relevant to this proceeding and is also protected under the work-product privilege.

Question (b) requests information not relevant to this proceeding and is also protected by the work-product privilege.

Question (c), if those documents exist, requests information protected by the work-product privilege.

MW/WWH-0100 RE: Public Ownership

- a. Please provide all notes, minutes, and agendas from all internal and

external meetings where the integration of Mountain Water's operations and employees into the City's operations was discussed.

- b. Please explain the terms of all offers made to the employees of Mountain Water from the City, and provide copies of all written offers.
- c. Admit the City does not have experience operating the Mountain Water system for the citizens of Missoula. If your answer is anything other than an unqualified admission, please explain in detail and produce all documents used, referred to, or relied upon in answering subpart (c).

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

Question (a) requests information that is not relevant to this proceeding. The City's internal planning as a result of the condemnation action is not before the PSC.

Question (a) requests information that is protected by attorney/client and work-product privilege.

Question (b) requests information that is not relevant to this proceeding. The City's offers to the employees of Mountain Water do not have bearing on whether the Liberty application should be approved.

MW/WWH-0101 RE: Service Lines

Admit that the City is not seeking to condemn the service lines that connect customers to Mountain Water's system. If your answer is

anything other than an unqualified admission, please explain in detail and provide all documents used, referred to, or relied upon in answering this request.

OBJECTION:

The City objects to this request. The request is directed at the merits of the condemnation proceeding, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This question is not relevant to the current proceeding. What the City is condemning or not is not the subject of the PSC's docket to determine if the Liberty transaction should be approved.

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 24th day of November 2015:

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