

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

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

REGULATORY DIVISION
DOCKET NO. D2014.12.99

**CITY OF MISSOULA’S REPLY IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

The City’s initial brief identified specific improper data requests out of the hundreds issued by Mountain Water. The City further described the reason each request was improper and the legal basis for inclusion of each request in a protective order. Mountain Water responded with a one-page brief generally promising that every request was simply “intended to obtain further understanding of the basis for the City’s testimony . . .” *Mountain Water’s Response to the City’s Motion for a Protective Order*, p. 1.

The requests themselves belie this assurance. Numerous requests seek information only related to the entirely separate condemnation action. The City and PSC can only guess whether Mountain Water intends to use the condemnation action to influence the PSC case, or the PSC case to influence the condemnation action, or merely hopes to increase the cost and burden of this process to the City. Regardless of their motive, these requests are improper and Mont. R. Civ. P. 26(b)(1) (“Parties may obtain

discovery regarding any non-privileged matter that is relevant to any party's claim or defense. . . ."(emphasis added).

Mountain Water is well aware that PSC discovery cannot be used to mine for information from the condemnation action. Mountain Water and its co-applicant, Liberty Utilities Company ("Liberty") have themselves strenuously argued against the introduction of condemnation issues into the PSC proceedings:

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).

Mountain Water's belief that it should now be entitled to reach into the condemnation action through PSC discovery is hypocritical and incorrect. See *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 353, n. 17 (1978)("when the purpose of a discovery request is to gather information for use in proceedings other than the pending suit, discovery is properly denied.").

Tellingly, Mountain Water makes no attempt to address or defend any of the challenged data requests, aside from its vague nothing-to-see-here-please-move-along assurance that the requests are perfectly fine. And no wonder – Mountain Water would be hard pressed to explain the relevance to *this* matter of a request like:

Please explain in detail how the City intends to recover its legal and administrative acquisition-related expenses.

MW/WWH-048(c)

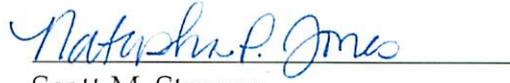
Instead of addressing the substance of their requests, Mountain Water attempts to defeat the City's Motion on procedural grounds. Mountain Water argues that the Motion is improper under Admin. R. Mont. 38.2.5001, *et seq* because the motion does not seek confidential treatment for responses. This ignores the actual basis of the City's motion, Mont. R. Civ. P. 26(c), which expressly provides for protective orders and has been adopted by the PSC. Admin. R. Mont. 38.2.3301(1).

Conclusion

Despite the irrelevance and impropriety of the Mountain Water data requests identified in the City's Motion for Protective Order, the City endeavored in good faith to answer those requests to the extent reasonably practicable so long as the requests had *some* connection to the PSC proceedings, and were not *entirely* focused on the condemnation action. The PSC should issue a Protective Order indicating that the City has no obligation to further respond to the requests identified in the City's motion, and prohibiting further data requests that relate only to the condemnation action, are overly

broad or unduly burdensome, or seek materials protected by attorney/client privilege of the work-product doctrine.

Dated this 7th day of December 2015.



Scott M. Stearns
Natasha Prinzing Jones
BOONE KARLBERG P.C

Jim Nugent
City of Missoula
CITY ATTORNEY'S OFFICE

Attorneys for the City of Missoula

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 7th day of December, 2015:

Thorvald A. Nelson Nikolas S. Stoffel Holland & Hart LLP 6380 South Fiddlers Green Circle, Suite 500 Greenwood Village, CO 80111 tnelson@hollandhart.com nsstoffel@hollandhart.com cakennedy@hollandhart.com aclee@hollandhart.com	Michael Green Gregory F. Dorrington CROWLEY FLECK PLLP P.O. Box 797 Helena, MT 59624-0797 mgreen@crowleyfleck.com gdorrington@crowleyfleck.com cuda@crowleyfleck.com cgomez@crowleyfleck.com
Robert Nelson Monica Tranel Montana Consumer Counsel 111 North Last Chance Gulch, Suite 1B P.O. Box. 201703 Helena, MT 59620-1703 robnelson@mt.gov mtranel@mt.gov ssnow@mt.gov	Christopher Schilling Chief Executive Officer Leigh Jordan Executive Vice President Park Water Company 9750 Washburn Road Downey, CA 90241 cschilling@parkwater.com leighj@parkwater.com
John Kappes President & General Manager Mountain Water Company 1345 West Broadway Missoula, MT 59802-2239 johnk@mtnwater.com	Barbara Hall Legal Director The Clark Fork Coalition P.O. Box 7593 Missoula, MT 59801 Barbara@clarkfork.org
Todd Wiley Assistant General Counsel Liberty Utilities 12725 West Indian School Road, Suite D-101 Avondale, Arizona 85392 todd.wiley@libertyutilities.com	Gary Zadick #2 Railroad Square, Suite B P. O. Box 1746 Great Falls, MT 59403 gmz@uazh.com

Public Service Commission
1701 Prospect Avenue
Helena, MT 59620-2601
lfarkas@mt.gov
jkraske@mt.gov
jlangston@mt.gov
**ORIGINAL SENT VIA OVERNIGHT
DELIVERY**



Kate M. Palmer