

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

\*\*\*\*\*

<b>IN THE MATTER OF</b> the Joint Application )	
of Liberty Utilities Co., Liberty WWH, Inc., )	REGULATORY DIVISION
Western Water Holdings, LLC, and Mountain )	
Water Company for Approval of a Sale and )	DOCKET NO. D2014.12.99
Transfer of Stock )	

---

**MOUNTAIN WATER’S AND WESTERN WATER’S REPLY TO THE CITY OF  
MISSOULA’S RESPONSE TO MOUNTAIN WATER’S AND WESTERN WATER’S  
MOTION FOR A PROTECTIVE ORDER (PSC-014)**

---

Mountain Water Company (“Mountain Water”) and Western Water Holdings, LLC (“Western Water”), by and through their counsel, Holland & Hart LLP, respectfully submit this reply to the City of Missoula’s (“City”) Response to Mountain Water’s and Western Water’s Motion for a Protective Order (PSC-014) (“Response”), filed with the Commission on May 21, 2015.

The focus of the pending motion for a protective order, and the City’s Response, are a group of promissory notes between Park Water Company and Western Water and between Western Water and certain employees. These documents have already been produced in their entirety, with only the names and amounts of the loans to individual employees redacted in order to protect this private, individual information in a manner consistent with Montana law. But, contrary to the City’s assertions, Mountain Water and Western Water have not requested permission to completely withhold the names or amounts of the individual loans from the Commission or other parties in this case. Instead, the motion for protective order only asks for this information to be recognized and protected as confidential information under the Commission’s rules.

**I. Mountain Water’s and Western Water’s Motion for a Protective Order was timely.**

The City leads with the argument that Mountain Water and Western Water have “belatedly” asked the PSC to protect the names and loan amounts as confidential. But this argument is baseless. Mountain Water and Western Water initially objected to PSC-014 on the basis of relevance/discoverability as part of its timely response on February 17, 2015, and the objection included the following language reserving the right to ultimately seek a protective order: “If information redacted from the responsive documents is found to be relevant, Mountain Water and Western Water reserve the right to file for a protective order to maintain the confidentiality of the redacted information.” Ultimately, and belatedly, the City filed a motion to compel that information, challenging the relevance/discoverability objection.

When the Commission issued its Order to Compel the production of unredacted copies of the documents produced in response to PSC-014, Mountain Water and Western Water filed a timely motion for reconsideration of that order. And, recognizing that a motion for reconsideration does not stay the underlying decision, Mountain Water and Western Water requested and received a waiver of Admin. R. Mont 38.2.4806(2) from the party who initially sought the information—the Commission Staff.<sup>1</sup>

Following the denial of Mountain Water’s and Western Water’s motion for reconsideration during the Commission’s meeting on May 12, 2015, and without even waiting for a written decision from the Commission, Mountain Water and Western Water filed the pending motion for protective order on May 14, 2015, the same day the supplemental responses were filed with the Commission.

---

<sup>1</sup> See email correspondence with Mr. Langston, counsel for the Commission, attached as Exhibit A.

Accordingly, the City's argument is flawed. Mountain Water and Western Water do not "do what they want, ignore the rules, and assume they will simply get away with it." Instead, Mountain Water and Western Water have consistently complied with the Commission's rules, orders, and deadlines, and have sought waiver of the rules when necessary. As a result, the motion for protective order for the private, personal information contained in the promissory notes produced in response to PSC-014 was timely.

**II. The aggregate amount of the loans provided in the Promissory Notes has already been provided.**

As part of its Response, the City argues the Commission should require Mountain Water and Western Water to publicly provide the aggregate total of the loans and names of those receiving the loans. However, the aggregate amount of the loans has already been disclosed. This information is contained in, and was not redacted from, the Unsecured Intercompany Promissory Note produced in response to PSC-014. However, the City's request for names goes to one of the two types of private, personal information in the Promissory Notes for which a protective order has been requested.

**III. The City's alternative request that the individual loan information be provided subject to a non-disclosure agreement is exactly what Mountain Water and Western Water asked for in the motion for a protective order.**

As part of its request for the disclosure of the aggregate loan amounts, the City asks the Commission to require Mountain Water and Western Water to provide the individual loan information subject to a non-disclosure agreement. *This is exactly what Mountain Water and Western Water have asked for in the motion for a protective order.* With its Response, the City does not challenge the idea that the loans should be treated as individual compensation information, nor does the City show that the loan amounts or names of the individuals receiving loans is otherwise publicly available. Accordingly, Mountain Water and Western Water's prima

facie showing that the names and loan amounts satisfy the legal requirements for protection under the Commission's rules is unchallenged, and the requested protective order should be granted.

**Conclusion**

Because Mountain Water's and Western's Water's motion for a protective order for the names and loan amounts contained in the promissory notes produced in response to PSC-014 was timely and satisfies the legal requirements for confidential treatment under the Commission's rules, the pending motion for a protective order should be granted.

Respectfully submitted this 28th day of May, 2015.

**HOLLAND & HART LLP**

*s/ Thorvald Nelson*

Thorvald Nelson, # 8666

Nikolas Stoffel, # 13485

Holland & Hart LLP

6380 South Fiddlers Green Circle, Suite 500

Greenwood Village, CO 80111

Telephone: (303) 290-1601, 1626, respectively

Facsimile: (303) 290-1606

[tnelson@hollandhart.com](mailto:tnelson@hollandhart.com)

[nsstoffel@hollandhart.com](mailto:nsstoffel@hollandhart.com)

**ATTORNEYS FOR MOUNTAIN WATER  
COMPANY AND WESTERN WATER  
HOLDINGS**

**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 8th day of May, 2015, **MOUNTAIN WATER'S AND WESTERN WATER'S REPLY TO THE CITY OF MISSOULA'S RESPONSE TO MOUNTAIN WATER'S AND WESTERN WATER'S MOTION FOR A PROTECTIVE ORDER (PSC-014)** was filed with the Montana PSC and served via U.S. Mail and e-mail, unless otherwise noted, to the following:

<p>Kate Whitney Montana PSC 1701 Prospect Avenue PO Box 202601 Helena, MT 59620-2601 <a href="mailto:kwhitney@mt.gov">kwhitney@mt.gov</a> <b>via UPS on 5/29/2015</b></p>	<p>Robert Nelson Monica Tranel Montana Consumer Counsel 111 North Last Chance Gulch, Suite 1B P.O. Box 201703 Helena, MT 59620-1703 <a href="mailto:robnelson@mt.gov">robnelson@mt.gov</a> <a href="mailto:MTranel@mt.gov">MTranel@mt.gov</a></p>
<p>Barbara Chillcott Legal Director The Clark Fork Coalition 140 S 4th Street West, Unit 1 PO Box 7593 Missoula, MT 59801 <a href="mailto:barbara@clarkfork.org">barbara@clarkfork.org</a></p>	<p>Jim Nugent City Attorney The City of Missoula City Attorney's Office 435 Ryman Street Missoula, MT 59802 <a href="mailto:JNugent@ci.missoula.mt.us">JNugent@ci.missoula.mt.us</a></p>
<p>Gary Zadick #2 Railroad Square, Suite B P. O. Box 1746 Great Falls, MT 59403 <b>via U.S. mail</b></p>	<p>Scott Stearns Natasha Prinzing Jones BOONE KARLBERG P.C P.O. Box 9199 Missoula, MT 59807-9199 <a href="mailto:npjones@boonekarlberg.com">npjones@boonekarlberg.com</a> <a href="mailto:sstearns@boonekarlberg.com">sstearns@boonekarlberg.com</a></p>
<p>Thorvald A. Nelson Nikolas S. Stoffel Holland &amp; Hart LLP 6380 South Fiddlers Green Circle Suite 500 Greenwood Village, CO 80111 <a href="mailto:nelson@hollandhart.com">nelson@hollandhart.com</a> <a href="mailto:nsstoffel@hollandhart.com">nsstoffel@hollandhart.com</a></p>	<p>John Kappes President &amp; General Manager Mountain Water Company 1345 West Broadway Missoula, MT 59802-2239 <a href="mailto:johnk@mtwater.com">johnk@mtwater.com</a></p>
<p>Christopher Schilling Chief Executive Officer Leigh Jordan Executive Vice President Park Water Company 9750 Washburn Road Downey, CA 90241 <a href="mailto:CSchilling@parkwater.com">CSchilling@parkwater.com</a> <a href="mailto:LeighJ@parkwater.com">LeighJ@parkwater.com</a></p>	<p>Michael Green Gregory F. Dorrington CROWLEY FLECK PLLP 100 North Park, Suite 300 P. O. Box 797 Helena, MT 59624-0797 <a href="mailto:mgreen@crowleyfleck.com">mgreen@crowleyfleck.com</a> <a href="mailto:gdorrington@crowleyfleck.com">gdorrington@crowleyfleck.com</a></p>

<p>Todd Wiley  Assistant General Counsel  Liberty Utilities  12725 West Indian School Road, Suite D-101  Avondale, Arizona 85392  <a href="mailto:Todd.Wiley@LibertyUtilities.com">Todd.Wiley@LibertyUtilities.com</a></p>	
	<p>For electronic service only:</p> <p><a href="mailto:cakennedy@hollandhart.com">cakennedy@hollandhart.com</a>  <a href="mailto:aclee@hollandhart.com">aclee@hollandhart.com</a>  <a href="mailto:crmayers@hollandhart.com">crmayers@hollandhart.com</a>  <a href="mailto:cuda@crowleyfleck.com">cuda@crowleyfleck.com</a>  <a href="mailto:jtolan@crowleyfleck.com">jtolan@crowleyfleck.com</a>  <a href="mailto:sscherer@mt.gov">sscherer@mt.gov</a>  <a href="mailto:tsunderland@boonekarlberg.com">tsunderland@boonekarlberg.com</a>  <a href="mailto:jlangston@mt.gov">jlangston@mt.gov</a>  <a href="mailto:lfarkas@mt.gov">lfarkas@mt.gov</a></p>

*s/ Adele C. Lee* \_\_\_\_\_

7769199\_2

Docket No. D2014.12.99

Exhibit A

to

Mountain Water's and Western Water's Reply to the City  
of Missoula's Response to Mountain Water's and  
Western Water's Motion for a  
Protective Order (PSC-014)

## Nik Stoffel

---

**From:** Langston, Jeremiah <JLangston@mt.gov>  
**Sent:** Thursday, April 16, 2015 4:21 PM  
**To:** Nik Stoffel  
**Cc:** Thor Nelson; Farkas, Laura  
**Subject:** RE: Order No. 7392c - Order to Compel

Nik,

This is fine. Thanks.

-Jeremiah

---

**From:** Nik Stoffel [<mailto:NSStoffel@hollandhart.com>]  
**Sent:** Thursday, April 16, 2015 4:10 PM  
**To:** Langston, Jeremiah  
**Cc:** Thor Nelson  
**Subject:** Order No. 7392c - Order to Compel

Jeremiah,

Mountain Water and Western Water will be filing a Motion for Protective Order as permitted by Order No. 7392c ("Order to Compel") and a Motion for Reconsideration of the Order to Compel under ARM 38.2.4806. To the extent we are seeking reconsideration, will the Commission waive ARM 38.2.4806(2) and stay the requirement that Mountain Water and Western Water provide the unredacted information or file a motion for protective order for the redacted information within 10 days of the Order to Compel until the Motion for Reconsideration is resolved?

Thanks,  
Nik

**Nikolas S. Stoffel**  
Holland & Hart LLP  
6380 South Fiddlers Green Circle, Suite 500  
Greenwood Village, CO 80111  
Phone (303) 290-1626  
Fax (720) 763-9531  
E-mail: [NSStoffel@hollandhart.com](mailto:NSStoffel@hollandhart.com)



**CONFIDENTIALITY NOTICE:** This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.