



## COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

### Board of Directors Meeting Agenda

April 13, 2022 at 6:00 PM

Board Room, County Water District of Billings Heights 1540 Popelka Dr.

The meeting is open to any interested member of the public. Agendas are prepared for the meetings; agendas may be requested from the General Manager Peyton Brookshire, [peyton@heightswaterdistrict.com](mailto:peyton@heightswaterdistrict.com) and are available at <https://heightswaterdistrict.com/agendas-and-minutes/> and <https://www.yellowstonecountynews.com/county-water-district-of-billings-heights/>.

**CALL MEETING TO ORDER:** President Ming Cabrera

**PRESIDENT'S REMARKS:** Ming Cabrera

During the course of the meeting the Public may be heard before a vote is cast by the Board. The President will acknowledge the Public once the motion has been made and discussed by the Board for their input. The President will recognize speakers who raise their hand. Once recognized, the speaker should move to the side of the board table so comments can be heard, identify themselves by name, and limit their comments to two minutes. Each speaker will have one opportunity to speak on any agenda item.

1. 2020.03.20 Attorney General Advice Open Meetings attachment

Article II, Section 8 of the Montana Constitution provides:

Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law. The Legislature has codified guidelines to protect the Article II, Section 8, guarantees at 2-3-101, et seq., MCA.

Article II, Section 9 of the Montana Constitution provides:

Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure....The authorities cited in 47 Op. Att'y Gen. No. 13 indicate that a reasonable opportunity for public observation and participation is required. The manner by which notice, participation and observation are provided to the public must be reasonable.

### WELCOME AND INTRODUCTIONS

Background The City converted to a new utility billing software in January 2015. In 2017, the City performed an in-depth review of water bills and found a significant discrepancy between the volume of water produced at the water treatment plant and customer bills. It discovered the actual production was higher than what was being billed. Typically, this is caused by an undiscovered leak in the water distribution system. After spending several months trying to find leaks in the system, it was determined that the missing water was accounted for and caused by an incorrect conversion factor within the new billing software for the specific type of water meter used only by the CWDBH; no other customers were affected by the software conversion billing error. As a result, CWDBH was underbilled by \$2,970,599.35 since the software conversion took place from February 27, 2015, until December 15, 2017. With interest, the total amount owed as of October 2020 was approximately \$3,965,327.49.

There is no dispute on how much water was provided to the CWDBH, only how much CWDBH should pay for water they sold to their customers. The District was underbilled for consumption by approximately 40%;

however, they continued to bill their customers for the full consumption utilized. Once the error was corrected, CWDBH began paying the full amount but refused to pay for the undercharged amounts.

Since the fall of 2018, the City and CWDBH attempted to resolve this dispute informally and then again through formal mediation in November 2020 but were unable to reach an agreement. In December 2020, the City filed a Complaint against the CWDBH asserting a breach of contract for unpaid amounts due under the contract plus interest.

Because the City and CWDBH are long term partners and not competitors serving Billings citizens, negotiations resumed after new board members were seated on the CWDBH board. Representatives of the City and the CWDBH met several times between October 2021 and February 2022 to discuss the dispute and finally reached an agreement in February. The agreement provides for the parties to stipulate to the dismissal of 1) the City's claim for breach of contract for the underbilled amount; 2) CWDBH's counterclaims for negligence and declaratory relief related to the underbilled amount; and 3) CWDBH's counterclaim related to franchise fees. The agreement requires CWDBH to pay \$2,936,251.80 within 30 days of the agreement to the City for the water that was underbilled from 2015 to 2017. Since CWDBH has agreed to pay the amount owed in full rather than over a two-year period, the original amount was reduced by \$34,347.55 to reflect the interest CWDBH would have earned if it had made payments over a two-year period.

In addition to its claim for breach of contract under the UCC, the City asserted a claim for account stated or an open account. Under Montana law, the statute of limitations on that claim is five years. Open account: 5 years. *Mercury Marine v. Monty's Enterprises, Inc.*, 270 Mont. 413, 415, 892 P.2d 568, 570 (1995) (citing Mont. Code Ann. § 27-2-202(2)).

Any funds received from the Heights Water District are water revenues. The funds will have the same rules applied to use that all water revenues have and will need to be used towards the treatment and conveyance of water according to the water fund budget approved by city council. The rates were developed with the assumption that the city would receive the \$2.9M.

#### Fees For Services -- Hearing And Resolution

**7-6-4013. Fees for services -- hearing and resolution.** (1) If a local government has the authority to regulate, establish, and change fees, rates, charges, and classifications that are imposed for services to its inhabitants and other persons served by the local government, the fees, rates, charges, and classifications must be reasonable and related to the cost of providing the service.

The District countersued claiming \$1.5 for franchise fees and \$250,000 for right-of-way fees.. The city's liability to the District for the franchise fees was limited to \$35,000 due to the statute of limitations and the date the District gave notice to the City when filing a counter lawsuit (January 7, 2021). The second counter claim of right-of-way fees are about \$5000 annually and the committee's recommendation is that any dispute could be resolved through discussion, not litigation.

Evidence does not exist to draw a clear conclusion on who made the error, the software vender or a city employee. This was made more difficult by the timeline. The error wasn't discovered until way past the contract liability limitations with the vender.

The Billings city council unanimously approved the Final Settlement Agreement on March 28 with a minor amendment in paragraph 6; the amended version is not a substantive change. If anything it is less mandatory and therefore favorable to the District.

The Parties through their respective representatives, have mutually agreed to meet to begin addressing issues with the existing Water Purchase Agreement with a goal of drafting a new Water Purchase Agreement that may be acceptable to both the City of Billings and the County

Water District of Billings.

The legal committee of David Graves, Laura Drager and Pam Ellis recommend approval of the Final Settlement Agreement.

Recommended motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve SETTLEMENT AGREEMENT between THE CITY OF BILLINGS (the "City") and THE COUNTY WATER DISTRICT OF BILLINGS HEIGHTS (the "District") with the SETTLEMENT AMOUNT: \$2,936,251.80 (Two Million, Nine Hundred Thirty-Six Thousand, Two Hundred Fifty-One Dollars and 80 cents) and to direct the District to pay the full amount within thirty (30) days after the approval of this Settlement Agreement and Release by the later of the City of Billings City Council and the Board of Directors of the County Water District of Billings Heights. At a later date, The Parties through their respective representatives, shall meet to begin addressing issues with the existing Water Purchase Agreement with a goal of drafting a new Water Purchase Agreement that may be acceptable to both the City of Billings and the County Water District of Billings.

2. Notice of Public Meeting
3. 2022.03.29 Revised Final Settlement Agreement City and Heights Water District
4. **Water District Seeks More Public Input, Dianne Crees Retires**  
by Evelyn Pyburn YCN ♦March 25, 2022
5. County Water Board Summary of Minutes re COB vs CWDBH
6. 2020.12.28 Complaint - filed 4811-4050-9141 v1
7. 2021.1.7 Districts Answer, Counterclaim & Jury Trial Demand 4822-5160-3926 v1
8. 2021.1.7 Answer, Counterclaim & Jury Trial Demand
9. 2021.01.25 FINAL Answer Heights Water District
10. 2022.04.07 Letters & Emails from Ratepayers
11. President Ming Caberera "Thanks to all who helped Heights Water settlement..."

#### **Audit Report Postponed.**

Stefeni Freese will get the adjusted trial balance and adjustments to the Finance Committee and the bookkeeper and then a draft of the audit by this weekend. Stefeni Freese needed to work through any findings and write them up, so they won't affect the numbers; she had a family emergency that delayed the completion.

Stefeni Freese | CPA, Business Unit Director, Shareholde

#### **PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items**

- A. Any member of the Public may be heard on any subject that is not on the Agenda.
- B. The board will not take action on these items at this time but may choose to add an item to the next meeting's Agenda for discussion.

#### **CONSENT AGENDA**

12. Payables April 13
13. March Prepaid bills for approval
14. Profit and Loss Statement – March 2021 and March 2022
15. Minutes March 16,2022
16. March Stifel Statement
17. FIB Gross Income March

18. FIB O&M March
19. FIB Payroll March No checks
20. FIB Savings March Quarterly Statement
21. March Stats Billing software
22. CWD March Check Register

#### **GENERAL MANAGER REPORT - Peyton Brookshire**

23. April General Manager's Report
24. Sartorie Annexation Application
25. Recommended motion having conducted a public hearing, considered written and spoken public testimony, I move that the Board approve Sartorie Annexation of Tract 2B-2A-1 of Amended Tracts of Corrected Certificate of Survey No. 840, Fifth Amended and President Cabrera sign Resolution 012-22 Authorizing the Annexation.  
  
Resolution 012-22 to Authorize SARTORIE ANNEXATION 2.792 Acres 121619.52, Sqft. \$28,337.35.
26. Annexation petition for 2207 Bench Boulevard. .723 Acres 31885.92 Sq Ft buy in is \$7,429.42
27. Recommended motion having conducted a public hearing, considered written and spoken public testimony, I move that the Board approve Annexation petition for 2207 Bench Boulevard..723 Acres 31885.92 Sq Ft buy in is \$7,429.42 and authorize President Cabrera to sign Resolution 013-22.
28. We are looking at the government and accounting software offered by black mountain who's software does our utility billing and service orders to consolidate and streamline all the processes from budget to payroll and everything in between. This will get rid of QuickBooks and enable more people to have access to any information in the day to day operation. We will have a demo with black mountain and then assess. Quote is attached.

#### **OLD BUSINESS**

29. Update: Recording Secretary and Board Secretary (see attachments--Background)

#### **NEW BUSINESS**

##### **FINANCE COMMITTEE REPORT: Laura Drager**

30. see attached

##### **BYLAWS AND GOVERNANCE COMMITTEE REPORT: Pam Ellis**

The new website is ready to review.

Please review; let Pam Ellis know if anything needs to be adjusted.

Here is the link to the site: <https://billingsheightscwd.teamunicode.com/>

31. Municode Website: Additional Information attached

##### **SAFETY COMMITTEE REPORT: Jeff Engel (see attachments)**

32. 2022.04.06 Safety committee Report
33. Let's Talk Safety (attached)

**ANNOUNCEMENTS** The May County Water Board Meeting will be the second Wednesday, May 18, @ 6:00 pm

#### **ITEMS TO BE CONSIDERED AT FUTURE BOARD MEETINGS**

Note: No action can be taken on items that were not on the agenda.

...Audit Report Stefani Freese, Anderson ZurMuehlen

...Interstate Engineering and Andrew Rheem (Raftelis)

..May Genny Garrick, the Agenda and Board

...Management trainer from Municode will attend the May meeting to help the Board learn to use the software to vote. She will prepare a video for members to review prior to the meeting.

..Clay will provide a Quarterly Safety Report to the Board in June 2022.