



## COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

### Board of Directors Meeting Minutes

June 15, 2022 at 6:00 PM

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

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/>. Supplemental documents are linked in the Agenda Packet.

**CALL MEETING TO ORDER:** President Ming Cabrera called the meeting to order at 6:01 p.m.

#### WELCOME AND INTRODUCTIONS

Board Members present: Ming Cabrera, David Graves, Pam Ellis, and Brandon Hurst.

Board Member absent: Laura Drager

Staff Members present: Peyton Brookshire, Josh Simpson, Jenn Burnside, and Suzie McKethen

Also present: Kelly Brookshire, Kayla Wallace, Bob Ellis, Dianne Crees, Tom Zurbuchen, Frank Ewalt, Evelyn Plyburn (YCN), and Larry Brewster

**PRESIDENT'S REMARKS:** Read by 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.

**PUBLIC COMMENT on Non-Public Hearing Agenda Items:** Read by Ming Cabrera

- 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 the item to the agenda for the next scheduled board meeting.

#### NEW BUSINESS

1. **Vote of no confidence and vote on the dismissal of Director Pam Ellis from the County Water District of Billings Heights Board of Directors.**

President Cabrera asked Brandon Hurst to read the following statement:

During the tenure of Pam Ellis on the Board of Directors, her continued actions and operations outside the scope of her authority, has made her continued service on the board of directors untenable. The General Manager, on behalf of the entire staff, has written a letter to the board requesting action be taken to remove Director Pam Ellis. If no action is taken to remove Director Pam Ellis, the board may face the filing of a harassment and hostile workplace lawsuit from the staff.

Brandon Hurst made the motion: Having conducted a public meeting, considered written and spoken public testimony, I move to approve the motion of dismissal of Pam Ellis as a director on the County Water District of Billings Heights board. Before a second was made, David Graves suggested the letter from the General Manager be read into the minutes.

Assistant Manager Josh Simpson read a letter from General Manager Peyton Brookshire addressed to the Board of Directors. (Letter attached) David Graves seconded motion.

Pam Ellis asked the following questions: 1. Ming hand delivered the letter to the County Commissioners or was the letter to the Board?; 2. If the staff filed a lawsuit, who would be paying for the attorney fees?; 3. Polled attending staff who would quit?; 4. What was the fictitious testimony she gave for HB255?; 5. Letter stated what minutes were incorrect? Then why did the board approve them?

Peyton Brookshire explained these questions are irrelevant because the board is voting on the motion. The lawsuit would only occur if the board did not act.

President Cabrera called for a vote on the motion. Vote: For: Ming Cabrera, David Graves, and Brandon Hurst. Against: Pam Ellis.

#### PUBLIC COMMENTS

Larry Brewster thanked Pam for her service. He had spoken to several attorneys at the Montana State Legislature to try to get clarification on the procedure for removal of a board member (appointed or elected); as well as a board member acting as board secretary.

Discussion on Montana Code Annotated statutes first between Larry and Pam, and then with Ming and Pam.

Tom Zurbuchen urged the Board to amend the section in the District By-Laws because there was nothing in state code that prevents the District from removing a board member. He attended the committee meetings when the By-Laws were being drafted. Also, there had been discussion that only the President, or their designee, could speak on behalf of the Board. That did not make it into the final draft. He urged the District to take their cause to the County Commissioners to withdraw their appointee.

Frank Ewalt agreed with Larry about the vote of no confidence but the laws are vague. A board member acting as secretary became the board's problem by not hiring or appointing one. He felt the turmoil with the staff started when the City of Billings underbilled the Water District for three years.

Dave Graves mentioned he had asked at board meetings for the board secretary position be added to the agenda, but it was never done.

Dianne Crees stated the problems with the staff did not occur with the lawsuit with the city, but when Pam came on the board.

Brandon Hurst was on the board prior to Pam being appointed. He recalled that the previous board always got along amongst themselves, and with the staff.

Pam recalled some of the situations that occurred when she came on the board. Pam asked Evelyn Plyburn to address the articles that were written in the Yellowstone County News (YCN). Clarification that Ming had made the comment about removing board members who had missed three or more meetings.

Ming read a letter from Director Laura Drager. (see attached email) Thanked the public for their comments. Brandon Hurst re-read the motion. Vote: For: Ming Cabrera, David Graves, and Brandon Hurst. Against: Pam Ellis. Motion carried. Pam Ellis was dismissed as a board member. Ming thanked Pam for her service. See Resolution 018-22.

Tom Zurbuchen raised a Point of Order: Stated the board had to work under a quorum of the board. A quorum is four votes. Without four votes, a motion fails.

Ming clarified that a quorum is now five because the two have resigned (Jeff Engel and Dennis Cook). Point of order is overruled. David Graves made a motion to approve the consent agenda. Ming opted to move Item 22 from the agenda forward (Old Business on the Agenda). Suzie McKethen and Jenn Burnside have offered to be the board secretary under a Contract for Outside Services provided Ms. Ellis is no longer a director on the board. David Graves made a motion to accept the Contract for Outside Services from Suzie McKethen and Jenn Burnside. Brandon Hurst seconded. Called for a vote. Motion carried unanimously. See Resolution 019-22.

A short break was taken from 6:50 p.m. to 7:00 p.m. Zoom recording was paused and restarted when the break was over.

## **CONSENT AGENDA**

May 11, 2022 minutes  
May payables  
May prepaid bills  
Bank balances and Profit and Loss statement  
Stifel summary page  
First Interstate statements: Operations and Maintenance, Gross Income, and Payroll  
Billing stats for May  
2021 Audit Report and letter to the Board.

David Graves made a motion to approve the consent agenda. Brandon Hurst seconded.

Ming stated that he did not say anything about not paying the absent board members so he would like part of the minutes corrected. David Graves made a motion to approve the minutes with the change from Ming. Brandon Hurst seconded. Vote: Motion carried unanimously.

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

The actual cost of the riding lawn mower with bagger came in under the allotted budget of \$9,700. The final cost was \$5,379.98. See Resolution 020-22.

Update on the chlorination project: Met with Interstate Engineering and ARPA. Waiting for Governor Gianforte to sign. We did receive the planning grant of \$15,000.

Peyton handed out the proposed budget for the board members to review. The wage and salaries were included, as well as materials and supplies. Brandon Hurst asked for clarification on the servicemen. We have 5 servicemen, but Derek Weis is not fully certified so he is not at the full wage of a serviceman. Tom Zurbuchen commented a couple of items needed reviewed: fuel and legal costs. Tom also recommended to have a quarterly budget report to see where we are at. Ming made a motion to provide quarterly reports. (no second) (Tabled)

Update on the Black Mountain Software accounting upgrade. The target date for implementation is September.

Received the first pay request from Western Municipal Construction on the chlorination project.

Comprehensive Rate Study and CIP being done by Interstate Engineering who have sub-contracted with Raftelis. We will have a better idea in the fall what the CIP and rates studies reveal. Peyton expects the final report from Interstate in the next couple of weeks.

There was discussion regarding when Peyton and Josh met with Jennifer Duray at the City. Peyton wanted to make it clear that no negotiations took place. It was a meet and greet, and to get some clarification on items on the rate study. Jennifer did say the next 2 year rate study will begin this fall, which will give the District time to start planning with the findings on the CIP. Continued discussion about some of the items on the last rate study that were questionable: Oxbow Reservoir that is owned by the District. The City wanted to assign a portion of the cost of maintenance of that Reservoir? David Graves asked if there were some ways to generate revenue. For instance, could a developer pay for SDF over a period of time? The problem with that is if the development goes bankrupt, we are left holding the debt with no way to recoup the funds. Also, the development costs are needed up front because the District is taking the maintenance on those service lines for life. We had done a comparison of development costs with the City, and other Districts around the State of Montana. Often the other Districts treat their water, and/or have sewer connections. We are resale only.

The City of Billings rate will increase 5.7%. The District does not have to have a public hearing if we raise the rates 5%. The rates would be effective July 1, 2022. The summer months are roughly 15% of our annual revenue. Peyton handed out the proposed rate increases. Brandon Hurst made a motion having

conducted a public meeting, considered written and spoken testimony, I move to approve the proposed 5% rate increase on base rate, tiered rates, SDF fees, and fire line fees. David Graves seconded. It was recommended that a notice of the rate increase be added to the June bills. Called for a vote. Motion carried unanimously.

The servicemen have been working on installing valves. This allows for the impact on fewer customers when water has to be shut off for repairs.

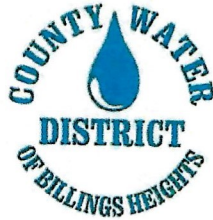
**FINANCE COMMITTEE REPORT: None**

**SAFETY COMMITTEE REPORT: None**

Ming mentioned the next meeting would be July 20. We will be reviewing applications for the open director position.

David Graves made a motion to adjourn the meeting. Brandon Hurst seconded. Called for a vote. Motion carried unanimously.

Meeting adjourned 7:34 p.m.



June 8, 2022

I am requesting the Board of Directors to ask Mrs. Pam Ellis to resign her board seat effective immediately. If Mrs. Ellis will not step down, I am requesting the board take action by voting to remove Pam Ellis immediately from her appointed director position. If the board fails to take action to remove her from her position, the staff and I are prepared to pursue a harassment lawsuit against Mrs. Ellis. This situation has come to a head, and it is critical that the board take action. If Mrs. Ellis is not removed, she will continue to undermine the district staff and board Directors on a daily basis. Her actions and false accusations over the last two years have made the County Water District of Billings Heights look like a malfunctioning sideshow. I truly believe her only motivation to be seated, and remain on this board, is to dissolve the Water District.

Mrs. Ellis' actions over the last two years have created a hostile work environment starting with her fictitious testimony on HB 255. Mrs. Ellis has repeatedly overstepped her authority and scope as a board member by inserting herself into the daily operations. These actions directly conflict with managements authority to run the district. Despite repeated directives from the board president to stand down, Mrs. Ellis continues to act on her own authority. It appears Mrs. Ellis's endgame is setting the district up to appear incompetent at every turn. In doing so, she has continuously failed to meet the expectations of a director of the board. This is most evident by the letter from Felt Martin Law Firm, which terminated the district as a client due to Mrs. Ellis willfully and deliberately disclosing privileged attorney client communications labeled "confidential".

She has also continued to act as the board secretary knowing full well it is in violation of state law. Every resolution or ordinance that Mrs. Ellis signs as secretary is a violation of state law and could potentially expose the district to litigation. In her illegal capacity as secretary, her minutes bear all the bias and non-factual information in which she continues to sermonize to any open ear, regardless of evidence contrary to her statements. Mrs. Ellis asks for minutes to be reviewed, yet when she is notified of inaccuracies, errors, or reflecting bias by Mrs. Ellis, input is ignored, and the minutes stand. Mrs. Ellis makes an enemy of anyone who has a view or direction that is not her own. The former manager retired early due to her continued harassment and slander.

The entire staff and three board members petitioned the County to remove her last November. Since that filing, and lack of any action, two of the three board members who signed that petition have since resigned. Her continued presence on the board will only create more turnover due to her alienating attitude. Mrs. Ellis is a toxic presence on this board and she needs to be held accountable for her actions. How many more board members will we lose due to her caustic ways? Mrs. Ellis is only interested in serving herself and her actions are a disservice to the rate payers and customers of the district.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Peyton Brookshire', with a long horizontal flourish extending to the right.

D. Peyton Brookshire  
General Manager

From: <[laura@remax-billings.com](mailto:laura@remax-billings.com)>  
Date: Wed, Jun 15, 2022 at 9:05 AM  
Subject: No Confidence Vote  
To: Ming Cabrera <[mingformontana@gmail.com](mailto:mingformontana@gmail.com)>

It's my understanding Ming Cabrera, the Board President for the County Water District Billings Heights has called for a vote of no confidence regarding the service of Board County appointee Pam Ellis. My opinion is that **Pam has lost sight of the true mission of the CWDBH to insure the District provides water** to the rate payers (customers) of the District. Her daily activities are over-reaching and interfering with the staff and their duties.

Pam has good ideas for improvements but due to her inability to cooperate with others, her effectiveness as a Board member has been negatively impacted. Based on Pam's harassment of the staff and her unwillingness to cooperate with others, I am supporting President Cabrera's position of no confidence and would support removal of Pam as a Board member.



Laura Drager, C-REPS, C2EX, GRI

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