
COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

Board of Directors Meeting Minutes

Supporting Documents and the agenda for the meeting maybe downloaded
https://www.dropbox.com/sh/vp7y3q9z4wg0iq5/AAAue_LwSe4QLpczVWrTtymwa?dl=0

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

Date: October 20, 2021

Time: 6:00 pm—8:05 pm

The October 20, 2021 board meeting was called to order by President Dennis Cook at 6:00 pm.

BOARD MEMBERS: Dennis Cook, Ming Cabrera, Laura Drager, Pam Ellis, Jeff Engel, David Graves, Brandon Hurst

ALSO PRESENT: Peyton Brookshire, Assistant Manager
Dianne Crees, CWDBH Bookkeeper
Josh Simpson, Serviceman

GUESTS: Frank Ewalt, Evelyn Pyburn, Terry Odegard, and Tom Zurbuchen

WELCOME AND INTRODUCTIONS

PRESIDENT'S REMARKS: Dennis Cook

During the course of the meeting the Public may be heard before a vote is cast by the Board. The Chair will acknowledge the Public once the motion has been made and discussed by Board for their input.

I. PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items

1. Any member of the Public may be heard on any subject that is not on the Agenda. 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.

2. CORRESPONDENCE RECEIVED BY BOARD

President Dennis Cook said the board had received a complaint from Tom Zurbuchen on Thursday, September 20th that had not been forwarded to the full board. Dennis Cook stated, “We had some correspondence to our gmail; I want to read it into the record and we will leave it at that. We will address those issues that were brought forward by the ratepayer and then we will come back to you after we have had a chance to look it over and the questions that were being asked and then give you an answer.” Ming Cabera noted “point of order”. He noted that he had been in a position where complaints were made public that had been brought forward in a public setting; the complaints were completely false and he recommended complaints be looked at in a committee. When asked by President Dennis Cook, Ming Cabrera offered to chair the committee. The President responded that he thought it needed to be an unbiased committee.

Pam Ellis noted that the Board was behind for two reasons. First, Jeff Weldon recommended more than once that the board develop and adopt a complaint procedure. He recommended looking at the policies from SD#2 as a guide. The Bylaws and Governance Committee has a complaint policy draft to consider at the next committee meeting. Basically, when a complaint is received, it is reviewed by the President. If it is relevant to the Board operations, the president may select a committee of 3 to evaluate and recommend how to proceed. If it is not relevant, s/he may write a letter to the complainant that the complaint is not relevant.

Jeff Weldon also suggested to the by-laws committee that we use Robert’s Rules of Order Revised as a guide. Robert’s Rules makes it very clear that individuals cannot be attacked in a public forum.

MOTION Ming Cabrera made the motion that that before a complaint is heard, it be referred to an interim committee. Complaints will just harm people who have put their time into this board of directors to try to do good things. David Graves seconded. Pam Ellis made a friendly amendment rather than an “interim committee”, a Board committee. Interim committee implies the Legislature which has an interim committee. The complaint process has a committee of the Board. Accepted by Ming Cabrera and David Graves.

PUBLIC COMMENT Terry Odegard commented that one of his big concerns is that County Water District of Billings Heights is a monopoly. The Board needs to be as open as possible. One of the things I have noticed is that on your website does not have any way to contact

board members directly because there are no phone numbers or email addresses for board members. I have all the emails but they are not public. I understand when you send things to the office, they sit there for sometime. Maybe the president gets a copy of it. But like the city, if you get a complaint, you can send it to all members of the council at one time. It is public. The same thing with county commissioners. There should be a way to communicate with all of you at one time by email. It is not being done and I think that is the first thing that needs to be done. If I want to communicate with you, the only number is listed over here in the office and I don't know how that flows. If I send an email there, when do you all get it?

3. Pam Ellis noted that she had made the same complaint in October 2020. The RFQ for the website requested that the website
 - i. Establish emails for each board member to use for board business
 - ii. Automatically forward emails sent to the board to all board membersNone of the responses addressed this requirement directly. Verbal recommendations came from two people: the first from Melissa Smith who has a web management company but did not submit an RFQ. The second was from Municode. Both recommended using a google suites program which allows us to set up a google email for each board manager. Approval of establish Google Suites is on the Revised Agenda.

Terry Odegard noted that the Board was several months into this. Laura Drager said "two minutes". Terry Odegard continued to talk. Pam Ellis noted that we need to honor the two minute limit.

Terry Odegard responded if you want to shut me down, that's fine. That's what you've just done.

Peyton Brookshire said that the policy of the previous board has not changed: emails sent to the board are received by the Board President who chooses whether or not to share with the full board. Pam Ellis and Jeff Engel commented that they believed that any email sent by a ratepayer needed to be forwarded to the full board immediately. Ratepayers have a right to expect that when they send an email to the board, the board will receive it. No formal board action was taken.

Terry Odegard responded that until you get this right, things are not going to fall into place. The community has a hard time dealing with that. I'm not going to stay for the rest of the meeting. I have other things I want to do tonight.

President Cook noted that the board has a motion and a second.

Tom Zurbuchen said sent notice to the board though he didn't have the date on the top of his head. He asked a question and requested information. You are about to be told we are going to send it to a committee. We are going to talk about this next month. I think you would be irritated. This board has an obligation to its ratepayers to communicate. If a ratepayer asks a question and wants a timely response. How would you feel if you ask a question of any government authority and were ignored.: 20-30-40 days before you get a response.

Ming Cabrera said he would not tolerate attacks on people on this board without looking at it and staff as well. I will defend everyone in this room on that same ground.

Dennis Cook asked to have the motion read again. Pam Ellis read the motion, the second and the friendly amendment. In the complaint procedure that is drafted, the President first decides is the complaint relevant to board operations. If it is, then he can refer it to a committee of three people or more and decide if it is relevant. If not, he just sends a letter and says it is not relevant to board operations.

Dennis Cook asked if there was any other discussion.

Motion approved 6:1; Dennis Cook voted no

Dennis Cook asked if there was anything else from the public.

Tom Zurbuchen felt that the agenda was rather confusing. He did not see any where in the agenda that any item was a public hearing. I don't know what items are open for public comment. Does not say which items will have a motion made that will allow the public to comment. Page 4 where the agenda on item #2 Suzie McKethen is board secretary. I have been to every meeting the board has had and they have never appointed a secretary or hired a secretary. Suddenly she is named as Board Secretary. How did that happen? There are written job descriptions for the General Manager and Board Secretary. When did this committee meet because I have never seen a meeting advertised for this process to take place and yet we have all these proposals for job descriptions. I have others along the same route.

Dennis Cook asked Pam Ellis to respond. She noted that they were on the agenda for possible adoption tonight and noted that the appropriate place to address the issue was when we got to that point in the agenda and not before the meeting starts. They are in the agenda for approval.

Everybody on the Bylaws and Governance committee received copies in advance. Duke Nieskens and Suzie McKethen received copies of the job descriptions. Community members received copies and asked for feedback including the president; committee members were asked if they wanted to meet before the Board meeting and none responded. No feedback was received so the assumption was that the job descriptions were acceptable as presented. We will know when we vote on them later in the agenda.

Terry Odegard rose to speak a second time.

Pam Ellis called Point of Order. We only let people speak once and if you open it for public comment on non-agenda items, that is the time to speak before the meeting. People don't get to speak over and over.

Dennis Cook suggested Terry Odegard put his comments in writing.

Terry Odegard said, "no, that's fine. I'll just say this to you guys, the next time I speak I will be representing several ratepayers out here and it will be my personal attorney."

II. CONSENT AGENDA (# supporting documents available at the dropbox link above)

1. Minutes of the September 9, 2021 Meeting (2)
2. September Prepaid bills for approval (3)
3. September Bills for Approval (4)
4. September Bank Statements: First Interstate Bank (5)
5. Stifel Statement September provided by Stifel(6)
6. Profit and Loss Statement – Sept 2020 and Sept 2021 (7)

MOTION TO APPROVE the consent agenda was made by Laura Drager and seconded by Ming Cabrera. The motion passed unanimously.

III. MANAGER'S REPORT Duke Nieskens (14)

Dear Board Directors,

I am notifying you that I am retiring effective December 10, 2021.

I would like to thank you for the opportunity to serve the customers of the District for the past 19 years. I have genuinely enjoyed my time with the District, and with the hard working, knowledgeable, and very capable staff.

I believe the District will continue to move forward in the very capable hands of Peyton Brookshire as the General Manager, he is qualified and has the knowledge and field experience to serve the people of the District.

Sincerely,



Duke Nieskens

Dennis Cook let everyone know that Duke Nieskens had submitted a retirement letter that was short and to the point with an effective retirement date of December 10, 2021. The board probably should vote to accept the resignation. His retirement package will be paid when he exits. Dennis Cook asked for clarification and Dianne Creese responded.

MOTION: Laura Drager made a motion to accept Duke Niesken's resignation and put in process the process of hiring a replacement; seconded by Pam Ellis. PUBLIC COMMENT: None Ming Cabrera read the portion of the letter recommending Peyton Brookshire as the General Manager. Ming Cabrera said we cannot indicate that Peyton Brookshire will be appointed General Manager; we will have to open it up. Peyton Brookshire and Laura Drager clarified that Duke Nieskens was endorsing Peyton but that decision is the responsibility of the board. Approved unanimously.

1. October 2021 Manager's Report (10)
 - i. Sanitary Survey was conducted by DEQ on 09/28/2021 as is required every three years. No significant deficiencies noted.
 - ii. Bid opening by JR Civil came in at \$520,661.00 the engineers high estimate was \$212,500.00. At \$308,161.00 over the estimate the best course of action is to reject the sole bid received and readvertise the project later in the year, maybe mid-November, provide a longer response time, say one month, and change the specs so that construction does not have to commence until April 2022. Discussed with Interstate and agreed is best course of action at this time. See Email Ming Cabrera requested clarification. Pam Ellis asked if Peyton wanted the board to reject the bid at this point. Answer: that would be best. The district can readvertise in November but we can have a longer time frame and revise the construction schedule. Maybe more people will be interested and prices for all the stuff will come down. MOTION Ming Cabrera made a motion to reject the bid for \$520,661. Seconded by Brandon Hurst. Motion carried unanimously. MOTION: Pam Ellis made a motion that the RFP be reposted in the spring with at least two weeks notice and that the application be available to download without cost. Seconded by Laura Drager. FRIENDLY AMENDMENT The RFP will be posted in November with construction in the spring. Accepted. Motion carried unanimously.
 - iii. DN Tank was in town to finish up warranty work on the tank on the paint and downspouts. Interstate Engineering was up there inspecting that work today.

- iv. TDS Fiber has given us plans to review for possible conflicts with our utilities they are being reviewed now. TDS Fiber is all over the place. Josh just went there early on. TDS needs to leave a 5' distance between any of our equipment, ie curb boxes because the district doesn't want to hit any of the fiber installation. TDS is trying to do the best they can. Pam Ellis noted the website address was included in the agenda which allows individuals to determine when installation will occur near their home. Peyton Brookshire noted he now has the correct location where TDS is working—primarily east of Main.
- v. The crew has been actively repairing 10 leaks in various locations as well as installing a fire hydrant on Orilla Street and valving on Griffing Drive. Some of the handiwork is on the table.
- vi. The dump truck was in for repairs on the DEF metering pump and will need to go back as the new part failed within hours of use. The initial problem was described as diesel contamination but that was not found. The truck is back in for repair.
- vii. Gleneagles drive was completed recently and upon punch list walkthrough it was noted that several curb stops were located 27' from the back of curb. The issue was a high-pressure gas main that was to be crossed during the installation of the services on the west side. We met with contractor and engineer and advised this was not acceptable as they were too far into the property and would not be able to be repaired once the home was built on the property. to be continued as they are seeing what they want to do. We advised them to move the curb stops back; we were not consulted before they were installed.
- viii. Bitterroot heights third phase is under way and Cop Construction is doing the work. We will do a live tap on our 16" main for the loop completion on this phase. There are some issues on location of the tap and they are being worked out.
- ix. Montana State Fund dividend is up again for November. Still recommend giving to the people who earn it and reinforcing the safety culture at the district. Combined with last year's refund it would be roughly \$730.00 each.
- x. Looks like that \$15,000 grant match will be given to the district and can go towards our CIP. We are just checking to make sure no conflicts with ARPA grants are encountered. Awaiting confirmation from Brad at Interstate. Laura asked how the money would be used; Peyton indicated it was for our CIP.
- xi. Conference call with Raftelis on 10/13/21 for status update on timeline for next steps and completion. Awaiting written response for board members for meeting as of today. Peyton said he has a have a copy from Raftelis that came in this afternoon. Peyton said the status is Andrew Rheem is getting his questions together. Raftelis have their questions drafted. The once they get their questions drafted, it is up to the city to respond. Hopefully we can get that, the sooner the better. Ming Cabrera asked if the report was complete; it is not complete.
- xii. BCBS increase slated at 5.6% or \$976.13 per month.
 - 1. Factor Duke and spouse removed \$2,788.86 per month
 - 2. Premium drops to \$15,454.93 so we will actually see no increase but a savings of \$1,812.13 per month.
- xiii. Need permission to take applications for two additional servicemen to start in January or February. We have been short on servicemen for several years and it is

time to get our staffing up. We have job descriptions that were contracted and written for us that are still current and relevant. See attached descriptions.

- xiv. In response to questions of the adoption of rules and regulations they were both adopted at the April 2014 board meeting resolutions 006-14 and 005-14. Pam Ellis asked for this information on September 28th and did not receive any response until it was included in the manager's report. Pam Ellis noted the question is who wrote the rules and regs—they were dated 2020 and I didn't see any evidence that the board had ever approved.

Peyton noted that the Rules and Regulations were one of the first jobs he started when he became Assistant Manager in 2014 because they had not been updated since 1998 and a lot of them were updated. So Peyton updated them, didn't have to change much and put them all together. Standard modifications; a lot of them mirror the Rules and Regulations for the City of Billings. Anything that I do with them now, I go through and make necessary changes. Like MT Public Works Standards just came out with their 7th Edition. I go through our Rules and Regulations and make necessary amendment. Biggest thing that we had to change during COVID with all our shortages was having an allowance for price changes and construction changes, things like that.

Pam Ellis asked Peyton if he would send the response he sent to the President. Dennis Cook said he would check again; Pam Ellis had not received other documents that had been sent. Ms. Ellis clarified that no, that was because the documents Dennis Cook sent on the week-end would not open due to poor internet reception. The documents which he resent Monday, October 18th opened fine when reception was good at another location.

- xv. The written record of response of delinquency is incorrect it is in the rules and regulations Chapter 7 subsection (7.2) and has been 60 days for water bills.
- xvi. The district prints the bills and mails them. It is the most cost-effective way. A notice can be printed on the bills as has been done in the past for the website going online and other notices of importance.

Suzie answered the question about who prints the bills. We can add a line to bills that notice the bylaws meeting so we don't have to send out a separate notice because there will probably not be a lot of interest. The goal was to approve the bylaws in December.

- xvii. Conference call phone was set up in board room. We had extra lines with our current phone provider and Peyton purchased the used phone for \$100.00 vs \$600 for a brand new one. Instructions for the use will be given to board members. Ming Cabrera asked if the Board would be able to do Zoom technology. Get a television, camera and computer in the board room so the public can watch; if a Board member is sick or unable to be present, they can attend via Zoom. Pam Ellis noted that we could also record the meetings as a video record of each meeting. If there is a challenge to the minutes, the zoom recording can be checked.

2. (10a) Duke/Peyton:

I contacted Alex Heesch of JR Civil last week to discuss the bid they submitted for the mixer/chlorinator project. Alex said that the subs they contacted for electrical and building quotes were too busy to provide pricing so they "threw a number at it". Alex said that they felt that if there was more time to put pricing together, a longer contract time, and a start date of next spring, the pricing would be less. How much less, he did not say. At \$50,000+ each for less than 200 feet of 1" conduit at the Lanier and Ox Bow locations, I think there's a lot of room for improvement. My suggestion is to reject the sole bid received and readvertise the project later in the year, maybe mid-November, provide a longer response time, say one month, and change the specs so that construction does not have to commence until April 2022. Let me know your thoughts in this regard.

Lowell J. Cutshaw, PE

Sr. Project Engineer

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Professionals you need, people you trust.

3. JR Civil Bid Package (10b)

Bid opening by JR Civil came in at \$520,661.00 the engineers high estimate was \$212,500.00. At \$308,161.00 over the estimate the best course of action is to reject the sole bid received and readvertise the project later in the year, maybe mid-November, provide a longer response time, say one month, and change the specs so that construction does not have to commence until April 2022. Discussed with Interstate and agreed is best course of action at this time. See Email below.

MOTION: made a motion to reject the bid from JR Civil; seconded by Brandon Hurst.
Approved unanimously

4. The manager's report also included a job description for Serviceman(10c) and "Manager" (10d), Assistant Manager (10e) The Job Descriptions will be reviewed at the Bylaws and Governance Committee. The written report included a request to hire two additional servicemen; this was not discussed at the meeting and will be on the November 2021 agenda.

IV. ASSISTANT MANAGER’S REPORT: Peyton Brookshire (combined with General Manager’s Report)

V. COMMITTEE REPORTS

1. President’s Report: Dennis Cook (no report)

2. Finance Committee: Laura Drager

**County Water District Billings Heights
Treasurer's Summary Report as of
30-Sep-21**

	31-Aug-21	30-Sep-21
Meters		
Sept total meter count	5,914	5,917
Residential	5,456	5,461
Commercial	458	456
New Residential	12	10
Total # Meters	5,926	5,917

Checking

FIB Gross Income Account	\$ 1,217,953.82	\$ 1,176,986.93
FIB Operational & Maintenance	\$ 24,768.61	\$ 28,604.91
FIB Payroll Account	\$ 3,568.44	\$ 24,414.15
Total Checking	\$ 1,246,290.87	\$ 1,230,005.99

Investments

Stifel - Cash & Equivalent	\$ 473,100.00	\$ 1,153,146.99
Stifel - Fixed Income CD's	\$ 8,448,932.00	\$ 7,747,956.58
Total Stifel Investments	\$ 8,922,032.00	\$ 8,901,103.57
First Interstate Bank Savings		\$250,926.03
Yellowstone Bank Reserve CD	\$ 250,000.00	\$ 205,267.50
Total Investments	\$ 9,172,032.00	\$ 9,106,371.07

Total Cash Position as of September 30, 2021	\$ 10,418,322.87	\$ 10,336,377.06
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- i. AZ Audit Discussion and Review The auditors were working at the district office reviewing documentation the week of October 18th and a third was working remotely. After the board receives the audit, Laura plans to develop a budget plan and recommendation for board approval. The auditors requested that Duke Nieskens sign a letter to Summers McNea giving permission to see work documents from the 2020 audit; the letter was forwarded to Dennis Cook for his signature because Duke was not in the office. Dianne Crees said the letter had been signed and sent. Ming Cabrera asked if we had any information.

The auditors interviewed Duke Nieskens, Dianne Crees, Laura Drager, and Pam Ellis. We are on track to complete the audit on schedule as required by the state.

- ii. Board Meeting Date

- 1. RECOMMENDATION The Board may make a motion to move board meetings to the third Wednesday of the month @ 6:00 pm
- 2. BACKGROUND For the last two months we have not received documentation from the bank; bank statements arrived October 11th so we are having difficulty getting the actual documentation. In the event there is a holiday, that creates additional problems. Dianne Crees spoke with staff and said there maybe some situations with prepaid bills. At this point it is completely up to the board
- 3. MOTION Laura Drager made the motion to move the board meetings to the third Wednesday of the month. Seconded by David Graves. DISCUSSION Jeff Engel just got his statement on two of his bank accounts; there is a 12-14 days after the first of the month. I'm used to getting them 3-4 days after the first. Laura Drager mentioned that the postal service is not delivering as quickly as before. VOTE: The motion was approved unanimously.

- i. Board meeting date Laura Drager wanted to discuss moving the regular board meeting from the second Wednesday of the month to the third Wednesday. .

- ii. MT Worker's Compensation Refund: the board will review the MT Worker's Compensation Refund

- 1. The board may make a motion to share the refund among staff from either/both the June and October refunds.
- 2. On October 1, 2021 the district received a letter from the Montana State Fund(10f) Our 2019 premium: \$11,612.68 Your losses of record: \$0.00
Your dividend amount: \$4,006.37
Your net 2019 premium: \$7,606.31

BACKGROUND: The staff shared the Workman's Compensation checks in 2016—2019. Laura Drager asked Peyton Brookshire and Dianne Crees at the meeting when the board has traditionally shared the refund with the staff. Peyton indicated the checks were issued after board approval.

MOTION Laura Drager moved to share the worker's compensation refund and share with our staff based on the safety record that they have. Jeff Engel seconded. DISCUSSION The November refund for FY 2021 will be \$4006.37; the April refund

was \$2606. Jeff Engel asked how employees split the refund, does each employee share equally. Peyton Brookshire said that was how it's always been done. Ming Cabrera asked for clarification on the amount of \$4006.37. Pam Ellis clarified that the June 9th agenda had a refund of \$2606 that the board did not deal with. I think Laura's motion is to divide total of the two refunds. Ming Cabrera noted that because the employees are showing safety in the workplace, this is a valuable compensation; I'm for it; that's my comment. VOTE: The vote was unanimous. Each employee will receive a check for \$730.

iii. Blue Cross/Blue Shield

The Finance committee received information about insurance rates. This is the open enrollment. The increase is under 6% this year and that is significant. She spoke with Duke at length about this and he was very pleased with that premium increase. In the past we have seen double digit increases in our health insurance premium so he was very very pleased with the annual rate. We will discuss it in Finance Committee and bring it to the board at the November meeting.

iv. Budget Update and Recommendation: No update at this time. Will complete after we receive the audit from Anderson ZurMuehlen.

4. Safety Committee: Jeff Engel's Meeting with Staff Not a lot to report there. Jeff initially talked with Peyton and then Clay McAfee called; Clay is in charge of the safety meetings. Jeff Engel made contact with Clay, who is in charge of safety and he is open to Board members attending any safety meeting. Generally they have them weekly and are planned around an activity that is similar in nature to the safety meeting topics the field crew is scheduled to address. The safety meeting may be called the morning of based on what is going on that day. Clay has agreed to notify Jeff Engel of upcoming safety meetings as soon as possible and practical. The safety meetings are short, generally 15 minutes or less and cover a pre-determined list of subjects related to the field work being performed that particular day. Notice of a safety meeting will be short; availability is difficult on short notice. Jeff Engel will work with Clay to try to determine ahead of time the scheduled days and times so board members can plan on attending. He asked that the district give him Clay's number so he can call him directly. I will not make it to every meeting but I would like to make it to one or two just so I have something to report. Ming has mentioned that he would like to come to.

Laura Drager asked if we have documentation of our safety meetings and who is in attendance. Jeff Engel said there is pretty much a standard procedure: you document who was there, you have everybody sign up that they attended, subject matter discussed, subject matter documented, etc. etc. They probably have a number of "canned" subject matters that are specific for the water district. The district has a book that includes topics for each meetings and a record of completion.

MOTION Ming Cabrera made a motion to eliminate the safety committee and include it in the manager's report. Seconded by Jeff Engel.

DISCUSSION

Ming Cabrera said it sounds like they are having safety meetings. The staff is doing a good job. Why do we have to have a committee? It is of no use at this point.

PUBLIC COMMENT

Frank Ewalt commented that if a problem happened (and problems always happen sometimes in construction), it is better to have a safety committee ready to get together with the manager and OSHA and have something lined up for the board meeting.

Jeff Engel said he is willing to be the safety committee. It is difficult to schedule meeting with staff but he would like to come to some of the meetings. Peyton Brookshire said that was fine.

Tom Zurbuchen agreed with Frank Ewalt. He noted that having run a trucking company and dealing with the Department of Transportation, safety is utmost. You are doing excellent in safety or you wouldn't be getting the refunds from Worker's Comp. Having a safety committee over viewing is just that. And if something happens, that is why you carry Worker's Comp. Being on top of it is a big plus in the event of an accident. A star in the file if OSHA comes around. You need a committee, you need the gold stars.

Laura Drager agreed with Frank Ewalt and Tom Zurbuchen and is happy to hear that Jeff is willing to stay on. A safety committee is risk mitigation for the district and it is critical that we have a safety committee.

WITHDRAWAL OF THE MOTION Ming Cabrera withdrew his original motion. Jeff Engel withdrew his second. Staff needs to know they can contact someone on the board if they have a safety concern and bring it forward to the board if needed.

5. By-laws/Governance Committee (Pam Ellis)

i. By-laws (Pam Ellis and committee members)

Committee Members: Pam Ellis, Laura Drager, Brandon Hurst, Dave Graves

1. By-laws update Rough draft and source documents available at dropbox https://www.dropbox.com/sh/dzbdwrj2rchauoe/AAAh5Hmx5ZQkiTjmYQ5Uoov_a?dl=0
2. Background Our current by-laws have not been updated and approved since 1956. At that point, the water district was "owned" by its members and multiple provisions violate the 1982 MT Constitution. Changing the by-laws will require a notice to all ratepayers of a meeting to consider approval of a revised document.

3. Update The committee met on September 27, 2021 at the CWDBH offices. In attendance were board members Dennis Cook, Pam Ellis, Laura Drager and David Graves. Also present were Attorney Jeff Weldon and community members Terry Odegard and Tom Zurbuchen. The committee reviewed edits suggested by Chair Pam Ellis and Attorney Jeff Weldon. Based on the discussion, a second revision will be reviewed in October with a goal of adoption in December 2021. Copies of the draft by-laws and supporting documents are available for review at the above drop-box address. The bills are printed internally by the district. We should be able to add the notice of the bylaws meeting to the bills which will save the district money. Jeff Weldon recommended we replace reference to specific statutes and include language in the bylaws that say we will comply with MT law. Otherwise, the bylaws have to be revised each time the legislature makes a change. The statute is going to be rewritten by the interim committee from stem to stern and may or may not be adopted by the 2023 legislature. In the initial revision of the bylaws, Pam Ellis had included procedures for complying with MT Open Meeting/Open Record laws. Jeff Weldon recommended that those rules be included in a policy document. In the 2nd revision, the statements from Dan Clark's draft "Bylaws for Special Districts" were withdrawn and included in a proposed policy. It essentially represents the rules in statute or Attorney General opinions. That is on the agenda for the Board to approve or not approve.
4. Meeting times: TBA Jeff Weldon told the committee he would provide available dates that he could meet in October. He did not provide any dates to Pam Ellis, the committee chair. It is frustrating because we need to have that next meeting. It was supposed to be scheduled before the end of October and he has not given the committee any dates so we will keep working on it. Brandon Hurst suggested Dennis Cook work with Jeff Weldon to establish possible dates.

Dennis Cook asked what the timeline was for adopting the bylaws. Pam Ellis said Jeff Weldon said he would give us a time to meet in October, finalize in November, with a public meeting in December. Because Jeff Weldon has not given us a date he can meet with the committee, we are hung up. Dennis Cook said he would contact Jeff Weldon for a date. He said the only thing he had on his list were the bylaws so he can focus on that now.

ii. Job Descriptions for Staff, Managers and Board Members

1. Background MCA 7-13-2277. Appointment of administrative personnel specifies (1) The board of directors shall, at its first meeting or as soon thereafter as practicable, appoint by a majority vote a general manager and a secretary. A director may not be the general manager or the secretary. The board of directors may assign the district's operator, as defined in 37-42-102, the additional duties of a general manager. (2) The general manager and secretary must receive the compensation that the board determines, and each shall serve at the pleasure of the board.
2. A draft of the job descriptions and evaluation procedures for general manager and board secretary were attached to the agenda sent to the Board on Friday, October 15th and the Revised Agenda that included the managers report and Jeff Engel's legal report on Monday, October 18th for possible approval by the board at the October 20th meeting. The draft was sent to the general manager and board secretary (Suzie McKethen), Attorney Jeff Weldon, and the By-laws and Board Operations Committee for review prior to the agenda preparation.(13a and 13b).

The board did not review the draft job descriptions for the general manager and board secretary and referred back to the Bylaws and Governance Committee. Peyton Brookshire forwarded a job description that was purchased a number of years ago for "manager" and was included in the agenda sent to the board on Monday, October 18th and in the drop box ("Manager" (10d)). Pam Ellis proposed purchasing the AAWA Manual referenced in the agenda. Peyton said he has a copy of the manual for medium sized districts in his office which is available for the board to reference when evaluating staff compensation which typically happens in December

DISCUSSION With Duke's resignation, a job description would typically go out with a job posting and also because salaries are also looked at in December, we are under a deadline to get job descriptions written from everybody and to complete evaluations. Pam Ellis requested job descriptions from Big Fork Water and Sewer District; she met the General Manager in Helena when she testified in Helena. The committee, Suzie McKethen, Duke Nieskens and some committee members received copy of the drafts. A little feedback was received but no one on the committee asked to meet in advance. It would be helpful if the Board could approve the General Manager's and the Board Secretary's job description and typically there would be an evaluation, typically in Executive Session.

Dennis Cook asked if everyone had been able to review the job descriptions and questions you might have.

Brandon Hurst asked if Pam Ellis had seen the job descriptions. She noted that she received copies of job descriptions on Monday, October 18th for "manager", "assistant manager" and "serviceman". Peyton said they had been purchased in 2001. The job descriptions do not have board approval dates. Laura Drager asked where those were kept. Dennis Cook said we may need to go back and discuss a little bit more. Pam Ellis noted the job descriptions were referenced in the Revised Agenda sent to the board,

Peyton Brookshire, Duke Nieskens, and Suzie McKethen on October 18th; they are also in the dropbox. The qualifications for General Manager seem low.

Dianne Crees said that she (Dianne) was confused. Suzie was hired as a water clerk. Suzie does not want to attend the board meetings; she resigned from board secretary. Pam Ellis noted that Suzie McKethen does the job of Board Secretary. The job description says the Board Secretary prepares the minutes as needed. Yes, she doesn't want to do the job. But when you have a job, you need to do the job. Right now, Pam Ellis is doing part of her job for her. But if Ms Ellis am ill or chooses not to prepare board minutes, it is Suzie's job as defined under the statute.

Peyton gave Dennis Cook a document from 2009 that identified her job. That document was not shared with other members of the board. That was when they fired the board secretary they had hired and they asked Suzie to prepare the minutes. Pam Ellis noted Suzie has a paid job that does the work of Board Secretary. Suzie needs to prepare the documents for the board. Peyton Brookshire said she never did that until she got a separate contract that paid her \$150 to attend Board Meetings. All other document preparation and preparation of minutes was done during her regular work day. Pam Ellis noted that the Board needs a Board Secretary that is on staff. We have a clerk that does the work of Board Secretary. NOTE The September 8, 2021 legal memo from Jeff Weldon said the board can choose to have a board member prepare the minutes.

Brandon Hurst asked if Suzie McKethen was fairly compensated for doing the board work. She was compensated at \$150 per meeting in the past. Pam Ellis said typically the board reviews compensation annually.

The AAWA Book has surveys from across the country for water and sewer districts. Peyton Brookshire said he has the book for medium size districts in his office. Provides information about salaries in districts across the country.

Dennis Cook said we need to get everything straightened out clearly in writing. Looks like we need to get a little more discussion with Jeff Weldon's input.

3. Evaluations for General Manager, Board Secretary and staff was not discussed. The Job Descriptions for General Manager and Board Secretary were referred back to the Bylaws and Governance Committee for discussion and recommendation at a future date.
- iii. Trustee and Manager Policies Rules and Procedures for Meetings of the CWDBH Board (13d) A draft of the proposed rules and procedures for meetings of the CWDBH Board were sent to the president, the committee and Jeff Weldon prior to being included in the agenda. The procedures are adapted from the draft of a model policy is a draft work in progress by the Local Government Center at Montana State University. It is intended to serve as a guide to the development of rules of procedure for a Sewer/Water Board. The board did not review draft Rules and Procedures for meetings of the CWDBH Board given that Jeff Weldon did not respond to a request for his feedback.

Pam Ellis requested that we adopt the Board Policies and Procedures for Meetings of the CWDBH so she can complete the agenda on Friday and not have to redo it when information comes in throughout the week-end. It is important that the board have time to review the agenda and we need to give the public time to review. Laura asked what page the information was in the agenda.

- iv. BDS Billing We currently use software from BDS for billing: 877.595.1957 bds@billingdoc.com sales@billingdoc.com The CWDBH staff is able to go to the reporting page and download the emails that have been entered by ratepayers. The company is able to send emails, texts, and calls to ratepayers who have registered on the site. BDS can print the bills and adjust the size of the postcard. They are not currently printing our bills. Pam Ellis asked when did we purchase BDS? Peyton Brookshire said the district had used BDS for about 1 1/2 years. Do we pay a monthly fee or was that just a one time purchase? Peyton responded it was a one time cost. Pam Ellis said one of the things we are trying to do through a revised website is develop a list of ratepayers so we could get notices out to people through email. Peyton said it was possible to include in the manager's report for each month from November 2020 will include information from the BDS account management page including: # emails, # phone numbers, # of ratepayers requesting bills be emailed. You can pay by credit charge with a 3% charge. Ratepayers cannot pay directly from their bank if they sign up for automatic withdrawal. The City of Billings Public Works department has phone numbers for most of their users and they are able to send text messages directly to customers. That would be a tremendous resource that the CWDBH is not currently using.

Website RFQ Application and possible recommendation

The RFQ was published for two weeks in the Yellowstone County News and the affidavit of publication was received and filed (14). The RFQ came directly out of our August 19, 2021 meeting with Jeff Weldon. He said directly, "Your agendas to be a lot more robust. They need to include more information and get it to the board days before the meeting." He specifically recommended the software from BoardDocs that Huntly Schools uses. We met with that firm and did not like the software that they recommended for our use. The agenda included that the board received in response to the RFQ with complete supporting documents in the dropbox. The best system so far is Municode. They were by far the most responsive and the most complete. That was the one that Ming Cabrera and Pam Ellis saw the demonstration. For the board management software, it uses Microsoft office software. That way, instead of Peyton sending his manager's report, he writes it and uploads it. Multiple people can contribute. That system is \$2600 per year. With DropBox, if more than one person was able to upload documents, it would be \$1800 per year. And that is nowhere near as efficient. Agendas would be much neater than they are now because of the software updates and formats.

At our last meeting, we said that anything we adopted we wanted to review thoroughly and we have looked at it. But also that we check references. Municode provided a list of references. Pam Ellis contacted them originally because they were in use in Red Lodge and Great Falls. If we also use their website, when the agenda is published, it is automatically published to a calendar. When we have a committee meeting and we publish an agenda, it automatically goes on a calendar. We don't need a separate person to the calendar up or worry about having it taken down prior to a meeting. It is a much more efficient system, is much more attractive, and has a lot more capacity. The next step for the Board and Governance committee to check the websites and follow-up with checking references.

Ming Cabrera said that with MuniCode they do take excel and word so we don't have to change it to a different system. Terry Odegard's complaint is that the public doesn't have information.

Peyton provided the data from the website about ratepayer engagement. No documentation was provided to the board in writing.

Pam Ellis asked if we have Google Suites so we can set up individual emails from each board member. Peyton said in the past the board did not want to see all the emails. Pam Ellis noted that we have had multiple discussions with the new board where we said we wanted all board members to see all emails that they came in. In the entire year after a board email was established, she did not see any emails. Even though a board member would not be dealing with a complaint about somebody's sidewalk that caved in, the board should see all emails that were sent to the board. QUESTION: Can we set up individual emails for each board member?

Laura Drager mentioned that currently she is receiving all of the emails to her business email which would make all of the emails discoverable. And there is information from my business that should not be made public. Brandon's is a business email. Would be

unconscionable if our business emails became available to the public. Laura thought it would be a good idea for the board to have emails specifically for County Water Board business.

Pam noted that she believed in order for emails from the public to be automatically formatted, we would need to use Google Suites @ \$6 per month per email. Brandon said it should be possible to use auto forward for free. Jeff Engel said he wanted to be apprised of anything that is sent to the board. I sure don't want to be responding to those. We need to respond to those as a board, not as an individual. It would be chaos if individual board members responded.

Pam Ellis noted that board members can respond. The City of Billings does not publish any complaints against individuals though complaints are automatically forwarded to the full council. The public can see responses from multiple people on the council website. The Heights Task Force sent a complaint about an unmanaged park; multiple people responded: Mayor Cole, KC Williams, Mike Whitaker. That would be ideal for people to see. The other thing that happens: If Laura asks Peyton a question, at the city level, the staff response is sent to all council members.

Dennis Cook said we probably need more discussion. We are a relatively small district. It does not mean he is against technology, he does not have a problem with that. However, would like to make sure that we are not doing some kind of overkill for lack of a better word. So that we are not spending way more than we need to because our usage and our analytics are showing something different.

Second thing, is we are a small organization. Need to be a little more frugal with how we spend our funds and can get a good result and not hinder our operations. I look forward to more discussion in the Bylaws and Governance discussion. He will get ahold of Jeff.

Pam Ellis: we need to know if Peyton is going to set up emails for every board member so every email that comes in automatically forwards. Peyton said that was not a problem.

MOTION Pam made a motion that Peyton Brookshire set up individual gmail addresses for each board member and automatically forward all emails sent to the board to all board members. SECONDED by Brandon Hurst. DISCUSSION Peyton said if someone wants an email that they already have, let him know. If not, he will make one for them. Pam Ellis asked that we use our whole name. Terry Odegard's point is a good one—right now there is no ability for people to contact individual board members. So use our whole name so people know who they are talking to. VOTE Unanimous

1. Partial responses to the RFQ were received:
 - a) Zee-Creative redesign website \$2500 or less; the undated email from Sabrina Marshall was on the board table at the September board meeting. ZCreative did not respond to the RFQ.
 - b) Pam Ellis and Laura Drager met with Curt Mildenberger with NISC on Thursday, September 30 to review the appropriateness of their bill payment software and costs. On October 15 he sent an email to Pam Ellis stating that their charges were One-Time Implementation Fees = \$99,000 Monthly Recurring Fees = \$6,350 Laura and Pam attended the electronic meeting and concurred before seeing the price, that the company provides a quality service but we need to postpone implementation at this point until we have effective board management software and an upgraded website that provides more useful information to rate payers.
 - c) Pam Ellis received an email inquiry from Jeffrey Lee of icompass software from Diligent on September 27. He had failed to follow up earlier and did not have time to respond completely adequately to the RFQ but submitted a proposal of costs. (15a) The meeting management software was \$3850 a year and was not the preferred choice.
 - d) Civics Plus met with committee members via Zoom. They did not respond to the RFQ directly but told the committee cost would be under \$5000 (first year's annual fee and set up) Annual renewal—will have to find out \$3400-\$4000 just for the agenda software(15b). The City of Billings uses Civics Plus software; their search feature is very poor. The presenter said she would inquire and respond to our concerns the next day. She did not respond.
 - e) 2021 RFQ for The Board of the County Water District of Billings Heights BY BRITTANY SEE DIGITAL SALES MANAGER, Ballantine Communications (15c) The pricing in this proposal is a rough estimate based on market research, competitive analysis, and a brief overlook of the Water District site. Investment \$8,000 Timeline 1-2MONTHS
 - f) The district received the most complete response to the RFQ from Municode (15d). They have indicated they could meet all the requirements outlined. The next step is for the by-laws and governance committee to follow up with contacts to cities in Montana and regionally that use the software and website platform in the western United States. The board consensus at the September meeting is that we should review all components of the software and contact references provided. the Municode Meetings would also qualify for the 50% discount on year one. The costs for a standard website design and board management software is \$5850 for year 1 and \$2100 annually.

Here are some examples of western region sites from Municode:

Feel free to hit the refresh buttons on these sites as the image files sometimes change

Standard Design:

- <https://www.hoopercity.com/>
- <https://www.livingstonmontana.org>
- <https://morgancityut.org>

- <https://www.newmeadowsidaho.us>

Custom Designs:

- <https://ketchumidaho.org>
- <https://www.kenai.city/>
- <https://www.greatfallsmt.net>
- <https://www.cityofsaxman.com/>
- <https://www.northogdencity.com/>
- <https://www.cityofredlodge.net>
- <https://www.millswy.gov/>

2. Local Government Interim Committee (Pam Ellis)

- a) Pam Ellis was asked by the staff of the interim local government committee to participate in a panel about her experiences and recommendations regarding revisions to the statutes for county water and sewer districts. She discussed this at the inservice meeting in August with Jeff Weldon. The meeting was also discussed briefly at the bylaws committee meeting in September when Terry Odegard mentioned that he had watched Dan Clark's testimony; Jeff Weldon asked if meetings were recorded and Ms. Ellis affirmed they were available. Representative Brewer thanked Ms. Ellis at the Heights Task Force meeting in September.
- b) Ms. Ellis sent two memos to the full committee regarding her personal recommendations about areas needed to be changed and she stated this directly in her verbal testimony. The link to the video testimony is <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20211013/-1/43940>
- c) Her submissions to the committee are available publicly through the committee website. Her initial testimony was printed and available at the meeting, included in the agenda for the meeting and is available at the interim local government committee website https://leg.mt.gov/content/Committees/Interim/2021-2022/Local-Gov/21_Sept/BillCleanUpEmails.pdf . Her second email that was more detailed about multiple problems with the statute that she felt needed to be changed; that correspondence was posted by the interim committee at https://leg.mt.gov/content/Committees/Interim/2021-2022/Local-Gov/21_Sept/21.09.23_HJ10Considerations_for_revising_statute.pdf .
- d) In her oral testimony Ms. Ellis referenced the MT Local Government Board Handbook which the board received during the training from Jeff Weldon in August 2021. That link is now available on line. https://leg.mt.gov/content/Committees/Interim/2021-2022/Local-Gov/21_Sept/MTboardHandbook_2016.pdf

- e) Other documents which have been posted on the Interim Local Government Committee website include Board Packet 1 https://leg.mt.gov/content/Committees/Interim/2021-2022/Local-Gov/21_Sept/BoardPacket1.pdf which includes Montana Statutes on the Right of the Public to Know and Participate, Open Meetings Law, Minutes of Meetings , Montana Code of Ethics Montana Statutes on Nepotism, General Board Statutes and Board Packet 2 https://leg.mt.gov/content/Committees/Interim/2021-2022/Local-Gov/21_Sept/BoardPacket2.pdf which includes Principles of Good Governance, Rules and Procedures for Governing Water/Sewer Districts, Parliamentary Procedure, and Parliamentary Motions Guide.
- f) Any member of the public can sign up at the website to receive notices of the meetings and can sign up to submit oral testimony during the interim meetings.
- 3. Legal Liaison (Jeff Engel) Update on various issues (Legal Committee is Dennis Cook, Brandon Hurst, and Jeff Engel)
- v. Lawsuit with the City
 - 1. Due to Dennis's recent health issue, the legal committee meeting scheduled for last week was cancelled. The meeting was rescheduled for Monday, October 18th. There are a few informational items that we requested Roberta Berkhof to obtain. With that information, the committee is planning to present the Board with a recommendation for action
 - 2. The committee is working to come to conclusion on a number of concerns. The City's demand is for \$2,970,599.35. However, there are concerns related to past charges from the City that could result in a substantial adjustment to the amount owed the City.
 - 3. On or about September 22, 2021, the Board of Directors selected 3 Board members to represent the Board at informal discussions with the City related to the lawsuit. Our first meeting was on September 30, 2021. There were attorneys for both parties present. It was a productive meeting that was very helpful in determining the issues and discussing the various positions taken by the City. After a lengthy discussion, and in order to save the District additional attorney's fees, it was collectively decided to continue these meetings informally, without attorneys present. Another meeting is tentatively scheduled for October 29th. The committee will continue to work toward resolution. If the informal meetings are no longer productive, a third-party mediator is available to help negotiate a settlement.
 - 4. It was discussed at length the need to not circumvent the process of collecting the information and determining the best results for the District by the legal committee; the Board of Directors will be given the opportunity to vote on any recommendations the legal committee presents. There is a fine line between the District's legal position and the public's right to know. Discussions that publicly discuss particular issues and legal strategies have the potential to compromise the Districts legal position. The committee will do its work and make a recommendation regarding the lawsuit to the Board at the appropriate time. Our current recommendation is to have the legal committee continue on the same path, working toward a negotiated settlement with the City of Billings.

5. The initial meeting with the City of Billings included: Dennis Cook, Brandon Hurst, Jeff Engel, Bobbi Berkhoff (Felt, Martin, Frazier & Weldon, P.C) and Chris Kukulski (city manager), Jennifer Duray (Deputy Director of Public Works), Roy Neese (Ward 2 Council member) and Gina Dahl (City of Billings City Attorney). Jeff felt they made good headway. The next meeting schedule for Friday, October 29 @ 4:00 pm will be even more informal; no attorneys will be present. Jeff Engel stressed the city called and invited representatives of the County Water District board to meet informally.

Dennis Cook said the board needs to know that the city initiated and that's where we're at. We're working through it and we feel a lot better from where we were to where we are now. Jeff has done a great job as far as being our liaison and Brandon too. I think we're closer than ever to making an agreement that will be beneficial to both parties. They initiated the call and said let's get together, let's figure this out. To me that is very encouraging, it shows a willingness on both sides to get something done.

Ming Cabrera expressed concern with our legal representative, Bobbi Berkhoff, because she sent us a letter that cautions against discussion by the full board because it limits her ability to negotiate. As far as I'm concerned, let's get this darn thing done and get the attorneys out of the room. Any attorney wants to stay in there for another 4 months and get paid. But if the city is willing to talk, let's do that and get the attorneys out of the room and have this bill done. From the reading I have done, there is a bill for \$2,970,599.35. Obviously someone has had a number and they are willing to defer all the finance charges and back charges. But the attorneys are going to eat us alive if you continue with their helping with the negotiations to get this done. We have some CD's that will be due in the future and we need to consider to get this thing done. Thank you Dennis, Jeff and Brandon for getting this thing moving. But I am not going to listen to our attorney because we listened to that other attorney for a year and a half and he just kept writing the bills. Same with Swimley and Tommy Towe. Let's get back to business.

Laura Drager noted that from the documentation she has seen, it looks like the amount the city is asking for is \$2,970,599.35 and that is for the water that we received and sold to our customers. In previous board meeting we had discussions where we were directing our legal liaison committee to discuss with the city or whoever that we want to get the bill paid, we don't want to pay any service charges and we don't want to bring into play any discussion regarding contract, rates. We just want to focus on that one thing and get that taken care of. Can you tell me in your meeting that you had, was that the case? Was it just discussing that or were other things brought into the discussion?

Jeff Engel said there were some other things on the table but I don't know that we can discuss them. This is one of the things that are really hard to deal with. Let me back up a step here. The attorney Bobbi Berkhoff is one of ones that is on board with us here to give us rein and let us do our thing by ourselves. She is not pushing the issue of being in all those meetings. She is supporting us in that decision to have these informal meetings with the city and she is looking at it strictly from a cost standpoint. I just wanted to clarify that. There is a fine line between the district's legal position and the public's right to know. They strongly encouraged us to try to keep it quiet until we have something to

present to the board. At this point in time, we don't have anything formal to present to the board.

Pam Ellis stated that that essentially violates MT Open Meeting laws and she is offended. Jeff Engel said that Jeff Weldon disagrees with that. If we bring everything that we've discussed to the table, it becomes public knowledge and it affects our ability to negotiate.

Pam Ellis said she was not clear why we were negotiating. The number has been the same for the last 2 1/2 years. The number has not changed by a penny. The city was demanding that we change the contract and they are now saying they will accept the payment.

Jeff Engel said the contract is not an issue at this point. In our last meeting, Chris Kukulski said the city would address the contract as a separate issue. They agreed to that right off the bat; we didn't have to press that issue at all. So those two items are separated.

Dennis Cook said there is a definite willingness to look at both sides and to try to come to some resolve. We're as close as we're ever going to be. If it looks like there are underlying circumstances that we could come to some agreement on and actually save the district some money, those are things that are still being talked about. All we're asking for the board here is some patience to let us follow through and see what can happen. The worst scenario is the number stays the same; we don't know that. We don't know that it is going to stay the same because that is part of our back and forth. So we have to just take these meetings initiated by the city. They are willing to listen. To me, that is a situation where I believe it could be a winning for us as we move forward. And all the facts and details that are being talked about between us, they don't want their attorney there and our attorney will not be there. This meeting coming up will just be ourselves; it will be that informal. Dennis believes there is light at the end of the tunnel. I am asking the board for your confidence and trust that we can at least talk to them, follow it a little further along, and see if it is going to develop into something that is going to benefit our ratepayers and be a decision that will come out where both parties can hold their head high and get on with what we are supposed to be doing.

Pam Ellis said she would like to point out because she was in the mediation meeting and the January 13th, 2021 board meeting. The minutes of January 13th say that the board approved filing a counter claim for \$250,000 based on the permit fees. That meeting was January 13th based on the City of Billings resolution passed on January 7th 2021. Pam Ellis does not recall approval of that counter claim being discussed by the board; she doesn't believe that 6 days later the district was able to compute. Pam thinks it was added to the minutes because the Amended Answer, Counter Claim and Jury Trial Demand filed by Randy Nelson was filed on February 8, 2021 before the February board meeting. There has been more than \$250,000 spent on lawyers (between the City of Billings and the CWDBH). The other issue in the complaint is the franchise lawsuit. The ratepayers are already represented by Matthew Monforton. For the franchise lawsuit, if there is a payment you have to assess the ratepayers the payment, hire an attorney to distribute it, and that benefits the ratepayers not at all (Note: The district did not return

the \$57,000 annual franchise fee reduction made by the City of Billings in 2017 and rejected requests from the Franchise fee plaintiffs on October 11, 2017 and January 9, 2019 . The October 11, 2017 record “The District does not want to get involved because it would not be in our customer’s best interest to bite the hand that feeds us, so to speak.”)

Pam Ellis said she believes there are some real problems with the complaint that was filed by Randy Nelson in February 2021 and she hopes we don’t pursue that. \$250,000, if that is an issue it can be dealt with informally. But it shouldn’t be an issue in resolving the fee dispute with the city.

Dennis Cook said those complaints were only part of it. I want to make sure we’re clear on that. There are bits and pieces to the whole back and forth that are going on in this smaller group. That is what we are working through. We are asking again to let us meet with them to see if they really mean what they say because like I say, they are the ones that called it. We are willing to listen to them, put our offer on the table, they put their offer on the table, and we will see where we are at.

Laura Drager asked for clarification about the October 29 meeting. Who will be participating? Our legal committee, who from the city?

Jeff Engel said it would be Chris Kukulski, Public Works Assistant Director Jennifer Duray and Council member Roy Neese. Brandon Hurst explained that there is no cost to the ratepayers for the meeting; it is the least we can do. Trust us as a committee to do that. Brandon stated that he was at the mediation and nothing came from it and it wasn’t our fault. We haven’t had a real negotiation with the city ever. Two council members and the city manager came to the board and started accusing us of things, that the engineers were lying and that kind of stuff. So we never really had a real negotiation, an honest negotiation.

Ming Cabrera asked if the committee anticipated coming to a consensus on October 29th. To settle this as soon as possible, can we set another board meeting to get this thing settled and out the door. Jeff Engel said it really depends on what is accomplished October 29th. Agreed to leave it up to the committee to think about it; let’s get it done.

Jeff Engel said he didn’t think we are into having a lot of meetings and I don’t think the city is either. I think everybody is focused on getting to the subject to try to get this thing solved. And that was one of the reasons the suggestion was made to leave the attorneys out of it and just cut right to it.

Pam Ellis said that what killed the mediation from her perspective was when the city demanded changes to the contract. People who had been on the board may have known, but as a relatively new member she was stunned.

Dennis Cook said, “well, that is our ask”. Have trust and confidence in us to let us move ahead and see what we can get accomplished here. Jeff Engel agreed.

- vi. The invoice from Susan Swimley has been paid in full.
- vii. Tom Towe Invoice
 - 1. Recommendation from Jeff Weldon (reported by Brandon Hurst) The board pay the invoice to Tom Towe for \$3000 (12)
 - 2. Background (Minutes of September 8, 2021) Jeff Weldon’s memo said he did not have sufficient information to make a determination (see addendum). Jeff Engel said “reading between the lines”, the board should make a decision. Several motions were made and withdrawn. The consensus decision was that Ming Cabrera would contact Tom Towe and ask if he could reduce the invoice for the October meeting. Tom Towe represented Laura Drager, Ming Cabrera and Pam Ellis officially. The period after the election in which the Acting Board President Brandon Hurst retained Susan Swimley in representing the district’s refusal to recognize the city and county appointees and to allow the elected officials to be seated in May was very upsetting and confusing for everyone. The information and actions recommended by Tom Towe were shared with the full board.
 - 3. MOTION Jeff Engel made the motion to pay Tom Towe \$3000. Seconded by Brandon Hurst. DISCUSSION Tom Zurbuchen recommended against paying the bill to Tom Towe because only 3 board members had been personally represented and a personal attorney should be paid by personal funds Dennis Cook said he didn’t want Tom to get too far off into the weeds; his complaint will be addressed in an interim committee that is already formed and talk about it. Dennis Cook called time. Brandon Hurst said that the district’s current attorney, Jeff Weldon, recommended paying the invoice to Tom Towe. David Graves said there should be a statement made the the board members had to do it to get seated on the board—you three had to hire a lawyer which was representing 3 board members; Tom Towe did benefit the Heights Water Board by getting the new board members seated on the board. Pam Ellis noted that board members were informed of each of Tom Towe’s actions and recommendations prior to the scheduled TRO hearing and that benefitted. The only current board members that did not benefit are Brandon Hurst and David Graves. APPROVAL Motion approved 6:1 Dennis Cook voting no.

V. OLD BUSINESS:

1. DPHHS Low Income Letter

- i. Background: From the board minutes September 8, 2021
Recommendation from Felt Martin (24) Not Received Ming Cabrera made a motion at the September meeting that the district complete the DPHHS application. Seconded by David Graves. The motion passed unanimously.
- ii. Peyton Brookshire completed the application to the state. Ratepayers seeking relief need to submit information to the state. The district had just gotten the information on October 20th. Basically the people that want it have to contact DPHHS. If somebody comes in and asks about it, they can get the address from the district depending upon what county they are in. Dennis Cook did sign the application. Pam Ellis asked Peyton if he would send the directions to the board so we can see the process; Peyton said he would.

6. Planning and Development: Strategic Plan (3 years): Dennis Cook (Postponed)
 - i. Measurement of Success for Success (Postponed)

VI. OLD BUSINESS:

1. DPHHS Low Income Letter (23)
 - i. Recommendation from Felt Martin (24) Not Received
 - ii. Ming Cabrera made a motion that the district complete the DPHHS application. Seconded by David Graves. The motion passed unanimously in September.
 - iii. Peyton Brookshire completed the application to DPHHS. Ratepayers submit their information directly to the state. The manager's report will include the number of ratepayers each month whose water bills are paid by the program. Pam Ellis included the communication from Jennifer Duray. The City of Billings is definitely participating in the program and since the CWDBH is serves about 10% of the residents of the City of Billings, it is important that we do it.

2. Update on Chlorination project:

- i. December 9, 2020 Duke received Task Order 26 from Interstate Engineering for the water storage reservoir mixing, chlorine residual sampler/analyzer, and chlorination system. The estimated cost of the equipment is \$250,000. The work would start in the spring of 2021 and we would go live in the fall of 2021. Brandon Hurst made a motion to approve the purchase of the chlorination system and mixers for the pump stations and reservoirs. Roger seconded. Motion carried 6-0.
- ii. June 9, 2021 Oxbow project was previously approved for the chlorination station. Peyton updated the board that Interstate Engineering was working hard to get the new system online before winter. This is needed to maintain the chlorine levels.
- iii. The general manager did not report the bid opening for the chlorination project to the board prior to publication. The RFP was published twice in the Yellowstone County News, once after the bid meeting with the engineers had already occurred. Applicants had to pay a \$30 fee to download an RFP packet; the RFP was not posted on the state of MT site for RFP's.
- iv. Board members David Graves and Ming Cabrera attended the pre-bid conference held at the Ox Bow reservoir site, 3500 Hawthorne Lane, Billings, MT on Thursday, September 23rd, 2021 at 1 P.M. The manager will update the board on the current status of the bid process and provide the comprehensive review scheduled for the June 9, 2021 meeting. The board will discuss the process and may make a motion for further direction to staff.
- v. Peyton Brookshire said the difference between the project approved on December 9, 2020 and the ARPA application estimated cost of the project was \$690,000 was because the \$250,000 was for the shell; the \$690,000 was full build-out of the chlorination facility. The JR Civil Bid Package (10b) was linked in the agenda and on dropbox. The bid was \$520,661 (engineers estimate \$212,500). The bid included site improvements at the Hilltop, Lanier and OxBow Reservoirs.

Dennis Cook noted that the agenda included information from the past. Pam Ellis noted that one of the things Jeff Weldon has said we need to include in background information. Pam Ellis said the chlorination project was approved in December 2020 at \$250,000 and then in June we approved the ARPA grant which had the same project at \$690,000. What was the difference?

Peyton Brookshire the actual equipment itself was \$250,000 and that was the assumption when we built the tanks and poured the concrete pads. The bid that was rejected was not for the total project; it was just for the building.

Comprehensive review of all Rates and Fees Capital Improvement Plan by Interstate

- vi. Background: The June 9, 2021 Agenda had “unfinished business item” a “comprehensive review of all Rates and Fees, Capital Improvement Plan that will be done by Interstate Engineering.” This item was tabled for a future meeting in June and not discussed in September 2021.

Pam Ellis said she assumes that the board has not authorized. Peyton said, no, because we have to wait for the Raftelis study to be done so that we know what we’re looking at before we get into that.

- vii. The board has not approved a contract for Interstate Engineering to do a rate and fees and capital improvement plan. The prepaid bills approved by the board on 10/20/21 include a payment for \$29,785.54 to Interstate Engineering.
 - 1. \$2440.50 to project support to Raftelis and NW Transmission Pressure zone modeling
 - 2. \$15,875 design services for chlorine sampler, analyzer, injector and tank mixers for Oxbow, Hilltop and Lanier
 - 3. \$11,000 to IMEG Mechanical, electrical and plumbing subconsultant
 - 4. \$264 for on call GIS services
 - 5. \$184 for Rawhide transmission main punchlist
 - a) Total billings to date \$221,278.05
 - b) Limit \$270,300
 - c) Remaining: \$48,825.19
- 6. Update on the Raftelis report
 - a) RECOMMENDATION The Board may move to schedule a meeting with the consultant for “Rate Setting 101” in conjunction with Josh Jabalara from Midwest Technical Assistance. The board may consider if they want to continue working with Raftelis to evaluate this information.
 - b) PAYMENTS TO RAFTELIS

9/14/2021	\$1,567.50
8/13/2021	\$5,112.50
TOTAL	\$6680.00

Dennis Cook asked Laura Drager if she knew if that number was correct; she did not. Pam Ellis noted that the amounts came directly from the reports the board received from Dianne Crees.

- c) Background: The agenda included 12 emails between General Manager Duke Nieskens and Assistant Public Works Director Jennifer Duray or references to the rate study from CWDBH minutes.
- d) The June 9, 2021 CWDBH Minutes record:
 - i) Manager's Report – Peyton Brookshire (May and June)
 - ii) City's rate study with FCS group. There was a conflict of interest because the City of Billings currently has a project with FCS group. The City's rate study has been forwarded to Raftelis. This study would need to be done before we can do the comprehensive review of all the districts rates and fees, and capital improvement plan which Interstate Engineering will do.
 - iii) Unfinished Business:
 - iv) Raftelis: Peyton gave an overview of the rate study. The reason one needs done is to make sure the District's contract with the City is being followed. Peyton mentioned two glaring issues:
 - v) a) the charge for the west end water plant which is not completed. The contract clearly states that the City can't charge the District until it is completed; and that the water plant has to directly serve the Heights;
 - vi) b) there is a charge of \$50,000 for maintenance of Oxbow reservoir. The city monitors the levels in the tank, but they do not maintain it.
 - vii) Public comment: Tom Zurbuchen asked how many board members have read the contract that the District has with the City of Billings. Pam Ellis stated that she had sent the contract to the directors. Tom also mentioned that the American Water Works Association (AWWA) Manual M1 is what sets the rates. It is quite a lengthy manual, and somewhat expensive. At the Heights Task Force meeting, City Administrator Chris Kukulski stated that the City of Billings does not have to have the treatment plant built/online before recouping the money from the District.

Frank Ewalt, customer of Heights Water and City Councilman stated that the first stage is under construction with the water lines and pump. The request for bids went out the beginning of this week or last, and should be done within a year's time. The District might get by with not paying the 31% next year, but the following year, the District would have a much higher percent increase. It is going to happen either way.

The current water plant formerly belonged to the Yegen's and is over 100 years old.

- e) Pam Ellis noted that the emails from Duke Nieskens to Jennifer Duray note in May that “our consultant is reviewing and we are waiting for their comments”. The GM told the board in April 2021 that Dule forwarded the Rate Study from the City of Billings to FCS Group in Denver. On June 9, 2021, Peyton told the board that there was a conflict with the FCS group because the City of Billings has a contract with FCS. Peyton recommended forwarding the rate study to Raftelis. In June, the minutes record “There was a lengthy discussion. Laura Drager made a motion to proceed with the rate study with Raftelis. Dennis Cook seconded. Motion carried 3-2. (Brandon Hurst voted but the Acting President only votes in a tie-breaker.)”
- f) Laying on the board table but not referenced at the meeting was an undated email from Andrew Rheem to Peyton:
UNDATED EMAIL FROM ANDREW RHEEM TO PEYTON
BROOKSHIRE

Good morning Peyton,

Sorry for the delay in getting back to you. I likely missed the cutoff, but below are the next steps. The timeline is more difficult to estimate since the City will very likely take some time to respond and I don't have a good sense for how long that may be.

Raftelis has finalized questions and additional data requests for the City based on the District rates identified within the rate study report completed. The study included rate recommendations for rate effective July 1, 2021 and July 1, 2022. Below are the next steps:

Submit questions, clarification requests and additional data to the City in October 2021

Receive and review responses from the City

Determine next steps

Accept explanations and results of the City's rate study and proposed rates effective July

1, 2022

Complete further discussions with the City with the intention that it will result in a lower proposed rate increase than what is current proposed to be effective July 1, 2022

Invoke the arbitration clause of the contract with the City and pursue an arbitrated outcome

Regardless of the path chosen in "Step 3", it is prudent for the District to prepare for the rate to be effective July 1, 2022 as proposed if options 3B

or 3C are chosen. Options 3B and 3C will likely result in the same rate or a lower rate than proposed.

Questions or to discuss, please let me know.

Thanks! Andrew

- g) Dennis Cook asked Peyton to relay to Andrew Rheem that he was disappointed in the very slow response from Raftelis. Trying to get information is very very hard. We would like to get a summary and a report so we have something to read through, make our own conclusions, ask some questions, and then move ahead. Dennis asked if we had a hard copy report from Raftelis now; Peyton responded no. They have spent the time studying the rate report from the City of Billings and it's implications on our rates. Raftelis will take their questions and go to the city to get those answers and factor that in. Peyton said hopefully the city will be responding in a timely manner.

Laura Drager spoke with Andrew, he had said he would be making business trips for other clients and that he would be happy to meet with us. Can you find out when he will be in the area. Peyton said sure.

Laura's understanding from talking with him was that the first step was they were doing a facilities study. That was the first thing and that should be completed. Based on the data that you've provided us, now they have gone to the city for the questions. Peyton said yes.

Pam Ellis said her understanding when Dennis called was that the review could be completed in 5 weeks. The CWDBH contract says we only have 30 days to challenge an increase in the wholesale cost of water. Ming Cabrera called Jennifer Duray and she assured him we would not be held to 30 days. Dennis was told 5 weeks and it's been 3 1/2 months.

Dennis Cook reiterated that it seems like it is taking forever to get something out.

Ming Cabrera said he was a little disappointed. We pay \$50,000. Andrew Rheem was in the board room and left in the middle of the meeting without talking with us. He didn't even address the board for his \$50,000 fee. I would expect more appreciation from Raftelis and to give us a little more time for \$50,000 and he walked out on a meeting and we didn't even get an introduction.

The agenda included background information. Pam Ellis noted that when the board approved the contract with Raftelis, there was not adequate information given about how much communication there had been between the City of Billings and the CWDBH. You see that Duke told Jennifer that our consultant was going to be very unhappy in April. We had no consultant in hired in April.

Duke told the board in April that he had forwarded the city rate study to a company. He had not done that because the company had been retained by the City of Billings and was unavailable.

There were a lot of things said to the board and to Jennifer Duray that were not correct. Pam Ellis said she things we are just throwing money out the door because we are not getting information from Raftelis. The background information in the agenda shows that the board did not get correct communication from the staff. I see no rationale for why we don't have to pay for the west end water reservoir. We need to get going on rates. Andrew Rheem needs to wrap it up.

VI. NEW BUSINESS: Technology Update on Equipment and Software

1. Teleconferencing capability/Podium: Dennis Cook Dennis Cook thanked Peyton Brookshire for getting a phone line installed in the board room and purchasing a used speaker phone for conference calls.
2. Planning and Development: Strategic Plan (3 years): Dennis Cook Measurement of Success for Success (postponed) Dennis is going to keep these items on the agenda because if the day ever comes where we have things in order and operating normally, the planning is going to be important. But we have a lot of stuff on our plate at the moment so he will keep it there as a reminder.

VII. ITEMS TO BE CONSIDERED AT FUTURE BOARD MEETINGS

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

Pam Ellis requested that Dennis Cook set up an executive session with Jeff Weldon to discuss the concerns that came in relative to how something was handled in the district that apparently was a violation of federal DEQ guidelines so we know how we're going to proceed with that. Needs to be discussed so we know how we're going to proceed. Dennis Cook agreed to schedule an executive session with Jeff Weldon.

VIII. ADJOURN

MOTION David Graves made a motion to adjourn. SECOND by Laura Drager. APPROVED Unanimously. The meeting was adjourned at 8:15 pm

November 2021 AGENDA ITEMS

- BCBS increase slated at 5.6% or \$976.13 per month; factor Duke and spouse removed \$2,788.86 per month Finance Committee Report
- Audit Update: Site Visit (Treasurer's report)
- Manager's Report: BDS data requested & update on DPHHS program for ratepayers At the October 20, 2021 Pam Ellis asked Peyton if the staff would report monthly the # of ratepayers that

have registered their email, phone numbers and requested electronic billing.

- Comprehensive review of all Rates and Fees Capital Improvement Plan by Interstate June 9, 2021 Agenda had “unfinished business item” a “comprehensive review of all Rates and Fees, Capital Improvement Plan that will be done by Interstate Engineering.” This item was tabled for a future meeting in June and not discussed in September 2021.
- Planning and Development: Strategic Plan (3 years): Dennis Cook Measurement of Success for Success
- Consider applications for two additional servicemen to start in January or February. We have been short on servicemen for several years and it is time to get our staffing up. We have job descriptions that were contracted and written for us that are still current and relevant. See attached descriptions.
- Peyton will report on when Andrew Rheem will be in the area and available to meet with the board.
- Questions raised by Pam Ellis about main hit by boring company on Bitterroot Dr. 8-12. Jeff Engel will ask Peyton Brookshire to prepare a written response to questions.
- Consider the purchase a television and wall mount, as well as a camera for Zoom meetings of the Board.
- Process for hiring a new General Manager.
- Adopt job descriptions for General Manager and Board Secretary
- Adopt policies for
 - Trustee and Manager Policies Rules and Procedures for Meetings of the CWDBH Board based upon Dan Clark’s Draft Bylaws for Special Districts (MSU Local Government Center)
 - Complaint Procedures

Pam Ellis, Board Secretary

Ming Cabrera, President