

November 22, 2022

TO: Board of Directors of the County Water District of Billings Heights
CC: Duke Nieskens and Peyton Brookshire
FROM: Ming Cabrera, Laura Drager, Pam Ellis, David Graves
RE: Notice of Special Board Meeting
County Water Board of Billings Heights
November 29, 2021 2:00 pm Board Room

In 1957, the Montana Legislature passed the "County Water District Act," sections 16-4501 to 16-4534, R.C.M. 1947, which permits the residents of an area such as Billings Heights to create a district for the purpose of building, operating, and maintaining their own central water supply and distribution system. Pursuant to the provisions of the afore-mentioned Act, the Water District was established. Title 7, Chapter 13, Section 2203 of the Montana Code Annotated ("MCA") authorizes the formation and incorporation of county sewer and water districts pursuant to the requirements of the remainder of Parts 22 and 23 of the same Title and Chapter. The County Water District of Billings Heights ("District") was formed by mail ballot election-voted by the residents and landowners within the designated boundaries of the District located in Billings, Montana and duly conducted in accordance with MCA §7-13-2208(2) on August 26, 1958. A Certificate of Incorporation for the District was thereafter issued by the Montana Secretary of State on August 29, 1958.

Bylaws written in 1956 have no relevance to the current board. Given that the board has not adopted bylaws in 63 years, we are governed by Montana statute. MCA 7-13-2232. Composition of board of directors specifies that CWDBH has seven board members.

MCA 7-13-2274. Conduct of business, subsection (2) A majority of the board constitutes a quorum for the transaction of business. Four of our seven board members may develop an agenda for a meeting, notice the meeting, and conduct business.

We hereby give notice of our intention to notice a public meeting and conduct business. The staff is directed to post notice of the meeting on the website. Minutes will be kept and items supported by the majority of the board will constitute a legal board decision.

The General Manager and Assistant Manager are directed to attend the meeting.



COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

Board of Directors Special Meeting Minutes

Supporting Documents maybe downloaded

<https://www.dropbox.com/sh/aa2ga2rwiwupgn8/AABRtJLYP8Z7raLRjXj8wYbOa?dl=0>

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

Date: November 29, 2021 (REVISED)

Time: 2:00 p.m.

The November 29, 2021 board meeting was called to order by Board Member Ming Cabrera at 2:00 pm.

BOARD MEMBERS PRESENT: Ming Cabrera, Laura Drager, Pam Ellis, David Graves,

ALSO PRESENT: Attorney Mark Noennig, Josh Simpson, Colton Westkamp

GUESTS: Frank Ewalt, Evelyn Pyburn, Larry Brewster, Tom Zurbuchen, Delbert Bailey, Mike Macki,

CALL MEETING TO ORDER: Board Member called the meeting to order at 2:00 pm and thanked everyone for being there. We do have a quorum according to MCA 7-13-2274. Conduct Of Business (1) All legislative sessions of the board of directors, whether regular or special, must be open to the public. Notice of the sessions must be given and the sessions must be held in compliance with the requirements of Title 2, chapter 3, parts 1 and 2. (2) A majority of the board constitutes a quorum for the transaction of business. (3) The board may act only by ordinance or resolution

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.
2. 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. Ming Cabrera recognized Tom Zurbuchen

Tom Zurbuchen stated that Dennis Cook, President of the Board, called him this morning and dictated a message he wanted Tom to read. *The three board members not present are due to pre-existing work commitments but believe this meeting to be a violation of the current bylaws (adopted 1956), page 6, Article 6, Section 3. He asked me to read it, which I will be happy to do:*

Section 3: Special meetings of the Board of Directors may be called by the President, and in his absence by the Vic- President, or by any five (5) members of the board. By written consent of all the

directors, special meetings of the board may be held with or without notice, at any time or place and for any purpose or purposes.

So they believe this meeting is illegal; that is Dennis' comment. Tom Zurbuchen also believes this meeting is illegal. Tom has seen no agenda. Is there an agenda for the public for this meeting or not? Tom has seen none. He has seen no advertisement for this meeting. Tom found out about it when Dennis Cook called. How can a meeting be open to the public without the public being notified and being given an agenda? At least some kind of idea of what is to be discussed if you just said it was a special meeting? What is the discussion on the special meeting? No agenda.

Ming Cabrera responded that the agenda was prepared last week. Unfortunately the people in this office refused to put out so we put it out publicly. Dennis and the other three board members nor the office staff did not put the agenda out there. We tried to put it out as publicly as we can and let people know.

Pam Ellis commented that Evelyn Pyburn called her a week ago Sunday. Evelyn was going to include the notice of the meeting in the article. It was planned for the front page of the Yellowstone County News. Jonathan McNiven was out of town and the article was pulled out due to space limitations. Evelyn did send it out on her business hotsheet, it was posted on the Heights Task Force Facebook which has more than 1000 followers, on her personal facebook, and a facebook page for the County Water District Board. It is all we could do.

A question was asked, "What's the reason for the meeting?" Ming Cabrera responded that the reason is that we were not able to conduct business at our regularly scheduled meeting in November. We have business we need to do including adopting bylaws for this organization, healthcare for the employees has to be signed by November 30.

Why wouldn't you have the meeting at the normal time, 6 o'clock. Pam Ellis said the regular meeting was scheduled at 6:00 pm. Tom Zurbuchen filed a threat against Laura Drager to file an ethics complaint with the Realtors Board of Ethics. Laura did not attend the meeting nor did the other three board members. The three board members in attendance went forward with a special meeting in which we had a discussion.

Tom Zurbuchen interrupted to say, "it was an illegal meeting". Pam Ellis responded, "no, it was not. We have had no illegal meetings. Moving on..."

Pam Ellis made a motion to move adoption of the bylaws to the first agenda item. Seconded by Laura Drager. No discussion from the Board. Ming Cabrera commented that four board members and Attorney Jeff Weldon were present at the November 8 Bylaws and Governance Committee meeting. It makes a lot of sense to do these bylaws since there has not been written since 1958 when this organization was established under the 1957 statutes. May I remind everybody that a public utility is a monopoly on the ratepayers in this area. That is why meetings need to be public and we need bylaws. We cannot run a public utility as a private enterprise.

Mr. Bailey asked what the end run of this agenda is that “you people have.” Does that include the City of Billings by any chance. Ming Cabrera answered: no, this is the County Water District, not the City of Billings.

Mr. Bailey asked, “OK, so there is no intent to bring the City of Billings in here to manage this district.” Ming Cabrera said the only way that could happen is if the legislature changes the law.

Laura Drager clarified, “in managing the district? Is that your question?”

Mr. Bailey said he knows for a fact, having lived in the Heights since 1963, that the people who have managed the water district all those years have done a pretty good job. Has it been perfect? No. What the City of Billings does is not perfect either. He owns property in the Heights, in the City of Billings and in the county. Guess which one is the biggest nightmare? The City of Billings. Those people, when they want money, they just send you a bill. What our concern is, they want a bill to put surcharges on our water to finance the monstrosity that they are building on the west end. We have already paid for our water here and our infrastructure. That was not the City of Billings. They did not want us from Day 1. Our interest is to keep the City of Billings’ hands off of our water.

Laura Drager explained that we purchase the water from the City of Billings; they are the sole supplier of our water. There has been no discussion amongst the Board members and the public about having the City of Billings come in and manage the district. We do not have any intention of taking that on as a task. At this point, all we are looking at is continuing to operate as a separate entity.

Pam Ellis said there is no legal way to dissolve the district. There are two routes in statute. One is that the district has no debts and no assets. That is never going to happen. The other way is if 51% of the ratepayers sign a petition to put that on the ballot. 50% of our ratepayers is more than 9000 people. 51% is a much higher percentage than any other type of petition to put an issue or recall on the ballot. There is no legal way to eliminate the district, period.

Question: your intent was that there were no bylaws written? Ming Cabrera responded that the bylaws are outdated. Were they ever posted? The bylaws to be voted on today were revised November 19th. They were sent to the full board and all the staff. They were not posted publicly because the staff refused to post the bylaws.

Attorney Mark Noennig commented that public notice does not require that the information be posted on the website. The staff refused to honor the directions of the four board members to put it on the website and therefore it was made public by all the other means that were made possible.

The comment was that the public doesn’t know about the new bylaws...so we’re going to take your word. Is that the case? The staff has all the agenda, the bylaws and all the other information. They have had them for over a week. You can get them from any staff member. We are passing a policy tonight that requires that they provide information to the public when requested. Pam Ellis is also happy to send information to you if you include your email on the sign in sheet.

Attorney Mark Noennig said he has not researched this in detail. The statute requires that upon the establishment of the district, an adoption of bylaws as well as a procedure for special meetings. That statute was adopted in 1957, I believe. The bylaws existed for a private county water district for 9 members at that time. When this district was formed as a public body in 1958, no bylaws were ever adopted. So as far as I can determine, there are no bylaws until this draft of bylaws which was done by counsel for the board, not by me and was submitted at a public meeting for review at the November 17 meeting. The Board did not review the bylaws at that meeting but the draft was available to the public. And it was on the agenda for this meeting which was made as public as possible.

Laura Drager reiterated that the November 8 Bylaws and Governance committee was also made public and the attorney was present.

Attorney Mark Noennig said that the original bylaws have no relevance. They were written for a board that no longer exists. Ming Cabrera pointed out that not only were four board members and the attorney present at the bylaws meeting, Tom Zurbuchen was also present. Tom has a copy of the original bylaws. He had valuable input at that meeting.

MOTION TO APPROVE MOVING THE BYLAWS TO THE TOP OF AGENDA: Approved 4:0

By-laws update)(13) Printed separately

Recommended motion: Having conducted a public hearing, considered written and spoken public testimony, I move to adopt the By-Laws of the County Water District of Billings Heights dated November 19, 2021.

MOTION Pam Ellis moved to adopt the bylaws that were drafted on November 19, 2021 and were included with the agenda notice for this meeting. **Seconded** by Dave Graves. No board discussion.

PUBLIC COMMENT Tom Zurbuchen said he sent all 7 board members six items he thought the bylaws were deficient in and did not meet with the previous lawyer, Jeff Weldon's recommendation. I hope that can be part of the official minutes and discussed as to whether any of those changes would be made. Your own lawyer said you shouldn't quote state law, you should reference it. Nowhere in the bylaws does it state when and where a special meeting can be called. You have committee meetings set up and there are only 7 board members. The bylaws committee had four members on it. Technically that is a full board meeting. Somewhere in the bylaws it should state that committee meetings will not conduct board business. You advertise them as a committee meeting, not as a full board meeting. The president is always entitled to sit in on any committee. So all of your committees could be at any time, a quorum of the full board. I urge you to make some of these changes or at least discuss them. This is for the benefit of the board, the whole water district.

Attorney Mark Noennig said he didn't know if there were changes made after that meeting, but all he sees are references to follow Montana law. There is nothing in these bylaws that directs the number of members on a committee. If there is notice and it's a public meeting and there's a

quorum, you are correct that the committee could conduct business. The board can take that under advisement.

Jeff Weldon said that it did not matter how many people were on a committee, the meetings still have to be noticed. We did that when we can get the staff to cooperate. We have not conducted any official board business at the committee meetings other than to approve documents to be referred to the full board at a public meeting.

FROM: zurbuchen@bresnan.net

SENT: Saturday, November 27, 2021 9:18 AM

TO: 'denniscook@billingshomes4sale.com' ; 'bhurst@meadowlarkco.com' ; 'pamellis50@gmail.com' ; 'laura@remax-billings.com' ; 'mingformontana@gmail.com' ; 'jeffengelconstruction@gmail.com' ; 'graves@q.com'

SUBJECT: bylaws

NOTE: The comments below reflect the wording in a prior draft. The draft considered was the November 19, 2021 draft.

I sent you all a link to the Local Government Interim Committee Meeting and I hope you took the few minutes to watch it. I was amazed at the out-come especially Larry Brewster saying that he hadn't read the statutes until just before that meeting and most of his previous concerns/complaints were already covered in the current statutes! Some have said he couldn't now make the statements he made outside the CWDBH office in May; I wasn't there in May so will not and cannot comment. It is now apparent the City and County had no authority to appoint a representative to the CWDBH Board for decades. Nothing was discussed about rectifying that and I can't see what they will do to fix the condition. We can't live in the past but find fair and equitable ways to move forward.

The proposed CWDBH Board meeting of November 17, 2021, (proposed by Pam, David and Ming after Dennis cancelled the meeting) violated open meetings laws to the limit of comprehension! No notice to the ratepayers of a meeting, no advance notice to ratepayers of the agenda. How were ratepayers supposed to know what was to be discussed so they could participate? MCA 2-3-103 clearly states: "Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public." The agenda that Pam sent to me, and a very select few others, had an item of bylaws. Isn't that something of significant interest to all ratepayers? These proposed bylaws have a section

Article VI Section 6 which states: "All meetings of the Board shall be open to the public and subject to the public participation and notification requirements of Montana law except as otherwise provided in law. Appropriate notice of all meetings shall be provided to the public." The meeting would have violated the proposed bylaws that the previously mentioned 3 Board members and Laura wrote! Again we can't live in the past but find fair and equitable ways to move forward.

The current bylaws cannot be removed or ignored without a public hearing at a well advertised CWDBH Board meeting. The CWDBH definitely needs bylaws that are current, fair and equitable, follow the law and consistently follow what Jeff Weldon advised at the committee meetings. The proposed bylaws don't, so I propose the following changes:

1) PAGE 2, Article VI Section 3: *The Board of Directors ("Board") shall consist of five (5) elected members as provided for in Montana law. There shall also be one member appointed by the Yellowstone County Commissioners and one member appointed by the Mayor of the City of Billings as prescribed in Montana law. Should say: The Board of Directors ("Board") shall consist of members prescribed in Montana law. The Local Government Interim Committee meeting of November 18, 2021, clearly said the presented wording would violate current State law, Will they change or not is unclear at this time but until they do the proposed language is definitely unlawful. Jeff Weldon advised the committee not to quote State Statutes but to reference them as this change does.*

2) Page 3, Article VI Section 4: *As provided in Montana law, Except as provided herein, or by law, the term of office for directors shall be four (4) years from and after the date of their election or appointment. Directors shall hold office until the election and qualification or appointment and qualification of their successors.*

Should say: The term of office shall be as prescribed in State Law. The Local Government Interim Committee Meeting of November 18, 2021, heard complaints about current State Law. Will they make a change or not are unclear but by adopting the proposed language in the Rough Draft the District could become in violation, by modifying the District stays in compliance no matter what the change is. Jeff Weldon advised the committee not to quote statutes but reference only.

3) Page 3, Article VI, Section 5: *Each director, as an incumbent of an elective office, whether elected by popular vote for a full term, elected by the Board of Directors to fill a vacancy, or appointed by a mayor or the board of county commissioners for a full term, is subject to recall by the electors of the District in accordance with Montana law. Should say: Each Director, whether elected or appointed for full term or fill a remaining term, is subject to recall by the electors of the District in accordance with Montana law. The Local Government Interim Committee Meeting on November 18, 2021, heard complaints about County and City appointments. Will they change is unclear but the Rough Draft proposal doesn't mention appointments by City or County to fill partial terms, another possibility for a legislative out come.*

Simply adopting State Law corrects any change they make. Jeff Weldon advised the committee not to quote statutes but reference only.

4) Page 5, Article VI, Section 7, Duties of the Board President: *The President shall, when present, preside over meetings of the Board. The president shall sign all resolutions and contracts on behalf of the district and perform such other duties as may be imposed by the board of directors as required by Montana law. The President shall communicate to all directors the information needed to make decisions.*

The President shall speak as a representative for the Board. The President may appoint any voting member to speak on behalf of the Board. Board members approached by the media, or others, shall speak as individuals and may refer questions to the President. This should read: The President shall, when present, preside over meetings of the Board. The president shall sign all resolutions, contracts and ordinances on behalf of the district and perform such other duties as may be imposed by the board of directors as required by Montana law.

The President shall communicate to all directors the information needed to make decisions. The President shall speak on behalf of the Board. Board members approached by the media, or others, shall speak as individuals and may refer questions to the President. State law

requires the District to do business with resolutions and ordinances. If the ordinances (which weren't mentioned) are not signed by the board President, how can they be official and enforced?

5) Page 6, Article VI, Committees and Advisors: The Board shall determine the necessity for any committees, either temporary or standing, and shall select and appoint the members of these committees. There should be an addition: No official Board business will occur at committee meetings no matter the number of Board members present. This should be a no-brainer as it only requires 4 Board members to have a quorum and what committee can function with 2 members. The Board president has the power to attend and participate in any committee at any time! Then there is fact that these are committee meetings not Board meetings and advertised as such. If a vote occurred it could be challenged under open meeting laws which have consequences. Even the City has City Code that prevents business at their work sessions!

6) Page 6, Article VII, Amendments: These Bylaws may be repealed or amended by the affirmative vote of a two-thirds (2/3) majority of the District Board, at any regular or special meeting so long as the change does not put the District into conflict with the Montana Code

Annotated or the administrative rules of the State of Montana after two reviews at regular board meetings. The board shall not have the power to change the purposes of the District, so, as to decrease its rights and powers under Montana law or to waive any requirement of bond or other provisions for the safety and security of the property and funds of the District or its users. This should read: These Bylaws may be repealed or amended by the affirmative vote of a two-thirds (2/3) majority of the District Board, at an at any two consecutive regular or special meeting so long as the change does not put the District into conflict with the Montana Code Annotated or the administrative rules of the State of Montana after two reviews at regular board meetings. The board shall not have the power to change the purposes of the District, so, as to decrease its rights and powers under Montana law or to waive any requirement of bond or other provisions for the safety and security of the property and funds of the District or its users. Adding consecutive to the language is what

Jeff Weldon recommended at the bylaws committee meeting. Bylaws should not be easy to change as they are serious and extremely important, therefor which two meetings is also important.

Tom Zurbuchen

MOTION TO APPROVE THE BYLAWS drafted on November 19, 2021: Approved 4:0

3. Correspondence Received by Board None received.

II. REMOVAL OF PRESIDENT AND VICE PRESIDENT

Pam Ellis commented that the behavior of the president and vice-president has not been effective for the District.

1. **Pam Ellis made the motion:** having conducted a public hearing, considered written and spoken public testimony, I move to remove Dennis Cook as President of the County Water Board of Billings Heights. I nominate Ming Cabrera as President of the County Water Board of Billings Heights.

DISCUSSION Ming Cabrera said that one of the reasons he would like to have Dennis Cook removed is the fact that 1) he doesn't attend the meetings; 2) he's acted a lot on his own, especially with legal ramifications regarding the lawsuit with the City of Billings. We had a straw vote in which we recommended three people to be part of the legal committee. The people Dennis appointed were not the people recommended by the majority of the Board. When it came to legal representation with the City at that time, we moved in May that we wanted to settle with the city so we could go on with our business. All of a sudden, we found ourselves back to square one without our knowledge. Ming asked him timely "what's going on in the meetings and he refused to answer." He refused to give us information or communication at that point. Ming has one vote as does Dennis Cook. He cannot run the board as a sole person. It is a public board of seven directors, not three people.

Pam Ellis commented that Dennis Cook has had trouble understanding the role of the president. We have the discussion of the Blue Cross-Blue Shield policies on the agenda today. Dennis literally sent an email to the board that said tell me what your opinions are on the contract and he would decide which contract to sign. The cost is \$218,000 per year. That is flat out illegal. The President by statute signs the contracts. The Board authorizes the contract. That is outrageous for a President to consider that he personally has the authority to spend \$218,000 of ratepayers money without Board approval.

Dave Graves said Dennis called each Board members asking who we would recommend be on the legal committee. Then he wanted to know our opinion on settling with the city on the principal. The four of us voted for settling because we had made that motion before to pay the principal, not the late fees, not any additional costs. He chose his own people. Then we were no longer allowed to speak to the attorney, any of us. Just them. We got more information from our city council members up in the Heights about what went on in the meetings. And they were not following what we voted for.

Ming Cabrera said what we are talking about is trying to get the board in order. The board is composed of seven members; four members have not been included as board members. They are the three that have made all the decisions for the seven of us. That is my problem right there is that we are now allowed to be part of the Board and we are not allowed to talk. I was elected by the public to be there to represent you as ratepayers. That is what Ming expected. If he cannot represent ratepayers, Ming has a problem. Dennis will not speak to us.

Mr. Bailey said they are present to understand what is happening. He reiterated that they do not want the City of Billings to come in and take over the District. If they do, you're going to have a battle. He clarified that that was his question and you have pretty much answered it. He wanted to know how the bylaws are going to affect rates. Ming Cabrera clarified that the bylaws just establish rules for governing.

Attorney Mark Noennig commented was just for the folks that have not had a chance to look at the agenda and document. The bylaws just govern the operation of the Board, electing or removing the officers, calling of meetings, those kind of procedural things. That is what the bylaws do. They have nothing to do with your rates.

2. **Pam Ellis repeated the motion:** having conducted a public hearing, considered written and spoken public testimony, I move to remove Dennis Cook as President of the County Water Board of Billings

Heights. I nominate Ming Cabrera as President of the County Water Board of Billings Heights. Seconded by Dave Graves.

MOTION TO Removing Dennis Cook as President and appointing Ming Cabrera: Approved 4:0

3. **Pam Ellis made the recommended motion:** Having conducted a public hearing, considered written and spoken public testimony, I move to remove Brandon Hurst as Vice-President of the County Water Board of Billings Heights. I nominate David Graves as Vice President of the County Water Board of Billings Heights. Seconded by Ming Cabrera.

Pam Ellis commented that Brandon works a lot and is out of town a lot. One of the things that we learned at the November 17th meeting is that Dennis Cook had appointed Brandon to be on the legal committee. There had been three meetings with the City of Billings and the last one completely blew up. Dennis stormed out of the meeting, refused to speak. One of the council members said, "everything is off the table, we're now starting at \$2.95 million plus the \$5.6 million in late fees. We're starting from there, we have no agreements." The other thing we learned is that Brandon had never participated in any of those meetings. We had reports from the legal committee which contained no information. Never were we told that the people negotiating were not the people we wanted. The person with the most information on that committee was Brandon Hurst because he had been on the board for 4 years. It was stunning to learn he had never been at any of the meetings. I don't begrudge him that because his job is his priority. If you are going to be on this board, you need to do your job here too.

Ming Cabrera commented that Brandon is a good man. There is nothing wrong with him. David has begrudgingly been open to accepting the role of Vice president and to be open to all members of the Board.

Mr. Bailey said that they are hoping that your heart is in the right place. Ming Cabrera responded: Mr. Bailey, you have known my family forever. You know where my heart is; you know that that is where I am coming from.

Pam Ellis and Laura Drager clarified that all Board members are Water District ratepayers. That is the only way you qualify to be a Board member. We had a candidate who was disqualified from being on board because he owned 50% of an LLC but did not own the real property directly. He was allowed to vote but could not be a director. So the laws are pretty complicated.

Laura Drager said one of the things she was most excited about with this board is that there is such a diverse skill set in the people that were elected. Dennis Cook is amazing; he sat on the Planning Board, he is the President of the Billings Association of Realtors, currently she is familiar with him from the Real Estate side. Brandon is an executive with Meadowlark Transportation. Jeff Engel construction. Laura's background was in utilities. She was a regional operations manager for 35 years in electric utilities so she understands the business very well. She was extremely excited with the people who are on the board because we have such a diverse skill set. When it was decided that the legal committee was going to keep the rest of us in the dark, I was very disappointed because there are ideas that we each have experience with that could be valuable to bring to the table. The ratepayers would benefit from that experience as well. Laura wants to see that we move forward with getting a more open communication, something that the public can come to and say, "hey, what about this?" Tom Zurbuchen will tell you when he sends correspondence, she responds.

Mr. Bailey said he spent 50 years in commercial construction. He worked on the water treatment plant, the sewage treatment plant, and several of the pump stations. He is very familiar with HDR. The one thing was this thing with Bar11 and their pumps. If you know anything about the specifications that are written when you bid a project you understand that if you have to deviate from that in any way shape or form, it is not impossible. You don't want a developer or a construction manager or contractor telling you what you want. I live two blocks from that tank. My water comes out of the tank. Bar11 found out that they could not use gravity feed; they had to have a pump. The reason for that was state law specifying the PSI required for fire hydrants. They never met that. They find out they have to build a pump station. Some lady here, her husband sold pumps. But the fact of the matter is that came out as it was her husband that was selling these pumps. He was out of that business 10 years ago. So the misinformation that came from this area from somebody, you have to wonder why that is happening. Then the Pizza Ranch when the campaign was happening. The fee was less than \$40,000. I think they got it mixed up with the City of Billings.

Pam Ellis said they had numbers for both the west end and Heights Pizza Ranch, The Heights was about 3x as expensive as building in the city.

Pam Ellis said one of the things we want to do this year is look at our rates. Because we do get consistent complaints from developers and engineers about our rates for development. Scott Aspenlieder said at the last meeting that he was willing to work with us. Jeff Engel worked on rates with the City of Billings. Mr. Bailey, you may be another person if you are willing to volunteer to take a look at that when we get to the rate study. The rates are not fixed; we need to do a complete rate study this year.

Ming Cabrera repeated the motion made by Pam Ellis and seconded by Ming Cabrera: Having conducted a public hearing, considered written and spoken public testimony, I move to remove Brandon Hurst as Vice-President of the County Water Board of Billings Heights. I nominate David Graves as Vice President of the County Water Board of Billings Heights. Seconded by Ming Cabrera.

MOTION TO Removing Brandon Hurst as Vice-President and appointing David Graves: Approved 4:0

Attorney Mark Noennig said that the phrase "nominate" means "appoint". Ming Cabrera pointed out that Dennis Cook and Brandon Hurst are not removed from the Board. We have just removed them as officer of the Board at this point.

III. INVITED GUESTS

1. Mark Noennig HENDRICKSON LAW FIRM, P.C. 208 North Broadway, Suite 324 Billings, Montana <http://hendricksonlawmt.com/attorneys/mark-e-noennig/>
 - The board may discuss the November 17, 2021 Board meeting (see notes from the meeting (2a)
 - The board will interview Mark Noennig Mark Noennig introduced himself. He grew up in Billings, attended Billings Senior, MSU degree in engineering. Had his own engineering firm designing oil refineries. Got his law degree at University of Montana and has been practicing law with Hendrickson Law Firm since 1978. He does a little bit of everything. More important is what he does not do. He does not do criminal defense, personal injuries, worker's compensation, or divorce. Does a lot of real estate work and commercial work. Spent 8

sessions in the legislature, 3 sessions of which he was chairman of the Local Government Committee. He was asked to give some competent advice and I restricted my participation to procedural matters, contract matters and review of the bylaws. Finally I agreed that if the board had a position to take in litigation, that I would be willing to put in an appearance on behalf of the board so we can get this settled in a timely manner for a reasonable amount that the board directs. Mark submitted the firm's standard proposed Attorney-Client agreement. I have incurred some time getting ready for the meeting which I would include. His rate is \$275 per hour. My goal is not to spend extra time for which I can try to bill; that's never been my policy. It certainly is not now since I am recovering from five spine surgeries and old age. But I work 60% of the time. Mark Noennig did represent Tom Zurbuchen previously in a matter that had nothing to do with this board and he does not perceive as a conflict of interest.

Ming Cabrera wanted clarification that he is willing to work with all seven board members. Mark said he would work for this board. Don't want to get involved in disputes among the board members. It's one thing to have votes that differ. It's another thing to have personal attacks. There has been a challenge to the seating of some of the board members. I don't want to be involved in those issues.

Ming Cabrera said our first goal was to approve bylaws. We got that done. The second was to settle with the city.

Mark Noennig said it is a delicate balance in litigation with a public entity because as you all know everything the board does or discusses is open to the public. That is the way it should be and that is the way it is. It is not unusual that a committee of less than a quorum is appointed to negotiate a settlement of a case. The committee has to make a recommendation to the full board and the full board has to approve or disapprove it. Negotiation is a delicate thing. He is an arbitrator for the American Mediation Association. To the extent that you vote on an outcome and put it on the public record, you limit your options. I am not finding fault with where you are in this case. I have not sat down and reviewed all the pleadings. Jeff Weldon has offered to sit down with me and give me everything. So if you appoint me, that's one thing I think is worth my spending the time to do. I just want to make those disclaimers.

Laura Drager commented about the November 18, 2021 testimony that Peyton gave in front of the Local Government Interim Committee in Helena, he stated that 80% of the County Water District is in the City of Billings. What that means is that 80% of the people that are paying for Heights water are paying for two sets of attorneys: the attorney for the city and the attorney for the County Water District to fight each other. That seems absolutely asinine to pay money for both sides because she lives in the city of Billings. As a Board, we discussed paying the city for the water. We have a contract. Sure, they made a billing error. We sold the water to our ratepayers and all seven of us agreed. In May we talked about it. In August we talked about it. September we talked about it. October we talked about it. All seven members of the board were in agreement. Then we find out that there is a stalemate. We

just want to get this taken care of so we can move forward. This has been going on for over four years.

An audience member said, “so you’re talking about a lawsuit that is pending right now?” What is that lawsuit about?

Pam Ellis said the city failed to bill \$2.95 million. The ratepayers of the District were billed for the water and collected the money. They kept it in cash up until December 2020 knowing full well that they may have to pay the bill. There was a tolling agreement that was signed by both sides that said the city would accept payment in full of the \$2.95 million without late fees or additional penalties. Late fees are 1 ½% per month.

Laura Drager said the late fees increase by \$71,000 per month; the city filed suit in December 2020.

Pam Ellis said that when the tolling agreement expired (which she did not know about at the time even though she was on the Board; she had asked for copies of the documents but was told by Duke Nieskens that that would require a vote of the Board. That is not legal—Board members need to have equal access to information).

When the tolling agreement expired, the City filed a lawsuit against the District for the \$2.95 million plus more than \$5 million in late fees. Duke told us multiple times in the board room that he personally had computed the amount owed. That’s true. The city not only failed to bill for almost 3 years, but when they figured out the problem was with the billing to the District and not a leak somewhere in the system, they computed the wrong amount. When we were in mediation and the mediator asked if there was any dispute over the amount owed, Duke said no. Her big concern is that we don’t have a legal foot to stand on and ratepayers are at risk. If we are in court—we owe the money and the city charges late fees.

Laura Drager pointed out that the city lawsuit quotes the state code that says they are allowed to charge us late fees.

Question from the audience: they failed to bill us. So is there no legal standing—since they didn’t bill us, why would we have to pay the late fees?

Attorney Mark Noennig said it is like if your water company forgot to send you a bill, you still owe the money. Laura Drager said we have all said we are not willing to pay late fees. Mark Noennig said he has not reviewed all the documents. There is a counter claim.

Pam Ellis said part of the counter claim is for the franchise lawsuit. When the city stopped charging franchise fees, the district did not stop charging rate payers and lower the rates.

The other issue is a right of way dispute which the district disputed in 2020. The city responded with the legal rationale. Apparently the District said we are not going to pay the right of way fees (cost of opening up the road to repair a water pipe). The city responded with a letter about their legal authority. The District did not respond and continued to pay the right of way fees. Those are very small fees. The city has said they are more than willing to talk to us about the fees and if we can prove legally that the city cannot charge the fees but their attorney says they can charge. Pam believes it is not worth litigating over that issue. The once you are in court, you have to live with whatever the judge says.

A guest said that should be the position of all of us. Ming Cabrera said the city already agreed that they would not charge us late fees. The money is owed. Rather than running up more lawyer fees for the next four months, enough.

Dave Graves noted that at the November 17th meeting the city administrator sat back in the corner and he said he would make the recommendation that we just pay the principal, not late fees, no interest.

Question: why was that not done? Because the three board members would not follow the direction of the board. Dave Graves and Ming Cabrera repeated that we wanted the bill paid, we wanted the lawsuit dropped.

Laura Drager asked to bring us back to our agenda.

Laura Drager made the motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve Resolution 006-21 to Authorize Engagement of Mark Noennig, HENDRICKSON LAW FIRM, P.C. 208 NORTH BROADWAY, SUITE 324 P.O. BOX 2502 BILLINGS, MT 59103-2502 as Counsel for meeting protocol and bylaws, settlement of pending litigation with the City of Billings, and preparation of contracts for general and interim managers. (1c)

The motion was seconded by Dave Graves.

Frank Ewalt asked if this attorney was going to represent the board or the administrator. Several members responded: the board.

Ming Cabrera and Dave Graves thanked Frank Ewalt. Ming asked the question to make sure he is going to represent all seven members of this board. So then we have open communication at all times with the public and the seven board members. Not three, not one, but seven board members.

Mark Noennig said he has not looked at the case as he told us. It is difficult to strategize in an open meeting. Pam Ellis said the other issue is that we did not expect Jeff Weldon and Bobbi Berkhoff to be doing something that is in opposition to what the majority of the Board wants and that is what they were doing. Attorneys have a responsibility to communicate with their clients. Jeff Weldon communicated and did something completely different.

Dave Graves said his gal from Great Falls—we were led to believe she was moving down here.

Pam Ellis said Bobbi Berkhoff introduced herself as the new hire for Felt Martin. When she called and asked Pam to get information for her, Pam told her she would be happy to meet her at the office. Roberta's response was that she was in Great Falls and not moving to Billings. We paid her to drive down to Billings and meet with the city. That is hugely expensive.

Tom Zurbuchen said Pam said the franchise fee is covered in existing lawsuit. That is incorrect, this District has been excluded from both franchise fee lawsuits. Plaintiffs would receive \$0 from the City from the franchise fee; they have been excluded from day 1.

Pam Ellis said there are two indications in the minutes that plaintiffs came to the Board and asked them to join the lawsuit. Duke Nieskens recommended that the District not join the suit because "we would be biting the hand that feeds us." If you watched the city council when they discussed the lawsuit in open session in December 2020, Gina Dahl figures the liability was \$50,000.

The motion: to hire Mark Noennig as Counsel for meeting protocol and bylaws, settlement of pending litigation with the City of Billings, and preparation of contracts for general and interim managers was approved unanimously.

Laura Drager made the following motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approving Resolution 007-21 to Direct Mark Noennig, Counsel for meeting protocol and bylaws, settlement of pending litigation with the City of Billings, and preparation of contracts for general and interim managers, to prepare a settlement agreement in cooperation with representatives from the City of Billings to settle the fee dispute for the amount due for unbilled water provided to the District TOTAL: \$2,970,599.35 with no additional late fees or penalties, pending a review of the court records and discussion with prior counsel. The settlement agreement will include an agreement to renegotiate the contract in 2022 when the new General Manager has been hired and may include resolution of the right-of-way issues and other issues identified by either party.1d) (p14)

Seconded by Ming Cabrera.

DISCUSSION Pam Ellis asked Mark Noennig that the resolution states that we want to pay the bill in full and includes pending a review of the court and discussion with prior counsel. Does that give you enough flexibility?

Mark Noennig responded, "I think so, and there is some other language in here too." He wants to make sure the city does what they told you they were going to do. These other issues cannot just be automatically be separated out at our request. If there is a lawsuit pending, they have to be dismissed without prejudice or resolved or something. I'm not trying to draw this out, I'm just saying this has to be dealt with. And I think this gives me enough flexibility to be able to do that.

Tom Zurbuchen said he thought he had seen, I thought they said they were going to negotiate a new contract with the City after a new administrator had been hired. Why would we open a contract just because we have a new General Manager when our contract is not scheduled to be reopened?

Pam Ellis said that the city will not settle unless we renegotiate the contract. You are absolutely correct Tom, had we paid the bill. The contract totally benefits the District and they had no ability to open it. When we didn't pay the bill, we broke the contract.

Laura Drager said the city agreed to separate the lawsuit for the money owed for the water from any contract renegotiations. It will be legally binding when a settlement agreement is signed.

Mark Noennig said an agreement to renegotiate is pretty open ended. It is not enforceable, but perhaps you have to negotiate in good faith. There is a limit to what you can force people to do when there is a lawsuit pending.

Pam read what Chris Kukulski told us on November 17, 2021:

Chris has not been secret that the contract is an issue. We work in a public agency. There are thousands of customers that the district has that keep getting added outside the city limits. They are not required to follow the land use planning rules, they are not helping to pay for streets, parks and police and fire.

And that has created another nightmare, in my opinion, for our community to deal with. And when that new interchange opens, Chris wants both to be ready. The city is the sewer. The district is the water. To have this done right.

And the way we are going right now, it is not going to be done right. It will be another disaster that has to get fixed later.

Pam noted that Chris has passionate feelings about this issue. She lives in the county. I've gotten questions from council members, "are you willing to be absorbed in the city. The city doesn't provide any benefits. Our lift system for the septic was very expensive. The city doesn't put any money into the parks in the Heights. But he has a legitimate point. The standards are different and it does create problems down the road when property is annexed. Part of this is a conflict between the city and the county and has nothing to do with the County Water District. She has great confidence in Mark Noennig and she feels that we will be able to resolve the problems.

Tom Zurbuchen urged the District to try to negotiate a settlement without opening the contract. We know what the city wants. They want to approve or disapprove of any future annexation. They want the right to have a system development fee that goes to the city for the water treatment plant. They want to raise our rights for development and this is one thing you four board members scream about is the cost of

development. The city wants to put a line to serve out by the bypass—that goes through our existing district.

Pam Ellis said that is not a true statement Tom. I have the attended the Bypass meetings and it clearly shows on the Bypass map that that area is served by the County Water District. Chris did introduce that concept when the area was originally included in the area for annexation. He has no ability to do that.

Ming Cabrera said all we are asking at this point is that we separate the contract from what we owe the city and then we negotiate the contract.

A guest said the city has the option to charge whatever the hell they want and they don't care about nothing but what their agenda is and we want to prevent that.

Laura Drager called the question to **approve Resolution 007-21** to Direct Mark Noennig, to prepare a settlement agreement in cooperation with representatives from the City of Billings to settle the fee dispute for the amount due for unbilled water provided to the District TOTAL: \$2,970,599.35 with no additional late fees or penalties, pending a review of the court records and discussion with prior counsel. The settlement agreement will include an agreement to renegotiate the contract in 2022 when the new General Manager has been hired and may include resolution of the right-of-way issues and other issues identified by either party. **Approved unanimously.**

Ming Cabrera would like to make a motion that we do a straw vote and we tally a vote so that the three other votes can be part of the negotiation and we are not excluding.

Pam Ellis said they cannot vote, they are not here. Dave Graves he is going to contact them and ask who they want on the legal committee. Pam Ellis said no, your votes have to be take publicly. That is what screwed it up the last time. Dennis Cook called everybody 1 by 1, that was an illegal serial meeting. Then there was no evidence.

Mark Noennig said you could conduct a straw poll and then have a special meeting. The president is saying he would like to have input from them before. You can do that, but you will have to have another meeting. Otherwise you could authorize the president to take those votes and appoint the committee.

Pam Ellis said we have already done that. The committee that was appointed is not the committee that was recommended.

Ming Cabrera nominated Jeff Engel to be on the legal committee. Dave Graves made a motion to table this to the December meeting and have an interim committee to meet with Mark until December 15th.

Mark Noennig clarified that the we were discussing appointing a temporary committee. He has not read enough to understand the contract and the dispute. He said it would be nice if he had someone to work with with the authority of the board. Ming Cabrera said he could be the authority at this point.

Ming asked Pam Ellis how she felt. Pam said she is the one who has all the files. She worked with Roberta Berkhoff about how to move forward.

Mark Noennig said the motion pending is whether to replace that committee. Pam Ellis said we need to replace the committee; the last meeting blew up.

Tom Zurbuchen said you can put anybody on the committee you want. You could put Tom Zurbuchen on as a citizen. You can put Larry Brewster on.

Ming Cabrera asked how we wanted to proceed. Pam Ellis reminded Ming that originally he had talked about appointing Laura, Pam and David so I think we should go with that. Ming could not attend because then we would have a quorum. Ming originally said he did not want to attend.

Laura Drager made the motion to appoint David Graves, Pam Ellis and Jeff Engel because Jeff is also legal liaison.

Pam Ellis seconded the motion. David Graves withdrew his motion to table the appointments. Ming Cabrera said that is a good compromise. **Approved unanimously.**

- Liaison Report – Jeff Engel (p 15)

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

1. Minutes of the October 20, 2021 Meeting (2)
2. October Prepaid bills for approval (3)
3. October Bills for Approval (4)
4. October Bank Statements: First Interstate Bank (5) & 5a) Summary from accounting
5. Stifel Statement October provided by Stifel (NOT RECEIVED)
6. Profit and Loss Statement – Oct 2020 and Oct 2021 (7)
7. Approve the resignation of Jeff Weldon (8) and Consent to Withdraw Counsel (8a)

Laura Drager made the motion to approve the consent agenda. Seconded by David Graves. Pam Ellis made a friendly amendment to add the bills from Main Street Printers for printing the documents for this meeting and the documents for November 17th. For November 17th, \$116.10. The documents for this meeting were \$194.10 Laura Drager accepted the friendly amendment. **Approved unanimously.**

V. **MANAGER'S REPORT** Duke Nieskens NO REPORT RECEIVED President Ming Cabrera noted that no report was received from the General Manager.

VI. **ASSISTANT MANAGER’S REPORT:** Peyton Brookshire NO REPORT RECEIVED—ITEMS BELOW ARE FOLLOW-UP TO THE OCTOBER 20, 2020 MEETING

President Ming Cabrera noted that Peyton Brookshire also did not provide a report. Pam Ellis noted that the Board had requested specific information at the October 20, 2021 meeting that Peyton agreed to provide. He did not.

1. Pam Ellis said at the October 20, 2021 meeting that 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.
2. DPHHS This program is slated to operate from October 1, 2021, through September 30, 2023. Households can apply to the Montana Department of Public Health and Human Services for assistance through a process coordinated with the Low-Income Energy Assistance (LIEAP) program. Funds will be sent from the State directly to the City to be credited to income-eligible household customers to reduce arrearages, prevent shutoffs, and reduce monthly bills



- i. How many ratepayers have requested information about enrolling in the program?
- ii. How will the district communicate to ratepayers so they know the program is available?
- iii. The board may make a motion to post the link for the DPHHS program on our website

Motion: Pam Ellis made a motion to post the link for the DPHHS program on our website providing information about where ratepayers can apply.

Second: David Graves

Discussion Given that the District has applied to participate in the program, it seems important. The City of Billings has advertised the program and sent it out to their ratepayers. It uses ARPA money and allows people to apply. If they cannot pay their water bill, the money comes directly to the district. Individuals have to apply with the state and qualify under the guidelines.

Mr. Bailey asked what the requirements are to qualify for the assistance.

Ming Cabrera replied "low income". For example, maybe if you only receive Social Security, it helps them out. Right now there is not anything on our website to help those people so they even know about it. We want to be able to help people that don't have the money.

Pam Ellis said it is a good program established by Governor Gianforte. It is more efficient. Instead of sending a check to the individual, the money comes directly to the District. We don't know what the application requires; the individual is responsible for completing the application. The program is available all over the state of Montana as long as the District applies and the individual applies.

Mr. Bailey agreed it sounds like a good program.

President Cabrera repeated the motion to put the Low Income Water Assistance program on the website.

MOTION APPROVED UNANIMOUSLY

3. 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 (serviceman, Prepared Date: 01/01/2020; have not been reviewed on approved by board) TABLED UNTIL NEW GENERAL MANAGER HAS BEEN HIRED
4. Coal Endowment Trust (9a) ... the County Water District of Billings Heights has been selected for a Montana Coal Endowment Program (MCEP) Planning grant award in the amount of \$15,000 to complete a CIP. As a planning activity for a necessary water or wastewater infrastructure improvement, this grant is being funded with funding from the American Rescue Plan Act per HB 632. INFORMATION ONLY
5. Petition for Annexation on behalf of Zackery D. Michalies, 1637 Sagebrush Rd, Billings, MT 59105 Homestead Subdivision, Submitted 10-19-2021. Fee paid \$13,002.71 (9b)

Pam Ellis recommended that we make a motion to approve the Petition for Annexation on behalf of Zachery D. Michalies. Ming Cabrera said it hurts when the Assistant Manager did not come to the meeting so we can help a ratepayer and move their development forward. We don't have anybody here within this office that wants to represent Zach Michalies.

Mr. Bailey inquired where the development is at. Ming Cabrera responded: It is on Sagebrush Rd. Pam Ellis noted that it is Homestead Subdivision. The petition was turned in on October 19 along with payment of fees.

Pam Ellis noted that it is very uncomfortable. The board gave a signed written directive for the General Manager and Assistant Manager to attend this meeting.

Mr. Bailey said provisions were made when they built the road. The valves are in. The only people you have to worry about putting their curb stops in are the people up on Rawhide Strip.

Ming Cabrera said he has no information. Normally the General Manager would be here.

Pam Ellis commented that we do have the application and it was in the Drop Box and available to people for the last two meetings.

Ming Cabrera asked Josh Simpson if he would help the Board. Laura Drager asked Josh to show us on the map where the annexation is located. Josh indicated that the annexation is not on the maps posted in the Board room.

Ming Cabrera asked if there was any reason the annexation should not be approved. Josh Simpson said he did not believe so.

MOTION BY DAVID GRAVES: Having conducted a public hearing, considered written and spoken public testimony, I move to approve petition for annexation of behalf of Zackery D. Michalies, 1637 Sagebrush Rd., Billings, MT 59105 Homestead Subdivision, Submitted 10-19-2021 and accept the fees paid of \$13,002.71.

SECONDED BY LAURA DRAGER

MOTION APPROVED UNANIMOUSLY

After the motion was approved, Mr. Bailey asked if we were sure that there was enough water pressure for the annexation. Pam Ellis said the applicants worked with Duke and Peyton and the staff always have the annexation plans reviewed by Interstate Engineering. Interstate Engineering bills for the work and the applicant pays the fee. Ming Cabrera asked Josh Simpson if there was enough water pressure. Josh said he thought it had been hydraulically modelled. Pam Ellis said the Board has to trust Duke and Peyton. Ming Cabrera reiterated that that is the problem of a General Manager who fails to show up at a board meeting. The summary that Laura read will be included in the minutes. The minutes from this meeting will not be approved until December, but the public will have access to the minutes.

VII. BOARD REPORTS

1. **President's Report:** NO REPORT
2. **Finance Committee:** Laura Drager (11) We had irrigation meters that were shut off so that explains the reduction in the number of meters from Sept. 21 to Oct. 21

**County Water District Billings Heights
Treasurer's Summary Report as of
31-Oct-21**

	31-Aug-21	30-Sep-21	31-Oct-21
Meters			
Previous total meter count	5,914	5,917	5,917
Residential	5,456	5,461	5,455
Commercial	458	456	429
New Residential	12	10	4
Total # Meters	5,926	5,917	5,884
			*Irrigation meters offline
Checking			
FIB Gross Income Account	\$ 1,217,953.82	\$ 1,176,986.93	\$ 1,276,204.33
FIB Operational & Maintenance	\$ 24,768.61	\$ 28,604.91	\$ 38,498.06
FIB Payroll Account	\$ 3,568.44	\$ 24,414.15	\$ 4,480.16
Total Checking	\$ 1,246,290.87	\$ 1,230,005.99	\$ 1,319,182.55
Investments			
Stifel - Cash & Equivalent	\$ 473,100.00	\$ 1,153,146.99	\$ 1,410,231.76
Stifel - Fixed Income CD's	\$ 8,448,932.00	\$ 7,747,956.58	\$ 7,481,322.97
Total Stifel Investments	\$ 8,922,032.00	\$ 8,901,103.57	\$ 8,891,554.73
First Interstate Bank Savings		\$250,926.03	\$ 250,929.02
Yellowstone Bank Reserve CD	\$ 250,000.00	\$ 205,267.50	\$ 205,267.50
Total Investments	\$ 9,172,032.00	\$ 9,106,371.07	\$ 9,096,822.23
Total Cash Position	\$ 10,418,322.87	\$ 10,336,377.06	\$ 10,416,004.78

- i. AZ Audit Discussion and Review Laura did not have any new information from Anderson Zurmuehlen, our accountants. The draft audit originally was scheduled to be given to the General Manager and Finance Committee on November 15th. The auditor said some things have come up and staff have been unable to work on it. Laura sent an email last Monday and did not hear back.
- ii. Budget work: Plan and Recommendation We are going to work after we have the new manager hired and the AZ report back.

- iii. Blue Cross/Blue shield This is the open enrollment. (11a)bs application for renewal; 1(1b) bcbs plan changes 2022; (11c) bcbs renewal pkg ; spreadsheet with 2022-BCBC Renewal Comparison (11d), Background pp 18-19

NOTE: The spreadsheet is printed separately for reference at the board meeting

The spreadsheet (11d) has 6 plan options for the health insurance for our staff. The plan highlighted in yellow is the current plan. If we do nothing, this plan is set to auto-renew effective Jan 1, 2022. After reviewing 35 plan options we were given by our plan provider, I have selected 6 plans for us to choose from.

The biggest change for the insured (staff & families) is being restricted to Billings Clinic providers to obtain maximum benefits from the insurance. They can still choose out of network providers (St V's) but they will be paying the cost for the services with a much lower insurance payment.

Please review . Each option is labeled separately for your convenience in providing feedback. While we have less expensive options to choose from, be aware that health insurance benefit will be a major factor when applicants are looking at our open GM position so now is not the time to make a drastic change to our benefit package.

Recommended Motion Laura Drager made the motion to approve the Guardian insurance for Vision and Dental. The premiums increase by only \$1 per month for the vision. Wants to include it on the motion for approving the health insurance.

Recommended motion: Having conducted a public hearing, considered written and spoken public testimony, I move the District approve a BCBS plan change from the Blue Preferred PPO Network plan to the Blue Focus POS (point of sale) Network plan and provide coverage at the platinum level. The proposed change will save the District \$50,846.28 in costs for 2022.

Laura Drager discussed the difference between the current plan and the plan she recommends the Board approve. Copies of the plan comparisons were printed and available to guests. We currently have a deductible in network of \$750 per year; out of network \$1500. The difference between the current plan and the PPO plan: the employees can choose physicians at Billings Clinic and St. Vincent's are in-network. The plan she proposed continues with the point of service plan, employees would need to select Billings Clinic doctors. Talked with Dianne at length. Dianne felt the most important to the employees was that the deductible not change and prescription coverage similar to what we currently have. Employees could use St. Vincent's but would be covered in out-of-network. To have everything covered, maximum out of pocket on the current plan is \$1500. Maximum out of pocket out-of-network is \$4500. Changing to the Point of Service plan would save the district \$50,844 per year and that includes all of the employees and their families covered, District paying 100% of the insurance and they continue to have \$750 out of pocket deductible and maximum out of pocket per family at \$1500.

David Graves said his school district went to this option to save money. David goes to St. Vincent's physicians. People pay the difference out of pocket. David never received a bill. St. Vincent's and

Billings Clinic charge about the same and so there was no additional out of pocket. It balanced out and everyone was happy.

Ming Cabrera said he worked for a pharmaceutical company for 30 years. The company always had a Point of Service plan. He was always provided the very best insurance. When he went to St. Vincent's, he paid the same amount anyway. The plan will save \$50,00 per year.

Mr. Bailey said he would not want to take the option of which doctor to see away from the individual. Ming Cabrera and Dave Graves reiterated that employees could use whatever doctor they want. It is preferred to use the Billings Clinic physician.

The question was asked if we looked at an HMO plan. Laura Drager responded that we did look at an HMO plan. Laura said she reviewed 35 different plans. After talking to Dianne, she said what mattered most to the employees was the out of pocket expense. Dennis Cook had some of the same concerns that you expressed. They can use their providers, they would just be out-of-network.

Ming Cabrera said he did not see that as a problem. Josh Simpson mentioned that four employees have younger children and they all go to St. Vincent's pediatricians at the Children's Clinic. None of the Board has had children recently. It is very difficult to find a pediatrician. Some people cannot afford the change even though we work here.

Pam Ellis noted that every other public employee in Billings is in a managed care program. The city of Billings caps health care benefits at \$842 per month per employee; the remainder is paid by employees out of pocket. The District pays \$17,000 per month which is almost \$2000 per employees. Some employees are getting \$2670 per month in tax free health care benefits; the low person is getting \$1395. The employee receiving the lowest health care benefit in the District is getting 2x what a city of Billings employee receives. Teachers in SD#2 get 100% for themselves if they are employed full time; all family costs are paid by the employee. The county was less clear—looks like the county caps at \$462 per month per employee. The District benefits are so much higher than any other public employee in the city or Yellowstone County. The cost of insurance has to be built into the rate for the cost of water. To save \$50,000 a year is huge.

The question was asked about a private practice doctor. Laura said you would have to go to the Billings Clinic, type the physician's name and see if they were in network. She said she was very sympathetic because she is going to a POS plan. She and her husband pay 100% of their own insurance and it will save her \$533 per month.

Ming Cabrera said most organizations are going to HMO's. This plan is much more generous. An HMO would increase pharmacy and co-pay costs. So everything is still the same except they prefer you stay at Billings Clinic.

Tom Zurbuchen talked about the comparison. He asked "what is the increase over the current policy." The current policy costs \$207,204. The increase is 3% or \$1000 per year per employee which is the cost of living."

Laura Drager asked for input from the Heights residents that are ratepayers. Tom Zurbuchen said he would like to keep these employees happy even if it costs a penny or two on his water bill. Happy employees don't require such a huge raise. Health and welfare means a bunch to business."

Ming Cabrera asked if anyone else had an opinion. Mr. Bailey asked what the rate would be if it was paid by everybody. It is 3%. Social Security is giving 5.9%. He agrees with Tom; he does not want the employees to be hung out to dry.”

Ming Cabrera asked “anybody else”. An employee noted when he started there were six servicemen. Now 5 employees are doing the work of 6 people. So how much money are you saving along with that guy’s salary? (BACKGROUND **September 13, 2017** Duke would like to hire a new full-time serviceman. The main reason is that when we dig a service line, we need at least 4 people to maintain crew safety. The last two digs, the serviceman who handles daybook, had to be pulled off those duties so they could assist with the dig. **October 11, 2017** Jon Muessig made a motion to hire a full-time serviceman. Bud Dunham seconded. Motion passed 6-0.) Employee said, “not only do we have a higher work load but we are not getting compensated. Peyton asked in October to add 2 new servicemen. The Board tabled until we hire a new general manager, develop a budget, capital improvement plan, equipment replacement plan. We cannot do additional hires until we know where we are at financially.

Mike Macki said the guys in the union want the benefits over the wages because they understood how much more valuable it is. Sometimes they will give up a raise to get the benefit package.

Recommended Motion Laura Drager made the motion to approve the Guardian insurance for Vision and Dental. The premiums increase by only \$1 per month for the vision. Wants to include it on the motion for approving the health insurance.

Recommended motion: Having conducted a public hearing, considered written and spoken public testimony, I move the District approve a BCBS plan change from the Blue Preferred PPO Network plan to the Blue Focus POS (point of sale) Network plan and provide coverage at the platinum level. The proposed change will save the District \$50,846.28 in costs for 2022.

Motion: Laura Drager made the motion, having conducted a public hearing, considered written and spoken public testimony, I move that we keep the insurance as is for 2022.

Seconded by Ming Cabrera.

Discussion: Ming thanked the staff and public for attending the meeting. This board is trying to make the decisions in public. We want you here and we want you happy. That’s why I seconded the motion knowing it is really important.

Motion approved unanimously

3. **Safety Committee:** Jeff Engel NO REPORT

Dave Graves asked what the staff recommends to help with the safety committee. The response is that the record speaks for itself. Weekly meetings keep us up to date and training on the job site. Recommend that the staff submit a quarterly report to the Board prepared by Jeff Engel.

MOTION: Ming Cabrera moved that the Board Safety Chair prepare a quarterly safety report in March, June, September and December.

SECOND David Graves

UNANIMOUS APPROVAL

4. **By-laws & Governance Committee** (Pam Ellis and committee members)

i. **Job Descriptions for General Manager (14a) and Recruiting for General Manager(14b)**

Recommended motion: Having conducted a public hearing, considered written and spoken public testimony, I move to adopt the Job Description for General Manager of the County Water District of Billings Heights and the Listing for Recruiting (pp 18-23)

The board may make a motion clarifying Board member responsibility for working with Job Service and advertising the position.

DISCUSSION Ming Cabrera noted that Duke Nieskens is retiring effective December 10th, 2021. We wrote a job description so we have a job description for the General Manager to provide clarification to the individual and the job advertisement.

Laura Drager asked if we got feedback from Jeff Weldon on the job description. Pam Ellis said Jeff Weldon added the language about math and problem solving skills at the November 8, 2021 By-laws and Governance Committee. We did have legal review of the job description.

MOTION Laura Drager moved that we accept the General Manager Job Description as written.

SECOND David Graves

DISCUSSION

Tom Zurbuchen said the job description had a clause requiring that the General Manager “demonstrate how to locate a water line”. (Not included in the proposed job description). Multiple board members said that wasn’t in the job description. The job description was sent to Duke, Debi Meling and two other engineers as well. The job description was reviewed by Jeff Weldon.

A community member asked if there was an individual in house that could take over. The Board has said we are not just promoting from within. The application process is open and the Board will make a decision about the candidate they believe is the best qualified. Mr. Macki suggested you thoroughly vet the in-house candidate.

Frank Ewalt commented that one requirement of the assistant manager is that he should have attended the meeting commented that if the assistant manager was interested in the GM role, shouldn’t he have been at the meeting?. Pam Ellis agreed, “correct, as directed by the board”. Dave Graves said that recommendation has been made a lot.

Frank Ewalt agreed that the manager does not need to be out laying pipe. Needs to know how to run an office, how to run the numbers.

Attorney Mark Noennig said we are not going to rewrite the job description. Tom Zurbuchen interrupted and continued talking over, reading from the job description. You are trying to itemize everything he does. What if you miss one. Pam Ellis added, “and other duties as assigned.” She noted that there is no evidence from any of the minutes that the Board ever evaluated the General Manager. By statute, that is the responsibility of the Board. You cannot evaluate someone unless you clearly define their job responsibilities.

Attorney Mark Noennig noted that Tom Zurbuchen was only referencing the itemized duties. There are other sections.

MOTION APPROVED UNANIMOUSLY

DISCUSSION Ming Cabrera talked with Job Service. Advertising for this position will be independent of the District. Job Service will accept all resumes. Pam Ellis noted that it is on page 23 of the agenda. The posting states,

Required Materials:

- Cover letter
- Resume including education, special skills, licenses or certificates, employment history including contact information of employers and salary
- Send cover letter and resume to: John Rife, Job Service Billings 2121 Rosebud Drive #B Billings MT 59102 jrife@mt.gov (406) 655-6075

MOTION Pam Ellis made a motion which was clarified by Laura Drager to advertise in the Yellowstone County News, AAWA, Montana Rural Water, Indeed, Zip Recruiter, Linked In, and Job Service. The position will be opened until filled. The Board will begin reviewing applications on December 15th.

SECONDED by David Graves

DISCUSSION Mr. Bailey asked who will ultimately choose the manager. Response: The Board by statute. Ming Cabrera pointed out that we are a month behind because of the failure of what we had in the past. We are asking of ourselves and we are asking a lot of the ratepayers—to make sure we get the best person possible.

Mr. Bailey asked if the community would have any input. Pam Ellis said honestly we have not gotten that far in the process. Tonight we are just dealing with the job description, the job posting, and the job posting locations. It is a legitimate question and we appreciate your asking the question.

MOTION APPROVED UNANIMOUSLY

CLARIFY WHO IS GOING TO DO THE POSTING Pam Ellis will send the posting to John Rife. Pam Ellis will send to the Yellowstone County News. Laura will complete the additional posting with assistance from Pam Ellis if needed. Laura said the fee for AAWA is \$699. Ming said that would be the group with the most clout because they are the most involved with water districts. That posting would be disseminated nation wide.

MOTION Pam Ellis made the motion to pay the \$699 to AAWA and any other fees required to post the job.

SECOND Laura Drager

DISCUSSION

MOTION APPROVED UNANIMOUSLY

Pam Ellis encouraged every Board member to send out copies to anyone they know who maybe interested in applying. Perhaps the President should send it to the city council website because

that is so widely read. Laura Drager said she would work on completing the on-line posting; Pam Ellis offered to assist as needed.

ii. **TRUSTEE AND MANAGER POLICIES Rules and Procedures for Meetings of the CWDBH Board (15)**

President Cabrera asked that the recommended motion be read. Pam Ellis read.

Recommended motion by Pam Ellis: Having conducted a public hearing, considered written and spoken public testimony, I move to approve the TRUSTEE AND MANAGER POLICIES Rules and Procedures for Meetings of the CWDBH Board.

Pam Ellis explained that MSU Bozeman has a Local Government Center. Dan Clark is the director and does inservices for governments all over Montana. He testified by invitation at the Local Government Interim Committee. The website has recommended By-laws for special districts which basically establish compliance with MT Statutes for Open Meeting Laws. This District has not followed MT law regarding Open Meeting for many years. The new board elected in May has made an effort to comply but we do not currently have the cooperation of the staff. Jeff Weldon recommended that we not include the information in the bylaws but to include in policy. We took Dan Clark's recommendations. When we adopt the policy, we can keep it in a notebook in the office. We will need to establish a numbering system for adopted policies. We need to be clear that this Board expects Open Meeting laws to be followed.

SECOND by Dave Graves

DISCUSSION: Ming asked if this could be tabled. Pam Ellis said it has been on the agenda for 3 months as was approved at the Bylaws and Governance Committee.

UNANIMOUS APPROVAL

iii. **Policy Records Access and Procedure (16)**

Pam Ellis introduced the Policy Records Access and Procedure in her role as Chair of the Bylaws and Governance Committee. Open Meeting laws allow the District to charge reasonable expense when responding to public information requests. There has been a real problem. The Board originally passed a policy several years ago that is recorded in the minutes to charge \$165 per hour for Duke's time. That was passed unanimously and is not in compliance with the statute. The District can only charge "reasonable" fees. In April 2021 Duke proposed the District charge 51 cents a page. It cost the District almost 200 dollars to print an agenda for this meeting for 7 board members at Main Street Printers which charges 15 cents per page. The documents can be made available at no cost via posting on the website. Basically the Board is trying to get everything on line so it is visible and members of the public can download the documents for free. If you want a printed copy, the District would charge 15 cents per page. The policy sets a fair and reasonable cost in line with Montana law. The policy was approved by the Bylaws and Governance Committee on November 8, 2021. The full board was invited to the committee meeting and received copies of the policy prior to the committee meeting, the November 17th meeting and today's meeting.

Recommended motion by Pam Ellis: Having conducted a public hearing, considered written and spoken public testimony, I move to approve the Policy Records Access and Procedure.

SECOND by Dave Graves

UNANIMOUS APPROVAL

iv. **Uniform Complaint Procedure (17)**

Pam Ellis introduced the policy. Jeff Weldon recommended the District develop a complaint procedure. He suggested we look at the complaint policy for School District #2. Their system is much more complex because they have a lot more layers of administration. The proposed policy basically follows that structure, beginning with requiring that the complaint first be discussed with the individual. It also says if it is not relevant to the district, then it is automatically dismissed. An example is that Tom Zurbuchen submitted a complaint about Pam Ellis' testimony at the Local Government Interim Committee and demanded that the Board demand that my testimony be removed from the Public Record by the Interim Committee. Pam Ellis was invited to speak by the Interim Committee. The Board has no authority to tell the Interim Committee who they can invite to speak and they cannot remove testimony from the public record. What we are trying to do is develop a complaint procedure so it is public, we will have a website adoption coming up next on the agenda. The policies will be on the website and the public could download the information.

Recommended motion by Pam Ellis Having conducted a public hearing, considered written and spoken public testimony, I move to approve the Uniform Complaint Procedure.

SECOND by Laura Drager

DISCUSSION None

UNANIMOUS APPROVAL

v. **Website RFQ and committee recommendation (18)**

Pam Ellis introduced the recommendation. The Board approved an RFQ for web design that was published for two weeks in the Yellowstone County News. The RFQ was based on a recommendation from Jeff Weldon. He told us our minutes were inadequate, our agendas were completely inadequate, and the ability of the public to access information was inadequate. He was right. We asked companies to respond. The RFQ was sent to the full Board and to the staff. Members of the Bylaws and Governance Committee had multiple Zoom meetings with different companies. Honestly only one company submitted a quality proposal and that was Municode. Laura qualified that we had multiple proposals; yes, we had 4 total. Municode responded to the needs identified in the RFQ and was more cost competitive. When the agenda is prepared and we post, the agenda will automatically be posted on the website and visible on a calendar. It allows Peyton to prepare his report. The secretary doesn't have to get a report from Peyton. We have been trying Dropbox which is incredibly frustrating because sometimes people can get in and sometimes they can't. We are spending \$20 a month for Dropbox. If multiple people were able to add information to Dropbox, the costs rise to about \$1900 per year. We did listen to those Zoom calls, we asked for a list of cities and governments using the software in the state of Montana. We were given a list of websites and people to contact.

Ming Cabrera did the reference checks. Ming checked with Laurel, Livingston, Great Falls and one in Idaho. They all use on a city level. The software is easy to use because it is based on Microsoft Office so we don't have to save in a different format. We will also be able to post the agendas without telling somebody else to do it. We won't have a problem with somebody refusing to post the agenda. Financial reports can be done properly and everyone can see them. It is expensive.

Other places are paying up to \$16,000 per year. We will be able to give peace of mind to the public that we can get the information out.

Recommended motion by Pam Ellis: Having conducted a public hearing, considered written and spoken public testimony, I move to approve Resolution 008-21, the contract from Municode for hosting a Standard Design Website and Board Management Software for a total of \$8250 for year 1; year 2 and beyond \$4500 per year.

SECOND by Ming Cabrera

DISCUSSION Laura Drager has a question because this is the one program she did not get to sit in on. Is their record retention? Can the public look at the records for the last meeting?

Pam Ellis responded that in the basic contract we can add five years of agendas and minutes. The District did not retain any of the agendas of supplementary documents that were used by Board members to make decisions. Pam does have all the agendas and documents from the past year. The minutes are available on the Yellowstone County website from 2015 to the present. We can upload all that. Our current website has a bill pay system. It is third party software that can be transferred to the new website. The public and staff will be able to more easily access the history of decisions. For the history of insurance, Pam Ellis was able to include the history because she has put together a document with all the minutes from 2015 to present on a single document so she can search. Others cannot unless they have her personal document. Going forward when the minutes from the past have been uploaded to the website, it will be infinitely easier for any member of the public or for staff preparing agenda items. Jeff Weldon got us started. He liked the software used by Huntley School District. We disliked that company's software for cities, but it got us moving and we found one we did like, that is effective and cost effective.

Ming Cabrera said we should be able to reference all the documents at a meeting from our individual computers rather than wasting so much time and paper printing everything.

PUBLIC COMMENT Tom Zurbuchen said he is a cheapskate. What does our current website cost? How many people go there? How long do they spend there looking for stuff? When the agendas are posted, I didn't have any trouble finding them in the past. The minutes are posted at the County and I can see the last few years. Yes there are some improvements that he would like? How many of our ratepayers are lost with our current website. Are we just fluff and puff for more money?

Pam Ellis asked "what would the ratepayers do on the website?" We have an extremely poor website, one of the poorest among water districts in the state of Montana and we are the largest district in the state. One of the reasons people don't spend any time on the website is because there is no information available. This was a response to a direct recommendation from Jeff Weldon and we acted on it. Jeff Weldon is correct. The public could not access information. Pam Ellis could never get information from the District because it is not available anywhere.

Ming Cabrera said that Jeff Weldon told us at our very first meeting that he highly recommended we change the website. We are on public think ice.

Evelyn Pyburn asked if people would be allowed to pay their bills. Pam Ellis said yes, the bill pay software is from BCS and can be transferred to the new website.

UNANIMOUS APPROVAL

VIII. OLD BUSINESS:

1. **Comprehensive review of all Rates and Fees, Capital Improvement Plan by Interstate Engineering** (18) tabled until Raftelis Report has been received in writing by the board and the board decides how to proceed
2. Peyton Brookshire will report to the Board when Andrew Rheem will be in the area and available to meet with the board.

Pam Ellis noted that at the October 20, 2021 meeting, every Board member who spoke including Dennis Cook expressed extreme dissatisfaction with Raftelis. Raftelis was approved by a 3:2 vote of the Board in June to award an \$80,000 contract to review whether we had to pay a proportionate share of the West End Water Plant. At the time, Pam Ellis asked Peyton why we were addressing that for the first time in June when it had been in public discussion and study for two years. Pam Ellis submitted a public information request to the City of Billings and received 700 emails between Duke and Peyton and Public Works staff. There were multiple emails. At the last board meeting in October, we had an undated email from Andrew Rheem that Peyton had apparently left on the table. In that email, Andrew Rheem the Raftelis consultant said we needed to start working on the rate increase because our cost of wholesale water is scheduled to rise 30.6% July 1, 2022. We have currently spent \$15,544 paying Raftelis and Interstate Engineering to provide information to Raftelis. They have never talked to the Board. Originally Laura called Andrew Rheem and he spoke to her briefly. He never answered his phone again or responded to voicemail. We asked Peyton to set up a meeting with Andrew Rheem; Peyton did not.

BACKGROUND: Amount remaining on the Raftelis contract (10/15/2021) \$39,667.50

Interstate Engineering	10/18/2021	\$2,771.00	Project support to Raftelis for Rate Study & NW Transmission Modeling
Interstate Engineering	9/23/2021	\$2,440.50	Project support to Raftelis for Rate Study & NW Transmission Modeling
Raftelis	10/11/2021	\$10,332.50	Billings to date
	TOTAL	\$15,544.00	

SUPPORT DOCUMENTS: emailed to Duke Nieskens, Peyton Brookshire and Pam Ellis by Jennifer Duray, November 19, 2021 Digital copies should be available from the district

- 2_Water System Overview Final Draft
- 3_Water Demand Forecasting Final Draft
- 4_Water System Evaluation Criteria Final Draft
- 05_Hydraulic Water Model Final Draft
- 06_Operation Analysis_Final Final Draft
- 08_Storage Analysis Final Draft

- 09_Distribution System Expansion Final Final Draft
- 10_Water System Resiliency Final Draft
- Water Map
- WTP to Distribution
- Pages from 06_Operation Analysis_Final Final Draft
- WO1942 WEWTP Preconstruction Contract (executed)
- WO1912 WERWP Pre-Construction Contract, COP (executed)
- **Recommended motion by Pam Ellis:** Having conducted a public hearing, considered written and spoken public testimony, I move to direct Raftelis to stop further work on the proposed City of Billings wholesale water rate increase of 30.6%, scheduled to begin July 1, 2022. The General Manager may review the work completed by Raftelis with the Board and make a recommendation to the Board at a later date..

When Scott Aspenlieder was here November 17, 2021 he said he had come repeatedly to the prior Board and asked them to conduct a proper rate study. It is not true that the City of Billings can charge whatever. They did do that in 1997 and lost a lawsuit at the Montana Supreme Court. Since then the state has passed firm guidelines about establishing rates. The City follows the law and spent \$250,000 on their rate study which the ratepayers in our District paid a proportionate amount. We are about 10% of the city's ratebase, we're paying for Raftelis and Interstate Engineering and we are still going to pay the 30.6% rate increase for wholesale water in July, she believes. We did ask Chris Kukulski on November 17th because at the City council meeting that week that the rate increase may be delayed because the city did not want to sign up for any contract that could cut them off from receiving money from the Infrastructure bill that passed the US Congress. Pam asked Chris about the delay. Chris said that the rate increase maybe delayed but we should assume a delay of weeks or months, not years. We have to get going on doing a rate study. A 30.6% increase in wholesale water does not mean that our ratepayers will pay a 30.6% increase. The cost of wholesale water is 50% of the cost of doing business. The District does not have a budget, we have never had a budget. We do not have a capital improvement plan. We have a lot of asbestos covered pipe which do not have as long a useful life as other alternatives and are difficult to locate. We know that when the Bypass is complete, there will be large costs to develop infrastructure. We as households need to pay our fair share for water and we need a fair share paid by developers. We don't know what is fair but we need to get moving.

Ming Cabrera said we are just talking about Raftelis. Andrew Rheem sat in the chair without speaking to anyone. He didn't even say hello. No one in the room did not know who he was. We have not heard from Raftelis at all. Why is the District paying if Raftelis does not speak to us.

Mark Noennig asked about the contract language which states every 5 years there needs to be a review of the rates. Is that what this is for?

Pam Ellis said no. If for some reason the intake system on Belknap went down, we only have a single intake for water from the river. Tom Zurbuchen interrupted to say there are two intakes. Pam said, if for some reason the river dropped or there was significant pollution which we had with the Exxon oil spill, the city has an 8 hour water reserve and we are out of water as a city. They are building the west end water reservoir to increase our reserves and to accommodate the growth. One of the questions that Andrew Rheem sent to Jennifer Duray who is the Public Works Assistant Manager was "what percentage of the west end water reservoir would be used for new construction and what percentage for existing

construction?” That is of course an impossible question to answer, but why are we asking that? We are going to be doing a huge amount of new development in the District. Public Works cannot continue to provide water to the City of Billings as it continues to grow without expanding your capacity.

Mr. Bailey asked about the study that Raftelis was conducted. Pam Ellis said we agreed because Peyton and Duke want to fight the 30.6% increase for the cost of wholesale water. We pay 100% of the Raftelis study. The city hired FCCS to do a rate study justifying the rate increase.

Mark Noennig said the 30.6% rate increase seems high. They city has increased water rates 5-7% every year so people don't get whacked all in one year. Josh Jabalara from Midwest Technical Assistance is available to assist the district in completing a rate study at no cost to the district. Mr. Jabalara said it is a lot more palatable if rates are increased gradually. There is nothing that prevents the District from doing that but that ship has sailed. The prior Board did not do that.

Mark Noennig read the language from the contract with the City of Billings. The ratepayers of the District have to pay a proportionate cost of all the infrastructure development for water in the City of Billings and we have to pay 100% of our infrastructure costs. The District may submit to arbitration within 30 days.

Pam Ellis said she read the contract and the 30 day limit. Ming called Jennifer Duray and talked to her; Jennifer assured her that would not be an issue. Others have said, the District did not submit their complaint in writing, so we are out of luck. Arbitration costs money and we have to have a reason. Mark's response was that we don't have to play dead either.

Andrew Rheem said directly, the District needs to start setting their rates to prepare for the July 1, 2022 increase in the cost of wholesale water. That was just a random email left on the board table at the October 20, 2021 meeting.

Mark Noennig suggested we should fall back on our contract until it is renegotiated.

Pam Ellis said the council approved the 30.6% rate increase in May 2021. She has a written estimate that there will be major increases again in 2023 and 2024 as other infrastructure projects come on line.

Ming Cabrera said we want Raftelis to come forward and tell us what they are doing. They have not been communicating with the Board.

Pam Ellis said the Board directed Peyton to set up a meeting with Andrew Rheem at the October 20, 2022. The rates are set through the American Water Works Association.

Tom Zurbuchen says if the plant on the West End does not service us, we are not responsible to pay for development. The city admits it only produces a maximum of 18 million gallons per day. In the summer, this District uses over 10 million gallons per day. What kind of lines does the city have to bring the water to us? The HDR report clearly says the city through the West End can supply for a few hours but they cannot provide service to the Heights.

Ming Cabrera reiterated that the Board is just asking that Raftelis stop working until the Board has met with them. Pam Ellis said the Board gave a directive October 20, 2021 that Peyton set up a meeting with Andrew Rheem and the Board. Peyton did not do that.

Ming Cabrera can contact Andrew Rheem directly. The Board now has Andrew Rheem's email because Jennifer Duray gave us a copy of her response to Andrew Rheem.

SECOND by Laura Drager
UNANIMOUS APPROVAL

IX. NEW BUSINESS

1. Consider the purchase a television and wall mount, as well as a camera for Zoom meetings of the Board. (TABLED)
2. Planning and Development: Strategic Plan (3 years): TABLED Dennis Cook Measurement of Success for Success/ Dennis wants 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.

X. TO BE INCLUDED ON THE DECEMBER 15, 2021 MEETING

- Laura Drager—the audit
- Raftelis Report
- DISCUSSION: Mark Noennig asked if the staff could post the agenda on the website. Pam Ellis said that the staff should understand now that a quorum of the Board has authority to call meetings and conduct business. Failure to follow the direction of the Board is insubordination. Mark Noennig said, "that is what I was looking for." Ming Cabrera said we have to conduct business; we are behind. Mr. Bailey said, "we have faith in you."

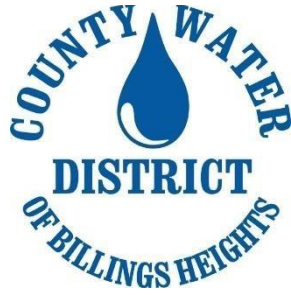
XI. ADJOURNED 4:37 PM

ATTACHMENTS:

- **By-Laws of the County Water District of Billings Heights Approved November 29, 2021**
- **Resolution 006-21 to Authorize Attorney-Client Fee Contract with Mark Noennig, HENDRICKSON LAW FIRM, P.C.**
- **Resolution 007-21 to Settle the Fee Dispute with the City of Billings**
- **Resolution 009-21 to Authorize Contract Blue Cross-Blue Shield and Guardian Policy Renewal**
- **Resolution 008-21 to Authorize Contract CivicPlus/Municode**
- **GENERAL MANAGER DUTIES AND EVALUATION**
- **Job Posting: General Manager County Water District of Billings Heights**
- **Rules and Procedures for Meetings of the District Board**
- **Records Access Policy and Procedure**
- **Uniform Complaint Procedure**

Ming Cabrera, President

Pam Ellis, Board Recording Secretary



By-Laws of the
County Water District of Billings Heights

ARTICLE I Statement of Organization and Incorporation

In 1957, the Montana Legislature passed the "County Water District Act," sections 16-4501 to 16-4534, R.C.M. 1947, which permits the residents of an area such as Billings Heights to create a district for the purpose of building, operating, and maintaining their own central water supply and distribution system. Pursuant to the provisions of the afore-mentioned Act, the Water District was established. Title 7, Chapter 13, Section 2203 of the Montana Code Annotated ("MCA") authorizes the formation and incorporation of county sewer and water districts pursuant to the requirements of the remainder of Parts 22 and 23 of the same Title and Chapter. The County Water District of Billings Heights ("District") was formed by mail ballot election—voted by the residents and landowners within the designated boundaries of the District located in Billings, Montana and duly conducted in accordance with MCA §7-13-2208(2)—on August 26, 1958. A Certificate of Incorporation for the District was thereafter issued by the Montana Secretary of State on August 29, 1958.

ARTICLE II Name and Boundaries

The name of the district is the County Water District of Billings Heights. The District is incorporated as required by Montana law. The principal office of the District shall be located at such place as the Board of Directors may from time to time determine. The mailing address of the District is 1540 Popelka Drive, Billings, Montana 59105. The boundaries of the district are as shall be designated by the Board of Directors from time to time in accordance with all applicable laws and statutes.

ARTICLE III Statement of Purpose

The purpose of the district is to provide a safe, potable water supply via the District's distribution system within its boundaries, and to do all things necessary and proper to maintain and operate these facilities as required and allowed by Montana State law.

ARTICLE IV Seal

The seal of the District shall have inscribed, thereon, the words "County Water District of Billings Heights". The Board Secretary for the District shall have custody of the seal. The seal may be used by causing it, or a facsimile thereof, to be impressed or affixed or reproduced otherwise.

ARTICLE V Fiscal Year

The fiscal year of the District shall begin July 1 of each year and shall end on June 30.

ARTICLE VI Board of Directors

Section 1: Powers_The Board of Directors is the governing body of the District. All powers of the District, as provided by Montana statutory or regulatory law or necessarily implied, shall be vested in the Board of Directors.

Section 2: Qualifications

A director shall meet the qualification established by Montana law.

Section 3: Election and Appointment

The Board of Directors (“Board”) shall consist of five (5) elected members as provided for in Montana law. There shall also be one member appointed by the Yellowstone County Commissioners and one member appointed by the Mayor of the City of Billings as prescribed in Montana law.

The procedure and mode of nomination and election for directors shall be as provided in Montana law.

Vacancies on the Board of Directors shall be filled as established by Montana law.

Section 4: Term of Office

As provided in Montana law, except as provided herein, or by law, the term of office for directors shall be four (4) years from and after the date of their election or appointment. Directors shall hold office until the election and qualification or appointment and qualification of their successors.

Section 5: Recall of Directors

Each director, as an incumbent of an elective office, whether elected by popular vote for a full term, elected by the Board of Directors to fill a vacancy, or appointed by a mayor or the board of county commissioners for a full term, is subject to recall by the electors of the District in accordance with Montana law.

Section 6: Meetings

The Board of Directors shall meet on a regular basis and may hold special meetings to conduct the affairs of the District. Committees of the Board may meet on a regular basis and may hold special meetings. All meetings of the Board shall be open to the public and subject to the public participation and notification requirements of Montana law except as otherwise provided in law. Appropriate notice of all meetings shall be provided to the public.

A meeting of the Board is defined as the convening of a quorum of the Board either in person or by means of electronic equipment to hear, discuss, or act upon a matter over which the Board has

supervision, control, jurisdiction, or advisory power. A quorum is represented by a majority of the total members of the Board or committee in attendance.

Special meetings of the Board of Directors may be called by the President, or in his absence the Vice President, or by a quorum of the members of the board.

Official action at Board meetings can only occur with a quorum of Directors present. Minutes of all meetings required by statute Montana law to be open, fully reflective of all business transacted at the meeting, shall be kept and shall be available for inspection by the public.

Section 7: Duties and Offices of the Board of Directors.

The Board of Directors, subject to restrictions of law, the Articles of Incorporation, and these Bylaws, shall exercise all of the powers of the District, and without prejudice to or limitation upon their general powers, it is hereby expressly provided that the Board of Directors shall have, and are hereby given full power and authority as provided in Montana law, including without limitations:

- A. To select and appoint or remove the General Manager and Board Secretary, and agents supporting Board services (ie attorney or others), prescribe duties and designate such powers consistent with these Bylaws, fix their compensation and pay for such services.
- B. To prescribe, adopt and amend, from time to time, such equitable uniform rules and regulations as, in its discretion, may be deemed essential or convenient for the conduct of the business and affairs of the District and the guidance and control of its officers and employees, and to prescribe adequate penalties for the breach thereof.
- C. To order, at least once each year, an independent audit of the books and accounts for the District and reported by the independent auditor at a regular meeting.
- D. To approve an annual financial budget once a year for the convenience and management of the business of the District. The proposed budget shall be available for public review, properly noticed and a public hearing conducted prior to adoption by the Board. The budget shall be approved by a majority of the Board prior to July 1 of each year. The Board of Directors may, from time to time, review the budget and revise the same by a majority vote of the directors present at the meeting. Any revisions in the budget that require an increase in user fees will be submitted for public notice.
- E. To review rates for water services charged by the District as often as deemed necessary, but, at least once every two years, prior to beginning the new fiscal year, in order to fix the rate, toll, fee, rent or other charge for the services, facilities and benefits directly afforded and the direct benefits received, that will be sufficient in each year to provide income and revenue adequate for:
 - i. the payment of the reasonable expense of operation and maintenance of the facilities;
 - ii. administration of the District;
 - iii. the establishment or maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of facilities, as may be determined necessary from time to time by the Board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the District.

Prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, increasing rates, fees or charge for services or facilities, the Board shall order a public hearing as provided in Montana law.

Members of the Board, advisors to the Board, officers of the District, staff members and employees shall at all times act in good faith with respect to the duties of their respective offices. They shall not use their positions or knowledge gained therefrom, so that a conflict of interest might arise between the interest of the District and that of the individual. A full disclosure of all facts pertaining to a transaction that is subject to any degree of doubt concerning the possible existence of a conflict of interest shall be made to the President of the Board of Directors before consummating the transaction.

A conflict of interest can be considered to exist in any instance where the actions or activities of an individual on behalf of the District also involve an improper or unfair gain or advantage to any party, or has an adverse effect on the District's interests

Election and Removal of Board Officers

The Board of Directors shall elect a President, Vice President, Recording Secretary and Treasurer who shall then serve for a term of one (1) year or until successors are elected.

Unless otherwise restricted by law, any officer of the Board may be removed from the office, with or without cause, at any time by a quorum of the Board that elected, designated or appointed such Board Member, and any vacancy caused by any such removal or may be filled by election of the Board.

Duties of the Board President.

The President shall, when present, preside over meetings of the Board. The president shall sign all resolutions and contracts on behalf of the district and perform such other duties as may be imposed by the board of directors as required by Montana law. The President shall communicate to all directors the information needed to make decisions.

Duties of the Board Vice President.

In the President's absence, inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions of the President; provided, however, that in case of death, resignation or disability of the President, the Board of Directors may declare the office vacant and elect a successor. The Vice-President shall also perform such other duties as from time to time may be assigned to him or her by the President and the Board of Directors.

Duties of the Board Recording Secretary

The Recording Secretary shall identify those present, record all votes taken at Executive Committee and Board meetings. The Recording Secretary may perform other duties as agreed by the majority of the Board of Directors

Duties of the Board Treasurer

The Treasurer shall chair the district Finance Committee to monitor all revenues and expenses of the district. The Treasurer will produce a monthly financial statement of income and expenses for the Board.

Section 8: Compensation

Each member of the Board of Directors shall receive a monthly salary as established by Montana law.

Committees and Advisors

The Board shall determine the necessity for any committees, either temporary or standing, and shall select and appoint the members of these committees.

ARTICLE VII Amendments

These Bylaws may be repealed or amended by the affirmative vote of majority of the District Board, at any regular or special meeting so long as the change does not put the District into conflict with the Montana Code Annotated or the administrative rules of the State of Montana after two reviews at regular board meetings. The board shall not have the power to change the purposes of the District, so, as to decrease its rights and powers under Montana law or to waive any requirement of bond or other provisions for the safety and security of the property and funds of the District or its users.

The undersigned President of County Water District of Billings Heights, does hereby certify that the above and foregoing Bylaws were duly adopted by the Board of Directors as the Bylaws of the said corporation at a regular meeting held the November 29, 2021 , and that the same now constitute the Bylaws of this District.

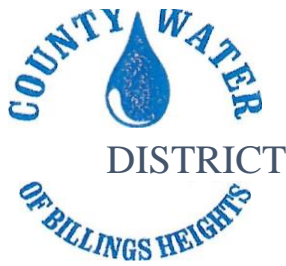


II. MING CABRERA, President

WITNESS: my hand and seal of the District this 29TH day of November 2021.



RECORDING SECRETARY



Resolution 006-21 to Authorize
Attorney-Client Fee Contract with Mark Noennig, HENDRICKSON LAW FIRM,
P.c. 208 NORTH BROADWAY, SUITE 324
P.o. BOX 2502
BILLINGS, MT 59103-2502
General Counsel for the Water District of Billings Heights Board

WHEREAS, the County Water District of Billings Height Board has interviewed Mark Noennig and reviewed his the Attorney-Client Fee Contract during a public board meeting November 29 , 2021;

That the District Board engages Mark Noennig Counsel for meeting protocol and bylaws, settlement of pending litigation with the City of Billings, and preparation of contracts for general and interim managers.

That, the President of the County Water District of Billings Heights, sign the attached engagement letter, on behalf of the Board.

Signed: 

Name: MING CABRERA

1710251 DEN'
Title:

Date: 11/29/21

Attested: 

HENDRICKSON LAW FIRM, P.C.
208 NORTH BROADWAY, SUITE 324
P.O. BOX 2502
BILLINGS, MT 59103-2502

Date: ____ November 29_____, 2021

ATTORNEY-CLIENT FEE CONTRACT

This ATTORNEY-CLIENT FEE CONTRACT ("Contract") is entered into by and between **County Water District of Billings Heights** ("Client" or "You"), and Hendrickson Law Firm, P.C., ("Attorney" or "We").

1. CONDITIONS. This agreement will not take effect, and we will have no obligation to provide legal services, until you return a signed copy of this agreement and pay the initial deposit called for under Paragraph 4.

2. SCOPE OF SERVICES. You are hiring us as your attorneys, to represent you in the matter described on the attached Rate Schedule. We will provide those legal services reasonably required to represent you. We will take reasonable steps to keep you informed of progress and to respond to your inquiries. If a court action is filed, we will represent you through trial and post-trial motions. After judgment we will not represent you on appeal or in execution proceedings. Unless you and we make a different agreement in writing, this agreement will govern all future services we may perform. If an appeal is needed, an additional contract will be required.

3. CLIENT'S DUTIES. You agree to be truthful with us, to cooperate, to keep us informed of developments, to abide by this Contract, to pay our bills on time and to keep us advised of your address, telephone number and whereabouts.

4. INITIAL DEPOSIT. You agree to pay us an initial deposit of \$ **N/A** upon execution of this agreement. Our hourly charges will be credited against the initial deposit. The initial deposit, as well as any future deposit, will be held in a trust account. You authorize us to use that fund to pay the fees and other charges you incur.

Whenever your deposit is exhausted, we reserve the right to demand further deposits, each up to the sum of \$_ (as reasonably requested) _. Once a trial or arbitration date is set, we may require you to pay all sums then owing to us and to deposit the attorneys' fees we estimate will be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees likely to be assessed.

You agree to pay all deposits after the initial deposit within twenty-one (21) days of our demand. **Any unused deposit at the conclusion of our services will be refunded.**

5. LEGAL FEES AND BILLING PRACTICES. You agree to pay by the hour at our prevailing rates for time spent on your matter by our legal personnel. Our current hourly rates for legal personnel (and other billing rates) are set forth on the attached Rate Schedule. The Rate Schedule also provides for periodic increases.

We will charge you for the time we spend on telephone calls relating to your matter, including calls with you, opposing counsel or court personnel. The legal personnel assigned to your matter will confer among themselves about the matter, as required. When they do confer, each person will charge for the time expended. Likewise, if more than one of our legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent. We will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

6. COSTS AND OTHER CHARGES.

(a) In General. We will incur various costs and expenses in performing legal services under this Contract. You agree to pay for those costs and expenses in addition to the hourly fees. The costs and expenses commonly include process servers' fees, fees fixed by law or assessed by courts and other agencies, court reporters' fees, long distance telephone calls, messenger and other delivery fees, postage, parking and other local travel expenses, photocopying and other reproduction costs, clerical staff overtime, word processing charges, charges for computer time and other similar items. Except for the items listed on the Rate Schedule, all costs and expenses will be charged at our cost.

(b) Out of Town Travel. You agree to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by our personnel. You will also be charged the hourly rates for the time legal personnel spend traveling.

(c) Experts, Consultants and Investigators. To aid in the preparation or presentation of your case, it may become necessary to hire expert witnesses, consultants or investigators. We will not hire such persons unless you agree to pay their fees and charges. We will select any expert witnesses, consultants or investigators to be hired.

7. BILLING STATEMENTS/COLLECTION. We will send you periodic statements for fees and costs incurred. Each statement will be due in fifteen (15) days of its date. You may request a statement at intervals of no less than 30 days. If you do, we will provide one within 10 days.

You will be charged a **finance charge** at the rate of 1% per month on all amounts unpaid for more than 30 days after the date of the statement. That amount will be

added to the principal balance owing. If you fail to pay the amount owed, you agree to pay us for collection costs and reasonable attorney's fees.

8. LIEN. You hereby grant us lien on any and all claims or causes of action that are the subject of our representation under this Contract. Our lien will be for any sums owing to us at the conclusion of our services. The lien will attach to any recovery you may obtain, whether by arbitration award, judgment, settlement or otherwise. The lien created by this provision is supplemental to the lien created by Section 37-61-420, Montana Code Annotated.

9. DISCHARGE AND WITHDRAWAL. You may discharge us at any time. We may withdraw with your consent or for good cause. Good cause includes your breach of the agreement, your refusal to cooperate with us or to follow our advice on a material matter or any fact or circumstances that would render our continuing representation unlawful or unethical.

When our services conclude, all unpaid charges will immediately become due and payable. After services conclude, we will, upon request, deliver your file or a copy thereof to you, along with any funds or property of yours in our possession.

10. DISCLAIMER OF GUARANTEE. Nothing in this contract and nothing in our statements to you will be construed as a promise or guarantee about the outcome of your matter. We make no such promises or guarantees. Our comments about the outcome of your matter are expressions of opinion only.

11. EFFECTIVE DATE. This agreement will take effect when you have performed the conditions stated in Paragraph 1, but its effective date will be retroactive to the date we first performed services. The date at the beginning of this Contract is for reference only. Even if this agreement does not take effect, you will be obligated to pay us the reasonable value of any services we may have performed for you.

HENDRICKSON LAW FIRM, P.C.


By: **MARK E. NOENNIG**

I/We have read and understood the foregoing terms and agree to them, as of the date Hendrickson Law Firm, P.C. first provided services. If more than one party signs below, we each agree to be liable, jointly and severally, for all obligations under this Contract.

Client: County Water District of Billings Heights


By: Its: PRESIDENT

Address: _____

Telephone: 406-671-2527
11/29/21

Email: _____

Matter: Counsel for meeting protocol and bylaws, settlement of pending litigation with the City of Billings, and preparation of contracts for general and interim managers.

B. Hourly rates for legal personnel:

- Mark E. Noennig \$275.00/hour
- Kelly J. Varnes \$225.00/hour
- Jeff Turner \$250.00/hour
- Daniel O.C. Ball \$225.00/hour
- Desi Seal \$185.00/hour
- Cody Atkins \$185.00/hour
- Justin Stark \$185.00/hour
- Paralegal \$130.00/hour
- Investigator \$70.00/hour

C. Standard charges:

We charge for our time in minimum units of .10 hours.

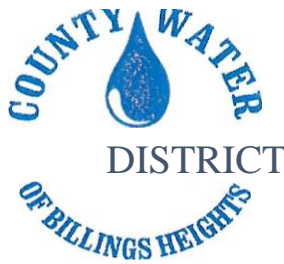
D. Costs and expenses:

- In-office photocopying 20¢/page black & white
- \$1.00/page color
- Mileage 55¢/mile

Clerical staff overtime will be charged at 1.5 times the base hourly rate or at the rates required by applicable law, whichever is greater.

E. Subject to Change:

The rates on this schedule are subject to change on 30 days' written notice. If you decline to pay any increased rates, we will have the right to withdraw as your lawyers.





Resolution 007-21 to Settle the Fee Dispute with the City of
Billings filed in
MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY Cause No. DV 20-1653 FILED by
Randall G. Nelson, 7th day of January, 2021.

WHEREAS, the County Water District of Billings Height Board has discussed the fee dispute with the City of Billings on November 29 , 2021;

That the District Board directs Mark Noennig, Counsel for meeting protocol and bylaws, and settlement of pending litigation with the City of Billings to prepare a settlement agreement in cooperation with representatives from the City of Billings to settle the fee dispute for the amount due for unbilled water provided to the District TOTAL: \$2,970,599.35 with no additional late fees or penalties, pending a review of the court records and discussion with prior counsel. The settlement agreement will include an agreement to renegotiate the contract in 2022 when the new General Manager has been hired and may include resolution of the right-of-way issues and other issues identified by either party.

That, the President of the County Water District of Billings Heights, sign the resolution , on behalf of the District.

Signed: 
Name: MARK NOENNIG
Title: PRESIDENT
Date: 11/29/21

Attested: 



Resolution 009-21 to Authorize Contract

Blue Cross-Blue Shield and Guardian Policy Renewal

WHEREAS, the County Water District of Billings Height Board reviewed 35 policies available to the employees of the District

The Board approved the renewal of the Platinum Blue Cross-Blue Shield Policy for staff, P910PFR at a monthly rate of \$18,243.88 for our nine employees and families; total annual cost \$218,926.56. The Board also approved the Guardian Vision and Dental policies which increased by \$1 per month over the previous year's expenses.

That, the President of the County Water District of Billings Heights or his designee, sign a contract on behalf of the board.

Signed: _____



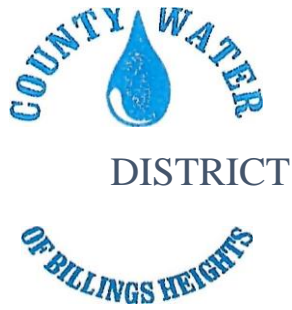
Name: Ming Cabrera

Title: Board President

Date: November 29, 2021

Attested

:  _____



Resolution 008-21 to Authorize Contract

CivicPlus/Municode

WHEREAS, the County Water District of Billings Height Board reviewed Meeting and Agenda Management (Municode Meetings) and contacted Montana cities using the software and web design services

The Board authorized a contract with CivicPlus/Municode during a public board meeting

November 29, 2021: Web Design Services Year 1 = \$5850; Meeting and Agenda Management (Municode Meetings) \$2400 per year. TOTAL YEAR 1: \$8250; Year 2 and beyond \$4500

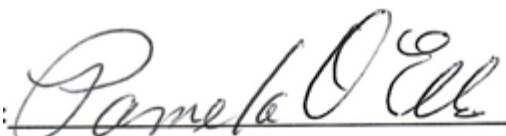
That, the President of the County Water District of Billings Heights, sign a contract on behalf of the board.

Signed: 

Name: MTWB CABANA

Title: _____ President _____

Date: _____ 11/29/2021 _____

Attested: 

GENERAL MANAGER DUTIES AND EVALUATION

BOARD POLICY NO.

Job Title: General Manager
Reports To: Board of Directors
FLSA Status: Exempt
Prepared by: District Board
Prepared date: November 29, 2021

Primary Objective

This General Manager serves as the chief executive officer of the District under the direction of the District Board of Directors. The General Manager is responsible for all aspects of the efficient and cost-effective operations and administration of the District.

In accordance with the policy guidelines of the Board of Directors and consistent with Federal and State regulations, the General Manager plans, implements, and directs the operations of the District's water system in a manner that insures service to customers, ongoing maintenance of systems and equipment, and sound development for the future. Quality decision making and judgment are expected and required.

Essential Skills Required

- Possess the ability to analyze, evaluate, write, and understand budgets and rate structures.
- Be able to monitor construction projects, as well as the maintenance and operation of water facilities.
- Possess the ability to handle accounting and payroll functions in accordance with government accounting guidelines.
- Be available for 24-hour on-call for emergencies except when previous arrangements are made with other district employees.
- Submits to random alcohol and drug testing per District regulations.
- Ability to work with mathematical concepts such as probability and statistical inference, and fundamentals of plane and solid geometry and trigonometry. Ability to calculate figures and amounts such as proportions, percentages, area, circumference, and volume. Ability to apply concepts such as fractions, percentages, ratios, and proportions to practical situations.
- Ability to solve practical problems and deal with a variety of concrete variables in situations where only limited standardization exists. Ability to interpret a variety of instructions furnished in written, oral, diagram, or schedule form.

- Physical requirements include the ability to reach, twist, stand, balance, bend, stoop, crouch, crawl, walk, or climb in a variety of indoor and outdoor environments and weather conditions, and lift weights up to 50 lbs. (greater with assistance), and manual dexterity to perform computer and cell phone tasks. Sensory abilities include smelling, hearing, close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus. Reasonable accommodations may be made to enable individuals with disabilities to perform essential functions.

Areas of Accountability and Performance:

Following directions from the Board of Directors the General Manager will:

- Develop rate structures as required by Montana law.
- Develop projections for current and future needs in the areas of staff, capital improvement projects and finances for 2 years, 5 years and 10 years.
- Monitor construction projects, as well as the maintenance and operation of water facilities.
- Maintain accounting and payroll functions in accordance with government accounting guidelines.
- Administer, supervise, plan, direct, and coordinate the water systems and office, delegating tasks as needed.
- Maintain familiarity with the rules and regulations of the District in order to enforce them and to answer questions from customers or developers.
- Meet and work with consultants and/or engineers to further the goals and needs of the District and its projects.
- Demonstrate the ability to read and interpret plans and specifications, and to locate lines for construction purposes.
- Work closely with Montana Rural Water and other agencies, attending related onsite and off-site meetings, seminars and training as often as possible in order maintain certifications and to be current on regulations and legislation at the state and federal levels in the water and wastewater fields.
- Is responsible for the timely filing of any necessary District reports to County, State and Federal agencies.
- Assists in preparation of the agenda and resolutions for the monthly Board meetings in compliance with board policy. Attends every board meeting and is prepared to discuss in detail the implications on District operations of any agenda item.
- Initiates, plans, develops, and implements records and reports for the Board of Directors
- Organizes and prepares financial reports, minutes, correspondence and other documents for board action, and performs other duties as assigned by the Board of Directors
- Is responsible for all facilities, property, and equipment of value.
- Provides thought-out and sound advice and counsel to the Board of Directors in relation to projects, developments, and improving District functions.

- Recommends priorities for short- and long-range projects, and coordinates implementation as required.
- Is responsible for developing, preparing, and recommending a comprehensive budget and rate structure with supporting data for the District.
- Serves as a liaison and advisor for the District with consulting engineers, government agencies, developers, and any others as need arises.
- Recommends purchases of new and replacement equipment as the result of continuous appraisal of the working and functionality of District facilities and equipment.
- Is responsible for timely and accurate meter reading, accounting and payroll tasks for the District as well as the billing and collection of accounts.
- Is responsible for establishing a high level of customer service and maintaining quality contacts with the public, District customers and the Board

Supervision-Responsibility for Work of Others

The General Manager

- Administer all personnel matters of the District including supervision and direction, orienting, training, discipline, evaluation of performance and related matters, delegating tasks as needed. (Exception: The Board Secretary reports directly to the Board of Directors) • Prepares written job descriptions for each employee and an annual employee evaluation
- Develop and maintain job descriptions for all district personnel
- Assign employee tasks to assure effective use of personnel, equipment, and facilities.
- Is responsible for using and instructing others in the proper use of safety equipment and procedures to prevent injury.
- Help maintain a professional atmosphere and positive morale among employees.
- Cross-train with other employees to maintain staffing requirements during periods of transition, vacations, or other absences.
- Periodically reviews logs and journals completed by other personnel.
- Is responsible for employee hiring, evaluations, additional training, advancement, promotions, wage increases, and terminations.
- Is responsible for preliminary review and management of all employee related plans and insurance programs, which are a part of the employee compensation package.
- Assess and suggest changes to the rate and structure of employee pay scales and compensation.
- Is responsible for ensuring employees obtain certification in the water field, and continue and maintain their education as required for their certifications.

Education, Training and Experience Requirements:

The General Manager possesses

- Any combination of education and experience equivalent to high school graduation and some college training in the areas of business administration. A degree in engineering is preferred.
- At least five years of progressively responsible experience involving the management of materials, personnel, budgets, rates, and purchasing in a water system.
- Valid Montana Water Operator Certifications appropriate for the District's classifications (certified within 180 days of position acceptance)
- Technical proficiency with computers and software
- Must possess a valid state of Montana driver's license with an insurable record

Evaluation of the General Manager

At least annually, at or near the employment anniversary date of the General Manager, the Board will meet in executive session for the purpose of evaluating the performance of the General Manager.

The Board will summarize the results of their individual evaluations and arrive at a consensus as to the overall performance of the General Manager. The results of the evaluation will be communicated to the General Manager.

The Board President shall ensure that the provisions of this policy are followed.

Adopted: November 29, 2021

Revised:

Reference: CWBDH Policy

Review Date:

Attest: /s/ 

Board President Ming Cabrera

Attest: /s/ 

Secretary

County Water District of Billings Heights

The County Water District of Billings Heights is seeking a General Manager to lead, motivate, manage, supervise and coordinate the District. This General Manager serves as the chief executive officer of the District under the direction of the District Board of Directors. The General Manager is responsible for all aspects of the efficient and cost-effective operations and administration of the District.

In accordance with the policy guidelines of the Board of Directors and consistent with Federal and State regulations, the General Manager plans, implements, and directs the operations of the District's water system in a manner that insures service to customers, ongoing maintenance of systems and equipment, and sound development for the future. Quality decision making and judgment are expected and required.

Essential duties and responsibilities include but are not limited to: assume safety responsibility for personnel and the safety of water delivery; select, train, motivate and evaluate personnel; plan, direct, coordinate and review work plan for District. The General Manager is provides thought-out and sound advice and counsel to the Board of Directors in relation to projects, developments, and improving District functions, is responsible for developing, preparing, and recommending a comprehensive budget and rate structure with supporting data for the District and Serves as a liaison and advisor for the District with consulting engineers, government agencies, developers, and any others as need arises. **Salary range:** \$78,000 - \$121,775 negotiable depending on education and experience

Excellent benefits including full medical and dental coverage, paid vacation and sick leave, and retirement benefits. Relocation expenses and mileage or work vehicle negotiable.

Desired Qualifications and Skills:

- A professional engineering license with a minimum of five (5) years or project or personnel management experience in water resource management
- At least five years of progressively responsible experience involving the management of materials, personnel, budgets, rates, and purchasing in a water system.
- Possession of, or ability to obtain within 180 days a valid Montana Water Operator Certification appropriate for the District's classifications
- Technical proficiency with computers and software
- Must possess a valid state of Montana driver's license with an insurable record

Required Materials:

- Cover letter
- Resume including education, special skills, licenses or certificates, employment history including contact information of employers and salary
- Submit to: John Rife, Job Service Billings 2121 Rosebud Drive #B Billings, MT 59102 jrife@mt.gov (406) 655-6075

The successful applicant

The successful applicant will be required to provide verification of educational certifications and and official education transcripts, pass a medical exam including a drug and alcohol screen, and a complete background check prior to beginning work. The Board will review applications beginning December 16, 2021.

County Water District of Billings Heights

TRUSTEE AND MANAGER POLICIES

Rules and Procedures for Meetings of the District Board

BOARD POLICY NO.

PART I. General Provisions

Section 1.01 Purpose. The purpose of this policy is to establish the rules of procedure for the conduct of meetings and the transaction of business by the County Water District of Billings Heights. These rules of procedure are intended to assure that the Board can accomplish its work efficiently, in full view of the public and with reasonable opportunity for the public to participate in the deliberations and decisions of its county government.

Section 1.02 Authority. These rules of procedure are pursuant to Montana statutory and regulatory law.

PART II. Public Participation

Section 2.01 Policy. It is the policy of County Water District of Billings Heights Board that the public shall be afforded reasonable opportunity to participate in the operation of Board prior to the final decision of the Board concerning any matter of significant interest to the public. A matter of significant interest to the public includes but is not limited to any matter:

1. Requiring a public hearing;
2. Adopting, Implementing, interpreting, prescribing or altering a rate, rule or policy of the District;
3. Relating to the budgetary and financial affairs of the District.

Section 2.02 Open Meetings. A meeting of District Board of Directors is convened whenever a quorum of Board members hear, discuss or act upon any matter over which they have jurisdiction. All meetings of the District Board shall be open to the public. However the presiding officer of the Board may close any meeting during the time the discussion relates to a matter of individual privacy and then if an only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and in that event, the meeting must be open as it relates to that individual.

Section 2.03 Notice. The District Board shall give timely notice of any public hearing or any meeting to discuss or act upon any matter of significant interest to the public, as prescribed by law. Additionally, the agenda of all scheduled meetings of the District Board shall be posted on the website not later than 48 hours prior to the meeting.

Section 2.03 Public Posting Board. The Board of the County Water District of Billings Heights designates as its official posting place the website for the District.

PART II. Procedures.

Section 3.01 Meetings The Board of Directors shall meet on a regular basis and may hold special meetings to conduct the affairs of the District. Committees of the Board may meet on a regular basis and may hold special meetings. All meetings of the Board shall be open to the public and subject to the public participation and notification requirements of Montana law except as otherwise provided in law. Appropriate notice of all meetings shall be provided to the public.

A meeting of the Board is defined as the convening of a quorum of the Board either in person or by means of electronic equipment to hear, discuss, or act upon a matter over which the Board has supervision, control, jurisdiction, or advisory power. A quorum is represented by a majority of the total members of the Board or committee in attendance.

Special meetings of the Board of Directors may be called by the President, or in his absence the Vice President, or by a quorum of the members of the board.

Official action at Board meetings can only occur with a quorum of Directors present. Minutes of all meetings required by statute Montana law to be open, fully reflective of all business transacted at the meeting, shall be kept and shall be available for inspection by the public.

Section 3.02 Agenda Preparation. Proposed resolutions, reports, recommendations, contracts and all other matters requiring consideration, discussion or decision by the Board shall be submitted to the President of the Board and to the Recording Secretary of the Board by 12:00 noon on the Friday immediately preceding the next regularly scheduled meeting of the Board. The President or his/her designated representative shall arrange the matters requiring discussion or action into an agenda according to the order of business specified herein. Copies of the agenda shall be provided to each member of the Board not later than 48 hours prior to the scheduled meeting. Copies of the agenda shall be readily available to the press and to the public at large and one copy shall be posted on the designated public posting board not later than 48 hours prior to the scheduled meeting.

Section 3.03 Order of Business. The presiding officer shall prepare the agenda in substantially the following form which may be altered by consent of the Board:

1. Call the Meeting to Order
2. Welcome and Introduction of guests
3. President's Remarks
4. Public Comment on anything not on the agenda but within the jurisdiction of the Board.
5. Consent Agenda

**** Consent Items** are those upon which the presiding officer anticipates no discussion should be necessary. However, at the beginning of each meeting any Board member may request one or more items to be removed from the consent agenda for the purpose of discussion prior to a separate vote on the item(s). The presiding officer shall schedule such discussion and vote immediately following adoption of the consent agenda.

6. Manager's Report

7. Assistant Manager's Report
8. Committee Reports
9. Old Business
10. New Business
11. Items to be Scheduled for Future Board Meeting:

***An item that is not scheduled on the agenda for the current meeting may be discussed during the session at the discretion of the Board. However, the purpose of such discussion shall be to decide whether or not to schedule the item for discussion and/or vote on a subsequent agenda. As a general rule no matter of significant interest to the public should be decided upon without prior notice to the public as a scheduled Board agenda item.*

12. Adjournment

PART IV. Rules of Board Participation.

Section 4.01 Policy. To provide for the effective participation by all members of the District Board and to protect the right of participation by members of the public appearing before the Board.

Section 4.02 Rules. Board debate shall proceed in accordance with the following rules:

1. A Board Member desiring to speak shall address the presiding officer, and upon recognition, shall confine him or herself to the question under debate, avoiding abusive and indecorous language.
2. A Board Member once recognized, shall not be interrupted when speaking unless it is to call him or her to order, or as herein otherwise provided. If a Board Member while speaking is called to order, he or she shall cease speaking until the question of order is determined, and, if in order, he or she shall be permitted to proceed.
3. Order of rotation in matters of debate or discussion shall be at the discretion of the presiding officer.
4. A motion may be made by any member of the Board but must be seconded prior to discussion and vote. If the motion is not seconded it shall be declared failed for lack of a second by the presiding officer.
5. A motion to reconsider any action taken by the Board may be made only on the day such action was taken. It may be made either immediately during the same session, or at a recessed and reconvened session thereof. Such a motion may only be made by a Board Member of the prevailing side, but may be seconded by any Board Member and it shall be debatable.
6. Nothing herein shall be construed to prevent any member of the Board from making or remaking the same or any other proper motion at a subsequent meeting of the Board but the matter must be a scheduled agenda item.

Section 4.03 Suspension of the Rules of Debate. The rules of debate may be suspended temporarily by the unanimous vote of the entire Board.

Section 4.04 Majority of Whole Board Required. The affirmative vote of majority of Board Members present is required to adopt any measure unless a greater number of votes may be required by law.

Section 4.05 Duty to Vote. It shall be the duty of each Board Member to vote in the affirmative or negative on each motion duly placed before the Board by the presiding officer. A Board Member may make a brief explanation of the reason why she or he voted in a particular way.

Section 4.06 Proxy Voting. A Board Member who is not present in the meeting at the time a motion is put to a vote cannot vote. Board Member shall not be permitted to vote by a proxy vote or by written vote.

Section 4.07 Conflict of Interest. Any member of the Board who has a private interest, as defined by law or as so advised by the County Attorney, in any matter pending before the District shall not participate in the debate nor vote in that matter nor seek to influence the vote of members of the Board, except as otherwise provided by Montana law. If the presiding officer has a private interest in a matter pending before the Board he or she shall yield the chair to the Vice President during the course of debate and decision concerning the matter in which she or he has a private interest.

PART V. Presentation to the Board.

Section 5.01 Procedures. The general procedure by which items are handled by the Board Members at *other than public hearings* shall be as follows:

1. The item is presented to the Board along with a brief summary of the matter for discussion, with or without the presiding officer's recommendation.
2. For the purpose of clarification and after recognition by the presiding officer, Board Members may direct questions about the item to the presenter, the presiding officer or staff member.
3. Comments from the presiding officer, staff or Board members will then be heard by the Board. The Board may invite individuals invited to speak to the motion.
4. After recognition from the presiding officer the Board may direct questions.
5. The presiding officer will then invite members of the audience to present or submit testimony beginning with those in favor of the proposal, followed by those who oppose the proposal and concluding with those who neither favor nor oppose the proposal.
6. All testimony shall be directed to the presiding officer.
7. The Board may, upon a proper motion and second, vote on the matter or table the matter until a date certain.

PART VI. Public Hearings

Section 6.01 Procedures. The Board shall conduct public hearings as required by law. Public testimony will be presented to the Board in the same format as described in PART V above, except that witnesses may be required to testify under oath as provided by law in which case the Board shall not be bound by the strict rules of evidence, but may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The presiding officer shall, with advice as needed from legal counsel, rule on all questions relating to the admissibility of testimony or evidence. The ruling of the presiding officer may be overruled by a majority vote of the Board. Additionally, the following rules of procedure shall apply:

1. The proponents or opponents, their agent or attorney, may submit petitions and letters prior to the closing of the hearing and the same shall be entered by reference into the minutes and considered as other testimony received at the hearing.
2. Following the presentation of all testimony and evidence, the Board may: (1) Continue the hearing to a date certain to allow additional information to be submitted to the Board; (2) Close the public hearing and proceed to Board debate of the matter; or (3) Continue the Board debate and vote to a date certain.
3. A public hearing which has been formally closed may not be reopened. If additional information is required before a decision can be made, the Board, upon motion duly made, seconded and passed, may call for an additional public hearing which hearing shall be duly noticed as required by law and this policy.

PART VII. Guide for Public Participation

Section 7.01 Guidelines for Public Participation. The following guidelines shall serve to assure reasonable and fair public participation in the decisions of the DISTRICT Board.

1. The public shall be invited to speak on any item under consideration by the Board after and only after recognition by the presiding officer.
2. The speaker should step to the front of the room, and for the record, give his or her name and address and, if applicable, the person, or organization he or she represents.
3. Prepared statements are welcomed and should be given to the presiding officer and noted in the minutes of the meeting. Prepared statements that are also read, however, shall be deemed unduly repetitious. All prepared statements shall become a part of the permanent record.
4. While the Board is in session, members of public must preserve order and decorum. No person shall delay or interrupt the proceedings or the peace of the Board nor disturb any member of the public or of the Board while speaking or refuse to obey the orders of the presiding officer of the Board.
5. Any person who while testifying shall use indecorous or abusive language or who shall become boisterous or disruptive shall be barred from further presentation to the Board by the presiding officer, unless permission to continue be granted by a majority vote of the Board.

PART VII. Resolutions

Section 8.02 Resolutions. Except as provided by law, proposed resolutions may be introduced at any time by a member of the Board and if adopted shall be effective on the date specified therein.


Section 8.03 Right of Initiative. The people retain the right to present resolutions for adoption by the initiative process, as prescribed by law.

Adopted: November 29, 2021 Attest: s/ Revised:

Reference: CWBDH Policy

Review Date:

/s/ 
Board President

Attest: s/ 

Secretary

County Water District of Billings Heights

1540 Popelka Avenue Billings, Montana 59105

Records Access Policy & Procedure

Purpose

This policy establishes guidelines to ensure compliance with the Montana Public Records Act, and for providing public examination of, and access to, Open Records at the County Water District of Billings Heights

District Policy

All requests for the inspection or copies of District open records must be presented in writing to the District's General Manager or President of the Board of Directors. A Public Information Request form shall reside on the District's website, and requesters of public information should complete the form, and submit the form to the District's GM or President of the Board of Directors, either via email CWDBHBoard@gmail.com or GeneralManagerCWDBH@gmail.com or via US mail (1540 Popelka Drive, Billings, Mt 59105). Such requests will be specific as to documents or information requested. Original files are to be handled and copied by District personnel only. Persons requesting copies of open records shall reimburse the District for the cost of reproduction, printing and mailing, as well as legal and/or staff time, prior to copies being turned over. The District shall not permit the removal of original copies of its public records from the files of the Board of Directors, General Manager, Secretary or Treasurer, or other District staff member.

Fees

Applicable fees for the processing of information requests under this Policy shall generally be set at actual cost, or as otherwise established below:

Copy fees:	\$.15 per page for District prepared copies (black&white)
Computer disk:	Actual cost
Other forms:	Actual cost
Postage/courier fees:	Actual cost
Legal Review	Actual cost
Staff Time	First hour no charge; \$50/hour after first hour

The Board President shall ensure that the provisions of this policy are followed.

Adopted: November 29, 2021

 Attest: /s/

Revised:

Board President

Reference: CWDBH Policy

Review Date:

Attest: /s/ 

Secretary

PUBLIC INFORMATION REQUEST
County Water District of Billings Heights
1540 Popelka Dr. Billings, MT 59105
CWDBHBoard@gmail.com or GeneralManagerCWDBH@gmail.com

SECTION A – REQUESTER INFORMATION

Name: _____

Representing: _____

Address: _____

City: _____ State: _____ Zip: _____

Email: _____ Phone: _____

SECTION B – RECORDS REQUESTED

Describe the record you are requesting. Please be as specific as possible and include enough detail to assist staff in locating the record(s). If you need additional space, please attach additional pages

UNIFORM COMPLAINT PROCEDURE

BOARD POLICY NO.

Primary Objective

The Board establishes this Uniform Complaint Procedure as a means to address certain complaints that arise within the County Water District of Billings Heights. The Uniform Complaint Procedure is an avenue for complaints concerning violations of Board policy or District procedures. The District will endeavor to respond to and resolve all complaints without resorting to a formal complaint procedure and, when any complaint is filed, to address the complaint promptly and equitably. The right of a person to prompt and equitable resolution of a complaint will not be impaired by a person's pursuit of other remedies. Use of a District complaint procedure is not a prerequisite to the pursuit of other remedies and does not extend any filing deadline related to the pursuit of other remedies.

A. Addressing Complaints within the District

1. Initial Level Resolution of Complaints The Board expects that most issues will be addressed routinely when they arise. A person with a complaint is encouraged first to discuss the issue with the appropriate individual with the objective of resolving the matter promptly and informally. An important exception is that complaints of sexual harassment should be discussed directly with the Board President and referred to the attorney representing the district given that neither are involved in the alleged harassment and who will initiate District anti-harassment procedures. The Uniform Complaint Procedure is not an appropriate venue for making complaints concerning the job performance of most District employees. If a complaint concerns an employee's job performance and cannot be resolved informally at the administrative level, the complainant may have further review through the Complaint Procedure.
2. Areas of Concern. This Uniform Complaint Procedure may be used to address concerns (except job performance issues) in those rare circumstances when an issue is not resolved at the individual level.
3. Board's Authority Limited. Ratepayers should be aware that the Board's authority and role in the District's complaint procedures are limited in certain circumstances and not all issues arising within the District can or should be directly addressed by the Board. For example, the Board will not consider employee discipline issues unless and until the General Manager or attorney brings the issue before the Board pursuant to Montana law.

B. Written Complaint Procedure for Violation of District Policy

1. Standing. If a person with standing believes that a District policy has been violated, then that person may use this Uniform Complaint Procedure to address the concern. A person has standing to bring a complaint under this Uniform Complaint Procedure if the person is a resident of the District and directly affected by and has personal and direct knowledge of the matters asserted.
2. Written Complaint. When a complaint has not been resolved informally, a person with standing may file a written complaint under this policy to the Board. The written complaint must be signed and dated, stating (a) the nature of the complaint, (b) a description of the event or incident giving rise to the complaint, including the date of the event or incident and any individual involved, (c) the remedy or resolution requested, and (d) a description of complainant's effort, if any, to resolve the issue informally, including whom within the District the complainant informally addressed the issue. Individuals filing written complaints must indicate which policies or procedures they think have been violated and must provide evidence of the nature of the violations and when they occurred. The written complaint must be filed within thirty (30) calendar days from (a) the event or incident or (b) the date the complainant became aware of or could reasonably become aware of the event or incident. If the complainant attempted to resolve the issue informally, the informal resolution process will operate to extend the filing deadline, but the written complaint must nevertheless be filed within sixty (60) calendar days from (a) the event or incident or (b) the date the complainant became aware of or could reasonably become aware of the event or incident.
 1. President's Review. The Board authorizes and directs the President or the President's designee(s) to evaluate and determine within twenty (20) business days of receipt of a written complaint the following issues: (a) the complainant's standing to bring the complaint, (b) the timeliness of the complaint, and (c) the governing policy implicated in the complaint. The President or designee(s) may consult with District legal counsel on these issues. Upon completion of this review, the President or designee(s) will (a) direct the complaint to the appropriate individual pursuant to applicable policy or (b) dismiss the complaint.
 2. Board's Authority to Dismiss a Complaint. The Board may dismiss any complaint if (a) the complainant lacks standing, (b) the complaint is time-barred, or (c) no District policy is implicated. The Board will notify the complainant in writing of the Board's decision to dismiss the complaint and the specific reason for the dismissal.
 3. Review and Response. Upon receipt of a written complaint, the General Manager or Board President will investigate and attempt to resolve the complaint. In responding to the complaint, the investigator may, but is not required to, take any or all of the following steps:
 - a. meet with the parties involved with the complaint,
 - b. conduct a separate or supplementary investigation,
 - c. engage an outside investigator or other District employees to assist with the complaint, or
 - d. take other steps appropriate or helpful in addressing the complaint.The investigator will respond in writing to the complainant within thirty (30) calendar days of the investigator's receipt of the complaint. The Board may grant additional time for review and response. If the Board grants the investigator additional time for review and response, the investigator will notify the complainant of the grant of additional time and the reason for the grant of additional time. The investigator will provide a copy of the response to the Board.

If the complainant believes the investigator's decision was in error, the complainant may request in writing that the Board review the decision. This request must specify the reasons for dissatisfaction and

must be submitted to the Board within fifteen (15) calendar days of the investigator's decision. The Board may dismiss the request if the request is not submitted within fifteen (15) calendar days of the investigator's decision.

If the Board has jurisdiction over the substance of the original complaint and the complainant believes the investigator's decision was in error, the complainant may request in writing that the Board consider an appeal of the investigator's decision.

6. Board Review


- a. Board Jurisdiction. The Board's powers and duties are outlined in Montana law. If the substance of the original complaint falls within the Board's powers or duties, the Board has jurisdiction to consider an appeal of the investigator's decision. For example: If the complainant seeks a change in District policy, the Board holds jurisdiction over the substance of the complaint; Conversely, if the complainant seeks to impose discipline on a staff member not directly reporting the Board, the Board lacks jurisdiction to do either absent the recommendation of the General Manager. If the complainant seeks to impose tort liability, the Board lacks jurisdiction over tort claims.
- b. Board Review. If the Board holds jurisdiction over the substance of the original complaint, the Board will consider upon written appeal the investigator's decision. Upon receipt of a written request for appeal, the President will either (1) place the appeal on the agenda of a regular or special Board meeting or (2) appoint an appeals panel of not less than three Board members to hear the appeal and make a recommendation to the Board. If the President appoints a panel to consider the appeal, the panel shall meet to consider the appeal and then make a written recommendation to the full Board. The Board will report its decision on the appeal in writing to all parties within thirty (30) calendar days of the Board meeting at which the Board considered the appeal or the recommendation of the panel. A decision of the Board is final, unless Montana law specifically provides for an appeal and such an appeal is taken within the period provided by law.
- c. Complaints Against General Manager or Board Secretary. If a complaint is submitted alleging a violation of District policy by the General Manager or the Board Secretary, the Board holds jurisdiction over the complaint as the supervisor of the General Manager and the Board Secretary. The Board will respond to the complaint. In doing so, the Board may refer the matter to a panel of not less than three Board members to hear the complaint and make a recommendation to the Board. The Board or its panel may (a) meet with the parties involved with the complaint, (b) conduct a separate or supplementary investigation, (c) engage an outside investigator or other District employees to assist with the complaint, or (d) take other steps appropriate or helpful in addressing the complaint. The Board will respond in writing to the complainant within sixty (60) calendar days of the Board's receipt of the complaint. The Board may extend its response deadline if conditions warrant additional time to respond. The Board's response to a complaint against the General Manager or Board Secretary is final, unless Montana law specifically provides for an appeal and such an appeal is taken within the period provided by law.


shall ensure that the provisions of this policy are followed.

The Board President shall ensure that the provisions of this policy are followed.

Adopted: November 29, 2021

Attest: /s/



Board President


Revised:

Reference: CWDBH Policy

Review Date:

Attest: s/Secretary

County Water District of Billings Heights

1540 Popelka Avenue Billings, Montana 59105

COMPLAINT FORM

The Board of the County Water District of Billings Heights established a Uniform Complaint Procedure as a means to address certain complaints that arise within CWDBH.

The Board expects that most complaints will be addressed informally. A person with a complaint is encouraged first to discuss the issue with the individual, with the objective of resolving the matter promptly and informally. This complaint procedure may be used when an issue cannot be resolved informally.

The District endeavors to respond to and resolve complaints promptly and equitably. The right of a person to prompt and equitable resolution of a complaint will not be impaired by the person's pursuit of other remedies. Use of this Complaint Procedure is not a prerequisite to the pursuit of other remedies and does not extend any filing deadline related to the pursuit of other remedies.

I wish to have the District address:

- The services of:

(name of individual and title)

- This program: _____

(name of program)

- This incident:

- Date of incident: _____ (This written complaint must be filed within thirty (30) calendar days of the incident or from the date an individual could reasonably become aware of such event or incident. If there has been an attempt to resolve this issue informally, the complaint must be filed within sixty (60) calendar days.

Please attach a separate sheet if necessary.

1. Nature of complaint:

2. Description of incident:

3. Personnel involved (if any):