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# COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

## Board of Directors Meeting Minutes

The meeting is open to any interested member of the public. Agendas are prepared for the meetings; please request an agenda from the Board Recording Secretary Pam Ellis, [pamelliscwdbh@gmail.com](mailto:pamelliscwdbh@gmail.com) and are available at <https://www.yellowstonecountynews.com/county-water-district-of-billings-heights/> and <https://heightswaterdistrict.com/agendas-and-minutes/>

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

Date: January 19, 2022

Time: 6:00 p.m.

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

**WELCOME AND INTRODUCTIONS:**

- **GUESTS:** Frank Ewalt, Tom Zurbuchen, Kelly Brookshire, Evelyn Pyburn, Bud Bailey
- **STAFF:** Larry Brewster, Peyton Brookshire, Dianne Crees, Josh Simpson
- **BOARD:** Ming Cabrera, David Graves, Laura Drager, Pam Ellis

**PRESIDENT'S REMARKS:** Ming Cabrera

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

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

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

The board will not take action on these items at this time but may choose to add an item to the next meeting's Agenda for discussion.

- Tom Zurbuchen said the new board said they were committed to being transparent and legal. The Board did not post notice of a committee meeting on January 10. Even executive session meetings have to be posted.

- Ming Cabrera said that the January 10<sup>th</sup> meeting was the Hiring Committee. The committee was reviewing resumes which are confidential until the finalists are chosen.
- Mike Macki Asked if the Board was just going to hire in private or if it would be public. He said if there wasn't input from the public, this Board is going to be redone. He has already gone down to the election department and got the papers to sign.
- Ming Cabrera said the hiring process is on the agenda.

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

Minutes of the December 15, 2021 Meeting

December Prepaid bills for approval

December Bills for Approval

December Bank Statements: First Interstate Bank

Stifel Statement December

Profit and Loss Statement – December 2020 and December 2021

Reimburse Laura Drager for expenses incurred posting the job notice for General Manager

Recommended Motion Pam Ellis moved to approve the consent agenda. Seconded by David Graves.

- Tom Zurbuchen saw a bill from Felt Martin for almost \$27,000. He requested a copy of the bill. Mr. Zurbuchen commented that the Board ignored the advice of Felt Martin which he felt was an abuse of rate payers money.
- Peyton Brookshire said Tom had requested a copy of the check and it had not been generated because Suzie had been ill.

MOTION APPROVED UNANIMOUSLY.

**INTERIM GENERAL MANAGER REPORT: LARRY BREWSTER**

- CIP UPDATE REVIEW OF RECOMMENDED PROJECTS AND PRIORITIES IDENTIFIED, NEXT STEPS (pdf copies of the documents can be requested from the District)

Peyton said that the CIP is always a long list, many are 'wish list' items that are just thrown in. Larry Brewster and Peyton Brookshire will rank the items; some are not cost effective. The main item is the 24" NW Transmission line; we submitted a grant for it too. Give the situation with watering over the by the golf course, it is a must have or it will start cutting into our reserve capacity, fire flow, if something happens. This project will probably have to be built within the next 2 years. SRF is giving loans.

GIS updates are current.

We are looking at the facility, storage shop, yard. Considering cold storage for excess construction materials on the land where our tank is located.

Pam Ellis noted that the Johnson Road bridge will be completed in 2023 and the area for development is in the County Water District. Peyton said the District doesn't extend water mains unless it is critical infrastructure. That cost would be on the developers; the District does have the ability to serve the area.

Peyton said the only project not on the CIP going from north of Hwy 312 and tying into Bitterroot Heights because you have 130 pounds of pressure at the top and 105 lbs at the bottom—it will just sit there. If we come off 24 and go around Independent, we can bore under the Interstate and will not have to do a ditch crossing and come down Bitterroot. That will level the pressures. Bitterroot from P&E to Mary Street, tying that in. That is something we would consider doing.

Pam Ellis noted that #31 recommended implementing a system for notifying consumers of issues including planned outages. If we make better use of the BCS software, we can get contact information from consumers. When we do the new website, we need to focus on getting people to provide their email addresses and phone numbers for notification.

Peyton said we have under 200 customers who want the emails and e-bills. If you want to roll something like that out, you need to have an opt-in.

Larry Brewster said we have to look at the overall cost. What we are doing now doesn't cost us very much. Pam Ellis noted that we have paid for the software and getting email addresses does not cost the district anything. If we actively support that, we will have a lot better questions.

Laura Drager asked how far out is the CIP? Peyton said it is projected to be 10 years but to reevaluate in 5 years. Some projects may drop off; priorities may need to be adjusted.

Larry Brewster said the pink highlights where the District can provide water. Peyton clarified what the pressures would look like with the tank in our area of build-out, to make sure that the NW bypass will be able to serve. The NW area is developing the quickest. It is just a matter of laying pipe down and gridding off as property develops.

Ming Cabrera commented that we may need to push the CIP a little quicker. Peyton said it would not be a full CIP. The last CIP was 2004 and it was a 20 year plan. The tank and the chlorination upgrade finishes the projects on the 2004 CIP.

Pam Ellis commented that the Bar 11 project required consumers to install pressure reducers in each property. People were gone and their homes flooded. We could have put pressure reducers in the system.

Peyton said that people knew they had to install pressure reducers when they build their homes. If you put a pressure reducer that the system has to monitor with the varied terrain, it would be a lot of maintenance. It is only the back end by the plateau. As that builds out, the pressure will come down.

Josh Simpson said sometimes that is a plumbing failure. Sometimes plumbers have hooked up the water incorrectly. That has happened in various areas that are in different areas.

The last form outlines the process for prioritizing the projects. There is also a list of projects completed from the previous CIP.

WAGE STUDY Larry said they did some work and looked at some comparisons and the document today is a starting point. We didn't give you all of it today because we would like to put it together as a resolution so the public can look at it as well. We plan to have it available for the February meeting. We started with the salaries and we will look at the overall compensation as part of the presentation at the next meeting. We will try to compare districts similar in size and a similar market.

#### Pay adjustments for 2022

This is an attempt to raise the pay of the district employees higher in the range and in line with Comparable rates of pay in Montana. This shows where they are and what we are recommending, we move too. This is for discussion if the board is interested, we will bring forward a resolution to the meeting in February with the comparable used for this recommendation. The board may have other options if they wish but we are already a month late with when the rates are adjusted.

Job Class	old rate	new rate
Customer service manager	22.51	26.23
Senior Accountant	24.00	27.46

Senior Distribution Operator	29.25	33.34
Assistant Manager	33.26	45.92s
General Manager	44.00	53.61

The Senior Distribution Operator new employees depending on their certification and experience will start at 75 percent and move up till the meet all of the certifications needed to qualify for the senior operator rate.

Pam Ellis recommended we consider a work session, publicly noticed, so the Board could deal with the complexity of the proposal and have time to focus and think about the implications.

Larry Brewster said that salaries are usually updated in December and the District is a couple of months late because of leadership changes.

**PERSONNEL RECOMMENDATIONS**

Need to consider in the near future adding one employee and maybe one more in the future years. And I base that on the amount of work. I base that mostly on safety. If you have someone out sick and you have a big project, you have to put 3-4 people on. Staff still have to do the day book and other things. When we look at how busy the guys are and how much time they are not here because they have been on staff for a long time, we need to evaluate. That recommendation will come in the next month.

**MEETING OPERATION**

This meeting is going way better than the last one. Just want to remind you not to interrupt people. All of you are pretty out spoken anyway so you will make sure you made your points. Be sure to be polite to one another.

**COMMUNICATIONS WITH THE STAFF** There is some confusion about who is supposed to do what. Funnel the requests for information through the General Manager. Then it doesn't get confused.

Pam Ellis said she sends the agendas and minutes out to the full office staff and full Board. Larry Brewster says that is fine. He is talking about individual requests.

**REVIEW OF STATE LAW**

Procedure Relating To Ordinances And Resolutions -- Rates, Fees, And Charges Established 7-13-2275 Procedure relating to ordinances and resolutions -- rates, fees, and charges established. (1) The ayes and noes must be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. An

ordinance or resolution may not be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

The Board has to have 4 ayes to pass a resolution or ordinance. 4 Board members is a quorum. The Board has not passed any resolutions to his knowledge with only 3 votes.

The next statute deals with the motion you are supposed to make to pass an ordinance 7-13-2275 (2) The enacting clause of all ordinances passed by the board must be in these words: "Be it ordained by the board of directors of \_\_\_\_\_ district as follows:"

Larry Brewster says no board he has ever been a part of does that on ordinances.

Larry Brewster commented that a Board member may not be the General Manager or the Secretary.

Pam Ellis said we have a legal opinion from Jeff Weldon that states that the statute does not apply to taking minutes. Nothing in the statute applies to taking minutes or working on the agenda.

Larry said if you had 4 attorneys you would have 8 opinions.

ADDED NOTE: The minutes from the Board Training on August 19, 2021 and the legal opinion from Jeff Weldon dated September 8, 2021 states

As Kyle reported to the Board earlier, a board member is prohibited by Montana law from serving as the board's "secretary". MCA 5 7-13-2277. A county water board secretary has certain specific duties defined in state law. There are also things the Board must do which would reasonably be assigned to the Board's secretary, such as submitting the minutes of meetings to the Clerk and Recorder for storage. MCA 7-13-2350.

That said, we find nothing in the law that prohibits the Board from appointing one of its own to take minutes of the meeting. That is not a duty specifically assigned the secretary by statute, Therefore, the Board could, by motion, appoint Ms. El I is to be the Board's "scrivener," generate minutes, submit the minutes for Board approval, and then give the approved minutes to the Board's secretary for submission to the Clerk and Recorder. It would be prudent to make clear in the motion that this does not make Ms. Ellis the Board's "secretary," as the dual-use of that phrase is where some confusion occurred before.

## HOW ARE BOARD MEMBERS SEATED ?

Larry Brewster said it is a confusing part of the code. He has read it probably 20 times to make sure he understood it. Larry said he is trying to gather all the information about some things that we may not have been in compliance with.

Vacancies On Board Of Directors – Appointment 7-13-2262. Vacancies on board of directors – appointment

1) (a) Except as provided in subsections (2) and (3), any vacancy in the board of directors, whether the vacant office is elective or appointive, must be filled by majority vote of the remaining directors.

(b) A vacancy must be determined in accordance with 7-13-2263.

Vacancies

7-13-2263. Vacancies. A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

- (1) death;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;
- (3) resignation;
- (4) removal from office;
- (5) neglect or refusal to perform the duties required by this part for 3 consecutive months, except when prevented by sickness or when absent from the district by permission of the board of directors;
- (6) conviction of a felony or a violation of official duties; or
- (7) the decision of a court declaring the incumbent's election or appointment void.

(2) If there are no directors remaining on the board and no nominees for any director position to be elected, the county commissioners may appoint the number of directors specified in 7-13-2232(1). If the district lies in more than one county, the county commissioners of each county with territory included in the district shall jointly appoint the directors. The county commissioners shall stagger the terms of the directors appointed.

(3) If the boundaries of the district include any municipality or municipalities and a new board must be appointed as provided in subsection (2), the board shall include one additional director to be appointed by the mayor of the municipality for which the additional director is allowed.

(4) Following the appointment of a board in accordance with subsection (2), the directors must be elected as provided in this part.

Pam Ellis noted that are 3 attorneys and a judge who do not agree with Larry's reading of the statute. She read

7-13-2232. Composition of board of directors.

(1) If there are no municipalities within the boundaries of said district, the board of directors shall consist of five members or three members if there are 10 or less qualified electors in the district.

(2) In all cases where the boundaries of such district include any municipality or municipalities, said board, in addition to said five or three directors to be elected as aforesaid, shall consist of one additional director for each of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed, and, if there be any unincorporated territory within said district, one additional director to be appointed by the board of county commissioners of each county containing such territory.

Larry Brewster said he is just reading the statute. There maybe some point where someone wants to file a suit over it and when that happens, they are going to present this language. His goal is to be helpful.

#### ANNEXATION OF THE OWN PROPERTY—AMENDED PLAT OF SPRING HILLS ACREAGE TRACTS, SECOND FILING

Larry said the management has reviewed the application and is recommending approval.

Pam Ellis said the Board is generally given the buy in fee and it does not seem to be included with the application. Peyton confirmed the buy-in fee was received: \$7180.48

Larry Brewster said this is an addition to the subdivision. They want to be served by this district because the city of Billings cannot serve the subdivision.

Josh Simpson said it is located near Lake Hills, north of Alexander Road and Lake Elmo juts south of this area.

Laura Drager asked about the size of the water main. Josh Simpson said the new transmission line would continue on Alexander and head west all the way to where Gleneagles Rd is if it were to run all the way to the north and intersect with Alexander.

Frank Ewalt asked if north and south of Lake Elmo will be looped. Josh Simpson said that was part of the Oxbow Project. It does not go under Alkali Creek

Laura Drager asked if we had the DEQ permits for drilling under 5 mile. Josh said we had the permits for the previous project.



Brock Owen  
 Spring Hills 2nd Filing, Tract 7  
 Heights Water Annexation Fees

Item	Total Cost
Annexation (\$10,174.97/acre @ 0.5 acre)	\$5,087.49
System Development Fee (3/4")	\$1,742.99
Tap Fee	\$250.00
Service Installation Review Fee	\$100.00
	\$7,180.48

BDS ACCOUNT MANAGEMENT PAGE including: # emails, # phone numbers, # of ratepayers requesting bills be emailed (monthly report)

Pam Ellis said the board had asked to get the data every month from the BDS software. If we get people to sign up for the emails. We have never received all the data requested. I wanted someone to call and ask if we can modify so that people have the option to receive just an electronic bill because the bills are so small they get lost and we are spending about \$1700 a month to mail the bills. I get my bill electronically, I don't need to get a postcard. Most companies incentivize their customers who do not require a paper bill. When we do the switch over to the new website, can we specifically ask customers. Would like to get the data for every meeting; the goal is to increase the customers who register electronically. It will provide information about whether we are increasing our registration.

Ming Cabrera said this makes sense.

Larry Brewster said a lot of old people like to get a paper bill.

Dianne Crees said there are people who sign up for automatic deduction don't get a bill. This option could be noted on the bill.

MOTION by Pam Ellis: Having reviewed the written documentation for the annexation and the annexation fee of \$7180.48, I move that we approve the Owen annexation as presented by the staff. Seconded by David Graves.

APPROVED UNANIMOUSLY.

**DPHHS LOW INCOME HOME WATER ASSISTANCE PROGRAM**

Peyton said few customers have requested copies of the application. No ratepayers have completed the application. Information about the program is available on the website, For Residents, Helpful Forms, Low Income Home Water Assistance Program.

Pam Ellis said the city of Billings added the information to their bill. Huntley Project have done a good job of advertising. It has been posted on the Heights Task Force and Board County Water District facebook page.

Laura Drager noted that we get the check from DPHHS. Peyton responded that every quarter the district has to notify DPHHS the amount owed.

Additional questions to consider

- Consider the advantages of not charging a fee for people who pay with credit card
- Can we provide the option for ratepayers to opt-out of receiving a mailed bill?
- Can we provide an option for ratepayers to pay monthly with direct debit from their checking account by providing routing and account numbers without requiring ratepayers to sign up for automatic payment?

**ASSISTANT GENERAL MANAGER REPORT (not available prior to the meeting due to illness)**

**OLD BUSINESS**

RESPONSE TO CAUSE NO.D V 2 1 0 1 4 9 filed by Plaintiffs JEFF ENGEL, BRANDON HURST, DENNIS COOK, and TOM ZURBUCHEN against the County Water District of Billings Heights in MONTANA THIRTEENTH JUDICIAL DISTRICT COURT YELLOWSTONE COUNTY on December 10, 2021

FOLLOW-UP DISCUSSION WITH ANDREW RHEEM, RAFTELIS FROM DECEMBER 15, 2021 BOARD MEETING

Larry Brewster said he had spoken by phone on January 18, 2022. They are having difficulty getting information from the city. Larry will call the city and ask for additional information.

Ming Cabrera noted that Raftelis had agreed to provide information to the District in the week following the December 15, 2021 meeting. Larry said he had spoken to Raftelis once by phone and he and Peyton met with them. We told them they need to move along.

**WATER SYSTEM IMPROVEMENT PROJECT TO PROVIDE UPGRADES TO THE DISTRICT'S POTABLE WATER RESERVOIRS**

Pre-Bid Conference held at the Ox Bow Reservoir site, 3500 Hawthorne Lane, Billings MT on Wednesday, January 12th, 2022 at 1:30 PM

Bids were publicly opened and announced by the County Water District of Billings Heights at Three O'clock Local Time on Wednesday, January 19th, 2022

Two bids were submitted. One was almost the same, just a little higher than before. The engineers estimate was increased to almost \$300,000. The bid was about \$130,000 over the engineers estimate. Peyton said the District would be allowed by statute to subcontract directly rather than accept either bid.

Ming Cabrera asked what the bids were. Western Municipal's bid \$423,180.10. The other bid was \$567,537.00

Larry Brewster agrees with Peyton that we need to see if we can hire subcontractors directly. The contractors will probably sub the project out anyway.

Laura Drager said the city experienced the same thing with the bids for the playground at Castle Rock park. The city is putting the playground back out for bid.

Larry Brewster asked if the District could proceed with hiring subcontractors or whether they should come back to the Board for approval.

Ming Cabrera said we need a motion to reject the two bids. Peyton Brookshire said we need to wait for the engineer’s review. If there are errors in the bids, they are automatically disqualified. Peyton said they will review the statute.

Frank Ewalt said if the District refuses the bids. Will the District get bids or if they allow contractors to work by the hour, the District may end up higher. Contractor prices are increasing due to all the available federal money.

**ARPA APPLICATIONS SUBMITTED ON OR BEFORE JANUARY 14, 2022**

Larry Brewster said two projects were submitted. The engineers said we could begin the project and still use the money if granted. Peyton Brookshire that the chlorination project is shovel ready and the District gets more points for shovel ready projects.

Ming Cabrera said we could reject the grants if granted.

**NEW BUSINESS**

David Graves made a proposal that we hire a secretary to take minutes. Larry provided a paper copy of a Contract for Outside Services signed by Suzie McKethen on December 11, 2009 (see attachments).

Pam Ellis noted that it was not included with the agenda. We could include for the February agenda.

**BOARD REPORTS**

PRESIDENT’S REPORT: Ming Cabrera No report.

FINANCE COMMITTEE: Laura Drager

Treasurer’s Summary Report as of December 31, 2021

<b>County Water District Billings Heights Treasurer's Summary Report as of 21-Dec-21</b>						
	30-Sep-21		31-Oct-21		30-Nov-21	31-Dec-21
<b>Meters</b>						
Previous total meter count	5,917		5,917		5884	5881
Residential	5,461		5,455		5436	5481
Commercial	456		429		401	400
New Residential	10		4		9	5

Total # Meters	5,917	5,884		5881
		*Irrigation meters offline		
<b>Checking</b>				
FIB Gross Income Account	\$1,217,953.82	\$1,176,986.93	\$1,276,204.33	\$1,003,872.97
FIB Operational & Maintenance	\$24,768.61	\$28,604.91	\$38,498.06	\$33,902.05
FIB Payroll Account	\$3,568.44	\$24,414.15	\$4,480.16	\$3,312.29
Total Checking	\$1,246,290.87	\$1,230,005.99	\$1,319,182.55	\$1,041,087.31
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<b>Investments</b>				
Stifel - Cash & Equivalent	\$473,100.00	\$1,153,146.99	\$1,410,231.76	\$3,458,578.84
Stifel - Fixed Income CD's	\$8,448,932.00	\$7,747,956.58	\$7,481,322.97	\$5,431,037.86
Total Stifel Investments	\$8,922,032.00	\$8,901,103.57	\$8,891,554.73	\$8,889,616.70
First Interstate Bank Savings		\$250,926.03	\$250,929.02	\$250,933.54
Yellowstone Bank Reserve CD	\$250,000.00	\$205,267.50	\$205,267.50	\$205,267.50
<b>Total Investments</b>	<b>\$9,172,032.00</b>	<b>\$9,106,371.07</b>	<b>\$9,096,822.23</b>	<b>\$9,094,884.20</b>
<b>Total Cash Position</b>	<b>\$10,418,322.87</b>	<b>\$10,336,377.06</b>	<b>\$10,416,004.78</b>	<b>\$10,135,971.51</b>

Laura Drager reported that she had spoken with the Stifel representative regarding short term investments to satisfy our fiduciary responsibility to rate payers. He quoted 4 different Treasury bonds that would be fully government insured. Asked for 30, 60, 90 and 120 day quotes. This did not require a vote of the Board of Directors, she only needed to notify the Finance Committee. She asked him to invest in the Treasury bills.

Pam Ellis asked why the Stifel investments had dropped \$2000 from November to December. Laura Drager said the numbers reported are the market value of the funds that we have. The market value of our CD's has been falling; it is semantics on how the interest is recorded. That should turn around as the Federal Reserve increases interest rates.

AZ AUDIT UPDATE Larry Brewster called and asked what was taking so long. They said they were short handed with employees. The Board had also requested some information that was outside a typical audit. He will keep after AZ. Peyton said the District received a bill from the state because the audit was late. The District will be billed \$130 a month until the audit is received. Larry Brewster said he would have a conversation about reducing the audit fee by the late charges.

INSURANCE UPDATE

Background: In speaking with other General Manager's of water districts in Montana, Laura Drager discovered the one area we are lacking in employee benefits is our disability insurance. Eric Allen, the Insurance Specialist with Allen & Associates Insurance wrote: "The rates look really good as well. \$216.66/month for Short Term Disability and \$280.21/month for Long Term Disability. Looks like they did a 60% benefit up to \$6K/month on Long Term and 60% up to \$1K/week for Short Term." Laura Drager was extremely pleased with the policy and the quote.

#### SHORT TERM DISABILITY

Laura Drager made the motion: Having conducted a public hearing, considered written and spoken public testimony, I move that the Board approve Resolution 002-22 to provide short-term disability insurance with Guardian Insurance for 8 employees for a monthly premium of \$216.66; and an annual premium of \$2,599.92.

SECONDED BY PAM ELLIS. Noted that this includes only 6 employees; the amount will increase when we hire a General Manager.

Laura Drager said the premiums are based on salaries. The premiums will increase if there are salary increases.

Ming Cabrera said the premiums were pretty good. What is short term?

Laura Drager said there is a one week waiting period. A short term policy goes for 90 days after the initial payment.

Larry Brewster says some companies structure it a little differently. Require staff to use a percentage of their sick leave but the costs are pretty much the same.

Tom Zurbuchen spoke on both short and long term disability. This is part of wages. If everybody cost the same, this is like giving every employee a 35 cents per hour a wage increase tax free. He objected to spend more money and make it part of a wage package so the wage packet is complete.

Laura Drager is that we are asking Larry Brewster to provide us with a total cost of our employees.

Ming Cabrera asked if any employees wanted to comment.

Ming Cabrera asked when these policies would be effective. Laura Drager projected that the policies would be effective February 1, 2022.

Pam Ellis said that what motivated her to support the insurance was that we had an employee in the past who was terminally ill, used up all his sick leave, and was terminated without any income. The employee could not qualify for COBRA insurance because the District is too small. She sees this as an important benefit.

#### MOTION PASSED UNANIMOUSLY

#### LONG TERM DISABILITY

Laura Drager made the motion Having conducted a public hearing, considered written and spoken public testimony, I move that the Board approve Resolution 003-22 to provide long-term disability insurance with Guardian Insurance for 8 employees for a monthly premium of

\$280.21; and an annual premium of \$ \$3,362.52 with the understanding that the premium would increase with future salary increases or hiring or additional employees.

Ming Cabrera asked about Workman's Compensation. In the event that an employee would qualify for Workman's Compensation, it only pays a portion of the salary. The employee would have an opportunity to be made whole.

Larry Brewster said one of the reasons you have this insurance is if people are injured, it allows the staff member to be compensated through the policy and the District can add an employee to do the work. The District does not lose the value of the employee.

David Graves noted that in his job an employee got leukemia. The staff had to do 3 fundraisers to get money so he would not lose his house. He was out over a year with no salary.

Bud Bailey asked about the Worker's Compensation program. Ming Cabrera answered the questions.

MOTION PASSED UNANIMOUSLY

BYLAWS AND GOVERNANCE COMMITTEE: Pam Ellis

Report from Ming Cabrera, Laura Drager, Pam Ellis regarding Posting the Notice to Hire a General Manager and updates on responses to date. The committee met with Larry Brewster on Monday, January 10, 2022 to review the applications received to date and develop procedures for the hiring process. The Hiring Committee worked with Interim General Mana, Larry Brewster, to establish the process including:

Larry Brewster reviewed all the applications submitted to identify potential finalists

The Hiring Committee members reviewed applications to consider additions or removal from a list of finalists

The applications are available for Board members to review prior to noon on January 21<sup>st</sup> to make recommendations for addition or removal from the finalist list. Applications cannot be made public unless they are finalists.

The Interim General Manager Larry Brewster will conduct an initial background check to affirm employment history and business references.

Executive Board Meeting to review applications and consider adding or subtracting candidates January 24 , 2022 3:00 pm The full board plus Larry Brewster to select 4 candidates to interview.

The full board will interview 4-5 finalists in person or via zoom (9:00 am—6:30 pm; 8:30 pm if we interview 5 candidates) Saturday, January 29, 2022. The Interim General Manager will ask the prepared questions. Board members may ask follow-up questions if the applicants answers need clarification.

QUESTIONS Board members can submit questions to the Hiring Committee; a draft has been prepared

- Each candidate will be asked the same questions.
- Board members may ask follow-up questions if the applicants answers need clarification or based on the job description.

- Each board member will evaluate the applicants in writing prior to a final vote using a form that weights the questions and calculates a point total.

The public to observe interviews with the finalists and may comment prior to the board making a final decision.

The Board will recommend a final candidate at a special board meeting on Wednesday, February 2 @ 6:00 pm. Prior to the final vote, the public will be allowed to observe and comment.

Verification of educational certifications and official education transcripts, pass a medical exam including a drug and alcohol screen, and a complete background check prior to the Board approving an Employment Contract.

A verbal offer will be made to the Board's candidate by the Board President.

The Board attorney, Mark Noennig, will work with the candidate and Board to draft a contract for final approval by the Board at a public meeting.

The Interim General Manager will prepare letters of regret to the other candidates to be signed by the Board President.

Ming Cabrera asked for clarification of whether the January 10 committee had to be noticed. Pam Ellis said it may be a good idea but the city does not notice committee meetings of the city council that do not have a quorum and cited the Stillwater Building committee that had 5 of the 11 council members. The executive meeting has to be noticed and we have to post the topic.

Larry Brewster said the finalist names will be publicly noticed. The interview process will be open and the public can offer an opinion about who should be hired as the next General Manager.

Ming Cabrera said we are trying to get the best candidate possible. We received more than 40 applications.

Frank Ewalt asked where the interviews would be held. Larry Brewster said we could put up a zoom meeting.

Frank Zurbuchen asked if staff would be allowed to ask questions of the 4 candidates. Larry Brewster said he would like to see that.

Mike Macki asked Larry Brewster if he had contacted someone from the water certification board. Larry had not. Pam Ellis asked what the purpose was of calling the water certification board. The board and General Manager are responsible for having a certified water operator on staff.

Recommended Motion: None

WEBSITE UPDATE: We have begun to upload minutes, agendas, resolutions, and policies. We will need to transfer the BCS software to the new site

The minutes, available agendas, audits and policies have been uploaded for Municode. There is an online meeting with Municode for the Board Management software. The

software will make it much easier to prepare agendas and each individual will be responsible to upload.

The minutes will be searchable by topic rather than have to read through 6-8 years of minutes. Suzie McKethen is copying the Resolutions so they can be uploaded.

Tom Zurbuchen asked about a new website address.

Ming Cabrera said the new website will be much more transparent.

SAFETY: JEFF ENGEL (FROM THE DECEMBER 15, 2021 AGENDA) not available; Jeff Engel did not attend the meeting. Larry Brewster said he would work on a report.

## ANNOUNCEMENTS

Friday, January 21, noon	Board members may individually review the applications for General Manager
Monday, January 24, 3:00 pm	Executive Board Meeting to select 4-5 candidates to interview
Saturday, January 29 <sup>th</sup> , 9:00 am—6:30 pm	Interview 4-5 finalists for General Manager
Wednesday, February 2 <sup>nd</sup> , 6:00 pm	Special Board Meeting: Hire General Manager
Wednesday, February 16 <sup>th</sup> , 6:00 pm	February Board meeting; Ming attending by Zoom
Wednesday, March 16 <sup>th</sup> , 6:00 pm	March Board Meeting
**Wednesday, April 13 <sup>th</sup> , 6:00 pm	April Board Meeting (Note: 2 <sup>nd</sup> Wednesday)
Wednesday, May 18 <sup>th</sup> , 6:00 pm	May Board Meeting
Wednesday, June 15 <sup>th</sup> , 6:00 pm	June Board Meeting
Wednesday, July 20 <sup>th</sup> , 6:00 pm	July Board Meeting
Wednesday, August 17 <sup>th</sup> , 6:00 pm	August Board Meeting
**Wednesday, September 14 <sup>th</sup> , 6:00 pm	September Board Meeting (Note: 2 <sup>nd</sup> Wednesday)
Wednesday, October 19 <sup>th</sup> , 6:00 pm	October Board Meeting
Wednesday, November 16 <sup>th</sup> , 6:00 pm	November Board Meeting
Wednesday, December 21 <sup>st</sup> , 6:00 pm	December Board Meeting



Pam Ellis made a personal statement. She had tried to get information for over a year about how the Board justifies paying \$150 per meeting when the statute limits payment to \$100. In 2006 the Board passed a motion to reimburse members \$50 per month for fuel and “time spent”. The motion passed unanimously in 2006. They passed a Resolution that said the Board is entitled to reasonable reimbursement for expenses incurred. Pam wrote a memo in February 2021 asking to be reimbursed at the statutory maximum of \$100. She would like to be reimbursed at the statutory rate. 2 Board members who voted for it received about \$10,000 more than allowed by law. The District spent about \$70,000. Pam Ellis asked Dianne to compensate her \$100 per month.

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

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

- AZ Audit
- Consider hiring a Board Secretary
- Wage package

**ADJOURN**

David Graves made the motion to adjourn the meeting. Seconded by Laura Drager and Ming Cabrera. The motion was approved unanimously @ 8:40 pm.

Signed: \_\_\_\_\_

David Gaves, Vice President

Date: February 16, 2022

Attested: \_\_\_\_\_

**ATTACHMENTS:**

- Contract for Outside Services dated December 11, 2009
- Resolutions 002-22 and 003-22

SUZANNE MARIE MCKETHEN  
COUNTY

PAGE 4  
PART 6  
Item 34

DIRECTORS  
SANDY D. REITZ, President  
WYNN PIPPIN, Vice-President  
DONNA DINSMORE  
JAMES E. MILLER  
DICK MARTIN  
CLIFF JONES  
JON MUESSIG



BILLINGS HEIGHTS  
1540 Popelka Drive  
Billings, MT 59105

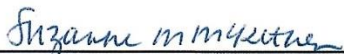
DUKE NIESKENS  
General Manager  
Phone: 252-0539  
Fax: 252-0518

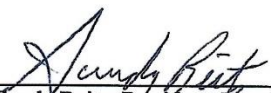
December 11, 2009

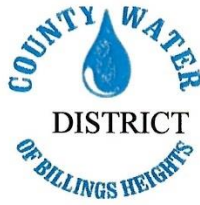
### Contract for Outside Services

As Secretary for the Board of Directors of the County Water District of Billings Heights, duties will consist of:

- Written minutes of each regularly scheduled Board meeting on the second Wednesday of the month and any additional scheduled special meetings.
- Transcribed minutes of the monthly meeting must be given to the District office on or before the 25<sup>th</sup> of the month. Transcription of minutes of special meetings will be due two (2) weeks after the meeting.
- If the secretary is unable to attend the Board meeting, minutes will be tape recorded and minutes will be prepared from the tape.
- Payment of \$150.00 for services rendered will be issued at the next following scheduled Board meeting.
- Either party may terminate this agreement with a minimum notification of one (1) month.

  
Board Secretary  
County Water District of Billings Heights

  
Sandy Reitz, President, Board of Directors  
County Water District of Billings Heights



**Resolution 002-22 to Authorize purchase of Long-Term Disability Insurance through Guardian Insurance**

WHEREAS, the County Water District of Billings Height Board consider written and spoken testimony at a meeting of the County Water District of Billings Heights Water Board on January 19, 2022.

The Board authorized signing the contract to provide long-term disability insurance with Guardian Insurance for 8 employees premium of \$280.21; and an annual premium of \$3,362.52.

That, the President of the County Water District of Billings Heights or his designee, sign the resolution and Guardian Long-Term Disability contract on behalf of the board.

Signed: 

Ming Cabrera, President

Date: January 19, 2022

Attested: 



Resolution 003-22 to Authorize a contract for Justin Stark and the Hendrickson Law Firm to represent the District in responding to Cause No.D V 2 1 0 1 4 9 filed by Plaintiffs JEFF ENGEL, BRANDON HURST, DENNIS COOK, and TOM ZURBUCHEN against the County Water District of Billings Heights in MONTANA THIRTEENTH JUDICIAL DISTRICT COURT YELLOWSTONE COUNTY on January 19, 2022

WHEREAS, the County Water District of Billings Height Board consider written and spoken testimony at a meeting of the County Water District of Billings Heights Water Board on December 15, 2021.

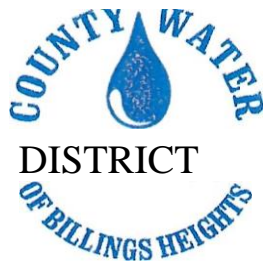
The Board authorized signing the contract to hire Justin Stark and the Hendrickson Law Firm of the HENDRICKSON LAW FIRM, P.C. 208 NORTH BROADWAY, SUITE 324 P.O. BOX 2502 BILLINGS, MT 59103-2502 @ an hourly rate of \$185 per hour

That, the President of the County Water District of Billings Heights, sign the resolution and an employment agreement on behalf of the board.

Signed:   
Ming Cabrera, President

Date: January 19, 2022

Attested:   
Pamela Q. Edwards



Resolution 002-22 to Authorize purchase of Long-Term Disability Insurance through Guardian Insurance

WHEREAS, the County Water District of Billings Height Board consider written and spoken testimony at a meeting of the County Water District of Billings Heights Water Board on January 19, 2022.

The Board authorized signing the contract to provide long-term disability insurance with Guardian Insurance for 8 employees premium of \$280.21; and an annual premium of \$ \$3,362.52.

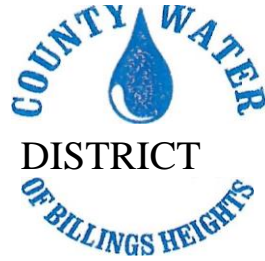
That, the President of the County Water District of Billings Heights or his designee, sign the resolution and Guardian Long-Term Disability contract on behalf of the board.

Signed: \_\_\_\_\_

Ming Cabrera, President

Date: January 19, 2022

Attested: \_\_\_\_\_



Resolution 003-22 to Authorize a contract for Justin Stark and the Hendrickson Law Firm to represent the District in responding to Cause No.D V 2 1 0 1 4 9 filed by Plaintiffs JEFF ENGEL, BRANDON HURST, DENNIS COOK, and TOM ZURBUCHEN against the County Water District of Billings Heights in MONTANA THIRTEENTH JUDICIAL DISTRICT COURT YELLOWSTONE COUNTY on January 19, 2022

WHEREAS, the County Water District of Billings Height Board consider written and spoken testimony at a meeting of the County Water District of Billings Heights Water Board on December 15, 2021.

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That, the President of the County Water District of Billings Heights, sign the resolution and an employment agreement on behalf of the board.

Signed: \_\_\_\_\_

Ming Cabrera, President

Date: January 19, 2022

Attested: \_\_\_\_\_

MARK E. NOENNIG  
JUSTIN STARK  
HENDRICKSON LAW FIRM, P.C.  
208 N. Broadway, Suite 324  
P.O. Box 2502  
Billings, MT 59103-2502  
Telephone: (406) 245-6238  
Email: justin@hendricksonlawmt.com  
Attorneys for Defendant  
County Water District of Billings Heights

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

JEFF ENGEL, BRANDON HURST, DENNIS COOK, and TOM ZURBUCHEN,	) Cause No. DV 21-1494	
	)	
Plaintiff,	) Judge: GREGORY R. TODD	
	)	
v.	)	
	)	ANSWER
COUNTY WATER DISTRICT OF BILLINGS HEIGHTS,	)	
	)	
Defendant.	)	

-----  
The Defendant, County Water District of Billings Heights (the "District"), by and through counsel of record, hereby answers the Complaint of the plaintiffs, Jeff Engel, Brandon Hurst, Dennis Cook, and Tom Zurbuchen, as follows:

**ANSWER**

1. Answering paragraph 1, the District admits the allegation.
2. Answering paragraph 2, the District admits the allegation.
3. Answering paragraph 3, the District admits the allegation.
4. Answering paragraph 4, the District admits the allegation.
5. Answering paragraph 5, the District denies the allegation.
6. Answering paragraph 6, the District denies the allegation.
7. Answering paragraph 7, the District denies the allegation.
8. The District denies any allegations of the Complaint not specifically answered in the preceding



paragraphs of this Answer.

**FIRST AFFIRMATIVE DEFENSE AND GENERAL ALLEGATIONS**

9. A meeting of the board of directors of the District occurred on November 29, 2021 (the “November 29th Meeting”).
10. On November 22, 2021, notice of the November 29th Meeting was provided to the District’s directors and staff of the District by a memorandum from four of the District’s directors. A copy of this memorandum is attached hereto and incorporated herein as Exhibit A.
11. The memorandum dated November 22, 2021, directed the District’s staff to post notice on the District’s website.
12. Upon information and belief, one or more of the Plaintiffs encouraged the District’s staff to not post notice of the November 29th Meeting on the District’s website.
13. Upon information and belief, notice of the November 29<sup>th</sup> Meeting was provided by posting to one or more facebook pages.
14. On November 27, 2021, and November 28, 2021, a plaintiff, Tom Zurbuchen, emailed with directors of the District regarding, among other things, the District’s Bylaws and public participation in District meetings.
15. On November 28, 2021, notice of the November 29th Meeting was provided by email to approximately 5,000 recipients of the Big Sky Business Journal Hot Sheet. A copy of this post entitled “Water District Sets Special Meeting” is attached hereto and incorporated herein as Exhibit B (article dated November 29<sup>th</sup>, but emailed November 28<sup>th</sup>).
16. All Plaintiffs had notice of the November 29th Meeting.
17. The November 29th Meeting implemented the District’s procedures for permitting and encouraging the public to participate in District decisions that are of significant interest to the public.
18. The November 29th Meeting had a quorum of the District’s directors in attendance.
19. Three of the plaintiffs who are District Directors, i.e., Jeff Engel, Brandon Hurst, and Dennis Cook, did

not attend the November 29th Meeting.

20. The November 29th Meeting was open to the public.
21. The November 29th Meeting was at no time a closed meeting.
22. The November 29th Meeting allowed and accepted public comment on agenda items.
23. A plaintiff, Tom Zurbuchen, attended the November 29th Meeting and spoke publicly during the Meeting.
24. At the November 29th Meeting, Tom Zurbuchen was given a copy of the agenda for the November 29th Meeting.
25. The actions of the District at the November 29th Meeting comply with Montana's open meeting law, Mont. Code Ann. § 2-3-203.
26. The actions of the District at the November 29th Meeting are valid.
27. On November 30, 2021, notice of the December 15, 2021, meeting was emailed to Big Sky Business Journal and Yellowstone County News.
28. Upon information and belief, notice of the December 15, 2021, meeting appeared in the Big Sky Business Journal.
29. Notice of the December 15, 2021, meeting appeared in the Yellowstone County News on December 3, 2021, and again on December 10, 2021. A copy of the Affidavit of Publication is attached hereto and incorporated herein as Exhibit C.
30. On December 11, 2021, December 12, 2021, December 14, 2021, and December 15, 2021, notice of the December 15, 2021, meeting was provided on the Heights Task Force facebook page. A copy of those posts are attached hereto and incorporated herein as Exhibit D.
31. On December 13, 2021, notice of the December 15<sup>th</sup> meeting was emailed to Mr. Zurbuchen and District directors, along with the agenda and documents for the December 15<sup>th</sup> meeting. The notice and agenda including a list of all November 29<sup>th</sup> Meeting decisions to be heard again at the December 15<sup>th</sup> meeting. This notice was emailed at least 48 hours before the December 15<sup>th</sup> Meeting began. A copy of the email

and the notice is attached hereto and incorporated herein as Exhibit E.

32. A meeting of the board of directors of the District occurred on December 15, 2021 (the “December 15<sup>th</sup> Meeting”).
33. All Plaintiffs had notice of the December 15<sup>th</sup> Meeting.
34. The December 15<sup>th</sup> Meeting implemented the District’s procedures for permitting and encouraging the public to participate in District decisions that are of significant interest to the public.
35. The December 15<sup>th</sup> Meeting had a quorum of the District’s directors in attendance.
36. The three plaintiffs who are District Directors, i.e., Jeff Engel, Brandon Hurst, and Dennis Cook, did not attend the December 15<sup>th</sup> Meeting.
37. The December 15<sup>th</sup> Meeting was open to the public.
38. The December 15<sup>th</sup> Meeting was at no time a closed meeting.
39. The December 15<sup>th</sup> Meeting allowed and accepted public comment on agenda items. Copies of the agenda and all attached documents were available to all who attended.
40. A plaintiff, Tom Zurbuchen, attended the December 15<sup>th</sup> Meeting and spoke publicly during the meeting.
41. At the December 15<sup>th</sup> Meeting, Tom Zurbuchen was given a copy of the agenda for the December 15<sup>th</sup> Meeting.
42. On December 20, 2021, the Yellowstone County News published Mr. Zurbuchen’s letter to the Editor, which letter acknowledges that Mr. Zurbuchen attended the December 15<sup>th</sup> Meeting, participated in the December 15<sup>th</sup> Meeting, and inspected a copy of the agenda for the December 15<sup>th</sup> Meeting during the December 15<sup>th</sup> Meeting.
43. The actions of the District at the December 15<sup>th</sup> Meeting comply with Montana’s open meeting law, Mont. Code Ann. § 2-3-203.
44. The actions of the District at the December 15<sup>th</sup> Meeting are valid.

**SECOND AFFIRMATIVE DEFENSE**

**(Moot)**

45. The District repleads and incorporates by this reference paragraphs 9 through 44 of the First Affirmative Defense and General Allegations in this Answer.
46. On December 15, 2021, the District held a meeting of the Board of Directors that included all the items from the November 29th Meeting's agenda. Notice of the December 15<sup>th</sup> Meeting was given to the Plaintiffs and the public in advance of the meeting. At the December Meeting, the District's decisions at the November 29th Meeting were ratified, after public input, and the District's actions at the November 29th Meeting were properly adopted anew. Accordingly, Plaintiffs' claims of the invalidity of the November 29<sup>th</sup> Meeting are moot. *See Zunski v. Frenchtown Rural Fire Department Board of Trustees*, 2013 MT 258, ¶¶ 15 – 17 (discussing Montana's open meeting law and determining that a subsequent meeting "remedied any earlier violations" and the subsequent meeting remedy "rendered moot any actual controversies about the actions taken" at the prior meeting).

**THIRD AFFIRMATIVE DEFENSE**

**(Official Act and Decision)**

47. The District repleads and incorporates by this reference paragraphs 9 through 44 of the First Affirmative Defense and General Allegations in this Answer.
48. The actions of District at the November 29th Meeting were legally done, and the decisions of the Board of District were properly made at the November 29th Meeting.

**FOURTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

49. The District repleads and incorporates by this reference paragraphs 9 through 44 of the First Affirmative Defense and General Allegations in this Answer.
50. Upon information and belief, one or more of the Plaintiffs encouraged staff members at the District to refrain from giving notice of the November 29th Meeting according to routine procedures used for prior meetings, including without limitation that the notice not be published on the District's website.

Accordingly, Plaintiffs' claims should be dismissed for the reason of the unclean hands of one or more of the Plaintiffs.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Failure to State a Claim Upon Which Relief Can Be Granted)**

51. The District repleads and incorporates by this reference paragraphs 9 through 44 of the First Affirmative Defense and General Allegations in this Answer.
52. Plaintiffs fail to state a claim upon which relief can be granted.

**COUNTERCLAIM**  
**(DECLARATORY RELIEF)**

The Defendant, County Water District of Billings Heights (the "District"), by and through counsel of record, hereby alleges and counterclaims as follows:

1. The District repleads and incorporates by this reference paragraphs 1 through 36 of the First Affirmative Defense and General Allegations in this Answer.
2. The November 29th Meeting of the board of directors of the District was held in conformance with the law, including Mont. Code Ann. § 2-3-203.
3. The District is entitled to a declaration under Title 27, Chapter 8 of the Montana Code that the actions taken by the District on November 29, 2021 were valid.
4. In the alternative, District is entitled to a declaration that the actions taken by the District on December 15, 2021, rendered moot any claim of invalidity of the November 29, 2021 actions or decisions of the District.
5. The District is entitled under Mont. Code Ann. 27-8-311 and 27-8-313 (costs and supplemental relief under the Uniform Declaratory Judgments Act) to recover from Plaintiffs, jointly and severally, the attorney fees incurred by the District in the above-captioned case.

PRAYER FOR RELIEF

WHEREFORE, the defendant, County Water District of Billings Heights (the "District") prays for Judgment in its favor and against the Plaintiffs, Jeff Engel, Brandon Hurst, Dennis Cook, and Tom Zurbuchen, jointly and severally, as follows:

1. In the District's favor on all claims contained in the Complaint;
2. That Plaintiffs take nothing by way of their Complaint;
3. On its counterclaim against Plaintiffs for a declaration that actions taken by District on November 29, 2021, were valid or, in the alternative, for a declaration that the actions taken by the District on December 15, 2021, rendered moot any claim of invalidity of the November 29, 2021 actions of the District;
4. Against Plaintiffs, jointly and severally, for the District's attorney fees;
5. Against Plaintiffs, jointly and severally, for the District's costs; and
6. For any further or other relief to which the District may be entitled.

DATED this 30th day of December, 2021.

HENDRICKSON LAW FIRM, P.C.  
Attorney for Defendant  
County Water District of Billings Heights

By:   
Justin Stark

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 Grayes

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.

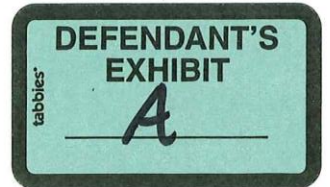
Bylaws written in 1956 have no relevance to the current board. Given that the board has not adopted bylaws in 63 years, we are governed by Montana statute. MCA 7-13-2232. Composition of board of directors specifies that CWDBH has seven board board members.

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.

*Ming Cabrera*  
*Laura Drager*  
*David Grayes*  
*Pamela Q. Ellis*





# HOT SHEET

November 29, 2021



## Medical Workers Rally

Hundreds of medical workers gathered on Sunday afternoon at 24th Street and King Avenue to support health care workers and other employees of health care facilities who are being threatened with the loss of their jobs if they do not get vaccinated for COVID-19. Medical providers which depend upon Medicare and Medicaid reimbursements from the government are being required by the government to make sure all employees are vaccinated or lose support from those programs. They, in turn, are forcing employees to get vaccinated or lose their jobs by Dec. 5.

Calling themselves the Big Sky Liberty Alliance, workers recently formed the organization to provide support for people who, "because of the shaming, are being pressured into do something they didn't want to do," explained an organizer, Corinne Hammond. Hammond said that in announcing plans on facebook for the rally they were surprised that groups in nine other Montana towns announced intentions to join the public awareness effort. Men, women and children lined King Avenue, waving American flags and holding signs advocating for "Choice not Force." "There needs to be informed consent, not forced coercion," said Hammond. Passing vehicles honked incessantly. Hospitals in Billings have reported that 35 to 40 percent of staff are not vaccinated. Rallies were also held in Bozeman, Glendive, Great Falls, Hamilton, Helena, Kalispell, Miles City, Missoula, and Sidney.

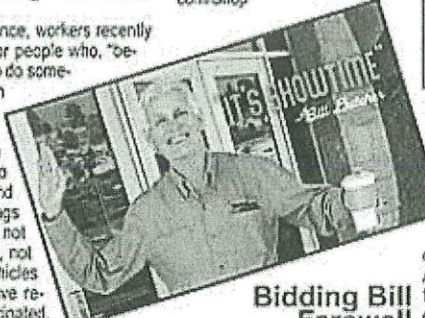
**GROWN LOCAL**  
Stockman Bank  
Montana's Brand of Banking

### Weather

M	T	W	T	F	S	S	M
57	55	66	66	41	46	34	33

## Shop Local & Made in Montana

Besides shopping local for Christmas, consider shopping Montana-made, suggests the Montana Small Business Administration (SBA). Entrepreneurs and small business owners are at the heart of Montana's economy, as 99.3% of all Montana businesses are small businesses. The Made in Montana program was created in 1984 to provide a unique identity to value-added products made and/or grown in Montana. The program has multiple components including Made in Montana, Grown in Montana, Native American Made in Montana, and Taste our Place program promoting Montana businesses that focus on using Montana ingredients in ready-to-consume food and beverages. Find Made in Montana products here: <http://www.MadeInMontanaUSA.com/Shop>



## Bidding Bill Farewell

A reception will be held on December 10, 4-7 pm at the Billings Hotel and Convention Center to commemorate 40 years of service to MetraPark by Manager Bill Dutcher who is retiring on Dec. 31, 2021. The event will feature snacks and a cash bar, as well as some surprises for Dutcher, according to Ray Massie, MetraPark's marketing and sales manager.

### EVENTS

- Dec 2 - 4 - Festival of Trees - Metra
- Dec 18 - Chase Hawks Memorial Rodeo
- Dec 25 - Christmas Day
- Dec 31 - New Years Eve
- Jan 1 - New Years Day

### Building Permits

- REI Big Sky LLC, 3123 3rd Ave S, Roofing and Siding, \$32,050
- City Of Billings, 810 Airport Rd, Roofing, \$9,760
- Hanser Capital Holdings LLC, 4430 Altay Dr, Footing/Foundation, \$458,762
- DSS LLC, 1410 38th St W, New Other, \$150,000
- MLZ, LLP, 180 S 32nd St W, Remodel, \$180,000
- Elevation Church Billings, Inc, 711 4th Ave N, Remodel, \$40,000
- Dwight Deckert, 1411 38th St W, Remodel, \$6,768
- Western Security Bank, 2401 Grand Ave, Remodel, \$115,525

## Water District Sets Special Meeting

Following email threats to a board member and continued discord among board members, the Heights Water District Board failed to have a quorum at their monthly meeting. A special meeting has been set for today (Monday) at 2 pm by a quorum of board members while others are opposed to meeting.

**COLDWELL BANKER COMMERCIAL**  
CBS  
406 656-2001  
Visit our website for commercial listings.

DEFENDANT'S EXHIBIT  
tabbies®  
**B**



# Affidavit of Publication

STATE OF MONTANA

County of Yellowstone

Jonathan McNiven

Being duly sworn, deposes and says:

That he is the Legal Advertising Clerk of Yellowstone County News, a newspaper of general circulation published weekly in the town of Huntley, in the County of Yellowstone, State of Montana, and that the (4) folio Legal Notice of Meeting, a true copy of which is hereto Included, was published in said newspaper on the following dates:

**December 3, 2021; December 10, 2021;**

making in all (2) publication(s).

*Jonathan D. McNiven*  
STATE OF MONTANA  
County of Yellowstone

On this 10<sup>th</sup> day of December 2021, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Jonathan McNiven, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal that day and year first above written.

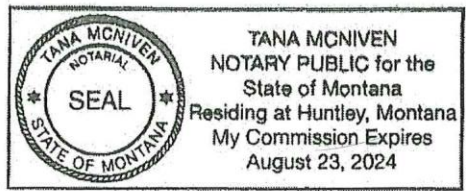
*Tana McNiven*  
Tana McNiven

NOTARY PUBLIC for the State of Montana, residing at Huntley, MT.

My commission expires: August 23, 2024

### NOTICE OF MEETING COUNTY WATER DISTRICT OF BILLINGS HEIGHTS REGULAR BOARD MEETING

Wednesday, December 15, 2021 8:00 pm  
District Office 1630 Poplar Dr., Billings, MT 59105  
The meeting is open to any interested member of the public. Agendas are prepared for the meetings; please request an agenda from the Board Recording Secretary Pam Ellis, pamellis@billingsheights.com and may be available at <https://billingsheights.com/agendas-and-minutes/>  
Agenda items will include Ratification of Board Actions on November 29, 2021 including:  
- Removal of Board President and Vice-President and election of new board members for those periods  
- Approval of the bylaws received and dated November 19, 2021  
- Approval of a contract with Attorney Mark Noonan  
- Approval of Board Director for resolving the fee dispute with the City of Billings  
- Approval of a new legal committee to meet with legal counsel Mark Noonan  
- Approval of the consent agenda in the November 29, 2021 meeting agenda  
- Approval of Association on behalf of Zackory D. Michales, Homestead Subdivision submitted 10-19-2021  
- Approval of Platinum Blue Cross-Blue Shield Policy for staff, P010PFR  
- Job Description and Job Posting for General Manager  
- Policies, Rules and Procedures for Meetings of the Board, Policy Records Access and Procedure, Uniform Complaint Procedure, and approval of contract from Civic Plus-Municipal for hosting a Standard Design Website and Board Management Software  
Additional agenda items may include:  
- Approval of the consent agenda including minutes of the November 29, 2021 meeting, November prepared bills for approval, November bills for approval, Profit and loss statement November 2020-November 2021  
- Review of the audit report prepared by Anderson Zuercher  
- Finance Committee Report: Laura Drager, Chair  
- Review of applications received for General Manager  
- Bylaws and Governance Committee Report: Pam Ellis, Chair Approval of proposed procedure for interviewing and hiring a new General Manager  
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- Discussion with Andrew Phoenix, rate consultant with Ratefile  
- Safety Committee Report: Jeff Eysel, Chair  
- Other agenda items included from staff or Board members  
12/03, 12/10 2021  
MRS. P.





Heights Task Force

Published by Pam Ellis · December 11 at 10:56 AM ·



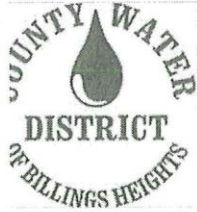
Notice of Meeting

County Water District of Billings Heights Regular Board Meeting

Wednesday, December 15, 2021 6:00 pm

District Office 1540 Popelka Dr., Billings, MT 59105

The meeting is open to any interested member of the public. Agendas are prepared for the meetings; please request an agenda from the Board Recording Secretary Pam Ellis, pamelliscwdbh@gmail.com and may be available at <https://www.yellowstonecountynews.com/county-water.../> See more



HEIGHTSWATERDISTRICT.COM

Agendas and Minutes « County Water District of Billings Heights

The CWDBH Board meetings current tentative monthly agenda will be posted 48 hours prior to the meeting and may be accessed in the month...

83

People reached

2

Engagements

↑ +1.1x average

Distribution score

Boost post

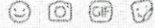
Like

Comment

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Comment as Heights Task Force





### Heights Task Force

Published by Pam Ellis · December 12 at 4:10 PM · 🌐



The meeting is open to any interested member of the public. Agendas are prepared for the meetings; please request an agenda from the Board Recording Secretary Pam Ellis, [pamelliscwdbh@gmail.com](mailto:pamelliscwdbh@gmail.com) and may be available at <https://www.yellowstonecountynews.com/county-water.../>

Agenda items will include Ratification of Board Actions on November 29, 2021 including:

- Removal of Board President and Vice-President and election of new board members ... See more

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County Water District of Billings Heights | Yellowstone County News

68 People reached    3 Engagements    ↓ -1.1x average Distribution score

Boost post

👍 Like

💬 Comment

➦ Share



**Heights Task Force**

Published by Pam Ellis · December 14 at 7:00 AM · 🌐



**Notice of Meeting**

County Water District of Billings Heights Regular Board Meeting

Wednesday, December 15, 2021 6:00 pm REVISED

District Office 1540 Popelka Dr., Billings, MT 59105

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SINCE 1976

ONE NEWS LOCAL VIEWS

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Local News Source for Subscriber, Vickie

January 31, 2020

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County Water District of Billings Heights | Yellowstone County News

42  
People reached

2  
Engagements

↓ -1.7x lower  
Distribution score

**Boost post**

🗨️ 1

👍 Like

💬 Comment

➦ Share

- Approval of a contract with Attorney Mark Noening
  - Approval of Board Direction for resolving the fee dispute with the City of Billings
  - Approval of a new legal committee to meet with legal counsel Mark Noening
  - Approve of the consent agenda in the November 29, 2021 meeting agenda
  - Approval of Annexation on behalf of Zackery D. Michalies, Homestead Subdivision submitted 10-19-2021
  - Approval of Platinum Blue Cross-Blue Shield Policy for staff, P910PFR
  - Job Description and Job Posting for General Manager
  - Policies: Rules and Procedures for Meetings of the Board, Policy Records Access and Procedure, Uniform Complaint Procedure, and approval of contract from Civics Plus-Municode for hosting a Standard Design Website and Board Management Software
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  - Review of the audit report, prepared by Anderson Zurmuehlen
  - Finance Committee Report: Laura Drager, Chair
  - Review of applications received for General Manager
  - Bylaws and Governance Committee Report, Pam Ellis, Chair
- Approval of proposed procedure for interviewing and hiring a new General Manager
- Contract and appointment of an interim manager and hiring Justin Stark and Hendrickson Law firm to respond to Cause No.D.V.2.10149 filed by Plaintiffs JEFF ENGEL, BRANDON HURST, DENNIS COOK, and TOM ZURBUCHEN against the County Water District of Billings Heights in MONTANA THIRTEENTH JUDICIAL DISTRICT COURT YELLOWSTONE COUNTY on December 10, 2021
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  - Other agenda items included from staff or Board members
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**SINCE 1976**

**ONE EWS LOCAL VIEWS**

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**January 31, 2021**

YELLOWSTONECOUNTYNEWS.COM  
 County Water District of Billings Heights | Yellowstone County News

55 People reached    1 Engagement    ↓ -1.4x lower Distribution score    **Boost post**



**From:** Pam Ellis <pamelliscwdbh@gmail.com>  
**Sent:** Monday, December 13, 2021 3:41 PM  
**To:** Ming Cabrera <mingformontana@gmail.com>; David Graves <graves@q.com>; Dennis Cook <Dcook5533@gmail.com>; Laura Drager <lauradrager@remax.net>; Pam Ellis <pamelliscwdbh@gmail.com>; Brandon Hurst <bhurst@meadowlarkco.com>; Tom & Jane Zurbuchen <zurbuchen@bresnan.net>  
**Cc:** Peyton <peyton@heightswaterdistrict.com>; Suzie McKethen <CWDBH1540@outlook.com>; Mark Noennig <mark@hendricksonlawmt.com>; Larry Brewster <larry05@bresnan.net>  
**Subject:** Wednesday, December 15, 2021 6:00 pm REVISED

## Notice of Meeting

County Water District of Billings Heights Regular Board Meeting

Wednesday, December 15, 2021 6:00 pm REVISED

District Office 1540 Popelka Dr., Billings, MT 59105

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The bill to print the documents for the December 15 meeting is referenced in the agenda but I didn't have the cost until I picked up the documents a few minutes ago. Mark Noennig recommended that we reprint all the documents from the November 29th meeting as well as all the documents for the December 15th meeting.

The attached agenda says REVISED and is the agenda that was printed and is available on line.

The only difference is that when referencing the lawsuit, the wording is changed to "Justin Stark and Hendrickson Law firm to respond to Cause No.D V 2 1 0 1 4 9". The previous wording said "of" Hendrickson Law Firm. Other employees including Mark Noennig may have billable time responding the the lawsuit. Mark Noenning was contacted by the police officer that Tom Zurbuchen filed the criminal complaint with. Time was spent referencing the correct statute and communicating with the targets of Mr. Zurbuchen's criminal complaint.

I included Tom in this email because he is the only member of the community to contact me directly and request copies of all the documents for the meeting.

Pam

1



# Notice of Meeting

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Wednesday, December 15, 2021 6:00 pm REVISED

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Agenda items will include Ratification of Board Actions on November 29, 2021 including:

- Removal of Board President and Vice-President and election of new board members for these positions
- Approval of the bylaws reviewed and dated November 19, 2021
- Approval of a contract with Attorney Mark Noennig
- Approval of Board Direction for resolving the fee dispute with the City of Billings
- Approval of a new legal committee to meet with legal counsel Mark Noennig
- Approve of the consent agenda in the November 29, 2021 meeting agenda
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- 
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  - Safety Committee Report: Jeff Engel, Chair
  - Other agenda items included from staff or Board members

12/3, 12/10

This is to certify that a copy the foregoing Answer was duly served by mail upon:

Mr. Tyler Dugger  
2451 Applewood Avenue  
Billings, MT 59102  
Email: tylerdugger2@gmail.com

Of Attorney for Plaintiffs

this 30th day of December, 2021.

HENDRICKSON LAW FIRM, P.C.  
Of Attorneys for Defendant

By   
Justin Stark



## **CERTIFICATE OF SERVICE**

I, Justin W. Stark, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Answer and Counterclaim to the following on 12-30-2021:

Tyler Thomas Dugger (Attorney)

PO Box 1913

Billings MT 59103

Representing: JEFF ENGEL, Dennis Cook, Tom Zurbuchen, BRANDON HURST Service

Method: eService

Electronically Signed By: Justin W. Stark Dated:  
12-30-2021