



## COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

### Board of Directors Meeting REVISED Agenda

March 16, 2022 at 6:00 PM

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

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#### REVISED AGENDA Monday, March 14, 2021

The meeting is open to any interested member of the public. Agendas and Agenda Packets are prepared for the meetings; agendas may be requested from the General Manager Peyton Brookshire, [peyton@heightswaterdistrict.com](mailto:peyton@heightswaterdistrict.com) and are available at <https://heightswaterdistrict.com/> and <https://www.yellowstonecountynews.com/category/features/>. Supplemental documents are linked in the Agenda Packet.

Join Zoom Meeting

<https://us02web.zoom.us/j/89318236922>

Meeting ID: 893 1823 6922

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

#### WELCOME AND INTRODUCTIONS

**PRESIDENT'S REMARKS:** Ming Cabrera

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

#### LEGAL COMMITTEE REPORT (see report and attachments)

1. Background The City of Billings calculated the unpaid bill at \$2,970,599.35 and had offered to let the District repay the balance over a three year period. The legal committee negotiated that the District discount the amount possible to earn if the District invested in CD's during this period ( $\$2,970,599.35 - \$34,347.55 = \$2,936,251.80$ ). The District turned down requests to join the Franchise lawsuit multiple times as reflected in the Minutes (October 11, 2017, June 13, 2018, January 9, 2019).

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

Evidence does not exist to draw a clear conclusion on who made the error, the software vender or a city employee. This was made more difficult by the timeline. The error wasn't discovered until way past the contract liability limitations with the vender. Added to this is the simple fact that the HWD did receive, and sell the water.

The council is scheduled to approve the agreement March 28.

Recommended motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve SETTLEMENT AGREEMENT between THE CITY OF BILLINGS (the "City")

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

Attachments:

Final Settlement Agreement City and Heights Water District

Resolution 007-22 Resolve Fee Dispute with the City of Billings

Decision and Order Re City of Billings' Motion for Partial Summary Judgment (franchise lawsuit)

**YCN ♦ February 25, 2022 ♦ Proposed Water Rate Increases Postponed; Water District Nears Agreement with City**

**NEW BUSINESS**

2. Board Secretary and Recording Secretary (see attachments Appointment of Administrative Personnel; Jeff Weldon Memo to Board 2021.09.98, Contract for Outside Services Suzie McKethen 2009.12.11, Draft CWDBH Board Secretary Job Description and Evaluation, 2022.02 CWD staffing comparison)

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

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

**CONSENT AGENDA**

3. Minutes February 16, 2022
4. March Prepaid bills for approval
5. March Bills for Approval
6. February Bank Statements: First Interstate Bank
7. February Stifel Statement (see attached)
8. Profit and Loss Statement – February 2021 and February 2022

**GENERAL MANAGER REPORT - Peyton Brookshire**

9. See attached March Manager Packet
10. See Attachments Ordinance 001-22 ORDINANCE OF THE COUNTY WATER DISTRICT OF BILLINGS HEIGHTS CONFIRMING and RATIFYING ANNEXATIONS OF PROPERTIES INTO THE DISTRICT and Certification of Ordinance 001-22.

Recommended motion: having conducted a public hearing, considered written and spoken public testimony, I move that the Board approve Ordinance 001-22 confirming and ratifying annexations of properties into the District and Certification of Ordinance 001-22 addressed to Christi Jacobsen, Montana Secretary of State and Jeff Martin, Yellowstone County Clerk and Recorder.

11. Annexation Application and Resolution 008-22 or Ordinance 002-22 Annexation for Barrett Road Development, Total \$109,309.85. (See Attached)
12. Resolution 009-22 or Ordinance 003-22 Annexation for High Sierra 21st filing. 10.454 acres for total of \$105,910.15
13. Annexation Application and Resolution 010-22 or Ordinance 004-22 Annexation for E1228 Rawhide Strip 1.13 Acres \$11,469.91 Attached
14. Recommended motion: having conducted a public hearing, considered written and spoken public testimony, and the recommendation from staff, I move the District approve Annexation for Barrett Road Development. 10.77 acres Total for annexation is \$109,309.85. SDF fee to be determined by modeling currently underway; Annexation for High Sierra 21st filing. 10.454 acres for total of \$105,910.15; Annexation for Ed McCullough for 1228 Rawhide Strip 1.13 Acres \$11,469.91 and approve Resolutions 008-22, 009-22 and 010-22 (or approve Ordinances 002-22, 003-22 and 004-22 for First Reading).
15. Authorization to Establish and Maintain Security Account at Stife Investments (see attachment)  
Recommended motion: having conducted a public hearing, considered written and spoken public testimony, I move that the District approve Resolution 011-22 to Authorize the establishment and maintenance of Security Accounts at Stifel Investments and authorize the following individuals to act on behalf of the Entity named herein: Ming Cabrera, President; David Graves, Vice President, Laura Drager, Treasurer, and Peyton Brookshire, General Manager.

#### **OLD BUSINESS**

16. Update on the West End Water Plant Jennifer Duray told the legal committee on Monday, February 7 that the rate increase would probably not occur in FY23. She also said the projected increase would be higher than 30.6% based on completion of additional infrastructure. Laura attended the same meeting and heard Jennifer's statement. The rate increase the District will be charged is not known and the rate increase for July 2022 is off the table. At the February 16, 2022 Laura Drager moved to table actions Raftelis recommended until we have a written response from the City of Billings. Seconded by Pam Ellis. and approved unanimously.

Frank Ewalt responded to a question from Pam Ellis. There are multiple things coming into play. They city has applied for grant money, costs have increased beyond projections.

Attached are the emails received through a Public Information Request that gives some additional information and information from the City of Billings.

Jennifer Duray's email to council dated October 20, 2021 states, "Public Works' recommendation is to submit for the BRIC grant again and delay the intake and plant until the next round of grant selections are announced next July." The city did apply for the BRIC grant for the west end water plant. This appears to be written evidence from October 2021 that the city will not increase wholesale water rates to the District for FY 2023.

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

17. Yellowstone County Bank CD Maturity and Roll-over (see attached)
18. March Treasurer's Report (attached)

#### **SAFETY COMMITTEE REPORT: Jeff Engel**

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

19. The colors and layout for the website were approved by Pam Ellis, Ming Cabrera and Peyton Brookshire. Municode is currently uploading the documents from DropBox for the website including

agendas, minutes, policies, resolutions, ordinances, etc. There is the ability to have some sections on the website private. Currently that includes the videos and instructions for using the agenda and minute management software. The Board will be able to log on directly and vote on line so that all votes are accurately recorded. Municode will provide a brief training at a board meeting. Currently each Board members email address has been uploaded to the website and into the meeting management software. The projected completion is May 2022 but may be sooner. The website will allow us to post complete agendas, minutes and audio recordings. To post the audio recordings we will need to establish a You Tube channel in order to link the recordings.

The software will allow all supplemental documents to be linked directly in the agenda. We should not have to print agendas and documents for board members unless requested individually. This will also mean that minutes can be more concise because the source documents referenced are linked within the publicly available agenda.

## **ANNOUNCEMENTS**

The April County Water Board Meeting will be the second Wednesday, April 13, @ 6:00 pm Laura Drager and Dennis Cook were attending a meeting out of town on the third Wednesday of April.

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

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

..Begin working with Josh Jabalara on a rate study and review of fees charged to developers; the recommendation is that it is preferable to increase rates gradually when possible

..Steffeni Freese, the lead auditor from Anderson ZurMuehlen will meet attend our Board Meeting in April and be available to answer questions. The audit will be posted on the District website and at the Yellowstone County News when it is received so the public had adequate time to read.

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