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MONTANA FOURTH JUDICIAL DISTRICT, MISSOULA COUNTY

CITY OF MISSOULA, Montana municipal corporation, Plaintiff, v. MOUNTAIN WATER COMPANY, a Montana Corporation, and CARLYLE INFRASTRUCTURE PARTNERS, LP, a Delaware limited partnership, Defendants, THE EMPLOYEES OF MOUNTAIN WATER COMPANY (Adams, et al.) Intervenors.	Dept. No. 4 Cause No.: DV-14-352 REPLY BRIEF IN SUPPORT OF MOTION TO INTERVENE OF ADVOCATES FOR MISSOULA'S FUTURE AND FOR COURT ORDER UNSEALING CLAIMS FOR JUST COMPENSATION
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Intervenor Advocates for Missoula's Future, through counsel,
submits in support of its Motion to Intervene and for Court Order

Unsealing Defendants' Claim for Just Compensation, the following:

REPLY BRIEF

INTRODUCTION

Intervenor Advocates for Missoula's Future (AMF), has filed a motion asking to intervene for the limited purpose of seeking a court order unsealing Defendants' Claim for Just Compensation, as well as the claims of Intervenor Employees, on grounds the claim filings are public writings, subject to both the statutory and Montana Constitutional Right to Know. Neither the Defendants nor the Intervenor have objected to the motion. Plaintiff, however, does resist the Motion, but not on grounds of substance. It admits it knows of no authority upon which the public information sought should be kept secret from the public. Still, it resists AMF's participation in the case on this limited ground, even though it has no quibble with AMF's substantive legal arguments. It argues instead that AMF has no standing to participate in this case.

ARGUMENT

The City admits it has no substantive basis to resist the motion. (See *Pl. Br. in Response to Motion to Intervene of Advocates for Missoula's Future*, pp. 7-8 (Sept. 11, 2015).) For example, it points to no order entered by this Court which directs the parties to file papers under seal, or keep anything confidential from the public. As this Court itself stated, when it refused the City's failed motion to keep valuation matters secret (see,

Motion to Compel Compliance with Court’s July 7, 2014, Order (Sept. 25, 2014), Dkt. No. 60) , “this litigation is an important public issue and one that involves governmental entities and the Court does not find it necessary *or appropriate* to order a bright-line rule regarding what parties may or may not say.” (Order, 4:8-11 (December 1, 2004), Dkt. 124; emphasis added, see copy attached.) Thus, there has been no order in this case – none – requiring the parties to seal any valuation evidence, much less Defendants’ or Intervenors’ respective Statement of Claim for Just Compensation. Yet, the City continues to keep this information secret.

Rather than addressing the substance of these merits the City instead resorts to a procedural maneuver, seeking to discredit AMF’s standing to vindicate its members’ right to know. The City argues that because the commissioner’s hearing, starting on November 2, 2015, will be open to the public, and some or all of the information set forth in the statements of claim “will be public in just a few weeks,” neither AMF nor the public should fret over the constitutional Right to Know. The problem with this analysis, however, is that the information, if it is in fact disclosed at that time, will not be timely. The public’s Right to Know is ripe *now*. No delay is contemplated by the Constitution in the public’s rights of disclosure of public information. Thus, the citizens of Missoula need to know what their leaders are up to so they can communicate their will to those leaders before the cost and risk of more litigation is incurred. Perhaps the members of the constituency will support the City’s position if they have more information.

But they certainly have a right to the information they need upon which to make informed choices and give their political leaders direction.

The City has a serious responsibility to vindicate and protect the Constitutional rights of all its citizens, including the Right to Know. It should have undertaken an effort to seek release of the public information long ago. Instead, it stood idly by – even though it can point to no legal authority to support the proposition that the information should remain sealed. Indeed, it attempted the exact opposite – it filed a motion and brief to try to keep this important information secret. (See, Motion to Compel Compliance with Court’s July 7, 2014, Order (Sept. 25, 2014), Dkt. No. 60.) With the City failing to do so, the citizenry, in this case AMF, has a right to step-in and vindicate their own Constitutional rights. *Sportsmen for I-143 v. Montana Fifteenth Judicial Dist. Court, Sheridan Cnty.*, 2002 MT 18, ¶ 12, 308 Mont. 189, 40 P.3d 400. See, also, *Baxter v. State*, 2009 MT 449, ¶ 47, 354 Mont. 234, 224 P.3d 1211 (The private attorney general doctrine applies when the government fails to properly enforce Constitutional rights.)

Given the City’s refusal to recognize the public’s Right to Know, the valuation information put at issue in the motion, and its refusal to consent to AMF’s motion, it should bear the burden of AMF’s attorney fees. Absent AMF’s efforts, the City would continue to keep these matters of important public concern secret from its own citizens. In short, only the City’s wrongful actions and legal positions made this motion necessary.

CONCLUSION

Accordingly, Intervenor Advocates for Missoula's Future requests:

1. That it be allowed to intervene in this case for the purposes of unsealing Defendants' and Intervenor Employees' claims for just compensation, and other filings relevant to those claims;
2. That the Court enter an order to unseal Defendants' Statement of Claim for Just Compensation to the Full Extent of the Loss (Dkt. No. 323.10);
3. That the Court enter an order to unseal Intervenor Employees' statement of claim (Dkt. No. 323.20);
4. That AMF be awarded its attorney fees and cost under MONT. CODE ANN. § 2-3-221; and
5. That the Court grant such other relief as may be warranted in the circumstances.

DATED this 24th day of September, 2015.

Respectfully Submitted,
RHOADES & SIEFERT, P.L.L.C.

By: 

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CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that on the 24th day of September, 2015, the foregoing was copied on the following via regular U.S. Mail at the following addresses:

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