

**Michelle Halley Public Comments re: MWC Employee Settlement Offer
April 11, 2016**

My name is Michelle Halley and I work at Mountain Water Company.

As you may or may not be aware, this council was the last party to reject an offer regarding the Mountain Water employees, which was presented to you in July of last year.

Prior to this, the city gave the employees time limited take-it-or-leave-it offers that left the employees significantly short. The city's plan as presented to the PSC has a 32% reduction in wages and benefits. Any claim that a fair offer has been made is simply not true.

So, the employees presented an offer last July for all of us to come to work for the city, under city wages and benefits, with a settlement amount to be paid, at the time of the city's taking of the water system. I want to make it clear that when I say "settlement", it reflects the actual dollar amount to fairly compensate the employees for losses they would incur from having to take new jobs with the city. Much of those losses pertain to losses in Pension retirement, as employees will have to transition from one pension system to another, and start new vesting periods. Other losses relate to other reductions in wages and benefits.

What's important to understand in this settlement, is that with the employees willing to go to work at city wages and benefits, the city would **save enough money each year to finance the upfront payment to cover the employees' harm, without any additional cost to the city.** And why that makes sense, is because if the employees weren't being harmed by the city in the first place, there **would be no annual savings to the city.** So, understand there is no windfall to the employees, only a settlement to keep the employees from being harmed by a forced government taking. By not settling this way, it's actually the city that gets the windfall by taking revenues away from the employees.

Obviously this condemnation is costing the city much more than it intended. And the city has made it clear they can only finance the system with revenues from the water system. And remember, part of those revenues go to pay employee wages and benefits. So as your condemnation costs continue to exceed all estimates, the financing of this water system would eventually have to come at the expense of the employees.

In the Committee of the Whole meeting last Wednesday, the Mayor said the city was not going to have pay interest costs to Mountain Water, as did your attorneys in the Missoulian. If truly those costs are no longer an issue, you've saved enough money right there to easily settle with the employees. And that's the right thing to do as opposed to **using revenues that currently pay employee wages and benefits, in order to finance the revenue acquisition bond instead.**

It's time this council and the Mayor settle with the employee group as they have proposed. I urge you to accept the offer for which the employees have made. Your attorney has the information for you to accept.

It's not that the employees won't work for the city, if after all of these legal proceedings, the city ends up prevailing. It's that the employees do not want to be harmed and have their wages and benefits reduced so that those savings can be used to finance the system.

I'd also urge you to agree to pay the legal fees the employees have had to incur because of this taking. It's less than what you approve in your own legal costs in just one week. This alone has shown blatant disregard for what this city's actions have done to the employee group.

Thank you.

Municipal Water Utility Ordinance Comments
By: Ross Miller, 708 Lolo Street, Missoula, Ward 1, April 11, 2016

Watershed Trespass

Under 13.30.510 (5), the public may not “trespass upon any watershed belonging to or leased by the Municipal Water Utility [City]”. This could mean the City can lock the public out of the Rattlesnake, or anywhere else the City considers to be it’s “watershed”.

Shared Irrigation Wells a Violation – An Unconstitutional Property Taking

Under Ordinance 13.30.200 (C), two or more property owners who share an irrigation well would be in violation of the ordinance, subject to misdemeanor citation and fined, even if they each have valid water rights to the well, and their use predates the Ordinance. City enforcement of this ordinance would result in an unconstitutional taking of the owners’ property rights, essentially taking the owners’ water rights by depriving their use. Also, under this ordinance, violations are penalized under Chapter 1.20 of the Missoula Municipal Code, which requires a MINIMUM \$30 per day fine with a MAXIMUM \$500 per day fine and possible imprisonment. Sharing wells is common, for example, the entire Canyon River subdivision in East Missoula is on such a shared irrigation well.

Just and Reasonable Rates

Under 13.30.130 of the ordinance, the City is adopting Mountain Water’s current water rates. However, Mayor Engen, Dale Bickell, and Bryan von Lossberg have all testified under oath to the Montana Public Service Commission in a current proceeding that these very same rates are “not just and reasonable”. Montana statute 69-7-701 requires that rates charged by a municipality must be “reasonable and just.” Therefore, either the water rates in this ordinance are a violation of state statute, or these City representatives have miss-testified to the PSC.

City Denying Liability for Damages it May Cause

Under 13.30.350 and 530 of the ordinance, the City would not be liable for any damages it may cause to property owners, such as the City damaging customers’ curb cock or curb box, service lines or fixtures, for accidental disruption of water service, or damage resulting from the City shutting off water supplies at any time or any other operations of the water system that may damage someone’s property. Conversely, under private ownership, Mountain Water is responsible for any such damage it causes to the customer, and is insured for such damage.

Right to Privacy

A customer denying access to any City Water Division Employee into their buildings and property for inspection of its water use, reading meters, etc. is violation of the ordinance (13.30.410, 530). The ordinance states that customers must grant access to City Water Division Employees at any time for such inspections. Such a denial of access would result in a misdemeanor with up to \$200 per day in fines, water shut off, and potential imprisonment.

Misdemeanors and Fines

This Ordinance has numerous violations that result in a misdemeanor, with fines, plus shut-off of water service, and potentially imprisonment. Such violations include:

- Watering outside of set times and days,
- Providing water to a neighbor,
- Waste of water,
- Leaky plumbing and fixtures,
- Plumbing configurations not in-line with ordinance,

Under private ownership, Mountain Water does not have any authority to issue fines or cite for criminal violations such as misdemeanors.

My name is Shanna Adams and I live at 411 Spanish Peaks Drive in Ward 4.

As an engineer for Mountain Water Company I've worked closely with our customers on many of the items addressed in this proposed city ordinance, and I feel obligated to highlight a few areas that will be detrimental to our customers.

Section 13.30.190 states that some offenses would result in the customer being "guilty of a misdemeanor", subject to fines of \$200 per day every day until the violation is fixed, having water service shut off and being assessed disconnect and reconnect charges and fees, and being ordered to pay restitution to the city.

These "offenses" include having a leaking service line and broken curb box. This ordinance would turn hundreds, perhaps thousands of Mountain Water Customers into criminals overnight, subject to \$200 per day every day fines until the service line and curb box are replaced or repaired. This puts an exorbitant burden on customers.

Section 13.30.270 allows the city to shut off water without notice to customers, and does not state limits on water outages. Mountain Water Company currently provides 24 hour notification to residents, and 48 hour notification to businesses. In addition, we work closely with customers to minimize disruption of service and in recent years have implemented temporary water systems to ensure that customers who would otherwise have to close down their business without water, could stay in water and stay in business.

13.30.320 – Multiple Connections – This allows the Public Works Director, in his or her discretion, to force customers who are currently on a common service line to add new service lines or have one common bill, with the consequence of discontinuance of service. Again, there are hundreds of customers in this situation who would now be committing a misdemeanor, subject to fines.

Under section 13.30.340, the city can shut off a customer, repair or replace the corporation stop and curb box, then charge the owner for the entire cost of time and materials. "This charge must be paid...before water service will be restored". The cost for this type of repair could easily be \$3,000 to \$7,000. This puts an exorbitant burden on our customers. We receive about 150 calls per year from folks who know their service line is leaking and we send someone to their house and work closely with them to find and fix the leak. These customers would be dis-incentivized from locating leaks, if they are criminalized and subject to fines.

13.30.370 – Waste of Water Prohibited. The customer will only be given 5 days to fix leaky fixtures or service lines before water service is shut off. If you've ever tried to find a contractor who can complete a fairly large job at your house you know that 5 days is an unreasonable requirement.

Section 13.30.410 allows the city free access to all parts of buildings in which water is delivered, for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the water is used. This seems like a real violation of our customers right to privacy.

13.30.550 Two or More Buildings not to be Supplied Through One Connection – This situation exists across Missoula in the form of accessory buildings such as garages, studios, and mother in law suites. Under this ordinance these owners would become criminals overnight. This is inconsistent with the Administrative Rules of Montana, Section 17.38.101, and inconsistent with the manner in which the city handles sewer connections.

At Mountain Water Company, we view our customers as just that, customers to be served, and we focus on providing those customers with the highest level of service possible. I've had the good fortune of getting to know many of these customers over the years, and I disagree with the city's heavy handed approach to criminalizing their activities, and turning aging infrastructure issues into criminal offenses. I hope that you will reconsider the draconian nature of this ordinance.

**Michelle Halley Comments to City's Ordinance to Establish Municipal Water Utility
April 11, 2016**

My name is Michelle Halley and I oversee customer service and human resources at Mountain Water Company.

I'm here tonight to speak about the city's water utility ordinance and the negative impacts it has on the customers, and the employees.

While it's true, much of the ordinance simply adopts Mountain Water's existing rules and specs, making me wonder again why you're risking millions of dollars for an already well-run company.....

...there are still significant differences written into the ordinance that are very heavy handed toward the customer. I'll give you examples of where this ordinance, as applied to the customer will be strict, inflexible, inconvenient, and lacks an overall consideration for customer care and fairness.

First of all, we're a service provider, not the police department. There's wording in this ordinance that says a person "...shall be deemed **guilty** of a **misdemeanor** and upon **conviction**, they shall be **punished**...." up to \$200 per day for every day the person is in violation.

In addition, there's no external oversight. The council and mayor **set the rates, change the rates, and add new fees**. The council and mayor **set the rules, change the rules, and can make new rules** without any neutral, third-party oversight. – The only recourse a customer has is to appear right here in front of you – to be **judge, jury, and executioner**.

This ordinance is inconvenient. Customers will have to drive down to the City Clerk's office during business hours to get a copy of their rates, charges, and rules.

This ordinance is inflexible. There's no consideration to adjust a customer's water bill, regardless of who's at fault.

This ordinance oversteps the customer's right to privacy. If a meter fails to register, the city can estimate using a **flat rate** billing method and charge **in advance** every month. But, the flat rate is billed based on the number of rooms in the customer's house. We don't have room count information for metered customers. But the city reserves the right in this ordinance to enter the customer's house violating the customer's right to privacy. That is a major reason customers want meters. They don't want anyone entering their house and going room to room. Now the city can do so, just because they claim their meter isn't registering.

Lastly, this ordinance gives a customer only 10 days to pay their bill or their water is shut off immediately. If you aren't able to resolve this with the water department, you have to appeal it to city council. It will be quite embarrassing for a credit customer to have to appear in front of city council and the public to discuss personal financial hardships.

Shifting to the employees. Where are they in this ordinance? In the 1980's, there was an ordinance written to address the employees.

Not only does it **not** provide any assurance to the employees, it **takes** from them. One example is it gives the power and authority for the water system to the Public Works Dept. Yet, in the city's org chart presented to the courts, customer service, engineering and accounting employees were removed from the Public Works department. How do you expect the employee group to continue to serve the community when your plan breaks up the employees, and doesn't appropriately address our responsibilities in the ordinance?

It's also impossible to see how the employees can continue to provide excellent service to the community under an ordinance that actually reduces service and increases penalties. This will take us from being water service providers to being water cops.

In conclusion, this ordinance ends up harming the customers and the employees of the water system and should not be approved.

Thank you.

Logan McInnis' Comments on the water utility ordinance

Several of the City's expert witnesses testified to the District Court that Mountain Water's rules and actions have jeopardized public health and safety for the residents of the Missoula Valley. These claims were clearly central to Judge Townsend's ultimate conclusion that public ownership is more necessary than private ownership.

I find it curious that now that the Court has been convinced of necessity, the City intends to adopt Mountain Water's developer extension tariffs and construction specification documents practically verbatim. The City's version of our specifications contains a reference to a document called "Missoula Water Division's Disinfection Manual". This is a document which does not exist but is apparently referring to the disinfection requirements Mountain Water has developed in order to provide our customers with the safest water possible. I think the absence of these requirements in your specifications is troubling.

I will utilize the remainder of my 3 minutes to address some of the complaints the City made against Mountain Water's operation of the system and to show how this ordinance will result in the system being operated in exactly the same manner under the City.

The City's experts told the Court that the City has the opportunity to take ownership of the service lines in order to reduce leakage on the services. This ordinance proposes no change in the ownership and maintenance responsibility for service lines, except that it makes a criminal out of everyone with a leaking service line.

The City claimed that Mountain Water imposes too much cost on developers in extending mains, thus resulting in inadequate fire protection and water quality in parts of the valley. This ordinance makes no change in how developers will extend mains and hydrants throughout the valley. It certainly doesn't show how the City will impose any less cost on main extensions.

At least one City expert even claimed that the City would subsidize the cost of main extensions. This ordinance says nothing about subsidizing the cost of main extensions and the City's business plan did not budget \$1 for this purpose. To the contrary, John Wilson's statements made at the Public Works Committee made clear that the City's actual plan is to impose new development fees and impact fees on new connections. I think the City should be transparent at this stage and inform the community about these new fees that are certain to raise the price of every new home.

City experts claimed that Mountain Water's rules have caused gaps in fire hydrant coverage in the valley. Just like the other issues, your proposed ordinance makes no change in how fire hydrants are installed and who pays for them.

The City's experts stated that "the long payback period on Mountain Water's refunds discourages some developments altogether and prompts other developers to utilize private wells or small water systems". Again, your ordinance makes no change in the 40-year refund process but I think it is a pretty safe bet that these refunds will be one of the first things to go away once the City acquires the water system.

Mountain Water and its employees consider your adoption of our operating rules and specifications verbatim as an affirmation of how we have managed this system for decades. We also believe that your adoption of our rules proves that the District Court's made errors in its findings of fact regarding the necessity of public ownership.

Comments – 4/11/2016 John Kappes – Water Utility Ordinance

I fail to see the necessity for the utility ordinance to be approved.

The ordinance fails to provide the assurances the city has represented to the Montana courts were necessary to protect the employees from being harmed by condemnation.

The ordinance fails to provide the assurances the city represented to the Montana courts were necessary to protect the taxpayers from being harmed by condemnation.

It requires rules for the Rattlesnake watershed that are not necessary.

It fails to improve service conditions for customers, fails to provide proper rules for ratepayers, and fails to assure adequate water quality protections for consumers, all of which the city represented to the Montana courts were necessary.

It approves Mountain Water's construction specifications - word for word. The same specifications the city represented to the Montana courts were inadequate and necessary to change.

It approves Mountain Water's developer tariffs- word for word. The same tariffs the city represented to the Montana courts were causing problems for development in this community and were inadequate and necessary to change.

It approves Mountain Water's exact water rates – dollar for dollar. The exact rates the city represented to the Montana courts were a problem for this community. Councilman Vonlossberg, on behalf of council, Dale Blckell, on behalf of the administration, and the Mayor are all currently testifying to the Montana PSC that the exact rates are unjust and unreasonable. By Montana statute it is necessary for this city to pass just and reasonable rates. The city has provided no cost of service analysis to justify why the rates meet Montana law and have testified just the opposite.

You as a council have approved and spent over \$5.6 million dollars of taxpayer money to represent to this community and to the courts of Montana the reasons that it is necessary for the city to own the water system. This ordinance is proof that the reasons represented were fallacies.

This ordinance contradicts what is in Judge Townsend's Order supporting necessity. This ordinance now provides evidence that the information and assurances the city and its experts provided to Judge Townsend, for which she relied upon, were not accurate as to how the city would actually operate the utility.

This ordinance takes the best of what is presently being provided to the citizens of Missoula by Mountain Water and adds unnecessary and unworkable additional provisions. As a result, it should be voted down.

Because the very presentation of the ordinance to this Council verifies that City leadership misrepresented the facts before the District Court in the condemnation case - the appropriate and responsible thing for this body to do would be to also retract the condemnation ordinance.