

GALLATIN GATEWAY COUNTY WATER & SEWER DISTRICT

July 29, 2016

Chair, Revenue and Transportation Interim Committee
c/o Secretary of State
P.O. Box 201706
Helena, Montana 59620-1706

RE: Request to review ARM 18.7.202

Dear Committee Chairperson,

The Gallatin Gateway County Water & Sewer District (GGCWSD) is a "County Water and Sewer District" organized and authorized under MCA 7-13-2203. GGCWSD is a "unit of local government" [MCA 7-13-2201(3)]. GGCWSD has a right to maintain and operate utility facilities on state lands [MCA 7-13-2220].

Recently GGCWSD submitted a request to the Montana Department of Transportation (MDT) to place a sewer pipeline in the MDT right-of-way. MDT denied the request for an "Occupancy Permit" citing ARM 18.7.206(2) which indirectly references a definition contained in ARM 18.7.202(3). MDT asserted that GGCWSD does not have a right to occupy the highway right-of-way but should instead apply for an "Encroachment Permit" allowable under ARM 18.7.206(2).

GGCWSD repeatedly requested clarification from MDT legal staff including MDT's Chief Legal Counsel. No response to the GGCWSD request for clarification has been received to date.

I believe the definition adopted by MDT in ARM 18.7.202 incorrectly confuses "publicly owned utility" with "publicly regulated utility". In adopting the rules in question MDT is trying to comply with Title 60, Chapter 4, Part 4 of the MCA. MCA 60-4-401(5) defines an entity generally eligible for cost-reimbursement in the event of highway construction as "publicly, privately, and cooperatively owned utilities". MCA 60-4-402 allows MDT to adopt rules for the reimbursement of utility relocation expenses. MCA 60-4-403 *requires* MDT to adopt specific rules for reimbursing the cost of relocating a "publicly owned water or sewer facility". There can be no question that GGCWSD is a "publicly owned" utility.

MDT's erroneous adoption of a definition from an irrelevant section of the code should be changed. Of course GGCWSD is not included in the Public Service Commission's definition of "utility" – it is not regulated by the PSC! The definition for "PSC regulated" should not be confused with the definition of "publicly owned".

Thank you for considering this request for review of an administrative rule. The Secretary of State's website says, "The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules," and I hope I have not taken any unwarranted liberties

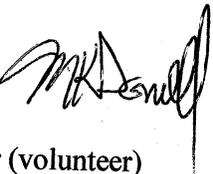
Gallatin Gateway Water & Sewer District
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GALLATIN GATEWAY COUNTY WATER & SEWER DISTRICT

in making this request.

Sincerely,

vs Matt Donnelly



General Manager (volunteer)
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