



October 24, 2019

The Honorable Jim Keane, Chair  
Environmental Quality Council  
P.O. Box 201704  
Helena, MT 59620-1074

RE: Administrative Rules of Montana (ARM) 17.36.805 and 17.38.106 (Fee Increases) and Adoption of New Rule I pertaining to certification under MCA 76-4-127.

Dear Committee Members:

I am sorry that I was unable to attend the last EQC meeting, but Kevin Smith, DEQ Engineering Bureau Chief, relayed your questions and concerns about our proposed rules to me. Please allow us to address those concerns and answer your questions.

DEQ's proposed New Rule I will: 1) help ensure that we have adequate funding for staff to meet statutory timelines for subdivision and public water and sewer reviews; and, 2) enable any municipality or county water and/or sewer district that seeks to become a certifying authority for the municipal facilities exemption in 76-4-125 and -127, MCA. DEQ has undertaken numerous reforms over the last three years to improve our efficiency and responsiveness. The result of those reforms includes improved communication with applicants and meeting or beating our statutory timelines for all subdivision reviews for the past 1.5 years even as the numbers of applications we have received has increased significantly.

Those reforms include supporting and initiating two bills (HB 507 in 2017 and HB 55 in 2019) to improve subdivision review process and eliminate redundant reviews where adequate public facilities are available. Additionally, we have reorganized to ensure that all the Water Quality Division's engineers are working more efficiently as a single team. DEQ also established the Subdivision and Development Advisory Council to bring stakeholders together quarterly to advise us on how we can improve our work. We remain committed to continually improve our reviews. We are currently working on a comprehensive rewrite of our subdivision rules to ensure that they are easier to understand and implement while maintaining protections for the environment and public health.

Most of your questions were related to the proposed 40% fee increase for both the Public Water and Waste Water Plan and Specification Reviews and the Subdivision Reviews. Similarly, most of the comments we received during the public comment period were related to the proposed fee increase. We did not receive any comments in opposition to the fee increase. We did, however, receive comments requesting that the fee increase be phased in over time and that we guarantee a timely and accurate review in exchange for the fee increase. Our intent with this proposed fee increase is to ensure we have the necessary staffing required to conduct timely and accurate reviews of water and wastewater systems and subdivision projects.

Currently, the subdivision program's expenses exceed revenues generated by fees by \$113,000. The ending fund balance for the program is practically gone because our current revenue stream is unsustainable. Without a fee increase, we will not be able to maintain our current staffing levels even as our workload has steadily increased. If we cannot maintain enough experienced engineers on-hand to review and assist owners and consultants it will result in delays and undermine our ability to provide the level of customer service the public expects from us.

The public water and wastewater plan review program is similarly running in the negative. Currently, we are subsidizing this program with public water connection fees. The proposed fee increase will eliminate this imbalance in three years and then provide this program with fiscal stability and flexibility to accommodate market fluctuations as well.

Our goal is to increase fees to provide fiscal stability over time by establishing an adequate ending fund balance for both the State and the Counties that are contracted to do reviews for us. Based on the comments we have received during the public comment, we are looking at amendments to the rules that will phase the fee increase over time with the goal to immediately address the shortfall and begin to build an ending fund balance to provide fiscal stability into the future. Please see the attached documentation showing an estimated revenue stream with the proposed phase approach. We are looking at proposing a 25% increase in fees in 2020, with three consecutive 5% fee increases beginning in 2022 to remain solvent and provide program stability over time. We are working on finalizing our response to comments for the rules and would be happy to share those with the committee once they are ready.

Additionally, we have included a set of examples showing how subdivision fees are calculated, as requested at the meeting in Libby.

Please let me know if we can provide additional information and if you would like to discuss how we can move the rules forward to ensure we can meet our statutory timelines and provide the best customer service we can.

Thank you for your consideration.

Sincerely,



Tim Davis, Administrator  
Water Quality Division

22-Oct-19

**Subdivision Projections**

**FY19 Actual Expenditure:** \$1,192,247  
**FY19 Actual Revenue:** \$1,078,591  
 No Additional Staff Projected in Expense Calculation

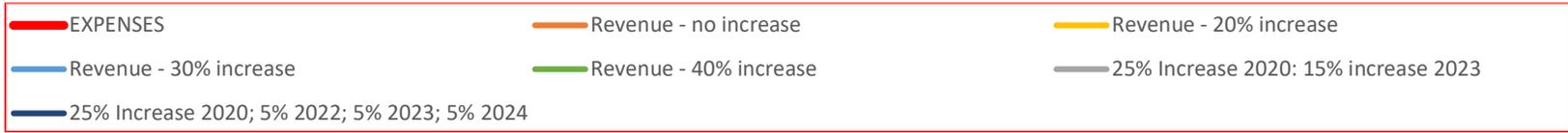
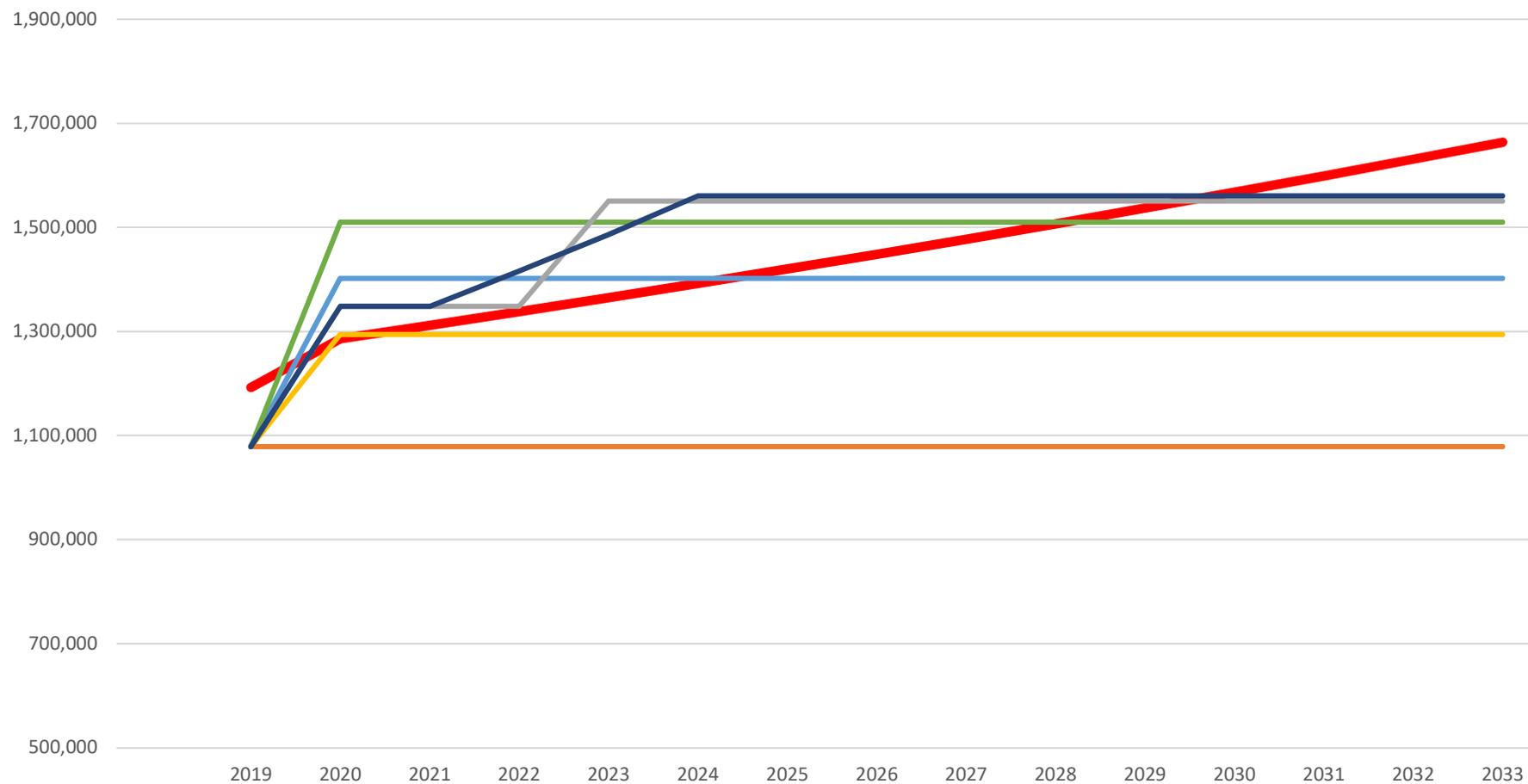
**Expenditures and Revenue #s taken from Eng\_cashflow\_16-19-fee increase2019 Spreadsheet.**  
 (Provided by Fiscal)

Note: in 2020 Expense, added additional 70,000 to account for vacancy in 2019.

**One-time fee increase, assumed 2% annual increase in expenses, assumed constant # of reviews**

	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
<b>EXPENSES</b>	<b>\$1,192,247</b>	<b>\$1,286,092</b>	<b>\$1,311,814</b>	<b>\$1,338,050</b>	<b>\$1,364,811</b>	<b>\$1,392,107</b>	<b>\$1,419,949</b>	<b>\$1,448,348</b>	<b>\$1,477,315</b>	<b>\$1,506,862</b>	<b>\$1,536,999</b>	<b>\$1,567,739</b>	<b>\$1,599,094</b>	<b>\$1,631,076</b>	<b>\$1,663,697</b>
Revenue - no increase	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591	1,078,591
Revenue - 10% increase	1,078,591	1,186,450	1,186,450	1,186,450	1,186,450	1,186,450	1,186,450	1,186,450	1,186,450	1,186,450	1,186,450	1,186,450	1,186,450	1,186,450	1,186,450
Revenue - 20% increase	1,078,591	1,294,309	1,294,309	1,294,309	1,294,309	1,294,309	1,294,309	1,294,309	1,294,309	1,294,309	1,294,309	1,294,309	1,294,309	1,294,309	1,294,309
Revenue - 25% increase	1,078,591	1,348,239	1,348,239	1,348,239	1,348,239	1,348,239	1,348,239	1,348,239	1,348,239	1,348,239	1,348,239	1,348,239	1,348,239	1,348,239	1,348,239
Revenue - 30% increase	1,078,591	1,402,168	1,402,168	1,402,168	1,402,168	1,402,168	1,402,168	1,402,168	1,402,168	1,402,168	1,402,168	1,402,168	1,402,168	1,402,168	1,402,168
Revenue - 35% increase	1,078,591	1,456,098	1,456,098	1,456,098	1,456,098	1,456,098	1,456,098	1,456,098	1,456,098	1,456,098	1,456,098	1,456,098	1,456,098	1,456,098	1,456,098
Revenue - 40% increase	1,078,591	1,510,027	1,510,027	1,510,027	1,510,027	1,510,027	1,510,027	1,510,027	1,510,027	1,510,027	1,510,027	1,510,027	1,510,027	1,510,027	1,510,027
<b>25% Increase 2020: 15% increase 2023</b>	1,078,591	1,348,239	1,348,239	1,348,239	1,550,475	1,550,475	1,550,475	1,550,475	1,550,475	1,550,475	1,550,475	1,550,475	1,550,475	1,550,475	1,550,475
<b>25% Increase 2020; 5% 2022; 5% 2023; 5% 2024</b>	1,078,591	1,348,239	1,348,239	1,415,651	1,486,433	1,560,755	1,560,755	1,560,755	1,560,755	1,560,755	1,560,755	1,560,755	1,560,755	1,560,755	1,560,755
Yearly Delta: for 20% increase:	-113,656	8,217	-17,505	-43,741	-70,502	-97,798	-125,640	-154,039	-183,006	-212,552	-242,690	-273,430	-304,784	-336,766	-369,388
Yearly Delta: for 25% increase:	-113,656	62,147	36,425	10,189	-16,572	-43,869	-71,711	-100,110	-129,077	-158,623	-188,760	-219,500	-250,855	-282,837	-315,458
Yearly Delta: for 30% increase:	-113,656	116,076	90,355	64,118	37,357	10,061	-17,781	-46,180	-75,147	-104,693	-134,831	-165,571	-196,925	-228,907	-261,529
Yearly Delta: for 35% increase:	-113,656	170,006	144,284	118,048	91,287	63,991	36,148	7,749	-21,218	-50,764	-80,901	-111,641	-142,996	-174,978	-207,599
Yearly Delta : for 40% increase:	-113,656	223,935	198,214	171,977	145,216	117,920	90,078	61,679	32,712	3,166	-26,972	-57,711	-89,066	-121,048	-153,670
Yearly Delta : for 25% / 15% inc.:	-113,656	62,147	36,425	10,189	185,664	158,367	130,525	102,126	73,159	43,613	13,476	-17,264	-48,619	-80,601	-113,222
<b>Yr Delta: for 25% / 5% / 5% / 5%</b>	<b>-113,656</b>	<b>62,147</b>	<b>36,425</b>	<b>77,601</b>	<b>121,622</b>	<b>168,648</b>	<b>140,805</b>	<b>112,406</b>	<b>83,440</b>	<b>53,893</b>	<b>23,756</b>	<b>-6,984</b>	<b>-38,339</b>	<b>-70,321</b>	<b>-102,942</b>
<b>Fund Balance w/ 20% Increase:</b>	<b>-113,656</b>	<b>-105,439</b>	<b>-122,943</b>	<b>-166,684</b>	<b>-237,186</b>	<b>-334,984</b>	<b>-460,624</b>	<b>-614,664</b>	<b>-797,670</b>	<b>-1,010,222</b>	<b>-1,252,912</b>	<b>-1,526,342</b>	<b>-1,831,126</b>	<b>-2,167,892</b>	<b>-2,537,280</b>
<b>Fund Balance w/ 25% Increase:</b>	<b>-113,656</b>	<b>-51,509</b>	<b>-15,084</b>	<b>-4,896</b>	<b>-21,468</b>	<b>-65,336</b>	<b>-137,047</b>	<b>-237,157</b>	<b>-366,233</b>	<b>-524,856</b>	<b>-713,616</b>	<b>-933,117</b>	<b>-1,183,971</b>	<b>-1,466,808</b>	<b>-1,782,267</b>
<b>Fund Balance w/ 30% Increase:</b>	<b>-113,656</b>	<b>2,420</b>	<b>92,775</b>	<b>156,893</b>	<b>194,250</b>	<b>204,311</b>	<b>186,530</b>	<b>140,350</b>	<b>65,203</b>	<b>-39,490</b>	<b>-174,321</b>	<b>-339,892</b>	<b>-536,817</b>	<b>-765,724</b>	<b>-1,027,253</b>
<b>Fund Balance w/ 35% Increase:</b>	<b>-113,656</b>	<b>56,350</b>	<b>200,634</b>	<b>318,682</b>	<b>409,969</b>	<b>473,959</b>	<b>510,108</b>	<b>517,857</b>	<b>496,639</b>	<b>445,876</b>	<b>364,975</b>	<b>253,334</b>	<b>110,338</b>	<b>-64,640</b>	<b>-272,239</b>
<b>Fund Balance w/ 40% Increase:</b>	<b>-113,656</b>	<b>110,279</b>	<b>308,493</b>	<b>480,470</b>	<b>625,687</b>	<b>743,607</b>	<b>833,685</b>	<b>895,364</b>	<b>928,076</b>	<b>931,242</b>	<b>904,270</b>	<b>846,559</b>	<b>757,492</b>	<b>636,444</b>	<b>482,774</b>
<b>Fund Balance: 25% / 15%:</b>	<b>-113,656</b>	<b>-51,509</b>	<b>-15,084</b>	<b>-4,896</b>	<b>180,768</b>	<b>339,135</b>	<b>469,660</b>	<b>571,787</b>	<b>644,946</b>	<b>688,559</b>	<b>702,034</b>	<b>684,770</b>	<b>636,151</b>	<b>555,550</b>	<b>442,327</b>
<b>Fund Balance: 25% / 5% / 5% / 5%:</b>	<b>-113,656</b>	<b>-51,509</b>	<b>-15,084</b>	<b>62,516</b>	<b>184,139</b>	<b>352,786</b>	<b>493,592</b>	<b>605,998</b>	<b>689,438</b>	<b>743,331</b>	<b>767,087</b>	<b>760,103</b>	<b>721,764</b>	<b>651,443</b>	<b>548,501</b>

### Subdivision Section



Determination of Subdivision Application Fees:

Subdivision fees for some typical projects are listed below. Please note that these reflect costs from our existing fee schedule.

2-lot subdivision	10-lot subdivision	10-lot subdivision using a Municipal Facilities Exclusion
2 lots @ \$125	10 lots @ \$125	
2 drainfields @ \$95	10 drainfields @ \$95	1 MFE @ \$100
2 non-deg reviews @ \$60	10 non-deg reviews @ \$60	1 engineering report @ \$280
2 wells @ \$85	10 wells @ \$85	public water system 10 lots @ \$70
2 simple storm water @ \$40	storm water design @ \$180 + 10 lots @ \$40	public wastewater system 10 lots @ \$70
<b>Total = \$810</b>	<b>Total = \$4,230</b>	<b>Total = \$1,680</b>

If applications are denied, typically the applicant will re-submit with additional or corrected information for review *with no additional assessment of fees*. Should an application require excessive review and follow up with the applicant, we can charge hourly rates to account for the additional time required by staff to provide review services for that application. In FY19, only two out of approximately 500 files were charged the additional review fees.

Please note that for larger subdivisions that may incorporate their own public water and waste water distribution and treatment systems, review fees for those special cases are dependent on the complexity, type and level of treatment required. The fees for this type of review are provided in ARM Title 17 Chapter 38 Public Water & Sewage System Requirements (ARM 17-38-106 Fees).