

From: donotreply@mt.gov
To: [LEG Cmte-LGIC Comment](#)
Subject: Public Comment for EQC
Date: Sunday, June 19, 2022 8:08:05 AM

Public Comments for the Local Government Interim Committee

Date: 19th June 2022 08:07

First Name:

Thomas

Last Name:

Zurbuchen

Email Address:

zurbuchen@bresnan.net

Subject:

Special Districts PD0001 & PD0002

Comment:

I would like to submit the following on PD001 & PD002 (MCA 7-13-2231). This great country was founded and has matured on the one man one vote principle for nearly 250 years. An appointment on a Board of Directors for a Special District erodes that principal. Adding 2 appointed members to a 5 member voted in board making a 7 member board, which equates to a 28 % dilution of one man one vote. These diluted voters are the same voters who vote you in or out of office without any diluted votes. Why do you accept their ability to decide your future but dilute their vote when it comes to running a Special District? If things were equal then the Montana Legislature would need 28 House Representatives and 14 Senators appointed by the Federal Government. Now there would be screams heard around the world! Please respect and advance the one man one vote principal by advancing PD002 and eliminating PD0001. Thomas L. Zurbuchen 1747 Wicks Ln. Billings Mt. Yes I reside within the boundaries and receive water from County Water District of Billings Heights

Sent via leg.mt.gov/committees/interim/lgic/public-comments-lgic/

June 30, 2022

TO: Local Government Interim Committee
FROM: Pam Ellis, Board member, County Water District of Billings Heights
RE: Heights Water District Soap Opera Continues; Pam Ellis Voted off Board, County Attorney Calls Vote Illegal

I know the Yellowstone County Commissioners discussed the proposed legislation last week and will submit written comments. Billings City Administrator Chris Kukulski plans to submit written comments prior to July 5th and Heights council members intend to provide feedback.

The June meeting is evidence of what happens when a Board exists that do not understand their responsibility to rate payers. While my removal was not legal, the verbal and written abuse I experienced from the Board President Ming Cabrera was and continues to be stressful.

The lack of clarity in the 2015 changes in the legislation meant that that the city reluctantly agreed not to appoint a replacement for the city appointee.

In June, after the vote to remove me from the board, the Board President got the remaining 2 members present to agree that all information would come only through the General Manager; board members are not “allowed” to speak to anyone outside of the General Manager because the general manager believes it is his sole authority to provide information and recommendations to the board.

Mr. Cabrera specifically ordered that I not be allowed to speak with Jennifer Duray, the Assistant Billings Public Works Director. General Manager Peyton Brookshire told Jennifer Duray that she was not allowed to speak to anyone except he and the assistant General Manager. A “spy” was appointed by the president to attend the meeting and report back to the president (President Cabrera speaks about the “spy” in the June meeting which is linked in the YCN article below).

In the June meeting, the board removed reference to the minutes of the May meeting that would have required them to vote publicly to illegally compensate themselves the \$150 rather than the \$100 statutory maximum. I testified in May that when a board will not follow the law, it empowers the staff to do likewise. I’ve attached a copy of the May minutes as originally written with the offending information removed. President Cabrera’s comments were also reported in the YCN, May 20, 2022.

All decisions at the June 15 Water District meeting were illegal because after I was removed from the Board table by the police officers, there were only 3 remaining board members present. The statute and our by-laws establish a 7 member board; 4 is a quorum. Not just the majority of the board members still serving and present at a meeting.

<https://www.yellowstonecountynews.com/202206241038/heights-water-district-soap-opera-continues-pam-ellis-voted-off-board-county-attorney-calls-vote-illegal/>

The article linked includes the board meeting video.

ATTACHMENTS

- May 11, 2022 COUNTY WATER DISTRICT OF BILLINGS HEIGHTS Board of Directors Meeting Minutes
- May 20, 2022 Water District Gets Grant; Chair calls for Board members to resign
- June 10, 2022 Water Rates & Supply Concern Ratepayers
- June 24, 2022 Heights Water District Soap Opera Continues; Pam Ellis Voted off Board, County Attorney Calls Vote Illegal



COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

Board of Directors Meeting Minutes

May 11, 2022 at 6:00 PM

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

The meeting is open to any interested member of the public. Agendas are prepared for the meetings; agendas may be requested from the General Manager Peyton Brookshire, peyton@heightswaterdistrict.com and are available at <https://heightswaterdistrict.com/agendas-and-minutes/> and <https://www.yellowstonecountynews.com/county-water-district-of-billings-heights/> Zoom Meeting ID Meeting ID: 891 4318 4955

CALL MEETING TO ORDER: President Ming Cabrera called the meeting to order at 6:00 pm

WELCOME AND INTRODUCTIONS

Board Members Present Ming Cabrera, David Graves, Laura Drager, Pam Ellis

Staff Members Present Josh Simpson, Jennifer Burnside

Also Present Jeremy Burnside, Dianne Crees, Mike Macki, Evelyn Pyburn, Kathy Stevenson, Tom Zurbuchen

PRESIDENT'S REMARKS: Ming Cabrera read the remarks below:

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.

President Cabrera noted that 3 board members have not attended the meetings in 8 months. He asked the public and the press to ask these Board members to resign if they are unable or unwilling to attend and participate.

President Cabrera directed Jennifer Burnside to stop paying the 3 absent board members when they do not attend meetings. Pam Ellis noted a "point of order". Board compensation is directed by Board Resolution and can only be changed by a vote of the Board. A proposed Resolution change will be included in the June agenda.

President Cabrera noted that the General Manager will work with Jennifer Duray to understand the city's recommendation for rate increases for FY23.

AUDIT REPORT Stefani Freese, Anderson ZurMuehlen

1. 2021 Financial Report DRAFT

The agenda noted to pay particular attention to the MD & A, page 7 under Economic Factors and Future Rates since the audit disclosed the settlement in that section. Management is welcome to propose changes to wording in the MD & A if they so choose. "In the fall of 2018, the County Water District received an invoice from the City of Billings (water supplier) for past, previously unbilled, water charges that were the result of errors made by the City of Billings in converting water to and from gallons from another unit of measurement. Those errors by the City of Billings began in approximately December of 2014 and were not discovered and corrected for over two years. The total error asserted by the City of Billings and billed to the County Water District amounted to approximately \$2.5 million for that period of time. The District, in consultation with legal counsel determined it would owe approximately \$550,000 and had accrued a liability as of June 30, 2018 for

that amount with a charge to water purchased in the accompanying financial statements. On April 13, 2022, the District Board approved a settlement for \$2,936,252 with the City of Billings, which the District paid on April 19, 2022. The additional liability of \$2,386,252 was recorded as a prior period adjustment to net position as of June 30, 2021.” Typically the audit for FY21 would not include changes made after the close of the fiscal year. The settlement with the city of Billings required a restatement of prior audits and was included.

Budgeting (p 15)

Although the District prepares an operating budget for purposes of financial management of operations and accountability to the Board of Directors, the District is not legally required to do so. NOTE: The district has not prepared budgets in prior years and was not able to produce a budget document for the auditors. The auditor will remove this incorrect statement which was copied from a prior year audit.

NOTE 9. CONCENTRATIONS (page 20)

“The District maintains its primary bank accounts in two financial institutions located in Billings, Montana. Those balances are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000 per financial institution. Certificates of deposit held for investment purposes are held with various financial institutions throughout the United States and those balances are insured by the FDIC. Temporarily idle investment funds are maintained in cash deposits at brokerage firms which may or may not be federally insured. At June 30, 2021, the District’s uninsured balances totaled \$516,691.”

NOTE 10. WATER RATES The statement was copied from the prior year’s audit. Laura Drager noticed an error in the wording which will be corrected when the auditor finalizes the audit.

Also page 22 for the Prior Period Adjustment and Subsequent Event footnote has the settlement disclosure the adjustment needed.

The findings start on page 25 and Stefani highlighted the Management Response since copied that from last year and will need management’s response to these findings to replace or leave as is. Peyton Brookshire will return to work on May 16 and can send revisions.

Finding #2021-001 – Segregation of Duties and Financial Statement Preparation – Significant Deficiency

Recommendation: It is the responsibility of management and those charged with governance to make the decision whether to accept the degree of risk associated with this condition because of cost or other considerations. In order to mitigate the inability to segregate duties, management and the Board of Directors should continue to exercise effective oversight.

Finding #2021-002 – Preparation of Annual Budget Recommendation: We recommend management prepare an annual budget, including capital expenditures, for approval by the Board of Directors each year and then prepare budget to actual comparison reports for management and the Board oversight each month. This will help management make better and quicker decisions on expenditures that have prior approval by the Board through the budget process. Salary and compensation adjustments to personnel should be approved by the Board with the budget. NOTE: The Board has directed the General Manager to prepare a budget for FY23 for consideration and approval by the Board. Stefani recommended that the monthly staff report to the Board reference income and expenses in relation to the budget. Stefani Freese noted that both Quick Books and Black Mountain software have capacity for developing and reporting budgets annually and monthly.

Finding #2021-003 – Investment Policy and Excess Cash Condition: The District has significant investments, however, it does not have a formal investment policy. The District should develop and adopt a written investment policy, which should address the following:

- The investment objectives (that is, increase earnings, provide specific returns, or maintain accessible cash reserves).
- The person authorized and responsible for investments.
- The maximum amounts for investments and the approval criteria.
- The types of authorized investments.
- The desired mix of products (especially those considered to create risk).
- A goal for the amount of return expected.
- Approved vendors of investment products.
- The maximum length of time cash can be committed.

Recommendation: We recommend management prepare and the Board adopt an investment policy. We also recommend that the District investigate the possibility of investing some of its excess cash in higher yielding products approved by state law. NOTE: The finance committee will work with staff to develop an investment policy for consideration at the June 2022 Board meeting. Stefani noted that most government investment in The Short-Term Investment Pool (STIP) which was created by the Legislature on July 1, 1973.

Once the Board approves this report, either before or after the Board meeting, Stefani Freese will send a Management Representation Letter for the manager to sign and return; then she can issue the final audited financial statements.

Anderson ZurMuehlen completed requested tasks which are beyond the scope of an audit but are typically outsourced by the District to the auditor including depreciation, accruals, etc. Financial summaries need to be submitted to the state of Montana in December; audits are not required until June. The District historically had submitted the audit in December. This year, nothing was submitted so the state billed the District \$130 per month fine totalling \$520 to date. Stefani Freese communicated to Larry Brewster and the Finance Committee previously that AZ would reduce the remaining \$1000 of their bill by the amount fined. The Finance Committee communicated this commitment to the full board in March and April.

Laura Drager and Pam Ellis thanked Stefani for her work. She was responsive to answer questions and provided helpful guidance and feedback in the audit report.

FINANCE COMMITTEE REPORT: Laura Drager

County Water District Billings Heights Treasurer's Summary Report as of

	31-Jan-22	28-Feb-22	31-Mar-22	30-Apr-22
Meters				
Previous total meter count	5881	5839	5837	
Residential	5440	5491	5448	
Commercial	399	346	398	
New Residential	4	3	5	
Total # Meters	5839	5837	5846	
Checking				
FIB Gross Income Account	\$ 952,485.57	\$ 960,580.57	\$ 708,141.15	\$ 333,822.87
FIB Operational & Maintenance	\$ 42,232.02	\$ 7,501.22	\$ 252,125.14	\$ 199,981.78
FIB Payroll Account	\$ 3,918.96	\$ 1,894.21	\$ 243,411.00	\$ 210,513.01
Total Checking	\$ 998,636.55	\$ 969,976.00	\$ 1,203,677.29	\$ 744,317.66
Investments				
Stifel - Cash & Equivalent	\$ 262,785.81	\$ 1,526,572.32	\$ 2,485,786.20	\$ 751,980.87
Stifel - Fixed Income CD's	\$ 8,612,724.64	\$ 7,327,654.60	\$ 6,344,964.92	\$ 5,568,211.84
Total Stifel Investments	\$ 8,875,510.45	\$ 8,854,226.92	\$ 8,830,751.12	\$ 6,320,192.71
First Interstate Bank Savings	\$ 250,935.48	\$ 250,937.40	\$ 250,939.53	\$ 250,941.52
Yellowstone Bank Reserve CD	\$ 205,267.50	\$ 219,584.53	\$ 219,584.53	\$ 219,584.53
Total Investments	\$ 9,080,777.95	\$ 9,073,811.45	\$ 9,301,275.18	\$ 6,790,718.76

2. Jenn Burnside would like to leave three checking accounts in place for about 6 months when she will feel confident with the procedures. Both the auditor and FIB recommended consolidating our accounts into one checking account. Jenn noted that she has added all three checking accounts to the Positive Pay plan. In response to a question from Tom Zurbuchen, Jenn said the District has stopped about \$92,000 in fraudulent checks.

FIB will prepare a report based on the questions asked and bring them back to the staff and Board representatives for discussion and possible recommendations to the full Board. Mike Peterson will reach out to the District to discuss options for credit card processing that may be more cost effective.

FIB would like to do a six month review (September 2022) and then annual relationship reviews going forward.

3. The city of Billings and Yellowstone county invest their short term reserves with the MT Board of Investments. The Muni Official Handbook provides the legal structure for investments; money markets are not allowed except under some circumstances. By investing in the MT STIP account, we may be able to earn about many times what we are earning on the Money Market at FIB and the money would be available within 24 hours. The FIB Money Market has paid .001 percent; the current average daily yield on STIP funds is 0.6382713 (May 5, 2022) and the monthly average is 0.5015563.

Recommended Motion Having conducted a public hearing, considered written and spoken testimony, I move to approve the purchase of STIP funds and sign the authorizing Resolution 018-22. TABLED TO ALLOW THE DISTRICT TO DEVELOP AN INVESTMENT POLICY AS RECOMMENDED BY THE 2021 AUDIT

Attached: MCA Investments, Muni Official Handbook, Ch 5 Financial Management; Resolution 018-22, STIP Resolution Letter, STIP Participation Information Sheet, STIP Electronic Funds Transfer, STIP Exhibits A&B

CIP and Rate Study (Interstate Engineering & Raftelis)

The special meeting of the Board on Monday, May 9 was a presentation from Andrew Rheem regarding rate setting for FY24. Josh Jabalara from the Midwest Assistance Program was also present. Jennifer Duray submitted a draft rate increase of 5.7% over the FY22 rate for wholesale water from the City of Billings on May 4TH.

Motion Pam Ellis made a motion confirming the decision of the Board on May 9th directing staff to work with Josh Jabalara to select the most appropriate spreadsheet for assessing the income and expenditures of the District toward developing a recommended rate increase for FY22. The staff will work to provide the data; Josh Jabalara will work with staff after June 1st to prepare a rate recommendation to the Board at the June meeting. Seconded by Laura Drager. Approved unanimously.

Pam Ellis reminded the Board and staff that Scott Aspenlieder had agreed to work with the District to review the rates. Scott is an engineer with a background in water and has worked as a General Manager for a water District. The concerns shared by Scott Aspenlieder and Dave Goodridge at the November 16, 2021 were included in the agenda for the May 9th meeting. Scott is available after May 15th to meet.

Tom Zurbuchen recommended that the District send information to all ratepayers regardless of whether the increase was more or less than 5% (Provide notice of a public hearing if proposed increases are more than 5% which requires mailing to customers at least 7 days, but no more than 30 days before public hearing, Include an estimate of what the customer may be charged, Included twice in local newspaper, published at least 6 days apart, Hold public hearing, Board vote on proposed fees, Modified fees can't become effective sooner than 10 days after approval).

Ming Cabrera, David Graves and Pam Ellis asked that the rate study for FY22 address the concerns that TAP fees and annexation fees are holding back development in the County Water District (see comments from Scott Aspenlieder and Dave Goodridge in the agenda of the May 9, 2022 meeting)

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.

Kathy Stevenson wanted to ask about rumors that were circulating in her subdivision that the District would be charged 10% above the cost of services for purchasing wholesale water from the City of Billings. She was assured that water rates whether set by the City of Billings or the District have to be based on the cost of providing services and must be legally compliant with MT statute and the contract in effect between the city of Billings and the District. The city cannot charge the District for capital improvement projects until the projects are complete; city rate-payers pay for rate increases over time. This may result in larger increases in one year for District rate-payers.

CONSENT AGENDA

- 4. Minutes April 13, 2022
- 5. May Payables
- 6. May prepaid bills for approval
- 7. Bank Balances and Profit and Loss Statement
- 8. CWDBH April Check Register
- 9. Stifel Statement pp 1 and 2
- 10. 2022.04.29 FIB Gross Income
- 11. FIB Operations and Maintenance Statement April 29, 2022
- 12. FIB Payroll Statement April 29, 2022
- 13. FIB Savings Statement April 2022
- 14. Billings Stats for April
- 15. Bank Balances and Profit and Loss

Motion Laura Drager made a motion to approve the consent agenda as presented. Seconded by David Graves. Approved unanimously.

GENERAL MANAGER REPORT - Peyton Brookshire

- 16. May Manager's Report

The General Manager's written report said "Per discussion with our insurer Payne West today (04119122) in reference to the claim opened up on behalf of Larry Brewster on 1211012021. The adjuster for Cincinnati called and mentioned there would be no coverage for directors suing each other. We can withdraw the claim and that would keep your account loss free or you can have them send you a denial letter which would show that you filed a claim and would show up as a claim on our policy. I opted to withdraw the claim to keep our claims record clean".

President Cabrera noted that Justin Stark, the attorney representing the District in the lawsuit filed by Dennis Cook, Jeff Engel, Brandon Hurst and Tom Zurbuchen. Justin Stark is sending a letter to the

insurance company citing state law that requires the company to accept the claim. Mr. Stark will follow-up with a phone call.

17. Annexation Request and Resolution Lot 1 of Cornerstone Meadows Subdivision

Laura Drager made the Motion Having conducted a public hearing, considered written and spoken testimony, I move to approve the 1. Jensen Annexation for lot 1 of Cornerstone Meadows Subdivision. 1.08 Acres 47,044.8 SqFt. for a fee of \$10,961.44. Property is along Alexander Road and direct the President to sign Resolution 014-22. Seconded by David Graves. Approved unanimously.

18. Cherry Island Annexation Lot 2 Block 1 Cherry Creek Estates Subdivision and Resolution 015-22

Laura Drager made the Motion Having conducted a public hearing, considered written and spoken testimony, I move to approve the Cherry Island Annexation Lot 2 Block 1 Cherry Creek Estates Subdivision. This is 7.13 acres 310,450 sqft, 40 single family home lots. for a fee of \$72,334.85 and approve Resolution 015-22. Seconded by David Graves. Approved unanimously.

19. Black Mountain Software bid and feedback.

Ming Cabrera made the Motion Having conducted a public hearing, considered written and spoken testimony, I move to approve the purchase of Black Mountain service for \$14,820.00 and approval of Resolution 016-22. Seconded by Laura Drager. Voting yes: Laura Drager, David Graves, Pam Ellis; Voting No: Ming Cabrera

20. Valve Replacement Bid NW Pipe

21. NW Pipe Bid and Resolution 016-22

Laura Drager made the Motion Having conducted a public hearing, considered written and spoken testimony, I move to approve the bid from NW Pipe for \$22,120.57 to purchase 20 gate valves and related equipment and approval of Resolution 017-22. Seconded by David Graves. Approved unanimously.

22. Recommended Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve the Randall Hurley Basic Plan Document, Engagement and approve Resolution 018-22.

Attachments: Restatement Basic Plan, Engagement Form, Resolution 019-22 TABLED FOR REVIEW BY THE FINANCE COMMITTEE

Josh Simpson noted that mower has reached it's end of life and is no longer cost effective to maintain and so we are looking to either purchase a replacement or contract the mowing out to a service. The replacement cost of our existing mower would be about \$9,700. We have a couple alternatives that will do the job between \$4,000 to \$5,300. David Graves suggested Clay talk with the distributors about discounting; his experience is that they generally provide a generous discount to government and non-profits. Ming Cabrera made the motion to purchase a riding mower for up to \$9700 plus the const of a bagger. Seconded by Laura Drager. The motion was approved unanimously. NOTE: The final cost should be presented to the Board in June as a Resolution.

OLD BUSINESS

23. 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)

Peyton was asked to see if someone maybe interested. No job description, salary, or estimated budget was discussed.

BYLAWS AND GOVERNANCE COMMITTEE REPORT: Pam Ellis

Recommended motion: Having conducted a public hearing, considered written and spoken public testimony, I move to discontinue the month to month agreement with Yellowstone News to post the agenda packet. TABLED UNTIL THE OPEN RECORDS LAWSUIT FILED BY DENNIS COOK, JEFF ENGEL, BRANDON HURST, AND TOM ZURBUCHEN HAS BEEN RESOLVED

24. The website is live. We have access to website support.

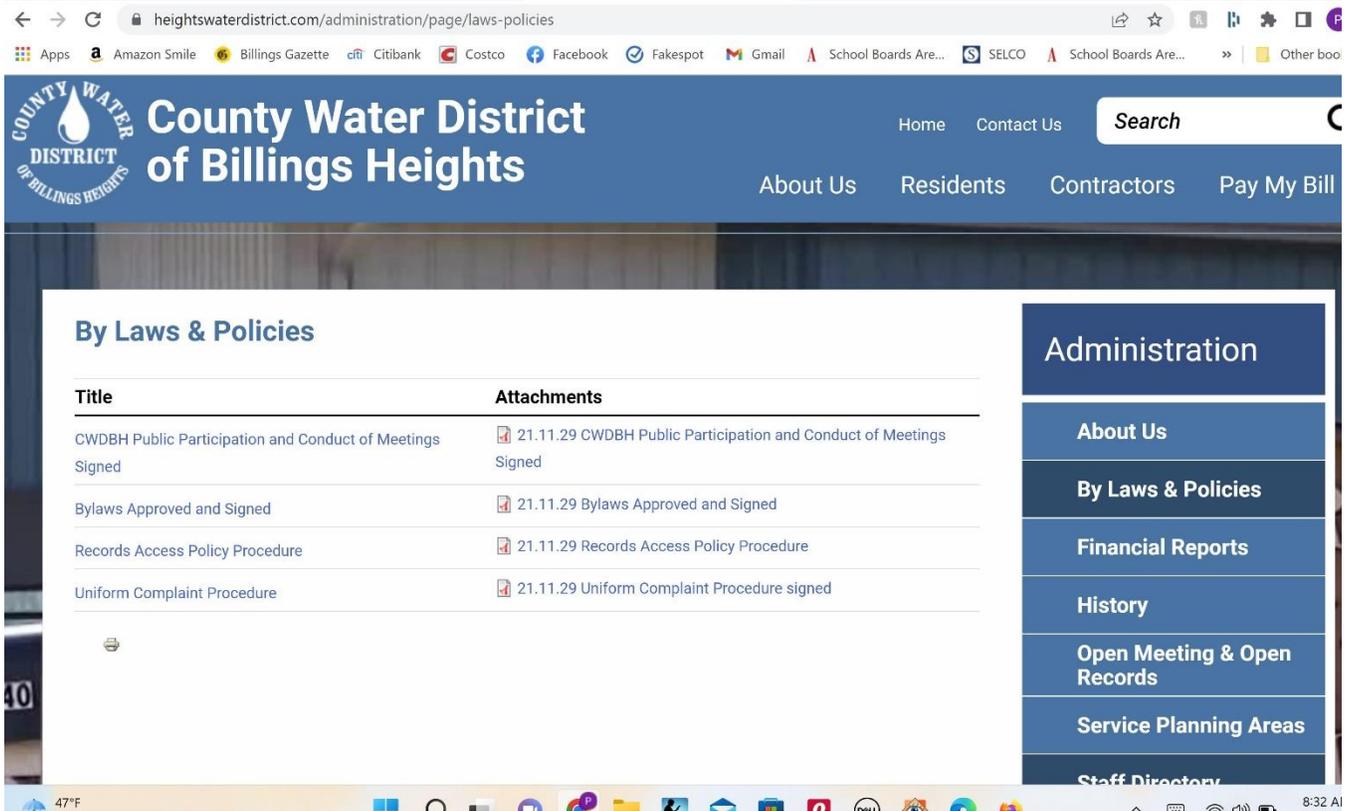
Jenn Burnside commented that people were not able to locate the Application for Service request. The application was included on the old website under "Helpful Forms for Residents" just as it is on the new website. Pam Ellis has asked the website developer if it possible to add another button on the right hand side.

The screenshot shows a web browser window with the URL [heightswaterdistrict.com/residents/page/helpful-forms-residents](https://www.heightswaterdistrict.com/residents/page/helpful-forms-residents). The website header includes the logo for County Water District of Billings Heights and navigation links for Home, Contact Us, Search, and a menu with options like Put Us, Residents, Contractors, and Pay My Bill. The main content area is titled "Helpful Forms for Residents" and contains a table with the following data:

Title	Attachments
ACH Authorization Form	ACH Authorization Form
Application-For-Residential-Service	Application-For-Residential-Service
Low Income Water Assistance	Low Income Home Water Assistance Program Low Income Water Assistance Program Application
Property Owner Agreement	property-owner-agreement.pdf
Release of Liability	Release of Liability
Water Service Retainer Agreement	Water Service Retainer Agreement
Water Service Demolition	Water Service Demolition

To the right of the table is a sidebar menu titled "Residents" with the following items: Pay My Bill, Request a Service Call, Rates & Fees, CCR Report, Helpful Forms, and Frequently Asked Questions.

Tom Zurbuchen said he could not find the records request form; the policy and form are available on the website (see image below)



SAFETY COMMITTEE REPORT: Jeff Engel

No report—Jeff Engel did not attend the meeting or communicate. He did not submit a Safety Report.

ANNOUNCEMENTS

Next Meeting Wednesday, June 15, 6:00 pm

..Genny Garrick from Municode will train the Board on voting on line; please bring laptop computers to the pre-meeting @ 5:30 pm

....Clay will provide a Quarterly Safety Report to the Board in June 2022.

25. Saving Water and \$\$\$ in Your Yard

ITEMS TO BE CONSIDERED AT FUTURE BOARD MEETING

- Genny Garrick from Municode will train the Board on voting on line; please bring laptop computers to the pre-meeting @ 5:30 pm
- Resolution Re: Board member compensation
- Investment Policy and consideration of STIP Investment
- Randall Hurley Basic Plan Document, Engagement and approve Resolution 018-22
- Clay or Josh Simpson will provide a Quarterly Safety Report to the Board in June 2022
- District rate increase recommendation (District and Josh Jabalara)
- Resolution to purchase a new riding mower and bagger

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

The meeting was adjourned at 8:06 pm

Attest: /s/_____

Board President, Ming Cabrera

Attest: [s/_____

Recording Secretary, Pam Ellis

<p>IN PRINT WEEKLY</p>  <p>YELLOWSTONE COUNTY NEWS WEEKLY NEWS, LOCAL VIEWS</p>	<p>SINCE 1976</p> <p>SAVE THE DATE August 19 & 20 12pm - 6pm</p> <p>ONLY AT </p> <p>Dig it Days </p> <p>www.digitdays.org</p>
Volume 45, Number 37	June 10, 2022
\$1.00 per issue	

Water Rates & Supply Concern Ratepayers

by Evelyn Pyburn

The proposed \$140 million West End Reservoirs and Water Plant are still in the works for the City of Billings, even though the time line has been extended because of increasing costs. Plans were brought up to-date last week by Billings Deputy Director of Public Works Jennifer Duray in an informational meeting with board members of the Heights Water District to explain the process for setting water rates.

The plan was that the West End Reservoir plant would be completed by 2024 – a goal about which Duray is now dubious. It is more likely to be 2025, she said. City officials found it necessary to curtail the proposed project and to push plans back because of increasing costs. “Inflation is killing us,” said Duray.

Once started, construction is expected to take about two and a half years.

Part of the delay involves the hope of getting a \$50 million BRIC grant from FEMA, which would be good news for both city and district ratepayers, said Duray. The city applied once before for the grant and failed to get it, but they see more promise this time around.

To understand the purpose and impact of the proposed new plant was one of the reasons for the meeting which was attended by two Heights Water District Board members, Pam Ellis and Laura Drager. Questions about how it pertains to the Heights Water District and whether district ratepayers might be called upon to pay for something that does not serve them are among numerous points of contention that have been expressed by some district ratepayers.

The proposed plant will be part of the West End Reservoir, a 70-acre recreation area with two reservoirs, one on either side of Hesper Road, just south of Shiloh Conservation Area. The reservoirs will be connected by a stream and together, they will be about three times the size of Lake Elmo. The reservoirs will also serve the community in other ways including swimming, fishing, canoeing, and for security.

The plant will be built on Hesper Road between Shiloh and 48th Street.

A new facility is needed to supplement the city's water plant on Belknap Avenue, which is "about a hundred years old" and is nearing capacity. As it is, the city is operating with a reserve of only hours. The addition of the West End Reservoirs will give the city 40 days of water supply in an emergency.

Water restrictions last summer surely underscored the limited capacity of the plant which is about 60 million gallons a day. The city reported that on some days, last summer, the city was consuming 57 million gallons of water. The city has no other back up reserve should the system completely fail.

The escalating costs of building the plant have forced city officials and planners to go back to the drawing board and scale back the project and cut costs where they can – a process which has delayed the construction time table and therefore the rate increases they had planned.

Duray explained that the city has increased water rates, slightly, in advance which are applied to the capital cost of the proposed plant, to avoid "rate shock" when even higher rates come. She recommended that the Heights Water District do likewise, because they, too, will be paying substantially higher rates.

The city is not charging higher rates to the District, in anticipation of the anticipated new plant costs, because by law they are not allowed to charge the District in advance for services. They can only charge for services delivered.

The city was going to increase fees beginning last July to \$3.68 per 1000 gallons but scaled that back to \$2.97 per 1000 gallons, because of the plant delays and its impact on their capital investment plans.

About whether the West End Water treatment plant will serve the Heights Water District, there is no doubt, said Duray, because the city plans to shut down the Belknap plant during the winter to allow for complete maintenance, which has been very difficult to do under the current situation because it has to be operational all the time.

With the uncertainties about what is included in the rates the city charges the water district, District Board Chairman Ming Cabrera appointed a negotiating committee consisting of board member David Graves, District Manager Peyton Brookshire and Assistant Manager Josh Simpson. Duray said that she met with Brookshire and Simpson with whom she shared the same information she presented to Ellis and Drager. She said that Brookshire asked that she communicate with the board only through him. But, said Duray, all the information she has is public information, and she is willing to talk to anyone and provide them with any information they want.

Duray said that while she is available to talk to anyone about the water rates and to explain processes and charges, the rates are not negotiable. There isn't anything to negotiate given that under "stringent" Montana laws, cities are required to follow

established water rates. The law states that “the rates have to be as close as possible to benefit.”

“If there are errors found, we will correct those, of course, but we cannot negotiate the rates,” Duray said. The law requires that the rates be equitable between classes and within classes.

Duray responded to one of the issues that she said District representatives “are always bringing up” about the city’s obligation in its contract with the Heights Water District to maintain the reservoirs that the District uses to store Heights water. They object to the fact that the city passes on the cost of that maintenance.

Duray agreed that contract directs the city with the responsibility of maintaining the reservoirs, but she said, “We are going to charge costs back to the District.”

The Heights Water District has 8 million gallons of water in its three reservoirs. The city is currently charging the water district \$29.91 per million gallons.

Duray said that the city has projected that in 2023 the Heights will need 993,680 gallons of water a day.

Duray mentioned also that the city is in the process of doing an inventory of lead pipes in its system which is being mandated by the EPA (Environmental Protection Agency) and must be completed by October 2024. The Heights Water District is under the same mandate.

She said that older homes—those built before 1970---are those most likely to still have lead pipes, but so far, the problem is not as bad in their system as she had anticipated. She said that when city staff changes out meters, they check the service connection. If it is lead, they alert the resident that the connection needs to be changed although she said the health risk of the lead pipes is minimal.

More information about how home owners can check out their pipes themselves is available on the City’s Public Works Website.

Currently, owners are responsible to pay to replace the lead pipes with copper pipes, but there has been some mention, said Duray, by the federal government that at some point in the future, they may require the water utility to pay for the replacement.

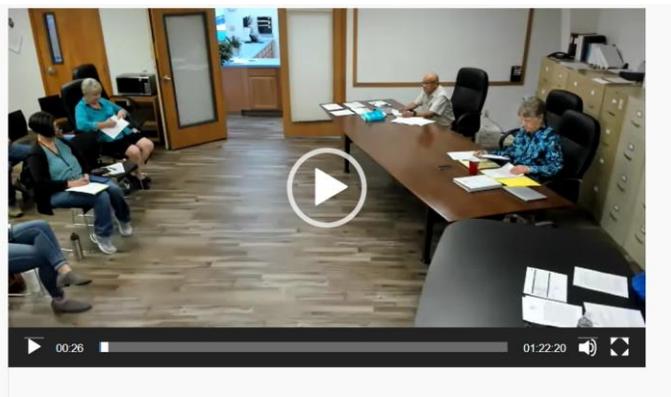
Heights Water District Soap Opera Continues; Pam Ellis Voted off Board, County Attorney Calls Vote Illegal

Evelyn Pyburn Local <https://www.yellowstonecountynews.com/202206241038/heights-water-district-soap-opera-continues-pam-ellis-voted-off-board-county-attorney-calls-vote-illegal/>



Heights Water District Board member Pam Ellis, right, stands up as law enforcement escorts her away from the board table after being voted off the board by board members Wednesday evening June 15, 2022. Board President Ming Cabrera, pictured left sitting in chair, had law enforcement remove Ellis. Ellis was appointed to the Height Water District by County Commissioners as a County Representative. Deputy county attorney says the vote was illegal. Read full story, see differing emails, and actual letter sent to County Commissioners about Ellis on page 4 & 5. (Photo by Evelyn Pyburn)

Below is the actual board meeting video.



Three members of the Heights County Water District Board unanimously voted Board Member Pam Ellis off the board with a vote of no-confidence, last Wednesday. Whether they have the authority to do so is a point of contention. Ellis was appointed to the board by Yellowstone County Commissioners and the County does not agree the board has the authority to remove her.

On Tuesday, County Chief In-House Counsel Jeana Lervick sent an opinion to the commissioners that said, "...the Heights Water Board cannot 'remove' Ms. Ellis from the Water District. Ms. Ellis is the County's appointee to the District. Both Montana Code (Title 7, Chapter 13, Sections 22 and 23) and the Water Board's bylaws state that directors may only be removed subject to recall by the electors of the District. This applies to both elected as well as appointed directors, which would include Ms. Ellis. The reasons that a director may be removed would include neglect, refusal to perform duties, felony conviction, decision of a court declaring the incumbent's election or appointment void, etc... As such, the Water Board's action taken is not valid and Ms. Ellis remains on the Board."

In other business, during their regular monthly board meeting, the three members of the board also voted to increase the price of water for district ratepayers by five percent. They, also, announced an increase of eight percent for staff pay.

The board is supposed to be comprised of seven members, but two have resigned. Board member, Laura Drager, was absent. Cabrera read a letter from Drager stating that she was supportive of removing Ellis from the board.

Ellis' appointment by the commissioners was originally rejected as legitimate by board members at the time she was appointed, and they refused to seat her under the same claim that the county had no authority to appoint her.

Water District Chairman, Ming Cabrera, cited several State codes in asserting that the board does have the authority it assumed on Wednesday. District Manager Peyton Brookshire reiterated Cabrera's position after the meeting, telling YCN, that the board had recently consulted with Bozeman attorney Susan Swimley, who was also an advisor to the board prior to its reorganization and election of four new board members.

The meeting of the board last Wednesday began with an introduction of the board members and people in the audience. One audience member only identified himself as "Bob." Chairman Cabrera insisted that he give his full name, but when he refused, Cabrera said it was "Ellis" and Cabrera commented further telling the audience that the man had called him an "asshole" earlier in the day on the phone.

The man, apparently Pam Ellis' husband, responded, "Well you are an asshole."

At that Cabrera became visibly angry and yelled back that the man should leave the meeting.

When the man refused, Cabrera again yelled for him to leave, vehemently pointing to the door. When the man again refused, Cabrera called upon a staff person to call for law enforcement to remove him.

The man left before the officer arrived, who then spoke just outside the door with Manager Brookshire.

The board twice voted to remove Pam Ellis from the board and read a letter with a list of complaints into the record which they said had been sent by Brookshire to the board. Ellis later pointed out that the letter had not been sent to the board but had been hand-delivered by Cabrera to the County Commissioners. (See facsimile of letter).

Cabrera said that two of the county commissioners had agreed to rescind their appointment of Ellis. His claim was later denied by commissioners. Commissioner John Ostlund said all they agreed to do

was to hear their complaints. An announced discussion meeting with the county commissioners for last Thursday was postponed.

In the letter, Brookshire wrote, "I am requesting the Board of Directors to ask Mrs. Pam Ellis to resign her board seat effectively immediately. If Mrs. Ellis will not step down, I am requesting the board take action by voting to remove her from her appointed director position. If the board fails to take action to remove her from the position, the staff and I are prepared to pursue a harassment lawsuit against Ms. Ellis."

He went on to say, "If Mrs. Ellis is not removed, she will continue to undermine the district staff and board Directors on a daily basis. Her actions and false accusations over the last two years have made the County Water District of Billings Heights look like a malfunctioning sideshow. I truly believe her only motivation to be seated, and remain on this board, is to dissolve the Water District."

Brookshire also claimed that Ellis functioned contrary to state law by acting as the board's secretary. The issue was raised at several past board meetings, but every time, the board voted, or agreed to table, hiring a secretary. A member of the audience, Frank Ewalt, noted the same, telling the board "don't put it on Pam."

Ellis asked each board member present, which included David Graves and Brandon Hurst, as well as, Cabrera, if they would resign if she remained on the board. All said, "Yes."

She then asked staff members who were present if they would "walk out" as had been claimed in the letter. None said they would. After she posed the question to each, including Brookshire, Cabrera exclaimed that the staff did not have to answer her questions. Numerous times, as Ellis spoke to charges made in the letter, Cabrera tried to stop her from speaking or asking questions. At one point he said she had exceeded her two-minute time limit to speak.

Ellis persevered saying that she was the one about whom all the charges were made, and she had a right to respond.

Cabrera seemed especially upset that Ellis met with Jennifer Duray, Billings Deputy Director of Public Works. He said, "You went down and had a meeting and you weren't directed by the board."

Ellis said, "I had a right to be there."

Former interim manager of the district, Larry Brewster, spoke to say, "I know staff had lots of problems" and some he said he sympathized with. He told Ellis, however, "I think it would be a service if you took a while away from here. There has been so much water under the bridge....The animosity is like a poison pill. It isn't going to change." Brewster said that he believed the board did have the authority to remove Ellis from the board.

When Ewalt spoke, he said that he agreed with Brewster. Ewalt said that all the "turmoil" within the district began with the lawsuit with the city.

Dianne Crees, retired District Clerk and Treasurer, responded from the audience, "The turmoil did not start when the lawsuit was filed; it began when Pam was put on the board."

Following their vote the board resumed with agenda items, and Ellis remained seated at the table. Cabrera asked her to leave. Ellis said she could remain seated where she was. Again, Cabrera had staff call on law enforcement to remove Ellis.

Ellis remained seated and no more business was conducted until a law enforcement officer entered the room and asked Ellis to accompany him outside. She did so and after a few minutes returned, removed her stuff from the table and sat in the audience.

The board approved the consent agenda except for the minutes from the last meeting. Cabrera said he wanted to change the minutes because they included a statement he did not make. The board approved the removal of the paragraph that stated, "President Cabrera directed Jennifer Burnside to stop paying the three absent board members when they do not attend meetings. Pam Ellis noted a 'point of order'. Board compensation is directed by Board Resolution and can only be changed by a vote of the Board."

However, a report in the Yellowstone County News (May 20, 2022) of the May meeting stated, "He [Cabrera] then asked management to cease sending the board members their \$150 monthly stipend for attending meetings they don't attend."

The board then voted to increase by five percent the base water rate, tiered rates, SDF fees, and fire line fees, effective July 1. Manager Brookshire said that the increase from the City of Billings to the district was 5.7 percent but he believes the district can "eat" the difference since state law allowed the district to increase rates up to five percent without having to hold a public hearing. His report stated, "This allows us to avoid delays due to public hearings and allows us to offset the increase through the summer months which are 40-45% of our annual revenues. We can then reassess in the fall with the rate study and CIP by Interstate completed and once further information is known from the upcoming rate study by the City on their intended increases for the following years."

Brookshire then recommended a pay increase for district employees of 8 percent. The board took no action.

The board then voted approval to hire on a contract basis Suzie McKethen, who used to keep minutes for the board, and district staff member, Jenn Burnside.

Cabrera made a statement to Brookshire saying that he will not in the future be troubled by the board. "I am not going to put anyone to supersede you. There will be no interference from the board to try to take over negotiations." He went on to say that "the board does not bring our advice to you, but you bring advice to the board." He asked the other two board members, Hurst and Graves if they agreed and they said, "Yes."

About the prospect of mediating water rates with the City of Billings, Cabrera said, "We will show them that mediation is going to have to happen."

Graves asked of Brookshire, "Can we look at what Billings does to see if we can generate more business to the Heights?" He mentioned that Billings builds in the cost of a developer fees into their monthly bill rather exacting it up front.

Brookshire said, "I don't want to stop growth out here but you have to have something." Past boards "didn't want to play banker," he said.

Cabrera said that at the next board meeting the board will review the applications of candidates for appointment to the board which were requested following the resignation of Dennis Cook and Jeff Engel.

LEG Cmte-LGIC Comment

From: donotreply@mt.gov
Sent: Friday, July 8, 2022 6:16 AM
To: LEG Cmte-LGIC Comment
Subject: Public Comment for LGIC

Public Comments for the Local Government Interim Committee

Date: 8th July 2022 06:15

First Name:
terry

Last Name:
odegard

Email Address:
terryshomes@bresnan.net4068554351

Subject:
PD0001 AND PD002

Comment:

As a long time rate payer in the local water district in yellowstone county, members reaching the 11,000 members and 6000 residences, my 16 years as a member has me now very concerned about the direction the state may go. The pd 1 plan is very problem in the making and may not pass the due process in litigation. I prefer the plan pd2 with 5 elected directors. The 11,000 members we have can be well represented and It can be fine tuned as we proceed. 5 directors can very well do the job. The county and city need to stand down, and let the process work properly.

Sent via leg.mt.gov/committees/interim/lgic/public-comments-lgic/

From: [Kukulski, Chris](#)
To: [Henneman, Toni](#)
Cc: [Dahl, Gina](#); [Cole, Bill](#); [Owen, Jennifer](#); [Neese, Roy](#); [Meling, Debi](#); [Iffland, Kevin](#)
Subject: [EXTERNAL] RE: County Water/Sewer District Study
Date: Friday, July 1, 2022 1:19:13 PM
Attachments: [PD1_TH_6.30.22_COB's_edits.docx](#)
[PD1_TH_6.30.22_COB's_edits.pdf](#)

Thank you for the opportunity to weigh in. Here is the final draft of the bill with our edits. I've attached both a word and PDF version of our suggest edits, in the event there are problems with formatting or readability.

Here is some of our rationale:

The current draft (PD1) does not clearly provide for a City appointee in the event there is a vacancy despite this being the practice under the authority of this Part of the MCA for decades. However, it seems that it may have been the intent of the drafter to provide for this authority based on the deletion of 7-13-2231(4), which provides, "When an appointed director's term expires, the position must be filled by election, except as provided in subsection (2)." The current language of PD1, without the City's proposed amendments (in the attached draft), only provides for an initial appointment and it is unclear if there is authority for a subsequent appointment by the mayor/county commissioners following the expiration of the board member's term. Since this has been the source of confusion and disagreement over the last year, the City has clarified in the bill draft that a municipality or a county has the authority to replace a director when there is a vacancy.

The City urges the committee to reject the PD2 bill draft. The City believes it is important to have a voice on a local county water district because a majority of the users in the district are city residents. The only way to ensure this is to authorize the city to make an appointment in the event of both a vacancy on the board as well as following expiration of a member's term. While it seems unlikely, there is the potential that resignations could be orchestrated to deprive the city of its appointee. Historically, there has been an appointee on the County Water District of Billings Heights for decades under the previous version of the code.

In the unfortunate event, the committee determines to advance PD2 bill draft, the City of Billings requests the committee consider allowing for municipalities to appoint an *ex officio* member to any county water district where the boundaries of such district include a municipality. Additionally, if the committee decides to go with PD2, the City requests that it be clarified in the bill that 3 of the 5 members of the board must be residents of the city in order to be eligible for election to the board.

Again, I want to express our appreciation for you taking the time to ask for our feedback. Please feel free to contact me for any additional feedback. I hope you have a wonderful holiday weekend!



Chris A. Kukulski
City Administrator
kukulskic@billingsmt.gov

billingsmt.gov
[\[ci.billings.mt.us\]](http://ci.billings.mt.us)

P.O. Box 1178 • Billings, MT 59103
P 406.657.8222 F 406.657.8390

City of Billings email messages and attachments are subject to the Right to Know provisions of Montana's Constitution (Art. II, Sec. 9) and may be considered a "public record" pursuant to Title 2, Chapter 6, Montana Code Annotated. As such, this email, its sender and receiver, and the contents may be available for public disclosure and will be retained pursuant to the City's record retention policies. Emails that contain confidential information such as information related to individual privacy may be protected from disclosure under law. This message is intended for the use of the individual or entity named above. If you are not the intended recipient of this transmission, please notify the sender immediately, do not forward the message to anyone, and delete all copies. Thank you.

From: Henneman, Toni <Toni.Henneman@mt.gov>
Sent: Monday, June 20, 2022 9:29 AM
To: Kukulski, Chris <kukulskic@billingsmt.gov>
Subject: [EXTERNAL] County Water/Sewer District Study

Dear Administrator Kukulski:

The Local Government Interim Committee of the Montana Legislature is currently conducting House Joint Resolution 30, a study of County Water and/or Sewer Districts. The committee has researched and taken testimony on various aspects of county water/sewer districts and proposes two legislative options for your consideration. Most of the study has focused on district board composition, namely the appointed directors currently allowed in certain situations and the length of term of a board director.

Few county water/sewer districts operate with a city and/or county appointed director, but the committee recognizes that the County Water District Billings Heights is one of those. Thus, the committee requested that these bill drafts be sent to you directly for comment since you may be affected more than other districts.

- [PD1](#) – Clarifies appointed directors
- [PD2](#) – Removes appointed directors

The two drafts conflict, so the committee will need to choose one if legislation is introduced on the topic. For this reason, the committee greatly appreciates any information you can provide at their next meeting on July 12-13, 2022.

Comment may be submitted until **July 11, 2022** by replying to this email or by submitting testimony through our [online public comment webform](#).

If you would like additional background information on the study, see our [HJ30 study page](#).

Please reach out to me with any questions,

Toni Henneman, Lead staff of the Local Government Interim Committee

Research Analyst

MT Legislative Services Division

406-444-3593

State Capitol Rm. 136A

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

*Amendments in purple received
from the City of Billings*

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COUNTY WATER AND/OR SEWER DISTRICT
6 ADMINISTRATION LAWS; REVISING LAWS RELATED TO THE ELECTION, APPOINTMENT, AND
7 COMPOSITION OF A COUNTY WATER AND/OR SEWER DISTRICT BOARD OF DIRECTORS; CLARIFYING
8 THE NUMBER OF APPOINTED DIRECTORS ALLOWED ON A COUNTY WATER AND/OR SEWER
9 DISTRICT BOARD; CLARIFYING THE DATE A DIRECTOR'S TERM OF OFFICE BEGINS; REMOVING
10 BOND REQUIREMENTS OF CERTAIN COUNTY WATER AND/OR SEWER DISTRICT ADMINISTRATIVE
11 PERSONNEL; AMENDING SECTIONS 7-13-2231, 7- 13-2232, 7-13-2234, AND 7-13-2262, MCA; REPEALING
12 SECTION 7-13-2279, MCA."
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15

16 **Section 1.** Section 7-13-2231, MCA, is amended to read:

17 **"7-13-2231. Election or appointment of board of directors.** (1) The district shall elect a board of
18 directors, except as provided in subsection (2) ~~and allowed in, 7-13-2232(2) and (3), and 7-13-2262(4).~~

19 (2) If no qualified electors reside in the district at a time when directors of the district are to be elected,
20 the directors must be appointed in a certificate of appointment. The certificate of appointment must be signed
21 by the owners of all of the real property in the district and must contain the signed acceptance of the
22 appointment by all of the directors.

23 (3) The board of directors is the governing body of the district.

24 ~~(4) When an appointed director's term expires, the position must be filled by election, except as~~
25 ~~provided in subsection (2)."~~

26
27 **Section 2.** Section 7-13-2232, MCA, is amended to read:

28 **"7-13-2232. Composition of board of directors.** (1) If there are no municipalities within the

1 boundaries of ~~said a~~ district, the board of directors shall consist of five members or three members if there are
2 10 or ~~less fewer~~ qualified electors in the district.

3 (2) ~~In all cases where~~ If the boundaries of ~~such a~~ district include any municipality or municipalities,
4 ~~said the~~ board, in addition to ~~said the~~ five or three directors to be elected as ~~aforsaid allowed in subsection (1),~~
5 ~~shall may shall~~ consist of one additional director for each ~~of said municipalities~~ municipality within ~~such the~~ district,
6 ~~each~~ Each such additional director ~~to may shall~~ be appointed by the mayor of the municipality for which ~~said the~~
7 additional director is allowed, ~~and,~~

8 (3) ~~if there be any unincorporated territory within said district~~ If the district includes any unincorporated
9 territory, one additional director ~~to may shall~~ be appointed by the board of county commissioners of each county
10 containing such territory.

11 (4) A director appointed as allowed in subsections (2) and (3) serves at the pleasure of the appointing
12 authority for the term of office allowed in 7-13-2234."

13

14 **Section 3.** Section 7-13-2234, MCA, is amended to read:

15 **"7-13-2234. Term of office.** (1) The term of office of a director begins on the first Monday of the
16 month following the date of the director's election or appointment. A director, elected or appointed, shall hold
17 office until the ~~election and qualification or the appointment and qualification of the term of office of the~~
18 director's successor begins.

19 (2) Except as provided in subsection (3), the term of office of a director must be 4 years.

20 (3) (a) In districts requiring the election of five directors, three of the initial directors shall serve for a
21 term of 2 years and two of the initial directors shall serve for a term of 4 years.

22 (b) In districts requiring the election of three directors, one initial director shall serve for a term of 2
23 years and two initial directors shall serve for a term of 4 years.

24 (c) At the first meeting following an initial election or appointment of directors, the directors shall
25 determine by lot who shall serve a 2-year term.

26 (4) Directors to be first appointed under the provisions of this part and part 23 must be appointed
27 within 90 days after the formation of the district."

28

1 **Section 4.** Section 7-13-2262, MCA, is amended to read:

2 **"7-13-2262. Vacancies on board of directors -- appointment.** (1) (a) Except as provided in
3 subsections (2), ~~and (3), and (4),~~ any vacancy in the board of directors, ~~whether the vacant office is elective or~~
4 ~~appointive,~~ must be filled by majority vote of the remaining directors.

5 (b) A vacancy must be determined in accordance with 7-13-2263.

6 (2) If there are no directors remaining on the board and no nominees for any director position to be
7 elected, the county commissioners may appoint the number of directors specified in 7-13-2232(1). If the district
8 lies in more than one county, the county commissioners of each county with territory included in the district shall
9 jointly appoint the directors. The county commissioners shall stagger the terms of the directors appointed.

10 (3) If the boundaries of the district include any municipality or municipalities or unincorporated territory
11 and a new board must be appointed as provided in subsection (2), the board ~~shall~~ may shall include ~~one additional~~
12 ~~director to be appointed by the mayor of the municipality for which the additional director is allowed an~~
13 ~~additional director or directors to be appointed as allowed in 7-13-2232(2) and (3).~~

14 (4) If there is any vacancy in the board of directors of a director that was appointed in accordance with 7-13-
2232(2) or (3), the board shall allow the replacement to be appointed in the same manner as that set forth under 7-13-
2232(2) or (3) by the mayor of the municipality or the board of county commissioners.

15 (5) Following the appointment of a board in accordance with subsection (2), ~~the subsequent~~ directors
16 must be elected as provided in this part.

17 (6) Following the appointment of a director in accordance with subsection (4) or 7-13-2232(2) and (3),
subsequent directors shall be appointed as set forth in subsections (3) and (4)."

18 NEW SECTION. Section 5. {standard} Repealer. The following sections of the Montana Code
19 Annotated are repealed:

20 7-13-2279. Performance bonds for administrative personnel.

20

21

22

- END -

TO: Local Government Interim Committee

From: Peyton Brookshire, General Manager, County Water District of Billings Heights

RE: PD 0002

As you are all aware by now this particular piece of legislation was born out of a lot of misinformation and politics and quickly became known as the Billings Bill or something of that nature due to its relevancy to our specific water district. I can honestly tell you that this is what happens when politics enter a non-political governmental entities board of directors. For many decades the appointing agencies rubber stamped and reappointed whoever was already seated which led to some directors being on the board for well over twenty years. This district, like many others, had been doing it all wrong concerning appointees for decades but was unaware due to ignorance of their own laws. This incomprehension was also never an issue that arose to be examined due to the fact that there were no political motivations by either the City or County involved with the appointments. That all changed quickly in 2020. We have since seen firsthand how much chaos misguided individuals can cause while seated on the board. I do not know why a city government or county government would need a perpetual appointee on a separate governmental entities board of directors. There are no County Water District appointees to a City Water Board or a City Council and some of the decisions made by those groups could impact a water district significantly. The fact that a majority of a district becomes annexed into a city at some point in its history does not give a city government authority over a district. It is irrelevant and would be biased to add any stipulations concerning who is eligible to run for a district board election based on anything other than the requirements contained in 7-13-2233. County Water and Sewer Districts are separate entities of local government and are not under the supervision of a city or county and have their own set of statutes which governs their operation. I am in favor of the PD 0002 draft. I believe 5 elected board members are enough to oversee the operations of a district. I think the draft language clarifies and simplifies the entire process which is the goal of the committee. I believe it is immensely needed given how many districts as well as attorneys have been misinterpreting the laws as they are currently written. I am optimistic that PD 0002 can prevent what has happened to this district over the last two years from happening to another district in this state in the future. I appreciate the committee members taking the time to read and consider my opinion in this matter.

From: donotreply@mt.gov
To: [LEG Cmte-LGIC Comment](#)
Subject: Public Comment for LGIC
Date: Monday, July 11, 2022 11:52:18 AM

Public Comments for the Local Government Interim Committee

Date: 11th July 2022 11:52

First Name:

Tom

Last Name:

Zurbuchen

Email Address:

zurbuchen@bresnan.net

Subject:

Special Districts & PD1 & PD2

Comment:

I have been receiving water from The County Water District of Billings Heights (CWDBH) since February of 1977. I saw an email from City of Billings City (COB) Administrator posted on July 11, 2022, but sent in on July 1, 2022. It clearly talks of changes to PD2 and lists an attachment for those proposed changes, but nothing is posted on your site for PD2! According to Pam Ellis' public comments posted on the site not only Kris Kukulski but the Yellowstone County Commissioners and the Ward II COB City Council Representatives are supposed to comment. Why can't the public see these comments? Why was COB Administrator's email not posted sooner and where are the others? I can't believe Pam Ellis would mention others sending in comments then they don't send them. Aren't they public as well? I wish to remind the committee that all laws are to apply to all County Water and Sewer Districts not just CWDBH. Mr. Kukulski wants 3 out of 5 to be appointed by the COB even though there is a Lockwood Water and Sewer District that the COB deals with to treat wastewater. None of that district is within the COB as of now, but is he saying that if any of it becomes part of COB 3 out of 5 members of that board would be residents of COB? The CWDBH had very few COB residents until 1984 when massive amounts of the district were annexed into COB so as to get wastewater service. According to Mr. Kukulski that former board would have needed 3 out of 5 members to be COB residents when the vast majority of its customers were County residents. There are numerous other districts throughout the State with similar situations, but Mr. Kukulski is only concerned with CWDBH and wants the law written to apply just for his concerns! I hope you see through his rhetoric! Mr. Kukulski is hired by COB Council which is elected by all residents without any appointed voters! He trusts all the COB voters' judgment but not those of CWDBH when it comes to running a special district! How two-faced and arrogant!

Sent via leg.mt.gov/committees/interim/lgic/public-comments-lgic/

From: donotreply@mt.gov
To: [LEG Cmte-LGIC Comment](#)
Subject: Public Comment for LGIC
Date: Tuesday, July 12, 2022 2:45:55 PM

Public Comments for the Local Government Interim Committee

Date: 12th July 2022 14:45

First Name:

Tom

Last Name:

Zurbuchen

Email Address:

zurbuchen@bresnan.net

Subject:

PD1 z& PD2

Comment:

I like the direction you are heading, PD2 with the following. A municipality or county may appoint a board member 1 be a non-voting member 2 who need not reside or own property within the districts' boundaries 3 be compensated by the entity who made the appointment 4 not allowed attending executive board meetings All will promote cooperation but not dilute the one man one vote principal and will make it easier for enough people to volunteer and work on these boards!

Sent via leg.mt.gov/committees/interim/lgic/public-comments-lgic/