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City of Missoula's response to Liberty Utilities paid advertisements

In recent weeks, Mountain Water Co. purchased several full-page advertisements in the Missoulian newspaper. The ads have contained speculation, half-truths and outright false statements about the litigation connected with future City ownership of the water utility. Mayor John Engen addressed the ads at the meeting of the Committee of the Whole of the Missoula City Council on Feb. 24. Here is the text that was the basis for his remarks.

Ad Claim: City ownership will result in \$134 million in additional financing costs.

Reality: First, this amount is rank speculation by Liberty. The financing costs are unknowable because the amount to be borrowed and the precise rates cannot be determined at this time. Liberty is presenting the worst case scenario as a settled fact, a theme that runs throughout their propaganda.

Secondly, the water bills Missoulians pay to Liberty Utilities already fund Liberty's financing costs, at a significantly higher rate than the City will pay (because the city has access to low interest municipal bonds that are not available to a Canadian corporation). So under Liberty ownership Missoulians would pay more over the next 30 years for interest payments, and we wouldn't own a water system at the end.

Ad Claim: The City must pay \$14 million in interest and \$7.3 million in legal fees to Liberty.

Reality: Speculative. These are sums that Mountain Water and its parent corporation intend to request from the presiding judge, but the judge has not ruled on the request. Just like Liberty Utilities decided it didn't have to wait for Montana regulators' approval to buy Missoula's water utility, they have also decided they don't have to wait for a judge's rulings to proclaim victory. In fact, those claims are legally tenuous and Liberty knows it.

Ad Claim: The City will incur \$60 million in debt to expand and repair the water system infrastructure.

Reality: False/misleading. The City *will* expand and repair the failing infrastructure. Indeed, a primary reason the City is taking possession is because profit-driven, out-of-state corporations have neglected the water system to the point that it leaks 4 billion gallons of water per year – more than it delivers. (Preliminary Order of Condemnation, ¶¶ 59, 62, 63.)

But these capital expenditures will generally not be financed by debt – they will be financed by revenue, including water utility revenue that has previously gone to executives and investors in California, Washington D.C., and now Toronto.

Liberty's ads neglect to mention that Liberty would also spend millions on maintenance and repair (only because it would be forced to meet the minimal standard imposed by regulators) and it would pass that expense on to consumers plus 9.8 percent for Mountain Water's shareholders. See (Preliminary Order of Condemnation, ¶¶ 63, 131.)

So the choice is not between spending money to repair the failing system or not; the choice is between the City making those repairs at cost, or a private corporation making repairs at cost plus 9.8 percent. (Preliminary Order of Condemnation, ¶205(e).)

Finally, there is significant irony in the corporate owners trying to use the disrepair *for which they are responsible* as a reason why they should remain in possession of the water system.

Ad Claim: “The City would have unfettered discretion to raise your rates.”

Reality: False. The City of Missoula, like every other city and town that already own their water utilities, will be subject to specific requirements under Montana law before any change can be made to rates. Moreover, City Council members will be answerable to voters who can elect different leadership, and who are entitled to attend and speak at City Council meetings regarding any proposed rate increases. Missoula residents have no such influence over Liberty Utilities' Board of Directors. (Preliminary Order of Condemnation, ¶¶ 97, 112, 132)

Ad Claim: Nobody asked members of the public whether they wanted to own the water system.

Reality: False. A survey by an independent third party asked Missoula residents if they favor City ownership of the Water System - 70 percent confirmed they did. A judge determined that poll was valid and credible. (Preliminary Order of Condemnation, ¶¶ 50-51.)

Furthermore, members of the public confirmed that support by overwhelmingly electing City Council members who campaigned on a promise of completing City acquisition of the Water System.

Ad Claim: Liberty can't and won't raise your rates because it is regulated by the Public Service Commission (PSC).

Reality: False. Liberty Utilities' corporate mission is to earn high profits for shareholders. (Preliminary Order of Condemnation, ¶ 122.)

Liberty has shown it is willing to ignore PSC based on what they called “a business decision” that PSC approval wasn't worthwhile. Furthermore, Missoula's water rates have steadily increased under

corporate ownership and are already among the highest in the state, even though we have some of the best access to water.

The judge presiding over this case, after reviewing extensive evidence, has already determined: “The Court does not find it credible that revenue requirements due to Liberty’s acquisition costs will have no effect on rates.” (Preliminary Order of Condemnation, ¶ 123.)

Indeed, when Carlyle marketed the Water System to Liberty, it predicted a 50 percent increase in the rate base for Mountain Water by 2019. (Preliminary Order of Condemnation, ¶ 129.)

Ad Claim: The price established for the water utility is far higher than the City claimed it would be.

Reality: False. The City first offered \$65 million for Mountain Water before this condemnation action, counting on Carlyle to act in good faith. (Preliminary Order of Condemnation, ¶ 37.)

The ultimate determination of \$88.6 million is \$23.6 million higher, but includes \$22-24 million that Mountain Water owes to local developers who had to dig into their own pockets to finance expansions of the Water System. In other words, after choosing to disregard their agreement with the City and instead force two years of litigation, Mountain Water’s corporate owners will get about what the City originally offered.

In fact, it is Mountain Water’s corporate parents who have been wrong at every turn. They claimed they should receive \$200 million for the Water Utility, but a panel of commissioners – including Mountain Water’s own hand-picked commissioner – unanimously determined it was worth less than half that.

Ad Claim: Liberty Utilities has a “respectful disagreement” with the regulators on the Montana Public Service Commission.

Reality: False. The PSC described itself as “shocked” when Liberty decided to ignore regulators, and has described Mountain Water and Liberty’s actions as “thumping their noses” at the Commission, whose very existence is to prevent corporations from using their monopoly control of essential resources to gouge consumers. The PSC has asked for assistance from Montana’s Attorney General to impose the most “swift and severe” consequences possible. (See Public Service Commission Order 7392q, January 29, 2016.)

The PSC clearly does not consider this a “respectful disagreement.”

Ad Claim: No jobs will be lost through Liberty ownership.

Reality: Misleading. The new Montana president for Liberty Utilities testified under oath that Mountain Water Company revenue would be sent to Canada to pay for “administrative services” based in Canada. There are plenty of Missoulians who are perfectly capable of performing those jobs. (Preliminary Order of Condemnation, ¶ 87.)

Mountain Water's last corporate owner, Carlyle, also sent ratepayers' money out of state for these "administrative services" so the claim that no Missoula jobs will be lost might be technically true, but it is certainly not the whole truth.

Ad Claim: "When an issue has arisen in the past, we have arrived on scene promptly [and] accepted responsibility . . ."

Reality: False. When evidence at the condemnation trial showed Mountain Water loses 4 billion gallons of water per year, Mountain Water did not accept responsibility. It blamed consumers. Mountain Water's unbelievable theory is that most of those 4 billion gallons are leaking from individual homeowners' pipes, and there is nothing Mountain Water can do about it. Of course, Mountain Water doesn't actually have evidence to support that theory.

Ad Claim: Liberty is fighting to protect private property rights.

Reality: False. Liberty took possession of the water utility after the City won the right to take possession in the condemnation case. Liberty is answerable only to its investors, in Canada and wherever else they may be, and their goal is to make money. Liberty's goal is to buy two valuable water systems in California and, as a bonus, squeeze as much cash as possible out of Missoula, Montana. The idea that a foreign corporation bought into this lawsuit to protect Montanans' property rights is laughable even by propaganda standards.

Ad Claim: "Simple math says the City would need additional revenues of at least 18%."

Reality: False. First, this assumes that Mountain Water will receive every penny it asks the Court to order the City to pay – an extremely presumptuous and, we believe, unfounded starting point.

Secondly, this claims fails to consider that, unlike the current corporate owners, the City of Missoula will not send over \$4 million every year out of Montana for the benefit of investors, executives, and expenses like \$48,000 per year for Carlyle executives' "travel and entertainment," or \$257,000 for maintenance of California facilities. (Preliminary Order of Condemnation, ¶ 77.)

While the City cannot responsibly commit to never raising rates, based on the purchase price established by the Commissioners, we are confident the City can acquire and operate the water system at current rates.

Ad Claim: The City will send money out of town for bond payments.

Reality: This is a half-truth. The City will finance purchase of the water utility through low-interest municipal bonds financed by a national banking company. This is similar to money that is already leaving Montana to service the corporate owners' debts (which is just one of the many ways the corporate owners move money out of Montana). The difference is that when the bonds are paid

off, the City will own the water utility, and then *all* the money will stay in Montana. No such future is in store under corporate ownership.

Ad Claim: “This condemnation case is years from being decided.”

Reality: The Montana Supreme Court would beg to differ. They will hear oral argument on April 22, 2016. It will take them weeks or months – not years – to issue their decision. If they conclude that Judge Karen Townsend did not abuse her discretion in determining, based on three weeks of testimony and thousands of pages of documents, that City ownership is more necessary than the status quo, this case will end and Missoula will no longer be the only municipality in Montana whose water is controlled by a corporation.

Ad Claim: “If the City takes over the system, your water rates increase with every dime of principal and interest the city pays.”

Reality: False. The rates are not tied to expenditures by the City, and will not fluctuate with City payments. There is no basis to support the claim.

The City of Missoula is very familiar with budgeting for utilities, and will apply its knowledge, experience and prudence to the water utility. The City has an AA Plus credit rating from Standard and Poor’s Rating Service. (Preliminary Order of Condemnation, ¶ 115.) That does not happen by accident.

Ad Claim: Any water that leaks from the water utility goes safely back into the aquifer.

Reality: Speculation. Maybe most of the water returns to the aquifer, though Mountain Water cannot say for sure. Even if it does, the water could pick up pollutants as it percolates through soil at places like the former White Pine Sash industrial site and carry those pollutants back to the aquifer.

Mountain Water denies the 4 billion gallons leaked are endangering the aquifer, but frequently calls on Missoulians to exercise caution in disposing any pollutants because the aquifer is susceptible to contamination. Mountain Water and its corporate parents should hold themselves to the same standard they ask of customers. (Preliminary Order of Condemnation, ¶ 174.)

Ad Claim: No debt would be incurred under Liberty ownership.

Reality: This is a half-truth. The City would not incur debt under Liberty ownership only because the City would not be buying anything. And the fact that there would not be debt does not mean there would be no cost to consumers.

In fact, under corporate ownership, consumers would continue paying all the costs of the water systems infrastructure, plus Liberty’s 9.8 percent profit. The difference is analogous to renting versus buying a home. The renter does not incur a debt that is gradually paid off, but the renter does have comparable, never-ending monthly expenses.

Liberty wants Missoulians to continue “renting” the water system from a foreign corporation, but the City believes it is time to buy. Buying the water system will be cheaper than renting year over year, because we will only pay costs – not costs plus corporate profits and executive compensation.

We will also have the other benefits of ownership – like the ability to properly maintain, repair and expand this essential infrastructure.

Finally, unlike “rent” payments to Liberty, the purchase debt will be temporary – when it is paid off, we will finally own our water utility free and clear. Under corporate ownership, consumers would go on paying forever, but remain equally beholden to corporate interests.

Feb. 24, 2016