

Lori Stratton

From: Larry Bonderud
Sent: Tuesday, June 07, 2016 7:34 PM
To: Lori Stratton
Subject: Fwd: One Call Notes
Attachments: ETIC Meeting_One Call Notes.docx; ATT00001.htm; 2012-one-call.pdf; ATT00002.htm; one-call.pdf; ATT00003.htm; one-call-cover-memo.pdf; ATT00004.htm

Council

Sent from my iPhone

Mayor Lar

Begin forwarded message:

From: "Melissa Lewis" <melissa@mlewisassoc.com>
To: "Larry Bonderud" <larry@shelbymt.com>
Subject: One Call Notes

Mayor,

Please see attached notes from the One Call discussion at the May Energy & Telecom Interim Committee (ETIC) meeting. One Call is also referred to as "Call Before You Dig" in some states. One Call laws primarily impact excavators and utility providers but for due diligence, I thought I'd share these brief meeting notes and attachments w/ the City of Shelby.

A coalition of stakeholders is meeting on a regular basis to hash out provisions in draft legislation that'll be introduced in 2017. In previous legislative sessions, One Call legislation has failed but it is expected to pass in 2017 due to federal prompting and interim legislative session coalition efforts.

After the ETIC meeting, Representative Keith Regier asked me if a single One Call bill is preferred over multiple smaller bills. I told him it depends on the outcome of the next two stakeholder meetings and whether stakeholders gain consensus on remaining issues.

Between us, in past legislative sessions, certain provisions such as penalties for non-compliance and One Call oversight have caused Northwestern Energy to oppose (and successfully kill) One Call legislation.

Rep. Regier expressed his willingness to work with individual stakeholders, if needed. He said to let him know if a single bill is preferred over multiple bills—and to let him know if he can be of any assistance.

Please let me know if you have any questions.

Thank you!

Melissa

Melissa Lewis
Melissa Lewis & Associates

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Energy & Telecom Interim Committee

Follow-up Meeting

May 12, 2010

Meeting One (Call Logs and Federal Compliance)

3:30 p.m.

Meeting One Coordination Council-Dale Smith

Mr. Smith worked through the attached handouts. He indicated that the current computer system is not working properly and that they are looking for a new system. He mentioned that the current system is not working properly and that they are looking for a new system. He mentioned that the current system is not working properly and that they are looking for a new system.

The steering group has tentative acceptance on a number of items, including a request for a new system. The steering group has tentative acceptance on a number of items, including a request for a new system. The steering group has tentative acceptance on a number of items, including a request for a new system.

Committee Questions

Sen. Cliff Larson (D-Montana) asked the members of the steering group...

Mr. Smith said he has about 20 stakeholders and about 25-30 people show up to each meeting.

Sen. Larson said the stakeholders mostly are utilities.

Mr. Smith said they are not together for a long time. The steering group is not together for a long time. The steering group is not together for a long time. The steering group is not together for a long time.

Sen. Larson said he has been working on this for years and that the steering group is not together for a long time. The steering group is not together for a long time. The steering group is not together for a long time.

Mr. Smith said he will forward to the rest of the steering group to coordinate with the steering group. The steering group is not together for a long time. The steering group is not together for a long time. The steering group is not together for a long time.

Energy & Telecom Interim Committee

Flathead Electric Coop

May 12-13, 2016

3:30 p.m. **Montana One-Call Laws and Federal Compliance**

Montana Utility Coordination Council-Dale Schultz

Mr. Schultz walked through the attached handouts. He indicated stakeholders prefer a complaint driven system. For example, a rural electric utility damaging their own facility wouldn't necessarily be fined. Oil/gas line fines would be driven by PHMSA rulings.

The stakeholder group has tentative acceptance on a number of issues, including a reset number. Such as, after 12 months an excavator without any utility line hits could get a reset. And busy excavators that complete 100 locator requests without a damage would also get a reset. The handout lists all consensus reached to date. Stakeholders feel good about the consensus reached thus far. Next meetings are scheduled on June 10 and July 12.

Committee Questions:

Sen. Cliff Larsen (D-Missoula): Who are the members of stakeholders group?

Mr. Schultz: We have about 50 stakeholders and about 15-20 people show up to each meeting.

Sen. Larsen: Are the stakeholders mostly big utilities?

Mr. Schultz: I can put together the sign-in sheets from the three meetings we've had and share those names with you. It is half utility representatives and half people who spend time in Helena working for their respective clients.

Sen. Larsen: I've been working on this for years and years. I remember sponsoring a bill about 6 years ago. I'd like to see consensus on this issue. If you could share with us the sign in sheets, that'd be helpful.

Mr. Schultz: Yes, I will forward to the list of stakeholders to committee staff.

Rep. Regier: Have you talked about the series of bills that you'd like to see in 2017?

Mr. Shultz: I believe we'd be mostly interested in advancing one single One Call bill.

Committee Action: None.

Consensus Items to Date

1. **There was consensus** to first work on change to meet minimum PIMSA requirements for the regulated liquids and gas pipelines as everyone understands and supports this need.
2. **There was consensus** to dedicate adequate time at future stockholder meetings to discuss a matrix of outcomes for not calling for a locate and or damaging buried lines as well as for buried line owners if they do not participate in a "one call program to provide locates. A goal discussed was prevention and education for unintentional acts with flexibility graduating up to properly penalize those whose actions indicate disregard for the requirement to call prior to digging and to the danger and damage of hitting buried lines.
3. **There was consensus** that the stakeholders in future meetings will work on increased reporting even of non-pipelines and reach out to stake holds that may not have attended this meeting. The ability to reach consensus in this area is the flexibility to report non-regulated pipeline incidents with only the detail deemed appropriate. Based on the judgment of the owner wires or other non-regulated pipeline facility, it may be appropriate to report only that there was an incident and the general location where. Conversely for the rare contractor failing to follow the locate law, then digging through lines with little regard for safety or damage, would likely result in a report as detailed as required it digging into a pipeline.
4. We achieved consensus in that, as a contractor damaging a facility after not calling to request locates aligns with an escalating penalty based on repeated offences.
5. We all agreed that we needed to focus on enforcement. There was a consensus that the best manner to deal with this deficiency was to establish an unpaid review board under the department of labor.
6. We achieved consensus in that, as a contractor damaging a facility after not calling to request locates aligns with an escalating penalty based on repeated offences.
7. There is also consensus that digging outside the described area of the locate request does not constitute having obtained a locate.
8. There is consensus that notwithstanding emergency locates, digging prior to the work to begin date on the call ticket (needs to coincide with the statute time, IE 12:01 AM) or the confirmation of facilities located by affected buried facility owners, does not constitute obtaining a locate.
9. We achieved a consensus that parties present would take the concepts of exhibit 2 (Part 1) to their members to try to get conventional approval that includes a rolling 12 month reset on the incident tracking used to escalate the level of fine.
10. There is consensus that paying or being subjected to a fine is not an admission of liability.

On April 1st 2016 at 10:00 am a group of stakeholders met in Billings at the Montana Dakota Utilities office. Our objective is to define and agree upon proposed changes to our existing dig law that will satisfy all federal excavation enforcement criteria, improve the safety of all people performing excavation tasks and protect our infrastructure.

To assure we stay on track our goals were reviewed at the start of the meeting.

- **Achieve consensus**
- Focus on becoming compliant. Which translates into making certain that all gas and liquid lines which are under the jurisdiction of PHMSA and the Montana PSC are made safe and protected under the Montana Safe Digging rules.
- Then focus on increasing excavation safety around all utilities which in turn will help maintain the integrity of our infrastructure.

Understanding the complexity and challenges involved in defining the penalties associated with this law we dedicated this meeting to working on a defined penalty matrix. John Fitzpatrick presented a document for us to use as a starting point.

We started on the excavator side of penalty matrix. The first decision block asks, "Did the excavator obtain a locate". After a lengthy discussion on what a locate was, we determined we should work on what we could agree wasn't a locate.

We achieved consensus in that, as a contractor damaging a facility after not calling to request locates aligns with an escalating penalty based on repeated offences.

There is also consensus that digging outside the described area of the locate request does not constitute having obtained a locate.

There is consensus that notwithstanding emergency locates, digging prior to the work to begin date on the call ticket (needs to coincide with the statute time, IE 12:01 AM) or the confirmation of facilities located by affected buried facility owners, does not constitute obtaining a locate.

Although we didn't vote on it, there appears to be a consensus that statute, when dealing with fines, should define as much detail as possible leaving the Board's responsibility to be tracking and ensuring the matrix is properly implemented. (We will need to vote on this next meeting)

John Fitzpatrick stated that he believes if you hit two lines in one excavation it is one incident. We did not take a consensus vote on this but it appeared there was consensus. There needs to be more discussion on this to set distances and for situations like joint trench. No vote was taken for a consensus.

We achieved a consensus that parties present would take the concepts of exhibit 2 (Part 1) to their members to try to get conventional approval that includes a rolling 12 month reset on the incident tracking used to escalate the level of fine.

There is consensus that paying or being subjected to a fine is not an admission of liability.

Below is a list of items we debated that we do not have a consensus on but have agreed to continue discussions and to bring back fresh ideas to the next meeting that can help build a product that brings consensus.

1. There needs to be a difference in the fine matrix between land owners and contractors.
2. Contractors that are bigger and dig more should not escalate to higher fines or to the top of a repeat offenders list as fast as those smaller contractors that dig less and are exposed less.
3. To make things consistent, how do we track contractors that have multiple area offices, multiple subsidiaries and those that change names often?
4. Do we develop a complaint driven system where liquid and gas companies are required to file a complaint and other utilities are allowed to do so at their discretion or do we have a completely bifurcated law that separates gas and liquid lines from other utilities.
5. Should incidents that get reported without a complaint filed, or incidents on the non-pipeline side of a bifurcated law be used in the repeat offender calculation in the penalty matrix? If so how would we track this?
6. How do fines for a landowner or homeowner that may not know the extent of the law and hit a line differ from excavators that dig all the time?

Those present at the meeting were asked to bring back some proposal that would help achieve a consensus on a fine matrix.

Our next meeting will continue to focus on penalties for non-compliance. We will meet at the NorthWestern Energy building, 11 W. Park St, in Butte on May 10th at 10:00 am.

Exhibit 2 (Part 1)
Examples of Fine Calculations
For Damage to Natural Gas or Hazardous Liquids Pipelines

Case 1: Excavator does not obtain locate and damages a pipeline

Other Facts

No prior damage incidents
No property damage
No person injured

Level 1 Fine	\$500
Level 2 Fine	<u>\$ 0</u>
Total Fine	\$500

Case 2: Excavator does not obtain locate and damages a pipeline

Other Facts

Third damage incident
Explosion and fire does \$100,000 damage to house
No person injured

Level 1 Fine	\$ 2,000
Level 2 Fine	<u>\$12,000</u>
Total Fine	\$14,000

Case 3: Excavator obtains locate but damages a pipeline anyway

Other Facts

Second damage incident
No property damage
Pipeline explodes; shrapnel strikes third party onlooker who loses an eye

Level 1 Fine	\$ 500
Level 2 Fine	<u>\$ 2,000</u>
Total Fine	\$ 2,500



Case 4: Excavator does not obtain locate and damages a pipeline

Other Facts

Seven prior incidents
Property damage less than \$25,000
No person(s) injured

Level 1 Fine	\$ 20,000
Level 2 Fine	\$ 80,000
Total Fine	\$100,000

February 22, 2019

Montana's pipeline excavation damage prevention program does not comply with federal requirements, setting the stage for federal enforcement action against excavators in Montana who damage pipelines in certain instances. At the March 11, 2018 meeting, the Energy and Transportation Committee (ETC) will hear from Montana stakeholders about their plans to develop potential state legislation for consideration by the 2019 Legislature to bring Montana into compliance. The ETC will discuss the need, timing, and development of the legislation.

In July 2018, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) finalized a rule establishing a process for evaluating state excavation damage prevention law enforcement programs and enforcing minimum federal damage prevention standards in cases where laws are determined to be inadequate. The Pipeline and Hazardous Materials Safety Act of 2009 gives PHMSA the authority to enforce minimum standards for excavation damage prevention in states with inadequate enforcement authority over excavators who damage pipelines in cases with inadequate excavation damage prevention law enforcement programs.

Montana's one-call law, Title 49, Chapter 2, Part 2, establishes the responsibility of excavators and underground facility owners and establishes damage fees. The damage fees are based on the location of the excavation. In 2017, the law is often cited as Montana's one-call law.

Montana is one of 15 states that lack an enforcement mechanism to its damage prevention law. The other 14 states with enforcement mechanisms are Alaska, Colorado, Connecticut, and West Virginia. PHMSA published a grant evaluation in the 2017-2018 fiscal year. PHMSA's grant evaluation and report on excavation damage prevention. The availability of the data for the program evaluation is a program.

An official report from PHMSA's program is available at <https://www.phmsa.dot.gov/sites/PHMSA/files/documents/2017-2018-grant-evaluation-report.pdf>. The report states that PHMSA will be looking for states to take action to bring their excavation damage prevention programs into compliance with federal requirements. PHMSA's grant evaluation report states that PHMSA will be looking for states to take action to bring their excavation damage prevention programs into compliance with federal requirements. PHMSA's grant evaluation report states that PHMSA will be looking for states to take action to bring their excavation damage prevention programs into compliance with federal requirements.



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Energy and Telecommunications Interim Committee 64th Montana Legislature

SENATE MEMBERS

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DUANE ANKNEY
PAT CONNELL
ROBYN DRISCOLL

HOUSE MEMBERS

KEITH REGIER—Chair
CHRISTOPHER POPE
TOM STEENBERG
DANIEL ZOLNIKOV

COMMITTEE STAFF

SONJA NOWAKOWSKI, Lead Staff
TODD EVERTS, Staff Attorney
NADINE SPENCER, Secretary

February 25, 2016

TO: ETIC Members

FR: ETIC Staff

RE: Montana's One-Call Law and Federal Noncompliance

Montana's pipeline excavation damage prevention program does not comply with federal requirements, setting the stage for federal enforcement actions against excavators in Montana who damage pipelines in certain instances. At the March 11, 2016 meeting, the Energy and Telecommunications Interim Committee (ETIC) will hear from Montana stakeholders about their plans to develop potential draft legislation for consideration by the 2017 Legislature to bring Montana into compliance. The ETIC may wish to discuss its role, if any, in the development of the legislation.

In July 2015 the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) finalized a rule establishing a process for evaluating state excavation damage prevention law enforcement programs and enforcing minimum federal damage prevention standards in states where laws are determined to be inadequate. The Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006 gave PHMSA the new enforcement authority over excavators who damage pipelines in states with inadequate excavation damage prevention law enforcement programs.

Montana's one-call law, Title 69, chapter 4, part 5, establishes the responsibilities of excavators and underground facility owners and establishes damage fees. The damage fees were enacted by the Montana Legislature in 2005 (Senate Bill No. 326). The law is often referred to as Montana's one-call law.

Montana is one of five states that lacks an enforcement mechanism in its damage prevention or one-call law. The other four states with no enforcement program are Alaska, Colorado, Mississippi, and West Virginia. PHMSA prioritized program evaluations in those five states, and on February 11, 2016, PHMSA visited Montana and began its evaluation of the Montana program. On the majority of the pass/fail questions for program evaluation, Montana's program failed.

An official letter stating that Montana's program is out-of-compliance is expected in the next month. When the letter is issued, PHMSA will be formally authorized to take enforcement action against excavators in Montana for certain violations. For example, if an excavator in Montana fails to utilize Montana's one-call law and damages a gas pipeline, instead of facing a first time

damage fee of 25% of the total cost of repairing the underground facility not to exceed \$125 for the first incident, the excavator could face a federal fee of up to \$200,000 a day.

During the February 11 meeting with Montana stakeholders, PHMSA evaluated Montana's damage prevention program, by evaluating seven criteria:

- Enforcement of damage prevention laws and regulations;
- Designated state entity to enforce laws and regulations;
- Sufficient civil penalties or other sanctions in laws and regulations;
- Reliable mechanism for learning about excavation damage to facilities;
- Equitable and reliable investigation practices to determine fault;
- Required use of one-call, respect of marks provided, required notification of excavation hits to the operator, and requirements to call 911 if flammable, toxic or corrosive releases occur; and
- Limitations on exemptions to one-call requirements.

Montana's law fails on the first three points largely because responsibility for safe excavation and demolition near underground utilities, including pipelines, falls to the excavators and utility operators themselves under Montana's existing damage prevention program. Montana law establishes no relationship between the Montana damage prevention program and any governmental entity other than the one-call members themselves.

Federal regulators have indicated Montana's current one-call law fails to meet PHMSA standards, particularly in the areas of enforcement. As noted above, there is no enforcement authority in Montana. Until an enforcement authority is designated in law, at least with respect to pipelines, Montana's law will remain out of compliance.

Montana's one-call law and its potential noncompliance with federal requirements are not a new issue before the ETIC. During the 2011-2012 interim, the ETIC completed a study of Montana's one-call law. The study is attached for committee review. Because the federal rulemaking was not complete before the conclusion of the 2011-2012 interim, the ETIC did not advance draft legislation to modify Montana's one-call law. Their findings on the subject can be found on page 4 of the report.

CI0099 6049slxc.

melissa lewis and associates

June 7, 2016

Larry Bonderud
City of Shelby
112 1st Street South
Shelby, MT 59474

Re: Monthly Activity Report

This memo outlines the work performed by Melissa Lewis & Associates for the City of Shelby and the Port of Northern Montana in May 2016.

Key Staff Changes

Description

Contact(s)

The newly formed Montana Infrastructure Coalition has hired Darryl James as its Executive Director.

Darryl James, Darryl@jamesconsult.com, (406) 459-6574.

Montana Interim Committee Actions, Regulatory Changes, the Political Environment and Industry Trends

Interim Committee Meetings

Subcommittee on Joint Revenue Estimating

On May 3, a Joint Revenue Estimating Subcommittee met in Helena to discuss whether to recommend a joint formalized revenue estimating process to the 2017 legislature.

Subcommittee members found the joint revenue estimating process used last legislative session to be a successful process that was useful in resolving a large difference between the estimates provided by the Legislative Fiscal Division and the Office of Budget and Program Planning.

However, the subcommittee does not recommend formalizing a revenue estimating subcommittee in legislative rules because a subcommittee process may not be necessary if revenue estimates presented by the two offices are similar.

The recommendation of the subcommittee is for the Revenue and Transportation Interim Committee to recommend to the taxation

committee chairs that a subcommittee be formed only if deemed necessary to resolve differences in the revenue estimates presented by legislative branch and executive branch staff.

Because the subcommittee would serve in an advisory capacity, the subcommittee recommends providing the following guidance on the composition of a subcommittee, if appointed:

- Taxation committee chairs appoint subcommittee members;
- Equal party representation;
- Equal chamber representation;
- Senate member to serve as presiding officer; and
- Taxation chairs may not vote unless appointed as members of the subcommittee.

The budgeting process is important for the City monitor, as it relates to how much state funding will become available for infrastructure programs, rural water projects and other state funded programs

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and associates

and initiatives of interest to the City of Shelby and the Port of Northern Montana.

Energy & Telecommunications Interim Committee

The Energy & Telecommunications Interim Committee met in Kalispell on May 12-13. Topics of interest include an update about Montana's One Call Laws and draft 2017 legislation. Meeting notes and handouts were provided to the City of Shelby.

Federal Grants

Federal Railroad Administration

On April 29, the Federal Railroad Administration announced a new Rail Safety Infrastructure Improvements Grant program to fund railroad infrastructure safety improvements.

The City of Shelby is pursuing program funding for rail infrastructure safety improvements. Lorette Carter, Melissa Lewis, Brad Koon and Transportation for America staffers are assisting the City of Shelby with its grant application.

Eligible projects include those that make improvements to highway-rail at-grade crossings. Grade separations and grade crossing closures are also eligible, as are improvements necessary to establish a quiet zone. Priority funding consideration will be given to projects that are primarily intended to improve safety at highway-rail grade crossings. \$25 million is available to be awarded in 2016. The FRA encourages applicants to limit their funding request to \$5 million per project and application. Applicants are encouraged to leverage other Federal, state, local or private funds to support the proposed project.

Applications are due by 5:00 p.m. Eastern Daylight Time on June 14, 2016.

Ad-Hoc Duties Performed

- Met with John Rogers, Director of the Governor's Office of Economic Development, regarding potential state funding opportunities for the development of a business case for the Port of Northern to present to BNSF Railway.
- Initiated contact with the Transportation for America organization for third party support for the Port of Northern Montana's near-term and long-term goals.
- Began developing a Federal Rail Safety Infrastructure Improvements grant application for the City of Shelby to submit to the Federal Railroad Administration.
- Alerted the City that Governor Bullock will announce his administration's Public Lands Agenda in Billings at Riverfront Park at 1pm on Thursday, June 9.
- Notified the City of Shelby that Governor Bullock will unveil his office's Energy Policy Blueprint in Billings on June 21.
- Monitored the outcome of the City of Shelby's CDBG-ED grant application.
- Notified Governor Bullock's office about a potential opportunity to attend a golden shovel groundbreaking event for Humic Growth Solutions in Shelby.
- Attended the May 17, 2016 Montana Infrastructure Coalition meeting and provided notes to the City.
- Prepared a letter of recommendation for the City of Shelby to send to Kevin Myhre, City Manager of Lewistown.
- Developed a monthly activity report outlining work performed in May 2016.

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Lori Stratton

From: Larry Bonderud
Sent: Wednesday, June 08, 2016 11:32 AM
To: Lori Stratton
Cc: Jade Goroski
Subject: Fwd: MT Primary election results

Council packets.

Sent from my iPhone

Mayor Lar

Begin forwarded message:

From: Melissa Lewis <melissa@mlewisassoc.com>
Date: June 8, 2016 at 10:49:40 AM MDT
To: Larry Bonderud <larry@shelbymt.com>
Subject: MT Primary election results

As reported this morning from the MT Secretary of State's website:

- 100% of precincts reporting with 44% statewide voter turnout.
- Bullock received 109,567 votes; Gianforte received 110,079 votes. Surprisingly, Gianforte's opponent who did not campaign at all, received 23% of the Republican vote.
- 144,153 Republicans voted for the Gubernatorial candidates and 120,070 voted for Democrats.

Other quick facts and outcomes of key races of importance to Shelby:

- Moderate Republican candidates have prevailed in most Republican primaries over Tea Party opponents.
- Representative Rob Cook crushed primary opponent Ann Morren by 15 points (303 votes). He'll face Herbert Hartzell in the General Election.
- Republican incumbent Art Wittich (R-Bozeman) was defeated by Bruce Grubbs by 7 points (113 votes).
- Republican PSC incumbent Kirk Bushman lost his seat to newcomer Tom O'Donnell by 2 points (574 votes).
- State Auditor candidate Matt Rosendale had no primary opponent but he earned 131,147 votes. His General Election opponent Jesse Laslovich earned 101,823 votes.
- Notable primary election winners include Ray Shaw (R-Sheridan), Steve Gibson (R-East Helena), Edie McClafferty (D-Butte), Kim Abbott (D-Helena), Steve Fitzpatrick (R-Great Falls), Keith Regier (R-Kalispell), Tom Richmond (D-Billings), Jeff Welborn (R-Dillon), Scott Staffanson (R-Sidney) and Alan Doane (R-Bloomfield).
- Notable primary election losses include Harry Klock who lost to Ryan Osmundson and Hertha Lund. Also, Christy Clark-endorsed Charlie Brown (R-Choteau) lost to Ross Fitzgerald by 30 points.

Article below from the Great Falls Tribune.

Bullock, Gianforte cruise to victories

HELENA - Now it's all over but the shouting.

Democratic Gov. Steve Bullock and Republican Greg Gianforte both cruised past their opponents in the primary Tuesday, clearing the lane for a Nov. 8 general election that has already been nasty for months.

Bullock easily defeated fellow Democrat Bill McChesney of Stevensville 109,567 to 10,503 and Gianforte won easily over Republican Terry Nelson of Hamilton 110,079 to 34,074

The results brought no surprises as attention for the top spot in Montana has already been cast on Bullock and Gianforte.

Bullock addressed supporters at the Montana Democratic Party headquarters Tuesday night.

"The stakes are high in this election for important issues like protecting our right to access our public lands and streams, our public education system, fiscal responsibility and our growing economy," he said.

Bullock, a former state attorney general, has said he will concentrate on building Montana's economy and creating jobs. He said top priorities would be investing in infrastructure, helping create a balanced energy future, and keeping public land, public wildlife and the public education system in public hands.

Gianforte, a high-tech entrepreneur, has made jobs the cornerstone of his campaign, trumpeting the fact Montana is 49th in the country when it comes to salaries.

"It's clear Montanans want to see a high wage job creator in the governor's office, instead of these career politicians who have left Montana 49th in the nation in wages," he said Tuesday night. "With today's victory we are now one step closer to unleashing Montana's economic potential and keeping our kids here in Montana."

Gianforte is the founder of RightNow Technologies. He started the company out of his home in Bozeman, and created more than 500 jobs in the state. The average Montana salary at RightNow was nearly \$90,000 a year.

Republicans have harped on Bullock about his combined use of state planes to campaign while also on official business. Republicans also blasted the governor for his time in leadership of the Democratic Governors Association, saying he raised dark money, which is something he has campaigned against.

Gianforte has come under criticism for making comments that Facebook would not come to Montana because of the Business Equipment Tax, only to have it disputed by the company that no such comments were made. He also was blasted for a 2009 lawsuit he filed against the state over a public access easement. He said the lawsuit was settled out of court.

Bullock has also come under fire for having one of his lieutenant governor resign after the two had a strained relationship.

He named Mike Cooney, a longtime lawmaker and state officeholder, as his latest lieutenant governor.

Gianforte picked Lesley Robinson, a longtime Phillips County commissioner and advocate for rural Montana, as his lieutenant governor.

Montana GOP Chairman Jeff Essmann said the Republican ticket won't stop fighting until it brings high-paying jobs and greater opportunities to all Montanans.

"Now is the time for Montana to shake off the doldrums imposed by stagnant wages and the lack of leadership from career politicians so all Montanans from every walk of life can be better off," he said.

Essmann said a team that unites behind the GOP's core platform of "job creation, lower and simpler taxes, greater business growth and innovation, reducing burdensome regulations, and respecting the freedom and rights of individuals will bring all of us a better future."

Nancy Keenan, executive director of the Montana Democratic Party, said Tuesday that Democrats would now concentrate on bonding for the Nov. 8 general election.

"The challenge now is uniting the Democrats, that will be our work," she said, later adding the party would win seats from the White House to the courthouse.

She said they would be closely watching the divisions in the GOP.

It wasn't the gubernatorial battle or other state races that voters on Tuesday said piqued their interest. Many filing in and out of the Helena Civic Center said it was the presidential race that drew them in.

Colin Willett, 24, who just moved to Helena from Oregon, said he cast his vote for Bernie Sanders.

"I like his stance on financial reform," he said, adding "he takes risks rather than a more conservative approach."

Amber Bell brought 7-year-old daughter Madison with her to the polling place.

She wanted to teach her daughter about the cherished right of voting and civic responsibility.

"I think she learned it's worth the effort to come and vote," she said.

Bell said she voted for Sanders as well.

"I'm not a big fan of Trump or Hillary," she said. "I think they're both borderline criminals."

Kay Buell Clouse said she was also very much interested in the presidential primary, but smiled broadly and declined to answer when asked what presidential candidate she voted for.

One 49-year-old man, who declined to give his name, said he voted for Clinton. But at one time he was a Sanders supporter.

He reasoned that since Clinton now apparently had the required number of delegates it was "time to finish up the primary and move on to the general election.

BLOOMQUIST LAW FIRM, P.C.

3355 Colton Drive, Suite A
Helena, MT 59602

MEMORANDUM

Date: June 10, 2016
To: Mayor Larry Bonderud
Cc: Jason Crawford, Bob Ganter
From: Abigail J. St. Lawrence
Subject: Review of City Water Rights

CONFIDENTIAL ATTORNEY-CLIENT WORK PRODUCT

Jason Crawford, Bob Ganter, and I spoke regarding the City of Shelby's ("City") historical consumptive use under the City's existing water rights as compared to water rights claimed by the City in the statements of claim and water reservations on file with the Montana Department of Natural Resources and Conservation ("DNRC"). In particular, we spoke about particularized doctrines of law that may apply to municipal water rights only and how that affects the comparison of actual water use to "paper" water rights. The purpose of this memo is to lay out the current state of the law as it pertains to municipal water rights and how this impacts the City.

Current City Rights

As per the numbers provided by KLJ, the City has historically consumed 1,124.9 acre-feet ("AF") and has a water reservation for an additional 161 AF. As a comparison, the City's total claim for water rights on file with DNRC is 3,851.6 AF, a difference of 2,565.7 AF. The question is if that difference is available to the City for future use.

Law Applicable to Municipal Water Rights

An appropriator is entitled to the amount of water in their appropriation, provided that the appropriator has sufficient capacity to make use of such amount of water. Tucker v. Missoula Light & Water Co. (1926), 77 Mont. 91, 250 P. 11, 15. The Montana Supreme Court has further refined this holding to state that the actual amount of water to which an appropriator is entitled is limited to that amount of water the appropriator actually applies to beneficial use. *See, McDonald v. State* (1986), 220 Mont. 519, 529, 722 P.2d 598, 605 (*beneficial use* shall be the *basis*, the *measure* and the *limit* of all rights to the use of water) (emphasis in original). In short, the law recognizes that for water rights in general, there can be a difference between the amount of water claimed in a statement of claim (the "paper" right) and the amount of water to which an appropriator actual has a right, and that if an appropriator does not make beneficial use of their water right up to the full amount claimed, the

difference between the amount of water beneficially used and the amount of water claimed may be considered abandoned.

In general, Montana law does not distinguish or prioritize rights based on the type of use (*i.e.*, irrigation, stock, domestic, municipal, etc.). However, when it comes to determining whether a municipal water right has been abandoned in whole or in part, Montana statute does make an exception to the general rule. Specifically, Mont. Code Ann. § 85-2-227(4) states:

a water right that is claimed for municipal use by a city, town, or other public or private entity that operates a public water supply system, as defined in 75-6-102, is presumed to not be abandoned if the city, town, or other private or public entity has used any part of the water right or municipal water supply and there is admissible evidence that the city, town, or other public or private entity also has:

(a) obtained a filtration waiver under the federal Safe Drinking Water Act, 42 U.S.C. 300(f), et seq.;

(b) acquired, constructed, or regularly maintained diversion or conveyance structures for the future municipal use of the water right;

(c) conducted a formal study, prepared by a registered professional engineer or qualified consulting firm, that includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs; or

(d) maintained facilities connected to the municipal water supply system to apply the water right to:

(i) an emergency municipal water supply;

(ii) a supplemental municipal water supply; or

(iii) any other use approved by the department under Title 85, chapter 2, part 4.

In other words, as long as a municipal appropriator has used a portion of a water right and has taken any one of the enumerated actions in (a) through (d), the municipal right is presumed not to have been abandoned.

In Case No. 41I-67, Water Judge Loren Tucker recently held that Mont. Code Ann. § 85-2-2207(4) is a change in procedure rather than substance and, therefore, could apply retroactively. *See*, Order Partially Adopting Master's Report on Section 85-2-227(4), MCA and the Growing Communities Doctrine, p. 23 (Apr. 25, 2016) (attached hereto for reference). This holding is presently on appeal to the Montana Supreme Court in Cause No. DA 16-0320. However, for the time being, Judge Tucker's opinion is controlling law.

Impact on City Rights

Judge Tucker's holding means that, at present, the City may utilize for future uses up to the full amount of the 3,851.6 AF of water rights claimed, provided that the City complies with the conditions of Mont. Code Ann. § 85-2-227(4). Judge Tucker's ruling has yet to be applied in the realm of an application to DNRC to change an existing water right. However, it would be reasonable to conclude that where a municipal right is being changed, the consumptive use analysis would have to be different, as the right is not necessarily limited solely to the amount of water historically appropriated and consumed. That said, a discussion with DNRC is merited to conclusively determine how Judge Tucker's ruling could affect a future change application on a municipal right.

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Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)

CLAIMANT: City of Helena	)	CASE NO. 41I-67
	)	41I-W-089056-00
	)	41I-W-089059-00
	)	41I-W-089062-00
OBJECTORS: Community of Rimini;	)	41I-W-089064-00
Andy R. Skinner	)	41I-W-089065-00
	)	41I-W-089066-00
	)	41I-W-089074-00
	)	41I-W-089075-00
	)	Unconsolidated Claims:
	)	41I 89047-00
	)	41I 89054-00
	)	Implied Claim:
	)	41I-W-214622-00

**ORDER PARTIALLY ADOPTING MASTER'S REPORT ON SECTION 85-2-227(4),
MCA AND THE GROWING COMMUNITIES DOCTRINE**

In reports filed July 28, 2011 and January 13, 2012 Water Master Hugh B. McFadden, Jr. (the "Master") found that the City of Helena ("Helena" or the "City") abandoned a portion of its rights to water from Tenmile Creek. On November 8, 2013, Water Judge Ted L. Mizner held that the Master erred and that the City did not abandon any of its water rights. Objector Andy R. Skinner appealed. The Supreme Court determined that "procedural errors and ambiguities in the Water Court's order foreclose[d] review" and remanded the case for further proceedings. Order, *Helena v. Community of Rimini and Skinner*, No. DA 13-0822 (Feb. 24, 2015) ("Supreme Court Order") at 1. On remand, this Judge adopted the Master's finding that the City had abandoned

its water rights under the common law. The parties then briefed (1) whether Section 85-2-227(4), MCA provides relief to the City and (2) whether the City may avoid abandonment via a separate theory of the “growing communities doctrine.”

BACKGROUND

The Court set out the facts in detail in the October 14, 2015 Order Adopting Master’s Report on Common Law Abandonment (the “October 14 Order”). Accordingly, recitation of facts now includes only those details necessary to resolve the present issues. All facts are taken from the Master’s Report filed July 28, 2011 except where otherwise noted.¹

A 1903 decree declared the Helena Water Works Company the holder of the first two water rights on Tenmile Creek southwest of Helena. The first claim established a right to 225 miner’s inches (MI) with a priority date of November 5, 1864 (claim number 41I 89074-00). The second established a right to 325 MI with a priority date of February 10, 1865 (claim number 41I 89075-00). Together, these two claims total 550 MI, or 13.75 cubic feet per second (CFS).

The City of Helena acquired these rights in 1911. At that time, the City diverted water at two locations. The first diversion used an open ditch beginning in the mountains near the old mining community of Rimini. The water from this diversion flowed to a treatment facility near the mouth of Tenmile Canyon. After treatment, two 16” pipelines carried the water to town. The precise date of the construction of the two 16” pipelines is unknown, but believed to be around 1903.

The second diversion tapped Tenmile Creek four miles downstream of the treatment plant and diverted water through an open channel known as the “Yaw Yaw” ditch. The Master found

¹ The Court refers to numbered findings of fact (“FF”) and conclusions of law (“CL”) by number and non-numbered findings and conclusions by page number.

that the City abandoned the Yaw Yaw ditch in 1919. (Exh. BI). A 1925 Fire Defense Report listed the Yaw Yaw as a source of water for use “only in cases of extreme emergency on account of polluted supply.” (Exh. C-F at 2). The report stated that it “[w]ould take about twelve hours to place [the] equipment in service.” (Exh. C-F at 2).

In early 1920, City officials recognized the risks of transmitting water intended for human consumption through an open ditch. (Exh BP at 7). The taxpayers, on April 6, 1920, voted to issue bonds totaling \$200,000 to fund construction of an enclosed pipeline. (Exh. BP). The Rimini Pipeline was completed in 1921. The pipeline is 18” in diameter and has a capacity of 13.15 CFS.

By 1929, the City had identified the two old 16” transmission pipelines from the treatment facility to the City as “the limiting factor in the Ten Mile System.” (Exh. BJ at 22). A 1929 Report by engineers Chas. T. Main & Co. noted that “leakage, waste, and other losses” as well as “unknown factors tending to increasing the friction” restricted its capacity to 5.50 CFS—less than half of the capacity of the Rimini Pipeline diversion. (Exh. BJ at 23). The report recommended replacing the two 16” lines. (Exh. BJ at 36-38). Reports in 1935 and 1939 repeated these findings and recommendations. (Exh. S-1 at 15; Exh BL at 14).

In 1946, the City took bids to construct a new transmission pipeline from the treatment facility to the City. In 1948, the City installed a new 24” transmission line, enabling it to transmit for beneficial use all of the 13.15 CFS it could divert through the Rimini Pipeline.

The Master filed his initial report on July 28, 2011. The Master found that the City’s predecessor used all 13.75 CFS of Tenmile Creek water prior to 1903, but that the City used only 8.732 between 1903 and 1919 and 6.4² CFS between 1919 and 1948. (CL 15). Because Helena did not explain the reason for the long period of nonuse from 1903-1948, the Master found that

² The master attributed 0.9 CFS of water to the Woolston Pumping Station.

the City had abandoned 7.35 CFS of its two Tenmile Creek water rights. In addition, the master found that since the installation of the Rimini Pipeline and continuing to the present, the Rimini Pipeline capacity of 13.15 CFS limited the City's ability to divert water from Tenmile Creek. (CL 15).

The Master addressed the City's argument that the "growing communities doctrine" or its statutory counterpart, Section 85-2-227(4), MCA, relieved it from a finding of abandonment. The Master noted that most western states, by either statute or judicial determination, have adopted a doctrine allowing a municipal water user to "perfect a water right in the amount of water it reasonably anticipates it will need to ensure water for future growth." *Department of Ecology v. Theodoratus*, 957 P.2d 1241, 1257 (Wash. 1998) (Sanders, J., dissenting). The Master noted that although there is no Montana caselaw applying the growing communities doctrine, the Montana legislature enacted a statutory version of the doctrine in 1999 when it adopted Section 85-2-227(4), MCA.

The Master noted that if the statute applied retroactively, Helena's maintenance of a "diversion structure"—*i.e.* the Rimini Pipeline—might establish a presumption of non-abandonment of its Tenmile Creek claims except as to "the 0.6 CFS which cannot be carried through the diversion pipeline." (CL 45). However, the Master concluded that the statute is retroactive and should not be applied because the legislature did not expressly provide for retroactive application". [N]o law is retroactive unless expressly so declared." Section 1-2-109, MCA. In addition, the Master further stated that, even if the statute applied retroactively, it raised only a "presumption of non-abandonment" and that the evidence in the record rebutted the presumption. Specifically, the Master referred to the following evidence: (1) the City constructed transmission pipe lines that could not carry all of its claimed water, (2) the Rimini

pipeline could not divert all of its claimed water, (3) the City abandoned the Yaw Yaw ditch, and (4) the City declared in Exhibit S-1 that it had “ample water for as long a time as the needs of the city can be forecast with any degree of accuracy.” (CL 47). The Master held that the statute provided no relief to the City.

Helena filed objections to the Master’s report and requested the opportunity to submit additional evidence. One of the exhibits showed that between 1919 and 1932, the City leased unknown quantities of water from the Yaw Yaw ditch for agricultural purposes. The Master recognized that, if the growing communities doctrine had applied, “the City’s leasing of water it could not then use and having others make beneficial use of it until the City could itself make beneficial use would be relevant.” (Supp. Rpt. at 10 fn. 1). However, because the Master had already determined the growing cities doctrine did not apply, the only effect of these exhibits was to reduce the period of nonuse from 29 years (1919-1948) to 16 years (1932-1948). The master held that the evidence did not change the result reached in the initial Master’s Report.

Then-water judge Ted Mizner held that “the Master erred by failing to apply [Section 85-2-227(4), MCA] to Helena’s claims” and restored to Helena it’s full decreed right of 13.75 CFS. Skinner appealed. The Supreme Court noted that Judge Mizner overlooked that the Master had applied the statute and remanded the case to this Court to review the Master’s Report under the correct standard of review. (Supreme Court Order at 4). In addition, the Court held that Mizner erred by restoring to Helena the full decreed right of 13.75 CFS without considering the effect of the Rimini Pipeline’s lesser 13.15 CFS capacity. (Supreme Court Order at 2). The Court remanded the case and this Judge assumed jurisdiction.

After a hearing, the Court ordered the parties to brief the issues in the order suggested by the Supreme Court. After receiving evidence and argument on the issue of common law

abandonment, the Court issued an order adopting the master's findings of abandonment under the common law. The Court then requested briefs on all issues relating to the application of the statute and the growing communities doctrine.

Helena contends that it has satisfied the requirements of Section 85-2-227 because it because it "constructed and regularly maintained diversion and conveyance structures for the future use of the water," "conducted no less than three engineering studies of its water system," and "maintained facilities to connect its water supply system...to...the City fire protection system." (Opening Br. at 6). According to Helena, these factors give rise to a presumption of non-abandonment and shifted the burden of proof to Skinner. Helena argues that the statute is not retroactive because it made changes only to the procedure for proving water rights, not to the substance of those rights themselves. (Opening Br. at 9). Helena's brief does not address the growing communities doctrine as a freestanding common law concept.

Skinner argues that applying the statute to the facts of this case would "subordinate Skinner's, and other Ten Mile Creek water rights." (Resp. Br. at 9-10). Skinner argues that "[s]uch a result is a substantive change to the law on abandonment and is impermissible under the Montana constitution." (Resp. Br. at 10). In the alternative, Skinner argues that even if the presumption applies, the Master correctly held that the evidence rebuts it. (Resp. Br. at 6).

STANDARD OF REVIEW

Abandonment of a water right is a question of fact. *Heavirland v. State*, 2013 MT 313, ¶ 13, 372 Mont. 300, 311 P.3d 813. The Water Court must accept the Water Master's factual findings of fact unless clearly erroneous. Rule 53, M. R. Civ. P.; *Heavirland*, ¶ 13. In determining whether the Water Master committed clear error, the Water Court applies the same standard the Supreme Court applies to fact findings of a district court sitting without a jury.

First, the Court will review the record to see if the findings are supported by substantial evidence. Second, if the findings are supported by substantial evidence, [the Court] will determine if the [Water Master] has misapprehended the effect of [the] evidence. Third, if substantial evidence exists and the effect of the evidence has not been misapprehended, the Court may still find that a finding is clearly erroneous when, although there is evidence to support it, a review of the record leaves the court with the definite and firm conviction that a mistake has been committed.

Interstate Prod. Credit Ass'n v. DeSaye (1991), 250 Mont. 320, 323, 820 P.2d 1285, 1287 (citations omitted).

Retroactive application of a statute is a matter of statutory interpretation which presents a question of law. *Moreau v. Transp. Ins. Co.*, 2015 MT 5, ¶ 8, 378 Mont. 10. 342 P.3d 3. The Water Court reviews the Master's conclusions of law de novo. *Heavirland*, ¶ 14.

DISCUSSION

Section 85-2-227(4), MCA Applies to this Case

Before 1999, courts in Montana applied the same law to issues of abandonment regardless whether the case involved a municipal use or a private use. The statute provided only that a water judge may "determine all or part of an existing water right to be abandoned based on a consideration of all admissible evidence that is relevant..." Section 85-2-227(3), MCA. Courts made abandonment determinations on the familiar common law test requiring proof of (1) nonuse and (2) intent to abandon, with the burden of proof resting on the party seeking to establish abandonment. *In re Clark Fork River Drainage (Deer Lodge)* (1992), 254 Mont. 11, 15, 833 P.2d 1120, 1123.

Courts long recognized that a period of nonuse, if of sufficient duration, could itself constitute evidence of intent to abandon. *See, e.g., Smith v. Hope Mining Co.* (1896), 18 Mont. 432, 438, 45 P. 632, 634 ("The nonuser (sic) of water for [nine years]...is certainly very potent evidence, if it stood alone, of an intention to abandon."). As a result, the same evidence that

satisfied the first element of the test could also satisfy the second element. Although the Supreme Court referred to the duration of nonuse as “strong evidence” of intent, it later explained that such evidence had the effect of shifting the burden of proof. The Supreme Court first articulated this effect in 1983. In *79 Ranch, Inc. v. Pitsch* (1983), 204 Mont. 426, 666 P.2d 215 the Court held that “[f]orty years of nonuse is strong evidence of an intent to abandon a water right, and, in effect, raises a rebuttable presumption of abandonment.” *79 Ranch*, 204 Mont. at 431.

The Court subsequently explained that *79 Ranch* primarily clarified operation of the existing law. *Heavirland*, ¶ 24. The Court regards the “shift from a long period of nonuse being considered ‘potent evidence’ of an intent to abandon to its raising a rebuttable presumption” as a change only in “the timing of when the party opposing the abandonment finding must produce evidence of intent.” *Heavirland*, ¶ 24. “Indeed, *79 Ranch* is akin to a caveat to claimants that they should not rest their case without addressing the potent evidence of intent to abandon which arises from a long period of non-use.” *In re Musselshell River Drainage Area* (1992), 255 Mont. 43, 49, 840 P.2d 577, 580. The Court’s statement about shifting the burden of proof garnered substantial attention in subsequent cases. *See, e.g., E.E. Eggebrecht, Inc. v. Waters*, 217 Mont. 291, 299, 704 P.2d 422, 427 (Morrison, dissenting) (“In *79 Ranch*...we held evidence of extended non use created a rebuttable presumption...”); *In re Clark Fork (Above Blackfoot)* (1995), 274 Mont. 340, 908 P.2d 1353, 1355 (“In *79 Ranch*...we set forth the criteria for determining whether a water right has been abandoned.”). The Court relied on the *79 Ranch* presumption in determining that the City of Deer Lodge had abandoned two claimed water rights in tributaries of the Clark Fork River. *Clark Fork*, 254 Mont. at 14-16.

Shortly thereafter, the legislature took the first step towards reversing the *79 Ranch* presumption in cases involving municipal water users. The legislature enacted SB 235, an act “specifying criteria for a presumption of nonabandonment for municipal water rights.” Originally, the legislature limited the act’s protections to the “highest quality waters in Montana.” *See* 1999 Mont. Laws 689. In 2005, however, the legislature removed this restriction and allowed all municipal water users to qualify for the presumption. As amended, Section 85-2-227(4) now reads as follows:

In a determination of abandonment made under subsection (3), the legislature finds that a water right that is claimed for municipal use by a city, town, or other public or private entity that operates a public water supply system, as defined in 75-6-102, is presumed to not be abandoned if the city, town, or other private or public entity has used any part of the water right or municipal water supply and there is admissible evidence that the city, town, or other public or private entity also has:

- (a) obtained a filtration waiver under the federal Safe Drinking Water Act, 42 U.S.C. 300(f), et seq.;
- (b) acquired, constructed, or regularly maintained diversion or conveyance structures for the future municipal use of the water right;
- (c) conducted a formal study, prepared by a registered professional engineer or qualified consulting firm, that includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs; or
- (d) maintained facilities connected to the municipal water supply system to apply the water right to:
 - (i) an emergency municipal water supply;
 - (ii) a supplemental municipal water supply; or
 - (iii) any other use approved by the department under Title 85, chapter 2, part 4.

§ 85-2-227(4), MCA. Under the statute, any city that claims a water right for municipal use qualifies for a presumption of nonabandonment if it (1) “has used any part of the water right” and (2) satisfies any one of the requirements contained in subsections (a) through (d).

The first question the Court must answer when confronted with a retroactivity issue is whether application of the statute would “actually constitute[] a retroactive application of the law.” *Mordja v. Eleventh Judicial District Court*, 2008 MT 24, ¶ 17, 341 Mont. 219, 177 P.3d

439. A statute does not operate 'retroactively' merely because it "is applied in a case arising from conduct antedating the statute's enactment," *Porter v. Galarneau* (1996), 275 Mont. 174, 911 P.2d 1143, 1148, or "draws upon antecedent facts for its operation, *State v. Coleman* (1979), 185 Mont. 299, 317, 605 P.2d 1000, 1012. Rather, "retroactive" means "a statute which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty or attaches a new disability, in respect to transactions already past." *In re Driver's License of Keeney v. DOJ*, 2006 MT 152, ¶ 9, 332 Mont. 446, 139 P.3d 814.

In this connection, the Court has recognized that "no one has a vested right in any given mode of procedure." *Haugen v. Blaine Bank* (1996), 279 Mont. 1, 926 P.2d 1364 (quoting *Ex parte Collett*, 337 U.S. 55, 71, 69 S.Ct. 944, 953, 93 L.Ed. 1207 (1949)). Accordingly, the Court has repeatedly held that application of a new procedural statute to conduct that occurred prior to enactment is not retroactive application of law. See *Mordja v. Eleventh Judicial District Court*, 2008 MT 24, ¶ 24, 341 Mont. 219, 177 P.3d 439; *Keeney*, ¶ 12; *Castles v. State* (1980), 187 Mont. 356, 361, 609 P.2d 1223, 1226. The Court applied this rule to a law that changed the burden of proof in *In re Application for Change of Appropriation Water Rights by Keith and Alice Royston* (1991), 249 Mont. 425, 816 P.2d 1054 (hereinafter "*Royston*").

The Roystons, holders of senior water rights on the Judith River, applied to change the place of use and expand the number of acres irrigated. *Royston*, 249 Mont. at 427. Junior users objected. *Id.* The district court held that Section 85-2-402, MCA placed the burden of proof on the Roystons to show that their proposed change would not adversely affect the water rights of junior users. *Id.* at 427-28. Since the Roystons failed to carry their burden, the district court affirmed the DNRC's denial of their petition. *Id.* The Roystons appealed.

The Supreme Court explained that prior to a 1985 amendment of Section 85-2-402, “parties objecting to the change had the burden of demonstrating adverse impact to their water rights.” *Id.* at 428. The 1985 amendment changed the burden of proof, placing it on the applicant. *Id.* Roystons argued that this change amounted to an “impermissible retroactive application” of the statute because it impaired their vested rights under the constitution. *Id.* at 429. The Supreme Court rejected this argument, holding that “a water right recognized by the 1972 Constitution does not include the right not to have to carry a burden of proof.” *Id.* The Court recited the rule that “[s]tatutes that modify the procedure for exercising a vested right or carrying out a duty do not constitute retroactive legislation.” *Id.* By changing the burden of proof, the Court held, “Section 85-2-402, MCA merely modify[ed] the procedure for exercising a vested right, and as such [was] not retroactive.” *Id.*

Royston coincides with the result reached by other courts. For example, in *Combs v. Comm’r of Soc. Sec.*, 459 F.3d 640 (6th Cir. 2006), the Sixth Circuit faced the question whether the removal of a presumption that obesity qualified as disability constituted a retroactive application of law. The Court held that the change was “more procedural than substantive in nature.” *Combs*, 459 F.3d at 647. The Court recognized that “[t]he ultimate criteria of disability eligibility [were] not changed. Instead, a presumption designed for administrative workability was changed to conform agency determinations more closely with the statutory requirements.” *Id.*; *See also Kenz v. Miami-Dade County & Unicco Serv. Co.*, 116 So. 3d 461, 464-65 (Fla. App. 2013) (“the burden of proof is a procedural issue”); *Thomas & Betts Corp. v. Panduit Corp.*, 108 F. Supp. 2d 976, 986 (N.D. Ill. 2000) (“A statutory clause regarding a burden of proof does not govern conduct that would give rise to a lawsuit. It merely governs conduct after a lawsuit is already filed.”); *Sudwischer v. Estate of Hoffpauir*, 705 So. 2d 724, 729 (La. 1997) (“a statute

changing a burden of proof is procedural and is to be applied retroactively”). The nature of burdens themselves confirms the soundness of this reasoning. Burdens of proof and presumptions determine only which party must “go[] forward with the evidence” and “carry[] the risk of nonpersuasion.” See Black’s Law Dictionary, 209 (8th Ed. 2004). They do not create substantive rights, but simply regulate the presentation of facts and arguments to the court.

The statute in this case changed the burden of proof in the same manner as did the statute at issue in *Royston*. If a claimant establishes that it used “any part” of the water right and satisfies one of four additional requirements, that party “is presumed” not to have abandoned its water rights. Section 85-2-227(4), MCA. “All presumptions, other than conclusive presumptions, are disputable presumptions and may be controverted.” Rule 301(2), M. R. Evid. The legislature did not “specifically declare” the presumption conferred by Section 85-2-227(4) to be conclusive. See Rule 301(1), M. R. Evid. Therefore, the opposing party may rebut it by producing evidence to the contrary. The effect of such a presumption when evidence is presented in support of both contending positions is simply to shift the burden of proof. *Baldwin v. Bd. of Chiropractors*, 2003 MT 306, ¶ 42, 318 Mont. 188, 79 P.3d 810. As the Supreme Court held in *Royston*, the application of such a statute to conduct that occurred before its enactment does not constitute a retroactive application of law.

Skinner argues that *St. Vincent Hospital v. Blue Cross/Blue Shield* (1993), 261 Mont. 56, 862 P.2d 6 compels a different result. *St. Vincent* involved the 1987 enactment of the Preferred Provider Agreements Act, a law which allowed health care insurers to enter into exclusive agreements with particular health care providers. *St. Vincent*, 261 Mont. at 58. In reliance on that statute, Blue Cross/Blue Shield (BCBW) entered into an agreement to deal exclusively with Deaconess Medical Center for a three-year period. *Id.* Halfway through the term of this

agreement, the legislature reversed course, enacting the "Willing Provider Amendment" which eliminated the Act's exclusivity provision and required health care insurers like BCBW to enter into an agreement with any health care provider willing to meet its terms and conditions. *Id.* The Supreme Court summarily held that the Willing Provider Amendment "affected the substantive rights of the parties" and therefore could not qualify as merely procedural. *Id.* at 61.

This case is easily distinguished. Application of the Willing Provider Amendment in *St. Vincent* would have meant that BCBW could not honor its contract with Deaconess no matter how much evidence it presented. The statute in *St. Vincent* eliminated the existence of a vested right. By contrast, application of Section 85-2-227(4) does not abolish the concept of abandonment. It merely changes the way abandonment is proved. As the Supreme Court held in *Royston*, water rights "do[] not include the right not to have to carry a burden of proof." *Royston*, 249 Mont. at 429. *St. Vincent* does not help Skinner.

Skinner also argues that the presumption makes it more difficult for him to prove abandonment and that he may not be able sustain his burden of proof. Skinner argues that this procedural change would affect his substantive rights. The Court acknowledges that procedural rules may affect substantive outcomes. However, the Supreme Court has not decided any case which adopts Skinner's theory that a greater difficulty makes the statute impermissibly retroactive.

In *Royston*, for example, the applicants' failure to satisfy the burden of proof resulted in the denial of their application. The Court did not decide that such a difficulty made the statute impermissibly retroactive. Similarly, in *Haugen*, rule 41(e) of the Rules of Civil Procedure required plaintiffs to file and serve a return of summons within three years after the filing of the complaint. *Haugen*, 279 Mont. at 5. Failure to satisfy this requirement resulted in the dismissal

of their lawsuit. *Id.* That fact did not convert the rule from one of procedure into one of substance. *See Id.* at 7-9. *See also, e.g., Keeney* (repeal of notice requirement subjected petitioner to temporary loss of driving privileges); *State v. Duffy*, 2000 MT 186, ¶ 32, 300 Mont. 381, 6 P.3d 453 (application of extended statute of limitations resulted in conviction of sexual intercourse without consent).

The Sixth Circuit explicitly recognized that “procedural rule[s] will have such substantive effects” and that the removal of the presumption regarding obesity “may be outcome-determinative for some claimants.” *Combs*, 459 F.3d at 647. However, the Court noted that “the same can be said for a jury trial right or the lifting of an immunity,” two statutory changes the U.S. Supreme Court had already classified as merely procedural. *Id.* (citing *Republic of Austria v. Altmann*, 541 U.S. 677, 124 S. Ct. 2240, 159 L. Ed. 2d 1 (2004) and *Landgraf v. USI Film Prods. Inc.*, 511 U.S. 244, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994)). The inquiry, the Court held, must focus on “whether there is a change in substantive obligation as opposed to a change in the way in which the same obligation is adjudicated.” *Id.* When evidence is presented on both sides, the change in the burden of proof falls into the latter category.

Other courts have addressed the problem of changed procedural requirements that inherently affect substance by stating that, to qualify as substantive, the statute at issue must “directly affect” vested rights. *In re Marriage of Buol*, 705 P.2d 354, 358 (Cal. 1985); *Bethea v. Phila. AFL-CIO Hosp. Ass'n*, 871 A.2d 223, 226 (Pa. Super. 2005). In other words, indirect effects, such as those resulting from a party’s inability to meet the new burden of proof, do not turn an otherwise procedural statute into a substantive one. Skinner’s argument to the contrary would ignore clear precedent. The Court declines to take that approach.

The 1999 and 2005 amendments to Section 85-2-227, MCA change the burden of proof. That change is procedural, not substantive, and does not create retroactive application of law. Accordingly, the Master erred when he held that Section 85-2-227(4) did not apply to this case. The Court will apply the amended statute.

Application of Section 85-2-227(4) MCA to the Present Case

To create a presumption of nonabandonment conferred by Section 85-2-227(4) MCA, the City must show that it (1) “used any part of the water right” and (2) satisfied at least one of the criteria set forth in subsections (4)(a) through (4)(d). The Master found, and neither party contests, that the City used “part” of each water right continuously from the date of the decree. The Court then must determine whether Helena satisfied any of subsections (4)(a) through (4)(d). If it has satisfied any subsection, the Court must determine whether other evidence rebuts the presumption. The City argues that it has satisfied subsections (4)(b), (c), and (d).

The Master’s findings divide the City’s water usage into two time periods: (1) the period between 1919 and 1948 and (2) the period after 1948. The Master found that the Helena Water Works Company made use of the full 13.75 CFS until about 1903 when it installed the two 16” transmission pipelines which had a capacity of only 5.50 CFS. (CL 10D). Before 1919, the pipe capacity limitation did not limit the amount beneficially used because the City diverted additional water into the Yaw Yaw ditch. However, after the City abandoned the Yaw Yaw in 1919, all³ water diverted had to pass through the two 16” pipelines to the City for beneficial use. After the City installed the new 24” transmission line in 1948 the City’s ability to deliver water for beneficial use was limited by the capacity of the 18” Rimini Pipeline which was constructed in 1921.

³ The City could still divert a modest amount to the Woolston pumping station. However, the Master found that the City retired the Woolston pumping station some time before 1948. (CL 10P).

Between 1919 and 1948

Subsection (4)(b)

A municipal water user qualifies for the presumption of nonabandonment if it used any part of the right and “(b) acquired, constructed, or regularly maintained diversion or conveyance structures for the future municipal use of the water right.” The City relies on evidence documenting construction of the Rimini Pipeline in 1921 and the 24” transmission line in 1948.

The statute does not specifically delineate the time period when a municipality must have “acquired, constructed, or regularly maintained” structures to establish the presumption. However, the statute applies “in a determination of abandonment.” The fact that the City constructed a transmission line in 1948 is not probative of abandonment in the 29 years preceding its construction. Accordingly, evidence of the construction of the 24” transmission line in 1948 does not satisfy subsection (4)(b).

The Rimini Pipeline undoubtedly qualifies as a “diversion structure.” However, although it enabled the City to divert 13.15 CFS of water from Tenmile Creek, the limited capacity of the two 16” transmission lines restricted the City’s beneficial use to only 5.50 CFS. Thus, prior to installation of the 24” transmission line, the City either diverted less than 5.50 CFS or allowed the excess to return to Tenmile Creek. The issue is whether constructing a diversion structure with a capacity larger than the conveyance system can satisfy subsection (4)(b).

The statute is written in the disjunctive: the City need only acquire, construct, or maintain “diversion *or* conveyance” structures for future use. Section 85-2-227(4)(b), MCA (emphasis added). Nothing in the statute requires the City to construct both diversion structures and conveyance structures.

In this case, the City constructed a diversion pipeline knowing that its transmission pipelines could deliver only less than half its capacity for beneficial use. The most reasonable inference from this conduct is that the City was planning for future growth; otherwise the City could have saved taxpayer money by constructing a smaller diversion pipeline. This inference comports with the rationale that prompted judicial recognition of the growing communities doctrine: ensuring an adequate supply of water for the future. *Theodoratus*, 957 P.2d at 1257. Construction of the Rimini Pipeline establishes the presumption of non-abandonment under subsection (4)(b).

Subsection (4)(c)

A municipal water user qualifies for the presumption of non-abandonment if it "(c) conducted a formal study, prepared by a registered professional engineer or qualified consulting firm, that includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs." Section 85-2-227(4)(c), MCA. Helena points to the 1929 Report by engineers Chas. T. Main & Co.

The 1929 Report provided recommendations "with a view to the normal growth of the City" to "provide facilities adequate to the present need and capable of expansion to meet the future growth." (Exh. B-J at 1). It found that the capacity of the two 16" transmission lines was "the limiting factor in the Tenmile distribution system." (Exh. BJ at 22).

The Report further explained that although the "quantity of water supplied to the City of Helena is ample for ordinary domestic consumption" it is "slightly deficient during the maximum demand of irrigation season, and seriously deficient when called upon to supply both the maximum domestic consumption and the amount required for adequate fire protection."

(Exh. BJ at 35). The report noted that “under the extreme conditions of maximum domestic demand, it is difficult to maintain a satisfactory storage, and under these conditions coupled with fire, the demand on the system exceeds its normal capacity and the domestic supply must be curtailed to insure sufficient water to supply the fire demand.” (Exh. BJ at 26). The Report characterized this condition as “a serious hazard in case of fire.” (Exh. BJ at 33-34). Accordingly, the report recommended “[c]onstruct[ing] a new twenty-six (26) inch diameter continuous wood stave pipe line from the [treatment facility] to the City.” (Exh. BJ at 36-38).

Although the 1929 Report does not use the specific terms “reasonable for foreseeable future needs,” it recommends construction of a new transmission line in order to enable the City to make full use of its water rights. The report indicates that the engineers believed the water right to be reasonable for foreseeable future needs. It therefore satisfies subsection (4)(c).

Subsection (4)(d)

A municipal water user qualifies for the presumption of nonabandonment if it “(d) maintained facilities connected to the municipal water supply system to apply the water right to: (i) an emergency municipal water supply...” § 85-2-227(4)(d)(i), MCA. The 1925 Fire Defense Report indicates that “in cases of extreme emergency” the City could use the Yaw Yaw pumping station for fire defense purposes. (Exh. CF at 2). The Report indicates that the City maintained a 16-inch pipe connecting the pumping station to a “flume and open ditch from Ten Mile Creek.” (Exh. CF at 2).

The City’s sporadic leasing of Yaw Yaw water for agricultural purposes between 1919 and 1932 supports the conclusion that, although the City ceased using the Yaw Yaw ditch for municipal purposes, it maintained the facility for other purposes, including emergency use. The

evidence demonstrates that Helena maintained facilities connected to the water supply to apply the water for emergency purposes. This evidence satisfies subsection (4)(d).

Having satisfied subsection (4), Helena met the requirements for a presumption of nonabandonment. The burden then shifts to Skinner to establish intent to abandon. *Clark Fork*, 254 Mont. at 15. The Master relied on three facts as evidence of such intent between 1919 and 1948 which Skinner repeats here: (1) the City constructed transmission lines that could not carry all of its water, (2) the City abandoned the Yaw Yaw ditch, and (3) the City declared in Exhibit S-1 that it had “ample water for as long a time as the needs of the city can be forecast with any degree of accuracy.” (CL 47).

Transmission Lines

After the City constructed the transmission lines it still diverted water through the Yaw Yaw ditch. The Yaw Yaw ditch diversion was below the treatment facility. It did not send the water through the transmission pipeline. Thus, the mere fact that the transmission lines could not carry all of the decreed water does not establish intent to abandon. In addition, the 1929 Report attributed the pipelines limited capacity to “unknown factors, tending to increase the friction” as well as “leakage, waste, and other losses.” The evidence does not show that the City knew or should have known such losses would occur when it constructed the pipelines in 1903. Therefore, these losses do not persuade that the City intended to abandon its water rights.

Abandonment of the Yaw Yaw Ditch

The Master recognized that the City continued to lease Yaw Yaw water for agricultural use and maintained facilities to use the water for emergency purposes. (Supp. Rpt. at 9). The Master stated that these uses “would be relevant” if the growing communities doctrine applied.

(Supp. Rpt. at 10 fn. 1). Montana's statutory version of the growing communities doctrine does apply. These leases are relevant and indicate an intent not to abandon.

Exhibit S-1

Exhibit S-1 is a 1935 Condensed Report of the Helena Water Works System. The statement relied on by the Master comes from the beginning of the report, which discusses the various sources of water supply. (Exh. S-1 at 4). The Condensed Report examines the watershed areas and provides a table of the flow into the Tenmile Reservoir. (Exh. S-1 at 5). After adding the sources of bedrock water supply, the report provides a table with "the minimum flow from the various sources contributing to the water supply of the City of Helena." (Exh. S-1 at 6). The report stated that, "the present sources of water supply to the city of Helena as now developed are capable of delivering ample water for as long a time as the needs of the city can be forecast with any degree of accuracy." (Exh. S-1 at 7). The statement that the City had "ample water" referred to the sources of supply, not its distribution.

A separate section of the Report details the distribution system. It describes the two 16" transmission lines as "the limiting factor in the Ten Mile system." (Exh. S-1 at 15). This section includes a table comparing "the capacity of the supply lines with the average quantity available" and notes deficiencies averaging 1,512,500 gallons per day. (Exh. S-1 at 15). The Report further explains that "under these conditions, coupled with fire, the demand on the system exceeds its normal capacity and the domestic supply must be curtailed to insure sufficient water to supply the fire demand." (Exh. S-1 at 15).

Part of the report deals with City water supply. Another portion deals with delivery. The isolated statement in the portion of the report dealing with supply, does not suggest intent to

abandon because of undersized delivery system components. The Master misapprehended the effect of this evidence.

Nonuse

Skinner also argues intent to abandon based on a long period of nonuse. However, the whole purpose of Section 85-2-227(4), MCA is to presume nonabandonment in precisely those circumstances when intent to abandon would otherwise be presumed (e.g. based on a long period of nonuse). When the common law conflicts with statutory law, the common law no longer exists. Section 1-1-108, MCA. Applying a presumption of abandonment based on a long period of nonuse would directly conflict with a statute that creates a presumption against abandonment. Accordingly, Section 85-2-227(4) supersedes the common law and Skinner cannot establish intent to abandon by simply showing a long period of nonuse.

Moreover, the legislature has declared that statutes in derogation of the common law should "be liberally construed with a view to effect their objects and to promote justice." Section 1-2-103, MCA. Allowing the common law presumption of abandonment by nonuse to creep back into statutory analysis to rebut the presumption of non-abandonment would defeat the purpose of the statute. The record contains no evidence that Helena intended to abandon 7.35 CFS of its water rights during the period from 1919 to 1948. Skinner has not rebutted the presumption of nonabandonment. The Master erred in finding otherwise.

After 1948

The Master found that "[a]fter construction of the [Rimini] pipeline in 1921, the amount of water that Helena could divert from Tenmile Creek above the treatment facility depended on how much water the Rimini line would carry." (FF 250). "For a time after 1921, the City diverted Tenmile Creek water below the treatment facility too, using the Yaw Yaw pump station

and the Woolston pump station.” (FF 25O). However, the City abandoned the Yaw Yaw ditch for all purposes no later than 1932 and retired the Woolston pump station some time before 1948.⁴ The Master found that since 1948 “the City has never been able to divert and put to beneficial use more Tenmile Creek water than either the Rimini pipeline’s capacity or distribution line capacity.” (FF 25AA).

The Rimini Pipeline “has manholes about every 1,000 feet.” (FF 25G). If the City had diverted more than 13.15 CFS into the Rimini Pipeline, the excess would have “vent[ed] out of the manholes and flow[ed] back into Tenmile Creek.” (FF 25S). The Master found that “[b]y the time of the 1999 hearing, the Rimini line had rocks and roots in it which impeded the flow if the City tried to have it carry more than about [13.15 CFS].” As a result, the Master found that the City has never used its full decreed amount of 13.75 CFS. (FF 25U; FF 25AA). The Master found that the City abandoned the difference of 0.6 CFS between the amount decreed (13.75 CFS) and the capacity of the Rimini Pipeline (13.15 CFS).

The Master found a period of unexplained nonuse of 0.6 CFS for at least 63 years (1948 to 2011). This period easily suffices to raise a presumption of intent to abandon. *See, e.g., Smith v. Hope Mining Co.* (1896), 18 Mont. 432, 438, 45 P.632, 634 (“The nonuser of water for [nine years]...is certainly very potent evidence...of intention to abandon.”); *Clark Fork*, 254 Mont. at 13 (holding that twenty-three year period of nonuse raised a presumption of intent to abandon); *Holmstrom Land Co. v. Meagher Cty. Newland Creek Water Dist.* (1980), 185 Mont. 409, 424, 605 P.2d 1060, 1069 (“Seventy-five years of nonuse is sufficient to provide ‘clear evidence’ of

⁴ The Master noted that “there is no direct evidence of the date when the Woolston pump station was retired from use.” (CL 10P). However, the Master found that after construction of the 24” transmission line in 1948, “the Woolston pump station would not have been needed.” (CL 10P). Substantial evidence supports the conclusion that the Woolston pump station was retired before 1948. Part of the Woolston pump station’s water supply came from the Yaw Yaw Ditch. (FF 36B). After the Yaw Yaw was abandoned, the Woolston pump station would have lost this source of supply. In addition, the 1971 General Plan describes the Woolston pump station as one of the “oldest water systems in Helena” and refers to the pump station in the past tense, noting that it was located “in the vicinity of the fairgrounds and the present Woolston reservoir.” (Exh. AE at 6).

abandonment.”). The burden shifted to Helena to present “specific evidence explaining or excusing the long period of non-use of the particular water rights on the specific property.” *Skelton Ranch, Inc. v. Pondera County Canal & Reservoir Co.*, 2014 MT 167, ¶ 53, 375 Mont. 327, 328 P.3d 644.

The City has produced no evidence that it ever acquired, constructed, or maintained diversion structures that would have enabled it to make use of the 0.6 CFS difference between the decreed quantity and the capacity of the Rimini Pipeline. It has produced no engineering study containing an assessment that the excess is reasonable for foreseeable future use or evidence that it maintained facilities connecting the excess to an emergency or supplemental water supply. The City is not entitled to a presumption of non-abandonment of .6 CFS under Section 85-2-227(4). The City has produced no evidence that it ever intended to increase the capacity of the Rimini Pipeline or create additional diversions.

The Master did not err in finding that Helena abandoned 0.6 CFS, the difference between the capacity of the Rimini Pipeline and the decreed quantity. These findings are supported by substantial evidence, do not misapprehend the effect of the evidence, and the Court is not left with a firm conviction that a mistake has been made.

CONCLUSION

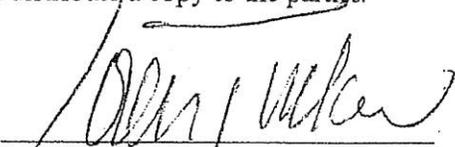
Section 85-2-227(4) changes the burden of proof for abandonment in cases involving municipalities that satisfy certain criteria. This statute affects a change in procedure rather than substance. The master erred when he held that it does not apply in this case. Helena maintained a diversion structure for future use of its rights, conducted a study finding that the amount of the right is reasonable for future use, and maintained facilities for use of the water for emergency purposes. This evidence established a presumption that the City did not intend to abandon 7.35

CFS. Skinner failed to rebut this presumption. Helena did not present evidence to avoid abandonment the difference between the 13.15 CFS capacity of the Rimini Pipeline and the 13.75 CFS decreed. The Master correctly found that the City abandoned the 0.6 CFS.

NOW THEREFORE IT IS HEREBY ORDERED as follows:

1. The Master's Report is hereby partially reversed and partially adopted as described above.
2. The water right abstracts for claims 41I 89074-00 and 41I 89075-00 shall be corrected as described in this Order.
3. The Clerk of Court will please file this Order and distribute a copy to the parties.

Dated: April 15, 2016


LOREN TUCKER
Water Judge



CONSTRUCTION FIELD REPORT

Project Name: NCMRWA Segment W3 Shelby to Cut Bank

Report Date: 6/12/2016

Owner: NCMRWA

Project Location: Shelby to Cut Bank, MT

KLJ Project No: 4611005

Contractor: Downing Construction Inc. & Central Excavation Inc.

Reporter: Nate Young

Weather & Site Conditions

- Mostly sunny throughout the week with daily highs from 72-90°F.

Downing Construction Inc.

- The week of June 6th, Downing Construction installed 16" water main from sta. 939+20 to sta. 966+58, as specified in the construction documents. This included placing ARV manholes at sta. 940+65 and sta. 952+33, and also connected to the road bore at sta. 939+20 and sta. 940+10.
- The week of June 13th, Downing Construction plans to continue installing 16" water main starting at sta. 952+33 working east.

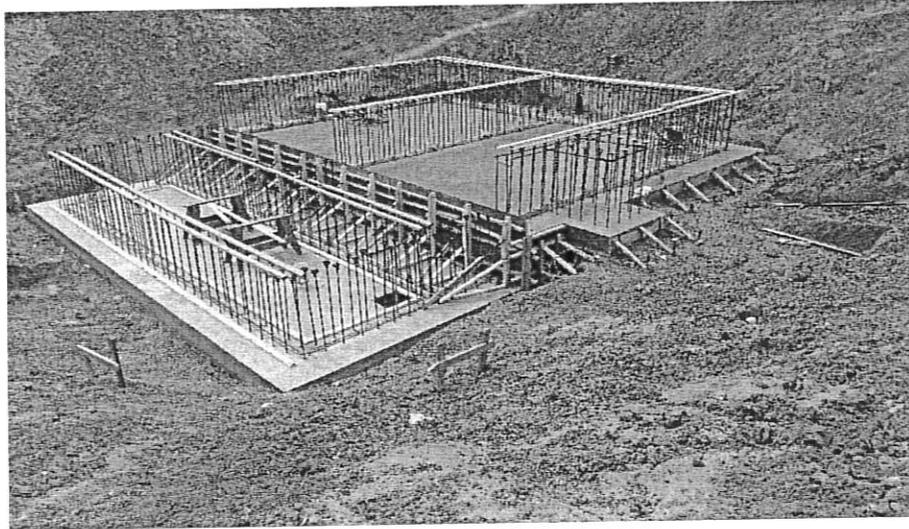
Central Plumbing & Heating Inc.

- The week of June 6th, Central Excavation performed final grading of standpipe access road. They also started pipe and fittings installation at the Stand Pipe but ran out of pipe on Tuesday, so they ended work for the week.
- On Tuesday, the 7th, Detailed Construction (Central Excavations concrete subcontractor) finished constructing forms and tying rebar for the pumphouse lower level foundation. The following day the lower level foundation was poured and finished by Ivers Construction. Detailed Construction spent Thursday removing the lower level foundation form work.
- The week of June 13th, Detailed Construction plans to be back on Tuesday of next week to begin construction of foundation walls form work. Central Excavation plans on resuming work at the Stand Pipe on Monday.

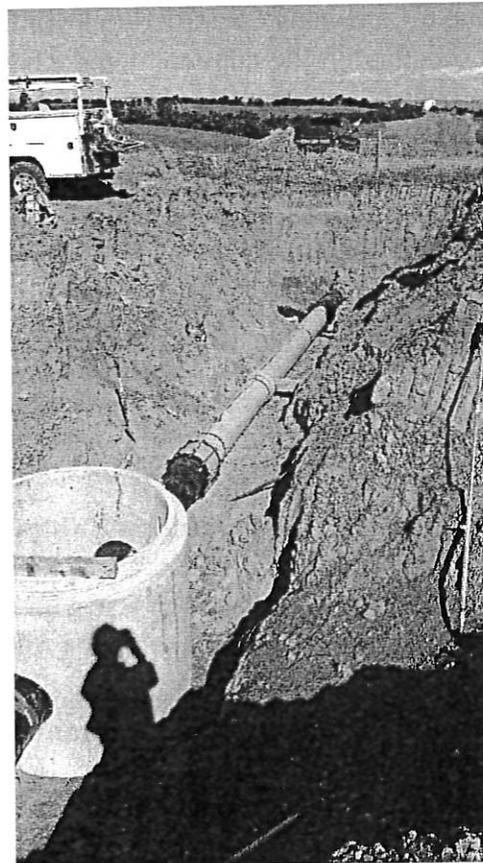
Construction Pictures



Pumphouse Lower Level Foundation Pour



Watermain Installation



RECEIVED
JUN 13 2016
CITY OF SHELBY

June 13, 2016

Shelby Civic Center
669 Park Ave
Shelby Mt, 59474

Re: Mary Whitt
724 2nd Street South
Shelby Mt 59474

To Whome it may concern;

Approximately five years I have been employed as a janitorial cleaning employee at the civic center,

I have decided it is time to make other arrangements so the City can find other person or persons to do the cleaning at the civic center.

I did mention to Cindy I would stay on until some one is found to take on the job, I would like to thank the city for giving me the opportunity to work for them, and I will continue to support the civic center.

Sincerely;

Mary Whitt

TEMPORARY PARKING PERMIT

Trailer Type	1998 Aljo 23' camper trailer
Name	Glenn Kurkowski
Address	111 E Richland Ave
Phone #	(406) 460-0290
Date(s) Valid	06/07/16—06/10/16
Permit Number	2016-009

Larry Bondarud MAYOR

CONDITIONS OF THIS PERMIT:

1. *Valid ONLY for date(s) indicated.*
2. *Must be displayed while parked at all times.*
3. *The acceptance of this permit relieves the City of Shelby of any responsibility for damages to or loss of vehicle, its contents or accessories from any cause whatsoever.*

CITY OF SHELBY

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Shelby, MT 59474

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