

# MINUTES OF THE CITY COUNCIL OF LAUREL

September 21, 2010

A regular meeting of the City Council of the City of Laurel, Montana, was held in the Council Chambers and called to order by Mayor Ken Olson at 6:30 p.m. on September 21, 2010.

**COUNCIL MEMBERS PRESENT:**

Kate Hart	Doug Poehls
Chuck Rodgers	Mark Mace
Vacant	Chuck Dickerson
	Norm Stamper

**COUNCIL MEMBERS ABSENT:**

Emelie Eaton

**OTHER STAFF PRESENT:**

Sam Painter	Chad Hanson
Kurt Markegard	

Mayor Olson led the Pledge of Allegiance to the American flag.

Mayor Olson asked the council to observe a moment of silence.

**MINUTES:**

Motion by Council Member Poehls to approve the minutes of the regular meeting of September 7, 2010, as presented, seconded by Council Member Dickerson. There was no public comment or council discussion. A vote was taken on the motion. All six council members present voted aye. Motion carried 6-0.

Motion by Council Member Rodgers to approve the minutes of the special meeting of September 14, 2010, as presented, seconded by Council Member Hart. There was no public comment or council discussion. A vote was taken on the motion. All six council members present voted aye. Motion carried 6-0.

**CORRESPONDENCE:** None.

**PUBLIC HEARING:**

- Water rate increase – additional public hearing.

Mayor Olson stated that tonight's hearing is the second water rate hearing and the record prepared during the first hearing remains part of this proceeding. Evidence presented at the first hearing does not need to be repeated to the council for the record. He stated that he appointed Kris Copenhaver as the hearing official to conduct tonight's meeting, and he turned the additional water rate hearing over to Ms. Copenhaver at this time.

Ms. Copenhaver stated: "Thank you, Mr. Mayor. Good evening. My name is Kris Copenhaver and I will be conducting the municipal rate hearing tonight. Before we do begin, I would just like to give a brief outline of how I expect this meeting to be conducted this evening. First, there will be a presentation by the applicant in this matter, the Laurel City Staff. Next, I'll encourage evidence to be presented by the public. There were previously written documents that were provided to the city clerk. Those are letters from individuals that are posted outside, I believe near the agenda in the reception area there, for review. So if you would like to look through those, there were five letters that were presented prior to this evening's hearing." [Letters were received from Willi and Cheryl Gabriel, Stanley and Lea Ann Pulver, an anonymous person, Daryl L. Carpenter, and the Montana Consumer Counsel. Copies are attached to these council minutes.] "As to oral evidence, I will encourage public testimony, starting with the proponents, those who are in favor of the water rate, followed by the opponents, those who are not in support of the matter. If you do have written materials that you would like to be considered as part of the record, please present those documents during your testimony. If you prefer to offer written testimony instead of speaking tonight, you may do so by taking a turn at the podium. Anyone who wishes to speak in support of his or her position shall be allowed three minutes to present evidence. After everyone has had an opportunity to present evidence, if there is anyone who would like to present a closing argument, you will be allowed an additional three minutes. At the end of the testimony and the argument, I will close the municipal rate hearing. No further comments or argument or evidence will be presented to the city council

once the municipal rate hearing is closed. So if you wish to be heard, you must do so before the public hearing is closed. I would like to thank you in advance for your patience and your respect toward the others who are presenting evidence this evening. So if we could begin please with the Laurel City Staff's presentation."

Chad Hanson, Great West Engineering, stated that he is the on-call engineer for the City of Laurel. He works closely with the city on a lot of the infrastructure needs and planning. For tonight's additional hearing, the city asked him to put together a visual presentation to give to provide some background and how the rates were calculated. Chad explained that the city operates the municipal water and sanitary sewer and solid collection as enterprise funds. Those particular city departments have to act independently and can only be financed by the fees and rates collected. Enterprise funds cannot use any of the General Fund tax dollars or mill levies. They essentially have to run just like a business, so that is why there are water, sewer and garbage rates. The process used to calculate the water rate is based on a concept using equivalent dwelling units, which is accepted in the industry and with state funding agencies. The concept is based on the premise that a 3/4-inch service line, which is the size of the typical residential line, is one EDU, or equivalent dwelling unit. As lines get larger, each service line is charged proportionally based on a cross-sectional area of the services. For example, a 1-inch line is 1.79 times larger and a 1 1/2-inch is four times larger, etc. At the time of the water calculations, the City of Laurel had 2,667 water services that calculated out to 3,362.43 EDU's. To calculate the water rate, the city first tried to assess the fixed costs in the water system. Most of the fixed costs are related to bonds and loans that were used for infrastructure improvements. In 1997, the city had to replace the trunk lines that run by the refinery coming from the Water Treatment Plant. In 1998, the city built a new clearwell and chlorination system at the Water Treatment Plant. In 2003, the city had to build a new intake structure in the main channel of the river. In 2009, they completed rehabilitation of the filters to increase the capacity of the plant because the filters were at the end of their useful life. Last spring, the city installed new high service pumps at the Water Treatment Plant and did some distribution work. Chad explained that there is also a depreciation factor, which is essentially a reserve or replacement cost, because there are other areas in the Water Treatment Plant, like the sedimentation basins, that need to be replaced in the near future. The city is trying to build up a fund. There are fixed O&M costs, which include, permits, testing, and things that do not change. The State's testing requirements for the Water Treatment Plant have to be done whether one gallon or 100 million gallons run through the plant, and the costs are fixed and never based on the volume of water. The PowerPoint presentation highlighted some of the improvements, such as the clearwell building, chlorination unit, the old intake in the river and the new intake and included some photos from the projects. Chad stated that the base rate for the water was based on the fixed costs calculated. The calculation came out to \$360 per year per EDU, or \$30 per month per EDU. Applying that back into the EDU table, a 3/4-inch service equal to one EDU is \$30 per month. One-inch service is \$53.70 and the calculation continues up, based on the conversion factor. In addition to a base rate, the city uses a common method where there is a base rate plus usage, which is a cost per 1,000 gallons. To determine a cost per 1,000 gallons, the estimated O&M budget was reviewed. That was not the fixed costs because, hypothetically, producing more water requires more employees, more time, more chemicals, etc., so those costs are reflected by the volume and go up and down by the volume of water produced. The average annual usage at the time of the calculation was 639,041,385 gallons per year. Dividing the O&M budget by the production and 1,000 gallons came out to \$1.80 per 1,000 gallons of usage. Chad showed a comparison of the City of Laurel's rates to similar communities with water treatment plants, because they are significantly more costly than groundwater wells and require more treatment. Taking the average usage of 6,000 gallons, which is the average number that is used industry wide, Laurel's rates are pretty high compared to similar communities like Miles City, Forsyth, Colstrip, etc. Billings is a terrible example because Laurel has 3,300 EDU's and Billings has 33,000 plus EDU's, so Billings can spread the costs over a significantly larger population even though they run the exact same treatment plant. Billings has the same training and the same requirements, but they just add more people and more chemicals and spread the cost out. Compared to similar communities with water treatment plants, Laurel's water rates are pretty high, but the debt load that is carried for those necessary improvements requires the rates.

Chad stated that, in addition to the base water rate, a bulk water rate was calculated. The need for the bulk water rate was identified based on several factors. The fact of the matter is that Laurel's system has limited capacity. The Water Treatment Plant can produce so much water, the storage tank has a finite capacity, and large volume users, such as bulk resalers, put a disproportionate usage on the system. In the summer, a resaler uses about 2,000,000 gallons per month, as opposed to typical residents who use 8,000 to 10,000 gallons per month. In addition, the resale of water is not allowed by city regulations without "a service agreement, contract, or applicable rate schedules," as per city regulations in the Rules and Regulations Governing Utility Services and Streets for the City

of Laurel, Montana. Section 11.3: Resale of Water states: "The City's water rate schedules cover the sale of water for the sole and exclusive use of the customer. Water service shall be used by a customer only for the purposes specified in the service agreement, contract, or applicable rate schedules. Customer shall not re-meter, sell, or permit any other individual to use such service or secure water through customer's service line by hose or other devices for the purpose of supplying water to the individual's property without first obtaining written permission to do so from the City." Chad stated that the rules and regulations were adopted in 1999, and the city staff is required to run the city based on the rules and regulations.

Chad stated that the base rate covers debt related to the Water Treatment Plant and affects every drop of water going through the system. The usage rate does not consider the debt, only the O&M of the city. Based on the rules and regulations, the city staff reviewed that and had a huge concern that individual service agreements or contracts for bulk water resalers could be unfair and could be negotiated differently every time. There were no guidelines. Consequently, it was recommended to develop applicable rate schedules, per the city regulations, and at the same time set the bulk water rate equal to the average cost for Laurel residents considering the base rate and average usage. The average cost per resident is \$30 per month base rate, plus \$10.80 per month usage (6,000 gallons as an average) for \$40.80 per month. Dividing \$40.80 by the 6,000 gallons comes out to \$6.80 per 1,000 gallons. That is how the bulk water rate was calculated. The PowerPoint presentation showed a comparison of the bulk water rates for the same communities as he previously compared for water rates. While the City of Laurel's water rate is high, the bulk water rate is right in the middle. If Billings is out of the equation, it is almost exactly the average. Chad stated that the Public Works Department would enter some testimony at this time.

Kurt Markegard, Public Works Director, continued the PowerPoint presentation and spoke regarding some comments and questions asked at the last public meeting relating to how the system is run.

The first question: Is there any stimulus money to offset the costs? Kurt stated that the City has made every effort to obtain all available grant funds to help offset the costs of improvements to the municipal water and sanitary sewer systems. In 2004, a \$500,000 CDBG grant was received for the Phase 1 wastewater collection system project. In 2006, Phase 1B of the wastewater collection system project received \$500,000 in TSEP funds and a \$100,000 DNRC grant. In 2008, Phase 2 of the wastewater system improvements project received a \$750,000 TSEP grant and the first stimulus funding of \$390,700 for the water and wastewater facilities. The engineering firm asked the State for that money and city staff went to Helena to request the money. At that same meeting, the city also asked for water stimulus funds, which were not received. The State declined the request and there was no available funding for Laurel's water system project. In 2010, the Phase 1 water system improvements project received \$625,000 in TSEP funds and a DNRC grant of \$100,000. Kurt again stated that stimulus funds of \$390,700 have been received to offset the costs.

The second question: Is it legal to fill water tanks from a neighbor's garden hose? Kurt stated that there were questions regarding where people would get their water if the standpipe shut down. According to the Rules and Regulations, it would not be legal. Section 11.3 stipulates that a person cannot run a garden hose or anything else to fill their tanks or their neighbor's tanks.

The third question: What if the new rates went into effect, would there be lower usage? Kurt stated that the city is concerned about residents not being able to water lawns, etc. He stated that the pumping records for water pumped straight out of the plant were reviewed. Prior to the rate increase in January 2010, the plant pumped out 35,930,000 gallons. After the rate increase, it went up 9.4% or 3,380,000 gallons, and the increase continued until May. In June, there was a decrease of 1,020,000 gallons, but the plant was already pumping out almost 100,000,000 gallons of water by June, due to lawn irrigation, etc. There were small declines of 1%, 1.1%, and 2.0%, but that is not substantial compared to how much was being pumped out. When pumping out 100,000,000 gallons, there can be a fluctuation of 1 to 3%, depending on rainfall. If it rains, people do not water their lawns. Overall, the plant pumped 684,202,009 gallons in 2009 and has pumped 550,612,010 gallons to date. Consumption has increased 6.5%, even though the rates went into effect.

Susan Huntoon interrupted and asked if she could ask a question.

Kurt stated that would be up to the Hearings Examiner.

Susan asked if she could ask a question about some of the figures.



The Hearings Official stated that, at this point, the city was presenting the evidence and it was not anticipated that there would be open dialogue. She asked Ms. Huntoon to wait until the presentation was done.

Kurt spoke regarding the misconception that the city provides the service right to the tap for residents. He explained that developers are responsible for installing the utility extensions for new subdivisions at their cost. If a new subdivision comes in, the developers put in the infrastructure for water, sewer, storm water facilities, curb, gutter, and sidewalks. Individual service lines are the responsibility of the landowners from the water main to the residence or business. New services are charged a system development fee to connect to the system. When people apply for a building permit to build a home, they have to pay a plumber or the developer to hook up their water system from the street or the curb box to their house at their cost. The city utility does not provide that service. The property owner also has to pay \$1,236.00 for a ¾-inch meter just to hook up to the city's system. The cost of the meter goes up with each size of meter, and a 4-inch service tap would be \$7,000.00.

The Hearing Official asked Kurt if he would be willing to entertain a question at this time, and he agreed to do so.

Susan Huntoon asked why there was an increase in water usage in February and March.

Chad Hanson explained that the unusual spike in February and March was related to the refinery doing fire testing and building its new tank. The rest of the consumption seems to be going up about 10 percent across the board. It has been down 1 to 2% this summer, but it has been unusually wet and rainy compared to last summer, and the irrigation is a huge deal. Comparing 40 million gallons versus 100 million gallons includes a lot of irrigation.

Bob Graham asked if there were any records kept as to how much the standpipe went up or down.

Chad stated that this is every drop that came out of the treatment plant.

Bob asked if there any records are kept for rural use at the standpipe.

Chad stated that records are kept, but he did not know whether someone's individual service, usage and bill, could be entered into the public forum without their permission. He would want to check with legal counsel before doing so. He stated that consumption is all metered and recorded individually.

Bob stated that this reflects the city residents and does not reflect the main complaint, which is the standpipe. He asked again if that use has gone down. He stated that this is good for the city, but the majority of the people here are rural people, so he asked what happened there with the usage.

Kurt stated that the usage has not gone down and is actually staying pretty well the same. In fact, one month, the meters recorded that usage increased by 24,000 gallons. Consumption for the meters has not seen any real reduction since June.

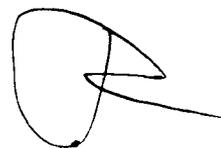
Bob asked which meters he meant.

Kurt stated that every water customer in town has a meter.

Bob Graham stated that he wanted to know about the standpipe. He does not care about the city. At this point, he sympathizes with the city, too, but he asked about the standpipe.

Chad stated that the meters that go to the services on the standpipe have not changed significantly in the last three months.

Hearing Official: "At this time I would like to go back on the record and open the municipal rate hearing. Unfortunately, as with any kind of proceeding where there are a lot of people involved, there are going to be rules. So I am going to briefly go through the rules to make this as efficient and effective and substantial as it can be this evening. First of all, for those of you who wish to present evidence for the council's consideration, I would advise that this is a recorded proceeding. So what that means is we are all wired up and everything that you say is going to be recorded. As you present testimony, I would ask that you speak loudly and clearly so that we can make the best of the recording of your testimony. I expect that the audience will be respectful to the speakers and



refrain from any comments, applause, shout outs, anything like that. Likewise, I expect that the speakers will be respectful during each presentation and keep their testimony truthful, relevant, and concise. I appreciate that each of you are here this evening. Obviously, it shows that you have a concern with this particular matter. Otherwise, you would not be here this evening. I understand that many of you are very passionate about your position; however, I am going to advise that this is not the time for personal attacks, or any kind of personal commentary. This is the time to present evidence with regard to your position regarding the water rates. Everyone who does want to speak tonight will be allowed to. As it is anticipated with as many folks who are here tonight that there will be several who want to present testimony, I am going to limit that to three minutes. However, once everyone has had an opportunity to present testimony, if you want to present a closing argument as well, then we will go ahead and do another three minutes for each of you. If you do have written evidence, please wait your turn at the podium to present those documents so that they do become part of the record. When it is your turn to testify, I would ask that you approach the podium one at a time, introduce yourself by your full name and please give your legal address. If you are someone's agent or attorney or you are here representing the opinions of someone else in addition to stating your own name, please state the name of that person or parties whom you are representing this evening."

Ms. Copenhaver stated that she would begin with the proponents in this matter. She asked three times if anyone in support of the water rate wished to speak.

Not seeing anyone, she moved on to the opponents. Ms. Copenhaver asked if anyone who was not in support of the water rate wished to speak at this time.

Mary Wright, Montana Consumer Counsel: "Thank you Madame Chair. Mr. Mayor, members of the Council. My name is Mary Wright. I'm an attorney at the Montana Consumer Counsel headquartered in Helena. The Montana Consumer Counsel is a constitutional agency of the State of Montana given the charge to represent consumers in public utility matters before the Public Service Commission and to a lesser degree before bodies such as this. Madame Chairman, on August 3<sup>rd</sup>, our office submitted a letter with our position attaching a memo from our water rate design expert and I would inquire if that is in the record already or do you need another copy."

The Hearing Official stated: "As I understand Ms. Wright, it has been presented as part of the record but it's not posted out there for review."

Ms. Wright: "Since my letter and the memo will be in the record, I would just like to make a couple of points. We think that there are two fundamental flaws with the water rates that have been approved and are in place. The first is that State law requires municipalities to have rules regarding a number of things, including classification and reclassification of customers. In the material that I was provided, I did not find any such rules and we believe that the reclassification of the Fox Water Company is not in accord with State law or very good policy. The second point I would like to make is that, in many years of combined experience, we have never ever seen a variable portion of the rate that is different depending on where customers live. In other words, all of your base rate is supposed to recover your fixed costs and your variable cost should apply to all consumption. There's no basis that we can see for doing that. And I would be happy to answer any questions."

Ms. Copenhaver asked Ms. Wright if there was anything else that she would like to present this evening. Ms. Wright took a copy of the letter to Ms. Copenhaver.

The Hearing Official asked if anyone else wished to be heard in opposition of the water rate.

John Alke: "Madame Chair, my name is John Alke. I am an attorney with the law firm of Hughes, Kellner, Sullivan, and Alke in Helena, Montana. I am appearing here today on behalf of the Fox Water Company. I would ask your indulgence and I would ask the mayor to grant me a little more time than three minutes. It will take me probably five to seven minutes to make my presentation. The city was given about a half an hour to make its presentation and I believe I can be concise, but I do not think I can say what I need to say within three minutes."

The Hearing Official granted Mr. Alke's request for additional time.

John Alke: "Again, my name is John Alke. I am an attorney from Helena. The reason I'm here today representing Fox Water Company is my area of expertise is public utility ratemaking. For closer to 35 years, I have represented primarily the utilities that set rates. I very seldom ever represent the customer. I do occasionally and I have agreed to represent the customer in this case.

What brings me before you today is to point out to the City of Laurel with all respect, that the unlawful actions of the City of Laurel have damaged the Fox Water Company and has adversely affected the lives of its customers. You have utilized unlawful procedures and you have adopted an unlawful rate structure. I suspect the purpose of the hearing tonight is primarily to address the unlawful procedures. I am here to respectfully urge you to go farther. I'm here to urge you to remedy the unlawful rate structure you have attempted to impose or are attempting to impose upon Fox Water and return to a non-discriminatory rate structure you had before. Montana law requires all rates, whether you are an investor-owned utility, which is typically my clients, or a municipal utility. And one of the aspects of a lawful rate, a requirement of a lawful rate is to be lawful it must be non-discriminatory. What we mean is that when you set rates, you must treat all customers the same. You cannot pick and choose favorites. You can't pick and choose people who you don't like. You can't set rates on that basis. You cannot have ulterior motives in setting your rates. Your rates must fairly treat everybody the same and exact from everybody a fair measure of compensation. I reviewed the city's explanation of how it came up with the rate for bulk resalers. Basically, using my words, your argument is we are trying to prevent discrimination between the people who live inside Laurel and the residential customers who are not actually citizens of Laurel. There are two huge flaws with that rationale. Let me explain each one of them. First of all, the people, the citizens of Laurel, are not the same as the people who live outside the city. You provide no distribution facilities to them, and I know you're the engineer from the engineering company says, but main extensions are provided by developers. That's true, but they are given to you. They are contributing to you. You own the facilities. The developer pays for them, but they are your facilities, you own them, they become part of your infrastructure. You provide no infrastructure between the outlet at Fox Water Company and the many customers that they serve. The customers provide their own distribution mechanism. You provide no storage facilities. You provide critically no fire flows. One of the single largest components in the cost of providing service for any water utility, whether it is a municipality, whether it is a privately-owned water company, is the cost of providing fire flows. A significant portion of your reservoir size, a significant portion of your mains, in fact your whole system has to be designed to provide fire flows. It's part of your obligation as a provider of water service. In fact, if you don't, if you are not engineering for fire flows and you have a fire and someone's structure burns down, you will be sued for negligent management and operation of your system. A huge portion of the cost of providing a good water system is the cost and designing adequate capacity at every level to fight fires. None of that is provided to people who are not citizens of Laurel. Think about this. You have no obligation to provide water to the individual customers of Fox Water. They can't come to you and demand as a utility that you serve them. That is part of being a public utility, whether you are municipal or IOU. When you profess to serve, you are obliged to serve even if you may not choose to serve that individual customer. If they are within your professed service territory, you must provide them service. Are you claiming the non-residential customers served by Fox Water Company has people who you the city are serving? Think twice about that because if you go down that path, you are assuming a set of liabilities that I assure you, you do not want to assume. The customer in this case is Fox Water Company. The customer isn't the people to whom they resell water. Your own engineer described for you how the most significant portion of your costs of running the system is the cost of the infrastructure. That's the demand cost. The commodity costs, and what we typically call commodity costs are the variable costs. It's the power to run the pumps. It's the chemicals you put in to treat the water. That's your typical commodity costs. You don't load up commodity costs with demand costs as you have proposed or as you are proposing to do in the bulk resaler water rate. That's patently discriminatory. You as a municipality do have the right to classify costs, but you have to classify them the same way for everybody. You can't say demand costs are to be charged as demand costs to the residential customers inside Laurel are going to be treated as commodity costs and billed volumetrically to the customers of Fox Water Company. The law prohibits unlawful discrimination. You are required to have reasonable rates and discriminatory rates aren't reasonable. Think about this as I said. One of the huge burdens you have as a municipality and a great expense you have is the facilities, the infrastructure, as your engineer said. That's why your engineer recommended to you that you use the EDU method for allocating demand costs. Take the service line that serves Fox Water Company. That's a 2-inch line. It doesn't matter whether there's 50 customers lined up at the standpipe, 500 customers lined up at the standpipe, or 5,000. The maximum amount of water that Fox Water can get from you is the circumference of the pipe, the diameter of the pipe. They may use more water in a year, but lots of your customers use way more water in a year than your residential customer, your typical residential customer. The comparison isn't between Fox Water Company and residential users. For you to comply with the standard, you must come up with reasonable rates, which means non-discriminatory rates, the comparison between Fox Water and your other commercial customers. You have lots of customers, or several I assume with 2-inch lines. They have the capacity to take the same amount of water out of the system as Fox Water does. You don't charge them a commodity rate that's four times as great. That's where, as I have tried to explain and hopefully

have explained, you have violated the law. It's an easy matter to fix. You simply abandon the unlawful rate structure for resalers. I'm not here to tell you or suggest that your overall costs of running the system aren't high. They are high. You are a small utility. That's not the issue and Fox Water hasn't made that the issue. The issue is, when you come up with a rate structure, the rate structure must be non-discriminatory and the rate structure you have imposed is highly discriminatory and I urge you on reconsideration to rethink it and to [unintelligible] and I'd be glad to answer any questions you might have and I thank you for giving me the extra time."

The Hearing Official thanked Mr. Alke. She asked if there were any other opponents to the water rate.

Peggy Gutierrez: "Here to represent J&J Water Service. We purchase our bulk water from Fox Water and we haul to the rural customers outside of Laurel here. And I know that since the rate increase, my bulk water bill has more than doubled and I kind of passed that on to our customers and we have lost quite a few, so it's not just about [unintelligible] and they can't haul their own. They have to buy their truck, they have to purchase a tank, the hoses and all that. It's not cheap, you know, for them either, so we're losing customers. We're not hauling as much water. I'm up here to oppose the water hike. Thank you."

The Hearing Official asked if anyone else wished to speak.

Wally McClain, 3555 Buffalo Trail: "I've been up here before. The reason, there's two main reasons I'm here now. At the meeting over at the Laurel High School, two issues were brought up. Of the issues that were brought up, these stood out with me. One was the fact that the council had presented by the mayor and the president did not know whether or not the Consumer Services Division in Helena had been invited to the rate increase. By virtue of the fact that they're here this evening, my guess would be that they weren't invited. The other issue that was brought up and the only reason I heard in defense of it was the fact that Fox supposedly is the only declared water hauler. Everybody there pointed out that there were other water haulers and the excuse is, well, they're the only ones who filled out the application. If you know that there are others, you cannot hide behind that as a legal entity. And then as one person pointed out, there's [unintelligible] a two-inch water pipe and they in the morning turned it on and let it run and then until they match Fox, they would still only be charged that other rate, which as the gentleman pointed out, is just discriminating. As a legal entity, as our city council, as our leaders, you guys should set the example. We shouldn't have to pick you apart. I'm surprised at every other meeting we've had on this issue, the first question that the mayor has asked is who here lives in the city and who lives outside? That wasn't asked this evening. You are the ones we come to for leadership. So if you made a mistake, acknowledge it, but to carry on with this and get everybody upset, that isn't fair. You people with this issue are not leading." (Applause from audience)

The Hearing Official asked who would like to speak next.

Mary Jo Devener, 1700 Ruffigy Road, Laurel, Montana: "Again a rural user. I had put together for the public hearing and I know that only two of you attended, not the public hearing, excuse me, the town hall meeting we had, two of you attended. I did put together all the calculations based on what water users, what water would be charged through a 2-inch, a 6-inch, a 10-inch meter versus what's being charged through the 2-inch meter at the pipestand. And the price was exorbitantly more. It was four times what it would be charged at another 2-inch meter anywhere else in the city. Again, that reinforces the discriminatory pricing and we brought that before you guys as a group. Also, in a couple different sessions where you had, where we spoke trying to get this public hearing reset again. It just verifies and I know I didn't bring those numbers with me tonight, but I hope you still have those numbers, and it does verify the discriminatory price. The other thing that I wanted to reinforce as well is what Mr. Alke had spoken about and what we had spoken with you about prior to this as well is the services that you provide. I understand fully the methodology, where the calculation of the water rate was determined. We don't assert that the calculation, however it came to, is arbitrary. There was obviously a purpose for that. But the fact is that by trying to charge all of the same rate for the city users versus what we're getting from the water pipe, your user or your customer, is for services that we don't receive. And we did talk about infrastructure before that you don't provide the infrastructure, but you do maintain the infrastructure and that's your variable costs or even your fixed costs, I don't know what you would consider those. But that maintenance of that system you own is your burden as the city. The maintenance that we have for our vehicles, for our tanks, for our water cisterns, for our pumps to get the water into our house, our pressure tanks, that's our cost, and just even, if you just consider just bringing that to our cisterns where we put our water, as the delivery cost and forget everything past that, including the pumps and the pressure tanks, that

cost is ours. And you guys don't provide that and you're trying to charge a base rate or an equivalent rate through Fox Water Service to us who are not customers of yours. And that base rate is exactly what Mr. Alke said you guys aren't covering the billing, you're not charging or covering the reading of the meters, you're not, excuse me, you're not providing the bills, you're not providing for the collection of the bills, and you're not providing for the bad debts. That's all a cost of Fox Water Service, so as I said, I don't argue that you guys looked at the way that water rate was calculated for Fox Water Service and believed it was correct. I think it's time to relook at that and say, are you guys sticking like a bone in your, like a bone for your dog, sticking to something you just decided without really considering all the facets of it and then be willing to change your mind where situations arise and information arises that shows that you may be incorrect. Thank you."

The Hearing Official asked who would like to speak next.

Karon Scovell, 706 Mulberry Avenue: "Hi, mayor and city council. I've never done this before. I just want to let you know I've been in town for sixteen years. I'm on a dead end street in that area. They currently they have fixed up 8<sup>th</sup> Avenue (Street) and I also would like to say, when I first moved here, the water tasted awful. I live here in town and it had an aftertaste. Well, you replaced the pipes and I have good water now. I drink out of the water system and it's really good. What I found is that when I first moved here, my water bill was \$17.00, just the water bill itself. Now it's \$32.00, just for me. I had four children with \$17.00 usage and now it's just me and I am paying \$32.00 by myself. It's gone up. I'm concerned about people who are on fixed incomes, people with two retirement incomes, and some who have more than one child. I've heard that some friends of mine have three digit money that they're putting out for just the water bill, like over \$100 for a family of more than just one child. I am really amazed at how many times that we have increased the rates. It just seems like whenever there goes a rate increase at least once a year. I do have a solution though; maybe it's already been taking place. I think we should have more enticing entitlements for people to come into the city limits. I don't think our city limits are big enough and they should be broader. I live right next door, in fact, in front of my house is the county and those people use water whenever, and but I am limited because mine is metered and so I watch what I water. I mean he does everything whether I, he has chickens and stuff, and they are now coming in my yard. So I called the city on that because he has fencing. He just never has put it up. I would like to see more pipe put down between the outer limits of the city so we can entice people to come into the city. We also need bigger businesses to come. We need to entice people to come in. They are not just going to come in because we are here. We needed some enticements. That way our tax rates will be lower. Not just a few of us that are putting out a big balloon for the many. I'm a big advocate wherever I travel, I talk about Montana. We have a lot to offer. We have good workers. We need somebody to say, ok, we want you here. This is why I'm here, even though the water rates. You talk about the different pipes and stuff, I don't understand all that. When I moved into my house, the pipe was already set, you know, so there's nothing much I could do. But we have come a long ways, you know, from just dipping ourself in the river and washing ourselves off like we used to do many, many, many years ago. Now we are getting to be a concise community and I think we have a lot to offer, but again, I would like to thank you for replacing the pipes and better water. Thank you."

Scott Reiter, from Laurel School District, 410 Colorado Avenue: "I've got a little different deal going here. But I'm here to speak about the base rate for the Laurel School District and the way it affected the school. Our base rates have increased over 235 percent with the recent increases. The School District pays \$32,711.70 in base rates on the seven-month period from April to October for base rates on just the water meters. This is a cost that is before any water is calculated being used. Our base rates have gone up during these months from \$1,980.39 to \$4,673.10 per month. We have been told that the base rate was for upkeep of infrastructure and to maintain the water system in Laurel, which would be the water lines and water plant equipment. My issue tonight is that on five of these service lines, we have two meters and on those five lines we are charged two base rates. The second meters on these lines are irrigation meters. They are there for the benefit of not paying sewer rates on irrigation water and it amounts to \$1,054.20 per month during the irrigation months. On residential houses, the sewer is averaged over the non-irrigation months and that number is used in the summer. Everything above that would be the irrigation. Using the 2009 water bills, our year round domestic usage at one of the five places, which is Graff School, is within \$75 year round every month. It doesn't fluctuate from winter to summer. South School is within \$44 year round. West School is within \$181 year round, including a spike in the winter month of December. With that one month removed, the West School was within \$97 all year long. It would seem that the School District's domestic water use is pretty even throughout the entire year. Why shouldn't the usage be averaged to save the taxpayers the extra cost of the base rates on those five meters? If we were being charged the extra base rate because the school district irrigates and the facilities use a



large quantity of water, what is the consumption rate charge of \$1.80 per 1,000 gallons for? We can't double the volume of water a 2-inch line allows simply by putting two meters on it. We still only get a single maximum volume of water through that 2-inch line. We don't dispute the need for a base rate charge on irrigation meters that have their own supply lines, as the infrastructure still needs to be maintained on those lines. However, on branched water lines where the irrigation meter lines meters shares the supply line with domestic water, the taxpayers are paying a base rate for both meters but only one supply line is maintained. In the end, we don't need to estimate the summer domestic usage because the meters are already in place and have been paid for from previous base rate charges. Why not just charge an accurate amount to the district for irrigation and domestic usage and stop charging the school district double on the lines in question? All I ask is for this council to be fair to the taxpayers of Laurel School District and not double charge a base rate for a single service." (Audience applause)

The Hearing Official asked who would like to speak next.

John Ostlund: "Good evening, Madame Chair and Mr. Mayor and Honorable Members of the Council. I am Yellowstone County Commissioner John Ostlund and I represent Laurel, which includes District 1. My fellow commissioners, Jim Reno and Bill Kennedy, are here tonight at the request of the citizens here. And I believe that from the testimony we have heard tonight, I think Mr. Alke's position represents a solid legal position. I think it also makes common sense. There is a rate that the city charges its residents that's associated with the water lines that supply the water for fire plugs, for the city infrastructure, for all of the equipment maintained under the roads and streets in the city. I think it's fair and appropriate to charge the water plant cost to produce the water, along with a reasonable profit, because I think that the city should make a little bit of money from the water plant. I don't, however, agree that the citizens of Yellowstone County, who use water through Fox Water and any of the other water services, should pay the additional rate associated with maintaining the lines under the city and the fire plugs and that. I think there's a good common sense argument and I would encourage you to at least give it some consideration. Thank you for your time." (Audience applause)

The Hearing Official asked who would like to speak next.

Bob Graham, 1200 Cedar Crest Circle: "I'd like to speak to the council tonight. Not so much about the water rates, per se, but your gentlemen here and lady should be here today to try to attract as much people and businesses to this community as you can. You should be uniting the community, and when I say community, I mean Laurel residents and rural residents who are citizens. The county is growing population. You should be doing everything you can to attract those people into this town to spend their money, to vote for the school elections, to participate in school activities, and support the things that we do in this community which makes this community such a beautiful place to live. But you're not. I have talked to many businesses throughout the city here, talked to cafes, and they say the business is off, not just because of the recession, because some of their best customers, who are rural people, are coming into their businesses saying, we're not going to support you anymore. We have to go to Billings to get our water and that's where we'll do our business. That's not unifying, it's dividing. I spoke as a retired teacher to many people about the school levies, because that concerns me. One gentleman says is a damn good thing they got the stadium built when they did because I'll never vote for another levy again. That seems to be a persisting attitude. Without the rural residents in the school election, we're not going to get them passed. So gentlemen and lady, I'm asking you to think about unity rather than disunity. Think about what you can do to build the City of Laurel. Thank you."

The Hearing Official asked who would like to speak next with regard to opposing the water rate.

Ron Reitler, 1691 Beartooth Drive and has a business downtown at 411 SE 4<sup>th</sup> Street: "Last couple meetings I'd like to say have been different than today's. All I really want to say is the last couple of meetings on this subject really, to be honest with you, the city council hasn't paid attention. Very few people that spoke at the other meetings got the respect I think you give tonight, let alone eye contact, doodling on your sheets at the other meetings were. I think that's very important. We took time out of our day to come and really just speak our piece. I think tonight you get the point because you certainly didn't before. I believe that your minds were made up when you first did this endeavor and I think tonight, I think hopefully the light bulbs came on to say that it is a serious matter and you may have jumped the gun a little bit and passed. So I do want to say thank you for paying attention tonight. Most all of you did give them the respect and get eye contact instead of just looking down at your feet, so just thank you again. I respect the situation tonight and this is a lot different environment. Thank you very much." (Audience applause)

The Hearing Official asked who would like to speak next.

Bill Kennedy, Yellowstone County Commissioner: "Good evening. We just want to ask, we have been able to share with the City Council of Laurel. We share the LUFSA, our fire service area. We have worked with road issues. We have a lot of folks that live outside the City of Laurel who are constituents of ours along with all of you that are constituents of Yellowstone County. We would like you to look at the rates. We're concerned about public health and safety. We've been working with the planning, as we put in dry hydrants, as we look at the fire and safety issue. We would hope that you would look at that, look at working with the folks in this area, and making sure that it is a fair rate. We're not looking to have you subsidize anyone. What we're doing is looking that it's fair across the board for everybody, and we appreciate working with you. Thank you, Mayor and Council." (Audience applause)

The Hearing Official asked who would like to be next.

Cindy Fox, 9407 Laurel Airport Road: "And I just would like to talk about the difference in volume that our standpipe has seen. And like the school system, I'll compare it from last year to this year. Last year in June compared to this year in June, we were down over a quarter of a million gallons. In July, we were down way over a half a million gallons, so our volume has gone down considerably."

Jeff Achten, 3542 River Road: "I live outside of Laurel at 3542 River Road. I've always considered myself as a Laurel citizen. My address is Laurel. Maybe I need to change it to Yellowstone County because I feel I have been discriminated against. I do not get my water from Laurel anymore. I go to Billings. I buy my groceries there. Thank you." (Audience applause)

The Hearing Official asked if there was anyone else who wished to present evidence this evening with regard to opposition of the water rate. She stated that this was the time. Once the meeting was closed, no other discussion will be had. This is the opportunity to present any evidence and any kind of closing argument. If anyone who spoke previously wanted to present their closing argument, she stated that this was the time.

Mike Oberg, 1065 Timber Wolf Trail: "I just want to say that I've been attending every one of these meetings since this rate increase came into effect. I think I just want to let you guys know that this is not a personal insult on you guys. Although we had felt that, I guess it all went up with what you said, that we were more a waste of your time than what your effort was. I really want you to know that's not the case. This has nothing to do with you personally. It's not a personal issue. It's a moral, ethical issue. And we ask that you look at this that way. These are all people here that would live in the City of Laurel had that opportunity been given to us, but it hasn't. And that's a shortfall on your planning department. There's a lot of people out there in these communities out here that could help this tax base if the forethought would have been put out there to incorporate them into your city. It has been said here many times, Laurel is smoldering away and it's because people aren't planning for the future here. People want to live here, but we see businesses closing up and people moving away. And this water thing doesn't help. So just think about what you've heard tonight and take the personal issue out of it. It's more about what's right and I thank you for your time." (Audience applause)

Jim Reno, County Commissioner: "I actually live in Billings Heights. I lost two neighbors to Laurel. They chose to live outside the city limits. They, too, would like to be represented by this body. They like to live in the city. We're bigger people than water. Let's use this to come back, look at the issue and do what's fair and I think we can start from here and in all frankly be better. I know the people around this table are fully capable of doing that and I thank you." (Audience applause)

Ray Scozzari, 625 Kenya Court, Billings: "I live outside the City of Laurel. I have a Billings address but I'm about halfway between Billings and Laurel and I'm on a cistern. And I used to come to Laurel here to get my water, but I don't anymore. I go to Billings to get my water. I can get the same amount of water for half the cost and when I did come to town here to get water, I'd stop over at ACE Hardware or maybe over to Hardee's or Taco John's and get a bite to eat. I don't do that anymore. That's money that doesn't come into this town anymore. You have to think of the people that are on fixed incomes. You know, it's costing us twice as much to get the water here as it did. You know, somebody mentioned how this town is stagnant. I moved out of Laurel about sixteen years ago, and I look at Main Street. It looks the same decrepit buildings today as it was



sixteen years ago or thirty years ago. You know, let's, where's the planning here? I don't see where there was any planning, you know. Nobody wants to, as far as I can see, nobody wants to do anything here. They don't want to come here. They don't want to spend their money. I don't anymore. I go to Billings. I hate going to Billings. I'd rather come here. I don't like going to the big city. I'd rather come here. Like I said, not only just to get water when I used to come here for water, I'd spend money around town. I don't do that anymore. It hurts the businesses here in town. So the town loses. You're not being fair. You know, people, you know, you supply the water to the residents here in town, but you supply the water to Fox's standpipe, and from there we have our own infrastructure. We have to haul our own water, we have our tanks, our own pumps, our own piping, but yet you are charging double the rates. It's not fair. Now I think you should think about that. If you want this town to grow, you're going to have to do some rethinking. That's all I have to say. Thank you." (Audience applause)

The Hearing Official asked who would like to speak next in opposition of the water rate.

Mary Jo Devener, 1700 Ruffigy Road: "Just one closing argument. One point that I would like to say in conclusion is that it truly is sad that we have laws in the State of Montana that need to be followed and that it takes a private citizen hiring an attorney to try and get those laws enforced. We've cited several laws, or several pieces of Montana Code, that applied to everything that occurred here and how the pricing was and the classification and it came to no avail through the whole time we've been arguing against the structure that you put in place. And it's just sad that in order to get that law enforced or to get the laws enforced that are put there to protect the consumers and the citizens of Montana, that someone has to reach into their own pocket, which you guys aren't doing into your pocket, to hire the attorney here. But you're not doing that. But we have to hire a private attorney in order to protect us utilizing the laws that are in place. So again, I would ask that when you're taking actions and something's brought to your attention that maybe it is some form of illegal action, that you look a little more closely at it before moving forward with it. So thank you." (Audience applause)

The Hearing Official stated that, if there is no new evidence, new testimony to be presented, then she would at this time allow anyone who has given evidence to give a closing argument if anyone wanted to speak.

Ron Reitler: "I own two properties, one downtown out in the County. I go on both sides of the issue, I guess. Downtown in the city, I don't have a problem with the new water rates. We know that we have to keep those pipes up and so in the city I think that's why you don't see in our audience tonight, very few in the city residents because I think they understand that they have to pay more when the infrastructure changes. And so I'm in the same boat. I don't have a problem with the business entity with my small line down there. But in the county is the big issue. We do have the expense, we have the operating expense of getting our water to us. So again just recognize that it's not the city residents that are really complaining about the water issues you can see tonight. And the great presentation initially was good, but most of that presentation as the other meetings were geared to the city residents. And rather than gearing your presentation to the city for the rural people, as you heard, we don't have a problem how it's calculated. There's going to be an increase. You have to pay for it. So again as I said before, there's two issues here and it's not the city residents. I'm happy to pay the increase. We know it has to happen, but it is the rural people that you really have to look at and it isn't fair. As everybody said, it isn't fair. We know it's not fair. You know it's not fair. You can't justly look at this thing and say that it's equal. So again thanks for your time and again, the city residents, I don't have a problem with that. It's part of living in the city and we would love to be annexed. I live very close. We're all up on the hill waiting the time that we can be annexed into the city and get water. I'm tired of my grass turning brown every year and this year it didn't, lots of rain. But thanks for your time. It's been a great meeting. Appreciate your time." (Audience applause)

The Hearing Official asked if anyone else would like to give a closing statement.

Karon Scovell, 706 Mulberry: "I'm going to do this. I live in town and I realize the rates are up but we're tired of them, too. But what we'd like to do is broaden Montana, I mean broaden Laurel. We want a bigger town and I think all these people are talking in the rural area, they want to be with us. So let's invite them in. Thank you." (Audience applause)

Hearing Official Copenhaver asked if anyone else wished to be heard in opposition of the water rate. She asked if anyone else would like to present some sort of a closing argument in opposition of the water rate and stated that it was the last chance. She again asked if anyone wanted to present any

kind of testimony or evidence or any kind of argument. She stated that, once she closed the municipal rate hearing, no further testimony would be allowed. She gave one more opportunity for anyone who opposes the water rate to be heard. Seeing none at this time, Hearing Official Copenhaver formally closed the municipal water rate hearing at 7:51 p.m.

Hearing Official Copenhaver asked the legal counsel for the city, Sam Painter, to explain what the council's options are now that the municipal rate hearing has been closed.

Sam Painter explained that a decision must be rendered thirty days after tonight's hearing. He stated that the record would be transcribed and the documents would be put together and the items would be circulated to each council member so they could study the issue fully. He stated that the council would be provided a copy of the previous hearing. Mr. Painter stated that the documents are also available to the citizens and the public. He stated that a copy fee would be charged.

Hearing Official Copenhaver thanked everyone and stated that she appreciate their patience and participation this evening.

At 7:53 p.m., Mayor Olson stated that the council would take a recess.

At 7:59 p.m., Mayor Olson called the council meeting back into session.

**CONSENT ITEMS:**

- **Clerk/Treasurer Financial Statements for the month of August 2010.**
  - **Approval of Payroll Register for PPE 09/05/2010 totaling \$172,910.45.**
  - **Receiving the Committee Reports into the Record.**
- Budget/Finance Committee minutes of September 7, 2010 were presented.
- Council Workshop minutes of September 14, 2010 were presented.
- Park Board minutes of September 2, 2010 were presented.
- Laurel Airport Authority minutes of July 27, 2010 were presented.
- Tree Board minutes of July 15, 2010 were presented.

The mayor asked if there was any separation of consent items. There was none.

Motion by Council Member Hart to approve the consent items as presented, seconded by Council Member Rodgers. There was no public comment or council discussion. A vote was taken on the motion. All six council members present voted aye. Motion carried 6-0.

**CEREMONIAL CALENDAR:** None.

**REPORTS OF BOARDS AND COMMISSIONS:** None.

**AUDIENCE PARTICIPATION (THREE-MINUTE LIMIT):** None.

**SCHEDULED MATTERS:**

- **Confirmation of Appointments.**

Laurel Ambulance Service:

Mayor Olson appointed Jackie Yamanaka-Williams to the Laurel Ambulance Service.

Motion by Council Member Poehls to approve the Mayor's appointment of Jackie Yamanaka-Williams to the Laurel Ambulance Service, seconded by Council Member Dickerson. There was no public comment or council discussion. A vote was taken on the motion. All six council members present voted aye. Motion carried 6-0.

- **Ordinance No. O10-03: An ordinance amending two sections of the Laurel Municipal Code titled “Bonfire prohibited” and “Smoking in hotel beds prohibited” located at Chapter 8 of the Laurel Municipal Code. Second reading.**

Motion by Council Member Mace to adopt Ordinance No. O10-03, seconded by Council Member Dickerson.

Susan Huntoon, 501 Cottonwood: “Could I have the changes read? What’s just been approved?”

Mayor Olson read the changes in Ordinance No. O10-03.

Susan Huntoon, 501 Cottonwood: “Thank you. I should have been more specific. I was only interested in the fire pit. And when you read that, did you say open fire pits are not allowed?”

Mayor Olson reread Section B. of the ordinance: “Approved or purchased outdoor fireplaces may be used per manufacturers’ specifications and in accordance with Section 307 of the International Fire Code as adopted by the city. No pit fires shall be allowed.”

Susan Huntoon: “Ok. I was just wondering why, is it Gary that put in all those restrictions on the smoking in rooms, was that his, was all those changes, were they done by the fire marshal?”

Mayor Olson stated that it was coordinated by the fire marshal and the fire chief.

Susan Huntoon: “Ok. I just wondered why he wasn’t willing to do that much with the fire pit ordinance. That’s all. He didn’t want to be bothered with regulations to allow people to have their home built fire pits. Am I hearing what I think I’m hearing or . . .?”

Mayor Olson stated that it is not the city’s intent to accept liability for fire pits.

Susan Huntoon: “Yeah, it’s in there. You read it that they do not accept that liability. It’s already in there. So the council is approving this, is that it, today? It gets approved, it gets approved today.”

Mayor Olson stated that was correct.

Susan Huntoon: “Yup. Thanks, Norm.” (She left the meeting at this time.)

Mayor Olson asked if there was any other public input. There was none.

There was no council discussion. A roll call vote was taken on the motion to adopt Ordinance No. O10-03. All six council members present voted aye. Motion carried 6-0.

- **Resolution No. R10-109: A resolution authorizing the Mayor to sign the final change order closing Phase 2A1 of the Laurel Wastewater Treatment Plant Improvements Project.**

Motion by Council Member Dickerson to approve Resolution No. R10-109, seconded by Council Member Mace. There was no public comment or council discussion. A vote was taken on the motion. All six council members present voted aye. Motion carried 6-0.

- **Resolution No. R10-110: A resolution of the City Council authorizing City officials to proceed with the purchase of a parcel of property located within the Solid Foundations Subdivision.**

Motion by Council Member Stamper to approve Resolution No. R10-110, seconded by Council Member Dickerson. There was no public comment or council discussion. A vote was taken on the motion. All six council members present voted aye. Motion carried 6-0.

**ITEMS REMOVED FROM THE CONSENT AGENDA:** None.

**COMMUNITY ANNOUNCEMENTS (ONE-MINUTE LIMIT):** None.

**COUNCIL DISCUSSION:**



Council Member Poehls stated that the Emergency Services Committee would meet on Monday, September 27<sup>th</sup>, at 5:30 p.m. Agenda items include discussion regarding the animal ordinances, an update on the medical director, and the fireworks issue.

Council Member Rodgers asked regarding the possibility of purchasing the Modern Auto building for the ambulance.

Mayor Olson stated that there has been some discussion regarding that and the possibility is being reviewed. He stated that some concerns have been brought forward. At the same time, the city is exploring the idea of building an addition to the FAP building in order to keep all of the emergency services at the FAP building. The building would be located on the east side of the FAP building in the millings parking lot. Mayor Olson stated the need to find a place to store the three ambulances, provide restroom facilities for male and female, as well as a director's office and a training room. He stated that the costs of both options are being considered in order to determine the best use of the tax dollars.

Mayor Olson advised the council that the city has been in the process of a complaint against the city for a trip hazard during one of the 4<sup>th</sup> of July events. The claim has been resolved and settled out of court.

Council Member Mace asked regarding the conditions of the claim.

Mayor Olson explained that it was a depression in the side street that the complainant contends was a reason for bodily harm. The case did not make it to trial, as MMIA took the case and it has been settled out of court.

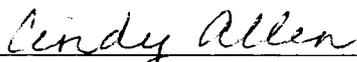
Mayor Olson asked the committee chairmen to meet following the council meeting.

**UNSCHEDULED MATTERS:** None.

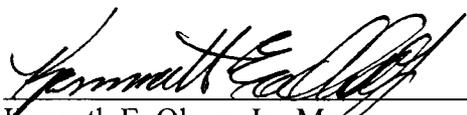
**ADJOURNMENT:**

Motion by Council Member Poehls to adjourn the council meeting, seconded by Council Member Mace. There was no public comment or council discussion. A vote was taken on the motion. All six council members present voted aye. Motion carried 6-0.

There being no further business to come before the council at this time, the meeting was adjourned at 8:18 p.m.

  
Cindy Allen, Council Secretary

Approved by the Mayor and passed by the City Council of the City of Laurel, Montana, this 5<sup>th</sup> day of October, 2010.

  
Kenneth E. Olson, Jr., Mayor

Attest:

  
Cathy Gabrian, Deputy Clerk

# Montana Consumer Counsel



Robert A. Nelson  
*Consumer Counsel*

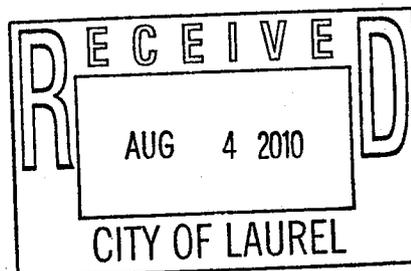
Frank E. Buckley, *Rate Analyst*  
Lawrence P. Nordell, *Economist*  
Mary Wright, *Attorney*  
Paul Schulz, *Rate Analyst*  
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Suite 1B  
PO Box 201703  
Helena, Montana 59620-1703

August 3, 2010

Hon. Kenneth E. Olson  
Mayor  
City of Laurel  
115 West First Street  
Laurel, Montana 59044



Re: Water Rates in Laurel

Dear Mr. Mayor:

The Montana Consumer Counsel (MCC) has been contacted by a number of rural users of the City of Laurel water utility as well as businesses on the system. MCC is the constitutional agency charged with representing the interests of utility ratepayers before the Public Service Commission and to a more limited extent the customers of municipal utilities. At issue is the apparent reclassification of Fox Water Service as a reseller serving customers in the rural areas and the large increase in the volumetric rate imposed on the reseller and its customers.

Based on documents we have obtained, we understand that until the recent rate change, customers were classified according to the size of their connection, that is, all customers with the same size connection were charged the same rate. We also understand that Fox Water Service was reclassified as a reseller and is now charged at a much higher volumetric rate than other customers with the same size connection. We also understand that the volumetric rate is an attempt to charge the equivalent of base rates to customers of Fox Water who do not receive the same services as customers who pay the base rate.

State law authorizes municipalities to "regulate, establish, and charge, as it considers proper, rates, charges and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems." Section 69-7-101, M.C.A. That same section requires that all rates, charges, classifications must be reasonable and just. In addition, the statutes require that a municipality adopt rules for operation of the utility, including the classification of users. Section 69-7-201, M.C.A.

MCC has examined the rules and regulations for operation of the Laurel water utility as revised in 2003, and found no provision for classification of users. In the absence of rules to justify the apparent reclassification of Fox Water Service, it appears to be inconsistent with the requirement that rates, charges and classification must be just and reasonable. One justification offered is that because of Fox Water's high consumption of water, it places inordinate wear and tear on the system. Although reduced consumption due to a large rate increase may reduce some operation and maintenance expense, it is unlikely that such a reduction would make up for revenues lost due to declining sales. As the water utility loses those sales volumes, it will be in the position of having to recover the same level of revenues from fewer customers, leading to the need to increase rates to remaining customers.

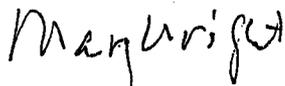
Volumetric charges are normally intended to capture the costs that vary with production. MCC is not aware of any instance where the volumetric rate itself changes for increased consumption except for inclining block rates that apply equally to all customers. Laurel appears to be attempting to capture base costs that do not vary volumetrically, and may not pertain to those customers, in volumetric rates.

MCC's rate design expert, who has testified many times about utility rate design, has evaluated the information provided to us, and concluded that the volumetric charge should be the same for all customers. His memorandum is attached.

MCC has no reason to conclude that the water utility's revenue requirement is not appropriate. Based on the information we have, however, the current rate design is flawed and inconsistent with the requirements of state law. The City of Laurel should reconsider its rate design and adopt a new one that corrects both the apparent reclassification of Fox Water Service and the disparity in the volumetric charge.

Please let me know if you have questions or would like more information.

Sincerely,



Mary Wright, Attorney  
Montana Consumer Counsel

Cc: City Council  
City Attorney  
Fox Water Service  
Commissioner Brad Molnar

Memo

To: Mary Wright, Attorney, MCC

From: Larry Nordell, Economist, MCC

Date: July 29, 2010

I have looked at the information available to me about the water rate dispute in Laurel, in which the city proposed to charge a volumetric rate to resellers of \$6.80 per 1000 gallons, compared with a rate for water delivered to users within the city system of \$1.80 per 1000 gallons. I understand the justification for this is that the consumers of water to whom the reseller delivers do not pay the city's base rate, which depends on connection size.

The city argues that the reseller consumption rate, that is, the volume of water used by those who purchase water from the reseller, places a tremendous burden on the City's water system. By contrast, the consumers argue that they bear additional costs of delivery (or pickup) as well as the costs of installing a cistern and pump, as well as pumping costs, and that they must pay higher fire insurance premiums because of the lack of hydrants.

The consumers further argue that the city's costs are lower for them because there is no city delivery infrastructure to serve them (eg mains, etc) or hydrants.

My initial conclusion from this review is that the base rate should be designed to recover the fixed costs associated with the mains, meters and taps, and that the volumetric rate should be designed to cover the costs of acquiring, pumping, treating and delivering water. A gallon of water run through the reseller's tap costs the city neither more nor less than a gallon run through a residential or commercial tap. If the volume of water being delivered in total by the city (not just through the reseller) is putting a strain on the city system, and costs are not being recovered, then the volumetric charge needs to be raised across the board. I see no justification for a discriminatory volumetric charge that attempts to apply a back door base rate to consumers who do not receive the services covered by the base rate, on the assumption that it is their consumption, and only their consumption, that is stressing the system.

I do not have access to data and cost figures that would permit calculation of an appropriate across the board volumetric charge.

It may be that for some portion of the consumers currently taking water through the reseller, the city could extend its mains and provide metered service and hydrants at a cost acceptable to these consumers. The cost would almost certainly be higher than the average cost for existing customers, so it likely would be unfair to existing customers to simply average the costs of expansion in with all existing capital costs. The creation of a water district with its own monthly base charges would avoid accusations that existing customers would be subsidizing the expansion. However, unless there were clear differences in costs of delivery, the volumetric charges should be the same for all users.

Presort Std  
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*Thank you for  
the opportunity to register  
our voice.*

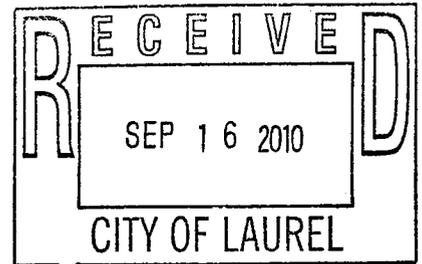
Willi & Cheryl Gabriel  
620 5th Ave  
Laurel MT 59044-1902



*yes, we do  
protest any increase in  
water pricing. Is not the  
River level sufficient? Should  
life's necessity be sold at  
inordinate levels of pricing - to  
subs like ourselves? 2 dependents  
on monthly Social Security totalling  
\$663.00*

RECEIVED  
SEP 13 2010  
CITY OF LAUREL

**RE: water stand pipe rates.**

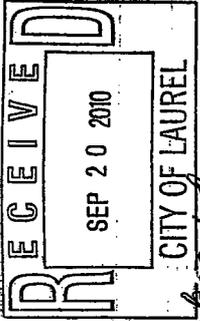


**I keep hearing how the city does not have to bill stand pipe customers ,collect past due bill or read meters for these customers.**

**The Stand pipe is pay as you go. The Stand pipe owner does not send bills or read meters or send past due bills to stand pipe users.**

**The stand pipe owner collects the money before one drop of water is dispensed.**

**Maybe The MMC should look at how the Stand pipe owner sets there prices.**



13 Sept 10

Mr. Martegard,

This is in response to the letter from the City of Laurel. I have measured water & sewer bills from near and far, and we pay the highest rate! It is grossly unfair!

I know of many single households aged with fixed income, or, lower income people who can barely meet this rate. There is injustice in balancing the rate and income to this city on their backs.

I truck for a living, and as such, am at my residence for less than 10-12 days a month. I, of course, shower and wash clothes. How I can use 6000 gal. of water is beyond me. I have been told to use the water, because I pay

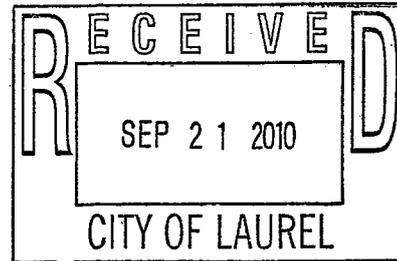
for it anyway! It smacks and suggests of encouraging misuse perhaps the city should look at the far sale sign in our city and wonder if motivated to the moon could be connected to the less than judicious rate charges.

I believe we should be allowed to have a moderate base and decide for ourselves how much water to use. It would be a free market approach and perhaps we'd actually see the greening of Laurel!

Thank you for considering my opinion and desires.

Sincerely  
Larry L. Carpenter  
4085 N 2nd St.  
Laurel, Md.

Sept 20, 2010



To Whom It May Concern:

We would like to go on recorded as inpossing the water rate increase, whitch looks to be tripled increase.

We are a signal family dewling and live on a fixed income whitch makes it a real hard ship .

We depend on a cystern for our water supply and being handycap we have to hire someone to haul our water.

sincerly,

A handwritten signature in cursive script, appearing to read "Stanley Pulver".

A handwritten signature in cursive script, appearing to read "Lea Ann Pulver".

Stanley Pulver

Lea Ann Pulver

City of Laurel.

There are a few things to consider with the water increase.

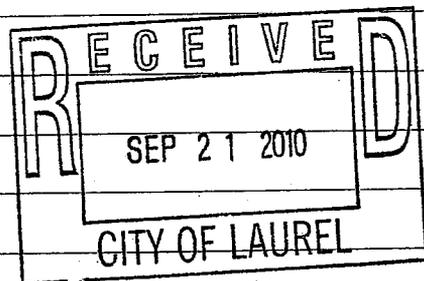
As a Real Estate Agent buyers are more reluctant to purchase in Laurel because of the high water rates. Also owners of rental's - duplexes etc have to pass these increases on to the tenants - With our economy all of these increases put an added burden on everyone -

There has to be an alternative remedy - Can't water lines be expanded -

It's come to my attention that there are only 3,545 water hook ups with a 3/4 inch line - This is unbelievable for a town our size -

I object to these increases -

Tatyp Mandur



## Additional Water Rate Hearing City of Laurel, Montana

September 21, 2010

### Enterprise Funds

- Section 7-7-4424 of the Montana Code Annotated (MCA) requires that municipal water, sanitary sewer, and solid waste funds be “self supporting”.
- Rates, fees, and charges must be sufficient to:
  - Pay when due all bonds and interest on the bonds for the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and
  - Provide for all expenses of operation and maintenance of the undertaking, including reserves.

## Water Rate Calculation

### Equivalent Dwelling Units (EDU's)

- Considers ¾” Service Line (typical residential connection) as 1 EDU
- EDU's increase proportionally with area of service connection

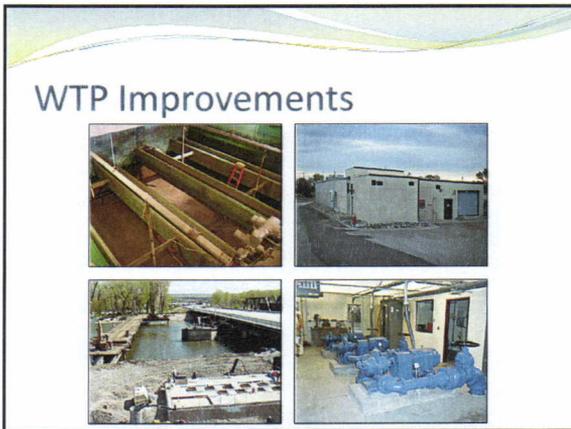
Size of Service	EDU's per Service	Number of Services	Total EDU'S
¾”	1.00	2,545	2,545.00
1”	1.79	68	121.72
1½”	4.00	20	80.00
2”	7.14	21	149.94
3”	16.00	10	160.00
4”	28.57	0	0.00
6”	64.00	2	128.00
10”	177.77	1	177.77
Total		2,667	3,362.43

### Fixed Costs

Cost	Annual Cost	Note
1997 Bond (\$1,020,00)	\$83,373	Replace Trunklines from WTP
1998 SRF Loan (\$5,250,000)	\$383,980	New Clearwell at WTP
2003 SRF Loan (\$2,541,000)	\$186,680	New Intake Structure
2009 SRF Loan (\$690,000)	\$47,437	WTP Filter Rehab
2010 SRF Loan (\$820,000)	\$47,437	New HS Pumps at WTP; Pipes
Depreciation	\$200,000	Replacement Cost
Fixed O&M Costs	\$250,500	
<b>TOTAL</b>	<b>\$1,210,492</b>	

### Water Treatment Plant (WTP)





### Base Rate Calculation

- Base Rate = Fixed Costs / EDU's

$$\frac{\$1,210,492 \text{ per year}}{3,362.43 \text{ EDU's}}$$

$$= \$360 \text{ per year per EDU}$$

$$= \underline{\$30 \text{ per month per EDU}}$$

### Base Rate per Service Size

Size of Service	EDU's per Service	Monthly Base Rate
3/4"	1.00	\$30.00
1"	1.79	\$53.70
1 1/2"	4.00	\$120.00
2"	7.14	\$214.20
3"	16.00	\$480.01
4"	28.57	\$857.11
6"	64.00	\$1,920.03
10"	177.77	\$5,331.08

### Usage Rate Calculation

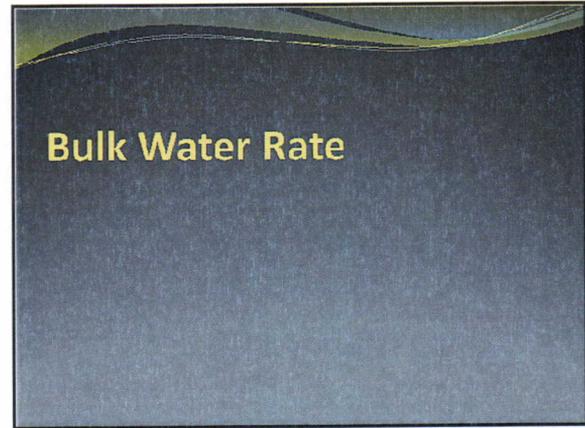
- Estimated O&M Budget = \$1,149,500
- Average Annual Usage = 639,041,385 gallons

$$\frac{\$1,149,500}{639,041,385 \text{ gallons} / 1,000 \text{ gallons}}$$

$$= \underline{\$1.80 \text{ per 1,000 gallons}}$$

### Comparison of Rates to Similar Communities with WTP's

Community	Base Rate for 3/4" Service	Usage Rate	Cost for Base Plus 6,000 gallons
Laurel	\$30.00	\$1.80 per 1,000 gal	\$40.80
Miles City	\$26.99	\$4.09 per 1,000 gal Over 4,000 gal	\$35.17
Forsyth	\$24.50	\$2.35 per 1,000 Over 2,000 gal	\$33.90
Colstrip	\$25.00	\$1.40 per 1,000 gal	\$33.40
Lockwood	\$7.50	\$3.70 per 1,000 gal to 8,00 gal	\$29.70
Glendive	\$18.46	\$1.29 per 1,000 gal	\$26.20
Hardin	\$18.32	\$2.50 per 1,000 gal Over 3,000 gal	\$25.82
Billings	\$7.92	\$1.73 per 100 cf (0 - 4 Ccf) \$1.84 per 100 cf (5 - 16 Ccf)	\$22.24
Average			\$28.57



## Need for Bulk Water Rate

- Limits of System
  - WTP & Storage have a finite capacity.
  - Large volume users, such as bulk resalers, put a disproportionate demand on system capacity (average month in summer = just under 2,000,000 gallons per resaler vs. 8,000 to 10,000 gallons per residence).
- The resale of water is not allowed by City regulations without a "service agreement, contract, or applicable rate schedules".

## City Regulations

- *Rules and Regulations Governing Utility Services and Streets for the City of Laurel, Montana (Adopted in 1999 and Updated in 2003)*
- Section 11.3: Resale of Water
 

The City's water rate schedules cover the sale of water for the sole and exclusive use of the customer. Water service shall be used by a customer only for the purposes specified in the service agreement, contract, or applicable rate schedules. Customer shall not re-meter, sell, or permit any other individual to use such service or secure water through customer's service line by hose or other devices for the purpose of supplying water to the individual's property without first obtaining written permission to do so from the City.

## Bulk Water Rate

- Base rate chiefly covers debt related to the water treatment plant.
  - Affects every drop of water running through the system.
  - Usage rate does not consider this debt, only O&M.
- Individual "service agreements" or "contracts" for bulk water resalers could be negotiated inequitably.
- Consequently, City Staff recommended developing a "applicable rate schedule" and setting the bulk water rate equal to the average cost for Laurel residents considering the base rate and average usage.

## Average Cost per Resident

- Average Laurel Resident Pays:
  - \$30.00 per month Base Rate
  - \$10.80 per month Usage (\$1.80/1,000 gal x 6,000 gal)
  - \$40.80 per month Total
- Average Cost per 1,000 gallons:
 

\$40.80 / 6,000 gallons  
= \$6.80 per 1,000 gallons

## Comparison of Bulk Rates to Similar Communities with WTP's

Community	Bulk Water Rate	Cost for 6,000 gallons	Eq. Cost per 1,000 gallons
Forsyth	\$1.00/100 gal	\$60.00	\$10.00
Colstrip	\$20.00 Set Up + \$5.00/1,000 gal	\$50.00	\$8.33
Miles City	\$5.00 User Fee + \$21.70/3,000 gal	\$48.40	\$8.07
Hardin	\$7.00/1,000 gal	\$42.00	\$7.00
Laurel	\$6.80/1,000 gal	\$40.80	\$6.80
Lockwood	\$5.00/1,000 gal	\$30.00	\$5.00
Glendive	\$18.46 Base + \$1.29/100 cf (748 gal)	\$28.81	\$4.80
Billings	\$1.35/100 cf (748 gal)	\$10.83	\$1.80
Average			\$6.48

## Public Works Department Testimony

## Comments and/or Questions

- Several comments and/or questions were raised at the first water rate hearing on December 22, 2009.
- The Public Works Department wanted to take this opportunity to address these comments and/or questions publicly and enter them into the record.

## Is there any stimulus money to offset the costs?

- The City has made every effort to obtain all available grant funds to help offset the costs of improvements to the municipal water and sanitary sewer systems, including:

Major Construction Grants Received	TSEP	CDBG	DNRC	DWRF Principal Forgiveness (Stimulus)
2004 - Phase 1A WW Collection System		\$500,000		
2006 - Phase 1B WW Collection System	\$500,000		\$100,000	
2008 - Phase 2 WW System Improvements	\$750,000			\$390,700
2010 - Phase 1 Water System Improvements	\$625,000		\$100,000	
Sub-Total	\$1,875,000	\$500,000	\$200,000	\$390,700
Total		\$625,000		

## Is it legal to fill water tanks from a neighbors garden hose?

- No.
- Per Section 11.3 of the *Rules and Regulations Governing Utility Services and Streets for the City of Laurel, Montana* (Adopted in 1999 and Updated in 2003).

## What if new rates lower usage?

Month	2009 Gallons	2010 Gallons	Increase (gallons)	Increase (%)
January	35,930,000	39,310,000	3,380,000	9.4%
February	27,940,000	35,820,000	7,880,000	28.2%
March	31,560,000	59,150,000	27,590,000	87.4%
April	45,630,000	50,490,000	4,860,000	10.7%
May	84,470,000	89,060,000	4,590,000	5.4%
June	99,850,000	98,830,000	(1,020,000)	-1.0%
July	97,230,000	96,130,000	(1,100,000)	-1.1%
August	83,520,000	81,820,000	(1,700,000)	-2.0%
September	68,100,000			
October	41,360,000			
November	28,950,000			
December	39,660,000			
Total	684,202,009	550,612,010	44,480,000	6.5%

## City provides service "right to the tap" for residents.

- Developers are responsible for installing utility extensions for new subdivisions at their cost.
- Individual service lines are the responsibility of landowners from the water main to the residence/business, and new services are charged system development fees to connect to the system.

Meter Size	System Development Fee
¾"	\$1,236.00
1"	\$1,854.00
1¼"	\$2,318.00
1½"	\$2,782.00
2"	\$3,708.00
3"	\$5,562.00
4"	\$7,000.00