



CONDEMNATION CASE STUDY: A RECORD OF BROKEN PROMISES IN MISSOULA, MONTANA

Beginning in 2010, city officials in Missoula, Montana, launched an effort to purchase Mountain Water, the privately owned local water system.ⁱ

Following a breakdown in negotiations, the mayor led the city into a government takeover, or condemnation, of the water system. Condemnation advocates in Missoula argued that government ownership would improve accountability, allow for local control, and provide savings to the city and residents.ⁱⁱ

The record clearly shows that the promises and predictions of condemnation advocates in Missoula proved to be wildly inaccurate. Advocates argued that the system could be purchased for \$43 million, yet the final cost has surpassed \$105 million and could increase even more. The city estimated legal fees for condemnation would be \$400,000, but ended up paying more than \$9 million and will likely be on the hook for millions more. The city finally took ownership of the system after multiple delays, following more than three years of litigation and almost a full year after the mayor assured residents that the city was “ready to go” and “had the financing in place” for the purchase.

The very long and expensive takeover process in Missoula serves as a cautionary tale for other communities considering condemnation.

PURCHASE PRICE MORE THAN DOUBLE ADVOCATE ESTIMATES

In its attempts to acquire the local water system, the city made a \$65 million bid and a subsequent \$50 million bid to purchase Mountain Water.ⁱⁱⁱ Both of these bids were rejected as they were well below the system value estimates of both the system owner and the city water commissioner.^{iv}

After its bids were rejected, the city sued, aiming to use eminent domain laws to make a hostile takeover of the system. In the resulting trial, the City’s experts argued that the system was worth just \$43 million, while the court determined that the system was worth \$88.6 million, more than double the city’s estimate.^v The final settlement cost passed onto taxpayers – including fees, expenses and interest – has exceeded \$105 million and could surpass \$140 million depending on the result of additional legal challenges.^{vi}

CITY SPENT 21 TIMES ITS LEGAL FEE BUDGET

When the city began the takeover effort, it estimated the total legal cost of condemnation to be \$400,000.^{vii} But as the three-year battle worked its way through the courts, the city spent \$9.1 million in legal fees associated with the takeover.^{viii}

In addition, by Montana law, the final purchase cost will include reimbursements of Mountain Water’s legal fees, which as of the summer of 2016 amounted to \$7.8 million.^{ix}

THREE-YEAR LITIGATION PROCESS FULL OF DELAYS

The Montana Supreme Court finally cleared the way for the government takeover in August 2016, ending a three-year legal process.^x At that time, the mayor assured residents that the city was “ready to go” and “had the financing in place” for the purchase of the system.^{xi} However, the city didn’t take possession of the water system

until 10 months later, in June 2017, following multiple delays.^{xii} Even the leader of the takeover effort in Missoula said that the process “felt expensive and long.”^{xiii}

BROKEN PROMISES ON RATES

Despite the city repeatedly claiming that public ownership would generate savings for the city and residents, water rates will immediately increase 6% under government ownership.^{xiv}

BROKEN PROMISES ON BONDS

The city initially said General Obligation bonds wouldn't be needed to cover the cost of the condemnation, and that the effort would be paid for with revenue bonds backed by money customers pay in water rates.^{xv} However, in June 2017, the City Council of Missoula voted to authorize General Obligation Bonds to cover “additional liabilities” related to the condemnation.^{xvi} This means that the city now has an open-ended authorization to keep pouring money into the condemnation effort using sources of revenue that advocates had promised they wouldn't even need.

TAKEOVER IRONY

Takeover proponents went through a long, expensive and difficult process just to be able to say that their local water system is publicly owned. But their so-called victory over the private sector carries some irony, as Missoula will issue up to \$140 million in privately-held bonds to finance the purchase of the system.^{xvii}

Montana Public Service Commission Vice-Chairman Travis Kavulla noted this irony, saying, “The city will own the utility in name, but is financing its large purchase entirely through private bond investors. It's a little ironic that, at the end of the day, Missoula consumers will pay more to private investors under city ownership than it did when the utility was officially owned directly by private investors.”^{xviii}

Sources

ⁱAnalysis Group, “The Economic Consequences of Contested Government Takeovers of Investor-Owned Water Utilities” January 2017.

ⁱⁱAnalysis Group, “The Economic Consequences of Contested Government Takeovers of Investor-Owned Water Utilities” January 2017.

ⁱⁱⁱMissoulain, “City will decline proposed price for Mountain Water Co.” July 17, 2015.

^{iv}Missoulain, “Mountain Water employees claim city merger would reduce pay by 32 percent” May 31, 2016.

^vMissoulain, “Montana Supreme Court clears way for city's Mountain Water purchase” August 2, 2016.

^{vi}Missoulain, “Montana Supreme Court clears way for city's Mountain Water purchase” August 2, 2016; Missoula Independent, “Trickle-down effect; Missoula just won Mountain Water! Now, about those legal fees” August 4, 2016; Presentation, “Water System Acquisition Financing” 15 February 2017; City of Missoula and Mountain Water, “Settlement Agreement and Release of Certain Claims” June 2017.

^{vii}Missoula Independent, “Trickle-down effect; Missoula just won Mountain Water! Now, about those legal fees” August 4, 2016. The Missoulain, “Engen: No further council approval needed for Mountain Water condemnation plans” 17 February 2014.

^{viii} Presentation, “Water System Acquisition Financing” 15 February 2017.

^{ix}Missoulain, “Carlyle wants new judge in Mountain Water case; city refreshes bad faith lawsuit” 24 July 2018.

^xMissoula Independent, “Trickle-down effect; Missoula just won Mountain Water! Now, about those legal fees” August 4, 2016.

^{xi}Missoulain, “Montana Supreme Court clears way for city's Mountain Water purchase” August 2, 2016.

^{xii}Montana Public Radio, “Engen: Missoula's Ready to Take Ownership of Mountain Water” 3 August 2016.

^{xiii}The Missoulain, “City of Missoula takes ownership of Mountain Water” 22 June 2017.

^{xiv}Missoulain, “Montana Supreme Court clears way for city's Mountain Water purchase” August 2, 2016.

^{xv}Montana Public Service Commission, “PSC Statement on Mountain Water Transfer” 22 June 2017; KGVO News, “Missoula Water Utility Ownership to Begin With at Least a Six Percent Rate Increase, Says PSC” 9 August 2016; Missoula Current, “At the stroke of midnight, it's Missoula Water” 22 June 2017.

^{xvi}The Missoulain, “Missoula files for eminent domain takeover of water system” 3 April 2014.

^{xvii}Missoula City Council, “Amendments and Supplements to Resolution 8144” Approved 1 June 2017; Mayor John Engen, “City Council New Business Item” 15 May 2017.

^{xviii}Presentation, “Water System Acquisition Financing” 15 February 2017; City of Missoula and Mountain Water, “Settlement Agreement and Release of Certain Claims” June 2017.

^{xix}Montana Public Service Commission, “PSC Statement on Mountain Water Transfer” 22 June 2017; Missoula Current, “At the stroke of midnight, it's Missoula Water” 22 June 2017.