

APPENDIX B

The following resolution was introduced at the July 18, 2019 Seeley Lake Sewer District board meeting. It will be put forward for public comment at the August 15, 2019 public board meeting that begins at 5: 15 pm at the Seeley Lake Community Center, 3248 Highway 83, Seeley Lake.

RESOLUTION 8152019A
OF THE
SEELEY LAKE-MISSOULA COUNTY SEWER DISTRICT: A RESOLUTION TO MANDATE THAT
ALL PROPERTIES IN THE SEELEY LAKE SEWER DISTRICT CONNECT TO THE SUBJECT
SEWER SYSTEM

At a meeting of the Board of Directors of the Seeley Lake-Missoula County Sewer District held on August 15, 2019 the Board resolved as follows:

WHEREAS:

1. The Seeley Lake-Missoula County Sewer District (hereinafter, the "District") was organized in 1992 for the purpose of determining if a sewer system is needed in all or part of the district, and if so, to construct, purchase, lease, or otherwise acquire and operate and maintain sanitary sewer works as provided for in MCA 7-13-2218; and
2. The District and the Seeley Lake Sewer Board (hereinafter, the "Board") were properly established under MCA Title 7, Chapter 13, Parts 22 and 23; and
3. The Board is expressly authorized by MCA § 7-13-2218 to "construct, purchase, lease, or otherwise acquire and operate and maintain . . . sanitary sewerworks . . ." for the purpose of "pollution abatement", and for other purposes prescribed by statute; and
4. The Board is further expressly authorized by MCA §§ 7-13-2280 to 7-13-2289 to adopt resolutions levying assessments to pay for that construction; and
5. The Board has a statutory and fiduciary duty to act in accordance with its duly adopted resolutions to serve the public interest, and to preserve the funding available for the sewer system that is the subject of those duly adopted resolutions (hereinafter, the "Subject Sewer System"), and
6. The Board currently has approximately \$9.8 million in grant support for Phase I of the subject sewer system, which may be lost if the Board is prevented from pursuing the subject sewer system; and
7. The Board held two public information meetings on August 23 and November 13, 2017, where it addressed the probable cost of designing, engineering, constructing and installing the Subject Sewer System, and answered questions. See the August 23 and November 13, 2017 Board Minutes; and
8. The Board adopted Resolution No. 11082017 on November 8, 2017, giving real property owners within the District an opportunity to file Notices of Protest with the Secretary of the District until December 18, 2017 at 5:00 PM.; and
9. Notices of Proposed Levy of Special Assessments, which included detailed instructions on the protest procedure, were mailed to real property owners within the District on November 17, 2017 and published in the Seeley Swan Pathfinder on November 16, 2017 and November 23, 2017; and
10. All of the Notices of Protest were validated and counted by Greg Robertson, District general manager and Missoula County Chief Public Works Officer, and Kim Myre, also of Missoula County. The Notices of Protest were then scanned and made publicly available for inspection on Missoula County's website; and
11. A majority of the District chose not to protest, thus, the District moved forward with the Subject Sewer System and its decision to incur debt; and

APPENDIX B

12. The Board adopted Resolution No. 12212017 on December 21, 2017, approving levies of special assessments within the District for the purpose of repaying special assessment bonds; and
13. The Montana Clean Water Act (MCA Title 75, Chapter 5) prohibits activities that pollute state waters, including groundwater; and
14. The Montana Board of Environmental Review has adopted a human health based maximum allowable standard of 10 mg/L for nitrate in ground water pursuant to Admin. Mont. R. 17.38.203(1)(c), which provides that “[t]he board adopts and incorporates by reference . . . 40 CFR 141.11 and 141.62(b), which set forth maximum contaminant levels for inorganic contaminants”. 40 CFR 141.62(b)(7) provides that the “maximum contaminant level” for nitrate is 10 mg/L; and
15. Nitrates are regulated in ground and surface water under state and federal law because, at elevated concentrations, they can pose a risk to human and environmental health. See the attached Explanation of Nitrates by James Erven of the Missoula City-County Health Department; and
16. According to Mr. Erven, an Environmental Health Specialist II for the Missoula City-County Health Board (hereinafter, the “Health Board”), test wells have shown elevated levels of nitrate in the groundwater, including some samples exceeding the state human health standard, with levels generally increasing over time; and
17. According to Mr. Erven, an Environmental Health Specialist II for the Health Board, high concentrations of nitrates in drinking water can cause methemoglobinemia, known as “blue baby syndrome”, in infants which is a potentially fatal disease that restricts the blood’s ability to transport oxygen throughout the body; and
18. According to Mr. Erven, an Environmental Health Specialist II for the Health Board, recent studies indicate potential links between nitrate consumption and certain types of cancer and organ disease; and
19. According to Mr. Erven, an Environmental Health Specialist II for the Health Board, high levels of nitrates in lakes, rivers, and other surface waters lead to excessive plant growth, including algal blooms, which drive down oxygen levels, drive up water temperatures, all of which may contribute to massive deaths of fish in a process known as “eutrophication”. Once eutrophication occurs, it is difficult to reverse; and
20. According to Mr. Erven, an Environmental Health Specialist II for the Health Board, samples taken of lake water do not show elevated nitrate levels because the nitrogen produced is primarily taken by plant growth in the surface water; and
21. According to Mr. Erven, an Environmental Health Specialist II for the Health Board, the Health Board discovered the nitrate issue in Seeley Lake groundwater in late 2010 and early 2011. The Health Board had already been monitoring the wells and surface water for several years and the data showed, and continues to show, an upward trend in nitrate levels; and
22. According to Mr. Erven, an Environmental Health Specialist II for the Health Board, initial estimates by the Health Board approximate that completion of all stages of the Subject Sewer System will reduce nitrates entering the Seeley Lake groundwater by at least 85%; and
23. The Missoula City-County Health Department (hereinafter, the “Health Department”) and the Missoula City-County Health Board (hereinafter the “Health Board”) have classified a portion of the Seeley Lake area as a Special Management Area (hereinafter, “SMA”) due to the presence of elevated nitrate levels in the groundwater caused by on-site septic systems; and
24. The Health Department has stated that the proposed sewer system will provide more effective waste water treatment to the community of Seeley Lake, but to maximize the effectiveness of the public

APPENDIX B

sewer's ability to address the elevated nitrates in groundwater, all properties within the district should be connected to the public sewer system; and

25. MCA § 75-5-605(1)(a) provides that “[i]t is unlawful to . . . cause pollution, as defined in 75-5-103, of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters.” MCA § 75-5-103(30)(i)-(ii) defines “pollution” as “contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.” MCA § 75-5-103(34)(a) provides that “state waters” means “a body of water, irrigation system, or drainage system, either surface or underground”; and
26. Debbie Johnston, Vice Chair of the Board of Health, explained in her July 19, 2017 letter to the Board that this “is an excellent way to deal with the high nitrate levels in the groundwater, and public sewer has proven to be effective at improving groundwater quality in other areas in Missoula County”; and
27. The Board is duty-bound to provide a way to reduce the high nitrate levels in the groundwater, and public sewer has proven to be effective at improving groundwater quality in other areas in Missoula County and the State of Montana; and
28. The Board is expressly authorized by MCA § 7-13-2218(10) to “establish, by ordinance or resolution, rules and regulations for the operation, maintenance, use, and availability of any of the district’s systems or improvements, including but not limited to connection procedures, service termination, and the payment of rates and charges, including penalties and interest charges for delinquent accounts”; and
29. The Board is expressly authorized by MCA §§ 7-13-2218, 7-13-2275 and 7-13-2301 to adopt ordinances or resolutions imposing, establishing, changing, or increasing rates, fees, tolls, rent, taxes, or other charges for sewer and other services, sewer facilities, and benefits directly afforded by the sewer facilities adequate for, among other purposes, the reasonable expense of operation and maintenance of the sewer facilities; and
30. The Board is expressly authorized by MCA § 7-13-2301 to impose, establish, change, or increase the above rates, fees, tolls, rent, taxes, or other charges to users of the sewer facilities, and a portion of the above rates, fees, tolls, rent, taxes, or other charges to the owners of undeveloped lots, tracts, or parcels, to pay a share of the principal of and interest on bonded indebtedness issued to finance the capital cost of improvements to an existing sewer system, so long as the Board makes findings in a resolution or ordinance that demonstrate that the improvements to the existing sewer system to be financed by the bonded indebtedness confer a direct benefit on the undeveloped lot, tract, or parcel; and
31. Pursuant to MCA § 7-13-2218 and the other provisions of MCA Title 7, Chapter 13, Parts 22 and 23, the Board has broad authority with respect to undertaking sewer projects, including the Subject Sewer System, and may adopt Rules and Regulations establishing which properties within the District must connect to the Subject Sewer System; and
32. It is in the interest of Seeley Lake residents, property owners, and properties located within the District, whether developed or undeveloped, and the public generally, to remove sources of nitrate pollution in and around the Seeley Lake community; and

APPENDIX B

33. The Seeley Lake residents, property owners, and properties located within the District, whether developed or undeveloped, and the public generally, directly benefit from the removal of sources of nitrate pollution in and around the Seeley Lake community;
34. It is in the interest of Seeley Lake residents, property owners, and properties located within the District, whether developed or undeveloped, and the public generally, to take measures to reduce the Nitrate levels in the ground and groundwater in and around the Seeley Lake community; and
35. The Seeley Lake residents, property owners, and properties located within the District, and the public generally, directly benefit from measures taken to reduce of sources of nitrate pollution in and around the Seeley Lake community; and
36. At the June 20, 2019 Board meeting, Mr. Erven, representing the Health Board, stated that the goal of the Subject Sewer System is to reduce outflow of nitrates into the ground water and to start the process to remediate the damages caused by the nitrate levels in the groundwater in and around Seeley Lake; and
37. The purpose of requiring all properties to connect is to make a safe and clean environment for the residents and visitors of Seeley Lake and to reduce and eliminate as much as possible the elevated nitrate levels in Seeley Lake groundwater; and
38. The Board has a duty to provide for “pollution abatement” and a safe or safer environment within its control.

NOW THEREFORE BE IT ORDAINED [sic. - RESOLVED] BY THE BOARD OF DIRECTORS OF THE SEELEY LAKE-MISSOULA COUNTY SEWER DISTRICT AS FOLLOWS:

1. The Board has a statutory and fiduciary duty to provide for “pollution abatement” in accordance with MCA § 7-13-2218, including the removal of sources of nitrate pollution for which the Seeley Lake area has been designated an SMA, and to construct, operate, and maintain the Subject Sewer System that directly benefits all of the residents, property owners, and properties within the District, whether developed or undeveloped, pursuant to the Board’s duly adopted resolutions; and
2. All residents, property owners, and properties within the District, whether developed or undeveloped, as well as the public, generally, will be directly benefited by the construction, operation, and maintenance of the Subject Sewer System; and
3. In order to fulfill these statutory and fiduciary duties, and reduce and eventually alleviate the actual and potential harm caused by nitrate pollution in the District, requiring partial adherence by property owners in the District is not adequate to resolve the ongoing nitrate pollution problem; and
4. In order to accomplish the goal to reduce and eventually alleviate the groundwater nitrate pollution, allowing developed properties to continue to use on-site septic systems is NOT an adequate resolution to the nitrate pollution problem; and
5. All residents, property owners, and properties within the District, whether developed or undeveloped, as well as the public, generally, will be directly benefited by the construction, operation, and maintenance of the Subject Sewer System; and
6. The Rules and Regulations of the Board will be modified to require each and every property owner in the District to connect each and every property lot, tract, and parcel to the Subject Sewer System within 180 days of its completion, at the expense of the Sewer District; and
7. An exception will be made for property owners who have installed a Level 2 system on their property within the last 5 years, such that they will be allowed 5 more years of use before they must connect to the Subject Sewer System at their own expense; and

APPENDIX B

8. These property owners may instead choose to attach to the Subject Sewer System within 180 days of its completion, as set forth in ¶ 6 above, at the expense of the Sewer District; and
9. An exception will be granted for vacant lots that are not buildable. Those owners must establish that they are not buildable in order to be granted this exception; and
10. Bids for the Phase 1 and 2 sewer systems will be let with the understanding that all available property lots, tracts, and parcels will be connected; and
11. For those property lots, tracts, and parcels located within the District which are vacant and/or undeveloped, those property owners may request that this requirement be only to obtain a stub to the Subject Sewer System; and
12. In the event a vacant and/or undeveloped property lot, tract, or parcel owner decides at a later date to complete the sewer access from the stub to a building and/or for other purposes, the cost of doing so will be at the property lot, tract, or parcel owner's sole expense, and in full compliance with the requirements of the District's engineer; and
13. This Resolution will be put forward for public comment and a public hearing, which will be received and held at the August 15, 2019 regular meeting of the board.

Passed and approved this 15th day of August, 2019.

By: _____
Pat Goodover
Its: President

_____ Date

ATTEST:

By: _____
Felicity Derry
Its: Secretary

_____ Date