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2023 Settlement Agreement Pro Forma

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Purpose

This pro forma analyzes the financial and non-financial implications of the proposed 2023 Settlement Agreement between the Mt Crested Butte Water District (MCBWSD) and Meridian Lake Park (MLP). The pro forma also provides additional information on the benefits to MCBWSD that have occurred from the inclusion of MLP.

Background

MCBWSD and MLP entered into a Memorandum of Agreement in 1995 to define the process of including MLP into the Water District. In 2013, a First Amendment to the agreement was signed to clarify certain aspects of the original contract and outline the requirements that would be necessary if the MCBWSD were to use portions of the MCB Water System for users outside of MLP.

In recent years, the District formed the joint water committee and the committee held public meetings to consider the current agreements and find a path forward that is fair to all parties involved. There were financial and non-financial issues and risks considered. The proposed 2023 Settlement Agreement is based on the feedback, agreements, and concerns from the water committee but was not produced by the committee.

Summary of financial changes under the proposed 2023 Settlement Agreement

The current surcharge for MLP is \$36.27 per month, totaling \$77,799 in 2022 and expected to be the same in 2023. Developed and undeveloped lots are paying the surcharge.

If the 2023 Settlement Agreement is approved, the surcharge would remain at \$36.27 per month through December 31, 2028. This would result in approximately \$466,794 in revenue from the surcharge from 2023 through 2028.

The \$36.27 surcharge amount and the December 31, 2028 expiration date were recommended by Perry Solheim, the former Finance/Administration Manager for MCBWSD, based on a financial assessment aimed at determining any "imbalance" that may exist. The methodology to determine the revenues, expenses, and allocations used in this assessment was agreed upon by the joint water committee at a public meeting on January 5, 2021, as documented in the meeting's minutes.

Upon the expiration of the surcharge, the District is expected to lose approximately \$5.66 per account per month, or \$67.94 per account per year, based on a total of 1,1145 accounts (965 MCB and 180 MLP).

Explanation:

965 MCB Customers 180 MLP Customers -> 1,145 Total Customers

$\$77,799 / 1,145 = \67.94 per customer per year

or \$5.66 / account / month

Overview of potential concerns if no action is taken

The District staff and the water committee have both identified unique and challenging issues with the current Memoranda of Agreements (MOAs) that have made it difficult to determine a fair path forward. This difficulty in interpreting and implementing the MOAs has been a longstanding concern, as identified through investigations and research by the water committee and District staff.

The MOAs are vague and open to interpretation, which has led to regular disagreement, uncertainty, and inconsistency in how MLP expenses and revenues are accounted for.

1. In 2016, the District manager told the MLP homeowners association that MLP was "paid up," but it was later believed that the methodology used at the time did not follow the requirements of the MOA.
2. The prior Finance/Administration Manager for MCBWSD found that it was "next to impossible for any professional accountant to accurately account for MLP costs and expenses without clear guidance from the MOAs", as it would involve "so many judgment calls on an almost daily basis that it would become truly worthless and indefensible if audited in retrospect."
 - a. The MOAs do not provide the needed guidance.
3. There has been much debate about whether the 1995 MOA was intended to define how to fund MLP costs and expenses indefinitely or if it was only meant to apply to the process of inclusion. Many believe that the 2013 amendment added further confusion.

The current Memoranda of Agreement (MOAs) provide specific provisions for funding MLP costs and expenses:

1. In section 8.1 of the 1995 MOA, upon inclusion of MLP, the District will make efforts to obtain revenue bonds or another mutually agreed upon method to raise the necessary revenue.
2. Section 8.2 of the MOA further specifies that the required revenue to repay revenue bonds or other financing will come from service charges, water tap fees, sewer tap fees, or special assessments.

This creates concerns and risks for the District, as many capital projects have been self-funded (referred to by the District as zero-interest loans to MLP), without presenting MLP with the option for a revenue bond or seeking their agreement.

- a. The MOA allows for funds typically allocated for water or wastewater to be used for either purpose, which creates further uncertainty.
- b. The District has been collecting the surcharge to cover the costs of prior expenses related to capital expenditures.
- c. This approach is unfair to both MCB and MLP residents:
 - i. MCB residents miss out on potential investment-related revenue from the funds used to pay for MLP projects.
 - ii. MCB residents unfairly fund MLP projects.
 - iii. MLP residents may have been able to pay a lower surcharge if the costs were spread out over a longer period.

- iv. Because MLP projects are being paid on a more aggressive time schedule, the majority of the costs are paid by current residents (vs. MCB plant costs are spread out over 30 years).
 - d. The MOA provides no guidance or process for a capital reserve for MLP.
- 3. The accounting of MLP finances has been a challenge for the District.
 - a. District Board members have raised concerns about the lack of integration of MLP financials into the District's public and audited financial reports.
 - b. Staff members have raised concerns about the accounting processes to track MLP finances.
 - i. Auditors have advised against including MLP financials in public records because there is only a single District.
 - c. Multiple options for addressing these challenges have been presented by District staff in the past, but it is unclear what changes, if any, were implemented.
 - i. Many years later, we are discussing some of the same issues that have been brought up in the past.
 - d. There has been confusion and disagreement among staff and MLP regarding financial matters, including:
 - i. A financial assessment by an MLP homeowner and board member that was found to be inaccurate by District staff.
 - ii. In the past few years, MCBWSD board members from MLP have made comments about their understanding of processes related to MLP finances and bank accounts that were incorrect.
- 4. MLP Residents are funding MCB Projects
 - a. The water committee determined that MLP residents are paying for MCB projects through the property tax levy.
 - b. Revenues from MLP can be used for MCB projects, but under certain conditions
 - i. According to the 2013 Amendment: "shall first provide public notice that such as issue is being considered and shall entertain a discussion of the matter at a regularly scheduled meeting of the District's board of directors."
 - c. The tax levy revenue was not part of the imbalance calculation

Benefits to District and MCB because of the inclusion

It is easy to overlook the benefits to the District and MCB residents of MLP joining the Water District.

1. Prior to MLP, the District had no property water rights in the Washington Gulch area
2. The dam and related infrastructure were conveyed to the District, which will benefit customers outside of MLP
 - a. Note: There are negotiations and cleanup related to the land titles underway
 - b. Unclear if the dam, reservoir, and other infrastructure are part of the 'MLP Water System' as the documents defining the system are missing
3. MCBWSD was able to increase water rights and seek other water rights that wouldn't have been possible otherwise
 - a. The District is actively pursuing 300 acre-feet of water storage in Long Lake

- b. Increase in storage in Meridan Lake Park Reservoir #1 that will primarily benefit non-MLP members
- 4. There is significant financial value in the additional water that is available to MCBWSD for use outside of MLP
 - a. 180.6 acre-feet in Meridan Lake Park Reservoir #1 can be used outside of MLP
 - i. $217.1 \text{ total acre-feet of water} - 36.5 \text{ acre-feet reserved for MLP} = 180.6 \text{ acre-feet}$ can be used outside of MLP
 - b. 300 acre-feet of water the District is actively pursuing
 - c. This is a 480.6 acre-feet of water that can be used outside of MLP per year that wouldn't be possible if MLP hadn't been included in the District
 - i. $300 \text{ acre-feet in long lake} + 180.6 \text{ acre-feet in MLP Res \#1} = 480.6 \text{ total}$
 - ii. 156,675,600 gallons of water per year
 - 1. 1 acre-foot = 326,000 gallons
 - 2. $480.6 \text{ acre-foot} * 326,000 \text{ gallons} = 156,675,600 \text{ total gallons}$
 - d. Potential revenue for MCBWSD at MCB Base rate for 2023:
 - i. $156,675,600 \text{ gallons} / (4,000 \text{ gallons} * 12 \text{ months}) = 3,264 \text{ units at base rate per year}$
 - ii. $3,264 \text{ units} * 115.49 \text{ (2023 base rate)} * 12 \text{ months} = \$4,523,512 \text{ revenue per year}$
 - e. This example of potential revenue doesn't account for other tax benefits to the town of Mt Crested Butte and the town's residents by allowing MCB area to have adequate water rights for existing and future property owners.
 - f. NOTE: This proforma is not suggesting that MCBWSD will be able to use the full reservoir capacity every year. The pro forma is also not suggesting that these revenue figures are what should be expected. The District would not want to fully use the capacity of either reservoir available to the District unless it was under the direst circumstances. However, using some percentage regularly is plausible. If 25% of the capacity was used, that is still a potential revenue of \$1.1 million per year.