

BIG SKY COUNTY WATER & SEWER DISTRICT No. 363

History and Background Information

Revised: November 15, 2003

HISTORICAL BACKGROUND INFORMATION

The Big Sky Resort was the dream of the late newscaster Chet Huntley. A corporation known as Chrysler Realty completed the original planning and initial construction of portions of the Meadow water system. Planning began in the 1960's and in 1969 Big Sky of Montana, Inc. was incorporated in Delaware, assuming control of the resort's development.

Prior to 1965, land in the West Fork area was controlled by the Forest Service and private landowners. Three land exchanges between the U.S. Forest Service and Burlington Northern Inc. occurred between 1967 and 1972. The land exchanges were intended to consolidate lands within the Gallatin and Beaverhead National Forests and Yellowstone National Park to promote more effective land management. In the three land exchanges Burlington Northern acquired, approximately 15,189 acres of which 11,523 acres were located in the West Fork area. Following the land exchange, 1,927 acres were then sold to Big Sky. Prior to the land exchanges, Big Sky had purchased 8,721 acres of land in the West Fork area from private individuals. The land purchases gave Big Sky of Montana ownership and control of 10,648 acres in the West Fork area. Big Sky also obtained Forest Service special use permits for a portion of the ski runs and lifts.

The first land exchange between the Forest Service and Burlington Northern was not opposed and was completed in 1967. The second and third land exchanges were quite controversial. The Regional Forester approved exchange #2 on June 26, 1970 and exchange #3 on December 9, 1970. The approval was appealed by a citizens group. The appeals were denied by the Chief Forester in October of 1971 and by the Secretary of Agriculture in 1972. The citizen group then sued the Secretary of Agriculture in federal district court. The district court decided in favor of the Secretary of Agriculture on May 23, 1972. The district court's decision was appealed to the Ninth Circuit Court of Appeals. In September 1973, the appellate court affirmed the district court decision.

In March of 1971, Big Sky of Montana, Inc. created and provided covenants for the Meadow Village Subdivision. The covenants require that "all improvements or structures designed for occupancy or use by humans shall be connected with the water and sewer facilities constructed or installed by Big Sky or a special improvement district. No private well, septic tank, leaching field or other private sewage treatment facility shall be used or installed in the subdivision." The protective covenants were referenced in the July 1, 1971 Environmental Impact Statement prepared by the Forest Service for Land Exchanges Number 2 and 3 between Burlington Northern Inc. and the Forest Service.

Big Sky, Montana is still unincorporated community located within the Gallatin Canyon. Big Sky is a resort community featuring a nationally recognized ski area. The area is a destination resort and therefore has a highly variable population. The development consists of two major housing areas, the Mountain Village located at the base of the ski hill and the Meadow Village

located above the confluence of the South and Middle Forks of the West Fork of the Gallatin River.

Creation of Rural Improvement District No. 305 and BSOA

In August 1971, the Gallatin County Special Improvement District No. 305 was created. at the time of the RID creation, the boundary for the District was essentially the Meadow Village area plus the wastewater treatment site. In April of 1973, the District was expanded to include the Mountain Village area.

In October of 1972, the Big, Sky Owners Association, Inc. (BSOA) was issued a Certificate of Incorporation. The purposes of BSOA is stated in its Articles of Incorporation as summarized below are:

- To manage, operate, and maintain the area described as Big Sky of Montana, Inc.
- To buy, own, acquire, sell, lease, rent, encumber, and possess real and personal property to carry out the functions of the corporation.
- Either directly or by agreement with third parties to provide municipal or quasi-municipal services and functions.
- To make assessments, collect assessments, file liens for unpaid assessments, and prosecute foreclosures.
- To administer and enforce all protective covenants.

Boyne Acquisition of Resort

In May 1976, Boyne Mountain Lodge, Inc. bought the controlling interest of Big Sky of Montana, Inc. Boyne Mountain Lodge, Inc. merged with Boyne Highlands, Inc. in May of 1978. The new corporation was named Boyne USA, Inc.

Westfork Meadows Sewer Dedication

In May of 1982, the Westfork properties (Westfork Meadows Subdivision) dedicated its entire sewer system to RID 305. In return, the RID agreed to provide hook-ups in the subdivision sufficient for a peak daily flow of 48 thousand gallons per day.

Westland Enterprises Litigation Against RID 305

In an August 1985 Montana District Court decision, a 1971 agreement between Westland Enterprises (Simkins/Taylor land) and Big Sky of Montana, Inc., (Boyne USA successor in interest) was interpreted. The court's decision was later upheld by the Montana Supreme Court in April 1989. The court ruled that the Simkin's lands have rights to sewer capacity of up to 43 million gallons per year (or 3700 population equivalency), without a financial obligation to share

in facility costs. In addition, the Court ruled that sewage originating from Simkins land would be entitled to free treatment for up to 1 million gallons per year until the year 2001. As of January 1, 2001, there were no sewer hook-ups to these properties.

In October 1991, Boyne USA, Inc. filed a complaint in the Montana Eighteenth Judicial District Court against RID 305 asking the court to declare that Boyne USA has no continuing obligation to pay all or part of the cost of expanding the wastewater collection and/or treatment facilities of RID 305. This litigation was eventually settled in 1997.

First Moratorium on New Connections

In January 1992, RID 305 placed a moratorium on specified new sewer hook-ups to the system. The moratorium did not apply to the following:

- Original Platted Subdivisions- Sweet Grass Hills, Meadow Village, and Cascade
- Court required capacity for Westland Enterprises.
- Contractual arrangements with West Fork Meadows.
- Tracts involved in BSOA/Boyne pond agreement.
- All developments officially granted a hook-up prior to the moratorium.
- All undeveloped lands currently paying sewer assessments.

Creation of County Water & Sewer District No. 363

In March of 1993, a Memorandum of Understanding (MOU) was entered into by Boyne USA, RID 305, and BSOA. The MOU allowed and directed BSOA to take all steps necessary to create a County Water and Sewer District without effecting the position, rights, obligations or liabilities of the parties in the litigation between Boyne USA and RID 305. On July 26, 1993, the voters approved the creation of the Big Sky County Water and Sewer District 363).

Second Moratorium Against New Sewer Connections

On July 13, 1993, just prior to the vote to create the Water and Sewer District, the Montana Department of Health and Environmental Sciences (MDHES) (now the Department of Environmental Quality) issued Administrative Compliance Order No. WQ-93-001 against the RID 305 (now the Big Sky County Water and Sewer District No. 363) and its Board of Trustees. This Order asserted that the District wastewater lagoons had contaminated state groundwaters. The Order also restricted the RID 305 from issuing further permits to connect to the sewage system without prior approval from the MDHES. In part, the Compliance Order stated "A building or facility that is not under construction or fully constructed at this time may only be connected to the existing Big Sky sewage system if:

“Respondents demonstrate to the Department that the connection will not result in biochemical oxygen demand loading to State Waters that exceed the Department approved Maximum Annual Load...”

On August 31, 1995, the DEQ issued its "First Amendment to the Compliance Order". Second, third and fourth amendments were issued on October 27, 1995; December 1, 1995; and August 13, 1999 respectively.

In the Compliance Order, the MDHES ordered the District to submit by specific dates:

- An Interim Action Work Plan (IAWP) to enhance water conservation, improve treatment, reduce inflow and infiltration into the sewage system, and eliminate the leakage of stored wastewater into the groundwater; and
- A Long Term Compliance Work Plan (LTCWP), to be designed and implemented to achieve long term compliance with the Water Quality Act.

In addition, the Order required that District begin reducing infiltration and inflow into the sewer system, and start reducing water consumption through education. The original deadline for completing the Compliance Order tasks was September of 2000. The District requested and received an extension of the deadline to December 1, 2002.

Interim Action Work Plan

In 1996, the IAWP was approved by the DEQ and a 7.14 million dollar general obligation bond to finance the improvements was approved by the property owners in the District. The IAWP spent the summers of 1996 and 1997 completing the IAWP capital improvements. These improvements included lining and expanding the wastewater storage ponds for 67 MG to 83 MG of storage, demolishing the old treatment plant and constructing a new filtration treatment plant, and installing a new golf course irrigation system on the Meadow Village Golf Course.

Moratorium Lifted

On July 1, 1996, after the District had awarded contracts to construct the IAWP improvements, the Montana Department of Environmental Quality lifted the construction moratorium which its predecessor MDHES had imposed on the District in 1993.

Long Term Compliance Work Plan

The District submitted the Long Term Compliance Work Plan LTCWP to the DEQ for review on January 2, 1996. It was authored by MSE-HKM, Inc., Billings, Montana, as the consultant engineer for the District. The plan was a 20 wastewater facilities plan that developed alternatives for wastewater treatment and disposal and the cost effectiveness of the alternatives.

The final draft of the Long Term Compliance Work Plan (LTCWP), covering wastewater improvements mandated in the second phase of the Compliance Order, was submitted to the

Department of Environmental Quality (DEQ) on September 16, 1998. The District received approval for the LTCWP from DEQ on June 21, 1999.

The plan includes the following components to expand the treatment capacity of the District:

Snowmaking

The District has entered into an option agreement with Boyne USA to potentially use two snowmaking sites located near the Mountain Village, but not on Boyne's ski terrain, for the snowfluent technology proposed in the LTCWP. Under the original plan, a second treatment plant would be constructed on the old lagoon site near the Mountain Village. The plant will have approximately 12.5 million gallons of storage capacity in 2 ponds with aeration equipment, a building to house large compressors to pump wastewater to remote sites, and towers with special spray nozzles. Using a process developed by Delta Engineering of Ottawa, Canada, the snowfluent plan proposes that 50 million gallons of wastewater be treated with this process during the winter months at Big Sky. Delta Engineering has successfully implemented this process in several communities in Canada and the United States and is currently constructing a similar plant in Island Park, Idaho.

Advanced Treatment Plant

Under this plan, an advanced treatment plant will be constructed. The plant will have a nutrient removal activated sludge system to provide nutrient removal and tertiary levels of treatment followed by clarification, filtration, and storage in the existing lagoons with eventual disinfectant and disposal.

Surface Discharge

The LTCWP facility plan includes an annual surface discharge disposal in the amount of 11.5 million gallons of treated effluent to the Gallatin River at the 20 year design build-out. This discharge assumes that the snowmaking treatment plant portion of the plan is constructed. Under this plan, a discharge pipe will be constructed from the treatment plant site in the Meadow Village to a point of discharge into the Gallatin River near the entrance of Big Sky. The District has applied to DEQ for a permit. The District and DEQ jointly held a public hearing at Big Sky on September 29, 1998, to hear comment on the facilities plan and on the draft discharge permit. The DEQ also held a public informational meeting in November 1998, at the Gallatin County Courthouse to provide information on the draft discharge permit and to hear public comment on the permit. Shortly after this public informational meeting a lawsuit was filed by a number of "environmental" organizations with the Greater Yellowstone coalition taking the lead role in this litigation.

Expanded Golf Course Irrigation

With an advanced treatment plant in place, spray irrigation loading rates can be increased because of the additional treatment from the advanced treatment plant resulting in a higher quality treated effluent. The recently completed interim plan allows 122 million gallons of

treated effluent to be irrigated to the golf course. The LTCWP facility would allow 143 million gallons to be spray irrigated to the same areas currently in use.

Boyne Settlement Agreement

Boyne and the District along with the BSOA entered into an agreement to settle long standing 18th District Court Case No. DV 91-716. This was the litigation that was filed about the same time that the State issued its Compliance Order. In a nutshell, this litigation was started by the RID 305 when it became clear that the State would be mandating new improvements in the wastewater system at Big Sky. Old engineering records and plans showed some wastewater improvements such as filtration treatment that were contemplated but never constructed by Big Sky of Montana. The RID 305, BSOA and Boyne all started pointing fingers at each other as the responsible entity for all improvements and associated costs that would be required by the Compliance Order. A settlement was reached on July 25, 1997 with all parties signing that resulted in:

- The transfer of Lone Mountain Springs Water Company from Boyne to the District. The Montana Public Service Commission conducted a public hearing on this transfer in October of 1997 and subsequently approved the transfer on November 24, 1997.
- Boyne forfeits MOU money, and agrees to make 13 annual payments in the amount of \$250,000 due April 1st of each year.
- Creation of a hookup surcharge in the amount of \$3,500 per single family equivalent (SFE) for all property belonging to Boyne as of the date of this settlement agreement.
- Set aside certain parcels of land for possible future storage and snowmaking
- Boyne transferring ownership of a small narrow parcel along the Spur Road that adjoins the Town Center development. This parcel was later traded for the parcel where the new treatment plant was constructed.
- Established a formal Irrigation Agreement between Boyne and the District for Big Sky's Meadow Village Golf Course.

Yellowstone Club Agreement

During the winter of 2000/2001, members of the Yellowstone Mountain Club appeared at a District board meeting to request permission to connect parts of the YC planned development to the District's Mountain Village water system. In exchange for allowing this connection, the District Board would require YC to provide its new 18 hole golf course to be used for summer irrigation of treated wastewater. In addition to the golf course irrigation, YC would have to provide enough winter storage to accommodate District flows to meet full build out projected sewer flows.

On March 29, 2001, the District and YC entered into an extension agreement that included the following major provisions:

- Allowed YC to connect to the District's Mountain village water system. YC would be responsible for the construction of 2 new water booster stations, the pressure water line from MV to their new water tank on Andesite mountain and all water distribution piping;
- Drill a new well in the MV to replace the water being sold to YC under the terms of this Agreement;
- Construct 130 million gallons of total winter storage. The Agreement allowed for the phasing of this storage;
- Allow the YC golf course and irrigation system to be used for summer spray irrigation;
- The District would construct a new wastewater treatment plant and forcemain pipeline to pump treated water from a new treatment plant in the Meadow Village to YC's storage ponds;
- The Lone Moose and Spanish Peaks Resort developments were annexed into the District and allocated 900 and 1,000 SFEs respectively as consideration for the expanded winter storage and summer irrigation.

Long Term Compliance Work Plan Amendment

The LTCWP was subsequently amended to include the new provisions outlined by the YC Agreement. The amended plan was subsequently approved by the DEQ in the spring of 2002. The new treatment plant and forcemain pipeline were designed in the spring and summer of 2002. The project went out for public bid in August of 2002. The project was awarded to 2 contractors: Bodell Construction, Missoula MT received the wastewater treatment plant (SBR) and 2 booster station contract, and Snow Machines Inc (SMI) received the contract for the new forcemain pipeline.

Construction commenced in September of 2002. The forcemain pipeline, approximately 39,500 feet was laid during the summer and fall of 2003. The new treatment plant is expected to be complete by May of 2004. This project also included replacing the old sewer inflow line along the aeration pond down to the recirculation pump house, laying new control wire conduit and wire to the recirc building, and adding 2 new blowers and aerator lines to pond 1.

LONE MOUNTAIN SPRINGS WATER SYSTEM

The existing water supply and distribution facilities for Big Sky were initially constructed beginning in 1971 and substantially completed by 1974. Big Sky of Montana, Inc. initiated water service in 1971, and water was provided free of charge until the end of 1972 when Lone Mountain Springs was organized as a private utility company owned by Big Sky of Montana, Inc. The assets and liabilities of Big Sky of Montana, Inc. were eventually purchased by Boyne

USA in 1976, and John Kircher, Vice President of Boyne USA became the sole owner of Lone Mountain Springs.

The water system is composed of two distinctly separate distribution systems, each with its own wells for water sources, welded steel or bolted steel tanks for storage, and asbestos cement, ductile iron and PVC water mains for distribution. The upper distribution system consists of Mountain Village and the lower area serves Meadow Village, Sweetgrass Hills, Hidden Village, Blue Grouse Hills, South Fork, North Fork, West Fork Meadows and portions of Pinewood Hills. There are no connections between the upper and lower systems. This document deals only with the system serving the Meadow Village service area. The original Meadow system consisted of the Meadow and Sweetgrass Hills subdivisions. These two projects were completed in the early seventies.

Ken McBride developed the West Fork Subdivision in Section Two in 1973. Paul Cronin began developing the nearby Blue Grouse and South Fork Subdivisions beginning in the early 1980's. In 1981 Camper Village and Mobile Home Village were constructed near what is now known as Hidden Village. The Hidden Village Condominium project replaced Camper Village in 1985 and the Pinewood Hills Subdivision replaced Mobile Home Village shortly thereafter. Boyne USA connected the North Fork Subdivision to the Meadow system in 1996. Lone Mountain Guest Ranch is on its own system and is not connected to the Meadow system. The District also took over the ownership and maintenance of the Apsen Groves water system on January 18, 2000, which remains a separate water system that serves the Aspen Groves Subdivision.

Lone Mountain Springs was transferred to Big Sky County Water & Sewer District No. 363 as part of the settlement of a lawsuit regarding sewer capacity in 1997. The transfer of the Lone Mountain Springs water system was approved by the Montana Public Service Commission in November of 1997. The Big Sky County Water & Sewer District has owned and operator the water system since this time.

CHRONOLOGY OF KEY EVENTS

- July 13, 1993 Montana Department of Health and Environmental Sciences (MDHES) issued Administrative Compliance Order No. WQ-93-01 which creates building moratorium
- July 26, 1993 Voters approved the creation of the Big Sky County Water and Sewer District No. 363 from the former Rural Improvement District (RID 305). Voters also elect first District Board of Directors.
- August 5, 1993 Certificate of Incorporation of Big Sky County Water & Sewer District No. 363 filed and approved by Montana Secretary of State's office.
- February 16, 1994 Agreement to transfer the assets of the RID 305 to the Big Sky County Water & Sewer District No. 363 executed
- September 15, 1994 Interim Action Work Plan first submitted by HKM to DEQ for approval
August 31, 1995 DEQ issues 1st Amendment to the Compliance Order. MDHES ordered the District to submit a Interim Action Work Plan (IAWP) and Long Term Compliance Work Plan (LTCWP).
- October 27, 1995 DEQ issues 2nd Amendment to the Compliance Order
November 1, 1995 Revised Interim Action Work Plan (IAWP) completed and submitted to DEQ for approval.
- November 7, 1995 District conducts first regular election for District Board Members.
December 1, 1995 DEQ issues 3rd Amendment to the Compliance Order
April 23, 1996 C&H Engineering, Bozeman, MT, plans and specifications for storage pond improvements approved by DEQ
- May 7, 1996 MSE-HKM Engineering, Billings, MT, plans and specifications for filtration treatment plant and new golf course irrigation system improvements approved by DEQ
- May 28, 1996 Bid opening for IAWP project, bids awarded to Williams Brothers Construction, Billings, MT for filter plant, Huppert Brothers, Billings, MT for golf course irrigation, and Van Dyke Construction, Bozeman MT for storage ponds
- June 4, 1996 Bond Election for General Obligation bond for 7.137 million dollars for IAWP improvements conducted as mail ballot election
- June 12, 1996 Gallatin and Madison County Commissioners and the District enter into a Interlocal Agreement which allowed the annual disbursement of Resort Tax funds to pay \$500,000 of annual debt service for the IAWP project improvements.
- July 1, 1996 DEQ lifts building moratorium after contracts have been awarded for IAWP improvements
- January 2, 1996 Long Term Compliance Work Plan first submitted to DEQ for approval. Plan included new oxidation ditch type treatment plant, snowmaking and surface discharge as recommended alternatives.
- 1996-1997 IAWP project improvements constructed. Williams Brothers Construction, Billings, MT constructed the filtration building, and Van Dyke Construction, Bozeman, MT expanded and lined the winter storage ponds 1 and 3.
- June 17, 1997 Big Sky County Water & Sewer District Board of Directors adopt Bylaws

for the District.

July 25, 1997 Boyne and District sign agreement to settle Case No. DV 91-716 resulting in transfer of Lone Mountain Springs Water Company from Boyne to the District

October 7, 1997 Public Hearing: Sewer Rate Ordinance 97-1002

November 24, 1997 Montana Public service Commission approves the transfer of LMS to the Big Sky County Water & Sewer District; Docket # D97.8.140, Order # 6027.

September 18, 1998 Long Term Compliance Work Plan revised and re-submitted to DEQ for approval.

September 29, 1998 Public Hearing: Long Term Compliance Work Plan project hearing conducted at Big Sky Fire Station

November 12, 1998 Public Information Meeting: Long Term Compliance Work Plan project meeting conducted at Gallatin County Courthouse

January 15, 1999 DEQ issues discharge permit to the District for new advanced wastewater treatment proposed in the LTCWP

March 24, 1999 Greater Yellowstone Club, et al file lawsuit DV99-123 against MDEQ and the Big Sky County Water & Sewer District in the 18th Judicial District Court (Gallatin County)

June 15, 1999 Public Hearing: Water Use Ordinance 99-1002

August 13, 1999 DEQ issues 4th Amendment to the Compliance Order

May 15, 2000 District office moves to new building at 561 Little Coyote Road

June 29, 2000 Bid opening for proposed snowmaking plant near the Mountain Village, contract never awarded, low bid at 6.2 million and engineers estimate approx. 4.5 million.

March 29, 2001 Yellowstone Mountain Club and the District sign their Agreement to sell water from Mountain Village in exchange for golf course irrigation and winter storage.

September 27, 2001 Public Hearing: Water Facilities Plan project

September 27, 2001 Public Hearing: Petition for Annexation of Land, Boyne section 25 lands, Lone Moose and Spanish Peaks Resort. Exclusion of certain lands in section 25, 26 27 and 31.

September 27, 2001 Public Hearing: LTCWP project which includes provisions of YC Agreement

October 26, 2001 DEQ approves LTCWP dated June 2001.

November 20, 2001 Public Hearing: Exclusion of certain lands in section 25, 26 27 and 31; creation of Sewer and Water Jurisdictional areas for bond debt service.

January 22, 2002 Public Hearing: Amendment to Rate Ordinance 97-1002 to establish meter rates for water use.

March 29, 2002 Public Hearing: Treasure State Endowment Program funding application

April 23, 2002 Public Informational Meeting: LTCWP and Water Facilities Plan

March 27, 2002 Annexation election to annex land petitioned by Boyne, NE ¼ of Section 25 of the Mountain Village area; Lone Moose Meadows and the Spanish Peaks Resort area. Conducted as a mail ballot election. Boyne annexation passed 228 For (81% to 54 Against (19%); Lone Moose/Spanish Peaks passed 236 For (83%) and 48 Against (17%).

May 7, 2002

Bond Elections for LTCWP \$13.5 million dollar general obligation bond, and \$2.5 million dollar GO bond for water facilities plan and water meters. Conducted as a mail ballot election. Sewer bond passed 187 For (81%) 44 Against (19%); Water bond passed 196 For (83.8%) 38 Against (16.2%).

July 2002

Bid opening for LTCWP project

September 2002

Commence construction of new LTCWP improvements

June 2003

Commence construction on new 1,000,000 gallon water storage tank for the Meadow Village area. Located above Hidden Village. Project also included 5 PRV's, sections of water main piping & a new booster station off of Two Moons Road.