



March 24, 2023

Billings Bench Water Association
111 Main Street
Billings, MT 59105

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ADMINISTRATION
2251 Belknap Ave
Billings, MT. 59101
P 406.657.8230

BBWA Proposal for City Use of Facility – Basis of Agreement

Dear BBWA Board,

The City believes that use of the BBWA by the city for conveyance of water from the Yellowstone River to our reservoir site can provide benefits to both entities. Our intent in entering into an agreement would be to not only provide the city with an option for conveyance but also develop agreement terms that will help the BBWA to achieve their operational goals. Our intent is to assist the BBWA to make improvements to create a more reliable water source for the city while also ensuring that use of the BBWA is in the City's best financial interest.

After a conversation with Jim Stott in mid-February, we would propose the following general terms as a basis for an agreement between the BBWA and City. Please understand that while city staff can negotiate a draft agreement, the final decision on the terms for the City is the City Council.

BBWA Operational Priorities

The City understands that the sole focus of the BBWA is to provide reliable irrigation water to its users. Our use of the BBWA will not interfere in that mission and in fact, will help as we would make improvements to the canal to increase reliability. The City would also provide funding annually to allow the BBWA to do additional work to the canal. The reservoir will have 40 days of storage so if there is an issue with supply through the canal, we understand that irrigation needs would be served first before filling the reservoir. There does need to be consideration to the fact that we would expect that any issue would be addressed as soon as possible to be able to resume service to the reservoir. That is consistent with the BBWA's mission to provide consistent service so we are confident it would not be an issue.



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Capital Improvements

There are several improvements that would need to be made before the City could or would use the canal. These include the headgate at the Yellowstone River, Canyon Creek Flume, lining to areas of the canal, and improvements necessary for operations of the system which would likely include a diversion structure/check structure (potentially combined with an overflow to Canyon Creek) and controls between the headgate, check structure and reservoir. As of now, the exact needs for each structure are unknown but below is a discussion of each structure and an approach that we believe is appropriate.

Headgate: the City will agree to make and fund improvements that are required to supply the water to the reservoir. This could include improvements to the existing headgate or possibly a new headgate adjacent to the existing headgate to control city supply in summer and winter.

Canyon Creek Flume: the flume is nearing the end of its useful life and needs to be partially or fully replaced to ensure continuous operation. The City and BBWA need to discuss a schedule for repair or replacement of the flume and an appropriate cost share.

Diversion Structure and Check Structure: improvements will be necessary to allow water to be diverted to the City's reservoirs both during irrigation season and outside of it. A check structure would likely be needed associated with the diversion structure. Provisions can also be included to allow excess BBWA flow to go to Canyon Creek or all the BBWA flow if the canal was shut-off at the check structure. The BBWA will have input into this structure and the city will fully fund the construction. This structure will be beneficial to the BBWA to reduce impacts if the canal is breached downstream of this location.

Canal lining: to increase the amount of water in the canal sufficiently to ensure the city has adequate supply, we recognize that areas of the canal must be lined to reduce water loss. There are a couple of areas that can be lined that would increase the flow the 30 cfs that the city normally needs initially. It is our understanding that there are grants in place for some of these locations. The City will commit to providing the grant match if a grant is being used or funding the necessary lining if a grant is not available.



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Other improvements: all improvements that are necessary for the City to use water from the canal will be fully funded by the City. At a minimum, this includes a diversion structure and controls.

Annual fees

Early and late season – 100% of cost + a 2X multiplier

Regular season – percent of usage (30/380) + a 2X multiplier. Current annual revenue is \$750k, 7.9% = \$59k so regular season fee would be \$118k.

Alternatively, the city can pay a fee for the year that does not require tracking of the off season work. The BBWA has proposed \$32,000 for a fee for the remainder of the season which would result in a total annual fee of \$150k.

The annual fee that is charged will be determined by the calculation above and will increase over time. Escalation will be accounted for through a percentage increase annually based on an industry index or through the above calculation modified as user fees increase. Further discussion on the fee and escalation clause can occur during the development of the agreement.

The fee paid by the City can be through direct funds or through work done by City crews. The City will provide an hourly rate for personnel each year and if the BBWA needs work performed, they can request the City use crews. If the City has personnel available, they will assist the BBWA with work that is needed and the value of that work will be deducted from the annual fee.

Water Rights

The City has water rights that can be moved to the location of the BBWA head gate so the City will not need to use the BBWAs water rights. Also, the City water rights are for the entire year so we will be allowed to draw water outside of the regular irrigation season. Costs associated with moving the point of diversion will be paid by the City.

Contract Duration

The City must be guaranteed use of the canal for at least 20 years. The capital cost to make the improvements is in the millions of dollars. When weighing options, the City needs to look at capital costs and how the



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expenditure of funds on a potentially temporary solution compares against using those same funds to develop a permanent solution. If the timeframe for the agreement is less than 20 years, we would need to work with the BBWA to develop an improvement plan that was reflective of the shorter duration. If the BBWA desires a minimum contract duration, the City needs to understand the basis for the duration and costs that would be incurred by the BBWA in the event the City decided not to use the canal.

Both the City and BBWA would like to see an “exit” clause in the contract. Likely triggers would be non-payment and unsustainable impact on operations among other things. When the agreement is developed, triggers will need to be added.

The City is planning to have the reservoirs operational in June 2025. This agreement would need to be in place in order to allow both the BBWA and the City to be ready for that date. The annual fee would start being paid as soon as the first water is delivered to the site.

We believe we have provided a plan that is beneficial to the BBWA as well as to the City. Not only will the city fund some much needed improvements but we will also cover all increased cost to operate and maintain the canal in addition to providing additional annual fees that are above and beyond those costs. We look forward to working with the BBWA to develop an agreement and appreciate the Board’s willingness to work with us on this important project.

Sincerely,

Debi Meling
Public Works Director