

Subject: 2018 Errors in Water and Sewer Impact Fee Calculations and Collections – City of Whitefish, Montana

I. INTRODUCTION

This report outlines significant errors identified in the City of Whitefish's calculation and collection of water and sewer impact fees, as originally submitted in the 2018 FCS Group Impact Fee Study and more significantly in subsequent amendments created by the acting City Manager. These errors, discovered during litigation and independent review, span multiple areas including cost allocation, capacity assessment, demand estimation, and collection methodology. Collectively, they resulted in material overcharges (estimated at \$4 Million) to developers and homeowners and raise serious concerns regarding compliance with applicable legal standards.

There are 13 errors we identified. Each error benefited the City at the expense of the property owners. Finally, we present serious misrepresentations by the City Manager in 2021 when we presented our findings to the City Council.

II. BACKGROUND: IMPACT FEE CALCULATION FRAMEWORK

Impact fees are calculated based on three core elements:

1. **Cost:** Includes reimbursable costs for existing infrastructure with unused capacity and projected costs for future infrastructure needed to support growth.
2. **Capacity:** Refers to the service volume (in MGD) of existing and new infrastructure.
3. **Demand:** The burden new development places on infrastructure, commonly expressed in Equivalent Residential Units (ERUs).

Basic Formula:

- $ERUs = Capacity / Unit\ Demand$
- $Fee\ per\ ERU = Cost / ERUs$

A miscalculation in any of these components can materially distort the resulting impact fees.

III. ERRORS IN COST ALLOCATION

A. Water Impact Fees

1. Fictitious South Whitefish Reservoir Costs

- A \$8.5M project repeatedly listed in the Capital Improvement Plan (CIP) was never constructed.
- Impact: Raised costs by \$4.25M.

2. Unsupported \$10M Additions

- \$5M each added to the water treatment plant and the South Whitefish Reservoir without documentation.
- No added capacity identified to justify inclusion.
- Impact: Increased costs by \$2.5M.

3. Inconsistent Credit Application

- 2018 year-end balances were used solely for water impact fee credits, unlike other categories that used 2017 data. Using consistent year for credits would have REDUCED wastewater and other impact fees. Violates state law and GAAP accounting practices.
- Impact: Increased fees by \$250K.

B. Wastewater Impact Fees

4. Nonexistent Solar Array Project

- A \$4M project included in calculations despite never being approved or constructed.
- Impact: Overstated costs by \$1M.

5. Cost Transcription Error

- Entered \$17.725M in Impact Fee report instead of \$17.275M in the CIP for wastewater treatment plant.
- Impact: Increased costs by \$122K.

C. Water and Wastewater

6. Failure to Offset for Financing

- City incurred \$25M in debt for infrastructure projects, yet no offset was applied.

- Resulted in double charging—both through impact fees and future finance charges.
-

IV. ERRORS IN CAPACITY ESTIMATES

7. Omission of Water Capacity Increases

- Capacity increase from 5.5 to 8.0 MGD omitted despite \$10M in added infrastructure spending.
- Impact: Artificially inflated fees.

8. Omission of Wastewater Capacity Gains

- Plant capacity increased from 1.59 to 2.07 MGD.
 - If included, fees would have dropped from \$3,384 to \$1,778 per ERU.
-

V. ERRORS IN DEMAND CALCULATIONS

9. Incorrect MDD and ERU Values

- FCS used inflated Max Daily Demand (MDD) of 744 GPD/ERU based on estimates rather than actual data.
 - Independent review by AE2S found MDD to be 374 GPD/ERU.
 - Result: Impact fees were effectively doubled.
 - Invalidated the 2018 FCS Report and subsequent City Manager Addendums.
-

VI. ERRORS IN IMPACT FEE COLLECTION METHODS

10. Overcounting of Fixture Units

- Standalone showers were double-counted.
- Resulted in average overcharge of \$427 per installation.

11. Incorrect Base Meter Size

- 2018 fees continued to use 5/8" meter base despite transition to 3/4" meters. Consultant FCS confirmed this with Whitefish, but City continued to use faulty chart.

12. Outdated Weighting Factors

- Used obsolete 5/8" meter weighting; did not apply proper 3/4" weighting factor of 0.667.
- City failed to use collection chart method developed by original consultant HDR Inc in 2007.
- Led to overcharges up to 50% higher than permitted.

13. Inconsistent Fixture Unit Starting Values

- Chart reduced starting fixture count by 1 unit from original version.
- Resulted in overcharges on every account.

VII. CONCLUSION

The cumulative effect of these miscalculations, omissions, and misapplications has resulted in significant and unlawful overcharges to residents, developers, and builders in Whitefish. The estimated overcharges were \$4,000,000. The foundation of the 2018 FCS Impact Fee Study has been undermined by these errors, rendering the fee schedule legally and technically invalid. A comprehensive audit and recalibration of the water and wastewater impact fee program is necessary to ensure legal compliance and equitable cost allocation.

Addendum: Misrepresentations by the City Manager in 2021

The following is a list of significant misrepresentations by the City Manager during just the short time period when Bill Burg and I presented to the City the problems we found with the 2018 Impact fees. These all occurred between July – September, 2021. If the Manager had given an honest presentation to the Council, perhaps an independent review would have been ordered, problems with the 2018 fees would have been corrected, and the subsequent Class Action lawsuit could have been avoided.

1. **Misrepresented Council Approval of Solar Array Project.** One of the projects used to calculate impact fees was a phantom solar array project. We contend that it should never have been included in the FCS report to start with, but since it was never built, refunds should have been issued to all rate payers. The City Manager objected to these refunds. One of the state and city requirements for impact fees is that any project used to calculate fees must be included in a Capital Improvement Plan (CIP)

approved by the City Council. In an email exchange in late July, 2021 between the City Manager, Mayor, Attorney and myself, City Manager states that she removed the “Solar Array Project” from a City Council approved Capital Improvement Plan (CIP) after the cost of the new wastewater treatment plant was higher than expected. However, this project was NEVER included in any CIP and the Council never approved this project. In a 2018 email exchange between FCS and Craig Workman, Workman stated this very fact that the City Council never approved this project and it was not included in any CIP. He was effectively arguing against including this \$4,000,000 project in the impact fee calculations. The City Manager notified FCS in an email that she would take care of this, which obviously NEVER happened. City Manager had 3 opportunities to include this project and get Council approval, which is required to assess impact fees for any project. The City Council never approved this project nor was it ever built. This was a MATERIAL misrepresentation by the City Manager. Refunds should have been issued.

2. **Misrepresented Scope Of Fixture Unit Problem.** The City double counted fixture units in homes built after 2019 when calculating water and wastewater impact fees. At Council meeting, City Manager claimed this problem was minor and only affected a handful of property owners. She misrepresented the widespread nature of this problem to protect her image and trivialized the significance of this problem to the Council, making it appear to be only minor. Prior to that, in a meeting with Bill Burg and myself, she effectively said the same thing, trivializing the scope of this problem. In reality it affected hundreds of homeowners and cost the City over \$200,000 in refunds.
3. **Misrepresented State Audit of Impact Fees.** At Council meeting, we requested an independent review of the City’s impact fees because the City Manager was responsible for most of the problems we found. The City Manager falsely claimed the State audits city financials and she claimed the City could submit its impact fees to the state for review if the Council wanted. In fact, the state does NOT audit either City finances or impact fees (per Montana Financial Services Division) and doesn’t have the staff nor ability to do this. As both a CPA and auditor, the City Manager knew this was a false claim.
4. **Misrepresented Consultant's Role.** The City Manager claimed to the Council members that the impact fees approved by the City were the result of calculations by their consultant, FCS Group. This was a deliberate attempt to deflect blame away from her errors and to add credibility to the changes she made. However, the water impact fee calculated by FCS was just \$1163 per homeowner (per FCS report) whereas the City Manager recalculated this fee on her own and the City charged each homeowner

\$4120 (per City Manager Addendum). Her representation could not be further from the truth since the City Manager quadrupled the FCS fee and documents show this fact. From City emails, we found that within DAYS of FCS submitting its report, the City Manager added \$10,000,000 in undocumented costs to dramatically increase these water impact fees.

5. **Misrepresented Collection Chart Used to Assess Fees.** At the Council meeting, the City Manager claims she developed a collection chart for the 2018 impact fees that conformed with the one developed by consultant Cil Pierce of HDR in 2007. In fact, she altered the content and methodology of this chart, did not follow the instructions provided by HDR, and eventually overcharged EVERY property owner by 50% because of this error or deliberate action. Even consultant FCS confirmed the chart she developed was based on the incorrect water meter size.