

Whitefish Water Impact Fee Issue

South Water Reservoir Project

In August 2018, FCS published an Impact Fee Update that recalculated the maximum fees the City of Whitefish could charge homeowners and builders. This report stated that the city must reduce the **water impact fees** charged its residents by 50%, from the previous \$1641 to \$1163 (Note 1). The new fee was based on funding required to increase the capacity of the existing Water Treatment Plant (WTP) and build a new South Water Reservoir south of HWY 40.

After this report was published, the City staff amended the FCS report and produced a 2018 Addendum that would increase these fees. They accomplished this by adding undocumented costs that were divided equally among the WTP and the South Water Reservoir project. The City Manager produced this Addendum to the impact fee update in which she simply added \$10M but failed to add the increased capacity in her calculations. After the addition of these costs, water impact fees increased from \$1163 to \$3018. Combined with a faulty collection chart, the maximum allowable water impact fee increased again to \$4119 (Note 2).

Four years after these impact fee increases, the City has substantially upgraded its WTP and raised water production capacity per the FY2020 CIP. However, the City did not start construction of the South Water Reservoir project and has not increased the capacity of its water storage facilities. In fact, the City has not defined this project. Like the Solar Array Panel project listed in water impact fee project list, the South Water Reservoir project had not been properly identified and documented, a need for the project had not been established, and the cost was a simple estimate, violating 7-6-1602 (2).

Water Impact Fees and the South Water Reservoir Project

According to MCA 7-6-1602 (5), impact fees can only be assessed against capital projects that are developed in response to the demands placed on infrastructure by new development. As such, two important factors of any impact fee capital investment are cost and the resulting increased capacity. For water impact fees, capacity is generally measured in terms of water production and storage.

Listed in the 2018 FCS water impact fee capital project table III-3, page 10, is a **\$3,400,000** South Water Reservoir future project which is developed to increase water storage capacity. The description of this project states “New reservoir south of HWY 40” which is outside Whitefish city limits. No water or sewer services are provided here. In the FY 2019 CIP this project is listed as being funded primarily with impact fees and shows construction completed in FY 2021. Yet as of today,

there is no “New reservoir south of HWY 40” (or anywhere else in Whitefish). Project costs are estimated but increased storage capacity is not specifically defined.

#	Project Name	Description & Justification	Total Cost
<u>Treatment/Supply</u>			
T1	South Water Reservoir	New reservoir south of HWY 40 - Total Cost \$3.5M (\$200K for modeling and siting, \$500K for land acquisition & preliminary engineering, \$800K for watermain extension (eliminated Karrow), \$2M for final engineering & construction). Assumes \$100K paid in FY18.	\$3,400,000
T2	Water Treatment Plant Expansion	Expand treatment capacity (\$4M for construction and \$1M for design)	\$5,000,000
T3	Reinstate First Creek Supply	Possible diversion structure to put First Creek back online \$100K (\$25K Design and Sampling, \$75K Construction)	\$100,000

This project is listed in the 2018 FCS Impact Fee Update as one of the major water impact fee projects, accounting for 42% on the net water impact fee.

Table III-3: Water Improvement Fee Cost Basis

Capital Project	Year	Current Cost (Uninflated)	% Utility-Funded	% Allocable to Growth	Amount In Cost Basis
South Water Reservoir	2018	\$ 3,500,000	100.0%	42.9%	\$ 1,500,000
Water Treatment Plant Expansion	2018	5,000,000	100.0%	50.0%	2,500,000
Reinstate First Creek Supply	2019	100,000	100.0%	37.2%	37,164
Central Avenue	2018	200,000	100.0%	0.0%	-
Park Avenue (E 8 th St. to E 10 th)	2018	150,000	100.0%	33.3%	50,000
Cast Iron Water Main Replacement	2018	500,000	100.0%	0.0%	-
Karrow Avenue Loop – Design & Construct	2020	1,000,000	100.0%	0.0%	-
Whitefish Urban Project – US 93 – Design and Construct	2022	1,000,000	100.0%	0.0%	-
Armory Road Watermain Railroad Crossing	TBD	TBD	100.0%	0.0%	-
Flathead Watermain Extension	2019	60,000	100.0%	37.2%	22,298
Suncrest Conversion Pumping Station	2018	50,000	100.0%	0.0%	-
Whitefish Lake Pump Station	2018	TBD	100.0%	0.0%	-
Lower Grouse Pumps	2019	15,000	100.0%	0.0%	-
Emergency Services Center / Public Works Expansion	2018	20,000	100.0%	0.0%	-
Less: Existing Water Impact Fee Fund Balance					(1,302,924)
Total		\$11,545,000			\$2,806,538

Using the above table, the FCS Group calculated the maximum allowable water impact fees that the City can charge residents.

Table III-4: Summary of Updated Water Impact Fee

Water Impact Fee Calculation	Reimbursement Fee	Improvement Fee	Administrative Fee	Total
Total Costs	\$235,699	\$2,806,538	5%	\$3,194,349
Growth in ERUs	2,747	2,747		2,747
Charge per ERU	\$86	\$1,022	\$55	\$1,163

Whitefish Adds New Water Expenses

According to the FCS report, Whitefish was charging new development a **\$1641** water impact fee prior to 2018 (Note 1). The new FCS maximum allowable fee was reduced to **\$1163**. City management decided to add new costs to some existing water projects. On Oct 29, 2018, the city management increased the South Water Reservoir project’s listed cost by \$5M. At this time, no documentation to support this \$5M expenditure was available and the new FY 2019 CIP did not identify ANY increase in water storage capacity as required by 7-6-1602.

In this CIP produced by the Manager, the South Water Reservoir project is listed with a Total Cost of **\$8,400,000**. Nothing changed in the description of this project in the new CIP and no increase in capacity was identified. The sole purpose of adding this additional cost appears to be the increase in water impact fees.

#	Project Name	Description & Justification	Total Cost
<u>Treatment/Supply</u>			
T1	South Water Reservoir	New reservoir south of HWY 40 - Total Cost \$8.5M (\$200K for modeling and siting, \$500K for land acquisition & preliminary engineering, \$800K for watermain extension (eliminated Karrow), \$7M for final engineering & construction). Assumes \$100K paid in FY18.	\$8,400,000
T2	Water Treatment Plant Expansion	Expand treatment capacity (\$9M for construction and \$1M for design)	\$10,000,000
T3	Reinstate First Creek Supply	Possible diversion structure to put First Creek back online \$100K (\$25K Design and Sampling, \$75K Construction)	\$100,000

The City Manager produced an Addendum to the 2018 FCS Update which included the increased costs to the South Water Reservoir and the Water Treatment Plant.

Capital Project	Year	Current Cost (Uninflated)	% Utility-Funded	% Allocable to Growth	Amount in Cost Basis
South Water Reservoir	2019	8,400,000	100.0%	42.9%	\$3,603,600
Water Treatment Plant Expansion	2019	10,000,000	100.0%	50.0%	\$5,000,000
Reinstate First Creek Supply	2019	100,000	100.0%	37.2%	\$37,200
Cast Iron Water Main Replacement	2019	500,000	100.0%	0.0%	
Karrow Avenue Loop - Design & Construction	2020	1,000,000	100.0%	0.0%	

As of late 2022, virtually no money has been spent to develop a South Water Reservoir (other than general studies conducted by AE2S), even though the city has collected approximately \$1.2M in fees tied to this project since around 2013. According to subsequent CIPs, the construction and completion dates continue to be moved back to the latest possible date (See History).

The City failed to identify the need for this project as required by 7-6-1602 (2). Subsequent reports produced by AE2S AFTER the FCS study identify shortfalls in the water infrastructure, but simply provided options for the City (Note 4).

This project appears to be an impact fee revenue generator. As shown later in this report, fees were charged Development to build a new water storage facility but were diverted to pay for a large water main replacement project not eligible for impact fees.

History Of The South Water Reservoir Project

The proposed South Water Reservoir project dates to at least 2011 where it appears in an old CIP. The cost associated with this project starts at \$2.2M with a completion date listed in the FY 2011 CIP as “Future”. In the FY 2013 CIP, the completion date is listed as 2017. This project is listed in the Whitefish 2012 Impact Fee Update, but it is not initially used in the water impact fee calculation. Later CIPs list this project, with impact fees as the source of funding.

The following chart shows the history of this project as listed in the Whitefish CIPs:

Whitefish Capital Improvement Programs (South Water Reservoir)								
FY of CIP	Project Description In CIP	Project Cost	Assumed Spent	Impact Fees	Est. Date Completed	Est. Fees Collected	Actual Spent	Total Water Impact Fees
2011	South Water Reservoir South RR Tracks	2,205,000			Future	\$0		\$100,000 est
2012	South Water Reservoir South RR Tracks	2,205,000			Future	\$0		\$109,445
2013	South Water Reservoir South RR Tracks	2,205,000		2,205,000	FY 2017	\$15,733		\$157,333
2014	Not Provided					\$22,647		\$226,465
2015	Not Provided					\$18,671		\$186,708
2016	South Water Reservoir South RR Tracks	2,205,000	150,000	1,323,000	FY 2018	\$28,035	0	\$280,349
2017	South Water Reservoir South RR Tracks	2,850,000	0	1,250,000	FY 2019	\$20,666	6000	\$206,657
2018	South Water Reservoir South HWY 40	3,500,000	0	1,500,000	FY 2020	\$24,782	77,000	\$247,821
2019	South Water Reservoir South HWY 40	3,400,000	100,000	1,500,000	FY 2021	\$159,000	221,000	\$338,180
2019(a)	South Water Reservoir South HWY 40	8,400,000					0	
2020	South Water Storage & Production	7,600,000	400,000	900,000	FY 2023	\$255,000	39,000	\$608,104
2021	South Water Storage & Production	7,000,000	600,000	940,000	FY 2025	\$317,000	0	\$754,738
2022	South Water Storage & Production	7,000,000	0	940,000	FY 2026	\$336,000	0	\$800,000 est
2023	South Water Reservoir South HWY 40	7,500,000	0	1,000,000	FY 2026	\$357,000		\$850,000 est
			\$1,250,000			\$1,197,534	\$343,000	\$3,915,800

Note 3 When producing the above chart, a discrepancy was found. In the 2012 Impact Fee update performed by the City, the water impact fee did not include the new South Water Reservoir because it was not due to be built until the end of a 20 year report period. However, the 2013 CIP contains this project with a completion date of 2017 and the project fully funded with

impact fees. Therefore, collected fees are estimates at 10% up to 2018. In subsequent years, the estimate is 42% based on actual numbers.

This project does not meet the requirements specified in MCA 7-6-1602 (7). The description and location of this new water storage facility changed at least 4 times in 12 years along with the associated costs. From documents provided by the city, no definitive decision has been made on the location or cost of this project. No justification for adding \$5M to this project in the addendum to the 2018 FCS Impact Fee Update was provided. No water production or storage capacity increase was identified.

In 2018, water impact fees were re-calculated and fees continued to be collected based on this project. For a typical new single family home, the city charged **\$1312** to build this new water storage facility. But a 2019 AE2S report (Note 4) demonstrates that the city had no basis for using this project a year earlier because the City never decided “*What is the project?*”. In this report, AE2S offers the City 8 different site locations along with different site functions. Some sites would have both ground water production and storage, while others were simply storage facilities with transmission of water coming directly from the existing WTP. AE2S cost estimates for each option range between \$7M to \$18M. Capacity increases range from a low of 1mg storage to a high of 1.5mg storage and 2 mgd daily water production and treatment. No start or completion dates have been defined. With all these unknowns, it is impossible to fairly and accurately assess impact fees.

No documentation was made available that any option was selected by the City. The city simply added \$5M to the project in 2018 WITHOUT specifying the additional capacity increase to the system.

7-6-1602 specifically requires that the city produce documentation supporting each project used in impact fee calculations, not just vague or changing descriptions, locations, cost estimates and capacity increases that will be determined later. When the 2018 FCS Impact Fee update and amendments were produced, none of the essential information needed to include this project was available.

City Meeting Obscures Project Objectives Further

In a meeting with Whitefish officials on August 30, 2021, the City Manager stated that the South Water Reservoir project had been “redefined”. It was no longer located south of HWY 40 but was now a water storage facility to be constructed within city limits on property the city currently owned. The City Manager did not know when the project would be constructed but stated that the need to build this facility was to increase water pressure for parts of South Whitefish for fire safety

reasons. She did not mention the AE2S studies or whether the City chose any of the proposed options. We pointed out that the project as now defined by the Manager corrects a deficiency in the water system and as such did not qualify for impact fees. The following comes directly from the 2018 FCS update (page 2):

“The improvement fee methodology must include only the cost of projected capital improvements or portions of improvements needed to increase system capacity for future users. In other words, the cost(s) of planned projects or portions of projects that correct existing deficiencies, or do not otherwise increase capacity for future users, may not be included in the improvement fee calculation.” (7-6-1603 (3)).”

In the FY 2023 CIP published after this meeting in 2022, the description for this project appears:

“Variety of projects to increase water capacity in South Whitefish including groundwater production and/or additional storage south of HWY 40.”

As described in this CIP, the project still appears to be vague on location and functionality. Nor does it match how the City Manager defines the South Water Reservoir.

City Misappropriates Water Impact Fees

For 10 years the City of Whitefish has been collecting impact fees for a water storage facility it never built. As these fees accrued, City management decided to spend them on unrelated projects.

MCA 7-6-1602 and 1603 clearly state that impact fees must be used to benefit development that paid these fees. It also states that these fees cannot be used for operations, maintenance and fixing deficiencies. In the 2021 Staff Report on Impact Fees (Note 5), the following statement appears:

“Impact fees may not be used for the operation or maintenance of public facilities.”

However, in this same report, the following statement appears:

*“Other areas where impact fees are currently allocated include the South Water Storage & Production and **Cast Iron Water Main Replacement projects.**”*

In the 2018 FCS Impact Fee Update, the independent consultant lists project that may and equally important MAY NOT be included in impact fees. Projects that are identified as operations or maintenance are not eligible, for example. This is identified in 7-6-1602 (1d, 1e). In Table III-3 above the FCS expert identifies 5 projects eligible for impacts under the column “% Allocable To Growth” including

the South Water Storage project. The **Cast Iron Water Main Replacement** project is not eligible and is listed as 0% because it is a scheduled, periodic maintenance and replacement project that is unrelated to new development.

According to its description, the project is defined as a multi-year program replacing aging infrastructure (cast iron water mains) and adding new hydrants. A further description of this project that defines the nature and benefits of this project appears in an AE2S report (Note 6).

In this 2019 study, AE2S determined that the City of Whitefish had experienced an unusually high percentage of Non-Revenue Water (NRW) usage. In simple terms the city was producing a lot of water that was not being paid for. There are several reasons for this, but one of the factors is leakage in the water infrastructure. But AE2S noted that since the city has been periodically upgrading its aging water mains, NRW percentage dropped from 36.9% to 15.9% from 2011 through 2017. This is significant, but there is still room for improvement because any NRW above 10% is considered excessive and this costs EVERY resident of Whitefish. AE2S recommends the city CONTINUE to replace older pipes to achieve lower NRW.

“Recent upgrades to the City’s infrastructure have reduced the NRW in the past few years. It is recommended that the City continue upgrading older pipes to reduce overall water loss through leaking pipes and valves”

Sometime after the 2018 FCS study, city management decided to recategorize this ongoing project as an impact fee eligible capital project and use water impact fees to pay for this. This effectively placed a burden on new development to pay for existing deficiencies in the water infrastructure and violates Montana statutes and even City ordinances.

In the 2023 CIP, city management diverted \$1.375M of water impact fees to pay for this maintenance project. There has been no change to the 2018 Impact Fee Update that allows the city of divert monies from legitimate impact fee programs paid for by development.

Summary

For 12 years, the **South Water Reservoir** project has been included in the Whitefish CIPs and used to calculate water impact fees for at least the last 10 years. The description and costs have changed over the years. Impact fees collected over this time period are approximately \$1.2M. No money has been spent to develop any new water storage facility in Whitefish. Impact Fee funds are being diverted by the city to pay for non-impact fee eligible maintenance projects.

No benefit has been derived by any of the homeowners and developers who were required to pay these fees for a decade. Numerous Montana statute violations by the city have been identified in this report. As of today, no homeowner or builder can obtain a building permit without agreeing to pay for this project.

NOTES

1. 2018 FCS Impact Fee Update, page 6.
2. Addendum to “Impact Fee Update”, prepared by Dana Smith, Assistant City Manager/Finance Director November 6, 2018.
3. 2012 Impact Fee Update, City Council Packet, 9/17/2012
4. AE2S, Water Tank Siting Technical Memorandum, Oct 31, 2019
5. 2021 Staff Report, Dec 16, 2021, Annual Impact Fee Report to the City Council
6. AE2S, Hydraulic Model Update Technical Memorandum, October 30, 2019